Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.79 of 2005

Dated: March 2, 2006

Union of India, Rep. by Dy. Chief Electrical Engineer,
South Central Railway, Secundrabad & Ors. .. Appellants

Versus

Andhra Pradesh Electricity Regulatory
Commission & Others ... Respondents

Present: Hon'ble Mr Justice. Anil Dev Singh, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member

For the appellants : Mr. Neeraj Atri and
Mr. R.P.Prajapati, (Dy.CEE/ SC Rly.)

For the respondents : Mr. ATM Rangaramanujan,
Sr. Advocate with Ms. Gauri
K. Das, Ms. Anu Gupta for R- 2 to 6
Mr. Ananga Bhattacharayya for R-1.

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

1. This appeal is directed against the order of the Andhra Pradesh Electricity Regulatory Commission (Commission/APERC) dated March 22, 2005, in original petitions no. 31 to 34 of 2004, whereby the APERC fixed the

tariff for the supply of electric energy to the appellants at Rs. 4.40 per kWH under the category 'High Tension-V' for the tariff year 2005-06.

2. The facts leading to the appeal briefly stated are as follows:

3. The South Central Railway, the Southern Railway and the East Coast Railway are bulk consumers of Electricity, transmitted by the Transmission Corporation of Andhra Pradesh Ltd. (AP Transco). They draw electricity at 132000 Volts at 38 Traction Substations for the trains hauled by Electric Locomotives. The first respondent, APERC, *inter alia,* determined tariff for the supply of electric energy for Railway Traction for the year 2005-06 at Rs. 4.40 per kWH. It also fixed tariff for other High Tension Consumers for the same year at Rs. 3.25 per KWH. The appellants were not satisfied with the order of the Commission mainly on the ground that while the tariff for Railway Traction was kept at Rs. 4.40 per kWH, the tariff for other High Tension Consumers was lowered to Rs. 3.25 per kWH. The appellants not being satisfied with the aforesaid determination, filed a review petition before the

APERC. The review petition was dismissed by the order of the APERC dated May 25, 2005. Aggrieved by the Order dated March 22, 2005, fixing the tariff, and the Order dated May 25, 2005, whereby the review application was dismissed, the appellants have filed the instant appeal before us.

4. We have heard the learned representatives of the appellants and the learned counsel for the respondents. The representatives of the appellants contented that the distinction drawn by the Commission between the Railways and the High Tension consumers for the purposes of determination of tariff is discriminatory and militates against the spirit of the Electricity Act, 2003 (The 'Act').

5. They also submitted that the average cost of purchase of power by A.P. Transco has come down to Rs. 1.77 per kWH from Rs. 1.78 per kWH and even the cost-to-serve has been reduced considerably, but the tariff in respect of Railway Traction has not been reduced suitably, whereas the tariff for other High Tension consumers has been lowered to Rs. 3.25

per kWH in the year, 2005-06 as compared to Rs. 3.50 per kWH in the year 2004-05.

6. The learned representatives of the appellants canvassed that since the Railways is a public utility, serving the nation, electricity should be supplied to it at reasonable rate so that the public at large can benefit by the services offered by the Railways. They concluded their submission by urging that the tariff in respect of Railway traction needs to be reduced appropriately.

7. On the other hand, on behalf of the respondents, it was contended that the tariff fixed for the supply of electric energy to the appellants for the year 2005-06 does not suffer from any legal flaw and the charge that the same is discriminatory is misconceived. It was pointed out that tariff for railway traction for the year 2005-06 has not been increased and in fact it has been maintained at Rs. 4.40 per Unit, which was the tariff for the previous year viz. 2004-05.

8. We have carefully considered the submissions advanced on behalf of the parties.

9. As regards the submission of the representatives of the appellants, that distinction which has been drawn by the Commission between the Railways and the High Tension consumers, for the purposes of fixation of tariff, is discriminatory and militates against the spirit of the 'Act' is of no avail. The Commission under Sub-section 3 of Section 62 of the 'Act' while determining the tariff has been empowered to treat the consumers differently on the basis of the load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, nature of supply and the purposes for which the supply is required.

10. When the differentiation is based on the factors postulated in sub-Section (3) of Section 62 of the Act, the distinction cannot be challenged as violative of Article 14 of the Constitution. Distinction between various consumers on the basis of load factor, power factor, voltage, total consumption of electricity etc. is not without difference. The consumers falling in different categories cannot claim to be treated alike. Similarly, the distinction made by the

Commission between the Railways and the other High Tension Consumers cannot be faulted.

11. It needs to be pointed out that the Railways require uninterrupted power supply and such uninterrupted power supply reduces the available quantity of energy to various other categories of consumers. Ensuring uninterrupted power supply by the respondent Nos. 2 to 6 is a factor which places the Railways in a different category than other consumers. Therefore, the Railways cannot complain of discriminatory treatment in the matter of fixation of tariff for the railway traction. Though the charge of discrimination is not well founded, various Electricity Regulatory Commissions need to consider that Railways being a public utility and is hauling passengers and goods throughout the length and breadth of the country, its plea for reasonable tariff for railway traction needs to be given serious thought.

12. This brings us to the consideration of the second plea of the learned counsel for the appellants with regard to the question of validity of tariff determined by the Commission.

13. It is not in dispute that the cost-to-serve for the category in question for the year 2003-04 was Rs. 3.28 per unit and the Commission reduced the energy charges for Railway Traction from Rs. 4.60 per unit to Rs. 4.50 per unit. This reduction in the tariff was brought about by the Commission on the ground that the tariff as in the case of other subsidizing categories was being gradually adjusted close to the cost-to-serve. In this regard, the Commission in the tariff order for the year 2003-04 observed as follows:

> *"Commission is inclined to consider that the tariffs for the Railways as in the case of other subsidizing categories will gradually be brought close to the cost to serve. The cost to serve for this category is Rs. 3.28 ps/unit. The Commission reduces the energy charges for railway traction from Rs. 4.60 ps/unit to Rs. 4.50 ps/unit which in real terms signifies a decline of over 6 percent."*

14. In the next tariff order for the year 2004-05, it was noticed by the Commission that cost-to-serve for the Railway Traction was Rs. 3.13 per unit and after efficiency gain the cost-to-serve came to Rs. 3.07 per unit. The Commission having regard to this factor reduced the energy charges for Railway Traction from Rs. 4.50 per unit to Rs. 4.40 per unit, thus bringing it closer to cost-to-serve. This was in keeping

with the principle which was applied by the Commission for fixing the tariff for railway traction for the year 2003-04.

15. It is an admitted position on both sides that cost-to-serve for the year in question viz. 2005-06 was Rs. 3.00 per unit and after efficiency gain the cost-to-serve came down to Rs. 2.97 per unit. In spite of the fact that the cost-to-serve for Railway Traction had come down by 10 paise per unit, the Commission did not pass on the benefit to the Railways. The Commission has deviated from the principle that the tariff for the Railways as in the case of other subsidizing categories is to be gradually brought close to the cost-to-serve. It has charted a different course without assigning any reason. Even the learned counsel for the Commission has not pointed out to us any reason on the basis of which the Commission took a view different from the one which was taken by it for the years 2003-04 and 2004-05. The principle that tariff for subsidizing categories is being gradually brought close to the cost-to-serve ought to have been applied even for the year 2005-06, unless there were other compelling reasons for not applying the same. Neither any reasons have been specified by the Commission

nor any reasons have been stated before us for not applying the aforesaid principle.

16. Railways is a public utility. It serves the public at large. In case electricity is supplied at a reasonable price to the Railways, its requirement for diesel will reduce. In the process, there will be saving of foreign exchange. It will also prevent upward revision of fares for transportation of passengers and goods by the Railways. Besides, it will reduce pollution.

17. The learned senior counsel for the respondents submitted that the tariff fixation by the Commission, which is an expert body, should not be interfered with, as the fixation of tariff is a very complicated exercise and it should be left to the Judgment of the Commission.

18. We have given our anxious consideration to the submission of the learned senior counsel. It is well settled that the matter of price fixation should be left to an expert body and normally the courts should not interfere with the prices fixed by it unless the fixation is found to be arbitrary, unjust, unfair and unreasonable. This principle has

been noticed and applied in the following decisions of the Supreme Court:-

1.	AIR 1986 SC 1999	K.S.E. Board Vs. S.N. Govinda Prabhu & Brothers
2.	AIR 1997 SC 2489	Bihar S.E. Board Vs. Usha Martin Industries
3.	2002 (3) SCC 711	Association of Industrial Electricity Users Vs. A.P. State & Ors.
4.	AIR 1984 SC 657	Rohtas Industries Ltd. Vs. Bihar S.E. Board
5.	AIR 1995 SC 2234	Real Food Products Ltd. Vs. A.P.S.E. Board
6.	1993 (2) SCC 37	Ashok Soap Factory Vs. Municipal Corporation of Delhi
7.	1990 (3) SCC 223	Sri Sitaram Sugar Co. Ltd. Vs. UOI State Sugar Corporation Ltd.
8.	AIR 1988 SC 985	Hyderabad Engineering Industries Vs. A.P.S.E. Board
9.	AIR 1993 SC 2005	Ferro Alloys Corporation Ltd., Vs. A.P.S.E. Board
10.	AIR 1991 SC 1473	Hindustan Zinc Vs. A.P.S.E. Board
11.	2002 (8) SCC 715	West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd.

19. The aforesaid decisions basically arise from decisions of the High Courts in writ petitions challenging the price fixation

orders. Since the High Courts sitting in writ jurisdiction are not acting as Courts of Appeal, the Supreme Court reiterated the principle that the courts ought not to interfere with the matter of price fixation unless the price fixation is discriminatory, arbitrary and unreasonable.

20. It needs to be pointed out that the Appellate Tribunal under Section 111 of the Act has been empowered to hear appeals from the orders of the Regulatory Commissions. Its jurisdiction is not confined to determination of just question of law arising in the appeal. The Tribunal is constituted to deal with both technical and legal aspects of a matter. This is sought to be achieved by Section 112 of the Act which provides for constitution and composition of the Tribunal. Section 112 of the Act, *inter-alia,* provides:

i) that the Tribunal shall consist of a Chairperson and three other Members;

ii) that the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof; and

iii) that a Bench may consist of two or more Members of the Appellate Tribunal as the Chairperson, Appellate Tribunal may deem fit, provided that every

Bench shall include at least one Judicial Member and one Technical Member.

Special care has been taken by the Parliament to equip the Tribunal to deal with factual, legal and technical matters. In case the Tribunal finds that an order of a Commission suffers from any factual, legal or technical mistake or is not based on any principle or reason or/ and is arbitrary, unjust, unfair, unreasonable or perverse, it can always interfere and set aside the same.

21. In the instant case, the Commission has over looked the principle which was applied for the tariff years 2003-04 and 2004-05, namely that the tariff for the Railway Traction should be gradually reduced to cost-to-serve, like cases of other subsidizing categories. The deviation by the Commission for the year 2005-06 is not based on any reason. In the circumstances, therefore, the impugned order of the Commission dated March 22, 2005 needs to be modified.

22. We find that for the year 2004-05, when cost-to-serve was reduced by 22 paise per unit, the Commission reduced the energy charges for Railway Traction by 10 paise per unit.

Since for the year 2005-06 the cost-to-serve has been reduced by 10 paise per unit, we consider it appropriate to reduce the energy charges for Railway Traction from Rs. 4.40 per unit to Rs. 4.36 per unit for the year 2005-06. We order accordingly. Since the year 2005-06 is almost over the reduction in tariff to the extent of 4 paise per unit, however, shall be given effect to in the truing up exercise for the year 2005-06.

23. The appeal is allowed to the extent indicated above.

(Justice Anil Dev Singh)
Chairperson

(H.L. Bajaj)
Technical Member

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