

COURT – I

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 181 of 2009

Dated: 25th May, 2010

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

M.P.S. Steel Castings (P) Ltd.

.... Appellant (s)

Versus

Kerala State Electricity Regulatory Commission & Anr.

... Respondent (s)

Counsel for the Appellant (s): Mr. P.S. Narsimha, Sr. Adv. with Mr. Abhishek Munot & Mr. Apoorva Misra

Counsel for the Respondent (s): Mr. M.T. George for KSEB
Mr. Ramesh Babu for R.1

ORDER

Mr. P.S. Narasimha, the learned Senior Counsel appearing for the Appellant submits that it is now found out on a perusal of the entire records and on getting opinion from the expert that the Appellant is not a co-generation plant, and therefore, he seeks permission of this Tribunal to approach the Commission for re-determination of the tariff in a different capacity and as such necessary directions may be issued to the Commission for the same.

An affidavit dated 24.05.2010 has been filed by the Manager-Power Project on behalf of the Appellant in the following manner. The relevant portion is as follows:

“3. That during the course of preparing for the final arguments of the present appeal, the learned Senior Counsel appearing for the Appellant expressed some doubts about the correctness of the plant as a cogeneration unit and advised us to seek technical expert opinion in this regard. Pursuant to which such expert opinion was taken from Dr. K.V. Unninarayanan and P.V. Jose. The experts on a visit and inspection of the plant premises were of the opinion that to the Appellant’s plant is not a cogeneration unit under the Electricity Act, 2003 and further issued a certificate dated 11.05.2010 to this effect. The certificate given by Dr. K.V. Unninarayanan and P.V. Jose dated 11.05.2010 is annexed herewith as Annexure A.1.

4. That thereafter, the learned Senior Counsel after perusal of the technical opinion given by the experts, came to a conclusion that the entirety of proceedings till date have been premised on a misconception that the Appellant is in fact a cogeneration unit. The Electricity Act, 2003 defines cogeneration as a process by which two forms of energy including electricity is produced simultaneously. It is evident that the Appellant only produces electricity and no other form of useful energy. Therefore, he advised us to take immediate steps to rectify the aforesaid mistake and take corrective

measures, by making appropriate representation to this Hon'ble Tribunal.”

In view of the statement of the Appellant that the Appellant is no more a co-generation plant, it is proper for the Appellant to approach the Commission seeking for necessary relief for re-determination of tariff in the capacity as a generating station without co-generation. The learned Senior Counsel requests this Tribunal to give permission to withdraw the Appeal with a liberty to approach the Commission for re-determination of tariff. The learned Senior Counsel would undertake that the Appellant would approach the Commission within two months from the date of this Order.

Accordingly, we permit the Appellant to withdraw the Appeal with a liberty to approach the Commission for necessary relief for re-determination of the tariff. However, it is made clear that we are not expressing any opinion on the merits of the matter and as such we are not disturbing the Order impugned passed by the Commission.

The Appellant is at liberty to approach the Commission for necessary relief in the light of the new stand taken by the Appellant within two months from today. In that event, the Commission may

consider the prayer of the Appellant and pass an Order with regard to the re-determination of tariff in accordance with law.

With these observations, the Appeal is dismissed as withdrawn.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

ts/ksm