

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 68 of 2012 &
MA No.25 of 2019 in Case No. 68 of 2012

CORAM: **I. M. Bohari, Member**
Mukesh Khullar, Member

**Implementation of Appellate Tribunal for Electricity's Judgment dated 31May, 2019 in
Appeal No. 241 of 2016 filed by APML against Commission's Order dated 21 August
2013 issued in Case No. 68 of 2012.**

Adani Power Maharashtra Ltd (APML)Petitioner
V/s

1. Maharashtra State Electricity Distribution Company Limited (MSEDCL)
2. Prayas Energy Group, PuneRespondents

Appearance:

For the Petitioner : Shri Sanjay Sen (Adv.)
For MSEDCL : Smt. Deepa Chawan (Adv.)
For Prayas Energy Group : Smt. Ashwini Chitnis (Rep.)

Daily Order

Dated: 22 July, 2019

1. Hearing held on 15 July, 2019. Heard the Advocates/ Representatives of the Petitioner and Respondents.
2. APML has stated that during the pendency of original matter, APML had duly started and continued power supply to MSEDCL. Accordingly, MSEDCL has returned the Performance Bank Guarantee to it. Thus, prayer in original matter relating to termination of the PPA and returning of Performance Bank Guarantee has become infructuous. Hence, for modifying such relief sought in original Case No. 68 of 2012 and to add supporting documents for strengthening its argument, AEML has filed MA No. 25 of 2019 requesting the Commission to allow it to amend its Petition in Case No. 68 of 2012.
3. While opposing such amendment, MSEDCL stated that ATE in its Order dated 31 May, 2019 has allowed placing on record any subsequent event /document. Some of documents sought to be brought on record by APML are prior to the original Order in Case No. 68 of 2012. APML under the garb of amending the Petition is attempting to alter their case. The amendment is completely beyond the scope of ATE Judgment dated 31 May 2019. APML has failed to offer a reasonable explanation as to why the proposed amendment more particularly the facts/ documents pertaining to the time period prior to the original Order could not have been placed before the Commission earlier. However, in the event, the

Commission allows the amendments, MSEDCL be permitted to file its detailed reply to the amended Petition upon service of the amended Petition by APML on MSEDCL.

4. In reply, APML stated that its main plea in original matter relating to Force Majeure and Change in Law remains unchanged. However, as the Supreme Court in Energy Watchdog Judgment has clarified the position of Law, through this amendment application it is bringing on record Govt. documents for strengthening its case. ATE Judgment dated 31 May 2019 has stated that parties may take up all points for fresh hearing and there must be a holistic consideration of the matter afresh. APML has already filed its Rejoinder dated 13 July 2019 on MSEDCL's objection. MSEDCL has taken objection to the amendment of Petition without raising objections on merits of the case for the purpose of delaying the proceedings in the present matter.
5. Prayas has filed submission in the matter on 19 July, 2019 mentioning that the Commission during the hearing has stated that it will first decide the maintainability of the MA and arguments regarding merits of the matter will be heard latter. Accordingly, it has restricted its present submission to maintainability of MA. Prayas has supported MSEDCL's submission and stating that APML has selectively referred to the paras of ATE Judgment and is trying to take on record documents which are prior to impugned Order. As per ATE Order only subsequent event / documents need to be considered.
6. The Commission notes that ATE in its remand Order has directed this Commission to hear afresh all parties on the issues relating to Change in Law and Force Majeure and decide the matter within three months. Thus, there is already time restrictions on this proceeding. The Commission notes that APML has sought to amend its prayer in original Petition (as it becomes infructuous with passage of time), taking on record additional documents which are prior to as well as subsequent to original Order in Case No. 68 of 2012 and adding paragraphs for its claim along with proposed methodology for computing compensation. MSEDCL has opposed taking on record documents which are prior to original Order and amending the original Petition. At the same time, MSEDCL has also stated that if Commission allows such amendment, MSEDCL should get opportunity of filing its submissions on merits. In this regard, the Commission notes that documents being sought to be added by APML for strengthening their argument in Petition are available for rebuttal by the Respondents. The documents sought to be produced on records even if available prior to the filing of the Case No. 68 of 2012, same might have gained importance after ATE judgement. The documents being public documents, they stand in the shoes of law. It is trite that law need not be pleaded. Production thereof is allowed. In order to comply with the time limit stipulated by ATE and at the same time protecting rights of parties to file their submissions, the Commission allows the MA No. 25 of 2019. The Commission allows APML to serve its amended Petition to all respondents, however respondent can raise objection on maintainability as well as merits of the same during the proceeding.
7. The Commission directs APML to serve copy of its amended Petition, as well as the additional submissions/rejoinder to all respondents, if not served. MSEDCL and Prayas to file their reply with a copy to all the other parties within seven days. Thereafter, APML may file its response to such replies within 3 days.

8. Next date of hearing will be communicated by the Secretariat of the Commission.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**