

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY  
Appellate Jurisdiction, New Delhi**

Appeal No. 107 of 2007 & IA No. 132 of 2007

***Dated this 10<sup>th</sup> day of October, 2007***

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member  
Hon'ble Ms. Justice Manju Goel, Judicial Member**

**IN THE MATTER OF:**

**Damodar Valley Corporation**

DVC Towers, VIP Road,  
Kolkotta – 700 054.

... Appellant

Versus

**Jharkhand State Electricity Regulatory Commission**

2<sup>nd</sup> Floor, Rajendra Jawan Bhawan-Cum-Sainik Bazar,  
Main Road,  
Ranchi – 834 001.

... Respondent

For the Appellant : Mr. M. G. Ramachandran, Advocate  
Mr. Anand K. Ganesan, Advocate and  
Ms. Swapna Seshadri, Advocate

For the Respondent : Mr. Sudarshan Shrivastava, Advocate  
Mr. A. K. Mehta, Sectt. JSERC

# **J U D G M E N T**

**Ms. Justice Manju Goel, Judicial Member**

Introduction:

The present appeal is directed against the order of the Jharkhand State Electricity Regulatory Commission (the Commission for short) dated 06<sup>th</sup> June, 2007 & 05<sup>th</sup> July, 2007. Vide the impugned order dated 06.06.2007, the Commission found the proposition of the appellant that its ARR had been delivered by CERC and was binding on the Commission to be incorrect and directed the appellant to submit the ARR with the required details in the format prescribed in the Regulations of the Commission for determination of tariff for distribution and retail sale of electricity in the areas of supply of appellant in the State of Jharkhand within a fortnight of the receipt of the order. The Commission also expressed its displeasure and took exception to the language used in the petition of the appellant and warned that in future adequate care should be taken in future in using the language. The appellant, in response to the order dated 06.06.07 filed a petition on 21.06.07 contending that it was not supplying electricity to any consumer at voltage less than 30,000 volts and that the universal supply obligation in terms of Section 43 of The Electricity Act 2003 was not applicable to the appellant. The appellant however, did not come out with the ARR petition as was required by the Commission

although it submitted certain details relating to retail sale of electricity. Vide the impugned order dated 05.07.07 the Commission held that the appellant was under the universal supply obligations in terms of Section 42(1) and 43(1) of The Electricity Act 2003 and directed the appellant to submit ARR essential for determination of distribution tariff. The Commission also observed that contempt of the Commission had been committed by the appellant in the manner in which its submissions were made in the Affidavit. The appellant was granted 15 days to file the ARR petition essential for determination of distribution tariff and also called for an unqualified apology. The present appeal challenges the Commission's demand for an ARR petition as also its direction to seek unqualified apology.

Facts :

2) The appellant, Damodar Valley Corporation, is a statutory body constituted under Damodar Valley Corporation Act 1948 (herein after called DVC Act 1948). DVC inter alia, generates and transmits & distributes electricity. It operates in the two States of West Bengal & Jharkhand. The DVC Act bars the appellant from supplying electricity to any consumer below 30,000 volts of voltage level and accordingly it has no consumer/purchaser of electricity at a voltage less than 30,000 volts. The appellant supplies electricity to industrial consumers and railways apart from supplying to the West Bengal State Electricity Board and Jharkhand State Electricity

Board. As per Section 79 of The Electricity Act tariff of the appellant has to be determined by Central Electricity Regulatory Commission. Section 79 of The Electricity Act does not, however, deal with the distribution and retail sale of electricity to the consumers. Distribution and retail tariff of electricity supply to consumers in Damodar Valley is regulated by the State Commissions concerned in terms of Section 86 of The Electricity Act of 2003. The generation and transmission tariff as determined by Central Commission becomes input cost for distribution licensees to whom electricity is supplied by the appellant. The Central Commission passed an order dated 03<sup>rd</sup> October, 2006 regarding the generation and transmission tariff of the appellant which is now under appeal before this Tribunal, being appeal No. 273/06. On 14<sup>th</sup> March 2007 this Tribunal passed an order directing the appellant to file the tariff petition before the West Bengal State Electricity Regulatory Commission and the Jharkhand State Electricity Regulatory Commission, viz. the present Commission within 18 days. Accordingly on 02.04.07 the appellant filed its tariff petition for determination of distribution and retail supply of electricity of Damodar Valley area falling within the State of Jharkhand on 02.04.2007. The Commission found that the tariff petition had not been filed as per Regulations notified by it. The appellant wanted more time to file the petition for distribution tariff with all details as required by the Regulations on the subject. Vide an order of 27.04.07 the appellant was given one month's time. In

the meantime, the appellant was allowed to charge its consumers in Jharkhand for supply of electricity at the rate at which the appellant were charging on 31<sup>st</sup> March, 2006. However, the Commission made it clear that it has neither accepted the appellant's distribution tariff as on 01.04.2006 nor the formula for the fuel surcharge. Its order concerning the fuel surcharge adjustment is a subject matter in an appeal, being No. 69/07 which is pending. The appellant filed a petition before the Commission placing on record the entire pleadings, statement, documents and other submissions made by the appellant made before the Commission and stated that the entire revenue requirement stood determined by the order of the Central Commission and submitted that the revenue requirement as settled by the Central Commission should be accepted by the Commission. The Commission however, passed the impugned order dated 06.06.2007. We will presently narrate how the impugned orders were passed.

3) The CERC vide its order dated 03.10.06 had determined the revenue requirement of the appellant. The appellant, as mentioned earlier, has been performing the functions of generation and transmission of electricity and also distribution of electricity but only those consumers who availed of electricity at more than 30,000 volts. While determining the ARR the CERC bifurcated the capital cost between the transmission & distribution system at a ratio of 87:13. The Commission observed in its order dated 06.06.2007

that the CERC as such had not determined the ARR for distribution and retail sale of electricity. The Commission, further observed that the appellant may take the figures of projected liability, capital cost etc. but said that those figures needed to be bifurcated and segregated so as to give the figures pertaining to the distribution and retail sale of electricity by appellant DVC in the State of Jharkhand only for the purpose of ARR determination vis-à-vis the State of Jharkhand. The commission demanded the following:

*“.... But again these figures are needed to be bifurcated and segregated for those pertaining to the distribution and retail sale of electricity by the petitioner DVC in the state of Jharkhand only for the instant application. The assets and cost which are clearly attributable to the distribution and electricity supply in the state of Jharkhand (which is generally so) should be segregated accordingly but those assets and costs which are common to the state of West Bengal or to transmission business should be allocated on a reasonable basis according to the ground realities. But all the same the fact remains that the ARR of the distribution and retail sale of electricity in the area of supply of the petitioner DVC within the state of Jharkhand; this being an activity distinct from generation and transmission with its own issues and considerations some of which different from that of the*

*generation and transmission ..... Accordingly the petitioner DVC shall be required to submit the ARR computed in accordance with the procedure laid down in the regulation of the Commission and submit the required details in the manner and in the format prescribed in the regulations;.....”*

4) The appellant filed a tariff petition giving details of retail business but without those required for ARR determination vis-à-vis the State of Jharkhand. The above view is reiterated in the subsequent impugned order dated 05.07.07 when the Commission directed “

*“The DVC is not complying with the direction of the Commission so far submitting of ARR is concerned which is essential for determination of the distribution tariff. However, the DVC is again allowed time of 15 days for compliance of the Commission’s direction given in its earlier and today’s order and if the orders are not complied with within 15 days from today a proceeding will be initiated against the petitioner for non-compliance of the Commission’s order and action will be taken under Section 142 of the Electricity Act 2003.”*

5) Both the impugned orders also made some observations about contempt being committed by the appellant's officer to which we will advert later. The Commission has filed a response contending that two impugned orders dated 06.06.07 and 05.07.07 are legal and valid and accordance with rules and regulations. It also represented its views at the time of hearing through its advocate Mr. Sudarshan Srivastava. We have heard Mr. Sudarshan Srivastava as well as Mr.M.G.Ramachandran, counsel for the appellant. We have given our anxious considerations on the question in issue.

6) On hearing the counsel for the parties we find that the facts themselves lead to the conclusion that the demand made by the respondent Commission cannot be sustained in law. It is not disputed by the respondent that the annual revenue requirement for the appellant as determined by CERC cannot be interfered with. The Commission, however, requires bifurcation of all figures relating to capital costs etc. between the appellant's business in West Bengal and its business in Jharkhand. Mr.M.G.Ramachandran submitted that the activity and infrastructure of generation, transmission and distribution of the appellant is such that the cost cannot be bifurcated between its businesses in the two States. It is submitted that even the distribution assets of the appellant is common for the two States except, however, for the transmission lines which can be measured



in terms of their length. This position is not disputed by Mr.Sudarshan Srivastava, counsel appearing for the respondent. We appreciate the concern of the Commission which lies behind seeking bifurcation of the 13% of the capital cost which has gone into the distribution business in the two States. The Commission is genuinely interested in keeping the distribution tariff for its industrial consumers at lowest possible level. However, the demand for filing a fresh ARR petition altogether and further showing therein the part of the cost incurred in business in Jharkhand is not possible to comply with. The consumers located in Jharkhand are required to meet only that part of the revenue requirement which arises out of the electricity supplied in Jharkhand. However, what proportion of the cost of supply of the appellant is attributable to business in Jharkhand has to be determined on some rational criteria other than segregated ARR in the prescribed format as mentioned above. At the time of hearing it was suggested that the bifurcation of 13% of the capital cost etc. may be done in the ratio of the units of electricity consumed between the two States. The Commission may adopt this criteria or may evolve some other criterion suitable for the purpose as it may be advised. We refrain from giving any advice on this issue. The Commission's demand for a fresh ARR filing as made in the two impugned orders cannot be sustained and the appeal to this extent requires to be allowed.

7) The second leg of the appeal concerns the order of the Commission requiring an apology from Mr.Swapan Kumar Saha, Chief Engineer (Commercial) Commerce Department, DVC. The order dated 06.06.07 does not specifically point out the words or expression which may have been found to be inappropriate. However, in another part of this order there is a mention that the appellant had submitted that the Commission had wrongly recorded certain part of the proceedings dated 27.04.07. The Commission has stated in its order dated 06.06.07 that a prayer for deletion of its observations in the proceedings dated 27.04.07 was rejected as the submission regarding incorrect recording was not found to be correct. The second impugned order dated 05<sup>th</sup> July, 2007 records the following regarding the apology tendered by the appellant's officer which was in the following language:

*“I would like to submit that if the wordings in the petition have hurt the feelings of the Hon’ble Commission, I deeply regret that, there was absolutely no intention in petition to hurt any ones’ feelings let alone the Hon’ble JSERC.”*

They proceeded to say:

*“Here we would like to make it clear that there was no question of hurting feeling of the Commission. A wrong & false allegation was leveled against the Commission by*

*the D.V.C. stating that the Commission had incorrectly recorded the submissions of their counsel though their counsel had neither filed any affidavit to deny that nor denied verbally even though he was present in the Court which has been clearly written in our order dated 06.06.2007. This is nothing but clear contempt of the Commission and for that the D.V.C. must seek unconditional and unqualified apology otherwise contempt proceeding may be initiated against the applicant.”*

8) Even at the time of hearing the counsel for the Commission did not categorically show what was so objectionable in the language used by any officer of DVC or by Mr.Swapan Kumar Saha. Only thing pointed out at the time of hearing was the sentence in Para 11 of the tariff petition filed by the appellant where the order of the Commission is referred to as “when requested by the Commission”. It is pointed out that the proper language would have been “when required by the Commission”.

9) It appears to us that the Commission is being too sensitive in the matter of language to be used before it. To err is human. Possibility of a mistake in recording of the proceedings or in recording submissions of a party cannot be ruled out. If the party feels that its submissions have not been correctly recorded it is his duty to bring it to the notice of the authority who records such a

submission. Such a submission cannot per se be contemptuous. Similarly, the language reproduced above is also not contemptuous.

10) At the time of hearing Mr.M.G.Ramachandran stated that the appellant is obliged by law to submit to the jurisdiction of the Commission and that it never intended to show any disrespect for the Commission and has all the respect for it. He reiterates that no officer of the appellant could ever intend to undermine the authority of the Commission. We do not think anything more is required to be stated and the matter should rest at that.

11) In view of the above discussion, the appeal is allowed and the Commission's order dated 06.06.07 and 05.07.07 requiring the appellant to furnish a fresh ARR petition or to seek a further unconditional apology is set aside.

12) Interlocutory Application No. 132 of 2007 is now in fructuous and hence dismissed.

Pronounced in open court on this **10<sup>th</sup>** day of **October, 2007**.

**( Mrs. Justice Manju Goel )**  
**Judicial Member**

**( Mr. H. L. Bajaj )**  
**Technical Member**

The End