

SUPREME COURT OF INDIA**Bench: Justices Abhay S. Oka and Ujjal Bhuyan****Date of Decision: 17th May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8413 OF 2009

Maharashtra State Electricity Distribution Co. Ltd. ...Appellant**Versus****M/s JSW Steel Ltd. & Anr. ...Respondents****Legislation:**

Electricity Act, 2003

Subject: Appeal against the order of the Appellate Tribunal for Electricity setting aside the imposition of reliability charges by Maharashtra State Electricity Distribution Co. Ltd. on bulk consumers, including M/s JSW Steel Ltd.

Headnotes:

Electricity Act, 2003 – Imposition of Reliability Charges – Validity – Appeal against Tribunal’s order setting aside reliability charges imposed on bulk consumers by Maharashtra State Electricity Distribution Co. Ltd. – Tribunal held that continuous process industries like the 1st respondent, which were already paying higher tariffs, could not be subjected to additional reliability charges – Supreme Court upholds Tribunal’s decision, finding no statutory basis for reliability charges under the Act or Regulations – Appeal dismissed.

Imposition of Reliability Charges – Continuous Process Industries – Tribunal noted higher tariff rates for continuous process industries on express feeders, compared to non-continuous industries – Held that additional reliability charges were unjustified – Tribunal’s findings confirmed by Supreme Court. [Paras 6-11]

Statutory Appeal – Section 111 of Electricity Act, 2003 – Entitlement to Appeal – Tribunal noted that the 1st respondent, directly affected by the levy, was entitled to appeal despite not participating in the public hearing – Supreme Court agrees, holding that non-participation does not bar statutory appeals. [Para 8]

Decision – Appeal Dismissed – Supreme Court finds no merit in the appeal and dismisses it, confirming the Tribunal's order to set aside the reliability charges imposed on the 1st respondent. [Para 12]

Referred Cases: None.

J U D G M E N T**ABHAY S. OKA, J.**

FACTUAL ASPECT

1. The issue involved in this appeal is about the legality of the imposition of a reliability charge by the appellant, a distribution licensee. The appellant is a company incorporated under the Companies Act, 1956. It is principally responsible for the distribution and supply of electricity in the entire State of Maharashtra, except the areas that expressly fall within the responsibility of the utilities like the Brihanmumbai Electric Supply and Transport Undertaking, TATA Power Company, Reliance Energy Limited, etc. The 1st respondent is a steel industry, which claims to be one of the largest consumers of electricity supplied by the appellant. The 1st respondent is exporting its end products and earning significant foreign exchange for the country.

2. On the petition filed by the appellant, the Maharashtra Electricity Regulatory Commission (for short, 'the Commission') passed a tariff order on 20th October 2006, imposing additional supply charges for uninterrupted power supply to the bulk consumers like the 1st respondent. In the next tariff order passed on 20th June 2008, the Commission discontinued the additional supply charges with immediate effect. It directed the appellant to refund the additional supply charges collected from bulk industries during the financial years 2006-07 and 2007-08. According to the case of the 1st respondent, as it is a continuous process industry and a bulk consumer, the appellant did not subject them to load-shedding. Therefore, the tariff was specifically fixed slightly higher than that for HT noncontinuous process industries.

3. The appellant submitted a petition before the Commission under the Electricity Act, 2003 (for short, 'the 2003 Act') for approval of reliability charges to be recovered for implementing Zero Load Shedding (ZLS) in the area covered by Pen Circle in Maharashtra. Permission was sought to appoint the Humanist Consumer Council as an interim franchisee. As per the directions of the Commission, a public notice was published for inviting objections. The Commission conducted a public hearing. By the order dated 15th June 2009, the Commission allowed the petition filed by the appellant and imposed a reliability charge from 16th June 2009 to 31st March 2010 on account of ZLS, which was made payable by all the consumers in the Pen Circle area, including the 1st respondent. Being aggrieved by the said order of the Commission, an appeal was preferred by the 1st respondent before the Appellate Tribunal for Electricity (for short, 'the Tribunal'). By the impugned judgment, the order of the State Commission dated 15th June 2009 was set aside.

SUBMISSION

4. Learned senior counsel appearing for the appellant has taken us through the impugned order, and the order dated 15th June 2009 passed by the Commission. The learned senior counsel submitted that the reliability charge existed in Pune, Baramati, Vashi and Thane circles. Relying upon Section 62 (3) of the 2003 Act, he submitted that the Commission has adequate powers to bring in schemes to improve the nature of supply in a particular area. He submitted that though the Commission published a public hearing notice, the 1st respondent did not participate in the hearing. He submitted that non-participation in the public hearing amounts to consent given by the 1st respondent to pay the reliability charge. He would, therefore, urge that the 1st respondent had no locus to challenge the order of the Commission dated 15th June 2009, and its remedy was to apply for review. He pointed out that the reliability charge was imposed for a limited period between 16th June 2009 and 31st March 2010, and at the time of the extension of the scheme, the 1st respondent could have raised an objection. He submitted that the 1st respondent is a bulk electricity consumer, consuming about 45 per cent of the electricity consumed in Pen Circle. Still, the 1st respondent did not participate in the public hearing conducted by the Commission. He submitted that the 1st respondent was enjoying ZLS and, therefore, was liable to pay the reliability charge, which HT industrial consumers are paying in Pune, Baramati, Thane and Vashi circles. He would, thus, submit that the view taken by the Tribunal is erroneous.

5. Learned senior counsel appearing for the first respondent invited our attention to findings recorded by the Tribunal and submitted that the view taken by the Tribunal cannot be interfered with.

CONSIDERATION OF SUBMISSIONS

6. The question which arose for consideration before the Tribunal was whether the 1st respondent was liable to pay the reliability charge. The Tribunal noted that the 1st respondent is undisputedly a continuous process industry on express feeder and is not subjected to load-shedding. In paragraph 18 of the impugned judgment, the Tribunal held that the tariff of HT continuous industries, like the 1st respondent, has been fixed at a higher rate than that of the tariff rate applicable for HT non-continuous industries. In the same paragraph, the Tribunal noted the admitted position that effective from 1st June 2008, the continuous industries (on express feeder) were paying tariff of 4.30 paise per kWh and non-continuous industries (not on express feeder) were paying tariff at the rate of 3.95 paise per kWh. From 1st

August 2009, the rates were increased to 5.05 paisa kWh and 4.60 paisa kWh respectively. Therefore, the Appellate Tribunal held that the 1st respondent had already been subjected to higher tariffs than consumers on non-express feeders. Thus, the appellant has already been compensated for providing continuous supply to the industries like the 1st respondent. The Tribunal also held that neither Section 62(3) of the 2013 Act nor the Rules and Regulations framed by the Commission support the levy of reliability charge. The appellant in this appeal is unable to show any basis in the Statute or Statutory rules and regulations to support the levy of a reliability charge.

7. As regards the failure of the 1st respondent to object at the time of the public hearing, the Tribunal recorded a finding of fact that Vidharba Industries Association, of which the 1st respondent is a member, had raised an objection by filing an affidavit. There is no dispute about this factual aspect.

8. Under Section 111 of the 2003 Act, a statutory appeal is provided against an order of the Commission. The remedy is available to any aggrieved person. It cannot be disputed that the 1st respondent was directly affected by the levy of the reliability charge. Hence, the first respondent was the person aggrieved within the meaning of Section 111. In the appeal, the appellant was entitled to challenge the legality of the impugned order of the Commission. Nothing in the 2003 Act suggests that a consumer who does not participate in the Commission's public hearing and is aggrieved by an order of the Commission is disentitled to prefer an appeal.

9. The Tribunal has also noted that the appellant filed a Review Petition before the State Commission on 27 July 2009 to determine an additional supply charge instead of a reliability charge for the withdrawal of load-shedding in the area.

10. It is an admitted position that 1st respondent, a continuous process industry on express feeder, paid a higher tariff during the relevant period of July 2009 to April 2010 to enable it to get supply without load-shedding.

11. We find no error in the view taken by the Tribunal that the appellant was not entitled to impose a reliability charge on customers like the 1st respondent.

12. Hence, we find no merit in the appeal, and the same is dismissed.

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