

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**I.A. NO.228 OF 2017 IN
APPEAL NO.263 OF 2013**

Dated: 09th May, 2017

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF:

**BHASKAR SHRACHI ALLOYS LIMITED,)
8/1, Middleton Row, 3rd Floor,)
Kolkata-700 071.) ... Appellant(s)/
Applicant(s)**

Versus

1. **CENTRAL ELECTRICITY)
REGULATORY COMMISSION,)
3rd and 4th Floor, Chanderlok)
Building, 36, Janpath, New Delhi-110)
001.)**
2. **DAMODAR VALLEY CORPORATION,)
DVC Towers, VIP Road, Kolkata-)
700054)**
3. **WEST BENGAL STATE)
ELECTRICITY COMPANY LIMITED)
Vidyut Bhawan, Bidhan Nagar,)
Kolkata-700 091.)**
4. **JHARKHAND STATE ELECTRICITY)
BOARD,)
Engineering Building, HEC Dhurwa,)
Ranchi-834 004.) Respondents**

Counsel for the Applicant(s) : Mr. Sanjay Sen Sr. Adv.
Mr. Rajiv Yadav
Mr. Rajesh Gupta

Counsel for the Respondent(s) : Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Ranjitha Ramahandran
for R.2
Mr. C.K. Rai
Mr. Umesh Prasad for R.3

ORDER

1. The Appellant has challenged, in this appeal, Order dated 29/07/2013 passed by the Central Electricity Regulatory Commission (“**CERC**”) determining generation tariff of Bokaro Thermal Power Station Units I to III for the period 2009-14.

2. By a letter dated 22/02/2017 Respondent No.2/Damodar Valley Corporation (“**DVC**”) called upon the consumers in Damodar Valley area to pay differential amount of Rs.14,92,54,515/-. Following is the relevant extract of the said letter:

“Please refer to our claim of differential amount against power supply on the basis of the final tariff order of CERC dated 30.09.2013 which has been lying accrued and payable at your end.”

You are aware that the Hon'ble Supreme Court of India by a common judgment dated 18.01.2017 was pleased to dispose of the appeals filed by CERC and DVC which were heard analogously as being infructuous and set aside the order passed by both the Hon'ble High Courts as the final fixation of tariff has already been made by CERC.

In the premises, you are being called upon to pay an amount of Rs.14,92,54,515/- towards the differential amount lying due.

Hence you are requested to pay an amount of Rs.14,92,54,515/- in total within 15 days from the date of issuance of this request.”

By another letter dated 01/03/2017 DVC reiterated the claim made in the above letter.

3. In the present application, the Appellant has made the following prayers:

- “(a) Stay of claim of DVC as contained in the letter dated 22.02.2017 being differential tariff for the period 2009-14.*
- (b) Issue an interim direction restraining the Damodar Valley Corporation from taking any coercive action against the applicant or from disconnecting the electric connection to the applicant;*
- (c) Ad-interim order in terms of prayer above.*
- (d) Pass such further or other orders or directions be given as may be deemed necessary and just in the facts and circumstances of the present case.”*

4. It is necessary to state certain facts which are material for the disposal of the present interim application. The CERC had passed provisional Tariff Order dated 26/06/2011 in Petition No.240 of 2009. DVC raised bills according to the said order. Some consumers of West Bengal part of Damodar Valley area, filed writ petition in the Calcutta High Court in respect of the said order. It appears that a writ petition was also filed in Jharkhand High Court in respect thereof. It appears that the High Courts were concerned, *inter alia*, with the constitutional validity of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2009. Appeals were carried to the Supreme Court from the above mentioned orders of the High Courts. By Order dated 18/01/2017, the Supreme Court dismissed the appeals as infructuous as in the meantime the CERC had done final fixation of tariff. The order of the Supreme Court runs as under:

"We are of the opinion that these appeals pertain to the fixation of tariff from Regulation 5(4) of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations (hereinafter referred to as CERC), 2009.

Since the final fixation has been done by the CERC during the pendency of these matters and the

Calcutta High Court has held that the relevant provisions of the Regulations are violative of principles of natural justice and doctrine of transparency and is thus ultra vires but the Jharkhand High Court has upheld the same, we are of the view that the challenge laid herein has become infructuous and academic for all practical purpose. As the final fixation of tariff has already been made, we do not find any merit in these petitions at this point of time and we are of the view that these matters have been rendered infructuous.

Thus, as suggested, we set aside judgments of both the High Courts and close these matters as infructuous, however, keeping the questions of law open to be decided as and when the same would arise.

These civil appeals are dismissed as infructuous.”

5. Final Tariff Order referred to by the Supreme Court was passed by the CERC on 30/09/2013. It is the case of DVC that in view of the above order of the Supreme Court, letters dated 22/02/2017 and 01/03/2017 are issued by the DVC to recover the amount, which is not paid by the consumers.

6. It is pointed out by the Appellant that pursuant to the remand order passed by this Tribunal on 06/08/2009, the CERC passed a revised Tariff Order for 2006-2009. This Tribunal dismissed DVC's Appeal No.146 of 2009 challenging the said

order on 10/05/2010. A direction was given to DVC to adjust the excess tariff, as determined by this Tribunal, collected by DVC from the consumers along with interest at the rate of 6% per annum in 24 equal monthly instalments. DVC filed appeal against the said order in the Supreme Court being Civil Appeal No.4881 of 2010. On 09/07/2010, the Supreme Court passed the following order:

“Application for impleadment filed by the appellant is allowed.

Issue show cause notice as to why this appeal should not be admitted.

Place this appeal on 12th August, 2010, for directions.

In the meantime, parties will submit before us the various disputed items to be taken into account in Tariff Fixation as well as the relevant documents on which Damodar Valley Corporation would be relying upon at the final hearing.

Until further orders, there shall be stay on refund.

No orders on the applications for impleadment”

The said appeal is pending.

7. It is contended that refund for the tariff period 2004-09 having been stayed, the claim for the period 2009-14 should also be stayed or alternatively it may be directed to be adjusted from the dues for the period 2004-09 on equitable principles. We are unable to accept this submission. The Supreme Court's order dated 09/07/2010 pertains to the tariff period from 01/04/2006 to 31/03/2009. We have already quoted the Supreme Court's order dated 18/01/2017 in Civil Appeal No.3203 of 2016, whereby the Supreme Court dismissed Civil Appeal No.3203 of 2016 with connected appeals filed in respect of provisional Tariff Order dated 26/06/2011 holding that since final Tariff Order is passed by the CERC the said appeals have become infructuous. The demand raised by DVC is based on the final Tariff Order dated 30/09/2013. Pertinently, while dealing with Civil Appeal No.3203 of 2016, though Civil Appeal No.4881 of 2010 was listed before it, the Supreme Court did not pass any order varying, modifying or otherwise dealing with order dated 09/07/2010 staying the refund of the amount claimed by the consumers in pursuance of the order dated 10/05/2010 passed by this Tribunal. Following is the order of the Supreme Court dated 18/01/2017.

“C.A. Nos.971-973, 1914, 4289 & 4504-4508 of 2008 and C.A.No.4881 of 2010.

These matters are segregated.

List these matters for hearing after four weeks.”

8. It is not possible for us to pass any order as prayed by the Appellant, which will result in varying or modifying Order dated 09/07/2010 passed by the Supreme Court.

9. It is contended by the Appellant that the West Bengal Electricity Regulatory Commission has not determined the retail tariff. Our attention was drawn to the judgment of the **Calcutta High Court in Writ Petition No.35245 (W) of 2013** where learned Single Judge of the Calcutta High Court has observed that determination of the retail tariff is essential before raising a claim on the consumers and has directed DVC to file an application for that purpose. This question can be raised at the final hearing of the appeal. The interim application will have to be disposed of in light of the Supreme Court order dated 18/01/2017, quoted by us hereinabove. In our opinion, the

demand raised by DVC claiming differential amount on the basis of final tariff order of the CERC dated 30/09/2013 cannot be stayed. No relief can be granted to the Appellant. The instant application will have to be therefore dismissed.

10. Before parting, we may note that the consumers in the Jharkhand, part of Damodar Valley area, have already paid the amount.

11. In view of the above, the application is dismissed.

12. Pronounced in the Open Court on this **9th day of May, 2017.**

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

~~REPORTABLE~~/√NON-REPORTABLE