

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 134 OF 2025 & IA No. 377 OF 2025

Dated: 22nd July, 2025

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

The Brihanmumbai Electric Supply and Transport
Undertaking, Of (Bhihanmumbai Mahanagarpalika) Appellant(s)

Versus

Sai Wardha Power Generation Ltd & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Samir Malik
Nikita Choukse
Tushar Mathur
Himani Yadav
for App. 1

Counsel on record for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Harsha V Rao
Aishwarya Subramani
Sanjukta Das
for Res. 1

ORDER

IA NO. 377 OF 2025
(For interim relief)

This appeal is preferred by Brihanmumbai Electric Supply and Transport Undertaking (BESTU) against the order passed by the MERC dated 24.12.2024 in Case No. 130 of 2024. The 1st Respondent herein had filed Case No. 130 of 2024 under Section 94(1)(f) of the Electricity Act read with Regulation 28 of the MERC (Transaction of Business and Charges) Regulations, 2022 seeking review of the order of the MERC in Case No. 73 of 2023 dated 01.07.2024.

Case No. 73 of 2023 was filed by the 1st Respondent before the MERC under Section 86(1)(b) read with Section 86(1)(f) of the Electricity Act to declare certain notifications as change in law in terms of Article 10 of the PPA entitling the 1st Respondent-Petitioner to additional compensation for change law for the import and blending of coal in terms of the directions in the said notifications etc. The said petition filed by the 1st Respondent, was dismissed by the MERC holding that the 1st Respondent-Petitioner had failed to establish increased expenses on account of the MoP directives vis-à-vis its practice of meeting coal requirement prior to such MoP directives.

The 1st Respondent filed the review petition as afore-mentioned, furnishing certain details which they claim established the increased expenses incurred by them in terms of the MoP directives. By the impugned order, in Case No. 130 of 2024 dated 24.12.2024, the MERC allowed the review petition and approved the methodology proposed by the 1st Respondent-Petitioner for computation of compensation for change in law. Aggrieved thereby, the BESTU is in appeal before us.

The submission of Mr. Gaurav Dudeja, Learned Counsel for the Appellant, is that Section 94(1)(f) of the Electricity Act, which confers the power of review on the Appropriate Commission, is akin to the power vested in a Civil Court under the Code of Civil Procedure; consequently, it is only if the tests stipulated in Order 47 Rule 1 of the Civil Procedure Code are satisfied, would the MERC then be said to have been justified in entertaining and adjudicating the review petition; among the tests stipulated in Order 47 Rule 1 CPC is that the review petitioner has sought review from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within their knowledge or could not be produced by them at the time when the decree was passed or order made; it is only if the afore-said test had

been fulfilled, could the MERC have examined the documents sought to be placed on record by the 1st Respondent-Petitioner; even without satisfying itself that the afore-said test stipulated in Order 47 Rule 1 CPC has been fulfilled, the MERC had perused the documents placed by the 1st Respondent-Petitioner, and had allowed the review petition; and, in any event, the 1st Respondent-Petitioner was not entitled for compensation on the basis of the MoP notification, since it did not amount to a change in law in terms of the PPA.

The grant or refusal of interlocutory relief is covered by three well established principles viz., (1) whether the Appellant has made out a prima facie case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if interim relief is not granted than the inconvenience which the opposite party would be put to if it is granted, and (3) whether the Appellant would suffer irreparable injury. With the first condition as a sine quo non, at least two conditions should be satisfied by the Appellant conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle them to the grant of interlocutory relief in their favour. (**Nawab Mir Barkat Ali Khan v. Nawab Zulfikar Jah Bahadur, AIR 1975 AP 187; Gone Rajamma v. Chennamaneni Mohan Rao, (2010) 3 ALD 175; Kishoresinh Ratansinh Jadeja v. Maruti Corpn, (2009) 11 SCC 229; Best Sellers Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792; State of Mizoram v. Pooja Fortune Private Limited, 2019 SCC online SC 1741**).

In view of the submissions urged by them and as recorded hereinabove, we are of the view that the Appellant herein has made out a prima facie case for grant of interim relief. Even then, one of the other two tests of balance of convenience and irreparable injury must be satisfied by the Appellant for being granted interim relief.

On the irreparable injury test, it must be borne in mind that, as the grant of interim relief is discretionary, exercise thereof is subject to the court/tribunal satisfying itself that its interference is necessary to protect the party from the species of injury. In other words, irreparable injury would ensue before the legal right would be established at the trial (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276**). Irreparable injury does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276**).; **Mahadeo Savloaram Shelke v. Puna Municipal Corporation, (1995) 3 SCC 33**). It is not even contended before us, on behalf of the Appellant, that, on their success in the main appeal, they would not be able to recover the amounts which they are required to pay BESTU in terms of the impugned order. The irreparable injury test is not satisfied in the present case.

The other test to be satisfied for grant of interim relief is that the “balance of convenience” must be in favour of granting interim relief. The Court/Tribunal, while granting or refusing to grant interlocutory relief, should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if interim relief is refused, and compare it with that which is likely to be caused to the other side if the interim relief is granted. If, so weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the Appeal, status quo should be maintained, interim relief would be granted. (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276**). The Court/Tribunal must satisfy itself that the comparative hardship or mischief or inconvenience which is likely to occur from withholding grant of interim relief will be

greated that that would be likely to arise from granting it (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276**).

The prayer for grant of interlocutory relief is at a stage when the existence of the legal right asserted by the Appellant, and its alleged violation, are both contested and uncertain and remains uncertain till they are examined during the final hearing of the main appeal. The court/tribunal, at this stage, acts on certain well-settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1; Gujarat Bottling Co. Ltd. v. Coca Cola Co, (1995) 5 SCC 545**). The basic principle of the grant of an interlocutory order is to assess the right and need of the Appellant, as against that of the Respondent, and it is a duty incumbent on to the law courts/tribunals to determine as to where the balance lies. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1**). The court/tribunal also, in restraining the Respondent from exercising what it considers to be its legal right but what the Appellant would like to be prevented, puts into the scales, as a relevant consideration, where the balance of convenience lies. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1**).

We cannot ignore the fact that the MERC has passed an elaborate order holding in favour of the 1st Respondent, and as to why the Respondent-BESTU was justified in its claim for compensation on account of a change in law. While we may not be understood to have expressed any opinion on the merits of the impugned order, we must express our inability to conclusively hold that the balance of convenience clearly lies in favour of the Appellant justifying grant of interim relief in their favour.

In terms of the impugned order, the Appellant is required to pay the 1st Respondent a sum of around Rs.7.21 Crores. During the earlier hearing, we had asked Mr. Anand K. Ganesan, Learned Counsel for the 1st Respondent as to why we should not require the 1st Respondent to furnish an unconditional bank guarantee for Rs.7.21 Crores to secure the interest of the Appellant in case we were to refrain from passing an interim order, for the possibility, of the appeal being allowed later when it is finally heard, could not be ruled out. Today, Mr. Anand K. Ganesan, Learned Counsel for the 1st Respondent BESTU, would submit that the monthly bill raised by the 1st Respondent, for the electricity supplied by them to the Appellant under the PPA dated 15.10.2024, is around Rs.44 Crores; at any given point of time, electricity generated with respect to two months is due and payable by the Appellant to the 1st Respondent; and the 1st Respondent agrees that, in case they were to stop generation and supply of electricity to the Appellant during the pendency of this appeal, it would be open to the Appellant to adjust this sum of Rs.7.21 Crores from the monthly bills payable by them to the 1st Respondent.

We are satisfied that the afore-said submissions, urged on behalf of the 1st Respondent, would adequately secure the Appellant's interest and see no reason, in such circumstances, to grant stay of the impugned order.

Suffice it to make it clear that compliance by the Appellant, with the impugned order passed by the MERC, shall be subject not only to the submissions urged by Mr. Anand K. Ganesan, Learned Counsel for the 1st Respondent as recorded hereinabove, but shall also be subject to the result of the main appeal. The order now passed by us shall also not disable the Appellant from claiming interest for the payment made by them in terms of the impugned order when the main appeal is taken up

for hearing; and this contention of the Appellant shall also be considered along with other contentions urged by the Appellant when the appeal is finally heard.

The IA is disposed of accordingly.

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Learned Counsel on both sides state that pleadings are complete. Let this Appeal be included in the '**List of Finals**' to be taken up from there, in its turn, for hearing.

Seema Gupta
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

tpd/sk