

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

**Appeal No. 209 of 2006**

Dated : 08<sup>th</sup> December, 2008

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

**Himachal Pradesh State Electricity Board**

Vidyut Bhawan,  
Shimla – 171 004

... Appellant(s)

Versus

1. **Himachal Pradesh Electricity Regulatory Commission**  
Keonthal Commercial Complex,  
Khalini, Shimla – 171 002  
Himachal Pradesh
2. Shri Jagan Nath Sharma  
President,  
The Kullu Hotels & Guest Houses Association,  
Hotel Narman,  
A.B. Kullu (HP) – 175 101
3. Shri I. K. Bhat  
Director, NIT,  
Hamirpur (HP)
4. Smt. Sudesh Sodhi  
Warden In-charge,  
Working Women's Hostel,  
Sanjauli, Shimla – 171 006

5. Shri Rajneesh Bansal  
Director, HM Steels Ltd.  
Trilokpur Road,  
Kala-Amb, Distt. Sirmour (HP)
6. Er. R. N. Sharma  
Engineer-in-Chief,  
I&PH Department,  
H.P. Government, U.S. Club,  
Shimla – 171 001
7. Shri M. P.Sharma  
President,  
Laghu Udyog Bharti,  
224, HPSIDC, Industrial Area,  
Baddi (HP) – 173 205
8. Shri Anil Kumar Chopra  
Convener,  
Himachal Small Hydro Power Association  
SCO No. 140-141, Sector-34-A,  
Chandigarh
9. Shri C. S. Kapoor  
President, Mehatpur Industries Association  
Residing at 84, Industrial Area,  
Mehatpur, Distt. Una (HP)
10. Shri Rakesh Bansal,  
Honorary General Secretary  
PIA, R/o HIG-279, Sector-4,  
Parwanoo,  
Himachal Pradesh  
(on behalf of CII, PIA and BBN Industries Association)
11. Shri D. S. Ghai  
Joint President,

Gagal Cement Works,  
P.O. Barmana, Bilaspur (HP)

12. Shri Satish Mehta  
Chief Engineer,  
Auro Spinning Mills,  
Post Box No. 7,  
Sai Road, Baddi,  
Distt. Solan (HP)
13. Shri J. C. Toshinwal  
Joint President,  
Gujarat Ambuja Cements Ltd.  
P.O. Dariaghat, Tehsil Arki,  
Distt. Solan (HP)
14. Shri Prem Nath Bhardwaj  
Consumer Representative,  
Resident of ARCADIA,  
P.O. Dharampur,  
Distt. Solan (HP)
15. Shri Gautam Thakur  
President,  
Manali Hoteliers Association,  
Manali, Distt. Kullu (HP) ... Respondent(s)

Counsel for the appellant(s) : Mr. M.G. Ramachandran,  
Ms. Taruna S. Baghel,  
Mr. Anand K. Ganesan and  
Ms. Swapna Seshadri

Counsel for the respondent(s) : Mr. Sanjay Sen, Mr. Vishal  
Anand, Ms. Ruchika Rathi,  
Mr. Rana S. Biswas,  
Ms. Shikha Ohri, Mr. Manoj  
Madhavan, and -

Mr. Mridul Chakravarty

Mr. Jagdish Chand,  
Sr. Asstt. For Municipal  
Corporation of Shimla for  
Mrs. Sudesh Sodhi,  
Warden Incharge, Working  
Women Hostel, Sanjauli,  
Shimla

## **J U D G M E N T**

**Ms. Justice Manju Goel, Judicial Member**

The present appeal is directed against the tariff order dated 03.07.06 passed by the Himachal Pradesh Electricity Regulatory Commission (the Commission for short) for the FY 2006-07. The impugned tariff order fixed tariff for the appellant Himachal Pradesh State Electricity Board which is a deemed licensee for supply, transmission, distribution of and trading in the State of Himachal Pradesh in terms of the first proviso to Section 14 of the Electricity Act 2003. The tariff order in question determines the annual revenue requirement (ARR), transmission and bulk supply tariff as well as distribution and retail tariff for the FY 2006-07. On 30<sup>th</sup> November, 2005, the appellant filed its application under section 62 & 64 of the Electricity Act, 2003 and Himachal Pradesh Electricity Regulatory Commission's (Terms and Conditions for determination of tariff) Tariff Regulations 2004 (Tariff Regulation for short)

submitting details of its revenue requirement for various activities carried on by it, relevant for tariff period 01.04.06 to 31.03.07. The appellant is aggrieved that certain expenditures anticipated to be incurred by the appellant have been disallowed in the calculation of ARR which has eventually reduced its revenue from the tariff. The issues, as enumerated in memo of appeal are as under:

- A. Matters relating to power purchases by HPSEB from various sources and cost thereon;
- B. Consideration of Merit Order for the power purchases;
- C. Employees cost;
- D. Realization of money from sale of power to outside States;
- E. Creation of HPSEB Development Fund;
- F. Classification of power Intensive units;
- G. Low voltage supply surcharge;
- H. Voltage-wise categorization;
- I. Delay alleged against HPSEB in furnishing the details.

2) At the end of the year 2006-07 the accounts were trued up and some of the above claims were accepted during the truing up exercise. On 11.11.08, Mr. Anand K. Ganesan, appearing for the appellant stated that the grounds A, B & D did not survive as

appropriate relief in this regard had been given in the truing up order dated 29.04.08. However, so far as ground 'A' is concerned, it was clarified by Mr. Ganesan that although power purchase cost had been allowed, interest on the money borrowed to meet such cost had not been allowed. So far as point 'F' is concerned, the same was given up as the claim remained only academic. Therefore, we will proceed to deal with only the remaining items.

The contentions of the appellant are as under:

The appellant contends:

3) Power Purchase Cost

The appellant has claimed an amount of Rs.11.73 Crores towards the cost of power purchased from four stations of its own, namely those at *Banner, Larji, Ghanvi & Khaull*. The Government of Himachal Pradesh's entitlement out of generation from these four stations is 12%. When the appellant is allowed to use the Government's share of 12% it has to pay @ Rs.2.35 per unit. The appellant claims that the cost in this regard amounted to Rs.11.73 Crores which it should have been allowed to recover.

4) Employees Cost:

The appellant projected employees cost at Rs. 463.55 Crores. The State Commission allowed only Rs.424.83 Crores leaving a balance of Rs.38.70 Crores to be born by the appellant. The approved expenditure towards basic salary in the FY 2005-06 was

Rs.309.95 Crores. According to the appellant, the Commission ought to have allowed an increase of Rs.7.13 Crores. The appellant claims that apart from the increase of Rs.7.13 Crores towards the basic salary of employees it should have been allowed a further sum of Rs.9.40 Crores towards Dearness Allowance. Further, the appellant says that the Commission should have allowed cost of employees, towards overtime payment, earned leave, workmen's compensation, staff welfare expenses etc. The grievance of the appellant on this issue is that the Commission has disallowed Rs.38.72 Crores incurred on employees by comparing the situation in Himachal Pradesh with that of in Punjab and on the plea that unless the efficiency of the employees is increased the employees cost cannot be increased.

5) Creation of HPSEB development fund:

The Commission found that a sum of Rs.96.55 Crores will be available as surplus revenue from the sale of electricity outside the State after meeting all the revenue requirement of the appellant. The State Commission directed that the appellant creates a development fund out of return on equity admissible to the appellant and the surplus revenue of Rs.96.55 Crores along with certain other sums aggregating to Rs.138.15 Crores should go into the development fund. The appellant opposes this proposal on the ground that creation of such a fund to be used only for specific purposes would severely restrict the cash flow for the appellant. It

is also submitted by the appellant that if the Return on Equity (ROE) goes into the development fund it will amount to denying the investors their return on equity.

6) Delay in furnishing detail:

The State Commission indicated in the impugned order that the appellant was guilty of delay in filing the ARR tariff petition. The appellant denies that there is any delay in filing the tariff petition. The Commission says in the tariff order that it is issuing the tariff order within 120 days of the acceptance of the petition, that it has computed the revenue for FY 2007 with the revised tariffs assuming that the revised tariff is applicable in the entire year and any revenue loss on this account in implementation of the revised tariff is to the Board's account and will not be recoverable from the consumers. The tariff revision was to be applicable w.e.f. 08<sup>th</sup> July, 2006 and was to remain in force up to 31<sup>st</sup> March, 2007. Therefore, on account of this order the appellant was to lose revenue to the extent of increase over the previous year's tariff for 3 months. The appellant claims that there was no delay on the part of the appellant and that the appellant be allowed to recover the entire revenue requirement for that year.



Response of the Commission:

7) Employees Cost:

The appeal is contested by the Commission. The Commission has filed written submission. In the written submission the Commission explains how the employees cost has been calculated. It also justifies putting a cap of 24% on the DA, citing a judgment of this Tribunal in an appeal from a tariff order of the Punjab State Regulatory Commission stating that the hike in DA has to be linked with improving efficiency. A part of the claim amounting to RS.3.75 Crores has been disallowed as the Board deviated from the policy of giving pay scales to the employees which correspond to their counter parts in the Punjab State Electricity Board.

8) Development Fund:

The Commission has attempted to explain the purpose of building a development fund. However, the Commission further says that the issue of development fund has become academic since the appellant Board did not implement the directive of the Commission and did not create any fund. The appellant, it is contended, in fact made use of the ROE as well as of the additional surplus in the year 2006-07. The Commission further says that it has carried forward a surplus resulting in Rs.105.51 Crores to the tariff order for FY 2009 issued on 30<sup>th</sup> May, 2008 and that in the truing up order of 2007 ROE has been allowed to the Board as per

actuals. This ROE, as stated by the Commission, is being used for new and ongoing projects, repayment of loan as well as for meeting routine expenses.

9) Delay in furnishing data:

The Commission also justifies denying the benefit of increase in tariff for the period of delay in presentation of ARR and tariff petition. It is contended by the Commission that there were major discrepancies in the ARR and Tariff petition filed and there were several letters written by the Commission to the appellant asking for details. The Commission contends that the tariff order could not be passed in time on account of defaults on the part of the appellant in providing the relevant data at the appropriate time.

Decision with reasons:

10) So far as the issue of delay is concerned we have already given our opinion on it in our judgment in appeal No. 70 of 2007 – Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL) Vs. Maharashtra Electricity Regulatory Commission(MERC). The MERC had denied the benefit of new tariff order to the MSEDCL for reasons similar to the one in the present case. It was observed that the gap between the beginning of the financial year in question and the date on which the new tariff order became effective was nearly a month and the loss of revenue on this account was Rs. 88 Crores.

The question that posed itself before this Tribunal was as follows: *“In a given situation, if a licensee is unable to file an ARR petition due to some reasons, will it be proper to say that tariff policy requires such difference to be denied to the licensee forever?”* We held that the answer was ‘no’. We also held that all that could be denied in such a situation was the carrying cost and not the revenue recoverable for the period of delay. In the present case, the appellant denies that there was delay in presentation of the tariff petition. The impugned tariff order itself says that the application for ARR was presented on 30<sup>th</sup> November, 2005. Subsequently further details were furnished on 09<sup>th</sup> January, 2006, 10<sup>th</sup> April, 2006, 10<sup>th</sup> May, 2006 and 02<sup>nd</sup> June, 2006. It is also mentioned in the tariff order that the Commission held admissibility hearing for the admission of the petition and admitted the petition on 10<sup>th</sup> March, 2006. The appellant Board was thereafter asked to supply additional information by 10<sup>th</sup> April, 2006. Apparently the delay in determining the tariff cannot be attributed solely to the appellant. It is stated at the bar that the single member Commission itself had no Chairman/Member for sometime after the ARR/Tariff Petition was filed. Even as per the tariff order, after the tariff petition was filed on 30<sup>th</sup> November, 2005 further information was asked for only on 09.01.06. The second demand for further information was made on 16.03.06. In this situation, it would be improper to impose penalty by way of denial of the increased tariff for a period of nearly

three months. The appellant will however be liable to bear the carrying cost.

11) So far as the question of the reserve fund and denial of ROE is concerned the issue has already become academic since the order has not been complied with and in the subsequent tariff orders the Commission has carried forward the surplus. It is not necessary for us to examine the legality for creation of such a fund out of the surplus earned by the appellant.

12) Coming to employees cost, the denial has been under four heads namely, DA, overtime, bonus and non-adherence to PSEB pattern as well as earned leave, workmen's compensation, staff welfare expenses. The apprehension that the DA has been denied is actually unfounded. The Commission says in paragraph 8.8 of the tariff order as under:

*“8.8 The Commission has calculated DA as per the declared rates by government. However the Commission makes its mind known that future increases in DA will not be approved to be part of Board's Annual revenue Requirement till the Board improves its efficiency.”*

13) In the present tariff order the Commission has not denied the DA. DA is generally linked to consumer price index and is given to neutralize the effect of rise in price level or inflation. The Commission has only warned that hereafter DA would be increased only if efficiency is increased. In case the subsequent tariff order declines to grant DA the appellant would have some grievance.

14) So far as denial of Rs.3.75 Crores is concerned the appellant has not taken a specific plea in the appeal. The Commission has explained in the written submission that when the Himachal Pradesh State Electricity Board (HPSEB) was constituted its employees were to get salary and allowances in the same pattern as their counterparts in the PSEB. Probably most of the employees in the newly constituted HPSEB were erstwhile employees of the HPSEB. It is explained by Mr. Sanjay Sen, the learned counsel appearing for the Commission, that the appellant did not stick to the pattern and some employees were given higher basic pay than payable to their counterparts in the PSEB. This amount being disapproved, the Commission disallowed Rs. 3.75 Crores in total employee expenses. The Commission says the following in its tariff order in paragraph 8.10:

*“8.10 The Commission has approved terminal benefits as per the Board’s projection i.e. Rs.70 Cr. The Commission has projected other*

*expenses (under employee costs) in the same ratio as that of the increase in Basic Salary with respect to last year's approved salary. The Commission disallows Rs. 3.75 Cr in total employee expenses due to deviation of salary of HPSEB from PSEB pattern as per CAG report for 2001-02."*

The appellant has not taken any specific plea regarding this disallowance. This could be challenged by pleading either that the appellant had followed the same pattern as that of Punjab or that deviation, if any, was justified. This having not been done, we are not inclined to interfere with the Commission's decision in this regard.

15) The Commission has not approved the projected overtime of Rs.1.21 Crores. The employer is bound to pay the overtime allowance to the employee if the employee is made to work for longer hours. Unless the Commission finds in its prudence check that any employee has been paid overtime allowance without actually putting in longer hours of work or for some reason payment for overtime allowance has been imprudent the Commission should not disallow the expenses incurred for making such payments.

16) So far as bonus is concerned the projection of Rs. .36 Crores which has not been approved for determining tariff. To the extent payment of bonus is statutory the same cannot be denied by the appellant and should be allowed by the Commission as pass through in tariff. The Commission has similarly not fully accepted the projected expenses for leave encashment, workmen's compensation and staff welfare expenses. The Commission having accepted that such payments were recoverable through tariff, has to give as much as can be justified in the truing up exercise.

17) So far as power purchase cost is concerned, the Commission has eventually granted the claim of the appellant. The Commission, however, has denied the interest on the money borrowed to meet this expense. Such denial is not justified. Nor has the Commission attempted to justify the same. The appellant is entitled to this expense as pass through in tariff.

18) In view of our analysis we allow the appeal in part and direct the Commission to allow expenses incurred towards bonus, leave encashment, workmen's compensation and staff welfare expenses to the extent justified on prudence check as well as interest on power purchase cost. Further we direct that the appellant be given benefit of the new tariff order in question from the beginning of the FY although the Commission can disallow the carrying cost. The benefit in these regards be given in the subsequent ARR determination and tariff order. The claim of the

appellant, in respect of Rs. 3.75, Crores denied by paragraph 8.10, of the tariff order is rejected.

Pronounced in open court on this **08<sup>th</sup> day of December, 2008.**

**( H. L. Bajaj )**  
**Technical Member**

**( Justice Manju Goel )**  
**Judicial Member-**