

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

Appeal No. 41 of 2008 & IA No. 83 of 2007

Dated : January 21, 2009

**Present: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. H. L. Bajaj, Technical Member**

**M/s. Jaya Hydro Power Pvt. Ltd. ... Appellant(s)
Versus
Jai Parkash Hydro Power Ltd. & Anr. ... Respondent(s)**

Counsel for the Appellant(s) : Mr. Yoginder Handoo

Counsel for the Respondent(s) : Ms. Anisha Upadhyay for Resp.
No.1

ORDER

Heard.

2) This appeal is directed against the order of the Himachal Pradesh Electricity Regulatory Commission (the Commission for short) dated 24.02.07 in Petition No. 338 of 2005 in the matter of determination of capital cost and tariff of 300 MU Baspa-II Hydro Electric Plant (hereinafter referred to as the plant in question), owned by the respondent No.1, Jai Parkash Hydro Power Ltd. The respondent No.1 sells power generated by it to Himachal Pradesh State Electricity Board (hereinafter referred to as the Board). The impugned tariff order has fixed the generation tariff for the Baspa-II Hydro Electric Plant which has to be paid by the Board. The tariff order directly affects the respondent No.1 and the Board. The

consumers of the Board shall also be affected by the impugned tariff order as the purchase made by the Board from the Plant in question will eventually be passed on to the consumers of the Board as per the provisions of the Electricity Act 2003 (hereinafter referred to as the Act) and the various policy declarations made the Government of India and the Rules and Regulations framed by the Commission. The appellant is neither a purchaser of power from the respondent No.1 and nor is affected by the impugned tariff order.

3) The first question posed by us to the appellant was as to whether he had the locus standi to challenge the appeal. Section 111(1) of the Act permits every person aggrieved by an order made by an adjudicating officer or an appropriate Commission to file an appeal before this Tribunal. Relevant provision is extracted below:

“111(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any

penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.”

4) The appellant has described itself in paragraph 7.1 of the appeal as under:

“7.1 It is submitted that the Appellant is a registered company established under the Companies Act 1956 having its registered office at Skipton Villa. The Ridge Shimla-1. All the Directors of the company are bonafide residents of Himachal Pradesh and are consumers of electricity in the State of Himachal Pradesh. Appellant is engaged in the field of hydro power development activities and is providing consultancy services in the State of Himachal Pradesh besides working as a watch dog on various issues of public interest affecting electricity

consumers in general in power sector and thus is a bonafide stake holder in the matter.”

5) The appellant, it is clear from the above paragraph, is not the purchaser of power from the plant in question. Nor does the appellant claim to be a consumer of electricity supplied by the Board. It merely says that all the Directors of the appellant company are consumers of electricity in the State of Himachal Pradesh. However, the appellant as a company is a distinct legal entity and this company is not pleaded to be a consumer. The appellant claims to be engaged in the field of hydro power development activity and providing consultancy services in the State of Himachal Pradesh. The appellant cannot be aggrieved by the impugned order either as a hydro power developer or as a provider of consultancy services. The appellant also claims to be working as a watch dog on various issues of public interest affecting consumers of electricity in general in power sector. However, memorandum of association of the appellant company does not show that one of its objectives is to take care of ultimate consumers of electricity or to act as watch dog for consumers of electricity. We had an earlier occasion of examining the memorandum of association in our order dated 23.07.07 whereby we rejected the prayer of the appellant for waiver of court fees. We find that the first objective as per the memorandum was “*to carry on business to generate, receive, produce, improve, buy, sell,*

resell, acquire, use, transmit, accumulate, employ, distribute, develop, handle, protect, supply and to act as agent, broker, representative, consultant, collaborator or otherwise to deal in electric power and steam in all its branches of such place or places as may be permitted by appropriate authorities.” We categorically observed that the company was not formed to act as a watch dog for the consumers of electricity. The appellant as a generating company cannot be aggrieved by an order fixing tariff for another generating company. We may add here that though the appellant is an incorporated company it has, so far, not set up any plant and is still not in the production of energy.

6) In view of the above analysis, we find that the appellant has hopelessly failed to disclose how it is aggrieved by the impugned order. The appellant not being a person aggrieved by the impugned order has no locus standi to file the present appeal. The appeal is *dismissed in limine*.

7) The IA No. 83 of 2007 seeking stay of the impugned tariff order is also dismissed.

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member