

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

Appeal No. 76 of 2007

Dated the October 1, 2007.

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

Maharashtra State Electricity Transmission
Company LimitedAppellant

Versus

1. Maharashtra Electricity Regulatory Commission
13th floor, World Trade Centre,
Cuffe Parade, Mumbai-400005
2. Prayas Energy Group
4, Om Krishna Kunj Society
Ganagote Path
Erandavane, Pune-411004
3. Mumbai Grahak Panchayat, Grahak Bhawan
Sant Dyaneshwar Marg
Vile Parle (W), Mumbai-400056
4. Thane Belapur Indl. Association
Plot No. P-14, MIDC Rabale Village
Navi Mumbai-400701
5. Vidarbha Industries Association
Ist floor, Udyog Bhawan, Civil Lines
Nagpur-440001
6. The Brihan Mumbai Electric Supply & Transport
Undertaking, BEST Bhawan
Post Box No. 192, Mumbai-400001

7. The Maharashtra Mofussil Mills' Association
Dhuru Bnuilding, 4th floor, Gokhale Road (North)
Dadar (West), Mumbai-400028
8. Grahak Seva Sangh
Vidyut Vidya Mandir Parisar, Janki Nagar
Jalgaon-425001Respondents

For the Appellant (s): Mr. G.R. Joshi, Advocate with
Mr. Zubin Morris & Mr. H.S. Jaggi,
Advocates
Ms Kiran Gandhi
Mr. Anami Bhattacharyya, Advocate
Mr. I. Ghosh, Advocate

For the Respondents: Mr. Jayant Bhushan, Sr. Advocate
Mr. Buddy A. Ranganadhan,
Advocate
With Mr. Arijit Maitra, Advocate
Mr. Ajit Pandit,

JUDGMENT

Per Hon'ble Mr. H.L. Bajaj, Technical Member

This appeal preferred by Maharashtra State Electricity Transmission Company Ltd. (MSETC in short) challenges the orders dated April 2, 2007 passed by the Respondent No. 1, Maharashtra Electricity Regulatory Commission (MERC or the Commission in short) in case No. 67 and 86 of 2006 relating to the determination of the Annual Revenue Requirement (ARR)

for the period FY 2007-08 to FY 2009-2010 and the transmission tariff for the control period 2007-08. The impugned order for the first control period has come into effect from April 1, 2007 and would continue to be in force up to March 31, 2010. It is alleged by the appellant that MERC has erroneously rejected several claims made by the appellant and consequently in the impugned order relating to the determination of tariff (case No. 86 of 2006), the tariff rates have been fixed at a lower level.

2. The appellant has challenged the impugned order to the extent that it rejected the claims for the revenue requirements under the following heads.

- (a) *failure to carry out truing up of expenses in respect of Administrative and General ("A&G") expenses for the financial year 2005-06 and lower ARR fixed under this head for the control period.*
- (b) *disallowance of the significant portion of the Operation and Maintenance costs projected by the appellant for the control period.*
- (c) *disallowance/reduction of the employees costs allowed to the appellant for the control period.*

- (d) *disallowance/reduction of the Repairs and Maintenance (R&M) costs projected by the appellant for the control period.*
- (e) *disallowance/reduction of the interest expenses projected by the appellant for the control period.*
- (f) *reduction in the capital expenditure/capitalization return on equity.*

3. During the hearing, the learned counsel Mr. Buddy A. Ranganadhan, appearing for the Commission fairly stated on instructions that the Commission had passed the impugned tariff order on April 2, 2007 when obviously the Commission did not have the opportunity to read the judgment of this Tribunal dated April 4, 2007 in appeal No. 251 of 2006 wherein several issues raised by the appellant in this appeal have been dealt with. He further stated that there is neither rationale nor any intention on behalf of the Commission to give a different treatment in case of the present appellant and that the audited figures for the year 2005-06, which were presented during the pendency of the ARR of the petition were not available when the ARR petition of the appellant was filed.

4. At this stage it will be pertinent to look into the decisions taken by this Tribunal in appeal No. 251 of 2006 vide judgment dated April 4, 2007 at paras 20,25,50 and 57 which are extracted below:-

Appeal No. 251 of 2006

Reliance Energy Ltd.

V/s

The Maharashtra Electricity Regulatory Commission
and Others.

Para-20.

In view of the aforesaid discussion, taking into consideration the provisions of Sixth Schedule to the Electricity(Supply) Act, 1948 which is being used for determination of ARR and truing up and the fact that the MERC is allowing the basic salaries and dearness allowance of the employees and that there are no prudent norms prescribed by the MERC in this regard, we allow the appeal in this respect and MERC should allow the actual expenditure of employees for the years 2004-05 and 2005-06 after verification of the same.

Para-25.

Concedingly, under the Sixth Schedule, Clause XVII of the Electricity (Supply) Act, 1948 "any expenditure properly incurred" on the distribution and sale of energy by the licensee is to be permitted. In the absence of any norms specified by the Commission, merely allowing 3.3 per cent (being the CAGR) is not correct as this does not factor inflation which has to be necessarily taken into account and cannot be ignored. We are inclined to accept the contentions of the appellant and, therefore, allow the appeal in respect of A and G expenses for FY 2004-05 and FY 2005-06.

Para 50.

In view of the aforesaid facts and the discussion, we agree with the contention of the appellant and allow the appeal in this regard. In future, if the Commission expects the licensee to curtail losses to the extent it requires, it ought to agree to the Schemes proposed by the licensee to meet the increasing load and reduce losses.

Para 57.

In view of the foregoing discussions, we do not agree with the reasoning of MERC and, therefore, allow the appeal with regard to the operating norms.

5. Keeping in view the fact that obviously the Commission had not the knowledge of the decisions taken by this Tribunal in Reliance Energy Ltd. V/s The Maharashtra Electricity Regulatory Commission & Ors. at the time of issuing the impugned order, and there being no reason for discriminatory treatment to the two licensees on the same issue, it will only be fair, equitable and in the interest of justice that the Commission amends its impugned order complying with the following directions:

6. In so far as truing up of A&G Expenses for the FY 2005-06 are concerned the same shall be done on the basis of actual expenses subject to prudence check as per the

judgment dated April 4, 2007, passed in appeal No. 251 of 2006.

7. Insofar as the projections of A&G Expenses, employees expenses and R&M expenses for the control period during FY 2007-08 to FY 2009-10, in the impugned order are concerned:

(i) actual expenditure for the purposes of truing up for the FY 2006-07 shall be considered by Commission subject to prudence check along with Annual Performance Review as per the Regulation 17 of the MERC (Terms and Conditions of Tariff) Regulations, 2005.

(ii) projections of ARR for the control period for the aforesaid heads shall be done by *extrapolating the actual* audited expenses for the FY 2006-07 subject to prudence check and the same approach shall be followed for the subsequent years till norms are finalized.

8. Insofar as the appellant's contention regarding rate of interest and calculation of GFA is concerned, the same shall be considered and dealt with by the Commission along with the aforesaid points subject to such details as the Commission may require.

9. Consequential changes, if any, in the tariff for FY 2007-08 and subsequent years shall be carried out based on the aforesaid.

10. It is also directed that the appellant shall submit the audited accounts for the FY 2006-07 to the Commission before the annual performance review as per Regulation 17 of the MERC (Terms and conditions of Tariff) Regulations, 2005.

11. The appellant has submitted before us that the scheme-wise details of the capital expenditure and the capitalization till March 31, 2007 are not available as of now. Appellant prayed that it be open to him to contend before the Commission regarding this difficulty. In view of the difficulty

explained by the appellant, we direct the Commission to accommodate the appellant in this regard.

12. The appeal is allowed.

Pronounced in the open court on the 1st day of October, 2007.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. H.L. Bajaj)
Technical Member