

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.25 of 2012

Dated: 19th November, 2012

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**Tata Steel Limited
Bombay House,
24, Homi Modi Street
Mumbai-400001**

...Appellant

Versus

**Jharkhand State Electricity Regulatory Commission
2nd Floor, Rajendra Jawan Bhawan
cum Sainik Bazar
Main Raod, Ranchi-834 001.
Jharkhand**

...Respondent(s)

**Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Abhishek Roy
Mr. A. Srivastava
Mr. Dilpreet**

Counsel for the Respondent(s): Mr. C.K. Rai

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

“Whether the State Commission was justified in law in not allowing the Voltage Rebate and Power Factor Rebate in favour of Steel Works division of Tata Steel Limited, the Appellant?”

This is the question posed in this Appeal.

1. This Appeal has been filed by the Appellant, challenging the impugned order dated 27.8.2011 introducing the Voltage and Power Factor Rebate payable to the High Tension consumers.
2. The short facts are as follows:-
 - i) Tata Steel Limited, the Appellant had set up a Steel Plant at Jamshedpur in the State of Jharkhand in the year 1907-11.
 - ii) Together with the Steel Plant, the Appellant has undertaken the overall development of the city of Jamshedpur including providing electricity supply to the consumers of the Jamshedpur City.

- iii) For this purpose, the Appellant has been granted a licence to distribute electricity in the city of Jamshedpur. The said license is valid and existing under the savings provision of the Electricity Act, 2003.
- iv) After enactment of Electricity Act, 2003, the Appellant filed an application for the issuance of the distribution licence for Jamshedpur town, under section 15 of the Act.
- v) Accordingly, the State Commission under the provisions of section 15 permitted the Appellant to continue its operations by the order dated 12.01.2006.
- vi) The principal activity of the Appellant is to operate and run the Steel Plant. Tata Steel Works of the Appellant as a consumer, was availing power supply from Tata Steel Limited, the distribution licensee. as well as electricity purchased from outside.
- vii) The Appellant has been using the electricity purchased and the electricity generated by it for the purpose of steel plant, in addition to using the electricity for supply to consumers in Jamshedpur city in the capacity as licensee.

- viii) After constitution of the State Commission, the issue arose as to “whether Steel Works of the Appellant should be treated as a consumer or not?”
- ix) When Tata Steel Limited has filed its first tariff petition for the year 2005-06 before the State Commission, the Commission put a specific query regarding the inclusion of Tata Steel Works as a consumer.
- x) The Appellant through its letter gave a consent conveying that Steel Works be considered as a consumer for its electricity needs over and above captive sources.
- xi) Accordingly, in the tariff order passed by the State Commission in respect of the year 2005-06 dated 30th March, 2006 treated Tata Steel Works as a consumer and directed the Appellant to segregate the accounts of the distribution business from that of the Steel Works business within six months from the date of issue of the order.
- xii) However, the issue of consumership of Tata Steel Works remained unsettled till the financial year 2010-11. State Commission finally in the tariff order for the year 2010-11 was constrained to consider Tata Steel Works as a consumer of the Tata Steel Limited in

regard to the supplies made to it by the Appellant distribution licensee i.e. Tata Steel Limited in the same manner as in the case of any other consumer.

- xiii) Then an application was filed by the Appellant before the State Commission for approving the Annual Revenue Requirements and for the determination of tariff applicable for the distribution and retail supply activities of the Appellant for the FY 2011-12.
- xiv) The State Commission in respect of the financial year 2011-12 passed the impugned order dated 27.8.2011, approving the Annual Revenue Requirements by determining the tariff applicable for the distribution and retail supply activities and allowed the recovery of the same through tariff to be charged from various categories of the consumers.
- xv) In the above order dated 27.8.2011, the State Commission introduced Voltage Rebate payable to the High Tension Consumers. However, the State Commission has excluded the Tata Steel Works of the Appellant to be eligible for Voltage Rebate.
- xvi) Similarly, the State Commission provided for Power factor Penalty/Rebate to be applicable but once again specifically excluded the consumption by the Steel

Works of the Appellant to be eligible for the Power Factor Penalty/Rebate.

3. Being aggrieved by introduction of voltage Rebate and Power Factor Penalty/Rebate for consumers and at the same time non-application of the same to Tata Steel Works in the impugned order dated 27.8.2011, the Appellant filed a review petition on 26.9.2011.
4. By the order dated 26.11.2011 the State Commission dismissed the Review Petition holding that there was no apparent error on the face of the record and giving various reasons for rejection of the claim for the Voltage Rebate and Power Factor Rebate made by the Appellant.
5. Aggrieved by the same, the Appellant has filed this Appeal seeking for setting aside the main impugned order dated 27.8.2011 as well as the Review Order dated 26.11.2011 in respect of the finding given on this issue.
6. According to the Appellant, the State Commission has not provided for Rebate on Voltage level and Power Factor to Tata Steel Works as in the case of other consumers, even though the Steel works of the Appellant was treated as a consumer applying the retail supply tariff as determined by the State Commission and as such the State Commission committed a wrong in not placing the Appellant on a similar

level as that of the other equally placed consumers and that this act of the Commission would amount to discrimination.

7. In refuting these grounds, the learned Counsel appearing for the State Commission pointing out the various reasons given by the State Commission for rejecting the claim of the Appellant contained both in the impugned order as well as in the Review order, strenuously contended that if the Voltage Rebate and Power Factor Rebate is allowed in favour of the Appellant's Steel Works as a consumer, there is a possibility of cartel kind of situation wherein the Tata Steel Limited as a distribution licensee would start taking undue advantage of the supply to Tata Steel Works as a consumer, which would create adverse impact on other category of consumers.
8. It is also submitted by the learned Counsel for the State Commission that if the Voltage Rebate and Power Factor Rebate is allowed to Tata Steel Works as a consumer, then it will result in less revenue generation for the distribution licensee resulting in adverse impact on the other categories of consumers.
9. In the light of the rival contentions the question framed above would arise for consideration. Let us quote the said question again:

“Whether the State Commission was justified in law in not allowing the Voltage Rebate and Power Factor Rebate in favour of the Steel Works division of the Tata Steel Limited, the Appellant?”

10. On this question, elaborate arguments were advanced by the learned Counsel for both the parties. We have carefully considered these submissions and have given our anxious consideration.
11. Before dealing with the issue in question, let us refer to the background of the case which is relevant for proper appreciation of the matter in this Appeal.
12. The Steel Works of Tata Steel Limited, earlier was not the consumer of the Tata Steel Limited, the Appellant. In the tariff petition, the Appellant, had requested the State Commission for creation of a separate category of consumer for “Steel Works of Tata Steel Limited” giving undertaking that such an arrangement would not make any adverse impact on other category of consumers. This request by the Appellant was also made through their letter dated 06.9.2005 sent to the State Commission. The relevant portion is as follows:-

“With the enactment of Electricity Act, 2003 we agree that Steel works will have to be considered as a consumer for its electricity needs over and above

captive sources. Accordingly, a scheme is being formulated to meet the above scenario with a prime condition that “ there should not be any adverse impact on any category of consumers”. “ With this as a background, the scheme will be put up for the Commission’s concurrence and implemented thereafter.”

13. On the basis of this letter, the State Commission, in the tariff order dated 30.3.2006 gave detailed reasonings as to why Tata Steel Works was required to be treated as consumer. In addition to that, the State Commission directed the Appellant to segregate the accounts of the distribution business from that of Steel business as required under the provisions of section 51 of the Electricity Act, 2003. The relevant portion of the said order is as follows:-

“4.1.2.....

The Commission takes cognizance of the existing distribution supply mechanism in Jamshedpur, and maintains that Steel works has to be treated like any other industrial consumer category, and its tariff has to be determined in line with the prevailing regulations as long as it continues to draw power from distribution licensee. Even the petitioner has acceded to treat Steel works as a separate consumer. In this context, the Commission brings to the notice of the petitioner Section 51 of the Act that provides for other businesses of distribution licensees. As per provisions under this section, a distribution licensee has to maintain separate accounts for each business so as to ensure that the power supply business does not subsidize or burdens its

distribution assets to support other business activities of the licensee.

However, the Commission directs the petitioner to separate the accounts of its Power Business Division from any other Business including Steel Works within six months from the date of issue of this order. This shall take note of the energy supplied to Steel works as well. Also, the petitioner shall undertake proper assessment of the Steel works' resources being utilised for supplying power to the township, especially the distribution network for determination of appropriate wheeling charges. The petitioner shall also make appropriate arrangements to treat Steel Works as a consumer and propose a corresponding tariff for the same within six months of the issue of this order. All the above mentioned information shall be submitted to the Commission for its consideration.”

14. The issue of consumer-ship of Tata Steel works remained unsettled till the Financial Year 2010-11 as the “scheme” as mentioned in the letter dated 06.9.2005 was not submitted to the State Commission for its approval despite directions.
15. Ultimately, the State Commission in the tariff order for 2010-11 dated 27.10.2010 was constrained to consider Tata Steel Works as a consumer of Tata Steel Limited, the distribution licensee. The relevant portion of the order is as follows:-

“6.5. The Commission observes that the matter under consideration with the Hon’ble Supreme Court is the

treatment of Unit II and III of TPCL at Jojobera as captive units of the Petitioner. In this regard, the Hon'ble Appellate Tribunal of Electricity(APTEL) has already ordered that "Jojobera Unit II and III are not to be treated as captive units" of the Petitioner and accordingly, at present, the two units are not being treated as captive units of the Petitioner and generation tariff for Unit II and Unit III is being determined by the Commission. It is therefore only logical, at present, to treat the steel works of the Petitioner as a separate consumer, as agreed to by the Petitioner earlier. Also, it may be noted that the Steel Works receive power from the pool of power procured from TPCL, DVC and other sources and not just from TPCL. The Commission has therefore decided that the Steel Works of the Petitioner shall henceforth be treated as a consumer of the electricity distribution business."

16. This observation would show that the Appellant had expressly given undertaking before the State Commission that the treatment of its Steel Works as its own consumer would not create any adverse impact on any other category of consumers. On that basis, the State Commission decided that the Steel Works of the Appellant shall henceforth be treated as a consumer of electricity distribution business. Thus, it is clear that the State Commission took decision to treat the Steel Works of the Appellant as a consumer of the distribution business of the Appellant on the basis of their undertaking.

17. The State Commission while passing the impugned order dated 27.8.2011 has for the first time introduced the Power Factor Rebate and Voltage Rebate in the distribution tariff of the Appellant in the tariff order for the financial year 2011-12 on its own to bring uniformity in the terms and conditions of supply for all distribution licensees in the State of Jharkhand.
18. However, in the impugned tariff order dated 27.8.2011 for the Financial Year 2011-12, the State Commission has specifically excluded the Steel Works of the Appellant from availing the Power Factor Rebate and Voltage Rebate applicable to the High Tension consumers. According to the Appellant, categorisation of Steel Works separately and denying the Voltage Rebate and Power Factor Rebate is blatantly discriminatory.
19. Though detailed reasonings have not been given in the impugned order dated 27.8.2011 the State Commission has given the detailed reasons for rejection of this Rebate in the Review Order dated 26.11.2011. Let us quote those observations and reasons:-

“7. It is also submitted that if at all the voltage rebate was to be introduced by the Commission, then it should have been extended to the “Steel Works of Tata Steel” as well otherwise the “Steel Works of Tata Steel” is put to a disadvantage. It is pertinent to mention that earlier the “Steel Works of Tata Steel”

was not a consumer. In the tariff petition for FY 2010-11, the petitioner-TSL has requested for creation of a separate category of consumer for “Steel Works of Tata Steel” and also undertook in the petition that such an arrangement would not have any adverse impact on any category of consumers. The relevant portion of the petitioner-TSL’s letter NoI.PBD/461/59/05 dated 06th September,2005 is reproduced below:

“With the enactment of electricity Act, 2003 we agree that Steel works will have to be considered as a consumer for its electricity needs over and above captive sources.”

Accordingly, a scheme is being formulated to meet the above scenario with a prime condition that “there should not be any adverse impact on any category of consumers”. With this as a background, the scheme will be put up for the Commission’s concurrence and implemented hereafter.”

8. Obviously, any rebate results in less revenue generation. Ultimately, it is adjusted in the ARR and tariff has to be determined accordingly. Any rebate to the “Steel Works of Tata Steel” is bound to have its adverse impact on other categories of consumers. Since the petitioner-TSL themselves have mentioned in their tariff petitioner for FY 2010-11 that a separate category of consumer be created for Tata Steel Works on the condition that there would not be any adverse impact on any category of consumers, hence, after careful consideration, the voltage rebate has not been extended by the Commission to the new category “Steel Works of Tata Steel”. The Commission is of the considered view that this issue for review is not tenable and hence rejected.

9. The second issue of Power factor rebate/penalty is co-related with the first issue. On this the petitioner-TSL has raised the issue why the Commission has lowered the Power factor rebate percentage from 95% to 85%. The Commission has lowered the percentage only to bring in the uniformity in respect of consumers of all the distribution licensees and to have the same Terms & Conditions for supply of power. Here also the power factor rebate/penalty has not been extended to the "Steel Works of Tata Steel" for the reasons explained in the earlier paragraphs. Thus this issue is also held to be untenable for review and as such the Commission rejects this contention of the petitioner-TSL as well.

20. On the strength of this order it is submitted by the learned Counsel for the State Commission that if Tata Steel Works had been allowed that Rebate, the entire revenue gap which would be created by the aforesaid Rebates, would have to be passed on to all the other categories of the consumers including the Tata Steel Works.
21. The crux of the submission of the learned Counsel for the State Commission is that when a rebate is allowed to a consumer, his total energy charges and demand charges are reduced to that extent and when these consumers are allowed such Rebates, they are benefitted but it would create revenue gap for the licensees and this gap would be again reflected in the ARR for the next year and adjusted in the next year's tariff. Any Rebate given to Tata Steel Works

would cause adverse impact on other categories of consumers which will be contrary to the specific undertaking given by the Appellant that treatment of its Steel Works as its own consumer would not create any adverse impact on any other category of consumers.

22. We have carefully considered this submission made by the learned Counsel for the State Commission. We do not find any force in this submission of the State Commission.
23. The State Commission in the impugned order has created HT-4 category specifically for consumption of Steel Works of Tata Steel for supply at 132 KV/33 KV. For similar supply at 132 KV/33 KV applicable to other industrial establishments with contract demand of 5000 KVA or more, the applicable category is HT-3 category. The tariff for both HT-3 and HT-4 categories is the same i.e. energy charge @ Rs.3.20 per unit and demand charge of Rs.180 per KVA per month. While Voltage Rebate and Power Factor Penalty/Rebate has been made applicable to HT-3 category, the HT-4 category alone i.e. the Steel Works of Tata Steel has been excluded from application of above Rebate/Penalty. Similarly, Voltage Rebate and Power Factor Penalty/Rebate have been made applicable to all the other HT consumer categories. This, in our view, is

discriminatory to Steel Works of Tata Steel Ltd., as the Steel Works also is a consumer of the Appellant.

24. It is true that the rebate given to all HT consumers will result in some reduction in revenue recovery of the Appellant and the revenue gap so created during the FY 2011-12 will have to be recovered from all the consumers including Steel Works of Tata Steel in the subsequent tariff order.
25. It is admitted that if the rebate is not allowed to Tata Steel Works, then the burden of revenue gap caused due to rebate given to other categories of consumers will also be shared by Tata Steel Works in the subsequent tariff order without Tata Steel Works itself being the beneficiary of the rebate, causing substantial prejudice to the Tata Steel Works.
26. The State Commission has, in fact, introduced Voltage Rebate and Power Factor Penalty/Rebate on its own without any proposal in this regard from the Appellant in order to bring the terms and conditions of tariff at par with other distribution licensees operating in the State. When Voltage Rebate and Power Feeder Penalty/Rebate have been allowed to all the HT industrial consumers across the State, there is no reason for discriminating against only Tata Steel Works.

27. The undertaking given by the Appellant to the State Commission “that such arrangement would not create any adverse impact on any category of consumer” has been wrongly interpreted by the State Commission. The undertaking would only mean that Steel Works of the Appellant would not get any preferential treatment over other similarly placed consumers and its tariff should not be subsidized by other categories of consumers. However, the undertaking in no way implies that the Tata Steel Works will not be considered at parity with other HT industrial consumers.
28. According to the Ld. Counsel for the Appellant, Tata Steel Works are cross subsidising other categories of consumers and not providing Rebate to the Steel Works would result in the Steel Works further cross subsidizing the other consumers and by providing for Rebate the Steel Works will be placed in the same position as that of the other HT consumers. It is further stated that, even after the rebate, the tariff applicable Tata Steel Works will be higher than the cost of supply.
29. We find force in the arguments of the Ld. Counsel for the Appellant. Section 62(3) of the Electricity Act,2003 stipulates that the State Commission while determining the tariff shall not show undue preference to any consumer of

electricity but may differentiate according to consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which supply is required or the geographical position of area, the nature of supply and the purpose for which the supply is required.

30. When Voltage Rebate and Power Factor Penalty/Rebate has been provided by the State Commission for all the consumers of HT-3 category who are similarly placed with that of the consumers of HT-4 category i.e. Tata Steel Works, then the same should be extended to the latter also.
31. According to the Ld. Counsel for the State Commission, the State Commission may differentiate the category of consumers on the basis of several factors including nature of supply. It is further pointed out that the consumer base of the Appellant could be divided into two parts viz. (i) consumer due to operation of law (ii) consumer due to necessity/residual consumers and except Tata Steel Works, the rest other consumers belong to second part i.e. consumer due to necessity/residual consumer.
32. We find that these reasons have not been given by the State Commission in the impugned order or in the Review order in support of its decision for non-application of Voltage Rebate and Power Factor Rebate/Penalty but now

only they are being extended by the Ld. Counsel to justify the order of the State Commission.

33. Even assuming that these new reasons pointed out by the learned Counsel for the State Commission could be taken note of, we do not find any force in these arguments. In law there cannot be any such classification of the consumers as argued by the Learned Counsel for the State Commission. The State Commission has itself decided to include Tata Steel Works as a consumer to be treated like any other industrial consumer category by its order dated 30.3.2006. The relevant extracts from the order of the State Commission are as under:-

“4.1.2. The Commission takes cognizance of the existing distribution supply mechanism in Jamshedpur and maintains that Steel Works has to be treated like any other industrial consumer category, and its tariff has to be determined in line with the prevailing regulations as long as it continues to draw power from distribution licensee.”

34. Having decided so, the State Commission cannot now differentiate Tata Steel Works from other industrial consumers. Ld. Counsel for the State Commission has submitted that improvement in power factor and high voltage helps in improving the voltage profile of the system and reduce system losses and avoids inefficient utilisation of system capacity. Non-improvement of Power factor not

only would lead to continuation of higher level energy losses and poor voltage profile but also would de-motivate the consumers from undertaking efficiency improvement. Accordingly, the power factor rebate and voltage rebate has been introduced in the Appellant's system in the FY 2011-12 to bring uniformity in terms and conditions of all distribution licensees in the State of Jharkhand. When that being the purpose of introducing the power factor and voltage rebates, there is no reason as to why it should not be made applicable to the Tata Steel Works which is a large industrial consumer.

35. According to the Ld. Counsel for the State Commission, the quantum of Rebate in financial terms for Tata Steel Works will be more in view of its high demand and energy consumption. The voltage and power factor rebate has been decided by the State Commission in terms of %age of tariff in the impugned tariff order. Thus, the quantum of rebate in financial terms for Tata Steel Works could not be a reason for not allowing the same at par with other industrial consumers. If the amount of rebate to Tata Steel Works is more than other industrial consumer so is the amount of its total electricity bill.
36. Ld. Counsel for the State Commission has referred to Hon'ble Supreme Court's judgments reported as 4 SCC

683 in the matter of R.N. Gosain Vs. Yashpal Dhir and 2011 (10) SCALE 419 in the matter of Cauvery Coffee Traders, Mangalore Vs Hornor Resources (Intern..) Co Ltd. to substantiate the point that the Appellant can not be permitted to both approbate and reprobate in view of its undertaking earlier given to the State Commission. In the light of our findings as referred to above, relating to the undertaking given by the Appellant the above judgments will not be applicable to the present case.

37. In view of the above, we direct the State Commission to allow Voltage Rebate and Power Factor Penalty/Rebate as applicable to other industrial consumers of HT-3 category to Tata Steel Works as well.

38. **Summary of our findings:**

- i) **The State Commission by not making applicable Voltage Rebate and Power Factor Penalty/Rebate to Tata Steel Works while allowing the same to other similarly placed industrial consumers has discriminated against the Tata Steel Works which is contrary to the provisions in Section 62(3) of the Electricity Act,2003.**
- ii) **If Rebate is not allowed to Tata Steel Works, the burden of revenue gap caused due to rebate given**

to other categories of consumers will also be shared by Tata Steel Works in the subsequent tariff order without Tata Steel Works itself being the beneficiary of the rebate, causing greater prejudice to Tata Steel Works.

- iii) The State Commission has on its own introduced Voltage Rebate and Power Factor Penalty/Rebate for the Appellant's retail supply tariff in order to bring the terms and conditions of tariff at par with other distribution licensees in the State. When these Rebate and Penalty have been allowed to all the HT industrial consumers across the State, there is no reason for discriminating against only Tata Steel Works.
- iv) The undertaking given by the Appellant to the State Commission about Tata Steel Works being treated as a consumer of Tata Steel would not create any adverse impact on any category of consumer should not be interpreted to mean that Tata Steel Works will not be considered at parity with other industrial consumers.
- v) The State Commission while deciding to include Tata Steel Works as a consumer has held in its order dated 30.3.2006 that the Steel Works has to

be treated like any other industrial consumer category. Thus, the State Commission can not differentiate Tata Steel Works from other industrial consumers.

vi) Voltage Rebate and Power Factor Penalty/Rebate as applicable to other industrial consumers of HT-3 category has to be allowed in favour of Tata Steel Works also.

39. In view of our above findings, the Appeal is allowed. The impugned order is set aside only to the extent of disallowing Voltage Rebate and Power Factory Penalty/Rebate to Tata Steel Works. Accordingly, the State Commission is directed to pass the consequential order within 45 days from the date of this judgment. No order as to costs.

43. Pronounced in the open Court on 19th day of November,2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 19th November, 2012

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