

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

Appeal No. 106 of 2007

Dated, this the 5th Feb., 2008

**Present : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

In the matter of:

Powergrid Corporation of India Ltd.

Saudamini, Sector 29,
Plot No.2, Gurgaon
Haryana

... Appellants

Versus

1. **Assam State Electricity Board**
Bijulee Bhawan, Paltan Bazar,
Guwahati, Assam – 781 001
2. **Meghalaya State Electricity Board**
Meter Factory Area, Short Round Road,
Integrated Office Complex,
Shillong – 793 001,
Meghalaya.
3. **Department of Power**
Government of Arunachal Pradesh
Itanagar – 791 111
Arunachal Pradesh.

4. **Power & Electricity Department**
Government of Mizoram,
Mizoram,
Aizawal – 796 001.
5. **Electricity Department**
Government of Manipur
Keishampat, Imphal – 795 004.
Manipur.
6. **Department of Power**
Government of Nagaland
Kohima – 797 001
Nagaland.
7. **Tripura State Electricity Corporation Ltd.**
Bidyut Bhavan, North Banamalipur,
Agartala – 700 001.
Tripura.
8. **Bihar State Electricity Board**
Vidyut Bhawan, Bailey Road,
Patna – 800 021,
Bihar.
9. **West Bengal State Electricity Board**
Vidyut Bhawan, Block – DJ,
Sector – 11, Salt Lake City,
Kolkata – 700 091,
West Bengal.
10. **Grid Corporation of Orissa Ltd.**
Vidyut Bhawan, Janpath,
Bhubaneshwar – 751 007,
Orissa.

11. **Damodar Valley Corporation**
DVC Towers, VIP Road,
Calcutta – 700 054.
12. **Power Department**
Govt. of Sikkim, Kazi Road,
Gagtok – 737 101
Sikkim
13. **Jharkhand State Electricity Board**
Engineering Building of Heavy Engineering Corp.,
Dhurwa,
Ranchi – 834 004
Jharkhand.
14. **Central Electricity Regulatory Commission**
Core-3, SCOPE Complex, Lodhi Road,
New Delhi – 110 003. ... Respondents

Counsel for the Appellant : Mr. M. G. Ramachandran,
Mr. Anand K. Ganeshan
Mr. Sudhir Mishra
Mr. Ramesh Jerath
Mr. Rohit Shukla

Counsel for the Respondents: Mr. R. B. Sharma for BSEB, Resp.
No.8, Mr. H.M.Sharma, Resident
Engineer for ASEB

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

- 1) The appellant is aggrieved with the order of the respondent No.14, the Central Electricity Regulatory Commission (the 'Commission' for short) dated 05.03.07 by which appellant's application, IA No. 6/07 filed in Petition No. 48 of 2000 was dismissed. The IA No.6 of 2007 sought approval of transmission tariff for 400 KV D/C Malda – Bongaigaon transmission line with effect from 01.04.2000 to 31.03.2001 by revision of tariff consequent on a revision of approved cost for the Kathalguri transmission system of which Bongaigaon - Malda line is a part.

Facts:

- 2) The appellant is a Central transmission utility and is engaged in inter State transmission of electricity. The tariffs for the services of the appellant are regulated by the Commission as per Section 61, 62 and 79 of the Electricity Act 2003. The appellant, *inter alia*, set up the Kathalguri transmission system which had the following components :

(I) 400 kV D/C Kathalguri-Mariani Line

(II) 400 kV D/C Mariani-Misa Line

- (III) 400 kV D/C Misa-Balipara Line
 (IV) 400 kV D/C Balipara-Bongaigaon Line
 (V) 400 kV D/C Bongaigaon-Malda Line
 (VI) 220 kV S/C Balipara-Tejpur Line

3) The appellant is a wholly owned Government of India undertaking. The Ministry of Power, Government of India initially accorded its approval for the Kathalguri transmission system as a whole in 1995 at an estimated cost of Rs.681.19 Crores. The subsequently cost of the Kathalguri transmission system was revised to Rs.1010.10 Crores, based on the fourth quarter 1998 price level and was approved by Ministry of Power on 22.03.01. The approved cost of Rs,.1010 Crores was apportioned between different parts on the transmission system as under:

Rs. In Crores

| Sl. No. | Name of the element | Apportioned approved cost |
|---------|-------------------------------------|---------------------------|
| 1. | 400 kV D/C Misa-Balipara Line | 197.77 |
| 2. | 400 kV D/C Balipara-Bongaigaon Line | 226.49 |
| 3. | 220 kV S/C Balipara-Tejpur Line | 20.83 |
| 4. | 400 kV D/C Kathalguri-Marani Line | 107.06 |
| 5. | 400 kV D/C Mariani-Misa Line | 160.52 |
| | Total | 712.67 |
| 6. | 400 kV D/C Malda-Bongaigaon Line | 297.43 |
| | Total | 1010.10 |

4) The appellant filed Petition No. 48 of 2000 before the Commission for approval of tariff for Malda Bongaigaon transmission line for the period 01.04.2000 to 31.03.2001 based on the above apportioned estimated cost of Rs.297.43 Crores. The Malda - Bongaigaon transmission line was declared under commercial operation on 01.04.2000. The Petition No. 48 of 2000 was filed on the basis of the initial estimated cost of the entire Kathalguri transmission system at the original level of Rs.689.19 Crores. As the cost estimate was revised to Rs.1010 Crores in 2001 the appellant applied for amendment before the Commission. Rs.297.43 Crores was claimed to be the cost for the Malda - Bongaigaon transmission line. The Commission approved the tariff for the Malda - Bongaigaon transmission line on the basis of the cost as Rs.297.43 Crores vide an order dated 04.07.02. The appellant filed a review petition being No.102 of 2002 (dismissed on 01.01.2003) claiming re-apportionment of cost of Malda - Bongaigaon transmission line as Rs.331.76 Crores. At that time approval of the revised estimated cost for the entire Kathalguri transmission system was pending for consideration before the competent authority and the revised estimate included cost of the Malda - Bongaigaon transmission line at Rs.356.35 Crores. The Commission rejected the review petition on the ground that the details of

expenditures incurred on the Malda – Bongaigaon section was available with the present appellant when the order dated 04.07.2002 was passed and the appellant could not be said to have come across a fact which could not have been known despite due diligence. Subsequently, vide an order dated 13.04.2004 the Commission approved the tariff for the Malda – Bongaigaon transmission line for the tariff period 2001-04 and by another order dated 14.01.2006 for the tariff period of 2004-09 on the basis of the capital cost as Rs.297.43 Crores. On 02.12.05 the Ministry of Power granted approval of revised estimate for the Kathalguri transmission line as Rs.1059.90 Crores as against the previous estimated capital cost of Rs.1010.10 Crores. The appellant then filed the interlocutory application No.6 of 2007 for revising the capital cost of the Malda – Bongaigaon transmission line to Rs.355.60 Crores. This application was dismissed vide the impugned order dated 05.03.2007.

Impugned Order:

5. The appellant submitted before the Commission that while disposing of the application for interim relief for provisional tariff the appellant had been granted the liberty to approach the Commission for revision of transmission charges after

revised cost estimates was approved by the competent authority i.e. the Cabinet Committee on Economic Affairs (CCEA). This contention is rejected by the Commission by the impugned order. The Commission recalls the previous review petition which was dismissed on the ground that no ground for review had been made out. It also recalls that for the tariff periods of 2001-04 and 2004-09 transmission charges had been approved by the Commission by taking the capital cost of Rs.297 Crores as the base. The Commission then takes into account the objections of the West Bengal State Electricity Board, the respondent No. 9 herein, one of the customers of the appellant, to the effect that West Bengal Electricity Regulatory Commission had already approved the tariff up to 31.03.2007 and therefore if the transmission tariff is enhanced there would be no scope for recovery of the additional amount from the consumers. The Commission then says that the liberty given in the interim order to seek revision of tariff in case of approval of revised cost came to an end when the final petition was decided. The Commission then notes that the competent authority has taken 04 years and 09 months for approving revised cost estimate and that even after the approval of the revised cost estimate the appellant has taken a year to apply to the Commission for revision in the tariff. The Commission accepted the objection of the West Bengal State

Electricity Board that the recovery of the additional burden caused by the revision applied for would be difficult and that revision with retrospective effect for nearly 07 years would have a cascading effect for the subsequent years also. By the impugned order the Commission dismissed the petition for revision of tariff for the years 2000-01 but made an observation that an appropriate application for revision of transmission charges from an appropriate date may be made.

Submission of the appellant:

6. The appellant contends that it is entitled to revision in tariff on account of revised cost estimate as it has actually incurred the expenditure on the basis of which the estimates have been finally approved by the CCEA. It also contends that the delay on the part of the CCEA in approving the estimate cannot be attributed to the appellant. The appellant contends that after the revised cost estimate was received the appellant had to find the data from different departments in order to revise the allocation of the cost to different parts of the Kathalguri transmission system which took time. It is pointed out by Mr. M. G. Ramachandran, the counsel for the appellant, that while carrying out the apportionment of the revised cost estimates, the proportion of the cost incurred for the different parts of

Kathalguri transmission system, has undergone a change. The cost has not increased for every section proportionately. In some parts it has also gone down. It is submitted by the appellant that appropriate measures can be taken for avoiding the tariff shock to the consumers but the mere fact that the large amount becomes recoverable and will have to be borne by the consumers of Kathalguri transmission system namely the States of Bihar, Orissa and West Bengal is not sufficient to deny rightful dues of the appellant.

Submission of the respondents:

7. The appeal is opposed by the respondent No.8 namely Bihar State Electricity Board and the respondent No.1 namely Assam State Electricity Board. It is contended on their behalf that the petition for revision of tariff has to be rejected for the same reasons for which the earlier petition for review was dismissed. It is contended that the appellant on its own showing was aware from the very beginning that the expenditure incurred by it on the Malda – Bongaigaon line was not Rs.297 Crores but was Rs.355 Crores or the like and therefore it was for the appellant to ask for such capital cost at the very initial stage. The Tripura State Electricity Corporation has also filed a response to the appeal, raising the

same pleas on which the Commission rejected the prayer of the appellant. This respondent also disputes revision in the cost estimate which of course is not within the ambit of the present appeal.

Decision with reasons:

- 8) The appellant filed the initial application on basis of approved capital expenditure of Rs. 1010.10 crores and the tariff was based on such estimated expenditure. The appellant claims refixation of tariff because the very basis of the tariff, viz the approved cost has been altered by the decision of CCEA to revise it to Rs. 1059 crores. The ground was in our opinion covered by Order 47 rule 1 Civil Procedure Code as ‘any other sufficient reason’ on which a review can be allowed. The appellant has not sought a revision in the tariff on the basis of any error apparent on the record on account of discovery of a fact which could not have been placed before the court despite exercise of due diligence. The appellant simply contends that the very basis for apportioning the capital cost for the Malda-Bongaigaon line at Rs.297 Crores has undergone a change with the revision in the approved estimated cost of the project. It is true that applicant’s prayer for revising the approved estimate was pending for long and the authorities have taken

time to dispose of the prayer. The appellant, however, was bound to seek recovery of only that much of expenditure which was approved by the authorities and therefore could not claim more than Rs.297 Crores. Initially Government of India accorded approval for the Kathalguri transmission system vide a letter dated 22.02.1995 at an estimated cost of Rs.681.19 Crores. However, as the transmission system was being set up its estimate was required to be revised. The estimate was revised to Rs.1010.10 Crores for which approval was accorded on 22.03.01. When Rs.1010.10 Crores was approved, Rs.297.43 Crores was the estimate for the Malda – Bongaigaon line. The appellant, therefore, had to ask for the tariff for this part of the line based on the capital cost of Rs.297.43 Crores. The appellant claimed, in its review petition, being No.102 of 2002, to treat the capital cost of this section at Rs.331.76 Crores on the basis of the apportionment of the total cost of Rs.1010.10 Crores. The appellant at that time claimed the capital cost of this section to be Rs.331.76 Crores. In that review petition itself the appellant had disclosed that it had actually incurred a cost of Rs.356.35 Crores. However, since the capital cost was not revised beyond Rs.1010.10 Crores at that time the claim for the cost apportioned for this line in question could not rise beyond Rs.331.76 Crores. This review petition was dismissed by the Commission. However, the

competent authority has revised the estimate finally to Rs.1059.50 Crores. The entire capital cost is now recoverable. The apportionment of the cost attributable to the Malda – Bongaigaon section has been stated to be Rs.355 Crores. It may be stated here that for the other sections of the Kathalguri system which fall in the North-Eastern region the system of uniform common pool transmission tariff is applicable which is not related to the capital cost of the Kathalguri transmission system and admittedly for the portion falling in the North-Eastern region the appellant has not been able to recover the capital cost through tariff. However, to the extent the capital cost is recoverable for the Malda – Bongaigaon line, the appellant is rightly entitled to make the claim. This claim is not based on any error. This claim is based entirely on the revision of the very estimate on which the initial tariff order was passed by the Commission in petition No.48 of 2000. Since there is a revision in the approved total cost estimate it is only natural that the apportionment of the cost between different sections of the Kathalguri transmission system also has to undergo a change. The Commission, therefore, has to take the revised approved capital cost estimate into consideration and should undertake a fresh exercise for recovery of the transmission charges for this line.

- 9) So far as the difficulty in recovering the additional amount is concerned, the Commission can make appropriate arrangements by creating a regulatory asset or by providing for financial support for the customers of the appellant falling in the Eastern region or by granting installments or by any other suitable measure. Neither the Electricity Act 2003 nor the National Electricity Policy debars a transmitter from recovering the capital cost merely because it is difficult to pay for.
- 10) The appeal is therefore entitled to be allowed. The appellant is entitled to re-fixation of tariff on the basis of revised approved capital cost of the Kathalguri transmission system and the revised allocation of cost for the Malda-Bongaigaon section. This, however, does not mean that the Commission has to blindly accept the cost of the Malda-Bongaigaon line at Rs. 355 crores. The Commission is entitled to carry out prudence check and to examine accounts of the appellant to verify the claims about reapportioned cost of the Malda Bongaigaon line.
- 11) In view of the above, we allow the appeal and direct the Commission to redetermine the transmission tariff for Malda – Bongaigaon line w.e.f. 01.04.2000 on the basis of revised

approved capital cost of the Kathalguri transmission system. The Commission is at liberty to make provisions for facilitating easy recovery of the additional amount payable on account of the revision consequent on implementation of our direction.

Pronounced in open court on this 5th ***day of Feb., 2008.***

(Ms. Justice Manju Goel)
Judicial Member

(A. A. Khan)
Technical Member

The End