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

**Appeal No. 252 of 2006**

**Dated: August 27 , 2007.**

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

Essar Steels Ltd.
Palnar road, Kirandul, Bailadila
Dantewada Distt. Chhatisgarh ….Appellant

Versus

1. Chhattisgarh State Electricity Board
Dagniya, Raipur-492013

2. Chhattisgarh State Electricity Regulatory Commission
Civil Line, G.E. Road, Raipur-492001 ……Respondents

For the Appellant : Mr. K.Gopal Choudhary, Advocate
Mr. J.Radha Krishnan

For the Respondents : Mr M.G. Ramachandran with
Mr. Anand K. Ganeshan, Advocates for CSERC
Ms Suparna Srivastava, Advocate for CSEB
Ms Nidhi Minocha, Advocate for Ms Suparna Srivastava, Advocate

**Judgment**

**Per Hon'ble Mr. H.L. Bajaj, Technical Member**

This appeal is directed against the order of Chhattisgarh State Electricity Regulatory Commission (CSERC or Commission in short) dated September 13, 2006 in petition No. 24 of 2006 (T) filed by the first respondent, Chhattisgarh State Electricity Board (CSEB or Board in short).

GB
No. of corrections

2. The brief facts leading to the appeal are as under:

3. The appellant has an iron ore beneficiation plant at Kirandul in Dantewada District of Chhattisgarh set up to process iron ore fines from NMDC. The process consists of grinding, washing and cleaning of iron ore for beneficiation and pumping in the form of iron ore slurry to the appellant's pellet plant located at Visakhapatnam where the iron ore fines are converted into pellets. The pellets are then used at the appellant's steel plant located at Hazira in Gujarat.

4. The appellant is availing electricity supply from the first respondent at 132 kV and is a power intensive industry initially with a contract demand of 15 MVA with effect from May 25, 2005. It was contemplated that the contract demand would be increased to 32 MVA from April, 2006. Subsequently, a supplementary agreement between the appellant and the first respondent was executed on March 30, 2006 revising the contract demand from 32 MVA to 20 MVA with effect from March 1, 2006 and the appellant's plant was being operated with a contract demand of 20 MVA. As the appellant's plant was drawing more than 20 MVA in the months of April to August, 2006, the first respondent had billed penal charges for exceeding the contract demand and also sought to change the tariff category from HV-5 to HV-4 with effect from June 1, 2006. While so, a proposal was mooted and accepted by the first respondent to amend the electricity supply agreement so as to provide for contract demand to be taken as 15 MVA with effect from May 25, 2005, 20 MVA with effect from March 1, 2006 and 27 MVA with effect from June 1, 2006.

5. The first respondent filed tariff application for 2005-06 to the respondent Commission on March 1,2005. The Commission issued a tariff order dated June 15, 2005 for the year 2005-06 effective from July 1, 2005 creating different categories of consumers. Inter alia, a category of HV-5 was created to be applicable to power intensive industries, up to 20 MVA contract demand, like mini-steel plants, rolling mills, mini steel plant with rolling mills/sponge iron plants, and ferro-alloys. Another category HV-4 was created to be applicable to heavy industries with contract demand above 20 MVA like Bhilai Steel Plant, BALCO etc. Another category of HV-6 created in the said tariff order covered electro-chemical and electro-thermal units and all other HT industries not covered under categories HV-1 to HV-5, but the tariff was provided only for the supply at 11 kV and 33 kV. The tariffs of the various categories under the tariff order dated June 15, 2005 as amended by letter dated August 29, 2005 insofar as is relevant to the present case is summarized below:-

| Category | Demand Charges Rs./kVA/month | Energy Charges Rs.per kWh |
|---|---|---|
| HV-4 (132 kV) | 380 | 3.15 |
| HV-5 | 260 | 2.55 |
| HV-6 (132 kV) | 330 | 3.05 |

6. In the aforesaid circumstances, consequent to the tariff order for 2005-06 effective from July 1,2005, the appellant was first billed for the month of

July, 2005 in HV-5 category as a power intensive industry treating the appellant's beneficiation plant as a power-intensive industry like mini steel plant, sponge iron plant etc. Subsequently, for the month of August, 2005, the appellant was billed under HV-6 category considering it as "other HT industry". The appellant filed petition No. 34 of 2005 (M) before the 2nd respondent Regulatory Commission for a review of the 1st respondent's decision for implementation of new category HV-6 for 132 kV consumers. By an order dated December 31, 2005, the Commission noted that the connected load of the appellant is 29.15 MW, and that the appellant's load factor had exceeded 60% even during the trial run in the month of November, 2005 and that there is seen to be a steady rise in the maximum demand, consumption and load factor from the day of commissioning of the plant. The Commission, therefore, considered that such an industry should be classified as a power intensive industry and took the view that the appellant's industry should be classified in the HV-5 category and not in HV-6. The Commission consequently directed that the HV-5 category be applied to the appellant with effect from July 1,2005.

7. The first respondent Board submitted its ARR and tariff proposals for the year 2006-07 in petition No. 24/2006 (T). In para 10.3 of the said petition, the Board proposed that the limit of contract demand for the consumers of the HV-5 category be enhanced from 20 MVA to 40 MVA in order to promote industries in the core sector. The Commission issued Impugned tariff order on September 13, 2006. The erstwhile HV-3 category for coal mines and the HV-4 category had

been combined into a new HV-3 category applicable to coal mines and all heavy industries (above 20 MVA CD). The erstwhile HV-5 category was re-designated as HV-4 category and made applicable to steel industries up to 20 MVA contract demand such as mini steel plants, rolling mills, sponge iron plants, ferro alloys units, steel casting units and wire drawing units. The erstwhile HV-6 category for other HT industries was re-designated as HV-5 and applicable to help electro-chemical and electro-thermal units and all other industries not covered under the new HV-1 to HV-4 categories. Aggrieved by the impugned order dated September 13, 2006, the appellant has filed this appeal.

8. The appellant has sought the following reliefs:

(a) To modify the order dated September 13, 2006 passed by the 2nd respondent Regulatory Commission in Petition No. 24 of 2006 (T) insofar as the HV-4 category is concerned and to direct that the tariff in the said category shall be applicable irrespective of the contract demand and to provide that the iron ore beneficiation activity of the appellant shall also fall with the said category being related and incidental to the steel industry; and

(b) Pass such other order as this Tribunal may deem fit and proper so that justice may be done.

9. Learned counsel for the appellant contended that as the proposal of the respondent Board for enhancing the contract demand from 20 MVA to 40 MVA for HV-5 category in order to promote industries in the core sector was acceptable to them, the appellant had no grievance or objection to the proposal and therefore,

no objection was taken in the tariff proceedings. He submitted that there was no proposal known to the public or made known to the appellant that there would be any change in the categorization of industrial consumers or that there would be any revision so as to materially and drastically affect the appellant. He stated that various tariff categories under the Impugned Order dated September 13, 2006 insofar as have relevance to the present case are as under:

| Category | Demand charges Rs./kVA/month | Energy Charges Rs. Per kWh |
|---|---|---|
| HV-3 (132 kV) | 300 | 3.25 |
| HV-4 (132 kV) | 250 | 2.40 |
| HV-5 (132 kV) | 300 | 2.90 |

10. Learned counsel contended that under the Impugned Tariff Order the appellant will be placed under new HV-3 category whereas under the old tariff the appellant was liable only for demand charges at Rs. 260 per kVA/PM and energy charges at Rs.2.55 per unit, the appellant will now be liable for huge increase of 15.4% for demand charges and 27.5% increase for energy charges resulting in an overall increased burden of about 24%.

11. Learned counsel stated that the Commission failed to state any cogent reasons as to why it did not accept the proposal of the Board for increasing the limit of contract demand from 20 MVA to 40 MVA which was mooted to promote core industries. He stated that the Commission failed to give any indication to the appellant during the course of the proceedings that the proposal of the licensee would not be accepted. The Commission failed to apply its own tariff principles in

determining the tariff which contemplated that there would be rationalization of tariff and that there would be no tariff shock to any category by reason of re-categorization and rationalization.

12. The learned counsel contended that the Commission has given no reasons for differentiating between consumers, engaged in similar business and/or having similar characteristics of consumption in voltage/load factor merely on the basis of the level of contract demand, that such a differentiation is not only without any rationale, but is also without any basis or foundation in law and that the differentiation made by the Commission would discriminate even between consumers having same or similar connected loads but availing and consuming electricity from different sources of supply such as captive power generation and/or purchases from sources other than the first respondent.

13. Learned counsel contended that the Commission erred in determining the tariffs of HV-3 and HV-4 categories, so markedly different from each other, without any rationale or reason, that the Commission ought to have seen and appreciated that the appellant has no similarity whatsoever with coal mines and, therefore, there could not be any rationale for clubbing the appellant with coal mines, that the Commission ought to have also seen that the only other industries in Chhattisgarh which have a contract demand over 20 MVA are BALCO and Bhilai Steel Plant and that the Commission ought to have seen and appreciated that the BALCO has a large captive capacity and the purpose of availing supply to the

extent of about 120 MVA from the licensee is only for standby/start-up power purposes and, therefore, this consumer is markedly different from the appellant, that the Commission ought to have also seen that the Bhilai Steel Plant also has a sizeable captive generation and the scale (with CD of about 200 MVA) and pattern of consumption of this plant is markedly different from that of the appellant, that the Commission erred in clubbing the appellant with other consumers who have no similarity whatsoever with the appellant, that on facts, the appellant is clearly being discriminated against, the Commission ought not to have stipulated any limit of 20 MVA or any other limit on the contract demand in the HV-4 category and that the Commission ought to have continued to consider the appellant as similar in characteristics and nature to the other industries within HV-4 category.

14. Learned counsel for the appellant further contended that the Commission did not ensure transparency while discharging its function of determination of tariff as required by Section 86(3) of The Electricity Act, 2003 and the principles of natural justice. In this regard he mentioned this Tribunal's judgment in Nav Bharat Ferro Alloys Ltd. V/s APERC in which this Tribunal had cited the settled law and the decision of the Supreme Court in case of Udit Narain Singh Malpharia V/s Addl. Member, Board of Revenue, Bihar, AIR 1963 SC 786 and had held that the order impugned therein was violative of the principles of natural justice when the contents of the notice which did not indicate the possibility of the appellants therein being adversely affected and when the affected party was not given an opportunity and hearing before affecting their rights/interests.

15. Learned counsel for the appellant contended that the consumers were only expected or required to give their objections to the proposals made by the licensee in the tariff application published under Section 64 of the Act and that there would be no occasion or necessity for the appellant to make any objection or submission before the Commission when there was no grievance against the proposals made in the petition.

16. Per contra Mr. M.G. Ramachandran, learned counsel for the Commission stated that there was a change in the numbering of the tariff categories on account of the merger of HV-2 and HV-4 categories. He submitted that as a result of the above, HV-4 category became HV-3, HV-5 category became HV-4, and HV-6 category became HV-5 in the tariff categorization under the new tariff order dated September 13,2006, that there was otherwise no change in the classification and in the above circumstances the applicable tariff to the appellant was the tariff for the category of heavy industries with a contract demand of more than 20 MVA.

17. Mr. Ramachandran contended that in the circumstances, there was no issue in regard to the categorization of the appellant either for the period up to May 31, 2006 (based on the contract demand of 20 MVA) or from June 1,2006 (based on the contract demand of 27 MVA) and that there is, therefore, no merit in the contention of the appellant that there has been any wrong categorization of the

appellant or otherwise for the tariff applicable to the appellant. He further stated that the appellant is required to pay the tariff applicable to HT consumer category applicable to the contract demand of 27 MVA, namely, HV-4 for the period from June 1,2006 to September 30, 2006 and HV-3 from October 1, 2006 onwards.

18. Learned counsel for the respondent Commission contended that the allegation made by the appellant that it had proceeded on the basis that CSEB had requested the Commission for increase in the quantum of the contract demand from 20 MVA to 40 MVA for tariff categorization (related to HV-5 and HV-4 as was in existence up to September 30, 2006 and correspondingly HV-4 and HV-3 effective October 1,2006 i.e. one category up to 40 MVA instead of 20 MVA and the other above 40 MVA instead of 20 MVA) and, therefore, the appellant assumed that the Commission would accept the same, is without any merit. He contended that the appellant cannot proceed on the assumption that the proposal made by CSEB will be accepted by the Commission, that the Commission is mandated under the Act to determine tariff according to certain principles. He stated that if the appellant had any suggestion or objection to the categorization, he should have participated in the public hearing pursuant to the notice published in the newspapers inviting objections/comments/suggestions and participation in the hearing and that the appellant did not send any suggestion/objection or comments and nor did he participate in the public hearing.

19. Mr. Ramachandran submitted that the change in the nomenclature given to the category, namely, from HV-5 to HV-4 and HV-4 to HV-3 is only consequential to the clubbing of two categories, namely, previously HV-2 and HV-4 without any implication whatsoever on the categorization of industries with contract demand of above 20 MVA. He stated that the categorization was on the basis of contract demand of up to 20 MVA; and above 20 MVA; and the position remained unaltered by the impugned tariff order dated September 13, 2006, that there is, therefore, no merit in the allegation made by the appellant, that there was change in the categorization without affording an opportunity to the appellant for hearing and that in any event, the appellant ought to have participated in the public hearing or sent his comments/suggestions/objections in response to the public notice issued by the Commission and that this is particularly so, when the appellant was categorized as heavy industry with contract demand of over 20 MVA right from June 1, 2006 and he had entered in to an agreement to this effect and there was no change in the above category in the impugned tariff order.

20. Mr. Ramachandran contended that as the Commission did not consider it appropriate to change the classification of the heavy industries there was no occasion to give any reason for the above, that the tariff design and classification is for the Commission to decide. He urged that even if the Commission was to change the categorization also, there was no need to give detailed reasons and that in terms of Section 62(3) of The Electricity Act, 2003, the Commission can categorize various classes of consumers based on the factors mentioned therein.

He contended that the allegation that the Commission has wrongly categorized the consumers or that the Commission should not have clubbed various classes of consumers as stated by the appellant is not correct.

21. Mr. Ramachandran further stated that there is also no merit in the allegation that the orders of the Commission have resulted in tariff shock. He submitted that since the appellant itself wanted increased contract demand, the appellant is required to pay the tariff applicable to the relevant category under which the increased contract demand falls and that it is also relevant to mention that the appellant had voluntarily sought for such increase. He stated that the appellant was further paying tariff applicable to the relevant category (above 20 MVA) prior to tariff order dated September 13, 2006 and that the impugned tariff order made no change in the tariff category applicable to the appellant prior to the order.

22. Mrs. Suparna Srivastava, learned counsel for the respondent Board contended that the Board had proposed that the limit of contract demand for consumers under HV-5 category be enhanced from 20 MVA to 40 MVA for promoting industries in the core sector, that this proposal was also in conformity with the provisions of Section 62(3) of the Act and the Supply Code and that in the event such a proposal was accepted, the appellant, covered under HV-4 Heavy Industry category by mutual understanding and agreement, could now be included in the HV-5 power intensive industries category. She contended that however, such a proposal did not and could not in any manner confer any right

whatsoever in the appellant to claim the proposed enhancement of contract demand for HV-5 category under the tariff order to be ultimately passed by the respondent Commission after considering all relevant aspects. She further submitted that neither the re-categorization nor the keeping of contract demand at the existing maximum of 20 MVA for power intensive industries affected the appellant insofar as its categorization prior to the passing of the impugned tariff order dated September 13, 2006 is concerned. She said that there was, however, marginal reduction in the applicable tariff and that the present appeal is misconceived and devoid of any merits.

23. The issue in this appeal lies in a narrow compass. Gravamina of the arguments of the appellant are that he had been discriminated in classification of various tariff categories and that tariff shock has been caused to him which is against the National Tariff Policy.

24. On the issue of tariff categorization this Tribunal has already held in appeal No. 131 of 2005, Udyog Nagar Factory Owner's Association V/s BSES Rajdhani that various categories can be created as envisaged in Section 62(3) of The Electricity Act, 2003. Any comparison; of a consumers contract demand plus captive generation with another consumer's contract demand is of no relevance for categorization as the respondent Board is responsible for meeting only the contract demand. In our view only the contract demands have to be compared for tariff categorization. Therefore, in our view, no interference is required with the decision of the Commission in this view of the matter.

GB
No. of corrections

25. We find no force in the arguments of the appellant that the proposal of the respondent Commission was acceptable to them and, therefore, they did not participate in the hearing of the Commission or filed suggestions. The appellant has cited this Tribunal judgment in Appeal No. 173/05- Nav Bharat Ferro Alloys V/s APERC wherein it was held that the Commission had failed to issue any notice to the appellant like the one it had issued in respect of the Distribution Licensees. This case has no relevance to the present appeal as notice had been issued by the Commission and it was for the consumers to respond and represent themselves before the Commission. It is the appellant in this case who has failed to represent himself. It cannot be assumed that the petition of the Board would be accepted as proposed. Even if the appellant had not participated in the discussions, it is the Commission itself who represents the cause of all stakeholders including the consumers and is expected to balance the interest of the consumers and other stake holders.

26. In our view, no discrimination or injustice has been caused to the appellant. We note that due to the increased contract demand of the appellant he has been placed in a different tariff category and, therefore, any comparison with the previous tariff (corresponding to another category) is neither tenable nor of any relevance. Since the appellant itself wanted increased contract demand, the appellant is required to pay the tariff applicable to the relevant category under which the increased contract demand falls.

27. In view of the aforesaid discussion, no interference is warranted with the order of the Commission. Accordingly, the appeal fails and is hereby dismissed.

Pronounced in the open court on the **27th day of August, 2007.**

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. H.L.Bajaj)
Technical Member

GB
No. of corrections