

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

Appeal No. 108 of 2008

Dated: January 13, 2009

Present: **Hon'ble Mrs. Justice Manju Goel, Judicial Member**
Hon'ble Mr. H.L. Bajaj, Technical Member

Shri Padmakar Balkrishna Samant & Ors. -Appellant(s)
Versus
Maharashtra Electricity Regulatory Commission & Anr.
- Respondent(s)

Counsel for the Appellant(s) : Mr. Mayank Mishra

Counsel for the Respondent(s) : Ms. Anjali Chandurkar and
Ms. Smieetaa Inna for R-2
Mr. Buddy A. Ranganadhan for
Respondent No.1 (MERC)

ORDER

Heard.

2) The appellants filed appeal No. 19 of 2008 on 12.06.07 and the present appeal on 18.07.08. The appeal No. 19 of 2008 challenged the tariff order of the Maharashtra Electricity Regulatory Commission, arrayed as respondent No.1, (the Commission for short) dated 24.04.07 in respect of Annual Revenue Requirement (ARR) for the control period of FY 2007-08 to FY 2009-2010 and retail tariff for the FY 2007-08 for Reliance Energy Limited (REL for short), which is a distribution company.

Cntd...2

3) The present appeal challenges the order dated 04.06.08 passed by the Commission in respect of the annual performance review and tariff determination for the FY 2008-09 of the same distribution company. Appeal No. 19 of 2008 was dismissed vide a judgment dated 02.12.08. The present appeal raises the same issues as in the previous appeal No. 19 of 2008. However, Mr. Mayank Mishra appearing for the appellant says that the present appeal deals with the truing up exercise following the tariff order for the FY 2007-08 and has raised some more issues.

4) The issue of truing up, as explained in the written submissions filed today, is formulated by Mr. Mishra as under:

“Whether the truing up exercise conducted by Maharashtra Electricity Regulatory Commission for the FY 2007-08 is illegal on account of failure to comply with the Regulations 17.2 and 17.3 of the MERC (Terms and Conditions of Tariff) Regulations 2005.”

5) Mr. Mishra may advance his argument on the basis of this issue.

6) Mr. Mishra further says that although it has not been raised specifically in the appeal the appointment of M/s Pricewaterhouse Coopers (P) Ltd. as consultant by the MERC is

cntd...3

contrary to Regulation 5.4 of Maharashtra Electricity Regulatory Commission (Terms & Conditions of appointment of consultant) Regulations 2004 which deals with the appointment of consultants and the appointment of M/s. Pricewaterhouse Coopers (P) Ltd. as consultant would vitiate the impugned order to the extent the truing up exercise was done contrary to the Regulation of Maharashtra Electricity Regulatory Commission (Terms & Condition of appointment of consultant) Regulations 2004.

7) This contention cannot be considered because there is no allegation in the appeal that M/s Pricewaterhouse Coopers(P) Ltd. was engaged for the truing up exercise for 2007-2008 and tariff fixation for the year question in the appeal.

8) So far as Regulations 17.2 and 17.3 are concerned, they deal with accounting statement. The previous judgment dated 2.12.08 also deals with the same accounting statement. The objection raised by the appellant to the accounting statement relates to the “other business”. The earlier judgment also held that “other business” as understood by section 51, read with the tariff regulations, did not actually exist for REL and therefore, the accounting statement was not vitiated on account of the alleged absence of separate account for the “ other business”.

Cntd... 4

9) Therefore, in view of the above, we do not need to go through the issue all over again. In view of our findings in appeal no. 19 of 2008, the present appeal deserves to be dismissed. We order accordingly.

(H.L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member