

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

**Review Petition No. 13 of 2010 in
Appeal Nos. 56 of 2008 & 192 of 2009**

Dated :27th May, 2011

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House,
Shimla-171004

...Review Petitioner/
Appellant

VERSUS

1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex,
Khalini, Shimla-171 002
2. Sh. Rakesh Mumar Sharma,
GACL Colony, Unit Himachal,
PO Darlaghat, Tehsil Arki,
Distt, Solan, Himachal Pradesh-171 101
3. The President,
The Kullu Hotels & Guest Houses Association,
Hotel Naman, Akhara Bazar,
Kullu Distt, Kullu – 175 101
Himachal Pradesh
4. Sh. Ashish Roy Chowdhry,
ACC Gagagl Cement Works,
PO Barmana, Distt.Bilaspur-174 013
Himachal Pradesh
5. Sh. Rakesh Bansal,
Honorary General Secretary of
Parwanoo Industries Association,
House No. 110, Sector-12,
Panchkulla- 134 108
Haryana

6. M/s H.M. Steels Ltd.,
Trilokpur Road, Village Johron,
Kala Amb. Distt. Sirmaur-174 104
Himachal Pradesh

7. M/s Sri Rama Steels Ltd.,
Village Bated, Baddi Road,
Barotiwala, Distt. Solan-174 103
Himachal Pradesh

8. The Director Agriculture,
Himachal Pradesh,
Krishi Bhawan, Shimla-171 005

9. The Director,
Animal Husbandry-cum-Member Secretary,
HP Livestock Development Board Shimla-171 005,
Himachal Pradesh

10. The Director,
Department of Horticulture,
HP, Shimla -171 002
Himachal Pradesh

11. The Director,
Department of Higher Education,
HP, Shimla-171 001
Himachal Pradesh

12. The Director,
Department of Elementary Education,
HP, Shimla -171 001
Himachal Pradesh

13. The Director,
Department of Health Services,
Block No. 6, SDA Complex,
Kasumpati, Shimla -171 009
Himachal Pradesh

14. Sh. C.S. Kapoor,
Mehatpur Industries Association,
Service Building, Industrial Area,
Mehatpur-174 315, Distt. Una (HP)

15. Sh. Satish Mehta,
M/s Auro Spinning Mills,
P.B. No 7, Sai Road, Baddi,
Teh. Nalagarh, Distt. Solan-174 103
Himachal Pradesh

.....Respondents

Counsel for Review Petitioner: Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,
Ms. Ranjitha Ramachandran

Counsel for the Respondent(s): Mr. Sanjay Sen, Mr. Sunil Sharma
Ms. Shikha Ohri &
Ms. Surbhi Sharma

ORDER

Hon'ble Shri Rakesh Nath, Technical Member

This review petition has been filed by Himachal Pradesh State Electricity Board against the judgment of this Tribunal dated 31.05.2010 in appeal nos. 56 of 2008 and 182 of 2009, filed by the review petitioner/appellant against the orders of the

Himachal Pradesh Electricity Regulatory Commission. Appeal no. 56 of 2008 was against the order dated 16.4.2007 passed by the State Commission approving the Annual Revenue Requirement (ARR) and Tariff of the review petitioner/appellant for FY 2007-08 and true up of the FY 2004-05 and 2005-06. Appeal no. 182 of 2009 was against the State Commission's order dated 11.8.2009 for true up of financials for FY 2007-08. These appeals were partly allowed.

2. In the review petition the petitioner/appellant has raised the following issues:

2.1. Employees cost related to Larji and Khauli

Projects: The review petitioner/appellant had in the earlier appeal no. 113 of 2006 challenged the State Commission's order regarding disallowance of employees costs related to Larji and Khauli Projects for

FY 2005-06. The Tribunal by Judgment dated 6.7.2006 had allowed the appeal. However, the State Commission did not allow the employees cost in the impugned order. The above issue raised by the review petitioner/appellant in appeal no. 56 of 2008 has not been adjudicated upon in the Judgment dated 31.5.2010.

2.2. Disallowance of costs of various projects: This Tribunal in its Judgment dated 6.7.2006 in earlier appeal No. 113 of 2006 had allowed the claim of the review petitioner/appellant relating to cost of various projects. The direction of the Tribunal in this regard was not implemented by the State Commission. This issue was also raised in appeal no. 56 of 2008 but was not dealt with by the Tribunal in the Judgment dated 31.5.2010.

2.3. Disallowance of Power Purchase Cost of Rs. 24.56 Cr. in True up for FY 2005-06: The State Commission in its order dated 16.4.2007 while truing up the financials of review petitioner/appellant did not allow power purchase cost to the tune of Rs. 24.56 crores for FY 2005-06. This issue raised in appeal no. 56 of 2008 had not been dealt with in the Judgment dated 31.5.2010.

2.4. Determination of provisional tariff for Larji Project: The review petitioner/appellant had challenged the decision of the State Commission to limit provisional capital cost of Larji Project at Rs. 960 crores, pending the decision of the State Commission on the completed cost. The petition of the review petitioner for final capital cost for Larji Project is pending before the State Commission. The review petitioner/appellant had challenged the State

Commission's order to limit the provisional capital cost of Larji at Rs. 960 cr. and sought allowance of interest on long term loans of Rs. 1060 Crores taken for Larji to meet its loan payment liability, on provisional basis, pending determination of final capital cost by the State Commission. However, the Tribunal in its Judgment dated 31.5.2010 held that the provisional cost of Larji was allowed in State Commission's order dated 30.5.2008 which was not challenged by the review petitioner/appellant, as such this issue could not be raised in the appeal. The Tribunal had proceeded on the basis of the submissions of the State Commission that order dated 30.5.2008 passed by the State Commission was not challenged. This is factually incorrect as the appellant had challenged order dated 30.5.2008 of the State Commission for the Multi Year tariff in appeal no. 12 of 2009. Subsequently, by the

time appeal no. 12 of 2009 was heard by the Tribunal, the petition for final determination of capital cost of the Project was filed before the State Commission. Therefore, this issue was not pressed by the appellant in appeal no. 12 of 2009.

2.5. Employees Cost: The State Commission had allowed employees cost except for an amount of Rs. 3.75 Crores on account of deviation from the Punjab State Electricity Board pay scales. This was challenged in the appeal before the Tribunal. The Tribunal relying on its earlier Judgment dated 8.12.2008 passed in appeal No. 209 of 2006, rejected the claim of the review petitioner/appellant. However, in its Judgment dated 8.12.2008 the Tribunal dismissed the contention of the appellant on the ground that there was no specific challenge by the

appellant. Thus there was no finding by the Tribunal on this issue.

2.6. Interest on Loan: The Tribunal in its Judgment dated 8.12.2008 passed in appeal no. 209 of 2006 had allowed carrying cost on the trued up amount of power purchase cost for the FY 2006-07. However, the State Commission in its order dated 11.8.2009 did not allow the interest on additional power purchase cost contrary to the directions of the Tribunal. In the appeal before the Tribunal, the review petitioner/appellant had challenged the decision of the State Commission. In the impugned order dated 31.5.2010, the Tribunal has rejected the challenge of the appellant.

2.7. Interest on General Provident Fund: The State Commission had disallowed a sum of Rs. 13.62 Crores

incurred by the review petitioner/appellant on interest on General Provident Fund which was challenged in the appeal before the Tribunal. The Tribunal confirmed the findings of the State Commission in the matter. The review petitioner/appellant has explained in details that the said expenditure was beyond its control.

3. We have examined the submissions made by the parties and heard the contentions of the learned counsel for the review petitioner and the State Commission. We will now examine the issues raised in this review petition.

4. The first issue is regarding employees costs related to Larji and Khaulji Projects. We notice that this issue has been raised by the appellant in the grounds of appeal under item I (c) in appeal no. 56 of

2008. However, it has not been dealt with in the Judgment dated 31.5.2010.

5. We find that this issue has been decided by the Tribunal by Judgment dated 6.7.2006. The relevant extracts of the Judgment are reproduced below:

“18. Taking up the fifth point on a consideration of the reasons assigned by the Board, we hold the disallowance of the employees cost related to two projects is not justified. The reasons which prevailed with us in examining the second point squarely applies in answering fifth point as well. Hence, we set aside the direction and allow the claims made under this head.”

Accordingly, we direct the State Commission to implement the above directions of the Tribunal in its judgment dated 6.7.2006 relating to employees cost of Largi and Khauli Projects.

6. The second issue is disallowance of costs of projects. This issue was raised by the appellant in appeal no. 56 of 2008 in grounds of appeal under item I (b), but has not been dealt with in the Tribunal's order dated 31.5.2010.

7. This issue has already been decided by the Tribunal in its Judgment dated 6.7.2006 in appeal no. 113 of 2006. The relevant extracts of the Judgment are reproduced below:

“On the third point, we may straightaway hold that there is no justification or reason to disallow cost of various projects based on bench mark. If the view of the Commission is to be taken as a scale or justification, then no projects will come up nor there is a possibility of meeting the ever increasing demand of power in the State and escalation of cost is a matter of fact. The view of the Commission, in our view cannot be held to be fallacious but at the same time, there is no

justification to disallow it for the year without advance notice or warning. The Board is directed to carry out the directions of the Commission in this respect, avoid delay and cost overrun. For this Financial Year, we allow the claim under this head as a one time measure while giving liberty for the future to the Commission to decide, if its directions are not implemented or there is a deliberate failure to complete the project.”

Accordingly, we direct the State Commission to implement the above directions of the Tribunal given in the Judgment dated 6.7.2006.

8. The third issue is regarding disallowance of Power Purchase Cost for FY 2005-06 in the truing process. According to the learned counsel for the appellant, this issue was raised by the appellant in appeal no. 56 of 2008 but has not been dealt with in the impugned Judgment by the Tribunal.

9. We have gone through the appeal no. 56 of 2008 and find that the above issue has not been raised in the grounds of appeal. However, this issue was raised during the course of arguments and also in written submissions by the petitioner/appellant. The State Commission has allowed power purchase cost of Rs. 1057.74 crores as against the audited amount of Rs. 1082.30 crores in the true up for FY 2005-06. However, the State Commission has not given any reason for disallowance of power purchase cost. Accordingly, we direct the State Commission to consider the submissions of the petitioner/appellant and pass a reasoned order.

10. The fourth issue is determination of provisional tariff for Larji Project. The review petitioner now wants that this issue may be disposed of without prejudice to

the final capital cost determination of the project by the State Commission. Accordingly, we dispose of this issue without prejudice to the final determination of the capital cost by the State Commission.

11. The fifth issue is the employees cost. According to the learned counsel for the review petitioner the Tribunal has relied on its earlier Judgment dated 8.12.2008 passed in appeal No. 209 of 2006 where it was rejected on the ground that there was no specific challenge by the appellant.

12. We do not accept the contentions of the learned counsel for the review petitioner. The Tribunal in its impugned Judgment has given a clear finding in paragraph-17. We do not find any error on the face of the records on this issue. Accordingly, the plea of the

review petitioner on the issue of employee cost is rejected.

13. The sixth issue is interest on loan. We find that the Tribunal has given a clear finding on the issue in paragraph-19 of the Judgment. The Tribunal has considered all the pleadings of the appellant including the Tribunal's Judgment in earlier appeal and we do not find any error on the face of the records. The review petitioner wants us to reconsider the issue afresh and in support of the same has made lengthy submissions for our consideration which is not permissible in the review. We do not think we can go through the issue afresh at the review stage. Accordingly, we reject the same.

14. The seventh issue is interest on General Provident Fund. The Tribunal has given a clear finding on this

issue in paras 13 and 14 of the impugned Judgment. The learned counsel for the review petitioner/appellant has raised the same issues as raised in the main appeal and also made new submissions which are not permissible in the review. We do not find that there is any error apparent on the face of the record in this matter. Accordingly, we reject the claim of the review petitioner on the issue of General Provident Fund.

15. To summarise, we allow the petition in respect of employees cost related to Larji and Khauli Projects and cost of various Projects and direct the State Commission to implement the directions given in earlier Judgment of this Tribunal dated 6.7.2006 in appeal no. 113 of 2006.

16. In view of above we allow the petition partly to the extent indicated above and direct the State

Commission to give effect to our findings. No order as to cost.

17. Pronounced in the open court on this **27th day of May, 2011.**

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE
vs