

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

**Review Petition No. 10 of 2010 in
Appeal No. 145 Of 2009**

Dated : 4th March, 2011

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

In the matter of:

Madhya Pradesh Electricity Regulatory Commission,
4th & 5th Floor, Metro Plaza,
Bittan Market,
Bhopal-462 016

....Review Petitioner/Respondent

Vs

1. Madhya Pradesh Poorv Kshetra Vidyut
Vitaran Company Limited,
Block No. 7, Shakti Bhawan, Rampur,
Jabalpur-482 008

2. Madhya Pradesh Madhya Kshetra
Vidyut Vitaran Company Limited,
Bijli Nagar Colony, Nishtha Parisar,
Govindpura,
Bhopal-462 023

3. Madhya Pradesh Paschim Kshetra
Vidyut Vitaran Company Limited,
GPH Campus Polo Ground,
Indore-452 015

... Respondents/Appellants

Counsel for Review Petitioner:

**Mr. Sanjay Sen, Ms. Surbhi Sharma
Mr. Gajendra Tiwari for MPERC**

Counsel for the Respondent(s) :

**Mr. M.G. Ramachandran,
Ms. Ranjitha Ramachandran
Mr. Praveen Kr. Jain**

ORDER

Per Hon'ble Shri Rakesh Nath, Technical Member:

This Review Petition has been filed by Madhya Pradesh Electricity Regulatory Commission against the Judgment of this Tribunal dated 19.5.2010 in Appeal No. 145 of 2009 filed by Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited and others.

2. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited, a distribution licensee and other two distribution licensees in the State of Madhya Pradesh had filed the Appeal No. 145 of 2009 against the order dated 16.6.2009 of the State Commission on truing up of Distribution Licensees' ARR for FY 2006-07. The main issue in the Appeal was disallowance of 1682.27 Million Units (MU) of electricity towards sale of the Distribution Licensees to unmetered agriculture consumers beyond the benchmark consumption and consequent denial of

the power purchase cost of the aforesaid quantum of energy by the State Commission. The Tribunal in its Judgment set aside the State Commission's order and allowed the Appeal on the issue of quantum of energy sold and consequential energy purchased and price thereof and remanded the matter to the State Commission with the directions to revise the ARR in the light of the findings rendered in the judgment. The Review Petitioner/Respondent is seeking review of the judgment passed by the Tribunal limited to the issue of allowing the additional supply of 1682.27 MU to the unmetered category of agriculture consumers and its consequential power purchase cost.

3. The Review Petitioner/Respondent has made all the submissions that were already made in the written submissions dated 30.3.2010 in the main appeal. His submissions are as

follows:

“The licensee does not have an obligation to supply electricity under Section 42 or 43 of the 2003 Act without recovering the cost of service, to the extent provided by the State Commission or in a manner inconsistent with the directions of the State Commission. The State Commission is required to reduce the cross subsidy quantum according to Section 61 of the Act. In the present case if the contention of the licensee is accepted it would result in increase in cross subsidy on the subsidizing consumers. The licensee can not take the role of the State Government, who has power to provide subsidy, to any category of consumer in terms of Section 65 of the Act. The State Government subject to payment of subsidy can issue directions under Section 11 or 108 of the Act. If the distribution licensees, Respondent herein, wanted to increase hours of supply beyond the

benchmark fixed by the State Commission for which no recovery was expected, they should take prior approval of the State Commission especially when the increased supply was being made on the basis of short term procurement of electricity at a higher cost. Further, there was no material produced by the Respondent/Appellants that the alleged additional units were supplied to the unmetered agriculture consumers. Whether part or whole of it is distribution loss masquerading as sales is an issue which needs to be addressed”.

4. The Review Petitioner/Respondent has also urged the following contentions relating to implementation of the judgment of the Tribunal:

“(a) The alleged additional supply of units allowed by the Tribunal pertains to unmetered category of agricultural consumers without recognizing any revenue. If the additional cost on account of this sale is allowed in ARR of Discoms without recognizing

corresponding revenue in respect of consumer category to which such alleged supply was made will result in tariff hike in all categories of consumers. Can such cost which is not attributable to all other categories of consumer is justified to be spread over to all the consumers in the State?

- (b) *Tariff determination exercise is fundamentally based on balancing the income and expenditure components while finalizing the Aggregate Revenue Requirement (ARR) and tariff for the tariff period. The Tribunal in the order has allowed the alleged supply of additional units to unmetered category of agricultural consumers during FY 2006-07 but has not given any directions for recognizing the proportionate revenue income to be earned by the Appellants. The Hon'ble Tribunal will appreciate that any supply of electricity, if allowed has to be considered as sale of electricity. Once the sale of electricity (units) are considered in any tariff determination exercises it has its corresponding power purchase cost which has to be recovered by the Appellants from the respective category of*

consumers. Accordingly, the Review Petitioner has requested the Tribunal to clarify the following issues:

- (i) Whether the revenue corresponding to the allowed additional sale of units has to be considered for determining revenue gap based on the re-determined ARR as per the judgment?*
- (ii) If so, whether the licensees shall have to recover the corresponding revenue from all category of consumers or only from respective unmetered agricultural category of consumers and on what basis?*
- (c) If the proportionate revenue corresponding to the allowed additional supply of units to unmetered category of agricultural consumers (a subsidizing category) is not recognized then the cross-subsidy by subsidizing categories will increase which will be against the spirit of the provisions under the Electricity Act, 2003 and Tariff Policy notified by the*

Central Government as well as various judgments of the Hon'ble Tribunal”.

5. According to learned counsel for the Respondents/Appellants, the contentions of the Review Petitioner/State Commission were outside the scope of review permissible under the Electricity Act, 2003, the State Commission vide this Review Petition is seeking the Tribunal's guidance in re-determination of the tariff after taking into account the Power Purchase Cost allowed by the Tribunal and this can not be a subject matter of a Review. The learned counsel for the Commission has referred to the Judgment of the Tribunal in 2007 ELR (APTEL) 931 SIEL Ltd. Vs. Punjab State Electricity Regulatory Commission. He has also submitted details with a view to establishing the additional supply to the unmetered agriculture consumers which was given on the directions of the State Government.

6. On a careful considerations of the contents of the Review Petition and the contentions of the learned counsel for the Review Petitioner, we find that the same arguments have been advanced for the review that were already advanced in the main Appeal. Thus, we do not find any reason to review the Judgment.

7. However, the Review Petitioner/State Commission has raised some relevant issues relating to implementation of the Judgment of the Tribunal. It is, therefore, necessary to give appropriate clarification to the Tribunal's Judgment dated 19.5.2010. The State Commission has sought clarification that whether revenue corresponding to additional sale of units has to be recovered from all categories of consumers or only from the unmetered agriculture consumers and on what basis. We shall now examine this issue.

8. It is noted that the benchmark for billing the unmetered agriculture consumers has been made on about 6 hrs. of

supply per day. The revenue recovery of the distribution licensees from unmetered consumers was determined on the basis of the benchmark energy consumption at the rates determined by the State Commission.

9. It was submitted by the learned counsel for the Respondent distribution licensees that Government of Madhya Pradesh issued instructions on 7.11.2006 to the State Load Dispatch Centre under Section 37 of the Act to enhance supply to rural feeders for agriculture pumping to 9 hrs./day in November, 2006 and 8 hrs./day from December, 2006 to March, 2007. Accordingly, the distribution licensees enhanced the supply to unmetered agriculture consumers. Thus, according to the distribution licensees, additional energy has been supplied to the unmetered agriculture consumers over and above the benchmark determined by the State Commission. This resulted in increase in power purchase cost over what was determined by the State Commission in the

ARR. It has been noticed that the distribution licensees had to purchase power from market at short term at higher cost whereas no such purchase was approved in the ARR.

10. The question that arises for consideration is as to whether the additional power purchase cost can be recovered from all the consumers or only the unmetered agriculture consumers to whom the supply has been made according to the distribution licensee? According to the Tariff Order dated 31.3.2006 for FY 2006-07 the realization in respect of subsidizing and subsidized agriculture category is as under:

New Tariff Structure (FY 07)

Category/ Sub-category	Average realization Rs/Unit	Average cost of supply Rs/Unit	Realization attained %age
Non domestic	5.86	3.49	168%
LT Industry	5.19	3.49	149%
Railway Traction	4.64	3.49	133%
Coal Mines	5.50	3.49	158%
Industrial & Non- industrial	4.72	3.49	135%
Irrigation Pumps for agriculture	2.15	3.49	62%

Thus subsidizing consumers are cross subsidizing to the tune of 33 to 68% and agriculture is subsidized by about 38%.

11. It would neither be logical nor desirable to load the subsidizing consumers further for the additional power purchase cost for additional supply made to unmetered agriculture consumers. It will also not be correct to recover the same from unmetered agriculture consumers as the year in question is already over and the electricity bills have been raised on them according to the tariff prevailing in the FY 2006-07 as decided by the State Commission in the tariff order dated 31.3.2006.

12. The additional supply to agriculture was given by the distribution licensees on the directions of the State Government and, therefore, it is logical that the additional power purchase cost has to be borne by the State Government as subsidy to the distribution licensees.

13. Section 65 of the Act provides for subsidy by State Government to any class of consumer. The relevant provision is as under:-

“65. Provision of subsidy by State Government.- If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section

and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard”.

14. In this case, the State Commission had fixed the tariff in March 2006. Subsequently, in November, 2006, the State Government directed the distribution licensees to enhance supply to agriculture which necessitated purchase of additional power over and above that approved by the State Commission in the ARR. Thus the cost of power purchase for additional energy should be borne by the State Government in the form of subsidy to the distribution licensee. In our opinion, the distribution licensees should have requested the State Government for payment of subsidy to recover the cost of additional power before implementing the revised schedule of supply to agriculture consumers. This was not done and the Distribution Licensees implemented the directions without demanding any upfront subsidy. The State Commission did

not come into the picture as the directions were given by the State Government directly to the SLDC/distribution licensees.

15. Another issue raised by learned counsel for the Review Petitioner/State Commission is that the distribution licensees have not produced any material to establish that the additional supply was actually made to the unmetered consumers. Even though this issue was not raised by the State Commission in the main matter in Appeal No. 145 of 2009, we need to answer this in view of implementation of the Judgment.

16. According to the learned counsel for the Respondents/distribution licensees, since supply is unmetered it may not possible to establish actual consumption by the unmetered consumers. He also argued that the State Commission could not raise a new issue at this stage.

17. In our opinion if the State Commission has to give an appropriate order providing for subsidy by the State

Government, it would be necessary for the State Commission to apply prudence check to assess the additional energy supply made to unmetered agriculture consumers. The State Commission may assess the additional energy based on additional hours of actual supply made to agriculture following the directions of the State Government after scrutinizing the records of the distribution licensee and State Load Dispatch Centre or any other method that it may like to adopt. Learned counsel for the Respondent/ distribution licensee submitted some documents regarding additional supply to agriculture consumer but we find that these are not adequate to establish the additional supply made to unmetered agriculture consumers.

18. We direct the State Commission to pass an appropriate order keeping in view the above clarifications.

19. The Review Petition is disposed of accordingly without any cost.

20. Pronounced in the open court on this 4th day of March, 2011.

**(Rakesh Nath)
Technical Member**

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

REPORTABLE / NON-REPORTABLE

vs