

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

Appeal No.211 of 2006

Dated: 27th November, 2006

**Present :Hon'ble Mr. Justice E. Padmanabhan, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

1. Commander Works Engineers (Hills)
Dehradun
2. GE, Roorkee
3. GE Clement Town, Dehradun
4. AGE (1), Raiwala
5. AGE (1), Lansdowne
6. GE, Dehradun
7. GE Premnagar
8. GE (1), R&D, Dehradun
9. GE, Pithoragarh
10. GE, Ranikhet
11. Gen 871, EWS
12. AGE(1), R&D, Pithoragarh
13. AGE Air Force Bhowli
14. AGE (FY), Raipur, Dehradun
15. GE (A/F) Sarsawa

.....Appellants

Versus

1. Uttranchal Power Corporation Ltd.(UPCL)
Dehradun
2. Uttranchal Electricity Regulatory Commission
Dehradun

.....Respondents

For the appellant : Ms Jyoti Singh, Advocate
Mr. Ankur Chhibber

For the respondents: Mr. S. M. Jain, Advocate for Respondents No. 1
Ms Tarun Singh Baghel, Advocate,
Mr. M.G. Ramachandran, Advocate and
Mr. Anand K. Ganesan, Advocate
For UERC, for Respondent No. 2

JUDGMENT

Heard Ms Jyoti Singh, Advocate appearing for the appellant, Mr. S.M. Jain, Advocate for the first respondent and Mr. M.G. Ramachandran, Advocate for the 2nd respondent.

2. The present appeal has been preferred by the Commander Works Engineers (Hills) and their connected establishments through their respective Garrison Engineers or Asstt. Garrison Engineers.

3. The appellants have prayed for the following among other reliefs:

- (i) To set aside the tariff determined by the 2nd respondent Regulatory Commission for the year 2003-04.
- (ii) To set aside order of the Uttranchal Electricity Regulatory Commission dated 25th July, 2005 whereby the Misc. application bearing No. 51/2004 has been disallowed.
- (iii) To set aside the action of the first respondent charging excess tariff @ Rs. 3.50 per KWH for the period September 2003 to March, 2005 and
- (iv) Other consequential reliefs as the facts of the case warrants.

4. The learned counsel for the appellant placed reliance upon the judgment rendered by the First Bench of this Appellate Tribunal in Appeal No.37 of 2005, M/s Garrison Engineer Military Services V/s Madhyanchal Vidyut Vitran Nigam Ltd. and contended that the appellant cannot be treated differently and they should be treated at par with the appellant in Appeal No. 37 of 2005. The learned counsel also pointed out that the appellant moved the Regulatory Commission by way of review petition, which has not been rejected nor the petition has received appropriate consideration in the hands of the Regulator. The learned

counsel for the appellant further contended that for the period 8th September, 2003 to March, 2005 the appellant should have been charged @ Rs. 2.90 per unit of consumption as 80% of the load is admittedly used for domestic and 20% load is used for commercial purposes and other offices as well as hospitals established by the appellant, defence establishment.

5. Per contra Mr. S.M. Jain, learned counsel appearing for the first respondent contended that the tariff determined by 2nd respondent Regulator has reached finality. In fact tariff has been revised for the year 2005-06 and it is too late for the appellant to seek relief at this stage. Mr. M.G. Ramachandran, learned counsel appearing for the Regulatory Commission pointed out that before 8th September, 2003 the appellants were charged in the category of "mixed load". For the period 20th September, 2003 to March, 2005 the appellant has been treated as "commercial" and they were liable to pay @ Rs. 3.50 per unit. Mr. M.G.Ramachandran learned counsel further stated that during the said period there has been a reduction in tariff in Uttranchal for other consumers. This is an anomaly, which deserves consideration in the hands of this Appellate Tribunal.

We have given our anxious consideration and also heard Mr. S.M. Jain and Mr. M.G.Ramachandran, learned counsel with respect to issue involved in this appeal.

6. To render substantial justice and keeping in view that the appellant is a Defence Establishment of the Government of India, we have condoned the delay. In fact at one stage we even considered to remand the matter to the Regulatory Commission, but since tariff period had already come to an end, it may not have yielded desired result. The learned counsel for the appellant persuasively contended that judgment rendered in Appeal No. 37 of 2005 should be followed and given effect in this appeal as well as the appellants are identically placed.

We find there is force in the arguments advanced by the learned counsel appearing for the appellants.

7. The learned counsel for the appellant rightly placed reliance upon the earlier order of this Appellate Tribunal and there is force as same tariff which was applicable to Uttar Pradesh was also applicable to Uttaranchal during the relevant period. The appellants are on par with the appellants in the appeal decided by the First Bench in Appeal No. 37 of 2005. There should be no distinction and to this extent there is no quarrel or controversy. All that counsel for the first respondent pointed out that its annual revenue and tariff has been determined and if at this stage relief is granted the same shall have bearing on the revenues of the first respondent. The earlier judgment of First bench is applicable to the present case in hand and there is justification to fix tariff at Rs. 2.90 per unit in the case on hand also for the period 20th September, 2003 to 31st March, 2005. As these appellants are defence establishment, like Contonment Board and identical in all respects being defence establishment we should give same treatment to these appellants as Contonment Board.

8. We allow this Appeal in part and fix the tariff for the appellants for the period 20th September, 2003 to 31st March, 2005 at Rs. 2.90 per unit. It is also made clear for the period subsequent to 31st March, 2005 there is no controversy and the appellants are paying as per tariff determined by the second Respondent.

9. We may make it clear that consumption charges leviable with respect to the consumption of power by the appellant for the period 20th September, 2003 to 31st March, 2005 is fixed at Rs. 2.90 per unit and the excess amounts collected by the first respondent shall be adjusted towards future bills of the appellant commencing from December, 2006. To this limited extent this appeal is allowed. In other respects we are not inclined to interfere with the tariff order impugned by the appellants.

10, We also make it clear that if there is a fall in the revenues of the first respondent, the same shall be taken by the second Respondent into consideration while taking truing up exercise or in the next tariff period and grant consequential reliefs. In other respects, tariff order of 2nd respondent Regulatory Commission passed on 8th September, 2003 is not interfered in this appeal . The Appeal is allowed to the limited extent with respect to the appellant herein.

11. The parties shall bear their respective costs.

Pronounced in the open court on 27th November, 2006.

(Mr. H.L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member

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