

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

Appeal No.132 of 2008

Dated: 9th February, 2009

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

**Byrnihat Industries Association ... Appellant (s)
Versus**

**Meghalaya State Electricity Regulatory ... Respondent (s)
Commission & Anr.**

Counsel for the Appellant/ (s) : Mr. M.G. Ramachandran with
Ms. Swapna Seshadri
Counsel for the Appellant/ (s) : Mr. Amit Kapur, Mr. Anupam Verma and
Ms. Poonam Verma for Resp. 2
Mr. Hemant Sahai for Resp. 1

ORDER

This appeal is directed against the tariff order for the Financial Year 2008-09 passed by the Meghalaya State Electricity Regulatory Commission (“**the Commission**”) on 30.09.2008. The Appellant, Byrnihat Industries Association whose members are engaged in the manufacturing and other industrial activities in the State of Meghalaya are the consumers of Respondent No.2 i.e. Meghalaya State Electricity Board (“**MeSEB/Board**”).

2. The appellant industries belong to two categories of consumers namely Industrial High Tension Category –II (IHT) and Extra High Tension (EHT). The Appellant is aggrieved that the impugned Tariff Order has given them tariff shock by steeply revising

the tariff for the aforesaid categories over the pre-existing tariff. It has stated that the tariff revision over the previous year has increased the fixed charges by 45% for IHT Category and by 62.5% for EHT category besides enhancing the energy charges for IHT category by 73.8% and for EHT category by 92.47%. It has also alleged that because of this increase in tariff, the quantum of cross-subsidy to subsidized categories of consumers, has increased over the previous year thus violating the Section 61 (g) of the Act and National Tariff Policy. Several other points relating to unreasonable expenses have been raised by the Appellant in support of their contention alleging that the MeSEB has collected more revenue than what it was entitled to collect in accordance with law.

3. We have heard the counsel for the Appellant and the Respondents.

4. The Appellant has submitted that while MeSEB filed its petition for the approval of Annual Revenue Requirement and Determination of Tariff for the financial year 2008-09 on 31.12.2007, the actual financial data of expenditure and revenue for the financial year 2007-08 till December, 2007 was available and ought to have been furnished by the MeSEB to reduce the uncertainty in the unreasonable increases in estimates for various expenditure given in the petition. It appears to us that despite the objectors including the Appellant having insisted for furnishing of the un-audited financial data and the Commission too asking for it, the MeSEB failed to furnish the requisite data. Consequently no truing-up exercise for the financial year 2007-08 was done while finalizing the tariff for the financial year 2008-09 for which the impugned tariff order was

issued on 30.09.2008. In case truing-up exercise was undertaken by the Commission, we feel, most of the grievances could have been remedied.

5. It is well known that tariff determination is undertaken by the Commission for the ensuing year and is grounded on estimates and projections of expenses and revenues on the basis of previous year data moderated on estimated growth in electricity consumption and other factors arising out of the prudence check by the Commission . By the time there is need to work out tariff for the ensuing year actual revenue and expenses generated on the basis of pre-existing tariff fixed by the Commission would be known. On the basis of the un-audited near actual data the truing-up exercise must be undertaken by the Commission. The revenue gap in the Annual Revenue Requirement based on the pre-existing tariff is required to be filled up by the new tariff applicable for the ensuing year. It seems that the tariff for the financial year 2008-09 has been finalized by the Commission without subjecting the estimates claimed by MeSEB to the prudence check, validation of data and in absence of actual financial data available with MeSEB till 31.08.2008. Except under the head of interest and finance charges, the Commission has allowed all expenditure such as purchase of power; Inter-state Transmission Charges; R&M expenses; employees expenses; depreciation; etc. as claimed for by the MeSEB. Also the impugned order while being critical to the petition filed by the MeSEB has stated that *“The Commission at this stage is unable to rationalize in other area of expenditure*” Normally, the Petition for approval of Annual Revenue Requirement and determination of tariff by the licensee is to be filed by November so that tariff order is issued so that it is prospectively made effective from 1st April of the ensuing year. In

the instant case the filing of the Annual Revenue Requirement Petition for 2007-08 was unduly delayed and tariff order was only issued on 17.12.2007. Also tariff petition for financial year 2008-09 was filed on 31.12.2007. We observe the pattern of Utility filing the petition for approval of Annual Revenue Requirement and determination of tariff just few months prior to completion of the tariff year. We feel the Commission is not powerless for ensuring timely filing of tariff petition. It needs to be corrected.

6. It may be mentioned that MeSEB has submitted before us on 30.01.2009, the audited report on the Annual Revenue Accounts of MeSEB for the financial year 2007-08 alongwith summarized financial results for the year ending on 31.03.2008 and accounts data of Annual Revenue Requirement alongwith the expenditure on repair and maintenance; employee costs; administrative and general expenses; interest and finance charges; power purchase costs, etc.

7. In view of the above, we remit the matter to the commission with the direction to undertake truing-up exercise of financial year 2007-08 with the financial data ending March, 2008 and examine the submission and contentions of the Appellant in accordance with law. The commissions shall provide the opportunity to Appellant for being heard alongwith the affected parties before arriving at the determination in the truing-up exercise. Truing-up exercise for financial year 2007-08 shall be undertaken by the Commission expeditiously so as to conclude it by end of May 2009. On completion of the truing-up exercise the commission shall act in accordance with law for giving effect to the same.

8. The appeal is disposed of in light of the above directions.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson