

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

R.P.(SR) No.24 of 2012

in

O.P. No.9 of 2010

Dated: 27.09.2012

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between

Central Power Distribution Company of A.P. Ltd (APCPDCL)
Corp. Office, Mint Compound, Hyderabad.

.... Petitioner

AND

M/s. GMR Hyderabad International Airport,
GMR HIAL Airport Office,
Rajiv Gandhi International Airport,
Shamshabad, Hyderabad – 500 409

..... Respondent

This petition has come up for hearing on 18.08.2012, Sri P.Shiva Rao, Advocate for the petitioner and Sri Gopal Jain, Advocate for the respondent present. The Commission passed the following:

ORDER

This review petition is filed under section 94(f) of the Electricity Act, 2003 r/w clause 49 of APERC (Conduct of Business) Regulations, 1999 by the petitioner. The case of the petitioner is briefly as follows:

- (i) The operation of order dt.30.04.2012 passed in O.P.9 of 2010 since contrary to interim orders passed by Hon'ble Supreme Court, this petition is filed, seeking modification of order by reviewing the same.
- (ii) Initially M/s. GMR filed O.P. 9 of 2010 seeking re-categorisation of Airport services by deleting from the category of HT-II as determined in tariff

order. The Commission refused to grant relief. Therefore M/s. GMR filed appeal no. 12 of 2011 before the Appellate Tribunal for Electricity, Delhi. The petitioner filed its counter opposing the claim of appellants. However, the Hon'ble ATE vide its order dt.22.07.2011 held that the since similar issue was earlier decided in Appeal No. 195 of 2009 (concerned to Mumbai Airport), this appeal is disposed of with said order, wherein the Commission was directed to classify Airport services in a separate category other than HT-II. Thereafter, the petitioner herein filed Appeal in Supreme Court. Meanwhile the Mumbai Distribution Company i.e., M/s. Reliance Infra Structure Ltd., also filed appeal No. 7525 of 2011 before Hon'ble Supreme Court. In the said appeal, the Hon'ble Supreme Court vide orders dt.10.10.2011 passed interim orders "*The proceedings on remand may continue and final order may be passed, but the same shall not given effect*". After filing appeal by the petitioner, the Hon'ble Supreme Court vide orders dt.03.02.2012 passed orders.

"Delay condoned, issue notice, Tag with CA No. 7525 of 2011". Thus the Hon'ble Supreme Court decided to deal both cases at a time. All the said events and the orders of Supreme Court were not brought to the notice of Commission, and consequently, the Commission ordered for revision of tariff of the respondent and to be adjusted against immediate future bills, which is contrary to the orders of Hon'ble Supreme Court and thus deserves to modify accordingly.

Grounds of Review:

- (a) The order of remand by the Appellate Tribunal since been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court decided to examine the case on merits along with similar other appeal No. 7525 of 2011 (which is filed by M/s. Reliance Infra Structure challenging the orders passed in Appeal No. 195 of 2009). Therefore once appeal is filed, the order loses its finality, as the order under appeal is in jeopardy. Therefore irrespective of the fact whether or not interim orders passed by Appellate Court, the order of APTEL dt.22.07.2011 in Appeal No. 12 of 2011 since been ordered to examine the merits by Hon'ble Supreme Court, ought not to have been acted upon. The view is fructified by the

principle of law laid down by Hon'ble Supreme Court in West Coast Paper Mills case reported at 2004 (ii) SCC at page 747.

- (b) No.12 of 2011 by APTEL, the spirit of order being to adopt orders of Mumbai Airport case which ultimately the Hon'ble Supreme Court directed not to effect of orders of Commission, could have been followed. On the other hand, contrary to the orders dt.10.10.2011 of Hon'ble Supreme Court, the orders dt.30.04.2012 of the Commission in OP 9 of 2010 was ordered to be implemented in the immediate coming bills. In fact by the effect of orders of Hon'ble Supreme Court dt.02.02.2012, where under this matter is since been tagged to Mumbai Airport case wherein the orders of Commission that maybe passed should not be given effect is mutandis – mutandis apply to the orders dt.30.04.2012 of the Commission.
- (c) The Commission failed to take into consideration of cost of service of Airport services, and thus lead to incorrect conclusion.
- (d) Other grounds will be urged during the course of arguments.

It is prayed that the Commission may be pleased to review the orders dt.30.04.2012 passed in OP 9 of 2010, and modify the same in consonance with the orders of 10.10.2011 Hon'ble Supreme Court passed in Civil Appeal No. 7525 of 2011, to which case, appeal challenging the orders of APTEL dt.22.07.2011 passed in Appeal No. 12 of 2011 arising from OP 9 of 2010, is tagged for disposal, in the interest of justice.

2. This petition is coming for up hearing on admission. The Commission has issued a notice to the respondents to submit their arguments on the admissibility of the petition.

3. The learned advocate for the petitioner argued that they have filed an appeal against the orders of the Hon'ble ATE and the same was admitted by the Hon'ble Supreme Court and ordered to tag with Civil Appeal No.7525/2011 filed against the orders of the ATE in Mumbai Airport case. It is further contended that the very admission of appeal itself is sufficient to hold that it destroys the finality of the judgment in the appeal. He has also relied upon Supreme Court of India WP (Civil) 276 and 543 of 2001 (Dharam Dutt & Ors vs Union of India & ors) and also relied

upon a ruling reported in 2004 (2) SCC 747 (Union of India & Ors vs. West Coast Paper Mills Ltd & Anr). It is also further argued that the admission of the appeal completely changed the proceedings before the Commission and therefore, the petition filed by him is within the ambit of Order 47 Rule 1 of CPC.

4. The learned advocate for the respondent argued that the order of the Hon'ble ATE has attained finality since it ordered to give notice to the respondent and the very claim made by the appellant is not sustainable. He has further argued that the review petition is barred by limitation and the contents of the petition do not attract the ingredients of Order 47 Rule 1 of CPC and the petition has to be rejected at the threshold.

5. Now, the point for consideration is, "Whether the petitioner is entitled for admission of the review petition as prayed for"?

6. It is very clear from the decision reported in 2004(2) SCC 747 that **once an appeal is filed in the Apex Court and the same is entertained, the judgment of the High Court or Tribunal is in jeopardy.** So, it is clear that when once appeal itself is admitted unless it is decided by the last court the finality of the lis is not attained.

7. The Apex Court has condoned the delay in filing the Civil Appeal and the same has been admitted and the Apex Court has ordered to tag it with 7525/2011 i.e., the case filed against Appeal No. 195/2009 of Hon'ble ATE (Mumbai International Airport Pvt. Ltd).

8. It is true that the order passed by the Commission fixing the tariff is a consequential order as ordered by the ATE but the very same order passed by the Hon'ble ATE is the subject matter of the appeal before the Hon'ble Supreme Court and the judgment of the Hon'ble ATE is in jeopardy.

9. When the petitioner claims that the order of the Hon'ble ATE is in jeopardy by virtue of the appeal preferred to the Apex Court, the same is applicable to this Commission also and the Commission cannot entertain any request for review of its order at this stage.

10. In the light of the above said circumstances, the petition filed by the petitioner cannot be taken up for consideration by the Commission at this stage.

11. Hence, we are of the considered opinion that the petition filed by the petitioner is not maintainable and the same is hereby rejected.

This order is corrected and signed on this 27th day of September, 2012

Sd/-
(R.ASHOKA CHARI)
MEMBER

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN