

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

**Appeal No. 137 of 2009**

**Dated: 6<sup>th</sup> September, 2011**

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

**In the matter of:**

**DPSC Limited  
Plot X – 1, 2 & 3, Block E P,  
Sector V,  
Salt Lake City,  
Kolkata-700 091**

**... Appellant**

**Versus**

**West Bengal Electricity Regulatory Commission,  
FD-415A, Poura Bhawan,  
3<sup>rd</sup> Floor, Sector-III,  
Bidhannagar,  
Kolkata-700 106**

**... Respondent**

Counsel for the Appellant(s): Dr. Samir Chakraborty,  
Ms. A. Biswas  
Mr. Atul Shankar Mathur  
Ms. Shruti Verma

Counsel for the Respondent(s): Mr. Pratik Dhar &  
Mr. C.K. Rai for R-1

**JUDGMENT**

**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by DPSC Ltd.  
challenging the order dated 28.5.2009 of the West

Bengal Electricity Regulatory Commission regarding Annual Performance Review for the FY 2007-08 in terms of the Tariff Regulations, 2007.

2. The Appellant is engaged in the business of generation and distribution of electricity in Asansol-Raniganj belt of District Burdwan in the State of West Bengal. It is a deemed distribution licensee under Section 14 of the 2003 Act. The State Commission is the Respondent.

3. The facts of the case are as under:

3.1. The State Commission issued the Tariff Regulations, 2007 on 9.2.2007. The same were amended vide a notification dated 31.12.2007.

3.2. Based on the tariff petition filed by the Appellant in accordance with the Tariff Regulations, 2007, prior to its amendment in December 2007, the State

Commission issued the tariff order for FY 2007-08 on 26.7.2007.

3.3. The Appellant filed an application for Fuel and Power Purchase Cost Adjustment (“FPPCA”) to claim the enhanced cost of fuel and power purchase for the FY 2007-08 under the 2007 Regulations on 22.09.2008. The State Commission decided the FPPCA application by its order dated 27.5.2009. In this order the State Commission made same deduction in power purchase cost on account of lower generation at the Appellant’s power plants. The Appellant preferred an Appeal bearing No. 138 of 2009 before the Tribunal against the FPPCA order dated 27.5.2009 passed by the State Commission. The said appeal was disposed of by the Tribunal by order dated 4.5.2010 remanding the matter to the State Commission.

3.4. The Appellant, in accordance with Regulation 2.6 of the 2007 Tariff Regulations, filed the petition for Annual Performance Review (APR) for the FY 2007-08 which was registered as Case No. APR-6/08-09.

3.5. The State Commission passed the impugned order dated 28.5.2009 deciding the APR for the FY 2007-08. Aggrieved by the determination of working capital and treatment given for disposal of scrap in the impugned order, the Appellant has filed this Appeal. According to the Appellant, the variable charges in the impugned order are also required to be revised in view of the remand order of the Tribunal dated 4.5.2010.

4. The learned Counsel for the Appellant has submitted as under:

4.1. The Tribunal by its order dated 4.5.2010 in Appeal No. 138 of 2009 filed by the Appellant

challenging the FPPCA order dated 27.5.2009 for FY 2007-08, after recording acknowledgement made on behalf of the State Commission that due to oversight there was mistake in taking note of the relevant figures in the FPPCA order, set aside the said order and remanded the matter to the State Commission for de novo determination of the cost to be allowed. In the impugned APR order dated 28.5.2009, the State Commission in determining the total amount adjustable in the APR for FY 2007-08 has taken into account the variable cost allowed in the FPPCA order date 27.5.2009 which has since been set aside by the Tribunal. Hence, the variable cost is required to be revised and corrected giving effect to the order of the Tribunal dated 4.5.2010.

4.2. The Appellant during the year 2007-08 had claimed in its tariff petition, a lower amount of interest

on working capital of Rs. 288.98 lakhs in comparison to which it is entitled to under Regulation 4.6.5 and the same was allowed by the State Commission. The actual interest cost incurred on working capital during the year, however, was Rs 443.58 lakhs. In the APR application the Appellant claimed the interest on working capital according to the Regulations. The State Commission, however, allowed the actual interest on working capital, in contravention to the Regulations.

4.3. In the course of the business the Appellant is required to dispose, from time to time, scrap or obsolete assets, against which it incurs gain or loss in comparison to the written down value of such assets. Profits on sale of such asset is shown in 'income other than sale of energy'. During the FY 2007-08 the Appellant incurred a net loss of Rs. 10.78 lakhs on

disposal of scrap and obsolete assets. However, the State Commission has not allowed the loss in the impugned order. Significantly, in the year 2006-07, when the Appellant had made a profit on sale of certain fixed assets, the State Commission considered it as an un-controllable income and included it in the non- tariff income of the Appellant. By the same logic, the loss on sale of such assets ought to be treated as non- controllable expense.

5. On the above issues, Dr. Samir Chakraborty, learned senior Counsel for the Appellant argued extensively assailing the impugned order. On the other hand Shri Pratik Dhar and Shri C.K. Rai, learned counsel for the State Commission argued with equal force in support of the findings of the State Commission.

6. On the issue of variable charges, the Tribunal by its order dated 4.5.2010 in Appeal No 138 of 2009 has already set aside the FPPCA order for financial year 2007-08 as far as calculation of the cost to be disallowed is concerned and remanded the matter to the State Commission for de novo determination of the cost to be disallowed, if any. Accordingly, the State Commission is directed to implement the directions of the Tribunal. This issue, therefore, does not require any further consideration in this Appeal.

7. On the remaining issues, after considering the contentions of the parties the following questions would arise for our consideration:

- i) Whether the State Commission has erred in determining the interest on working capital on the basis of the actual expense incurred, in contravention to the Regulations?



- ii) Whether the loss incurred by the Appellant in disposing the scrap and obsolete assets is to be considered as un-controllable expense and included in the non-tariff income of the Appellant?

8. The first issue is regarding the interest on working capital.

8.1. According to the learned counsel for the Appellant the State Commission has failed to consider the interest on working capital on the basis of the normative working capital computed under the provisions of the Regulation 4.6.5.1.

8.2. According to learned counsel for the State Commission, Regulations 2.7.1, 4.6.5.1 and 4.6.5.2 would show that the State Commission is entitled to take the actual interest on working capital incurred by

the Appellant. Regulations 4.6.5.1 and 4.6.5.2 form part of general principles of computing cost and return laid down by the State Commission. Such general principles are intended to enable the Applicant to make assessments of the different elements of cost and return at the time of submission of the application for tariff revision. The assessment made for the prospective period has every possibility of having deviations from the actual. There is no provision in the Tariff Regulation which debars the State Commission for regulating the amount of allowable interest on actual basis.

8.3. Let us first examine the relevant Regulations.

*“4.6.5.1 The working capital requirement shall be assessed on normative basis @ 18% on summation of annual fixed charge, fuel cost and power purchase cost reduced by the amount of depreciation, deferred revenue expenditure, return*

*on equity and other non cash expenditures such as, the provision for bad-debt, reserve for unforeseen exigencies, special appropriation against any withheld amount of previous year, arrear on account of adjustment due to Annual Performance Review, FPPCA, etc. of a generating company or a licensee, as the case may be.*

*4.6.5.2 Rate of interest on working capital so assessed on normative basis, shall be equal to the short-term prime lending rate of State Bank of India as on the 1st April of the year preceding the year for which tariff is proposed to be determined or at the actual rate of borrowing whichever is less”.*

The Regulations provide that the working capital will be assessed on normative basis but the interest rate on working capital shall be the short term prime lending rate of SBI as on 1<sup>st</sup> April of the preceding year or the actual rate of borrowing, whichever is less.

8.4. This issue has already been decided by this Tribunal in the case of Reliance Infrastructure Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. reported as 2009 ELR (APTEL) 0672. The relevant extracts of the judgment are reproduced below:

*“11. The Commission has directed that the interest on working capital be treated as efficiency gain and is required to be shared as per Regulation No. 19. The treatment given to the interest on working capital is as under:*

***“Interest on Working Capital***

*As discussed in the above paragraphs, the actual interest on working capital incurred by REL during FY 2006-07 is nil and the normative interest on working capital approved by the Commission considering other elements of expenses as approved after truing up, works out to Rs.0.60 Crore. As the actual expenditure under this head is zero, the Commission has considered the entire*

*normative interest on working capital as efficiency gains and has considered sharing of the same with the distribution licensees in the appropriate ratio, as discussed while sharing efficiency gains due to reduction in R&M expenses.*

*12) It is submitted on behalf of the appellant that when working capital is funded through internal sources of the appellant, the internal funds also carry cost. It is further submitted that such funds employed elsewhere would have carried interest income.*

*13) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on working capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as working capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any*

*cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards interest on working capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals and the cost of generating such accruals. The cost of such accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on working capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share*

*the interest on working capital as per Regulation 19 has merit”.*

In the above judgment the Tribunal has held that the working capital funded through internal sources also carry cost. Such funds employed elsewhere would have carried interest income.

8.5. The above issue has also been dealt with in this Tribunal’s judgment dated 28.8.2009 in Appeal No. 117 of 2008 in the matter of Reliance Infrastructure Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. The relevant extract is reproduced below:

*“15. In Appeal No.111/08, in the matter of Reliance Infrastructure v/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the normative interest on Working Capital when the Working Capital has been deployed from the*

*internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008.*

*“7) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on Working Capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as Working Capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards*



*interest on Working Capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on Working Capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on Working Capital as per Regulation 19 has merit.*

*15. b): The interest on Working Capital, for the year in question, shall not be treated as efficiency gain.*

*16. In view of our earlier decision on the same issue we allow the appeal in this view of the matter and hold that the entire interest on normative interest rate basis is payable to the appellant”.*

8.6. In view of the above, we direct the State Commission to determine the interest on working capital based on normative working capital according to the Regulation 4.6.5.1 and actual interest rate of borrowing, being less than the short term PLR of SBI, as per the Regulation 4.6.5.2. This issue is, thus, decided in favour of the Appellant.

9. The second issue is regarding sale of the fixed assets.

9.1. According to the learned counsel for the Appellant the loss on sale of scrap or obsolete assets ought to be treated as an un-controllable expense, as

per the treatment given to such sale in the APR order for the FY 2006-07.

9.2. According to learned counsel for the State Commission, the Appellant had itself claimed the above amount under the head “operation & maintenance expenses” which have been classified as controllable expense. However, the net amount of Rs. 10.28 lakhs on disposal of such capital assets, could have been considered as deductible from the total amount of income derived by the Appellant from the other non tariff sources, provided the following information/data were made available to the State Commission:

- “ (i) *Item wise detailed break-up of the original cost of assets disposed of.*
- (ii) *Date of acquisition of the concerned assets.*

- (iii) Depreciations charged on these items of assets upto the date of disposal of the concerned assets following the methods and rates prescribed / specified by the Government / Commission.*
- (iv) Depreciated book values of the assets on the date of disposal.*
- (v) Item wise break-up of the value realized on disposal.*
- (vi) Item wise break-ups of the profit made/ loss incurred on such disposal of assets”.*

9.3. According to learned counsel for the Appellant, there being no specific head prescribed in the forms under Annexure 1, required to be submitted in the petition as per the Regulations, the Appellant included the loss incurred on disposal of distribution assets in respective Form 1.15 under the expense head “others” and profit of 0.82 lakhs made on sale of other assets in Form 1.17 relating to other expenses.

9.4. In view of above, we direct the Appellant to submit the requisite information/data relating to disposal of scrap or obsolete assets to the State Commission and the State Commission will consider the same for approval as uncontrollable expense.

## **10. Summary of our findings**

**10.1. The State Commission is directed to re-determine the interest on working capital based on normative working capital according to the Regulation 4.6.5.1 and actual interest rate, being lower than the SBI PLR, according to the Regulation 4.6.5.2.**

**10.2. The Appellant is directed to submit the requisite information/ data regarding disposal of scrap or obsolete assets for consideration by the**

**State Commission for approval as uncontrollable expense.**

11. In view of above the Appeal succeeds. The impugned order is set aside to the extent indicated above, without cost.

12. Pronounced in the open court on this **6<sup>th</sup> day of September, 2011.**

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

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

REPORTABLE / NON-REPORTABLE

vs