

Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Appeal No. 99 of 2006

Dated this the 12th day of September 2006

Present : **Hon'ble Mr. Justice E Padmanabhan, Judicial
Member**

Hon'ble Mr. H. L. Bajaj, Technical Member

In the matter of:

Urla Industries Association.

....Appellants

Versus

Chhatisgarh State Electricity Regulatory
Commission,

....Respondents

Counsel for the Appellants : Mrs Nalini Chidambram, Senior
Advocate with
Mr. Manoj Sharma and Mr.
V.K. Munshi, Advocates.

Counsel for the respondents : Mr. M.G. Ramachandran, Advocate
with Ms. Taruna Singh Baghel
Advocate and Mr. Anand K.
Ganeshan for CSERC, Ms. Suparna
Srivastava, Advocate with
Mr. Shivraj Singh (Consultant) for
CSEB &
Mr. P.C. Sen, Advocate for BALCO

JUDGEMENT

1. This appeal has been preferred under Section 111 of the Electricity Act 2003 by the appellant Association seeking for the following reliefs:
 - (a) The appeal be allowed and the impugned order dated 4th May, 2006 in petition No. 13/2006 (Annexure-A) be set aside and consequently set aside the charges leviable on parallel operation fixed by order dated 6th Feb., 2006 passed on 6.2.2006 in petition No. 17 of 2005 (M) (Annexure-B). and
 - (b) Consequently pass appropriate order/directions to Respondent No. 2 to refund or adjustment of the amount paid for the period 1st July, 2005 till up-to-date by members of the petitioner/ appellant Association on account of parallel operation charges.
2. Heard Mrs. Nalini Chidambaram Senior Counsel appearing for appellant, Mr. M.G. Ramachandaran Advocate for the first Respondent Commission and Mrs. Suparna Srivastav Advocate for the second respondent, Chhatisgarh State Electricity Board.
3. In this appeal the point of controversy raised relates to “Parallel Operation Charges”. The learned Senior counsel appearing for the appellant represented that the appellant propose to file another appeal as against the order dated 6.2.2006 with a petition to condone delay as a preliminary objection was raised by the learned counsel for Respondent No. 1 & 2. Since the appeal itself is taken up for final hearing, this Appellate Tribunal assumed that if justice requires on facts of the case and not an technicalities: the matter

will be considered on merits. Thereafter both parties made their submissions on merits. The learned counsel for the appellant placed reliance on pronouncement of the A.P. High Court on C.M.A. No. 1104,1181, 1182 & 2002 dated 6.9.2006 in support of her contentions. Per contra Mr. M.G. Ramachandran and Mrs. Suparna Srivastav, the learned counsel for the Respondents sought to distinguish the said judgment, besides pointing out the said judgment is the subject matter of appeal before the Supreme Court. It is pointed out on behalf of the respondent that on facts the judgment has no application as the A.P. High Court considered the issue relating to Grid Support charges demanded by the A.P. Transco. In our view the distinction sought to be made by Mr. M.G. Ramachandran is not without substance and it merits consideration. We hasten to add that it may not be necessary for us to examine this point any further in the light of the view taken by us and in the light of the subsequent developments.

4. We had heard the Expert, who appeared in the matter on behalf of second Respondent. The Expert elaborated the technicalities the benefit enjoyed by captive power plant generators, the harmonic injection, additional reactive power requirement and the disturbance caused to installations of the second Respondent by parallel operation. We were impressed by the presentation of the subject by the Expert during hearing and his being an expert in the field of Electricity. We have considered the presentation of the said Expert. The contesting Respondents placed details by way of case study along with counter.
5. The points that arise for consideration are:
 - A. Whether review of Review Order is maintainable ?

- B. Whether as against the order declining to review the order passed in earlier review petition an appeal is maintainable ?.
 - C. Whether on facts and circumstances of the case, the order of the Regulatory Commission in fixing the charges for parallel operation for availing grid support by CPP at Rs. 10/= per KVA per month as against Rs. 16/= per KVA per month fixed in tariff notification is liable to be interfered ?
 - D. Whether parallel operation by CPOPs are changeable ?
 - E. To what relief, if any ?
6. We shall first take up points A & B for consideration. The first respondent Commission while approving Annual Revenue Requirement (ARR) determined the tariff by its order dated 15.6.2005. With respect to parallel operation charges proposed, despite publication no CPP raised objection and the commission fixed the charges for parallel operation at Rs. 16 per KVA per month on the installed capacity of the CPP as was hitherto before fixed by the Madhya Pradesh Electricity Regulatory Commission in its earlier tariff orders, which commission was the Regulator before bifurcation of the state of M.P.
7. Thereafter the appellant a CPP moved review petition on 12.7.2005 under section 94 (1) (f) seeking review of the rate of charges fixed by the commission in its tariff order dated 15.6.2005 raising various issues. By order dated 6.2.2006, the Regulatory Commission with respect to parallel operation charges allowed the review and refixed the same at Rs. 10/= per KVA per month as against Rs. 16/= per KVA per month. This review was undertaken by the Commission at the instance of the appellant herein.

8. Again on 4.4.2006 the appellant moved a review application before the Regulatory Commission seeking for review of its earlier review Order dated 6.2.2006 and prayed for total withdrawal of parallel operation charges. By order dated 4th May, 2006 the Regulatory Commission rejected the review petition at the admission stage itself, while pointing out formidable fallacies in adding new reliefs. Being aggrieved the present appeal has been preferred.

9. Section 94 (1) of the Electricity Act 2003 provides that the Appropriate Commission shall, for the purpose of any enquiry or proceedings under the Act, have same powers as are vested in a Civil Court under the code of Civil Procedure 1908 in respect of the matters enumerated in clauses (a) to (g). Section 94 (f) provides for reviewing its decisions, directions or orders by the commission. It is settled law that even in terms of the Civil Procedure Code, no review of review is maintainable. It has been held that an order passed on review application for review is not open to review again and again in 1998 (7) S.C.C. 386 Abhaimaligai Vs. K. Santhkumaran; Lily Thomas Vs. U. India 2000 (6) S.C.C. 224 at 250. Delhi Administration Vs. Gurdip Singh. 2000 (7) S.C.C. 296 (309-10); etc.

10. Following the same, there is no escape except to hold even in terms of Section 94 (1), review of review is not maintainable and such an application has been rightly dismissed at the threshold by the Regulatory Commission, while pointing out other formidable fallacies set out in the review petition. There is no escape for the appellant. As a further consequence, it follows under Section 111 of the Electricity Act 2003, no appeal is maintainable as against the order rejecting review of review. Hence the points A&B are

answered against the appellant and in favour of the Respondents 1 & 2.

11. Next we shall take up points C & D together, as the discussions overlap each other. The parallel operation is definitely a service that the second respondent renders to all the CPPs like the appellant. It is the contention of the appellant that no charges could be levied or collected for the said service. As rightly pointed out by the Expert who appeared for the second Respondent, the parallel operation is a service which extend support to the system and at the same it causes voltage dip in he system, harmonies, injection, additional reactive power requirement etc. By parallel operation the CPP gains more and hence it is liable to pay the charges for the service.
12. The contention that no charges at all is payable for parallel operation or transmission system cannot be sustained and such a claim is contrary to factual position. There is no escape for CPP to pay charges for parallel operation by which parallel operation the CPP gains while the transmission system of the second respondent is affected apart from the admitted fact the transmission grid is strengthened by the power injected by CPP. Hence the contention that no charges at all is payable by CPP to the second respondent for parallel operation is not acceptable nor such a claim could be sustained.
13. Conceedingly for the past several years, CPPs were paying at the rate of Rs. 16/= per KVA per month and in the absence any scientific data placed or objection by the appellant and other CPPs, the commission just followed the same scale and fixed the same tariff viz

- Rs. 16/= per KVA per month. On a review the commission has slashed the said rate and fixed it at Rs. 10/= per KVA per month. This works out approximately paisas 2 to 3 per unit per month, a negligible rate when compared to services rendered by second respondent. The rates of parallel operation charges so fixed are till the next tariff fixation, which is under progress.
14. It is strongly contended by the learned senior counsel that in the absence of scientific data and particulars the fixation is arbitrary and on the higher side. Per contra the second respondent while contending that the appellant could have very well placed the datas to show the fair rate of charges for such parallel operation.
 15. We are informed by either side that the first respondent commission is seized of the very issue and the respondent after study and sample survey has placed required datas, which will enable the Regulatory commission to fix parallel operation charges on a scientific basis and on the materials and datas placed before it.
 16. The charges at the rate of Rs. 10/- per KVA per month has been fixed by giving substantial reduction and it is a rough and ready formula adopted on a normative basis to render justice. In a review such a conclusion is not liable to be altered at all. As rightly pointed out by the commission no case even for review is made out, much less review of review. As justice has been rendered by the commission and as no case has been made out we decline to interfere with the order of the commission fixing parallel operation charges at Rs. 10/- per KVA per month.

17. Hence the appeal is dismissed holding that even on merits the rate fixed by the commission for parallel operation for the year in question is not liable to be interfered. Points C & D are answered against the appellant and in favour of the respondent.
18. However, we make it clear that in the tariff petition which is pending consideration, the commission may fix the charges for parallel operation on the basis of the datas, materials and scientific inputs relating to parallel operations already placed by the parties or that may be placed by the parties before the conclusion of hearing and such exercise shall be carried out by the first respondent Regulatory Commission independently and without in any manner being influenced by this judgment.
19. Mr. P.C. Sen learned counsel for BALCO Industries mentioned that he is moving an intervention application and that he will submit written arguments. As neither such an application has been filed nor written submissions till today, we have no occasion to consider the said intervention in this judgment.
20. In the result on point E, we hold that the appeal fails and it is dismissed but without cost.

Pronounced in the open court on this 12th day of September, 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E Padmanabhan)
Judicial Member

