

**Before The Appellate Tribunal for Electricity  
Appellate Jurisdiction**

**Appeal No. 76, 77 & 78 of 2005**

**Dated : 20.10.2005**

**Present      Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
                  Hon'ble Mr. Justice E. Padmanabhan, Judicial Member  
                  Hon'ble Mr. H.L.Bajaj, Technical Member**

**Appeal No. 76**

<b>Western Electricity Supply Co. of Orissa</b>	<b>Appellant</b>
<b>Versus</b>	
<b>Grid Corporation of Orissa Ltd. &amp; Ors</b>	<b>Respondents</b>

**Appeal No. 77**

<b>Southern Electricity Supply Co. of Orissa</b>	<b>Appellant</b>
<b>Versus</b>	
<b>Grid Corporation of Orissa Ltd. &amp; Ors</b>	<b>Respondents</b>

**Appeal No. 78**

<b>North-Eastern Electricity Supply Co. of Orissa</b>	<b>Appellant</b>
<b>Versus</b>	
<b>Grid Corporation of Orissa Ltd. &amp; Ors</b>	<b>Respondents</b>

Counsel for the appellants : Mr. Mr. J.J.Bhatt, Mr. Sayed Naqvi, Ms Smieetta Inna, Ms. Anjali M Chandurkar

Counsel for Respondents : Mr. R.K.Mehta for and  
Mr. Ramachandran for Respondents

**JUDGEMENT**

**Per Mr. Justice Anil Dev Singh, Chairperson**

These three appeals preferred by the appellants M/s. Western Electricity Supply Co. of Orissa, Southern Electricity Supply Co. of Orissa & North Eastern Electricity Supply Co.

of Orissa are directed against the order of the Orissa Electricity Regulatory Commission (OERC) dated July 7,2005 , whereby the review petitions filed by the Appellants have been admitted, but they have been ordered to be called during the next tariff hearing, which is likely to take place after receipt of the Annual Revenue Requirements of the licensees.

The facts giving rise to these appeals briefly stated are as follows:

The appellants filed the petitions before the OERC as per the following details:

- i) The appellant Western Electricity Supply Co. of Orissa Ltd., preferred petitions, being case nos. 142 of 2004 and 143 of 2004 for approval of its Annual Revenue Requirements(ARR) and Retail Supply Tariff(RST) for the years 2004-05 and 2005-06 respectively.
- ii) The appellant Southern Electricity Supply Co. of Orissa Ltd., filed petitions, being case nos. 144 of 2004 and 145 of 2004 for approval of their ARR and RST for the financial years 2004-05 and 2005-06 respectively.
- iii) The appellant North Eastern Electricity Supply Co. of Orissa Ltd., filed petitions, being case nos. 140 of 2004 and 141 of 2004 for approval of its ARR and RST for financial years 2004-05 and 2005-06 respectively.

By orders dated 26<sup>th</sup> Feb.,2005 and 22<sup>nd</sup> March, 2005, OERC determined the ARR & also fixed RST of the appellants for the aforesaid financial years. There upon the appellants filed review petitions seeking review/modifications of the aforesaid orders.

The review petitions were admitted by the OERC by its order dated 7<sup>th</sup> July, 2005. While admitting the review petitions, the OERC observed that since the review petitions raise tariff related issues, they can be finalized only through a process of public hearing, after the receipt of the ARR of the licensees by November, 2005. Aggrieved by the order passed by OERC, the appellants have moved the instant appeal.

Mr. Bhatt, the learned Counsel appearing for the Appellants submitted that the OERC has indefinitely postponed the hearing of the review petitions on the unsustainable ground that the issues raised by the Appellants in the review petitions can be addressed and finalized only through a process of public hearing & after the receipt of the ARRs for the year 2006-2007. Learned Counsel urged that it was not necessary to hear the public in the review petitions. According to him, the hearing can only be accorded to the parties in the ARR & RST applications and persons who had filed objections thereto. On the other hand the learned Counsel for the OERC submitted that the Commission was entirely right in its view that the review petitions need to be finalized through a process of public hearing as it involved tariff related issues. He also submitted that the determination of the issues raised in the review petitions will have a direct impact on the tariff of future years. This being so the Commission is duty bound to notify the public at large of the filing of the review petitions, so that the public has a say in the determination of the tariff related issues raised in the review petitions. While, drawing our attention to Regulation-70 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations 2004 (for short Regulations), he pointed out that a review petition is required to be filed

in the same manner as a petition under Chapter-2 of the Regulations & it needed to be advertised for public hearing.

We have considered the submissions of the learned counsel for the parties and have scanned the relevant provisions of the Regulations. From a reading of the Regulations, we find that there is no provision dealing with the question whether or not the commission is required to provide an opportunity of hearing to the public in a review petition. Normally, in a review petition before the Commission, only those parties need to be heard, who were arrayed in the original proceedings including the objectors. But, there cannot be any rigidity in the application of this principle as the rules of procedure are meant for securing justice and not for stifling it. In an appropriate case, it may be necessary to give notice of the review petition to public at large, especially when the issues raised therein are of far reaching consequences, having a direct effect on the interests of the general public. In such cases the Electricity Regulatory Commission must be guided by the principles of natural justice.

In the instant case, the Appellant had filed the petitions before the commission inter-alia for recognition, acknowledgement and acceptance of the Regulatory Asset for the accumulated losses of the financial year 1999-00 to financial year 2003-04 and to allow its amortization through recovery of tariff in future years to service the non-asset bearing liabilities . Thus, determination of the issue in the review petitions may lead to the possibility of a direct impact on the tariff of future years viz. 2006-07 onwards. In case the review petitions are heard without a notice to the public, their interests may be

adversely affected by the fixation of tariff. This will be contrary to the principle of audi alteram partem. Therefore, we are unable to hold that the Commission was wrong in coming to the conclusion that the review petitions need to be decided after going through the process of public hearing.

In so far as, the point relating to the question as to when a review should be heard falls within the domain of the Commission. The Commission is fully competent to fix an appropriate date for hearing the matter, keeping in view the interests of justice and having regard to the work load. During the course of the hearing of the instant matter, we enquired from the learned counsel for the Appellant as to whether or not any illegality was attached to the order of the commission directing the review petition to be taken up after the filing of ARR's for the year 2006-07. The Learned Counsel candidly submitted that he cannot point out any illegality in the order. He, however, submitted that the Commission failed to exercise jurisdiction vested in it to hear the matter expeditiously. In making the submission, it appears that the learned counsel has overlooked the fact that there will be no immediate adverse impact on the interests of the petitioner, since even according to the case of the petitioner, the accumulated losses of the aforesaid financial years are to be adjusted through recovery of tariff for future years. Besides, the fixation of an appropriate date for hearing of a review petition by the Commission is a discretionary matter. Normally, the Tribunal does not interfere with the discretionary orders passed by a Commission, unless the order is arbitrary or results in miscarriage of justice.

In circumstances, we do not find any ground to interfere with the order of the Commission at this stage. Appeals are dismissed. It will, however, be open to the appellants to pursue review petitions preferred by them before OERC and raise such pleas and contentions as may be available to them in law. We also make it clear that the appellants have preferred appeals not only against the tariff order but also against the interim order passed in the pending review petitions. At the time of hearing of the appeals, the learned Counsel for the appellants confined his challenge to the interim order passed in the review petitions and reserved his right to continue the review petitions pending before OERC. Hence, we are not expressing any opinion with respect to the grounds raised on the merits of the tariff order.

**(Mr. Justice Anil Dev Singh)**  
**Chairperson**

**(Mr. Justice E. Padmanabhan)**  
**Judicial Member**

**(Mr. H.L. Bajaj)**  
**Technical Member**