

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 848 OF 2007

MUNICIPAL CORPN. OF GREATER MUMBAI

Appellant (s)

VERSUS

MAHARASHTRA ELECY.REGY. COMMN. & ORS.

Respondent(s)

Date: 08/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Mr. Dushyant Dave, Sr. Adv.
Mr. M.T. Nair, Adv.
Mr. Praveen Jain, Adv.
Mr. H. Toor, Adv.
Mr. T.S. Sidhu, Adv.
Mr. Mukesh Kumar, Adv.
M/S. M.V. Kini & Associates, Adv.

For Respondent(s) Mr. A.V. Rangam, Adv.
Mr. Buddy A. Rangandhana, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(NEELAM GULATI)
SR.P.A.

(INDU SATIJA)
COURT MASTER

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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O R D E R

Heard learned counsel for the parties.

This appeal has been filed against the impugned judgment and order of the Electricity Appellate Tribunal, New Delhi dated 18.8.2006.

The facts have already been set out in the impugned judgement and hence we are not repeating the same here.

Section 51 of the Electricity Act, 2003 (for short 'the Act') states :

'51. Other businesses of distribution licensees -
A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilization of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilized for reducing its charges for wheeling:

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business:

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.'

Undisputedly the appellant was engaged inter alia in the business of distribution of electricity prior to the commencement of the Act. In our opinion it would be not correct to hold that despite the third proviso to Section 51 of the Act, the distribution licensee must not only maintain separate accounts for each of its businesses but must also ensure that the electricity distribution business should not subsidize the other business undertakings. Hence the view of the Tribunal in paragraphs 56 and 57 of its order is not correct.

In our opinion in view of the third proviso to Section 51 of the Act a certain limited electricity distribution licensees are exempt from the operation of the Section insofar as the requirement of prior intimation to the commission or the obligations of the first and second proviso are concerned. The appellant is admittedly doing business of transport besides electricity distribution for several decades.

On the facts of the case, we are of the opinion that the third proviso to Section 51 of the Act applies and hence the impugned judgment and order cannot be sustained. The appeal is allowed. The impugned judgment and order is set aside.

.....J
(MARKANDEY KATJU)

.....J
(SURINDER SINGH NIJJAR)