

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

**Review Petition No. 14/10 in Appeal No. 37 Of 2010**

**Dated : November 3, 2010**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,  
Chairperson.  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**Brynihat Industries Association, <sup>th</sup> Mile, Tamullikuchi,  
Byrnihar-793001, Ri Bhoi District Meghalaya.**

**.....Review Petitioner/Respondent No.2**

**Vs**

**1. Meghalaya State Electricity Board  
Lumjingsghai, Short Round Road, Shillong 793 001  
Meghalaya.**

**..... Respondent/Appellant**

**2. Meghalaya Electricity Regulatory Commission,  
New Adm. Bbuilding, 1<sup>st</sup> Floor, Left Wing, Lower  
Lachumiere, Shillong 793 001, Meghalaya**

**.....Respondent No. 1**

**Counsel for Respondent(s): Mr. Anand K. Ganeshan  
Ms. S. Seshadri for  
Review Petitioner/R-2**

# **J u d g m e n t**

## **Per Hon'ble Shri Rakesh Nath, Technical Member:**

1. This Petition has been filed by Brynihat Industries Association seeking clarification and modification of the order dated 10.08.2010 of this Tribunal in Appeal No. 37 of 2010. Brynihat Industries Association is an Industries Association which was Respondent No. 2 in the said Appeal.
2. The above mentioned Appeal was filed by Meghalaya State Electricity Board against the order dated 10.09.2009 by the State Commission undertaking true up of the financials of 2007-08 and 2008-09 and re-determining the tariff for the year 2008-09 and reducing the tariff retrospectively w.e.f. 1.10.2008. This Tribunal in its order dated 10.08.2010 set aside the order dated 10.09.2009 to the extent that the State Commission should have limited the true up exercise to only FY 2007-08 and the tariff adjustment should not have been applied retrospectively. The State Commission was also directed to consider taking up the true-up process separately in respect of FY 2008-09.
3. According to the Petitioner, the State Electricity Board did not implement the order of the State Commission dated 10.09.2009

reducing the tariff retrospectively and continued to bill the consumers as per the order dated 30.09.2008 of the State Commission approving the tariff for FY 2008-09. However, the member industries of the Petitioner Industry Association adjusted the excess amount for the year 2008-09 computed by them on the basis of the State Commission's order dated 10.09.2009 in the electricity bill raised on them by the State Electricity Board. According to the Petitioner, the Electricity Board also allowed such adjustment without taking any further steps against the Petitioner Association's Members.

4. According to the Petitioner the State Commission is required to determine the revenue requirement for the period 2008-09 in comprehensive manner taking into account the truing up of financials for both 2007-08 and 2008-09 and determine the tariff for the FY 2008-09 after taking into account the surplus/deficit of the year 2007-08 and adjust the excess recovery as under:
  - a) in the case of industrial consumers who have already taken such adjustments in the past, without further payment from such consumers,
  - b) in the case of industrial consumers who have not taken adjustments in the past, by providing appropriate

adjustments in the tariff for the year 2010-11 with reduction in the tariff to such identified industrial consumers.

5. The Petitioner also submits that the adjustment already implemented by their member industries on their own in pursuance of State Commission's order dated 10.09.2009 be maintained till the State Commission decides the issue of truing up of the financials for the year 2008-09 in terms of directions given by this Tribunal i.e. independent of the truing up undertaken for the FY 2007-08. Pursuant to this Tribunal's order dated 10.8.2010, the State Commission has already initiated a proceeding for truing up the financials of the year 2008-09.
6. The Petitioner is apprehensive that the State Electricity Board may interpret the order of the Tribunal dated 10.08.2010 in a manner to effect the retrospective recovery of the amount for the period 2008-09 which has been adjusted by them in their electricity bills on their own.
7. The Petitioner has prayed for the following:
  - i) Clarification by this Tribunal that order dated 10.08.2010 shall not have the effect of recovering with retrospective effect further amounts from the consumers.

- ii) Directions for adjustment of excess amount recovered by the Industrial Consumers on their own as per the State Commission's order dated 10.09.2009 prospectively against the expected surplus in the ARR of the State Electricity Board in the proceedings initiated by the State Commission in compliance of the Tribunal's order dated 10.08.2010.
8. Pursuant to the Order of the State Commission dated 10.09.2009 effecting downward revision of the tariff retrospectively w.e.f. 1.10.2008, the State Electricity Board filed an Appeal No. 37 of 2010 with this Tribunal. The State Electricity Board did not implement the order of the State Commission dated 10.09.2009 and continued to bill the consumers at the tariff decided by the State Commission in its earlier order dated 30.9.2008. In the meantime the Member Industries of the Petitioner Association on their own made adjustment in their electricity bills in accordance with the reduced tariff determined by the State Commission in its order dated 10.09.2009. Thus the Member Industries of the Petitioner Association adjusted the amount due to difference between the earlier tariff order dated 30.09.2008 and revised tariff as per order dated 10.9.2009 with effect from 1.10.2008.

9. However, this Tribunal vide order dated 10.08.2010 has set aside the State Commission's order in regard to true up for financials of 2008-09 carried out by the State Commission against the remand order of the Tribunal dated 09.02.2009 for true up for only 2007-08 and retrospective application of the tariff.
10. Now the Petitioner wants this Tribunal to clarify to the effect that the amount adjusted by the Member Industries of the Petitioner on their own pursuant to the State Commission's order dated 10.09.2009 which has since been set aside by this Tribunal should not be recovered by the Electricity Board and only adjusted against the surplus which is likely to be available to the Board after the true up of financials for the FY 2008-09 in future.
11. The Petitioner also wants us to direct the State Commission that such excess amount recovered by the Member Industries of the Petitioner be adjusted prospectively against the surplus which is expected after true up of the financials of the FY 2008-09
12. In our opinion, the review sought by the Petitioner, in the name of clarification, is not based on an error apparent on the face of the record, or any documents or the submissions not considered by the Tribunal in its judgment dated 10.08.2010 or on the basis

of some new documents which were not available at the time of proceedings in the said Appeal. In fact the Petitioner wants us to legitimize the adjustment made by them on their own, without any authority, against the order of the State Commission reducing the tariff for the year 2008-09 retrospectively w.e.f. 1.10.2008. The right course for the Member Industries of the Petitioner would have been to approach the State Commission for implementation of its order dated 10.9.2009, However, after the order of this Tribunal dated 10.08.2010, the State Commission's order dated 10.09.2009 reducing the tariff retrospectively does not survive.

13. We also do not want to observe anything which may influence the outcome of the proceeding initiated by the State Commission in compliance of the Tribunal's order dated 10.08.2010 for true up of financials of the Board for the FY 2008-09.
14. The Petitioner, however, is at liberty to approach the State Commission either in the proceedings being undertaken by it to comply with the order of this Tribunal dated 10.08.2010 or separately relating to the adjustment of surplus/deficit as a result of the true up exercise for the FY 2007-08 and 2008-09.

15. In view of above, the Review Petition is dismissed at the admission stage itself. No costs.

16. Pronounced in the open court on this 3<sup>rd</sup> day of November, 2010.

**( Rakesh Nath )**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

INDEX : REPORTABLE / NON-REPORTABLE.

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