

Supreme Court upholds the decision of APTEL directing that there is no statutory basis to levy additional reliability charge for uninterrupted power supply to bulk consumers.

The Hon'ble Supreme Court of India ("**Supreme Court**"), in *Maharashtra State Electricity Distribution Company Limited v. M/s. JSW Steel Ltd. & Anr.* ("**Civil Appeal**")¹, has upheld the decision of the Appellate Tribunal for Electricity ("**APTEL**") that the Maharashtra State Electricity Distribution Co. Ltd. ("**Appellant**") had no statutory basis to impose an additional reliability charge for uninterrupted power supply to bulk consumers.

Brief Facts

1. In terms of the Tariff Order dated October 20, 2006, passed by the Maharashtra Electricity Regulatory Commission ("**MERC**"), the Appellant imposed an additional supply charge for uninterrupted power supply to its bulk consumers, including Respondent No. 1 / JSW Steel Ltd. ("**JSW Steel**").
2. On June 20, 2008, MERC by its Tariff Order discontinued the imposition of additional supply charges and directed the Appellant to refund the additional supply charge collected during Financial Year ("**FY**") 2006-07 and FY 2007-08 from bulk consumers. Pursuant to this, the Appellant preferred a petition before the MERC seeking approval for recovery of reliability charges for implementing 'Zero Load Shedding' in the Pen Circle area in Maharashtra.
3. On June 15, 2009, MERC by its order allowed the imposition of a reliability charge for the period June 16, 2009, till March 31, 2010, ("**Order**") which was made payable by all the consumers in the Pen Circle area, including JSW Steel.
4. Aggrieved by the Order, JSW Steel challenged the said Order before APTEL in Appeal No. 135 of 2009. On December 14, 2009, APTEL by its Judgment *inter alia* set aside the Order. Subsequently, the Appellant challenged the Judgment of APTEL before the Supreme Court in the present Civil Appeal.
5. The Appellant contended that:
 - a) The MERC has adequate powers to bring in schemes to improve the nature of Supply in a particular area in terms of Section 62(3) of the Electricity Act, 2003 ("**Electricity Act**").
 - b) Non-participation of JSW Steel in the public hearing held by MERC, despite consuming about 45% of the electricity in Pen Circle area, amounts to deemed consent given by JSW Steel to pay the reliability charges. Similar charges are being paid by the High Tension ("**HT**") industrial consumers in other regions of Maharashtra.

¹ Civil Appeal No. 8413 of 2009, dated May 17, 2024.

6. JSW Steel contended that:
 - a) JSW Steel, being a continuous process industry and a large-scale consumer, was not subjected to load shedding by the Appellant.
 - b) JSW Steel was already paying higher tariffs compared to those for HT non-continuous process industries.

Issue

The issues before the Supreme Court were to adjudicate:

1. Whether imposition of reliability charge by the Appellant was legal?
2. Whether JSW Steel was liable to pay the reliability charge?
3. Whether JSW Steel, being affected by the levy of the reliability charge, had a right to appeal against MERC's Order under Section 111 of the Electricity Act?

Findings

While upholding the decision of APTEL in favour of JSW Steel, the Supreme Court observed that:

1. There is no statutory basis, either under Section 62(3) of the Electricity Act or the Rules and Regulations framed thereunder by the MERC, which supports the levy of reliability charges. Thus, the Appellant did not have any statutory basis for imposition of reliability charge.
2. Vidharba Industries Association, of which JSW Steel is a member, had already objected to the imposition of the reliability supply charge, thereby representing the interest of JSW Steel.
3. Section 111 of the Electricity Act provides for a statutory appeal against an Order of the Appropriate Commission. JSW Steel, being directly affected by the levy of the reliability charge, was a "person aggrieved" within the purview of Section 111 of the Electricity Act and hence was entitled to challenge the legality of the Order passed by MERC.
4. Nothing in the Electricity Act suggests that a consumer who does not participate in the Appropriate Commission's public hearing and is aggrieved by an order of the Appropriate Commission is disentitled to prefer an appeal.
5. JSW Steel, being a continuous process industry on express feeder, had paid a higher tariff during the period from July 2009 till April 2010 to get supply without load-shedding. Thus, JSW Steel had already paid a higher tariff for uninterrupted supply, negating the need for an additional reliability charge.

Conclusion

The Supreme Court by the Civil Appeal has re-affirmed the law laid down by APTEL that charges cannot be levied by Distribution Companies on its consumers without any statutory basis under the Electricity Act. Bulk / Industrial consumers are already subjected to higher tariffs which negate the need for the imposition of an additional reliability charge for implementing 'Zero Load Shedding'.

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