

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO.217 OF 2015

Dated : 1st December, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member.**

In the matter of:-

**SINGHBHUM CHAMBER OF)
COMMERCE & INDUSTRIES,)
a registered association through its)
President, Suresh Sonthalia, son of)
Sri Hari Shankar Sonthalia, resident)
of 12, Diagonal Road, Jamshedpur,)
P.O. & P.S. Bistupur, District : East)
Singhbhum, having its registered)
Office at Bistupur, P.O. & P.S.)
Bistupur, District East Singhbhum –)
831 001.) ... Appellants**

AND

- 1. JHARKHAND STATE)
ELECTRICITY REGULATORY)
COMMISSION,)
through its Secretary, having its)
office at Rajendra Jawan)
Bhawan, Main Road, Ranchi,
Jharkhand – 834 001.**

- 2. JHARKHAND BIJLI VITRAN)
NIGAM LIMITED,)**

through its Managing Director,)
having its office at Engineer's)
Building, H.E.C., Township, P.O.)
& P.S. Dhurwa, District Ranchi –)
834 012.) ... **Respondents**

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.

Mr. Mohit Kr. Shah

Ms. Sara Sundaram

Mr. A. Pathak

Counsel for the Respondent(s) : Mr. Farrukh Rasheed for **R-1**

Mr. Ajit Kumar, Sr. Adv.

Mr. Himanshu Shekhar for **R-2**

JUDGMENT

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. Appellant is a registered Association and is engaged in espousing the general cause of its members. Respondent No.1 is the Jharkhand State Electricity Regulatory Commission (**“the State Commission”**). Respondent No.2 Jharkhand Bijli Vitran Nigam Limited is a distribution company duly registered with the Registrar of Companies, Ranchi. In this appeal, the Appellant has challenged Order dated 15/9/2015 passed by the State Commission.

2. The Appellants' case needs to be shortly stated. The State Commission in exercise of the powers conferred under Section 181 read with Sections 45(2), 61 and 62 of the Electricity Act, 2003 ("**the Electricity Act**") has made the JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulation, 2010 ("**the 2010 Regulations**"), which govern the determination of tariff of generation, supply, transmission and wheeling of electricity in the State. The 2010 Regulations prescribe detailed procedure as well as pre-conditions for the determination of tariff. According to the Appellant, one of the mandatory requirements for determination of distribution tariff is submission of business plan by the licensee. It is also pointed out by the Appellants that the most vital element in determination of distribution tariff is the cost of power procurement and, therefore, the State Commission has specifically provided for review and approval of the power purchase cost in terms of Clause 6.37 of the Regulations. For determination of distribution tariff, the licensee is mandatorily

required to submit its sales forecast for each category of consumer by way of its business plan and the same has to be approved by the State Commission by using category-wise sales forecast along with distribution loss trajectory, for estimating the licensee's power procurement requirement for each year. According to the Appellant, in absence of business plan and more specifically non-approval of sales forecast, the determination of distribution tariff shall be contrary to the specific provisions of the 2010 Regulations.

3. Respondent No.2 has filed a petition for review for F.Y. 2013-14 and F.Y. 2014-15, for determining Annual Revenue Requirement ("ARR") and tariff determination for the year 2015-16. However, Respondent No.2 has not filed any business plan and in absence of the same, according to the Appellants, the tariff determination shall be contrary to the provisions of the 2010 Regulations and, hence, cannot proceed further.

4. According to the Appellants, filing of business plan is a basic prerequisite in tariff determination process. If it is not filed, the object of the Electricity Act gets defeated and there is a possibility of the consumers at large getting costlier power. The Appellants, therefore, filed preliminary objections to the proposed tariff determination process, *inter alia*, on the ground that business plan was not furnished. According to the Appellants, despite the fact that the objections were filed by the Appellants on 9/9/2015, the State Commission issued a public notice on 12/9/2015 fixing the public hearing on determination of distribution tariff for F.Y. 2015-16 for 19/9/2015. On 15/9/2015, the State Commission recorded the statement of the counsel for the Respondent that he wanted time to file rejoinder. The State Commission allowed the said prayer and directed that the objections be kept on record to be heard at the time of public hearing – the date of which shall be notified later on. The Respondent was permitted to file rejoinder after serving copy thereof on the

Appellants or their counsel. The Appellant has challenged the said order in this appeal.

5. On 20/11/2015, we partly heard this appeal. The thrust of the argument of Mr. Ramji Srinivasan, learned senior counsel for the Appellants was that a distribution licensee must file a tariff petition with complete data and audited accounts. It is obliged to file its business plan and a petition filed without these details cannot be entertained by the State Commission. In this connection, counsel drew our attention to the judgment of this Tribunal in **Appeal No.16 of 2014** where this Tribunal has given a direction to the State Commission not to accept any ARR or retail tariff revision petition from any distribution licensee in the State without complete data and audited accounts because there should be a transparency in the same. Relevant paragraphs of the said judgment on which counsel has laid stress are as under:

“12.7 In the instant Appeal, as we have stated above, the Appellant only is seeking a direction to

the State Commission to not to accept any future ARR and/or retail tariff revision petition from the Distribution Licensee without having complete data and the audited accounts accompanied with the petition. We think that this submission has legal force and the same should be accepted. Therefore, we find it our duty to direct the State Commission not to accept any ARR or retail tariff revision petition from any of the Distribution Licensees in the State without complete data and audited accounts because there should after all be a transparency in the same. The Discoms cannot be allowed to flout this candid and genuine demand of the Appellant. If the State Commission, in the impugned order, dated 8.8.2012, had observed that Discoms should take energy audit seriously and directed them to segregate technical and commercial losses and to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses, it was still bounden duty of the State Commission to get the said direction implemented and complied with in letter and spirit and there should be no leniency by the State Commission in relaxing or allowing any Distribution Licensee to flout the same directions.

xxx xxx xxx

15. In view of the above discussions and considering the nature of the prayers made by the Appellant in the Appeal Memorandum, we direct the State Commission not to accept any future ARR petition or retail tariff revision petition from the Discoms without complete data and audited accounts. We further direct the State Commission

to take action against the Discoms for non-compliance of the aforesaid directives of the State Commission considering the provisions of Section 24 of the Electricity Act, 2003 or other relevant provisions of law and regulations as the State Commission deems fit and proper. With these directions, the instant appeal being Appeal No. 16 of 2014 is accordingly disposed-of without any order as to costs.”

Counsel submitted that preliminary objection raised by the Appellants should have, therefore, been considered / dealt with by the State Commission.

6. Mr. Rasheed, learned counsel for the State Commission, on the other hand, submitted that the State Commission has taken note of the objections filed by the Appellants and, therefore, it would be proper to adjourn the appeal so as to see what order the State Commission passes on the objections. The appeal was admitted and adjourned to 20/11/2015 giving liberty to the parties to complete the pleadings.

7. Today, Mr. Ramji Srinivasan, learned senior counsel for the Appellants has tendered in this Tribunal a copy of the order dated 2/11/2015 passed by the State Commission. It reads thus:

"After scrutinizing the records in the light of the objections received from the stakeholders and in course of hearings as also required for determining the issues, the Commission finds the following deficiencies, impeding effective consideration of claim made in the Petition:

1. *The opening balance sheet of the successor companies, copy of transfer scheme notified by Govt. of Jharkhand vide notification dated 6th January 2014 and any amendments thereon have not been submitted as yet.*
2. *Audited annual accounts of erstwhile JSEB for FY 2013-14 (Up to 5th Jan 2014) have not been provided as yet.*
3. *Audited annual accounts for FY 2013-14 (January 2014 to March 2014) and FY 2014-15 of JBVNL have not been provided as yet.*
4. *The basis for considering the opening balances of GFA, Cip, LOAN, EQUITY, DEPRECIATION AS ON 6TH January 2014 has not been submitted.*
5. *Actual data for FY 2011-12 and FY 2012-13 as required in the MYT formats with*

functionally segregated details of CWIP, GFA, Consumer Contribution, Subsidies and Grants, O&M expenses including terminal benefits etc. has not been submitted.

6. *The data for FY 2013-14 to FY 2015-16 provided in the MYT formats submitted does not match with the Petition. Moreover, some of the formats are incomplete. MYT formats for FY 2013-14 to FY 2015-16 duly filled in all respects are required to be submitted.*
7. *The number of employees during FY 2011-12 to FY 2014-15 in generation, transmission and distribution functions of erstwhile JSEB and successor companies has not been furnished.*
8. *Asset class wise opening balance of GFA for FY 2013-14 to FY 2015-16 has not been submitted.*
9. *Scheme wise/project wise actual capital expenditure incurred and capitalization during FY 2013-14, FY 2014-15 and FY 2015-16 (Up to October 105) have not been submitted.*
10. *Details on resource gap funding for FY 2013-14 and FY 2014-15 have not been submitted.*
11. *Though it was mentioned in the course of hearing that MoU has been signed between PTPS and NTPC for performance improvement, the impact on the cost of*

power purchased from JUUNL has not been submitted.

12. *Station-wise power purchase details (quantum and cost) for FY 2011-12 and FY 2012-13 including details of own generation has not been submitted.*
13. *Month-wise station wise details of power purchase (quantum and costs) for FY 2013-14 (entire year) has not been submitted.*
14. *Energy Balance for FY 2013-14 (entire year) indicating the distribution loss for FY 2013-14 has not been submitted.*
15. *Soft copies of all bills/invoices for the purpose of verification of power purchase cost during FY 2013-14, FY 2014-15 and FY 2015-16 (Up to October) has not been submitted.*
16. *Actual slab wise details of sales, number of consumers, connected load, revenue assessed and revenue realized for FY 2013-14 (entire year and for period post unbundling) and FY 2014-15 has not been submitted.*
17. *Justification for category wise projections of sales, number of consumers and connected load made in the petition has not been submitted so as to verify as to*
 - a. *Why the sales of MES have been projected to grow by 97% and connected load by 287%.*

- b. *What is the justification for increase in sales in agriculture by merely 3% even though number of consumers has been projected to grow by 8%.*
- c. *What are the reasons for projecting a decrease in sales of LTIS category.*
18. *Though the changes have been sought in Tariff Schedule/Terms and Conditions of Supply, no details or analysis for undertaking proposed changes along with impact on tariff for each category and revenue from proposed change has been provided separately for the following:*
- a. *Load factor penalty – details and analysis for undertaking proposed changes along with impact on tariff for each category and revenue from proposed change.*
- b. *Power factor penalty – details and analysis for undertaking proposed changes along with impact on tariff for each category and revenue from proposed change.*
- c. *Distinct categorization of rolling mills and other associated operation with induction furnace under HTS – details of present practice of rolling mills has not been provided. The time required for undertaking such metering activity and impact on tariff and revenue has also not been provided.*

- d. Metering facility – Cost estimate of undertaking the change in metering facility has not been furnished.*
19. *In Para 2.6, while calculating depreciation 40% of additions is from consumer contributions, grants, etc. has been assumed in FY 2013-14 but the basis thereof has not been explained by any detail on year wise capitalization on account of consumer contribution. Also the basis of calculating the depreciation rate on average basis has not been explained.*
20. *In para 2.9.1, the calculation of interest on consumer security deposit has not been supported by the details of the number of consumers added during the remaining period of FY 2013-14 and FY 2014-15.*
21. *The detailed break up of Non-Tariff Income for FY 2013-14 and FY 2014-15 has not been provided.*

In order to afford one more opportunity, one week time is granted for furnishing the required details / data / documents as indicated hereinabove, failing which the Petition shall be dealt with and disposed of, in accordance with law.

*Sd/-
Member (Fin.)*

*Sd/-
Chairperson”*

From the above order, it does appear that the State Commission has taken a serious note of the objections raised by the Appellants.

8. Mr. Ramji Srinivasan submitted that the above order indicates that several vital material information and data required for the purposes of determination of tariff has not been filed. The State Commission has noted that the said deficiencies in the tariff petition are impeding effective consideration of the petition. Counsel submitted that it is, therefore, necessary that a fresh tariff petition be filed incorporating all the data. Additionally business plan should also be filed. Counsel submitted that copies of all the amendments in the tariff petition as also the new data submitted by Respondent No.2 should be uploaded on the website so as to invite objections and suggestions from all the stakeholders. Thereafter, public hearing should be held. The State Commission should thereafter pass a reasoned tariff order expeditiously.

9. While meeting the submissions of Mr. Ramji Srinivasan, our attention is drawn by Mr. Ajit Kumar, senior counsel for Respondent No.2 to the **judgment of this Tribunal in Appeal**

No.239 of 2013 and batch of appeals where this Tribunal has referred to its judgment in Appeal No.121 of 2010 and observed that this Tribunal had not issued any direction that the tariff determination exercise should not be held in the absence of the audited accounts. Counsel submitted that in the present case, the State Commission by order dated 2/11/2015 has noted the deficiencies and directed that the required details/data/documents be filed. Respondent No.2 has responded to the said order by filing certain details/data/documents. The State Commission should, therefore, be now allowed to pass the tariff order in accordance with the law.

10. Mr. Rasheed, learned counsel for the State Commission submitted that the State Commission is not treating the details/data/documents as amendment to the petition. However, the State Commission is duly considering all the details/data/documents filed by Respondent No.2 and explanations offered by Respondent No.2 to the queries raised

by the State Commission. It has also sought expert opinion. If the State Commission finds that the licensee i.e. Respondent No.2 has taken any new ground which it has not taken earlier, hearing will be given to the stakeholders.

11. In view of the order dated 2/11/2015 passed by the State Commission and in view of the statement made by Mr. Rasheed, learned counsel for the State Commission, which we have accepted, we feel that it is not necessary at this stage to go into the rival submissions of the counsel based on the judgment of this Tribunal in Appeal No.121 f 2010 and Appeal No.239 of 2013. We express no opinion on the said submissions. The State Commission appears to be determined to consider all the required details / data / documents and it has granted time to the parties to furnish the said documents. Pursuant to the order dated 2/11/2015, certain details/data/documents and explanations have been filed by Respondent No.2. We hope and trust that the State Commission disposes of the petition in accordance with law and in light of the relevant judgments of this Tribunal or of the

Supreme Court, if any. We make it clear that we have expressed no opinion on the contentions raised by the parties and the parties will be at liberty to raise them if they choose to challenge the final order passed by the State Commission.

12. The appeal is disposed of in the aforestated terms.

13. Pronounced in the Open Court on this 1st day of December, 2015.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

REPORTABLE/NON-REPORTABALE