

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

Appeal Nos. 148/07 & 124/08

Dated: 28th April, 2010

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Appeal No. 148 of 2007

In the matter of:

**Northern Railway (Headquarters)
Baroda House,
New Delhi-110 001**

... Appellant(s)

Versus

**1. Punjab State Electricity
Regulatory Commission
SCO 220-221, Sector 34-A,
Chandigarh-160 022 (Punjab)**

... Respondent-1

**2. Punjab State Electricity Board
The Mall, Patiala-147 002 (Punjab)**

... Respondent-2

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**Counsel for the Respondent(s) Mr. Sakesh Kumar for R-1
Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &**

**Ms. Swapna Seshadri for
PSEB
Ms. Shikha Ohri**

Appeal No. 124 of 2008

In the matter of:

**Northern Railway (Headquarters)
Baroda House,
New Delhi-110 001**

... Appellant(s)

Versus

**1. Punjab State Electricity
Regulatory Commission
SCO 220-221, Sector 34-A,
Chandigarh-160 022 (Punjab)**

... Respondent-1

**3. Punjab State Electricity Board
The Mall, Patiala-147 002 (Punjab)**

... Respondent-2

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Ms. Swapna Seshadri for
PSEB
Ms. Shikha Ohri**

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. Both these appeals are being disposed of through this common judgment since the Appellant in both the Appeals is the same and the issue raised also in these Appeals are common, even though the impugned orders of these two Appeals were made by the State Commission in respect of two different years on different dates.

2. Northern Railway is the Appellant in both the Appeals. The Punjab State Electricity Regulatory Commission (State Commission) determined the tariff on the basis of application filed by the Electricity Board fixing the tariff for the year 2007-08 by the order dated 17.9.2007. This matter is the subject matter of challenge in Appeal No. 148/07.

3. In respect of the financial year 2008-09, the State Commission determined the tariff on the basis of application filed by the Electricity Board increasing the traction tariff as

against the Appellant by the order dated 03.7.2008. This is the subject matter of challenge in Appeal No. 124/08.

4. According to the Appellant, the State Commission approved an unreasonable tariff increase ignoring the fact that the Appellant being the Railway is a public utility serving masses of the country and is a major contributor to the growth and development of national economy, without following the relevant provisions of the Electricity Act, and the circular issued by the Ministry of Power to all the State Governments and the Electricity Boards emphasizing the importance of providing electricity to the railway traction at a reasonable price and without giving any regard to the ratio laid down by this Tribunal in various judgments by increasing the energy tariff of the Appellant by 7% casting a heavy burden on the Railways whereas the railway traction tariff should have been brought down to a level less than the HT consumer/other bulk consumers tariff

5. The main question which arises for consideration in both these Appeals is as to whether the tariff for railway traction should be less than HT industrial tariff for other consumers?

6. On this question, both the parties were heard at length. While dealing with this aspect, we went through the impugned order to scrutinize the reasoning given by the State Commission for increasing the traction tariff by 7%, allegedly ignoring the heavy burden on the Appellant. It is noticed from the impugned order passed by the State Commission, the Northern Railway (Appellant) had raised various objections in regard to the increase in tariff. While objections were considered by the State Commission, it merely rejected on the ground that those objections were same objections raised in the tariff fixation for earlier years for the tariff year 2004-05, which had already been considered and rejected. Admittedly no other reasons have been given in the impugned order to reject those objections

raised by the Appellant for the tariff years 2006-07 and 2007-08. Let us quote the following observations made in the impugned orders.

“18. Objection No. 15 – Northern Railway

18.1 Issue No. 1 – Increase in Tariff

18.1.1 The hike in the existing rates is undesirable.

Northern Railway has been making timely payment, drawing uninterrupted power round the clock, contributing negligible T&D loss and in place of reducing tariff suitably it has been increased. Also for calculating revenue, railways are treated as Bulk consumer with tariff @ Rs. 3.96/unit but the proposed railway traction tariff is taken as Rs. 4/04/unit, which is not justified.

18.1.2 Response of PSEB

No reply

18.1.3 View of the Commission

In computation of Revenue, the tariff of Rs. 3.96 per unit was the weighted average of tariff of Bulk Supply and

Railway Traction. Attention is invited to Chapter 9, Para 9.18 of the Tariff Order FY 2004-05, where the issue of Railway tariff has been dismissed in detail.”

7. As indicated above, it is clear that no reasons have been given in respect of those objections even though there is no reply on behalf of the Electricity Board by the State Commission. On the other hand, it is simply stated that these objections have already been discussed and rejected in the tariff order passed earlier for the financial year 2004-05 and therefore, no further reasoning is necessary.

8. Similarly, yet another objection was raised which has been dealt with by the State Commission, as follows:

“That it is submitted that since the objections are the same from year to year the Commission has not repeated its reasons as the reason have been categorically explained in the para 9.18 of the Tariff Order for 2004-

2005. The same have not been repeated for the sake of brevity.”

9. The objection related to rebate has been dealt with under section 18(2) of the tariff order which is reproduced below.

“That it is submitted that the Rebate has been dealt with in para 18.2 of the Tariff Order which is reproduced below:

18.2 Issue O 2 – HT Rebate

18.2.1 Railways has been again treated with discrimination and no rebate has been proposed for Railway Traction, as being given to HT consumers (connected at 33 KV and above) in the range of 2.5 – 4%. Northern railway is availing power supply at 220 KV and 132 KV from PSEB. As Northern Railway is a bulk consumer and making regular payments timely, it deserves a rebate @ 15%, i.e. higher than that offered to

non-Railway HT consumers. At least HT rebate as given to other consumers must be extended to Railways as well.

18.2.2 Response of PSEB

Allowing rebate to Railway Traction is a prerogative of the Commission.

18.2.3 View of the Commission

Attention is invited Chapter 9, Para 9.10 of the Tariff Order FY 2004-05, where the issue has been discussed in detail’.

10. This observation made by the Commission would also make it clear that the State Commission has not given any reasons to reject the claim or objections raised by the Appellant on this issue.

11. To put it briefly, the reading of the impugned orders would clearly indicate that the State Commission did not at all deal with the objections and gave reasons to reject these objections and the claim made by the Appellant and on the

other hand it simply stated that railway traction tariff is reasonable and similar objections had already been dealt with in the earlier tariff orders.

12. Section 86 of the Act enumerates various functions to be discharged by the State Commissions. The main duty enjoined upon the State Commission under section 86(1)(b) is that it shall adjudicate upon the dispute between the licensees and the generating companies. Section 95 of the Act clearly stipulates that all the proceedings before the Appropriate Commission shall be deemed to be judicial proceedings and the Appropriate Commission shall be deemed to be a civil court.

13. Therefore, while determining the tariff for each year, the State Commission is required to consider the objections filed by the various categories of consumers and to apply its mind to those objections and give its reasons for accepting or rejecting those objections. Its function is not purely

administrative but it is a quasi judicial authority. As a matter of fact, in the judicial system the principle of method of justice are required to be adhered to and it is mandatory on the part of any authority whose order is amenable to judicial review or is appealable before the Appellant forum, to pass speaking order containing the reasons for its conclusion.

14. In this context, it would be worthwhile to refer to some of the judgments of Hon'ble Supreme Court with reference to the obligation of the courts and tribunals and quasijudicial authorities to make a speaking order as reported in AIR 1967 SC 1606:

“After all, the tribunal which exercises judicial or quasi judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far reaching consequences to them are adjudicated upon in a summary fashion, without

giving a personal hearing where proposals and counter proposals are made and examined the least can be expected is that the tribunal should tell the party why the decision is going against him in all the cases where the law gives a further right of appeal.”.

15. Further, the Supreme Court in Siemens Engineering and Manufacturing Company case as reported in AIR 1976 SC 1785 has observed as follows:

“It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai Vs. Testeels Ltd., CA No. 245 of 1970 decided on 17.12.1975”

16. A reading of these decisions would make it clear that the State Commissions should act fairly and shall give appropriate hearing to the persons sought to be affected by their order and give sufficiently clear and explicit reasons in support of the order made by them. Then alone the orders passed by the State Commission, exercising quasi judicial functions will be able to justify their existence and carry credibility with the people, by inspiring confidence in the quasi judicial process. The rule requires reasons to be given in support of the order it makes and this is the basic principle of following natural justice. This means quasi judicial process and the relevant rules must be observed by the quasi judicial authority in proper spirit.

17. Admittedly, no reason as indicated earlier is given in the impugned orders for rejecting the objections raised by the Appellant and the State Commission simply rejected on the ground that these objections were rejected through earlier orders. Thus, these orders in our view not only reflect

non-application of mind on the part of the State Commission, but also indicates that there was a failure to follow the principles of natural justice. On this score alone, the impugned order is liable to be set aside.

18. It is contended by the Learned Counsel for the Appellant that railway traction tariff has not been brought down to a level less than an HT industrial consumer/other bulk supply tariff by the State Commission after having ignored the circular issued by the Ministry of Power dated 01.05.1991. It is also pointed out that the ratio laid down by this Tribunal on this issue in various judgments has also not been followed.

19. Let us now refer to the circular and the decisions of the Tribunal on this subject. In the circular dated 01.05.91, Government of India through Ministry of Power requested all the Electricity Boards and Power Secretaries of all States to review the tariff for railway traction and to take

appropriate action to revise the tariff for the railway traction in such a way that the tariff for railway traction is not higher than HT industrial tariff for other consumers. The relevant portion of the said letter dated 01.05.91 is quoted below:

”The question of fixation of reasonable tariff for electric energy required for railway traction has been engaging the attention of the Government for quite some time. The Department of Power had constituted a committee under the Chairmanship of Shri K.P. Rao, former Member, Central Agencies like NTPC, NEPC and a few State Electricity Boards in October, 1986. The Committee submitted its report in October 1987. The recommendations made by the Committee on the subject were considered by a Committee of Secretaries of Central Government. After protracted deliberations, the Committee of Secretary, in August, 1988 has made a suggestion to the effect that the tariff for railway traction

should not be higher than the high tension industrial tariff for other consumers.

20. Admittedly, neither the Electricity Board nor the State Commission took into consideration the above circular while claiming tariff increase or determining the same. As a matter of fact, this Tribunal took note of the above circular in its judgment dated 28.11.2007 in Appeal No. 219 of 2006 titled Northern Railway versus Uttranchal Electricity Regulatory Commission and held as follows:

“Similarly while the tariff fixed for the Appellant (Northern Railway) is so much higher than the HT tariff also remains unexplained. The Commission also seems to have overlooked the fact that the Appellant (Northern Railway) bears the cost of infrastructure network of HT lines and transformers etc. which substantially facilitate to reduce the cost of supply to the R-2.”

21. In the light of the said observation, this Tribunal in the said judgment allowed the Appeal and set aside the impugned order increasing the tariff for traction for the railways.

22. It is also contended by the Learned Counsel for the Appellant that it has specifically raised before the State Commission that the issue of tariff applicable to railway traction should be less than the HT industrial/bulk consumers and a rebate of 2.5% to 4% being given to HT bulk consumers to be extended to the railways was taken up by the Northern Railway (Appellant) before the State Commission but the same was not considered by the State Commission. In order to substantiate the said plea, the Appellant has produced before this Tribunal a copy of the objections dated 19.07.2007 filed before the State Commission, This is not disputed by the Learned Counsel for the Respondent.

23. It is further pointed out by the Learned Counsel for the Appellant that the State Commission decided to allow 3% rebate on energy charge to large bulk consumers catered supply at 33/66 KV and 5% rebate to those catered supply of 132 KV/220 KV. This rebate is given to all categories of consumers except the railway traction category. As observed by the Tribunal in the order mentioned earlier State Commission has not chosen to give any reason for such discrimination.

24. Admittedly, the traction supply voltage is 25 KV. The Appellant takes supply from the Electricity Board at 132/220 KV. As such the Appellant incurs extra expenditure to utilize power at voltage lower than 132/220 KV. As indicated in the other judgments referred to above, the Appellant had to bear all the costs of infrastructure including the transmission lines and 132/220 sub-stations. Actually railway has to incur cost of transmission line to bring electricity from the sub-stations of the Electricity Board for

the railways own sub-stations which involves substantial expenditure. On the other hand, in case of other consumers the Electricity Board provides electricity to their premises. Therefore, it would be appropriate on the part of the Appellant to claim that HT rebate should also be extended to the Appellant at the highest slab.

25. The Learned Counsel for the Appellant has brought to our notice another judgment rendered by this Tribunal in Appeal No. 4 of 2005 dated 26.05.2006 directing that the Punjab State Commission should determine the cost of supply of electricity to different classes and categories of consumers. In fact, the Tribunal specifically held in its judgment that the view taken by the State Commission that the cost of supply means average cost of supply is wrong. Despite this, the State Commission has not followed this ratio while fixing the tariff.

26. As pointed out by the Learned Counsel for the Appellant, the importance of supply of electricity to railway traction at a reasonable price has also been emphasized by this Tribunal in Appeal No. 79 of 2005 (Union of India versus Andhra Pradesh State Commission) dated 02.03.2006. In the said judgment the Tribunal has observed as follows:

“Railways is a public utility. It serves the public at large and being a public utility should be supplied electricity at a reasonable price which would reduce its requirement for diesel. In the process there would be saving of foreign exchange. It will also prevent upward revision of fares for transportation of passengers and goods by the railways. Electricity Regulatory Commission need to consider that railway 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.”

27. Admittedly, this observation made by the Tribunal in this judgment also has not been given any importance by the State Commission. On the other hand, the State Commission has increased the Railway Traction tariff by 7% casting heavy burden on the railways.

28. Under sections 61 and 62 read with section 86 of the Act it is the duty on the part of the State Commission to enter into an inquiry into the various component factors relevant for the fixation of tariff.

29. The Learned Counsel for the Appellant has invited our attention to Article 287 of the Constitution. Article 287 of the Constitution states that no law of the State shall impose or authorize imposition of tax on the consumption or sale of electricity which is consumed by railways and further it shall be less by the amount of tax than the price

charged to other consumers of a substantial quantity of electricity. Thus Article 287 of the Constitution mandates that the tariff of electrical energy sold to the railways should be less than the price charged to other consumers of a substantial quantity of electricity. The State Commission has not taken into consideration this Article of the Constitution as well.

30. In view of the above discussion, we have no other alternative except to allow the Appeals and set aside the impugned orders. Accordingly the Appeals are allowed and the impugned orders are set aside.

31. The State Commission is directed to re-determine the tariff for the Appellant for the financial year 2007-08 and 2008-09 by giving fresh opportunity to the Appellant to raise its objections. The State Commission is further directed to consider those objections in the light of findings and observations made by this Tribunal in this order and pass

the order in accordance with law as expeditiously as possible.

32. Accordingly ordered. No costs.

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

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

Dated: 28th April, 2010.

INDEX: Reportable/Non-Reportable