

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

Appeal No. 96 of 2009 & IA No. 191 of 2009

Dated: September 2, 2009

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

Mr. Sudhir Deviram Agarwal - Appellant(s)

Versus

Maharashtra Electricity Regulatory Commission & Ors. -Respondent(s)

Counsel for the Appellant(s) : Ms. Deepa Chawan and Mr. H.S.Jaggi,
Advs with appellant in person

Counsel for the Respondent(s) : Ms. Anjali Chandurkar and
Ms. Smitha Inna for RIL, Resp. No.2

ORDER

I.A. No. 191 of 2009

The prayer in this application is for refund of Rs. 90, 000 out of the court fee Rs. 1Lacs is already deposited. The contention of the appellant is that the appellant being an individual consumer should not be made to pay the court fee of Rs. 1 lacs which according to the appellant is exhorbited. We have heard the learned counsel for the appellant. The bills of the appellant available on record show that the appellant consumes electricity worth Rs. 1.25 lacs almost every month. It is stated at the bar that the annual turnover of the appellant is more than a crore of rupees. The appellant is nowhere near a person who can be granted exemption from payment of court fee under the provisions of the order 33 of Code of Civil Procedure. Even if the code is not applicable to the present

proceedings the principles will have to be followed. We do not think that the appellant is entitled to reduction or waiver of the court fee.

The application is accordingly dismissed.

Appeal No. 96 of 2009

There are two prayers in this appeal.

“(a) This Hon’ble Tribunal be pleased to call for the papers and proceedings relating to the impugned Order dated March 23, 2009 passed by the Respondent No. 1 i.e. MERC in Case No. 87 of 2008 and after considering the legality and propriety thereof be pleased to quash and set aside the Impugned Order dated 23.03.2009 passed by the Respondent No. 1 in Case No. 87 of 2008;

(b) This Hon’ble Tribunal be pleased to lay down a specific procedure to be followed in case State Electricity Commission wants to make material changes in the ARR petition of the licenses after the public hearing is complete and the issues which came to its light after the public hearing are vital enough to alter the ARR materially.”

The prayer ‘a’ is the principal prayer. The appellant challenges the order passed by the Commission on review petition. The review petition itself dealt with the tariff for category LT-II (commercial). It is pointed out that vide our judgment dated 27th Jan, 2009, we set aside the tariff order for the category of

LT-II with sanctioned load of above 20 KW but below 50 KW and with sanctioned load of 50 KW and above for the tariff period 2008-09. The same tariff order is under challenge in the present appeal, although on certain grounds which were not present in appeal no. 98 of 2008 decided on 27th January, 2009. Nonetheless, the category itself having been set aside the principal prayer of the appellant has become infructuous.

We hasten to add that an appeal has been filed in the Supreme Court and Hon'ble Supreme Court has been pleased to stay the operation of our judgment dated 27th January, 2009. The fate of appellant will naturally follow the judgment of the Supreme Court that may be passed in the appeal before it. For the present all that we may say is that the prayer 'a' stands infructuous.

So far as prayer 'b' is concerned, the question has now become academic. We do not mean to say that the prayer 'b' has no substance. We may adjudicate on prayer 'b' in a suitable case. The questions raised under this prayer are left open.

The appeal stands disposed of.

(H.L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member