COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 413 OF 2023 & IA No. 2120 OF 2023 & IA No. 1542 OF 2022

Dated: 16th October, 2023

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

TGV SRAAC LIMITED (Formerly known as Sree Rayalaseema Alkalies And Allied Chemicals Limited)	....	Appellant(s)
Versus		
Andhra Pradesh Electricity Regulatory Commission & Anr.	....	Respondent(s)

Counsel on record for the Appellant(s)	:	Hitendra Nath Rath Alladi Ravinder For App1
Counsel on record for the Respondent(s)	:	Sridhar Potaraju Mukunda Rao Angara Ankita Sharma Shiwani Tushir Yashvir Kumar For Res1 Sidhant Kumar Manyaa Chandok For Res2

ORDER

IA NO.2120 OF 2023
(For extension of time)

This application is filed seeking extension of the interim order and protection granted on 23.09.2022, and subsequently clarified on 07.10.2022. In the present appeal, the Appellant had sought the relief to

set aside the order passed in OP No. 34 of 2020 dated 30.03.2022 to the extent challenged in the appeal, and to hold and direct that the true up of charges was not leviable by the 2nd Respondent on the Appellant.

When the matter was listed before this Tribunal on 29.09.2022, an ex-parte ad interim order was passed holding that no precipitative action shall be taken by the Respondents for enforcement of the demand for payment of grid support charges till the matter was placed again before the court after completion of service/pleadings. Since stay of enforcement of the demand for payment of grid support charges, granted by order dated 23.09.2022 was not subject matter of the Appeal, the Appellant filed an application for clarification and, by order dated 07.10.2022, this Tribunal modified the said order, and directed that no precipitative action should be taken by the Respondents for enforcement of the demand for payment of true up charges till the matter was listed again before the Court after completion of service / pleadings.

The appeal was listed before this Tribunal, after pleadings were completed, on 17.04.2023. By its order dated 17.04.2023, this Tribunal condoned the delay in refiling the appeal on condition that the Appellant paid cost of Rs.25,000/- to the Respondent Commission; and noted the request of the Learned Counsel for the 2nd Respondent that the IA be taken up for hearing since the earlier interim order was to operate till the matter was listed after the pleadings were complete. As Learned Counsel for the 2nd Respondent had fairly stated that no petition had been filed by them to vacate the said interim order, this Tribunal considered it inappropriate to vacate the order which was in force for nearly one year, even without an application being filed for vacation thereof.

The application, seeking for vacation of stay, was filed thereafter and, by order dated 15.05.2023, Learned Counsel for the Appellant was granted six weeks' time to file their response thereto. The matter was directed to be listed on 10.07.2023. Since this Tribunal did not assemble on 10.07.2023, the matter was listed on 04.08.2023 and was adjourned to 11.09.2023. In the proceedings dated 19.09.2023, this Tribunal observed that, since the Interim Order granted earlier had not been extended after 10.07.2023, and there was no interim order in force as on date, the application seeking vacation of stay did not necessitate adjudication. The IA, seeking vacation of interim stay, was closed as there was no interim order in force after 10.07.2023. Thereafter the present application has been filed, on 19.09.2023, seeking extension of the earlier interim order.

Mr. Alladi Ravinder, Learned Counsel appearing for the Appellant, would submit that recovery of future employees expenses and A&G expenses at the true up stage of the proceedings falls foul of the stipulation in the earlier tariff order; it is also in violation of Regulation 10.6 of the MYT Regulations; the norms prescribed in the earlier tariff order are sought to deviated from, at the true up stage, contrary to the law declared by the Supreme Court; and the liability with respect to future employees expenses and A&G expenses, cannot be fastened on the consumers alone, and should have been directed to be borne by the generators also, in view of Section 61(d) of the Electricity Act.

In the impugned order, the Commission has noted that the norms were fixed in the wheeling tariff order for the 3rd Control Period in respect of employees expenses, and A&G expenses after correlating the employees expenses and A&G expenses together to the number of substations, the

length of lines, the number of DTRs and the number of consumers to keep a tab on such expenditure; it had computed the employees expenditure based on the above norms using the actual number of Sub-Stations, the length of line, the number of DTRs and the number of consumers furnished by the DISCOMs in their petitions for Kurnool and Anantapur circles, to examine and compare the actual expenses with the set norms; as could been seen from the details given in the tables in the Impugned Order, the actual employees expenses and A&G expenses exceeded the norms by Rs.1537.29 Crores in respect of APSDCL; the DISCOMs had stated that the main reason for the increase in employees' expenses were the pay revisions effected from 01.04.2014 and 01.04.2018; employees expenses and A&G expenses were controllable items; in respect of controllable items, the losses and gains were required to be presented by the Licensees before the Commission which, on examination whether any uncontrollable factors existed, would make appropriate adjustments; for prudent check of the expenditure claimed by the DISCOMs, the Commission would examine the break up provided for the employees expenses by the DISCOMs in their petitions; as could be seen from the tables, the employees expenses increased significantly in FY 2019 for both the DISCOMs; the reasons stated by the DISCOMS in the petitions, for such a significant increase, were the pay revision and provision made towards pension and terminal benefits of the employees; certified information had been obtained from the DISCOMs; as could be seen from the table, the 2nd Respondent had made a provision for Rs. 1488.03 Crores, out of the total pension liability claim of Rs.3041.35 Crores, for the control period; the provisions made by the DISCOM in FY 2019 were

significant; and, accordingly, the said expenditure claimed by the 2nd Respondent was allowed.

Regulation 10.5 relates to pass-through of gains & losses on variation in uncontrollable items of ARR. Thereunder, the distribution licensee shall be eligible to claim variations in uncontrollable items in the ARR for the year succeeding the relevant year of the Control Period depending on the availability of data as per actuals with respect to the effect of uncontrollable items. Regulation 10.6 relates to sharing of gains and losses on variations in controllable items of ARR, and thereunder the distribution licensee in its annual filings during the control period, shall present gains and losses for each controllable items of the aggregate revenue requirement and a statement of gains and losses against each controllable item will be presented after adjusting for any variation on account of uncontrollable factors.

As has been noted hereinabove, the Commission has itself recorded that the expenditure, claimed under this head, constituted controllable factors. The Commission has, therefore, considered whether any uncontrollable factors existed which necessitated making appropriate adjustments, and has then observed that there was a significant increase in FY 2019 with respect to employees expenses; and this constituted uncontrollable factors necessitating revision.

Prima facie, the impugned order neither violates Regulation 10.5 and 10.6 nor have the norms stipulated in the ARR been changed or deviated from at the true up stage. The Appellant is, admittedly, one among several consumers of the second respondent. The interim order passed by this

Tribunal earlier was confined to the appellant alone, which meant that they alone would not be governed by the said order, which would continue to apply to all other consumers. The appellant's claim that this burden should not have been fastened only on consumers, but should have been directed to be shared by the generators also, is not supported by any statutory provision. The Learned Counsel for the Appellant has also not been able to show us how such a submission is justified.

Yet another reason why we may not be justified in extending the earlier ex-parte ad interim order is because grant of such a relief, in effect, would amount to allowing the main appeal itself, that too ex-parte even without affording the Respondent an opportunity of being heard. It is well settled that no interim order would, ordinarily, be passed which would, in effect, result in allowing the main appeal itself at an interlocutory stage, that too even before the Respondents are put on notice and are given an opportunity of being heard. Even otherwise, such an order of interim stay, which has an effect of allowing the main appeal itself, could not have been passed without assigning reasons.

This request for extension is sought after the petition filed by the 2nd Respondent, seeking vacation of stay was closed. Permitting extension of the ad-interim order at this stage, would result in the said order continuing till the main appeal is disposed of, thereby denying the 2nd Respondent the opportunity of having the stay vacated, and their vacate stay petition adjudicated. The appellant had also not been able to establish that the balance of convenience lies in its favour. They cannot claim to suffer irreparable injury, for they can always be compensated by the 2nd Respondent in case of their success in the main Appeal.

For all the aforesaid reasons, we see no reason to extend the interim order. Suffice it to make it clear that the order, impugned in this appeal, shall be subject to the result of the main appeal.

Subject to the aforesaid observations, the IA is dismissed.

APPEAL NO. 413 OF 2023 & IA NO. 1542 OF 2022

It is represented by learned Counsel on either side that the pleadings are complete. Registry to verify whether pleadings are complete, and thereafter let this Appeal be included in the **List of Finals of Court-II** to be taken up from there, in its turn.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

pr/js/ mk