

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

**I.A. No. 119 of 2011 in  
Review Petition No. 10 of 2010 filed in  
Appeal No. 145 Of 2009**

**Dated : 22<sup>nd</sup> July , 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

Government of Madhya Pradesh  
Through the Secretary (Energy)  
Vallabh Bhawan, Bhopal (MP)

....Applicant

Vs.

1. Madhya Pradesh Electricity Regulatory Commission,  
4<sup>th</sup> & 5<sup>th</sup> Floor, Metro Plaza,  
Bittan Market,  
Bhopal-462 016
2. Madhya Pradesh Poorv Kshetra Vidyut  
Vitaran Company Limited,  
Block No. 7, Shakti Bhawan, Rampur,  
Jabalpur-482 008
3. Madhya Pradesh Madhya Kshetra  
Vidyut Vitaran Company Limited,  
Bijli Nagar Colony, Nishtha Parisar,  
Govindpur,  
Bhopal-462 023
4. Madhya Pradesh Paschim Kshetra  
Vidyut Vitaran Company Limited,  
GPH Campus Polo Ground,  
Indore-452 015

... Respondents

**ORDER**

**Hon'ble Shri Rakesh Nath, Technical Member**

This application has been filed by the Government  
of Madhya Pradesh under Section 120 (2) of the

Electricity Act, 2003 against the order of this Tribunal dated 4.3.2011 in Review Petition no. 10 of 2010 filed by the State Commission in Appeal no. 145 of 2009.

2. The brief facts of the case are as under:

2.1. This Tribunal by its Judgment dated 19.5.2010 had decided the Appeal no. 145 of 2009 filed by Respondents 2,3 and 4 herein against the order of the State Commission on truing up the Revenue Requirements for the FY 2006-07.

2.2. Subsequently, a Review Petition no. 10 of 2010 was filed by the State Commission seeking review of the judgment passed by the Tribunal limited to the issue of allowing additional supply of electricity to the unmetered category of agriculture consumers and its consequential power purchase cost. The State Commission also raised

some issues relating to implementation of the Judgment of the Tribunal.

2.3. The Tribunal by its order dated 4.3.2011 decided not to review the judgment but gave directions to the State Commission on the implementation of the Judgment of the Tribunal. The directions were regarding prudence check to assess additional energy supply made to the unmetered agriculture consumers and payment of subsidy by the State Government for the additional power purchase cost on account of additional electricity supplied to the agriculture consumers.

2.4. Aggrieved by this order of the Tribunal dated 4.3.2011, the Government of Madhya Pradesh which was not a party in the main Appeal and the Review Petition, has filled this I.A.

3. Government of Madhya Pradesh has made the following submissions in the I.A:

3.1. By virtue of the order dated 4.3.2011 of the Tribunal, the Applicant has been held liable to pay for the power purchase cost related to the supply of electricity of 1682.27 MUs to unmetered consumers in the State on the basis that the State Government had directed the distribution licensees to enhance the hours of supply for agriculture pumping. This is wrong. The directions given by the State Government under Section 37 of the 2003 Act related to maintenance of supply in urban and rural areas generally and there was no direction to enhance the supply to unmetered agriculture consumers.

3.2. In any event, as it has been held in the Judgment dated 19.5.2010 of the Tribunal that there is no restriction on the hours of supply, the decision of the

State Government under Section 37 cannot be construed as enhancement of hours of supply. Besides, Section 65 of the Act has no application as there was no direction from the State Government to reduce tariff on such additional supply to the unmetered agriculture consumers.

3.3. The State Government has been made liable for the above without any notice.

On the above points, the learned counsel for the Petitioner argued challenging the directions given in the order dated 4.3.2011.

4. Learned counsel for the State Commission argued that the application under Section 120(2)(h) was not maintainable as the Applicant was not a party to the proceedings before the Tribunal. According to Order IX Rule 6, in case a party has to be proceeded ex-

parte, it needs to be a party to the Petition, and only on its non appearance it can be proceeded ex-parte. Further the second review is not maintainable in the light of Order 47 Rule-9.

5. After hearing the learned counsel for the parties and considering their contentions, the following questions would arise for consideration:

- i) Is the application filed by the State Government under Section 120(2)(h) of the Act against the order of the Tribunal in the Review Petition maintainable, when the State Government was not a party in the main Appeal and the Review Petition?
- ii) Whether the directions given by the Tribunal in its order in the Review Petition need any

change in view of the submissions made by the  
State Government in the present application?

6. Let us first examine the issue of maintainability.
  
7. The relevant extracts of Section 120(2) of the 2003 Act are reproduced below:

*“120. Procedure and Powers of Appellate Tribunal -  
(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.*

*(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, in respect of the following matters, namely:-*

*(a) .....*

*(b) .....*

*(h) setting aside any order of dismissal or any representation for default or any order passed by it ex parte;”.*

Admittedly, the order affecting the State Government has been passed by the Tribunal in the Review Petition without hearing the State Government. Thus, the application filed by the Govt. of Madhya Pradesh is maintainable under Section 120(2)(h) of the Act, even though it was not a party in the main Appeal or in the Review Petition.

8. On the issue of maintainability, learned counsel for the State Government, the Applicant has cited Judgments in the matter of Raj Kumar vs. Sardari lal and Others (2004) 2 SCC 601, Ravindra Singh vs. Financial Commissioner (2008) 7 SCC 663, J.K. Synthetics vs. Collector of Central Excise (1996) 6 SCC



92 and Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar AIR 1963 SC 786.

9. In view of the ratio decided in the above cases, we are convinced that the Application is maintainable.

10. Now let us examine the application of the State Government on merits.

11. According to the learned counsel for the Applicant, at no point the State Government had notified that it would give a subsidy for additional supply to agriculture. Order dated 7.11.2006 made by the State Government under Section 37 of the Act related to the maintenance of supply in Urban and rural areas generally and there was no direction to enhance the supply of electricity to unmetered agriculture consumers specifically.

12. It is correct that while giving directions for maintaining 8 to 9 hrs, three phase supply to rural feeders for agriculture pumping enhancement of supply to unmetered agriculture consumers has not been specifically mentioned by the State Commission. However, the directions tantamount to enhancement of supply as the prevailing supply to agriculture pumps was only for about 6 hours. The distribution licensees, the Respondents 2 to 5 herein, had specifically stated in the Review Petition proceedings that the supply was enhanced from 6 hrs. to 8/9 hours on the directions of the State Government and in support of their contention they had submitted a copy of the order of the State Government dated 7.11.2006 before this Tribunal.

13. It is difficult to appreciate that the State Government while giving directions for maintaining 8-9 hrs. of supply for agriculture pumping is ignorant

of the prevailing level of power supply to agriculture and the consequences of its directions that the increased supply to agriculture would necessitate procurement of additional power at higher cost which would eventually result in the revenue gap of the distribution company as the agriculture supply is cross subsidized. Though the State Government's direction to enhance the agriculture supply did not stipulate provision of subsidy, the Government directions indirectly influenced the amount of cross-subsidy to the agriculture consumer by way of increased hours of supply. The pertinent question raised by the State Commission was whether other subsidizing consumers who were already bearing the burden of high cross subsidy should be further loaded with the cost of additional power procurement necessitated due to the

directions of the State Government. We feel that the answer to this question is 'No'.

14. Moreover, the Tribunal in its order dated 4.3.2011 has also directed the State Commission to apply prudence check to assess the additional supply made to the unmetered agriculture consumers after scrutinizing the records of the distribution licensees and the State Load Dispatch Centre, as the Tribunal found that the documents regarding the additional supply to agriculture consumer submitted before it by Respondents 2 to 5 were not adequate to establish that the additional supply was made to the unmetered agriculture consumers. Therefore, the claim of additional energy is subject to the prudence check by the State Commission.

15. Having considered the submissions of the Applicant, we are of the view that there is no ground made out to review our order dated 4.3.2011.

16. Accordingly, the I.A. no. 119 of 2011 is dismissed.  
No order as to costs.

17. Pronounced in the open court on this  
**22nd day of July, 2011.**

**( Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

REPORTABLE / NON-REPORTABLE

VS