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Case Name: Maharashtra State Electricity Distribution Company Limited Vs JSW Steel Limited and Anr.

Case No.: Civil Appeal No. 8413 of 2009

Court: Supreme Court

Judges: Justice Abhay S. Oka & Justice Ujjal Bhuyan

Order Date: May 17, 2024.

Brief Facts

Parties: The appellant, Maharashtra State Electricity Distribution Company Limited ("MSEDCL"), is a company incorporated under the Companies Act, 1956, and a distribution licensee under the Electricity Act, 2003, responsible for electricity supply across Maharashtra. The respondent, JSW Steel Limited, is a major steel manufacturer operating as a continuous process industry on an express feeder, exempt from load-shedding, and a significant consumer of MSEDCL's electricity.

Background: On October 20, 2006, the Maharashtra Electricity Regulatory Commission ("MERC") imposed additionally supply charges on bulk consumers like JSW Steel for uninterrupted power. These charges were discontinued by MERC's tariff Order dated June 20, 2008, which also directed MSEDCL to refund charges collected during 2006-2008. JSW Steel, already paying a higher tariff (escalating from 4.30 paise/kWh in 2008 to 5.05 paise/kWh) due to its continuous process status, was affected.

Dispute: MSEDCL petitioned MERC under the Electricity Act, 2003, seeking approval for reliability charges to implement Zero Load Shedding ("ZLS") in Pen Circle, Maharashtra, and to appoint the Humanist Consumer Council as an interim franchisee. After public notice and a hearing, MERC's Order dated June 15, 2009, approved reliability charges from June 16, 2009, to March 31, 2010, applicable to all consumers, including JSW Steel. Aggrieved, JSW Steel appealed to the Appellate Tribunal for Electricity ("APTEL"), which set aside MERC's order. MSEDCL then appealed to the Supreme Court.

ISSUES

The Issues before the Supreme Court were to adjudicate:

1. Whether JSW Steel was liable to pay the reliability charges for ZLS?
2. Whether MSEDCL's imposition of reliability charges were legally valid?
3. Did JSW Steel have the right to appeal MERC's order under Section 111 of the Electricity Act, 2003?

RULES

Section 62(3) of the Electricity Act, 2003: Allows the appropriate Commission to differentiate tariffs based on consumer characteristics (e.g., load factor, voltage, nature of supply) but prohibits undue preference among consumers.

Section 111 of the Electricity Act, 2003: Permits any person aggrieved by an order of the Appropriate Commission to appeal to APTEL, except for orders under Section 127.

Legal Principle: Charges imposed by a distribution licensee must have statutory backing and regulatory approval, and double recovery for the same services violates fairness and Section 62(3).

ANALYSIS

Liability for Reliability Charges: MSEDCL argued that reliability charges were justified to fund ZLS, benefiting all consumers, including JSW Steel. JSW Steel countered that, as a continuous process industry on an express feeder, it already paid a higher tariff (4.30 paise/kWh in 2008, later 5.05 paise/kWh) for uninterrupted supply, making additional charges duplicative. The Supreme Court agreed, finding that JSW Steel's existing tariff accounted for its exemption from load-shedding. Imposing reliability charges constituted double recovery for the same service, violating Section 62(3)'s prohibition on undue preference or unfair differentiation.

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Legality of Charges: MSEDCL claimed MERC's Order dated June 15, 2009 authorized reliability charges. However, MERC's Order from the year 2008 had discontinued similar additional supply charges and mandated refunds, signing no basis for reintroducing equivalent charges without new statutory or regulatory grounds. The Court found that MSEDCL's reliability charges lacked legal foundation, as they mirrored the discontinued charges without fresh justification under the Electricity Act, 2003. APTEL's decision to set aside MERC's order was upheld, as MSEDCL failed to demonstrate statutory support.

Right to Appeal: MSEDCL contended that JSW Steel's non-participation in MERC's public hearing barred its appeal under Section 111 of the Electricity Act, 2003. JSW Steel argued that Section 111 grants an unqualified right to appeal for any aggrieved party. The Court clarified that Section 111 imposes no requirement for prior hearing participation, and JSW Steel, directly affected by the charges, was entitled to appeal. APTEL's jurisdiction to hear the appeal was affirmed.

CONCLUSION

The Supreme Court dismissed MSEDCL's appeal, holding that JSW Steel was not liable for reliability charges, as its higher tariff already covered uninterrupted supply, and additional charges amounted to impermissible double recovery. The imposition of reliability charges lacked statutory backing, rendering it illegal, and JSW Steel's appeal under Section 111 of the Electricity Act, 2003 was maintainable regardless of public hearing participation. The ruling underscores that electricity distribution companies must ensure charges are statutorily authorized and equitable, reinforcing consumer protections under the Electricity Act, 2003.

Case Name: M/s Sundew Properties Limited v. Telangana State Electricity Regulatory Commission & Anr.

Case No.: Civil Appeal No. 8978/2019

Court: Supreme Court of India

Judges: Justice Sanjiv Khanna & Justice Dipankar Datta

Order Date: May 17, 2024

Citation: (2024) 6 SCC 443

BRIEF FACTS

Parties: The appellant, M/s Sundew Properties Limited, was notified as a ‘Developer’ under Sections 3 and 4 of the Special Economic Zones Act, 2005 (“**SEZ Act**”), by the Ministry of Commerce & Industry (“**MoCI**”) to establish an information Technology/ Information Technology Enabled Services SEZ in Madhpur, Hyderabad. The respondents are the Telangana State Electricity Regulatory Commission (“**TSERC**”) and Southern Power Distribution of Telangana Limited.

Background: A 2010 MoCI Notification (SO 528(E)) amended Section 14(b) of the Electricity Act, 2003, granting SEZ developers the status of “deemed distribution licensees.” The Appellant applied (O.P. No. 10 of 2015) to the Andhra Pradesh Electricity Commission for recognition as a deemed distribution licensee under this provision, read with Regulation 13 of the Andhra Pradesh Electricity Regulatory Commission (Distribution Licensee) Regulations, 2013 (“**2013 Regulations**”). Post the Andhra Pradesh Re-organization Act, 2014, the matter was transferred to TSERC.

Dispute: On February 15, 2016, TSERC recognized the appellant as a deemed distribution licensee but imposed a condition requiring its promoters to infuse Rs. 26.90 crore (30% of the projected investment of Rs. 89.53 crore) by March 31, 2016, to meet the capital adequacy norms under Rule 3(2) of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 (“**2005 Rules**”), as mandated by Regulation 12 read with Regulation 49 of the 2013 Regulations. The appellant challenged this condition before the Appellate Tribunal for Electricity (“**APTEL**”) in Appeal No. 3 of 2017, which upheld TSERC’s order. Aggrieved, the appellant appealed to the Supreme Court under Section 125 of the Electricity Act, 2003.

ISSUES

1. Does the designation as an SEZ developer by the MoCI ipso facto confer deemed distribution licensee status under Section 14(b) of the Electricity Act, 2003, without requiring an application?
2. Are Regulation 12 of the 2013 Regulations and Rule 3(2) of the 2005 Rules applicable to an SEZ developer recognized as a deemed distribution licensee under Section 14 (b) and Regulation 13 of the 2013 Regulations?

RULES

Section 14(b), Electricity Act, 2003 (as amended by 2010 Notification): Declares SEZ developers notified under Section 4(1) of the SEZ Act as deemed distribution licensees, effective from the notification date.

Regulation 13, 2013 Regulations: Requires deemed licensees to apply in the form specified in Schedule-2 for recognition as a deemed licensee, explicitly exempting them from Regulations 4 to 11.

Regulation 12, 2013 Regulations: Mandates that applicants for a distribution license within an existing licensee’s area comply with the 2005 Rules, in addition to Regulations 4 to 11.

Rule 3(2), 2005 Rules: Requires applicants to demonstrate 30% equity on the cost of investment, considering the net worth of promoters, to satisfy capital adequacy norms.

Legal Principle: A deeming fiction must be interpreted to achieve its intended purpose without imposing additional conditions beyond the legislative scheme, as established in *State of Bombay v. Pandurang Vinayak Chaphalkar* (1953) 1 SCC 425 and *Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission* (2014) 8 SCC 444.

ANALYSIS

Issue 1: Requirement of Application for Deemed Licensee Status

The Supreme Court held that the 2010 Notification under Section 14(b) grants SEZ developers deemed distribution licensee status but does not eliminate the need for an application under Regulation 13 of the 2013 Regulations. Unlike the third and fourth provisos to Section 14, which explicitly exempt certain entities (e.g., State Government, Damodar Valley Corporation) from obtaining a license, the proviso for SEZ developers lacks such an exemption. The Court, citing *State of Bombay v. Pandurang Vinayak Chaphalkar*, emphasized that the deeming fiction confers licensee status for supplying power within the SEZ but requires regulatory scrutiny through an application process. The appellant complied with this requirement, and its status was upheld.

Issue 2: Applicability of Regulation 12, 2013 Regulations and Rule 3(2), 2005 Rules

The Court ruled that Regulation 12 and Rule 3(2) of the 2005 Rules do not apply to deemed licensees like the appellant. Regulation 12 pertains to regular applicants under Regulations 4 to 11, from which deemed licensees are explicitly exempted by Regulation 13. The TSERC's reliance on Regulation 49 (general conditions) to enforce Regulation 12 was erroneous, as Regulation 49 applies only to Chapter-4 conditions, not Chapter-3 procedures like Regulation 12. The Court further clarified that the sixth proviso to Section 14, which mandates compliance with the 2005 Rules, applies to regular licensees, not deemed licensees. Imposing capital adequacy requirements on the appellant was contrary to the legislative intent of the 2010 Notification. The Court criticized TSERC's approach as impermissible "reading up" of subordinate legislation, violating the statutory scheme (*B.R. Kapur v. State of Tamil Nadu* (2001) 7 SCC 231).

CONCLUSION

The Supreme Court partly allowed the appeal, affirming the appellant's status as a deemed distribution licensee under the 2010 Notification and Regulation 13, as the application requirement was fulfilled. However, the condition requiring an additional capital infusion of Rs. 26.90 crore under Rule 3(2) of the 2005 Rules was set aside, as it was inapplicable to deemed licensees and lacked statutory backing. The TSERC and APTEL orders were modified to exclude this condition, reinforcing that deemed licensees are exempt from procedural requirements applicable to regular licensees, ensuring alignment with the Electricity Act and SEZ Act's objectives.

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Dipali Sarvaiya Sheth

Founder



D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com