

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Review Petition No. 4 of 2006

in

Appeal No. 160 of 2005

**Present : Hon'ble Mr. Justice E. Padmanabhan, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

DPSC LimitedPetitioner/Applicant

Versus

West Bengal Electricity Regulatory CommissionRespondent

For the Appellant : Dr. S. Chakraberty, Advocate alongwith
Mr. A. Chowdhuri, Head (Finance &
Commercial)

For the Respondent : Mr. Pratik Dhar, Advocate along with Mr.
C.K. Rai, Advocate for WBERC.

Dated 1st September, 2006

Judgment

The petitioner who is the appellant in appeal No. 160 of 2006 has sought for a review of Judgment dated May 17,2006 made in appeal No. 160 of 2005 with respect to the findings and orders contained in paragraph 15 of the Judgment and prays for consequential orders or directions in this order for the respondent Commission. Respondent Commission has admitted apparent error on the face of the order. On the last occasion we directed the counsel for the applicant to serve the point which he proposes to argue in addition to the first

point, namely substitution of the figure of Rs. 458.85 lakhs in place of Rs. 540.02 lakhs. Accordingly a notice has been served by Dr. S. Chakraborty, Advocate for the appellant on Mr. Pratik Dhar, Advocate for the respondent.

2. The review petition was taken up for hearing on August 30,2006. The counsel on either side made their submissions.

3. The review is confined to para 15 of our Judgment. An error apparent was pointed out by the counsel for the applicant/appellant with respect to sum of Rs. 540.02 lakhs set out in the said para 15. This is an obvious error and the figure of Rs. 458.85 lakhs ought to have been incorporated in the place of the figure of Rs. 540.02 lakhs. Mr. Pratik Dhar, Advocate appearing for the respondent has no objection and fairly states that this error is apparent on the face of the record which has to be reviewed. Accordingly we order that for the figure ' Rs. 540.02 lakhs' "appearing in para 15 of our Judgment the figure Rs. 458.85 lakhs" will stand substituted.

4. The learned counsel for the applicant pointed out that with respect to over realization or under realization for the year 2003-04 and 2004-05, the earlier directions issued by the Commission for the year 2002-03 would apply and there is omission by this Appellate Tribunal to issue a direction in this respect despite framing of an issue. The issue framed in this respect reads thus:

"(V) Whether disallowance of claim made by the appellant for such appropriation of accounts over and under realization of penalty and incentives is illegal and liable to be interfered? "

5. The said issue has been considered in paragraph 15 of our Judgment where we have held thus:

“However, we do not find any error apparent on the face of the record as on this point as the failure to consider or advert this aspect will not affect or prejudice the appellant as Commission has directed the said appropriation be undertaken during the next tariff petition. We do not find any illegality or error warranting interference in this respect. Therefore the fifth point is answered against the appellant”.

In our view the above portion of the Judgment do not call for any modification or review.

6. Mr. Pratik Dhar, Advocate refers to the review petition filed by the applicant before the Commission, where the applicant has fairly admitted that the claim with respect to the adjustment of over realization or under realization have been set out under a mistaken impression or confusion. Therefore we do not find any reason or justification to review the above portion of our Judgment. No case has been made to review.

7. However, it is fairly stated by Mr. Pratik Dhar, the learned counsel for respondent that in respect of over realization or under realization, if the applicant furnishes full details, the Commission will consider the same in the next tariff exercise. We appreciate the stand taken by Mr. Pratik Dhar, Advocate appearing for the Commission. If there is over realization or under realization during the tariff period 2003-04 and 2004-05, it is well open to the applicant herein to furnish necessary particulars or details with supporting materials before the West Bengal Electricity Regulatory Commission and we direct the said Commission to consider the same in the next tariff exercise and issue suitable directions for adjustment of the amount, if any, after prudent check.

8. In the result excepting the modification in respect of the figures found in paragraph 15, we held that no case has been made out for review of our

Judgment. No other point has been argued by the learned counsel for the applicant.

9. As already ordered above the figure "Rs. 540.02 lakhs" shall stand substituted with the figure "Rs. 458.85 lakhs" in paragraph 15 of our Judgment and we allow the review petition to this limited extent.

10 The parties shall bear their respective costs in this petition.

Pronounced in the open court on the 1st day of September, 2006

(Mr. H.L. Bajaj)
Technical Member

(Mr. E.Padmanabhan)
Judicial Member

Last page