

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

**IA 267 of 2009 in Appeal No.117 of 2008**

**Dated: December 08, 2009.**

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

**IN THE MATTER OF:**

Reliance Infrastructure Limited  
(formerly Reliance Energy Limited)  
Reliance Energy Centre  
Santacruz (East)  
Mumbai

..... Applicant(s)

v/s

1. Maharashtra Electricity Regulatory Commission  
World Trade Centre, Centre No. 1  
13<sup>th</sup> floor, Cuffe Parade  
Mumbai-400005  
(Through its Secretary)
2. Mumbai Grahak Panchayat  
Sant Dnyaneshwar Marg  
Vile Parle (W)  
Mumbai-400056
3. Prayas  
C/o Amrita Clinic, Athawale Corner  
Karve Road  
Pune-411004

4. Thane Belapur Industries  
Post: Ghansoli  
Navi Mumbai-400071
  5. Vidarbha Industries Association  
Civil Lines  
Nagpur-400041
  6. Maharashtra State Electricity Distribution Co.Ltd.  
Prakashgad, Bandra (East)  
Mumbai-400051
  7. Tata Power Company Ltd.  
Bombay House  
24, Homi Modi Street  
Fort  
Mumbai-400001
  8. Brihanmumbai Electricity Supply and  
Transport Undertaking  
Shahi Bhagat Singh Marg  
Electric House  
Colaba  
Mumbai-400001
  9. Maharashtra State Electricity Transmission  
Company Limited  
Prakashganga, Bandra (East)  
Mumbai-400051
  10. State Load Despatch Centre-Maharashtra  
Thane- Belapur Road  
P.O. Airoli  
Navi Mumbai-400708
- .....Respondents

Counsel for appellant(s): Ms Smieetaa Inna  
Ms Anjali Chandurkar  
Mr. Hasan Murtaza  
Ms Junaira Rahman  
Ms Shilpy Chaturvedi

Counsel for respondent (s): Mr. Jaideep Gupta, Sr. Advocate  
Mr. Sitesh Mukherjee  
Mr. Sakya Singha Choudhuri  
Mr. Vishal Anand and  
Ms Megha Sen for Resp. No. 7  
Mr. Brajesh Pandey for Mr. Ajit  
S. Bhasme, Resp.No.6  
Mr. Mukesh Kumar for BEST,  
Respondent No. 8  
Mr. Sumit Gamlaway for  
Resp.No. 8  
Mr. Mohd Yasir Abbasi  
Mr. Buddy A Ranganadhan,  
for MERC

**order**

The applicant before us has pointed out that in the judgment dated August 28, 2009 in Appeal No. 117 of 2008, this Tribunal has inadvertently not addressed the issue at (f).

2. We notice that inadvertently the issue at (f) has indeed not been dealt in the Appeal. The parties have already argued this issue before us. We now proceed to deal with the same.

**Issue (f)- Employee Expenses**

3. Ms Chandurkar contended that RInfra-D in its APR petition had claimed Rs. 224.70 crore towards Employee Expenses for FY 2006-07 including impact aggregating to Rs. 58.13 due to wage revision which became effective from FY 2006-07 crores. The wage revision of RInfra-D employees was to become effective from FY 2006-07. However, the agreement with the employees was entered into in FY 2007-08. Till then, RInfra-D has made a provision for FY 2006-07 to the extent of Rs. 37.48 crore which was paid to the employees as an interim measure. Thus only an amount of Rs. 37.48 crore was claimed in the relevant year. After the wage agreement was entered into, the amount payable for FY 2006-07 was paid in FY 2007-08 and the same is merged with various sub heads of Employee Expenses while providing estimates for FY 2007-08 to MERC vide the APR petition. The

details of such actual payment made to the extent of Rs. 20.65 crore (i.e. Rs. 58.13 crore- Rs. 37.48 crore) to the employees are available with RInfra-D.

4. MERC, in the impugned order provisionally trued up the O&M expenses (of which employees expenses form part) of FY 2008 on account of wage revision. RInfra in its APR petition, had proposed as follows:

*“REL-D has estimated total employee expenditure of Rs. 275.39 crore as against Rs. 192.56 crore approved by MERC FY 08.*

*We would draw your attention to MYT order which states that the impact of wage revision would be considered on concluding the wage agreement and therefore no increase was considered in the approved amount of Rs. 192.56 crore. Though wage revision was not considered by Commission, there was a provision made in the financial statement of the Company for FY 07. The full impact of wage agreement which is effective from July 2006 for staff and labour and April, 2006 for officers is now being reflected in FY 08,*

*including for the period related to FY 07 and has been reflected in Form 3.1 of Wire & Retail Model”.*

5. Learned counsel submitted that MERC, in the impugned order, while carrying out the truing up exercise for FY 07 held as under:

*“ The Commission has obtained the actual employee expenses for FY 2006-07 under various heads and analyzed the increase in expenses for FY 2006-07 over actual expenses in FY 2005-06. The Commission also obtained the actual expenses under various sub heads of employee expenses for FY 2004-05 and FY 2005-06 from REL. The Commission also obtained the copy of the Wage Agreement signed between REL and its employees, since in a cost plus scenario, all such costs impact the consumers. Considering the details of actual employee expenses and reasons submitted by REL for increase in employee expenses, the Commission has accepted the actual employee expenses for FY 2006-07 under the truing up exercise”.*

6. She contended that, therefore, actual impact of wage revision has been accepted by MERC and MERC ought to have

given effect to the amount of Rs. 20.65 crore additionally paid as wage revision, which is not done. However, MERC in the impugned order, while provisionally truing up the employee expenses for FY 2007- 08 held the following:

*“For FY 2007-08, for each sub-head of employee expenditure, the Commission has considered an increase of around 6.26% on account of inflation over the revised level of employee expenses as approved for FY 2006-07 under the truing up exercise in this order based on the increase in Consumer Price Index (CPI).....The Commission will undertake the final truing up of employee expenses for FY 2007-08 based on actual employee expenses for the entire year and prudence check, during the APR process for FY 2008-09.”*

7. Learned counsel contended that for the period FY 2006-07, RInfra-D was entitled to an amount of Rs. 58.13 crore (i.e. 37.48 crore provision plus Rs. 20.65 crore paid during FY 08 but belonged to FY 07) as against the amount provided by RInfra-D of Rs. 37.48 crore as an interim arrangement. This additional

amount of Rs. 20.65 crore ought to have been considered by MERC while provisionally truing up employee expenses of FY 2008, as the said amount was actually incurred by RInfra-D in FY 08 as a part of the wage revision arrears for FY-2007. Further, MERC ought to have considered the base figure of R. 58.13 crore additionally in FY 2007 to apply the escalation rate of 6.26% which it has not done. Thus the full impact of wage revision has not considered by MERC despite RInfra-D being entitled to the same.

8. Ms Chandurkar stated that the MERC has, in this impugned order only allowed Rs.224.70 crore for FY 2007, when it should have allowed Rs. 245.35 crore, after accounting for the arrears of FY 2007 of Rs. 20.65 crores paid in FY, 2008. Further, the escalation@ 6.26% applied by the MERC should have applied on the revised amount of Rs. 245.35 crore. For FY 2008, RInfra-D was entitled to Rs. 281.36 crore. While provisionally truing up the employee expenses for FY 08, MERC has not considered the full impact of wage revision insofar as the



actual liability of wage revision for FY 2007 and payments made in this regard. This resulted in lower level of approved employee expenses for FY 2008. She prayed this Tribunal to direct the MERC to take into account full impact of wage revision while truing up the employee expenses for FY 2008 and provisionally truing up the same for FY, 2009.

### **Analysis and decision**

9. The issue lies in a narrow compass. MERC had agreed implementation of wage revision agreement with employees. Though this agreement was concluded in the year 2007-08, it had retrospective effect during 2006-07 in which year pending final settlement, a provision of Rs. 37.48 crores was made in FY 2006-07. This provisional amount of Rs. 37.48 crores increased to Rs. 58.13 crores in the final wage revision. The Commission has considered an increase of around 6.26% on account of inflation over the revised level of employee expenses which provisionally included an amount of Rs. 37.48 crores as approved for 2006-07. During 2007-08 on conclusion of the

wage agreement, the provisional amount pertaining to 2006-07 increased to Rs. 58.13 crores. In our opinion the Commission, ought to have considered the final amount of Rs. 58.13 crores paid partly in 2006-07 and balance in 2007-08 due to wage revision as base for arriving at the employee expenses for 2007-08. Notwithstanding that Rs. 20.65crores was paid in FY 2008, this amount was actually for 2006-07. Nextly, the 2008-09 expenses should be worked out taking revised base figures of 2007-08.

10. Issue at (f) of Appeal No. 117 of 2008 is allowed. This order be read as part of our judgment dated August 28, 2009 in Appeal No. 117 of 2008. Accordingly we direct the Commission to re-determine the employee expenses for the year 2006-07, 2007-08 and 2009-10 in the light of our decision.

(H.L. Bajaj)  
Technical Member

(Mrs. Justice Manju Goel)  
Judicial Member