

**Before the Appellate Tribunal for Electricity  
Appellate Jurisdiction**

**Appeal No. 27 of 2007**

**Dated: October 4, 2007**

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A. A. Khan, Technical Member

**IN THE MATTER OF:**

Haryana Vidyut Prasaran Nigam Limited,  
A Company incorporated under the Companies Act, 1956  
Being a successor of the Haryana State Electricity Board  
Having its registered office at Shakti Bhawan,  
Sector-6, Panchkula-134 109,  
**HARYANA.** .... Appellant

Versus

Haryana Electricity Regulatory Commission  
Through its Secretary,  
SCO 180, Sector-5,  
Panchkula-134 109,  
**HARYANA** ... Respondent

For the appellant : Mr. Neeraj K. Jain, Mr. Bharat Singh,  
Advocates with Mr. D.P. Tiwari, Financial  
Advisor & Mr. S.K. Aggarwal, CAO

For the respondent: Mr. N.S. Bhinder, Jt. Director (Law) and  
Mr. Rajesh Kumar Monga, Law Officer, HERC

**JUDGMENT**

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

This appeal is directed against the orders of the Haryana  
Electricity Regulatory Commission (for short 'HERC') dated  
December 1, 2006 and December 5, 2006 passed in petitions

filed by the appellant mainly for seeking revision of tariff fixed by the HERC relating to financial years 2002-03, 2003-04, 2004-05, and 2005-06 in the light of the decisions of this Tribunal rendered in Case No. 24/06 dated September 12, 2006 and Case Nos. 33/05 & 74/05 dated July 7, 2006

2. In these appeals the appellant has raised pleas only relating to depreciation on BBMB assets and accumulated losses sustained by it.

3. In so far as the claim of the appellant based on depreciation on BBMB station assets is concerned, the appellant had contended before the HERC that the BBMB, though an inter-state Project, was inherited from the erstwhile Haryana State Electricity Board. It was also submitted that the value of the assets had diminished and the diminutive value of investment in BBMB amounting to Rs. 107.04 millions should be allowed. In nutshell, it was claimed that the assets had depreciated like any other Generation Projects. The HERC however, referred the matter to the Government of Haryana on the ground that it involved inter-state sharing of

power and water. It appears to us that the HERC in referring the matter to the Government of Haryana acted contrary to the decision rendered by the Division Bench of this Tribunal, comprising of Justice E. Padmanabhan, Judicial Member and one of us (Shri H.L. Bajaj, Technical Member), in Appeal nos. 33/05 and 74/05 dated July 7, 2006. In this regard it was held by the Bench as follows:-

*“ 13.6. After hearing both sides we are persuaded to hold that in view of the fact that generation does not require any license, value of BBMB/IP stations assets appear in the Balance Sheet of HVPNL and that replacement will be required after useful life of assets, the depreciation on BBMB/IP station assets deserves to be allowed as claimed by the appellant. Hence this point is answered in favour of the appellant”.*

4. Thus, the depreciation on BBMB/IP stations was allowed by the Tribunal. The HERC was bound by the order of this Tribunal. Therefore, the matter could not have been referred by it to the State of Haryana. The HERC ought to have acted in compliance with the aforesaid decision. Consequently, there is need to interfere with the Order of the HERC.

5. The other point relates to accumulated losses of the appellant as on March 31, 2006. According to the HERC, the accumulated losses of the appellant as on March 31, 2006 were to the tune of 2015.76 million in accordance with the audited accounts of the appellant.

6. The HERC has failed to note that the appellant had filed the audited accounts in accordance with the requirements of the Companies Act, 1956. The accumulated losses reflected in the audited accounts prepared in accordance with the Companies Act do not disclose the actual accumulated losses suffered by the appellant as on March 31, 2006. The HERC has restricted the amount of accumulated losses of the appellant as per the audited accounts, which the appellant was required to submit in accordance with the Companies Act. The HERC did not take into consideration the actual accumulated losses suffered by the appellant. The actual accumulated losses should not have been capped by the Commission as per the audited balance-sheet. The HERC ought to have taken into consideration the actual accumulated

losses suffered by the appellant as on March 31, 2006. Even the Commission has not taken into consideration the contingent liability of 130 crores, while computing the amount to be recovered by the appellant.

7. Therefore, the matter needs to be remitted to the HERC for computing *denovo* the amount required to be recovered by the appellant by taking into consideration the actual accumulated losses suffered by the appellant. While calculating the amount the HERC will also take into account the contingent liability of appellant.

8. We are constrained to observe that the HERC felt that it was not bound by the Order of the Tribunal and it had the liberty to act in a manner which may not be in consonance with our directions. The following observations of the Commission betray the mind set of the Commission while dealing with the matter for giving effect to our orders:

*“In this context, the Commission has studied the audited accounts of HVPNL upto the financial year 2005-06 as supplied by the licensee to the Commission. It is observed that the liability on this account calculated on the basis of actuarial valuation*

*upto FY 2005-06 is already reflected in the balance sheet. Consequently, the Commission is of the view that though we agree in principle with the observation of the Hon'ble Appellate Tribunal, there is no need to add any financial benefit in the ARR of HVPNL in the corresponding year".*

9. Though it is stated in the impugned order that the Commission agrees in principle with the observations of this Tribunal, at the same time it makes a departure by stating that there is no need to add any financial benefit in the ARR of the appellant in the corresponding year.

10. That apart even in the matter of depreciation on BBMB assets, the HERC has not carried out the direction of the Tribunal. Whether the thinking of the Commission is in tune with the views of this Tribunal is not material. What is material is that the orders passed by us must be implemented by the HERC. The HERC has no option but to comply with our orders.

11. Regulatory Commissions are bound by the principle of judicial discipline. The doctrine of judicial discipline requires sub-ordinate forums or courts to abide by the orders of higher forum/court. Regulatory Commissions are not to forget that

their orders are appealable under Section 111 of the Electricity Act, 2003. Any order passed by us in appeal is required to be carried out unless and until our order is stayed, set aside or modified by the apex court to which the second appeal lies under Section 125 of the Act.

12. In our country administration of justice and judicial system requires the sub-ordinate courts to obey, honour and follow the orders and directions of the higher courts. The sub-ordinate courts/forums cannot ignore the orders of the higher courts/forums regardless of the doubts about its correctness. In case a lower court/forum fails to comply with the order, it amounts to breach of judicial discipline. In Union of India vs. Ramlakshi Finance Corporation Ltd., (1992 Supp. (1) SCC 443), it was held that the principle of judicial discipline requires that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. In this regard, the Supreme Court observed as follows-

*“ The High Court has, in our view, rightly criticized this conduct of the Assistant Collectors and the*

*harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not “acceptable” to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws”.*

13. In Bhopal Sugar Industries Ltd. vs. ITO, (AIR 1961 SC 182), it was held by the Supreme Court that if a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, there will be chaos in the administration of justice and it will be destructive of the basic principles of the administration of justice.



14. In Dharam Chand Jain vs. State of Bihar, (1976) 4 SCC 427, it was held by the Hon'ble Supreme Court that the State Government, being a subordinate authority in the grant of mining lease, was obligated under the law to carry out the orders of the Central Government. In this regard the Supreme Court held as follows:-

*“The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government. But the State Government declined to do so, on the ground that it had laid down a policy that the mining leases in respect of the area should be given only to those who were prepared to set up a cement factory. It was clearly not open to the State Government to decline to carry out the orders of the Central Government on this ground, particularly because the Central Government was a tribunal superior to the State Government”.*

15. Same view was expressed by the Supreme Court in Morgan Securities and Credit (P) Ltd. vs. Modi Rubber Ltd. (2006) 12 SCC 642), where it was held that while exercising its power under sub-section (3) of Section 22, the Board cannot ignore an order passed by a superior court. It is bound by the doctrine of judicial discipline.

16. The Supreme Court in Commissioner of Income Tax, Bhopal vs. Ralson Industries Ltd. (2007) 2 SCC 326), again had an occasion to deal with the principle of judicial discipline in line with the aforesaid judgments. The Supreme Court held that when an order is passed by a higher authority, the lower authority is bound to carry it out, keeping in view the principle of judicial discipline.

17. Thus, the HERC was bound by the orders of this Tribunal dated July 7, 2006 and September 12, 2006. The principle of judicial discipline required it to carry out these orders to the hilt. We need not say more as we think that only nudge to the Commission should be sufficient to remind it of its duty to carry out the orders of this Tribunal.

18. In the result we remit the matter to the HERC for computing denovo the amount required to be recovered by the appellant by taking into consideration the actual accumulated losses suffered by the appellant and while calculating the amount the HERC will also take into account the contingent liability of the appellant. We also direct the HERC to act in

consonance with the earlier directions of this Tribunal in appeal nos. 33 of 2005 and 74 of 2005 dated July 7, 2006, whereby the depreciation on BBMB/IP station assets was allowed as claimed by the appellant. Accordingly, the reference on this aspect of the matter made by the HERC to the State of Haryana is set aside. The Appeal is allowed to the extent indicated above.

**( Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

**Dated: October 4, 2007**