

**APPELLATE TRIBUNAL FOR ELECTRICITY  
(APPELLATE JURISDICTION)**

**Appeal No. 179 of 2009**

**Dated July 12, 2010**

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

Appeal No. 179 of 2009

In the matter of:

North Eastern Electric Power Corporation Ltd.  
Brookland Compound, Lower New Colony  
Shillong-793 003 .....Appellant(s)

Versus

1. Tripura State Electricity Corporation Ltd.  
Bidyut Bhavan, North Banamalipur,  
Agartala-799 001
2. Central Electricity Regulatory Commission,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi-110 001 ... Respondents

Counsel for Appellant(s) Mr.Sanjay Sen,  
Ms Shikha Ohri and  
Ms.Mandakini Ghosh

Counsel for Respondent(s) Ms. Seema Sharma &  
Mr. S.G. Chaudhuri for  
Respondent 1.

JUDGMENT

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

North Eastern Electric Power Corporation Limited (NEEPCO) is the Appellant herein. The Tripura State Electricity Corporation Limited is the 1<sup>st</sup> Respondent herein. The Central Commission is the 2<sup>nd</sup> Respondent herein.

2. Aggrieved by the order dated 19.06.2009 passed by the Central Commission holding that the Appellant is entitled to interest only from 08.06.2006 on which date the Regulation 5A came into force and not from 01.04.2004 as claimed by the Appellant, the Appellant has filed the present Appeal claiming interest for recovery of interest from 01.04.2004.

3. The short facts of the case are as under.

4. On 11.04.2002, the Central Commission passed the order in the Petition No. 87/2001 filed by the Appellant/Petitioner approving provisional tariff to be charged by the Appellant in respect of its Ranganadi Hydro Electric Project, owned by the Appellant.

5. The Central Commission notified the CERC (Terms and Conditions of Tariff) Regulations, 2004 on 26.3.2004. On 08.06.2006, the Central Commission framed regulation 5A relating to the provisional tariff through an amendment (First Amendment) providing for the payment of simple interest @ 6% p.a. which was notified in the Official Gazette.

6. On 30.04.2008, the Central Commission passed an order in the application filed by the Appellant/Petitioner in 89 of 2007 for final tariff,

allowing the final tariff for the tariff period 2004-09 effective from 01.04.2004. Prior to this, the Appellant had been charging the provisional tariff approved by the Central Commission by its order dated 11.04.2002 in Petition No. 87/2001. In the said order the Central Commission held that the Petitioner (NEEPCO), i.e. the Appellant is entitled to recover the other charges in accordance with the Regulations. Based on the said order, the Appellant adjusted the final tariff with the provisional tariff which was earlier allowed by the Central Commission through its earlier order dated 11.04.2002.

7. Accordingly, the Appellant billed the beneficiary claiming simple interest @ 6% p.a. from 01.04.2004 and sent the bills to all the beneficiaries including the Respondent 1. But the Respondent-1, i.e. Tripura State Electricity Corporation Limited paid

the interest only for the period from 08.06.2006 and refused to pay the interest for the earlier period from 01.04.2004 on the ground that 5A, which was brought into force only on 08.06.2006 would not be applicable for the claim for interest from 01.04.2004.

8. Aggrieved by this, the Appellant filed Petition No. 105/2008 before the Central Commission claiming interest for the entire period i.e. from 01.04.2004 and seeking for the direction to the Respondent 1. The Central Commission, after hearing the submissions made by the parties, passed the order dated 19.06.2009, rejecting the Appellant's claim for recovery of interest from 01.04.2004 and allowed the Appellant to recover the interest only from 08.06.2006 as per Regulation 5A. This order dated 19.06.2009 is challenged in this Appeal.

9. According to the Learned Counsel for the Appellant, the Central Commission has wrongly passed the order rejecting the Appellant's claim for recovery of interest from 01.04.2004 on the ground that the Regulation 5A had come into force only from the date of the said regulation dated 08.06.2006, without considering the fact that the final order was passed by the Central Commission only on 30.04.2008 and on that day the said regulation 5A was in existence and, therefore, the Central Commission ought to have allowed the interest from 01.04.2004.

10. The Learned Counsel for the Respondent in justification of the impugned order submitted that the interest was provided only in Regulation 5A which came into force on 08.06.2006 and as such the Appellant would be entitled to recover the interest not from 01.04.2004 as claimed but only

from the date of publication of notification of the Regulation 5A, i.e. from 08.06.2006 and that this amount had already been paid by the Respondent-2 to the Appellant.

11. In the light of the rival contentions, the following question arises for consideration in this Appeal.

“ Whether the Appellant is entitled to claim interest on deficit tariff from the R-1 in accordance with Regulation 5A either from 01.04.2004 or from date of publication of the said regulation, i.e. from 08.06.2006?”

12. Let us now deal with this question.

13. According to the Appellant, the Appellant is entitled to the interest @ 6% from the date of applicability of the Tariff Regulations, 2004 but the Central Commission wrongly allowed interest only from the date of the publication of the notification of

the first amendment to the Regulations dated 01.06.2006 which came into force from 08.06.2006, as per Regulation 5A, which will have a prospective effect and not from 01.04.2004 as claimed by the Appellant.

14. It is strenuously contended by the Appellant that the interest is not a tax or penalty but it forms part of the principle of equity based upon the doctrine of restitution as per the decision of the Hon'ble Supreme Court in *South Eastern Coalfields Limited vs. State of M.P.* as reported in 2003 (8) SCC 648 and the judgment rendered by this Tribunal in Appeal Nos. 64, 212, 237 of 2006 rendered on 20.04.2007 and as such the order impugned is wrong.

15. The dispute which has arisen in this Appeal involves the adjudication about the date of



applicability of Regulation 5A. While considering the merits of the matter it would be appropriate to refer to the principle which has been laid down by the Hon'ble Supreme Court in regard to retrospective effect. It is held in the case of State of Madhya Pradesh V/s Tikamdas (1975) 2 SCC 100 that subordinate legislation cannot be given retrospective effect unless specifically so authorized under the parent statute. The relevant observation made by the Hon'ble Supreme Court is as follows:

*“There is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the Rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf”*

16. In the light of the dictum laid by the Hon'ble Supreme Court, if we look at the Electricity Act,

2003, it is evident that this Act, under which the Regulations on the terms of conditions of tariff are notified, does not authorize the Commission to make the Regulations which may apply retrospectively. Keeping in view of the above, let us discuss the relevant facts to analyse the issue.

17. The Appellant filed the tariff petition in Petition No. 87 of 2001 in which the provisional tariff had been approved by the Central Commission by the order dated 11.04.2002 and accordingly tariff had been charged. Thereupon, the Appellant filed a tariff petition on 11.07.2007 in Petition No. 89 of 2007 for approval of final tariff for the period commencing from 01.04.2004. Accordingly, the Central Commission, after hearing all the parties, including the R-1, allowed the final tariff in respect of Ranganadi Hydro Electric Project, i.e. for the period

2004-09 by the order dated 30.04.2008 in accordance with Tariff Regulations, 2004.

18. Thereafter, the Appellant filed a petition No. 105 of 2008 claiming interest on the final tariff with effect from 01.04.2004 from the Respondent in terms of Regulation 5A. Admittedly, in the tariff petition filed by the Appellant in Petition No. 87 of 2001 as well as in the final tariff petition in Petition No. 89 of 2007, the Appellant had not claimed any interest on account of deficit tariff. Belatedly, separate petition in 105/08 has been filed claiming interest only in terms of Regulation 5A.

19. There is no dispute in the fact that Regulation 5A was framed by the Central Commission as per the Regulations 2006 which came into force on 08.06.2006 through Gazette Notification. On that basis, the Central Commission has, in the impugned

order, held that interest claimed on the basis of Regulation 5A can be claimed only from 08.06.2006 and not prior to that, on the reason that the Regulation 5A under which interest is claimed cannot have retrospective effect especially when the said Regulation or the parent statute do not provide for the same.

20. In pursuance of the said impugned order dated 19.06.2009 passed by the Central Commission, the Respondent being the beneficiary utility, paid the entire dues towards interest from 08.06.2006 and the Appellant received the same. As a matter of fact, the payment of the interest from 08.06.2006 has caused additional burden on the Respondent to bear the same on past presented bills as the Appellant would not be able to recover the said amount from the past consumers through its Annual Revenue Requirement, to be approved by the State

Commission, which is effective for prospective period only. It has been correctly pointed out by the Learned Counsel for the Respondent that as per section 56(2) of the Electricity Act, 2003, the R-1 being the sole licensee in the State cannot recover such dues from the concerned consumers which have been held for more than 2 years.

21. In the present case, if the obligation of Regulation 5A has been made retrospective, it will further increase ARR and in that event it will cause additional burden on the old as well as new consumers.

22. In the light of the above situation, we have to deal with the issue raised in this case.

23. The Learned Counsel for the Appellant submits that the claim of the Appellant was just based on

Regulation 5A as interest was payable from the date on which final tariff was applicable and since in this case the final tariff was applicable from 01.04.2004, interest was payable from that date. The Electricity Act, 2003 under which regulations are being framed by the respective Commissions does not permit the Commission to make regulations which may apply retrospectively. For this reason while issuing notification amending the regulations, it was specifically stated in the Regulation that the amendment was intended to come into force from the date of publication in the Official Gazette. In the present case Regulation 5A on the basis of which interest was claimed by the Appellant was introduced through amended notification dated 08.06.2006 which provides for the obligation to pay interest. In this context, we can quote Regulation 5A as below:

*“5A Provisional Tariff: Provisional tariff or provisional billing of charges, wherever allowed by the Commission based on the application made by the generating company or the transmission licensee or by the Commission on its own motion or otherwise, shall be adjusted against the final tariff approved by the Commission.*

*Provided that where the provisional tariff charged exceeds the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee as the case may be, shall pay simple interest @ 6% per annum, computed on monthly basis, on the excess amount so charged, from the date of payments of such excess amount and up to the date of adjustment.*

*Provided further that where the provisional tariff charged is less than the final tariff approved by the Commission, the beneficiaries shall pay simple interest @ 6% per annum, computed on monthly basis on the deficit amount from the date on which final tariff will be applicable up to the date*

*of billing of such deficit amount. Provided also that excess/deficit amount along with simple interest @ 6% shall be adjusted within three months from the date of the order failing which the defaulting utility/beneficiary shall be liable to pay penal interest on excess/deficit amount at the rate as may be decided by the Commission.*

24. The reading of the above referred Regulation 5A would reveal that where the final tariff approved is applicable from the date prior to 08.06.2006, the interest may be payable only from 08.06.2006, i.e. date of publication of the notification and in other cases where the final tariff approved, subsequent to the date of publication of the notification, the interest may become payable from a later date. On the strength of this Regulation, this conclusion has been correctly arrived at by the Central Commission. The decisions of the Hon'ble Supreme Court and the



Tribunal cited by the Learned Counsel for the Appellant would not be applicable to the present case as in those cases both the Tribunal as well as the Hon'ble Supreme Court dealt with the issue where the party is entitled to the interest for the retention of the arrears which was held wrongly by the other party. That is not the case here. In this case we are concerned with the question as to whether the Regulation 5A could be invoked even prior to the date of notification.

25. The concept behind payment of interest is that when a person deprived of the money which he is legitimately entitled has a right to be compensated for such deprivation. In the present case the application for approval of tariff was filed by the Appellant only on 11.07.2007. The tariff was approved by the Central Commission on 30.04.2008. Under these circumstances, it cannot be held that

the Appellant suffered any loss or damage, owing to the inaction of the party.

26. As correctly pointed out by the Learned Counsel for the Central Commission, when the Petitioner/Appellant has based its claim on Regulation 5A, which came into effect on 08.06.2006, that date alone has to be taken into consideration for the purpose of payment of interest as laid down by the Hon'ble Supreme Court in its judgment *LIC vs. S. Sindhu* in 2006 (5) SCC 258. In this case, the Hon'ble Supreme Court emphasized that the interest can be awarded only where the contract between the parties or where the statute applicable to the transaction prevailing at that time, provides for the payment of interest. The relevant portion of the said judgment is as follows:

*“It is now well settled that interest prior to the date of suit/claim (as contrasted to pendent lite interest and future interest) can be awarded in the following circumstances:*

- (a) where the contract provides for payment of interest; or*
- (b) where a statute applicable to the transaction/liability, provides for payment of interest; or*
- (c) where interest is payable as per the provisions of the Interest Act, 1978”*

27. In the present case, Regulations providing for the interest was framed only on 08.06.2006. As mentioned earlier, it does not provide for the interest with the retrospective effect. Similarly, there is nothing on record to show that there existed any contract between the parties providing for payment of interest. Admittedly, the interest claimed by the Appellant is not based upon the Interest Act, 1978. Therefore, the Appellant’s claim can be considered

only under sub-para (b) of the judgment of the Hon'ble Supreme Court which provides for interest only when the statutes applicable to the transaction provide for payment of interest. As already indicated, the Appellant has based his claim on Regulation 5A, which provides for interest which came into effect only on 08.06.2006, which is the crucial date for the purpose of payment of interest. In other words, by applying the ratio of the Hon'ble Supreme Court judgment in LIC vs. S. Sindhu, the interest cannot be claimed by the Appellant from 01.04.2004.

28. This issue could be viewed from yet another angle.

29. After the enactment of Electricity Act, 2003, the Central Commission is required to determine tariff in accordance with the guidelines provided in section

61 of the Electricity Act, 2003. Section 61 provides as under:

*“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff and in doing so shall, by the following namely:*

*“(d) safeguarding of consumers’ interest and at the same time recovery of cost of electricity in a reasonable manner.”*

30. In the light of the above provisions, the Central Commission adjudicated the dispute between the Appellant and the Respondent and passed the order dated 30.04.2008 in Petition No. 89 of 2007 in respect of the final tariff and the order in Petition No. 105 of 2008 dated 19.06.2009, the impugned order in respect of the interest as per the Regulation taking into consideration of the interest of consumers as referred to in Section 61(d) of the Act.

31. Summary of our findings is as follows:

*“The reading of the Regulation 5A would make it clear that when the final tariff approved is applicable for the date prior to 08.06.2006, the interest is payable only from 08.06.2006 i.e. the date of publication of the notification of Regulation 5A. The Regulation 5A which is framed on 08.06.2006 does not provide for the interest with retrospective effect. Similarly there is nothing on record to show that exists in contract between the parties providing for payment of interest. The Appellant’s claim can be considered only on the basis of the statutes applicable to the transaction providing for the payment of interest. Admittedly, Appellant has based its claim on the basis of Regulation 5A providing for interest which came into effect only on 08.06.2006 which is the crucial date for the purpose of payment of interest. Therefore, the claim made by the Appellant i.e. entitlement to interest from 01.04.2004 is misconceived. On the other hand, he is entitled to the interest as per Regulation 5A only from the date 08.06.2006*

*on which the notification of Regulation 5A had been issued.”*

32. In view of our above findings, we hold that there is no merit in the submission made by the Learned Counsel for the Appellant and the reasonings given by the Central Commission for allowing interest on deficit tariff only from 08.06.2006 in our opinion are perfectly valid and justified.

33. Accordingly, the Appeal is dismissed as devoid of merit. No costs.

(RAKESH NATH)  
TECHNICAL MEMBER

(JUSTICE M. KARPAGA VINAYAGAM)  
CHAIRPERSON

REPORTABLE/NON-REPORTABLE

**Dated: 12.07.2010**