

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

JUDGMENT IN APPEAL NO.187 OF 2011

Dated: 27th April, 2012

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**M/s. Chemplast Sanmar Limited
Nagore Main Road,
Melavanjore
TR Pattinam Commune Panchayat
Karaikal-611 002, Pondicherry**

...Appellant

Versus

**1. Joint Electricity Regulatory Commission
2nd Floor, HSIDC Office Complex
Vanijya Nikunj Complex, Udyog Bihar
Phase-5, Gurgaon
Haryana-122 016**

**2. Government of Puducherry
Electricity Department
137 NSC Bose Salai
Puducherry-600 001**

...Respondent(s)

**Counsel for the Appellant : Mr. Vijay Narayan, Sr Adv
Mr. K V Mohan
Mr. K.V Balakrishnan**

Counsel for the Respondent(s): Mr. R Venkataramani, Sr Adv
Mr. V.G. Pragasam
Mr. S Prabhu Ramasubramanian
Mr. Senthil Kumar
Mr. Dinesh Kapoor
Mr. Aditya Kr. Singhal

JUDGMENT IN APPEAL NO.6 OF 2012

In the Matter of:

**M/s. Chemfab Alkalis Limited
Gnanania Place, Kalapet,
Pondicherry-605 014**

...Appellant

Versus

- 1. Electricity Department of Puducherry
Government of Puducherry,
Pondicherry-609 605**
- 2. Joint Electricity Regulatory Commission
2nd Floor, HSIDC Office Complex
Vanijya Nikunj Complex, Udyog Bihar
Phase-5, Gurgaon
Haryana-122 016**

...Respondent(s)

Counsel for the Appellant : Mr. Rohit Rao N

Counsel for the Respondent(s): Mr. R Venkataramani, Sr Adv
Mr. V.G. Pragasam
Mr. S Prabhu Ramasubramanian
Mr. Dinesh Kapoor
Mr. Aditya Kr. Singhal

ORDER

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

1. Both these Appeals arise out of the same impugned order. Hence this common judgment is being rendered.
2. M/s. Chemplast Sanmar Limited, Karaikal is the Appellant in Appeal No.187 of 2011. M/s.Chemfab Alkalis Limited Puducherry is the Appellant in Appeal No.6 of 2012. The Electricity Department of Puducherry, Government of Puducherry and the Joint Electricity Regulatory Commissions are the Respondents in both these Appeals.
3. The Appellants, being the consumers aggrieved over the impugned order dated 12.8.2011 fixing the Incremental Fuel Surcharge even without public notice and without hearing the consumers and interested parties have filed these Appeals. The short facts are as follows:
 - (a) M/s. Chemplast Sanmar Limited, the Appellant in Appeal No.187/2011 is a manufacturer of PVC Resins, Caustic Soda, Chloro Chemicals, Refrigerant Gases etc., The manufacturing facilities are located in various places both in Tamil Nadu as well as in Union Territories of Puducherry. The said Appellant entered

into a Power Supply Agreement dated 19.7.2004 having a contracted demand of 14,650 KVA with the Electricity Department, Puducherry, the Respondent.

(b) M/s. Chemfab Alkalises Limited, the Appellant in Appeal No.6 of 2012 is having its factory in Kalapet, Puducherry. It is one of the consumers of the Electricity Department, Puducherry, the Respondent.

(c) The Electricity Department, Puducherry, being a deemed licensee which is carrying on the business of transmission, distribution and retail supply of electricity in Puducherry, Kalapet and other places of the Union Territory of Puducherry, filed the Petition before the Joint Electricity Regulatory Commission for determining the tariff for the year 2009-10. Accordingly, the Joint Commission passed the tariff order on 5.2.2010 fixing the Power Purchase Cost of the Electricity Department as per Chapter-5 and specified power purchase cost adjustment formula as per Chapter-6.

(d) Under Regulation 7 of the 2009 Regulations, the Joint Commission notified the provision for fuel cost revision in accordance with fuel surcharge formula and pre-conditions attached thereto by which the escalation in Fuel cost would be determined and charged by the Electricity Department.

(e) The Electricity Department, the Respondent has been raising the bills as per tariff determined by the State Commission by the tariff order and the Appellants have been paying the same.

(f) The Electricity Department filed another Petition before the Joint Commission on 10.12.2010 praying for passing on to the consumers the Fuel Surcharge Cost of Rs.57.573 Crores in respect of the Financial Year 2009-10 and 2010-11.

(g) The Joint Commission without issuing notice to the public passed the impugned order dated 12.8.2011 allowing the Incremental Fuel Surcharge and permitting the Electricity Department to collect from the consumers an amount of 34.25 Paise Per unit towards Fuel Surcharge cost.

(h) The Appellants came to know about the impugned order which was passed on 12.8.2011 only on the receipt of the bills issued by Electricity Department directing the Appellants to pay the increased charges on the basis of the impugned order dated 12.8.2011.

(i) Aggrieved over the said order, the Appellants have filed these Appeals.

4. The Appellants assailing the impugned order have urged the following grounds:

(a) Even though the Joint Commission had passed the tariff order on 5.2.2011, approving the Power Purchase Cost adjustments as per the Formula under Chapter-6 subject to 09 conditions, the Commission passed the impugned order without verification of the compliance of those conditions by following a different Formula.

(b) U/S 62 (4) of the Electricity Act, 2003, the tariff order can be amended once in a year under the terms of any Fuel Surcharge Formula. Under Regulation 15 (xi) of the JERC Conduct of Business Regulations, 2009, the Commission may issue notice to the affected parties before passing the order. In this case, neither notice was issued to the affected parties nor the Formula as specified in Tariff order dated 05.2.2010 was followed.

(c) The impugned order is only cryptic order. The Joint Commission has not chosen to give any reasons for granting the relief sought for by the Electricity Department. Similarly, no reasons were given in the order as to why the notice was not issued to the public or the affected parties as per the Regulations.

(d) This is not a case where levy of Fuel Surcharge involves only arithmetic and mechanical calculations. This is a case where the Power Purchase Cost adjustment Formula was specified in the tariff order and as per the Formula, 9 conditions have to be followed by the Electricity Department while seeking for the increase in the Power Purchase Cost. The Joint Commission, without verification of the same and using a different formula, passed the impugned order without proper calculation of the variation in the Power Purchase Cost.

(e) On these grounds the impugned order is sought to be set aside.

5. The Joint Commission as well as the Electricity Department Puduchery, the Respondents made their reply justifying the impugned order and submitted that the Joint Commission has complied with all the requirements and only after verification of the Fuel Surcharge components computed allows the incremental surcharge per unit which worked out to be 34.25 paise per unit, the Joint Commission passed the impugned order. Both the Respondent have cited the judgment of this Tribunal in the case of Bihar Steel Manufacturing Association and Rohit Ferro Tech Limited case in support of their defence.

6. In the light of the rival contentions, the following questions may arise for consideration:

(a) Whether the impugned order dated 12.8.2011 can be sustained while it has been passed in complete violation of the principles of natural justice and transparency ?

(b) Whether the Electricity Department could claim for Incremental Fuel Surcharge for the period from April, 2010 to October,2010 when the Respondent Department has already charged Fuel and Power Purchase Cost in the Tariff Order dated 5.2.2010 ?

(c) Whether the State Commission could fix the Incremental Fuel Surcharge on the basis of the Formula which is different from the Formula specified in the Tariff order dated 5.2.2010 ?

7. The **First Issue** relates to the failure to follow the principles of natural justice while passing the impugned order increasing the Incremental Fuel Surcharge.

8. According to the Appellant, the State Commission has passed the impugned order without issuing notice to the public and without hearing the objections or submissions by the consumers who were likely to be affected by the order increasing the incremental fuel surcharge.

9. It is an admitted fact that before passing the impugned order, no notice had been issued by the State Commission to the public as well as to the consumers and that the State Commission straightway passed the impugned order on the basis of the claims made by the Electricity Department (Respondent).
10. According to the Respondent, in the decisions rendered by this Tribunal in the case of Bihar Steel Manufacturers Association Vs Bihar State Electricity Regulatory Commission reported in (2009) 5 SCC 641 and M/s. Rohit Ferro Tech Limited Vs WBERC 2011 ELR (APTEL) 1375 in Appeal No.51 of 2010 it has been held that the levy of fuel surcharge by the Joint Commission involves only a mathematical or mechanical exercise and therefore, there would be no necessity of conducting or undertaking a public hearing.
11. On going through the said decisions cited by the Respondents, the ratio which had been laid down in the above cases, would not apply to the present facts of the case for the following reasons:

(a) Section 62 (4) of the Electricity Act , 2003 provides as under:

“ In terms of Section 62 (4), “No tariff or part of any tariff may ordinarily be amended more

frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

- (b) Further, under Regulation 15 (xi) of the JERC Conduct of Business Regulation, 2009, it is specifically provided as follows:

“ If the Commission admits the Petition, it may give such orders and directions, as may be deemed necessary, for service of notices to the respondent(s) and other affected or interested parties for the filling of replies and rejoinders in opposition or in support of the Petition in such form as the Commission may direct and for the Petition to be placed for hearing before the Commission”.

- (c) Admittedly, the Joint Commission has not issued any notice as contemplated under Regulation 15 cited above. As mentioned earlier, reliance has been placed by the Electricity Department in the decision in Rohit Ferro Tech Limited and Others Versus West Bengal Electricity Regulatory Commission and West Bengal State Electricity Distribution Company Limited. In that judgment this Tribunal has held as under:

“Held, Section 62 (4) of the Act, permitted revision of tariff under any fuel surcharge formula as specified. The State Commission Regulation provided for fuel and power purchase cost adjustment at the end of the year based on a formula, but also permitted under

Regulation 2.8.7.3, ad hoc fuel and power purchase cost at any time provisionally, subject to final adjustment of the same in FPPCA for that year. Thus, ad hoc increase in fuel and power purchase under Regulation 2.8.7.3 did not always require pre-publication and inviting objections and suggestions from public as envisaged for Tariff Order under Section 64 of the Act”.

(d) Reliance is also placed on the judgment of this Tribunal in the case of Bihar Steel Manufacturers Association Vs Bihar State Electricity Regulatory Commission and Bihar State Electricity Board, wherein this Tribunal has held as under:

- (i) *“ The impugned orders are not in violation of Section 64 and 86 (3) of the Act and **Regulations** 18 and 19 of the Tariff Regulations.*
- (ii) *The FPPCA formula as have been laid down in Tariff order dated 26th August, 2008 cannot be defeated because of not being specified in the tariff regulations in terms of Regulation 21 thereof.*
- (iii) *The Commission has not ignored the provisions of Section 61 (a) and Section 62 (4) of the Act.*
- (iv) *Principle of natural justice has not been violated.*
- (v) *The question of approval of parameters before implementation of the FPPCA formula does not arise because operational*

parameters have been laid down in the tariff order itself.

- (vi) Computation of the FPPCA through it is related to the chapter on determination of tariff is virtually a mechanical application of the formula already specified and made known to all concerned.*
 - (vii) Principle of constructive res judicata and the provision of Order 2 Rule 2 of the Code of Civil procedure are applicable vis-a-vis the earlier two appeals where FPPCA as formulated in the tariff order dated 26th August, 2008, was not challenged.*
- (e) On going through the principles laid down by this Tribunal in the above cases, it is evident that those judgments would be of no use to the Respondents. The perusal of those judgments and the impugned orders in those cases would reveal that the respective State Commissions passed the detailed impugned orders giving cogent reasons for the increase of incremental fuel surcharge and allowed increase in tariff due to fuel and power purchase cost as per the formula decided earlier by the State Commission in the tariff order/Regulation. But in the present case, no reasons have been given and mere cryptic order had been passed by the Joint Commission. Further, there are no reasons given in the impugned order as to why no notice was issued as per Regulation 15 (ix) of the

Regulation 2009 to justify that there was no requirement at all to give notice to the affected persons. Moreover, as is evident from the submissions of the Respondents, a different formula has been used by the State Commission in deciding the incremental fuel surcharge than what was decided in the tariff order dated 05.2.2010. We also notice that similar formula for Power Purchase Cost Adjustment was specified in the tariff order for Daman and Diu which was set aside by this Tribunal by order dated 29.2.2012 in Appeal No.169 of 2011 as it was found inconsistent with the conditions specified therein and the Tariff Regulations of the Joint Commission.

12. Let us now refer to the **impugned order which is cryptic.**

The relevant portion of the order is quoted below:

“ Incremental Fuel Surcharge per unit works out to 34.25 Paise per unit for energy sold to various categories except one hut one bulb and agriculture in the period from April, 2010 to October, 2010. In this case also, under drawal of energy has not been considered and total amount admissible works out to Rs.46.40 Crores”.

13. The reading of the present impugned order relating to the incremental fuel surcharge would clearly reveal that there was no discussion about the necessity to increase the Incremental Fuel Surcharge to the tune of 35.25 Paise per

unit for energy sold to various categories and its computation. The Joint Commission simply observed in the impugned order that it is expedient to allow incremental fuel surcharge amount to Rs.46.40 Crores to be recovered from all category of consumers except one hut one bulb and agriculture from September, 2011 to March, 2012.

14. Thus, it is clear that neither reasons have been given for the above conclusion nor there is discussion over the expediency to pass an order without hearing the consumers who are likely to be affected by this order. The computation for Incremental Fuel Surcharge has also not been indicated.
15. As indicated above, there is no reason given as to why the notice is not necessary to the consumers.
16. As mentioned earlier, the decisions cited by the Respondents would deal with the impugned orders containing the details and cogent reasons for arriving at a conclusion. But in this case, no details, no discussion and no reasons have been given for the above conclusion.
17. As a matter of fact, the Joint Commission has merely passed a cryptic order which goes against its own Regulation namely 15 (xi) of the Regulations, 2009.
18. If the principles of natural justice are complied with and the hearing is given to the parties, the said parties who are likely

to be affected by the order would have satisfied the Commission as to the extent and nature of the adjustments.

19. It is true that this Tribunal in other cases held that no notice was necessary. In those cases the conclusion was arrived at on the basis of the mathematical calculations based on the Fuel and Power Purchase Cost formula specified by the State Commission in the Tariff order. But that is not the case here.
20. Hence, we are of the view that the impugned order would suffer from the infirmity by the failure to hear the consumers as it involves not merely arithmetic or mathematical calculations but also requires verification of the compliance of the conditions as prescribed by the Commission in the tariff order which had been passed on 5.2.2010. That part, the State Commission has used a different formula than specified in the Tariff order dated 5.2.2010 in the impugned order in computing the Incremental Fuel Surcharge as is evident from the submissions of the Respondents.
21. In the instant case, as referred to above, the Power Procurement Cost Adjustment Formula was specified by the Commission in the Tariff order dated 5.2.2010. While specifying the Formula, the Joint Commission laid down 09 pre-conditions that had to be satisfied before the PPCA could be allowed. It cannot be disputed that the Fuel

Surcharge to be levied on the consumers by using the Formula as prescribed by the Tariff order dated 5.2.2010 would not be fixed merely by a mathematical or mechanical exercise. On the other hand a different formula, has been used by the Joint Commission in the impugned order.

22. Therefore, it is the duty of the Joint Commission to exercise its discretion while passing an order on Fuel Surcharge. For proper exercise of its discretion, it was necessary to hold a public hearing and since no public hearing had been held in this case, which is necessary in the facts and circumstances of this case, we are to hold that the lack of public hearing has vitiated the whole proceedings.

23. Let us now deal with the 2nd Issue relating to the earlier Tariff Order dated 5.2.2010.

24. As mentioned earlier, in the present case, the Joint Commission had already passed the tariff order on 5.2.2010 approving the Aggregate Revenue Requirement and Retail Tariff for the Electricity Department for the Financial year 2009-10. The Joint Commission in the said order under Chapter 6 had approved the PPCA as per the Formula given therein. The said Formula is given as under:

$$QPP (RPP_2 - RPP_1)$$

$$PPCA (per/kWH)=\frac{\hspace{15em}}{\hspace{15em}}$$

QPP X (1-L) - PSE

Where:

QPP + Quantum of Power purchase from different sources and fed to EDP System (in Mus)

RPP₁ + Average rate of power purchase as approved by the Commission (in Rs/kWH)

RPP₂ = Average rate of power purchase during the adjustment period (in Rs/kWH)

L = T&D loss as provided by the Commission or actual whichever is lower.

PSE= Power sold to exempted categories.

The approved (PPCA) formula is subject to the following conditions:

- (i) The basic nature of PPCA is “adjustment” i.e. : passing on the increase or decrease, as the case may be.*
- (ii) The operational parameters / norms fixed by the Commission in this Tariff order shall be the basis of calculating PPCA charges.*
- (iii) Incremental cost of power purchase due to deviation in the allocation of power, power purchase at higher rate, etc, shall be allowed only, if it is justified to the satisfaction of the Commission.*
- (iv) Any cost increase by the EDP by way of penalty interest due to delayed payment*

etc, and due to operational inefficiency shall not be allowed.

- (v) *PPCA charges shall be levied on all categories of consumers, except one hut-one bulb and agricultural consumers.*
- (vi) *The data in support of PPCA claims shall be duly authenticated by an officer of the EDP not below the rank of Superintending Engineer.*
- (vii) *Variation of PPCA charge will be allowed only when it is five (5) paise and more per unit.*
- (viii) *The PPCA charges shall be revised by the EDP for the first time after six months from the date of implementation of the order and every six months thereafter.*
- (ix) *The approved formula is subject to review as the Commission may deem fit”.*

25. The perusal of the above Formula would make it clear that the Power Purchase Cost Adjustment is subject to 09 conditions as set out there in. There was no indication in the impugned order that the Electricity Department adduced any material to show that the Electricity Department has complied with those conditions set out therein. Even before this Tribunal the Respondent could not give any details with reference to the nature of materials produced before the Commission.

26. Regulation 7 of the Tariff Regulation 2009 of Joint Commission mandates that the Fuel Surcharge can be passed on to the consumers as per this specified Formula due to the reasons beyond the control of the generating companies/the licensee. In the present case, the perusal of the impugned order as well as the pleadings on records would reveal that the Joint Commission has not undertaken any exercise to ascertain the reasons for the Fuel Surcharge. In view of a non-speaking order it is not possible for us to give a specific finding on the incremental fuel surcharge due to the Respondent No.2 for the period from April,2010 to October,2010. However, this issue will not survive in view of our findings on the first issue.
27. Let us now go into the **last issue** with reference to the different formula used in the impugned order.
28. In respect of this issue, it is pointed out by the Learned Senior Counsel for the Appellant that the Joint Commission passed the impugned order allowing the Electricity Department for collecting the incremental fuel surcharge for the consumers by following the formula which is different from the Formula framed by the Joint Commission through the order dated 5.2.2010.
29. In this connection, a comparison needs to be made between the Formula at paragraph 6.1 of the Tariff order for

the Financial year 2009-10 by the Commission. The approved Power Purchase Cost Adjustment (PPCA) formula is as under:

$$\text{PPCA (per/kWH)} = \frac{\text{QPP (RPP}_1 - \text{RPP}_2)}{\text{QPP X (1-L) - PSE}}$$

30. However, a perusal of Annexure 5 filed along with Counter of the First Respondent No.2 would reveal that what has been claimed by the Second Respondent is incremental fuel purchase adjustment charges as per the Formula:

$$\text{Incremental FPA per kWh} = \frac{\text{QPP x (FPA}_2 - \text{FPA}_1)}{\text{QPP X (1-L) - PSE}}$$

31. A cursory perusal of the formula originally approved by the Commission and the claim of the second Respondent would show that both are entirely different and this itself would show that the Joint Commission had not applied its mind in this regard. The submissions of the Electricity Department that the formula appearing in the tariff order dated 5.2.2010 and the formula applied by the Joint Commission for the incremental fuel charges are one and the same is, therefore, liable to be rejected.

32. It is a well established principle of law that an authority exercising quasi judicial functions has to give reasons for the order. A duty is cast upon the First Respondent to give reasons. The Supreme Court of India, Victoria Memorial Hall Vs Howrah Ganatantrik Nagrik Samity and Others had held that “Ratio Decidendi: Reasons heartbeat of every conclusion and it introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjective by objectivity. The following observations of the Hon’ble Supreme Court at Paragraph 31 to 33 (extracted hereunder) are relevant:

“Quote:

It is a settled legal position that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice- delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact

that the Court concerned had really applied its mind. Vide State of Orissa Vs Dhaniram Luhar MANU/SC/0082/2004: AIR 2004 SC 1794: and State of Rajasthan Vs Sohan Lal and Ors. MANU/SC/0397/2004: (2004) 5 SCC 573.

Reason is the heartbeat of every conclusion. It introduces clarity in an order without the same, it becomes lifeless. Reasons substitute subjectivity and objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Vide Raj Kishore Jha Vs State of Bihar and Ors MANU/SC/0783/2003: AIR 2003 SC 4664; Vishnu Dev Sharma Vs State of Uttar Pradesh and Ors. MANU/SC/7002/2008: (2008) 3 SCC 172; Steel Authority of India Ltd Vs Sales Tax Officer, Rourkela 1 Circle and Ors MANU/SC/2996/2008 (2008) 9 SCC 407; State of Uttaranchal and Anr. Vs Sunio Kumar Singh Negi MANU/SC/7315/2008: AIR 2008 SC 2026; UPSRTC Vs Jagdish Prasad Gupta MANU/SC/0480/2009: AIR 2009 SC 2328; Ram Phal Vs State of Haryana and Ors MANU/SC/0137/2009: (2009) 3 SCC 258; Mohammed Yusuf Vs Fajj Mohammad and Ors MANU/SC/8506/2008: (2009) 3 SCC 513: and State of Himachal Pradesh Vs Sada Ram and Anr MANU/SC/0409: (2009) 4 SCC 422.

33. Thus, it is evident that the recording of reasons is the mandatory principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. Further, the person who is likely to be adversely affected must be given opportunity to explain to the Joint

Commission as to why the Petition filed by the Licensee should be rejected.

34. In the present case, as quoted above, the Joint Commission has merely referred to the conclusions but failed to give reasons for arriving at this conclusion.
35. This Tribunal in its order dated 11.11.2011 in O.P.No.1 of 2011 had directed the State Commissions to place a mechanism for Fuel and Power Purchase Cost Adjustment in terms of Section 62(4) of the Act so that the fuel and power purchase cost adjustment could be allowed on monthly basis and in no case exceeding a quarter to avoid problem of cash flow to the distribution licensee. In this case even though the State Commission passed an order for the incremental fuel surcharge we are constrained to set aside the same due to infirmity in the process as discussed above. Learned Counsel for the Respondent No.2 had argued that for no fault of theirs they may be deprived of the fuel surcharge due to them resulting in cash flow problem. In view of this, we direct the State Commission to undertake an exercise afresh to determine fuel surcharge, if any, after following the procedure as per law as indicated above.

36. Summary of Our Findings

- (1) The First Issue relates to the failure to follow the principles of natural justice. If the conclusion regarding the Fuel Surcharge was arrived at merely on the basis of the mathematical calculations based on the formula specified by the State Commission then no notice is necessary to the public or consumers. But in this case, it involves not merely arithmetic or mathematical calculations but also requires verification of the compliance of the conditions as specified by the Joint Commission in the Tariff Order dated 5.2.2010. The Fuel Surcharge has to be levied on the consumers by using the Formula as prescribed by the Tariff Order dated 5.2.2010 on the verification of the fulfilment of the requirements imposed by the Joint Commission in the Tariff Order. Hence, it is the duty of the Joint Commission to exercise its discretion while passing the order on Fuel Surcharge after analysing all the materials. In this case a different formula was used in computing the Incremental Fuel Surcharge. In the facts and circumstances of this case, it is necessary to hold a public hearing in order to enable the Joint Commission to exercise its discretion with the**

judicial approach. In this case, having the peculiar facts and circumstances we hold that the failure to issue public notice and the failure to hear the consumers has vitiated the whole proceedings.

- (2) The Second Issue is relating to the earlier tariff order dated 5.2.2010. The Joint Commission in the said order had approved the PPCA under Chapter 6 as per the Formula given there in. The perusal of the above Formula would make it clear that the PPCA is subject to the compliance of 9 conditions as set out therein. Regulation 7 of the Tariff Regulations 2009 mandates that the Fuel Surcharge can be passed on to the consumers as per this specified Formula due to reasons beyond the control of the licensee. In this case, the impugned order does not indicate that Joint Commission has undertaken the said exercise.**
- (3) The next issue is with regard to different Formulae used in the impugned order. On comparison of both the Formulae it would reveal that both the Formulae are entirely different. In the tariff order, the Joint Commission framed a particular Formula as per paragraph 6.1 of the Tariff Order. But the**

present Formula which has been used in the impugned order would reveal that different Formula has been adopted. Thus, both the Formulae are entirely different. This would indicate that the Joint Commission had not applied its mind in this regard. Furthermore, the authority exercising quasi judicial functions has to give reasons for the conclusion in the impugned order. But in this case, the impugned order contains only conclusion and there was no discussion or reasons for the said conclusion.

(4) The State Commission may note our directions in paragraph 35 for further necessary action.

37. In view of our above findings, the impugned order which suffers from infirmity is liable to be set aside. Accordingly the same is set aside. Appeal is allowed.

38. However, there is no order as to cost.

(Rakesh Nath)

Technical Member

Dated: 27th April, 2012

(Justice M. Karpaga Vinayagam)

Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~