

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.150 of 2010

Dated:04TH Nov, 2011

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

Appeal No.150 of 2010

1. M.P Poorv Kshetra Vidyut Vitran Co. Limited
Block No.7, Shakti Bhavan
Rampur,
Jabalpur-482 008.

2. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company
Limited
Bijli Nagar Colony, Nishtha Parisar
Govindpura
Bhopal-462 023

3. Madhya Pradesh Paschim Kshetra
Vidyut Vitaran Company Ltd.,
GPH Campus Polo Ground
Indore-452015

... Appellant(s)

Versus

Madhya Pradesh Electricity Regulatory Commission
4th and 5th Floor, Metro Plaza,
Bittan Market
Bhopal-462 016.

.....Respondent

Counsel for Appellant(s): Mr. M.G. Ramachandran
Ms. Swapna Seshdri
Ms. Sneha Venkatramani

Counsel for Respondent: Mr. Sanjay Sen
Ms. Surbhi Sharma
Mr. Sunil Sharma
Mr. Manish Srivastava
Mr. Anurag Sharma

JUDGMENT

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

True up order dated 13.4.2010 for the year 2007-08 is the subject matter of this Appeal filed by the Appellants.

2. The Appellants 1 to 3, the Distribution Companies filed their respective applications before the Madhya Pradesh State Commission for true up of aggregate revenue requirements for the financial year 2007-08 based on the audited accounts. The State Commission by the common order dated 13.4.2010 disposed of all the three applications filed by the Appellants for truing up of the annual revenue requirements for the tariff year 2007-08. Since the finding of the State Commission was against the Appellants in respect of some of the issues, the Appellants have filed this Appeal as against those findings relating to those issues.

3. Facts are as follows:-

- i) The Appellants 1 to 3 are the Distribution Companies in the State of Madhya Pradesh. It has undertaken the functions of distribution and retail supply of electricity in the East, Central and West areas respectively in the State

of Madhya Pradesh. The Appellants have been vested with the functions of distribution and retail supply of electricity in the State of Madhya Pradesh pursuant to the re-organisation of the erstwhile State Electricity Board. The Appellants succeeded to the distribution functions and assets of erstwhile State Electricity Board effective from 1.6.2005 in pursuant to the statutory transfer scheme.

- ii) On 03.6.2006, Government of Madhya Pradesh effected the transfer and vesting rights of the functions, properties, interests, rights and obligations of the State Electricity Board relating to the bulk purchase and bulk supply of the electricity in the State and re-transferred and re-vested the same to the MP Power Trading Company. Since then MP Power Trading Company has been discharging the responsibilities of procurement of power in bulk and supplying to the 3 Distribution companies, namely the Appellants.
- iii) On 10.11.2006 Madhya Pradesh State Commission framed a Regulation -2006 relating to the determinations of tariff for Distribution and Retail supply of electricity and methods and principles for fixation of charges. Based on the above Regulation, the State Commission by order dated 30.3.2007 determined the aggregate revenue requirements and applicable tariff of the Appellants for the period from 1.4.2007 to 30.3.2008 based on the estimates, projections and details then available.
- iv) After closure of the financial year 2007-08, the Appellants through their respective applications sought for truing up

of the amount of correct revenue requirements for the financial year 2007-08 based on the audited accounts on 31.10.2009. The State Commission, after holding a public hearing on those applications passed a common order dated 13.4.2010 deciding all the three applications filed by the Appellants for truing up annual revenue requirements for the tariff year 2007-08.

- v) Aggrieved by the order of 13.4.2010 passed by the State Commission on some of the issues, the Appellants have filed this Appeal.

4. In this Appeal following issues have been raised for consideration:-

- a) Energy sales and additional hours of supply of power to agricultural consumers.
- b) Disallowance of power purchase cost.
- c) Adjustment of loss level and power purchase.
- d) Operation and maintenance expenditure
- e) Interest and finance charges
- f) Depreciation
- g) Interest on working capital

5. According to the Appellant, the first three issues namely – 1) Energy Sales and additional hour supply of power to agricultural consumers, 2) Disallowance of power purchase cost and 3) Adjustment of loss level and power purchase have already been decided by this Tribunal in its judgment in Appeal No.145 of 2009

dated 19.5.2010 related to true up for FY-2006-07, which has allowed the claim in favour of the Appellant. On this basis, the learned Counsel for Appellants is praying this Tribunal to dispose of this Appeal on these issues in terms of the above judgement. It is noticed that these issues i.e. 1 to 3 as pointed out by the learned Counsel for Appellants are covered in favour of the Appellants by the judgment of this Tribunal in Appeal No.145 of 2009 dated 19.5.2010.

6. The relevant portions of this Tribunal's judgement dated 19.5.2010 are as follows:-

“ 21. For the year FY 2007, no elaborate table similar to one for FY 2006 has been given. Commission made it clear in its order dated 31.3.2007 that Billing of Un-metered Domestic and Agriculture Consumers is to be done on the basis of assessed units given in the aforementioned table(supra). Having regard to the State Commission's order for FY 2006 and FY 2007 and the fact that un-metered supply was permitted during FY 2006-07, we conclude that no restriction is placed on the Appellants to supply energy beyond 100/130 units per HP per month. Rather Clause 3.6 requires that supply should not be unduly restricted. Respondent Commission having permitted unmetered supply and billing on normative basis is not justified in labelling the supply of energy over and above the normative level as free power. Normative means irrespective of actual use billing has to be done on the normative figure prescribed by the State Commission. Assuming that actual use of power was lesser by 1682.27 MU, instead of being higher by 1682.27MU as is the case, this would not entitle the Appellant to claim power purchase cost corresponding to normative value. It is the consumer who is to be billed on normative basis irrespective of the quantum actually consumed. Appellants are entitled to only actual power purchase cost whether it is less or more than the assessed values. In view of this, we conclude that there is no justification to disallow the supply of energy by the Appellants. We, therefore, set aside the impugned order in this view of the matter.

22. Having decided that the Commission should consider the additional 1682.27 MU(or 1612 MU which the Commission may actually determine) of un-metered supply for the purpose of power purchase quantum required for energy sales, the consequential issues of rates of power purchase cost and the adjustment of loss level and purchase cost stand settled”.

7. As regards the transmission and distribution losses the State Commission has considered the percentage of transmission loss as per actual and distribution loss as per the norms for working out the power purchase cost which we feel is in order. However, the quantum of transmission and distribution loss and power purchase cost will have to be determined on the basis of the actual un-metered supply as per the above decision of the Tribunal in Appeal No.145 of 2009.

8. As a matter of fact, Review petition had been filed in RP No.10 of 2010 against the said order and the same had been dismissed by this Tribunal on 4.3.2011. The learned Counsel for the Appellant has argued that the directions contained in paras-7 to 18 of the Review order dated 4.3.2011 can have no application to the present Appeal. The orders in Review Petition No.10 of 2010 and the tariff order for FY 2006-07 of the State Commission were based on the Tariff Regulations, 2005 in which Regulation 3.7 provided for prior approval of the State Commission if supply to any category of consumer is varied due to any abnormal situation like drought. The tariff order for FY 2007-08 was based on Tariff Regulations, 2006 which do not contain any similar provision such as Regulation 3.7 or any other provision akin to the said Regulation.

9. The learned Counsel for the State Commission has ventured to justify the impugned order. However, we are not able to agree with those arguments except that the State Commission has to apply prudence check with respect of computation of consumption of the un-metered agriculture consumers due to additional hours of supply compared to the normative consumption based on the restricted hours of supply as directed in our order dated 4.3.2011 in RP No.10 of 2010. The State Commission may assess the additional supply based on the additional hours of actual supply made to agriculture after scrutinising the records of the distribution licensees and the State Load Dispatch Centre or any other method that it may like to adopt. Therefore, we deem it fit to allow the Appeal in respect of the issues 1 to 3 in terms of judgment in 145 of 2010 dated 19.5.2010 with the above directions. Accordingly, ordered.

10. The next issue i.e. fourth issue is the Operation and maintenance expenditure. The learned Counsel for Appellant himself fairly submits that this issue is also covered in the judgment dated 19.5.2010 in Appeal No.145 of 2010, in which, it was held as against the Appellants thereby the Tribunal refused the claim on this aspect. The relevant portion of the observation by the Tribunal is as follows:-

“ 26. More than 85% of the total O&M charges is the employee cost. The employees in these companies are on assignment and all the decision on employer's salary are taken by the Electricity Board and as such the decision applied uniformly to all the companies. The companies, i.e. the Appellants have no control on expenses of employee's cost which is a major portion of the O&M cost.

27. In view of the above, taking a comprehensive view of the actual O&M expenses and also keeping in view that these O&M expenses have employees expenses as a major component alone, the State Commission had consciously allowed O&M expenses based on actual as per the particulars given in the petition filed by the Appellants in true up of 2006-07. This logic was uniformly applied for O&M expenses of the distribution companies also. In view of the his we do not find any justification to interfere in the decision of the State Commission”.

11. Following this, we are to hold against the Appellant in respect of this issue. Accordingly, ordered.

12. The next issue is - Interest and finance charges. This issue is the new issue to be dealt with. The Appellant claimed the interest and finance charges of an amount of Rs. 239.35 crores including borrowed capital in respect of capital assets in use, though the accounts reflected part of the same as work in progress.

13. According to the Appellants, the State Commission proceeded to adopt a methodology of treating of only 50% of additional capitalisation claimed by the Appellants and to treat the remaining as work in progress.

14. It is submitted by the Appellant that the State Commission has not fully considered the assets for the purpose of tariff during the financial year 2007-08, even though these assets had been put to use, the benefit of the same had accrued to the consumers, and that therefore, assets should have been treated as part of the capital block for the purpose of tariff. Per contra, the learned Counsel for the State Commission has refuted the claim of the

Appellants contending that the State Commission has carefully examined the claims of the Appellants from its filing and its audited annual financial statement and decided the issue on the basis of the regulation 2.10 of the Regulations-2006. It is also pointed out by the learned Counsel for the State Commission that the State Commission has relied upon the Regulation 2.5. of the Regulations-2006 which states that the net ratio shall be 70:30 for the calculation of the interest and return on equity and as such, the decision on the issue is perfectly valid.

15. We have considered submissions on this issue made by both the parties.

16. The Appellant claimed interest and finance charges of an aggregate of amount of 239.35 crores based on the audited accounts for the financial year 2007-08. The State Commission examined the claims of the distribution companies from its filing and its audited annual financial statements. As pointed out by the learned Counsel for the State Commission, Regulation 2.10 of the Regulation-2006 is quite relevant. This regulation 2.10 of the Regulation-2006 notified is as follows:-

“ Interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of repayment, as per the terms and conditions of relevant agreements of loan, bond or debenture, ordinarily restricted to prevailing rates of SBI Long Term Lending Rate from time to time. Exception can be made for the existing or past loans which may have different terms as per the agreements already executed if the SERC is satisfied that the loan has been contracted for and applied to identifiable distribution projects. The interest rate on the amount of equity in excess of 30% treated as loan shall be the weighted average rate of the loan schemes of the licensee.

Provided that all loans considered for this purpose shall be identified with the assets created.

Provided that interest and finance charges of renegotiated loan agreement shall not be considered, if they result in higher charges.

Provided further that interest and finance charges on works in progress shall be excluded and shall be considered as part of the capital cost.

Provided further that neither penal interest nor overdue interest will be allowed for computation of annual revenue requirement.”

17. The next relevant regulation is 2.5. This provides that debt equity ratio shall be 70:30 for collection of interest on loan and return on equity and the same is reproduced below:-

“ For the purpose of determination of tariff, debt-equity ratio of the total capital employed in completed assets shall be 70:30. The debt-equity amount arrived in accordance with this clause shall be used for calculation of interest on loan, return on equity, advance against depreciation and foreign exchange rate variation.”

18. The Appellants, the Distribution companies, in their petitions provided the amount of interest and finance charges for various lending Agencies like NABARD, APDRP, PFC, ADB and MPSEB generic loans. However, the Appellants had not furnished the information relating to the loans mapping with particular assets and the actual date of capitalisation of individual assets during the year 2007-08. Therefore, the State Commission considered that 50% of net addition to the gross fixed asset has been through debt for allowing interest on project loans so that principles of pro rata basis can be followed. Learned Counsel for the State Commission

pointed out various guidelines for following the approach for collection of interest on project loans. They are as follows:-

- i) *Allocation of fixed assets as on 31st March, 2007 into debt and equity was taken forward for 2007-08 taking base figures as per true-up order 2006-07.*
- ii) *Net addition to GFA during FY 2007-08 worked out after subtracting the consumer contribution amount from total addition to GFA as available from the audited accounts of the Appellant Discoms.*
- iii) *30% of the net addition to GFA during FY 2007-08 was considered as funded through equity and added to the total equity in GFA(considered by the Commission at the end of FY 2006-07), as per the True-up order for FY 2006-07.*
- iv) *Balance of net addition to GFA was considered as having been funded through debt and added to the total debt in GFA considered at the end of FY 2006-07.*
- v) *In absence of the actual date of capitalization of individual assets during the year. 50% of the net addition to GFA funded through debt was considered by the Commission for allowing interest on project loans to follow principle of pro-rata basis and also to make justice for allowing appropriate interest and finance charges on project loans in absence of information expected to be provided by the Appellant Discoms in line of the provisions under clause-2.10 of the Regulation on "Terms and Conditions of Determination of Tariff for Distribution and Retail Supply of Electricity and Methods and Principles for Fixation of Charges" notified on 10th November,2006.*
- vi) *Scheduled debt repayments was subtracted from the total debt identified with completed assets as computed from above. Actual repayments had not been considered since there had been defaults in repayment of principal by the Discoms during FY 2007-08.*

19. So these guidelines would indicate that in absence of actual date of capitalisation of individual asset during the year, 50% of net addition to gross fixed funded through debt should be considered. Accordingly, debt was considered by the State Commission for allowing interest on project loans to follow principles of pro-rata basis.

20. Admittedly, the Appellants had not furnished information as expected to be provided by the Appellants, in line with the clause 2.10 of the Regulations-2006. Therefore, actual repayments had not been considered since there had been defaults in repayment of principal by the Distribution companies during the financial year 2007-08. Therefore, there is no merit in this ground urged by the Appellant on this issue. So the contention of the Appellant on this issue would fail.

21. The next issue is relating to the depreciation. The Appellants claimed depreciation as per the rates prescribed under the State Commission's regulations which include asset-wise depreciation. According to the Appellants, the State Commission did not take into account that every Distribution company has different assets base and different assets mix and as such, the depreciation rates are different for each asset and that therefore depreciation will vary according to the assets mix. It is also submitted by the Appellants that the State Commission has committed wrong in considering the different amounts of opening and closing gross fixed assets as compared to the audited account.

22. On this issue we have heard the learned Counsel for the State Commission. It is true that the Appellants claimed the depreciation as per the rates specified in the regulation of the Commission. But the scrutiny of the details furnished for true-up would reveal that the accumulated depreciation in certain items was more than 90 percent of gross block for east Discom. With regard to the depreciation claim of Appellant East Discom it is noticed that the percentage depreciation with regard to the average gross block of financial year 2007-08 was about 4 percent. In case of West Discom this was 2.24 percent. In the case of Central Discom it was 2 percent as per the admitted depreciation. Since these three distribution companies of the State had been carved out from the Madhya Pradesh State Electricity Board, they have almost similar asset base, percentage depreciation of average gross block for the year 2007-08 for East Distcom i.e. 4 percent, was considered higher when compared with the other two companies of the State. On going through the impugned order, it is clear that the State Commission, having regard to the fact that all the exercise was carried out on the basis of the provisional opening fixed asset, decided to apply average of percentage gross blocks of West and Central distribution companies to admit the amount of depreciation for the year 2007-08 for East Distcom. This was done only for the purpose of true-up. Even according to the State Commission as referred to in the impugned order, the final view on this issue would be taken by the State Commission as and when the affects of final opening balance sheets would be filed in future true-ups. Therefore, the contention urged by the Appellants on this issue also would fail.

23. The next issue relates to the interest on working capital. As regards this issue, the Appellants have specifically mentioned in their written submissions that they are not pressing the issue in the present appeal reserving the right to raise the issue in some other case. In view of the same we are not deciding the issue on merits.

24. **Summary of findings.**

(i) The issues a) Energy sales and additional hour supply of power to agricultural consumers, b) Disallowance of power purchase cost and c) Adjustment of loss level and power purchase have already been decided in favour of the Appellants in view of the judgment dated 19.5.2010 in Appeal No.145 Of 2009. We have, however, given directions regarding the prudence check to be adopted by the State Commission for actual energy supply to agricultural consumers in paragraph 9 above. The same has to be followed.

(ii) In respect of issue (d) relating to Operation and maintenance expenditure, the learned Counsel for the Appellants, himself submitted that the issue has been decided as against the Appellants by this Tribunal against in Appeal No.145 of 2009 dated 19.5.2010. Accordingly this issue is decided against the Appellants.

- (iii) In regard to the next issue i.e. (e) relating to interest and finance charges, we are of the view that we do not find any merit in this issue for the reasons mentioned in above paragraphs. Accordingly, this issue is decided against the Appellants.
- (iv) In regard to the next issue namely Depreciation, we do not find any infirmity in the findings rendered by the State Commission on this issue especially when the State Commission itself has observed in the impugned order that the final view would be taken as and when the affects of final opening balance sheets would be filed in future true-ups.
- (v) The last issue regarding interest on working capital is not pressed by the Appellants. So we are not deciding this issue on merits.

22. Thus, we allow this Appeal in respect of the issues namely (a) to (c) with some directions as given in paragraph 9 above, and dismiss the Appeal in respect of other issues namely (d),(e),(f).

23. The appeal is partly allowed. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 04TH Nov. 2011

REPORTABLE/NON-REPORTABLE