

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 46 OF 2019

Dated: 22.09.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

SERUM INSTITUTE OF INDIA PRIVATE LIMITED

212/2 Off Soli Poonawala Road,
Hadapsar, Pune - 411028

... Appellant(s)

VERSUS

**1. MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

**2. MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LIMITED**

Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East), Mumbai – 400 051

... Respondent(s)

Counsel for the Appellant(s) : Mr. Avijeet Lala
Mr. Asha Sharma

Counsel for the Respondent(s) : Ms. Pavitra Balakrishnan for R-2

J U D G M E N T (Oral)

PER HON'BLE MR JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a generating company catering, *inter alia*, to Open Access consumers. It had approached *Maharashtra Electricity Regulatory*

Commission (“the State Commission”) by Case no.173 of 2017 seeking directions to respondent - *Maharashtra State Electricity Distribution Company Limited* (“MSEDCL”) for compliance with *Distribution Open Access Regulations 2016* (“DOA Regulations”) and *Open Access Practice Directions* dated 08.03.2016. The prayers pressed before the State Commission included not only a direction to MSEDCL to allow non-discriminatory *Short-Term Open Access* (“STOA”) on the actual capacity as was sought by the consumers of the appellant at their consumption end but also for compensation to be granted on account of losses suffered by the appellant due to arbitrary denial of Open Access, the claim being pressed under Section 57 of the Electricity Act, 2003.

2. The petition of the appellant was disposed of by order dated 07.07.2018 which is assailed by the appeal at hand. Though several grievances were raised and varied reliefs were initially pressed for, the learned counsel appearing at the hearing for the appellant submits that some of the issues have become redundant, some have worked out over the period of time, he being under instructions to restrict the prayer for consideration of the award of compensation for wrongful denial of the Open Access by MSEDCL, the said prayer not having been even considered by the Commission in the impugned decision.

3. On the subject of denial of Open Access, the crucial observations of the Commission read thus:

“In view of the foregoing, the Commission vide above two Orders explained the justification and rationale for considering Undertaking from the applicants for better understanding of the effective load requirement. In the present case, MSEDCL has intimated the applicants regarding submission of Undertaking. Accordingly, applicants have submitted the undertaking for the month of June, 2017. However, they have not submitted undertaking for the month of May, 2017.”

4. The above view vis-à-vis the STOA for the month of May, 2017 is based essentially on Practice Directions issued by the State Commission on 19.10.2016 and 08.03.2017 besides daily order dated 16.05.2017 in Case No.76 of 2017. It appears that taking note of the system constraints, the Commission had introduced a new system by said daily order dated 16.05.2017 which reads as under:

“As regards the prayer of the Petitioner for interim relief, the Commission observed that the issue has wide ramifications and there could be many other similar cases, and that hence it is not inclined to grant ad-interim relief to the Petitioner. However, the Commission directs MSEDCL to have the issues clarified before grant of Open Access to avoid future complications, by way of separate suitable undertaking or otherwise instead of unilaterally deciding the issue at its level.”

5. It is clear from the above that the requirement of submitting an undertaking was not even there when the request for STOA for month of

May, 2017 was made and rejected by communication dated 26.04.2017, the reasons given being different from the ones on which the Commission has ruled. To put it more clearly, the requirement of undertaking to be furnished for a bilateral decision on the request of STOA was introduced only by order dated 16.05.2017.

6. In the above facts and circumstances, we find that the view taken by the State Commission by the impugned decision, particularly Para 11.6, to be erroneous. The same to that extent is, therefore, set aside.

7. The relief which the appellant seeks, at this distance in time from the events in question, is that of compensation. Though a prayer to this effect was made by the petition which resulted in the impugned order being passed, it seems to have escaped the attention of the Commission altogether. There is no discussion in the impugned order nor any expression of opinion recorded.

8. In the above facts and circumstances, we remit the matter limited to the consideration of prayer for compensation to be awarded for denial of Short-Term Open Access, by the Commission. We order accordingly. We would, however, add that given the time which has lapsed, the issue having persisted for the last five years, the Commission must take a call on the

above prayer expeditiously and at an early date though, of course, in accordance with law, preferably within a period of three months from now.

9. With these directions, the appeal is disposed of.

Pronounced in the Open Court on 22nd Day of September, 2022.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson