

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

**Appeal No. 215 of 2006**

Dated: 31<sup>st</sup> October, 2006

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member,**

**M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. ...Appellant**

**Versus**

**M.P. Electricity Regulatory Commission & Anr. ...Respondents**

**Counsel for the Appellant: Mr. M.L. Jaiswal**

**Counsel for the Respondents: Mr. Sakesh Kumar for Resp.1  
Mr. Ashok Sharma for Resp.2**

**ORDER**

This appeal is directed against the Order of the Madhya Pradesh Electricity Regulatory Commission (for short 'M.P.E.R.C/Commission'), dated June 21, 2006, whereby it was held that the tariff schedule, HV-5.4.1 was applicable for determination of tariff of the second respondent.

The facts giving rise to this appeal lie in a narrow compass:

The second respondent and the appellant entered into an agreement on December 20, 2003. By this agreement, the appellant agreed to supply electrical energy (HT) in bulk at the premises of the

second respondent located at Village Fathepur, Sukhisewania, Berkhedi Abdulla, for irrigation purposes. The agreement, *inter alia*, indicated that tariff No. HV 9 (Irrigation Purpose) as per M.P.E.R.C's Order, dated November 30, 2002, in Petition No. 264 of 2002 shall apply. The agreement also provided that the consumer shall pay to the Board every month charges for the electrical energy supplied to it during the preceding month at the Board's tariff applicable to the class of service and in force from time to time.

On March 31, 2006, the M.P.E.R.C., passed fresh tariff order for the tariff year 2006-07. The Rate Schedule HV-5, which forms part of the tariff order, reads as under:

### **"Rate Schedule –HV 5**

#### **HT IRRIGATION AND PUBLIC WATER WORKS**

##### **Applicability**

- 5.1** The Tariff 5.4.1 shall apply to supply of power to Public Utility Water Supply Schemes, sewage treatment plants/sewage pumping plants and for energy used in lighting pump house.
- 5.2** The tariff 5.4.2 shall apply to supply of power to lift irrigation schemes, group agriculture pump connections,

connection for dairy, hatcheries, poultry farms, cattle breeding farms, grasslands, vegetable, fruits, floriculture, Mushroom growing units etc

### Character of Service

**5.3** The character of service shall be as per Madhya Pradesh Electricity Supply Code, 2004.

### Point of Supply

**5.4** The power will be supplied to the consumers ordinarily at a single point for the entire premises.

	Category of Consumers	Fixed Cost Charges (Rs./kVA of contract demand/month)	Energy Charges (Paise per unit)	Cost (Paise)
5.4.1	Public Water Works	100	300	
	11 kV supply	100	280	
	33 kV supply	96	250	
	133 kV supply			

#### 5.4.2 Group Irrigation and other agricultural users

	11 kV supply	140	320	
	33 kV supply	130	300	
	132 kV supply	120	280	

### Minimum Charge

5.5 The tariff is subject to payment for a minimum annual consumption of 720 units per KVA of the highest Maximum Demand recorded during the year of the contract demand, whichever is higher.

### OTHER TERMS AND CONDITIONS :-

As mentioned in General Terms and Conditions of Tariff. "

The second respondent filed an application for review of the tariff Order, dated March 31, 2006, pertaining to fixation of tariff for group irrigation and other agricultural users. The applicant submitted before the Commission that the tariff under HV-5.4.2 was too high and the same should be reviewed on the following grounds.

- i) The concerned stakeholders were not heard while issuing tariff order.
- ii) The basis of increase in tariff was not made clear.
- iii) The meter was shifted to new location.
- iv) The penalty levied on agriculture consumer against low power factor is not correct.
- v) Meter reading should be done once or twice only during the year.
- vi) The tariff is being enhanced continuously.
- vii) Maintenance of line should be done by the Licensee.

The Commission though was of the view that the scope for review was limited and the grounds mentioned by the second respondent were not sufficient for review of the tariff order, yet on the basis of the alleged concession made by the representative of the appellant directed that the tariff schedule HV-5.4.1 applicable to Public Works Department shall also be applicable to the second respondent. Aggrieved by the order passed by the Commission, the appellant, Central Discom, has filed the instant appeal.

The bone of contention between the parties is whether tariff item 5. 4. 1 or tariff item 5. 4. 2 applies for determination of tariff of the second respondent.

The learned counsel for the appellant submitted that at no point of time, the representative of the appellant had made any concession before the Commission. It was also submitted by the learned counsel for the appellant that the question as to whether tariff item HV-5.4.2. or tariff item HV-5.4.1 was applicable was a question of law, and assuming, without admitting, that any concession was made by the representative of the appellant, the same was not binding on the appellant nor it gave any jurisdiction to the Commission to direct that the tariff item HV-5.4.1. was applicable. According to the learned counsel the tariff of the

appellant was required to be determined in accordance with the tariff item HV-5.4.2, inasmuch as the Commission clearly stated that the supply was for the purposes of irrigation. The heading of tariff item HV-5.4.2 clearly indicates that it applies to group irrigation and other agricultural users. On the other hand, the tariff item HV 5.4.1 applies to supply of power to public utility Water Supply Schemes.

The learned counsel for the second respondent herein (applicant before the Commission) has argued that the concession made by the representative of the appellant before the Commission was binding on the appellant.

The learned counsel for the Commission submitted that the matter could be remanded to the commission for fresh determination.

We have considered the submissions of the learned counsel for the parties. It is clear from a reading of tariff item HV 5.4.2 that it applies to group irrigation and other agricultural users and tariff item HV-5.4.1 applies to supply of power to public utility water supply schemes, Sewage treatment plants / Sewage pumping plants and for energy used in lighting pump house. Obviously, the second respondent falls in tariff item HV-5.4.2 for determination of tariff, as according to the agreement, and admittedly, the power was supplied by the appellant to the second

respondent for irrigation and agricultural purposes. Therefore, tariff entry 5.4.2 was applicable to the case of the second respondent. The concession, assuming the same was given by the representative of the Central Discom, will not alter the legal position. No concession on the interpretation of tariff entry can bind the appellant.

In the circumstances, therefore, we reject the contention of the learned counsel for the second respondent that the alleged concession made by the representative of the appellant was binding on the appellant.

We also find no reason to remand the case to the Commission as suggested by the learned counsel for the first respondent. The impugned order is without jurisdiction as the Commission itself found that the grounds urged by the second respondent were not sufficient for review of the tariff order. Having held so, the Commission could not utilize the alleged concession of the representative of the second respondent to arrogate to itself the power to pass the impugned order.

In the circumstances, therefore, we allow the appeal and set aside the order of the Commission, dated June 21, 2006. Consequently, the second respondent shall be charged as per tariff item 5.4.2 of the tariff

schedule HV 5, with effect from the date of implementation of the tariff order, dated March 31, 2006.

There shall be no order as to costs.

**(Mr. A. A. Khan)**  
**Technical Member**

**(Mr. Justice Anil Dev Singh)**  
**Chairperson**

Dated: 31<sup>st</sup> October, 2006