Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Appeal No. 186 of 2005

Dated this 5th day of April 2006

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

M/s Jayaswals Neco Ltd.
Siltara Growth Centre, Siltara, Raipur ……Appellant

Versus

1. Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G.E. Road, Raipur-492001
2. Chhattisgarh State Electricity Board
Daganiya, Raipur ……Respondents

Counsel for the Appellant(s) M/s Sanjay Sen, Anuradha Priyadarshini, Sonia Dube, S.P. Nail - Advocates

Clounsel for the Respondent(s) M/s M. G. Ramachandran, Taruna S Baghel, Saumya Sharma, Suparna Srivastava, M.A. Bhatnagar - Advocates

JUDGMENT

The present appeal has been preferred under Section 111 of The Electricity Act 2003 being aggrieved by the order made in Petition No.19 of 2005(M) dated 5.10.2005 and order dated 15.6.2005 in case No.5/2005 in the matter of Determination of Annual Revenue Requirement (ARR) and Retail Supply Tariff for FY 2005-06 based on the Tariff Application made by the Chhattisgarh State Electricity Board.

2. Heard the learned counsel appearing for the appellant and the Respondents.

3. The appellant has prayed for the following reliefs in this appeal:

(i) To reduce the demand charges by 33% of the tariff order notified by the Commission.

(ii) To reduce P.F. penalty chargeable on unit consumption only and reduce the same to old tariff level.

(iii) The monthly tariff minimum charges to be fixed based on C.D and equivalent to demand charges.

(iv) To abolish the minimum guarantee unit of 10% load factor; and

(v) Pass such further or other directions as the facts of the case may warrant and render justice.

4. Factual matrix leading to the present appeal could be summarized briefly. The appellant company has set up an integrated steel plant at Siltara manufacturing 4,00,000 MT of steel and pig iron per annum. The annual raw material requirement of the appellant is of the order of 6,00,000 MT of iron ore. The appellant requires uninterrupted supply of power.

5. The appellant has a contract demand of 19,000 KV and the service connection is connected at 132 KV level with second Respondent. Besides the appellant has a captive power plant with three generators having aggregate of 15.5 MW capacity. Out of the three, one generator runs in the solo mode and the remaining two are synchronized with the CSEB grid for sale of surplus power to grid. The appellant has entered a Power Purchase Agreement with second Respondent for sale of surplus power to the grid, valid up to 5.5.2004.

6. The second Respondent moved the first Respondent for tariff fixation. After following the procedure, the first Respondent passed the tariff order on 15.6.2005 to be effective from 1.7.2005. Being aggrieved by tariff, the appellant moved the first Respondent for review raising several points on 15.6.2005. The appellant also submitted additional grounds of review on 5.8.2005. The second Respondent opposed the review petition while setting out the details. The first Respondent framed the following three points for its consideration:

(i) Should minimum charges be based on actual load factor and has there been error in the fixation of tariff?

(ii) Should there be a reduction in demand charges?

(iii) Should the present formula of incentive / disincentive based on power factor be modified?

7. On the first point, the Regulatory Commission while taking note of the effect of the revision in tariff, on the basis of calculations and in terms of parameters calculated by its officers, recorded a finding that the pre-revised tariff average unit was @ Rs.5.37 while the revised tariff worked out at Rs.12.01, the monthly billing increased from Rs.60.50 lakhs to Rs.1.35 crore consequent to revision of tariff and the revision was by 123.86 per cent, though the energy and FCS charges had been reduced to Rs.2.55 per unit from Rs.3.50 per unit. While taking note of the fact that the load factor fixed for the appellant is not on a realistic basis, the appellant's case is peculiar and different from other power intensive industries and while pointing that the request of the appellant is not unreasonable, the Regulatory Commission directed the appellant to bear the guarantee, a minimum monthly payment charges equivalent to 10 per cent load factor on the contract demand plus demand charges on the billing demand per month irrespective of consumption of energy during the month or not.

8. As regards the levy of power factor surcharge, the Regulatory Commission directed the power factor penalty as per the tariff order dated 15.6.2005 while holding that the Regulatory Commission would like to consider the issue separately. As regards the levy of parallel operation charges, the Regulatory Commission, at the instance of the appellant reserved the issue to be clubbed along with pending petition No. 17 of 2005(M) and till then the appellant shall pay parallel operation charges as per the tariff order dated 15.6.2005.

9. The review petition has been partially allowed without prejudice to the remaining issues raised regarding power factor penalty and parallel operation charges. Challenging the said order, the present appeal has been preferred.

10. The learned counsel for the appellant while reiterating the grounds set out in the appeal memorandum also relied upon an order passed by the first Respondent Regulatory Commission in respect of another power oriented industry, namely, BALCO in petition No.16 of 2005 where the very same Regulatory Commission reduced the demand charges to 50 per cent of the approved tariff if the load factor remains up to 20 per cent while issuing certain other conditions. The learned counsel contended that such an approach is in discriminatory and appellant should be treated identical in all respects as appellant is also a power intensive steel plant. It was also repeatedly contended that the appellant

should not have been treated differently merely because there is a difference in the furnace or the process between the two industries.

11. Per contra, Mr. M G Ramachandran, the learned counsel appearing for the first Respondent Regulatory Commission contended that no interference is called for with the order passed by the first Respondent Regulatory Commission. Mr. Ramachandran also brought to the notice of this Appellant Tribunal that the first Respondent Regulatory Commission has passed an order in petition No.17 of 2005(M) on 6.2.2006 with respect to power purchase and related dispensation in respect of captive generating plants. In the said order, the Regulatory Commission has already directed thus:

> "The Commission, however, decides that both the captive as also the non-captive consumers of the CPPs, while paying demand charges including tariff minimum charge, will not required to pay monthly minimum charges on consumption considering the fact that their requirement of power is to be met from the CPP only and they may take very little power from the licensee/CSEB. Thus such consumers, whether EHV or HT, shall be required to pay tariff minimum charges on the contract demand or the recorded maximum demand whichever is higher only. This dispensation will, however, be available to these captive/non-captive consumers who avail power both from a CPP and the licensee, on the condition that the supply from the CPP is more than 50% of their requirement in terms of unit consumption. Every captive and non-captive consumer will have to declare that they will be drawing more than 50% of their monthly consumption from the CPP failing which it will be presumed that their power requirement from the CSEB/licensee is more than 50% and they will not get the benefit of waiver of monthly minimum charge on consumption."

12. The learned counsel also contended that there are no merits in this appeal. Ms Suparna Srivastava appearing for Respondent No.2 supported the order passed by the Regulatory Commission and contended no interference is called for. The learned counsel also pointed that no part of the tariff order may ordinarily be amended in terms of Section 62(4) of The Electricity Act 2003 while contending that already the second Respondent Board has sustained a loss of Rs.8.4 crore per annum as seen from the calculation memo filed by the second Respondent.

13. During the hearing, the learned counsel for the appellant submitted a Techno Economical presentation with respect to the functioning of the appellant's steel plant through blast furnace – electric arc furnace route. It was argued that making up of steel through arc furnace process requires very high MVA for a short period while consumption of power is very less resulting in low load factor. Low load factor get further reduced due to the appellant's captive power plant. It was also pointed out that the power requirement for the furnace is only 20 minutes in a heat cycle of 60 minutes, i.e., 33 per cent. In other words, the power requirement in electric arc furnace will be only for 33 per cent time and any demand charge above 30 per cent will lead to heavy financial loss. The learned counsel further pointed out that in respect of five categories in 132 KV grade, the second Respondent opted for two part tariff in respect of Coal Mines, Cement Factories, Railway Traction, etc., and in respect of mini steel plant right from inception no demand charges were levied and only fixed charges were taken in terms of unit charges equivalent to 100 units per KVA per month. The earlier tariff worked out Rs.3.50 per unit (unit charges Rs.2.73 plus FCA Rs.0.77) and no demand charges were levied. However, in practice the rated worked out to Rs.5.37 per unit on actual consumption basis due to poor load factor and the tariff minimum of 100 units per KVA was very high with respect to steel plants with electric arc furnace. This led to closure of twelve steel plants in the State. It was also pointed out that the appellant is not able to consume 19 lakhs units but it has paid charges for the unconsumed 9 lakhs units per month to the second Respondent.

14. It is the further plea of the appellant that it is one of the two major industries with captive generation and the appellant deserve to have a special category tariff as per Section 62(3) of The Electricity Act 2003, as its peculiar nature of supply requirement. The appellant also pointed that the first Respondent Regulatory Commission allowed the review of M/s BALCO and The Re-Roller Association reduced tariff, while the appellant was subjected to a different treatment and its review has been dismissed. The learned counsel contended that the appellant has been discriminated and also filed a Statement of Billing for the period January 2005 to August 2005 to point out the phenomenal increase giving tariff shock. The appellant also filed a Statement of Comparison of its steel plant with BALCO. The appellant contended that its steel plant should have been classified as

a separate category with 33% demand charges for its steel plant while taking note of its Captive Power generation. The main relief prayed during the hearing being reduction of demand charges to 33% with effect from 1.7.2005.

15. In this appeal, the following points arise for consideration:-

(i) Whether the appellant could claim reduction of Demand charges to 33% with retrospective effect from 1.7.2005?

(ii) Whether P.F. Penalty should be charged on the basis of unit consumption? Whether the P.F. Penalty should be reduced to pre-tariff level?

(iii) Whether the monthly tariff minimum charges is to be based on Contract Demand only? Whether the minimum charges to be on par with Demand Charges?

(iv) Whether the present formula for incentive / disincentive based on power factor requires modification?

(v) Whether minimum guaranteed unit of 10% load factor is liable to be abolished?

(vi) To what relief, if any

Point No. (v):

It is pointed that though the appellant has raised number of points, this appeal falls within a narrow campus. The appellant a HT category consumer and it was being charged tariff at Rs.4.04 per unit with effect from 1.3.1999 (Rs.3.49 per unit towards monthly energy charges and monthly minimum charges at 100 units per KVA of contract demand). The second Respondent submitted a tariff proposal with respect to the appellant for a marginal increase of 3.72% in existing tariff at 30% load factor while proposing to charge Rs.4.19 per unit as hereunder:

(i) Monthly minimum charges equivalent to the fixed charges levied on contract demand or recorded demand, whichever was higher;

(ii) Monthly demand charges at Rs.250 per KVA; and

(iii) Energy charges based upon monthly consumption on KVA units at Rs.2.90 per unit.

The second Respondent Board computed the fixed charges component of expenses as 53% of the total cost and proposed to recover at least 17% in terms of fixed charges in proportion to contract demand / contract load. The first Respondent Commission by its tariff order dated 15.6.2005 determined the tariff for the appellant's

steel plant at Rs.4.06 per unit while allowing load factor concession on normal energy charges to the appellant.

The appellant moved for review of the tariff order dated 15.6.2005 on various grounds, which review was contested by the second Respondent Board mostly on factual matters. The first Respondent Commission granted relief by way of reduction in minimum monthly charges equivalent to 10% load factor on the contract demand as against its earlier order approving 30% load factor since the Commission found the load factor of the appellant to be 11.4%. The Commission had in fact directed minimum guaranteed consumption of the appellant to be distinct from other industries in its tariff category as seen from the fact that it was fixed at lower level. Added to that, it is seen that the appellant enjoys cross subsidized tariff also. This Appellate Tribunal is unable to appreciate the relief with respect of abolition of even 10% minimum guaranteed unit of load factor since it would be most unreasonable, unfair and unrealistic to interfere in this respect on the facts. Thus, on a consideration, we do not find any error or illegality or misdirection in the Commission fixing the minimum charges at 10%. The point (v) is answered against the appellant and in favour of the Respondents.

As regards Point No.(i), taking up the first point for consideration, though the learned counsel's argument and his Techno Economical presentation is attractive, we do not find any justification to reduce demand charges to 33% as claimed by the appellant, much less with effect from 1.7.2005. The reduction of demand charges by the first Respondent Commission itself as seen from the order by the first Respondent is fair and reasonable. No further reduction could be sustained as the appellant requirement of power is not for 20 minutes in a heat cycle of 60 minutes as sought to be contended. It is obligatory on the part of the second Respondent Board to maintain the power connected load since the requirement is not restricted to a particular spell but on the other hand requirement is throughout the day. The reasons assigned by the first Respondent Commission in this respect are well-founded and we do not find any justification to interfere with the said findings. It is rightly pointed out that the second Respondent Board should remain prepared to supply power to the petitioner for 8 hours and merely because power requirement is only 20 minutes in a heat cycle of 60 minutes, the power

not drawn by the appellant cannot be allotted to the other consumer as the second Respondent Board has to maintain supply as per the contracted load.

Pronounced in open court on this 5th day of April 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E Padmanabhan)
Judicial Member

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