



**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 8413 OF 2009**

**Maharashtra State Electricity  
Distribution Co. Ltd.**

**...Appellant**

*versus*

**M/s JSW Steel Ltd. & Anr.**

**...Respondents**

**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 1<sup>st</sup> respondent is a steel industry, which claims to be one of the largest consumers of electricity supplied by the appellant. The 1<sup>st</sup> 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 20<sup>th</sup> October 2006, imposing additional supply charges for uninterrupted power supply to the bulk consumers like the 1<sup>st</sup> respondent. In the next tariff order passed on 20<sup>th</sup> 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 1<sup>st</sup> 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 non-continuous 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 15<sup>th</sup> June 2009, the Commission allowed the petition filed by the appellant and imposed a reliability charge from 16<sup>th</sup> June 2009 to 31<sup>st</sup> March 2010 on account of ZLS, which was made payable by all the consumers in the Pen Circle area, including the 1<sup>st</sup> respondent. Being aggrieved by the said order of the

Commission, an appeal was preferred by the 1<sup>st</sup> respondent before the Appellate Tribunal for Electricity (for short, 'the Tribunal'). By the impugned judgment, the order of the State Commission dated 15<sup>th</sup> 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 15<sup>th</sup> 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 1<sup>st</sup> respondent did not participate in the hearing. He submitted that non-participation in the public hearing amounts to consent given by the 1<sup>st</sup> respondent to pay the reliability charge. He would, therefore, urge that the 1<sup>st</sup> respondent had no locus to challenge the order of the Commission dated 15<sup>th</sup> June 2009, and its remedy was to apply for review. He pointed out that the reliability charge was imposed for a limited period between 16<sup>th</sup> June 2009 and 31<sup>st</sup> March 2010, and at the time of the extension of the scheme, the 1<sup>st</sup> respondent could have raised an objection. He submitted that the 1<sup>st</sup> respondent is a bulk electricity consumer, consuming about 45 per cent of the electricity consumed in Pen Circle. Still, the 1<sup>st</sup> respondent did not participate in the public hearing conducted by the Commission. He submitted that the 1<sup>st</sup> 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 1<sup>st</sup> respondent was liable to pay the reliability charge. The Tribunal noted that the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> June 2008, the continuous industries (on express feeder) were paying tariff of 4.30 paisa per kWh and non-continuous industries (not on express feeder) were paying tariff at the rate of 3.95 paisa per kWh. From 1<sup>st</sup> August 2009, the rates were increased to 5.05 paisa kWh and 4.60 paisa kWh respectively. Therefore, the Appellate Tribunal held that the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> respondent to object at the time of the public hearing, the Tribunal recorded a finding of fact that Vidharba Industries Association, of which the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> respondent.

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

.....J.  
(Abhay S. Oka)

.....J.  
(Ujjal Bhuyan)

**New Delhi;  
May 17, 2024.**