

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

**Appeal No.129 of 2007 & I.A. Nos. 174 & 175 of 2007**

**Dated: May 8 , 2008.**

Present: - Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. H.L. Bajaj, Technical Member

Jharkhand State Electricity Board  
Engineering Bhawan  
HEC, Dhurwa  
Ranchi-834002  
Jharkhand

.....Appellant(s)

Versus

Jharkhand State Electricity Regulatory Commission  
Secord Floor,  
Rajendra Jawan Bhawan-cum-Sainik Bazar  
Main Road, Ranchi-834001  
Jharkhand

.....Respondent(s)

Counsel for Appellant(s): Mr M.G.Ramachandran with  
Mr. Anand K. Ganesan &  
Ms Swapna Seshadri, Advocates

Counsel for Respondent(s) Mr C.K. Rai, Advocate for Domestic  
Consumers  
Mr. Mohit Kumar Shah, Mr. Ravi  
Bhushan & Mr. Ajit Kumar,

Mr. Dhananjay, Advocates for  
HT/HTSS consumers and  
Jharkhand Induction Furnace  
Owners Association

Mr. Gopal Prasad with Mr. S.K.  
Singh, Advocates for Federation of  
Jharkhand Chamber of Commerce  
& Industries

Mr. C.S. Vaidyanathan, Sr. Advocate  
with Mr. Sudarshan Shrivastava,  
Advocate & Mr. A.K. Mehta (Sectt.)  
for Resp. No. 1

Mr. Dhananjay, Advocate

Mr. V.K.P. Sinha (Objector) for Tayo  
Rolls Ltd. Jamshedpur HT  
Consumers

### **Judgment**

**Per Hon'ble Mr. H.L. Bajaj, Technical Member**

This appeal challenges Order dated August 31, 2007 passed by the Jharkhand State Electricity Regulatory Commission (JSERC or the Commission in short) for determining Revenue Requirements and Tariff of the appellant, Jharkhand State Electricity Board (JSEB or the Board in short), for the financial year 2006 -07 and true-up of financials for FYs 2003-04, 2004-05, 2005-06

2. Facts of the case are given below in brief:
3. JSEB was carved out of the Bihar State Electricity Board (BSEB in brief) and constituted on March 10, 2001 as per the provision of the Bihar Reorganization Act, 2000.
4. Though, JSEB had become functional on March 10, 2001, several issues pertaining to the distribution of assets and liabilities and also personnel between BSEB and JSEB have remained to be sorted out and many of such issues are pending before the Supreme Court of India in Petition No. 1 of 2006 for final decision.
5. After the reorganization, JSEB came to be vested with the activities of generation, transmission and distribution of electricity within the State of Jharkhand. JSEB is also the State Transmission Utility (STU in short) under Section 39 of The Electricity Act, 2003 (The Act) for the State of Jharkhand. JSEB has remained a vertically integrated utility till date as per the

notification issued by the State Government under Section 172 of The Act with due sanction from the Central Government.

6. JSEB filed a petition before the Commission on August 26, 2003 for determining the Annual Revenue Requirements (ARR) and revision of tariff for the year 2003-04. As against the proposed ARR of Rs. 1526.82 crores, the Commission approved ARR of only Rs. 1334.11 crores. As the revenues from sale of power at the then existing tariff was projected as Rs. 1219.03 crores by JSEB, there remained a revenue gap of Rs. 307.79 crores (Rs. 1526.82- 1219 = 307.79). However, the Commission still found a surplus of Rs. 9.31 crores. The Board proposed a net revenue requirement of Rs. 2470.75 crores for FY 2006-07. However, the Commission vide its order dated August 31, 2007 approved a net Revenue Requirement of Rs. 1260.42 crores. Thus aggrieved by the order of the Commission, the appellant has filed this appeal.

7. The appellant has sought the following relief:

- a) Allow the appeal and set aside the Order dated August 31, 2007 to the extent impugned in the present appeal;

- b) Direct the Commission to re-determine the Revenue Requirements of JSEB for the year 2006-07 and truing up for the earlier years as per the decision of this Tribunal;

8. Though number of contentions have been raised in the appeal grounds, the learned counsel appearing for the appellant while advancing common contentions restricted himself to the following grounds seeking reliefs. Having heard the rival parties, the issues that need to be dealt and decided are taken up below one by one:

**1. Non-consideration of Annexure-B.**

9. Learned counsel Shri MG. Ramachandran, appearing for JSEB stated that the appellant had annexed a letter as Annexure-B which is not addressed to the Commission but to a Member of the Commission by name who did not place that letter before the Commission and therefore the Commission was not knowing about this important letter.

10. Per contra learned counsel for the Commission stated that the issue raised in the letter has been discussed in the

provisional tariff order and that the Commission was facing difficulties because of the different figures being quoted by the appellant and that in the absence of certified accounts the Commission had no way to rely on the accounts except after verification of figures by the Chartered Accountant and on the comments of the Accountant General in the matter of accounts. He submitted that the Board in its accounts for 2005-06 had itself indicated that they had current assets of a sum of Rs. 6233.72 crores under Cash in Transit. Learned counsel asserted that in view of such huge cash in Bank there was no need for the Board to resort to borrowings.

**Analysis and Decision:**

11. The main cause of the aggrievement of the appellant stems from the fact that the Commission has totally ignored vital fact known to at least one of its Member to whom the letter dated July 30, 2007 was addressed. This letter had clarified the status regarding net balance of Rs. 5888.13 crores. As much turns on this letter it is important to reproduce the same below:

*Annexure-B.*

*Jharkhand State Electricity Board  
Dhurwa, Ranchi.*

*No. 632*

*Dated: 30.07.2007*

*From:*

*K.N. Thakur  
CE(C&R), JSEB, Ranchi*

*To:*

*Shri P.C. Verma  
Member, JSERC, Ranchi*

*Sub: Clarification over cash in transit amount shown in the  
Balance Sheet as on 31.03.2006.*

*Sir,*

*While inviting your kind attention on the above mentioned subject I would like to explain you the specific clarification over cash in transit balance shown in the Balance Sheet of J.S.E.B. as on 31.03.2006. Cash in Transit balance head consists of transaction executed under sub-head. Fund transferred against Sale of Power from field revenue units i.e. 24.5, Fund diverted to field units from Headquarters 24.601, ICT (Cash) 24.6 etc. This is not actual cash/fund which are in transit. Reason for this huge figure is that only 25% of the corresponding Credit/Debit which is accumulated at Headquarters (Common Unit) is taken as decided by the Apex Board and Govt. of Jharkhand. Due to this one side of current assets under sundry receivable has been considered on the basis of 100% and other part which comes from common units accounts has been considered only*

25% of such balances i.e. 24.5 and 24.601. All necessary adjustment will be finalized only after the final adjustment with B.S.E.B. Huge Balances comes only due to non finalization of 24.5 and 24.601 between erstwhile B.S.E.B. and J.S.E.B.

1	J.S.E.B.	58,881,325,563.00
2	P.T.P.S. Patratu	20,995,823.00
3	S.R.H.P. Sikidiri	6,000.00
4	Total Generation	21,001,823.00
5	Trans.Circle Jamshedpur	25,614,383,916.00
6	Trans.Circle Ranchi	9,805,734,354.00
11	Total transmission	35,420,118,270.00
12	Elecl.Circle Chaibasa	3,661,450,169.00
13	Elecl. Circle Dhanbad	16,328,871,496.00
14	Elecl. Circle Dumka	738,489,919.00
15	Elecl. Circle Gumla	235,835,407.00
16	Elecl. Circle Jamshedpur	16,804,776,185.00
17	Elecl.Circle, Ranchi	9,091,182,982.00
18	Elecl.Circle Daltongang	806,558,463.00
19	Elecl.Circle, Deoghar	2,003,356,246.00
20	Elecl.Circle, Giridih	1,330,258,538.00
21	Elecl.Circle, Hazaribad	5,847,280,529.00
22	Elecl.Circle, Sijua Jharia	3,640,287,493.00
23	<b>Total distribution</b>	60,488,347,427.00
33	DDA(HQ) (25%)	(37,048,141,957.00)
35	Total (JSEB)	<b>58,881,325,563.00</b>

Note: As per decision taken by the J.S.E.B. Board in its Board meeting held on 10.01.2004, that opening balance will be drawn in the following manner.

- (i) Fixed assets “as is where is basis”
- (ii) Current assets “as is where is basis”
- (iii) Liabilities of field units “as is where is basis” and

- (iv) *Assets and liabilities of common units (DDA Hqrs & RE) will be considered on the basis of 75:25%. (B.S.E.B. and J.S.E.B.)respectively.*

*On the basis of above guidelines, first Provisional Annual Account for the year 2001-2002 has been prepared.*

*Total Dr side of field units of J.S.E.B. Jurisdiction under Cash in transit group balance in the erstwhile BSEB annual account was Rs. 9592,94,44,520 whereas credit balance of DDA HQTR was (-) Rs. 14819,25,67,829 on which only 25% taken for the drawing of opening balance of DDA Hqrs JSEB i.e. ( 37,048,141,957.00). This is just for the drawing of opening balance of JSEB. Actually no cash or bank balance have been transferred from the erstwhile BSEB to successor BSEB physically. Thus net balance came out Rs. 58,881,325,563.00 which is totally fictitious balance and this will be removed from the SCH-26© cash and bank balance, the net difference will arrive only Rs. 293,49,79,719.00 which is the actual cash and bank balance of JSEB as on 31.03.2006.*

*This is for your kind information.*

*Yours faithfully,  
Sd/-  
(K.N.Thakur)  
CE (C&R)*

12. The foregoing letter categorically brings out that the net balance of Rs. 5888.13 crores is totally fictitious. In our view the Commission cannot and should not have ignored such an important and critical input (available with one of its Member) which has created such an imbalance in the tariff fixation exercise. It has been averred by the Commission that letter dated July 30, 2007 was not placed by the concerned Member

before it. This fact is even more serious as the letter has been addressed to Member in his official capacity and ought to have been placed before the Commission as the implications of putting aside such critical input is serious with disastrous impact on the entire tariff setting exercise.

13. It is important to understand the concept of Cash in Transit: it is defined as *“Cash remitted by one office to the another within the company and outstanding on the date of balance sheet is required to be shown under the head cash and balances, and Cash in Transit to be shown under a sub head separately. (reference Guide to Company Balance Sheet and Profit and Loss Account by Dalal Gaggar and Kshir Sagar, 4<sup>th</sup> Edition, 2003 published by Wadhwa & Co. Nagpur”.*

14. Cash in transit is shown as a separate line item in the schedule of cash and Bank Balance-Current Assets. It is rather strange that when the appellant has brought a critical input to the knowledge of the Commission via one of its Member why the same has been ignored merely on a technical ground that it has

not been addressed to the Commission and it has been addressed to only one of its Member. The Member is also engaged along with other Members of the Commission in the same exercise and, therefore, such input of immense import should not have been ignored by the Commission. The impugned order is based on fiction that there existed a huge balance in the books of accounts of the appellant which was never a reality; the impugned order based on such a fiction was bound to be vitiated and is of no pragmatic consequence.

15. In view of the foregoing, it is necessary for the Commission to have a re-look into the entire tariff setting exercise based on the ground realities as indicated by the appellant. We order accordingly.

**(2) Interest and Finance Charges:**

16. Learned counsel Mr. M.G. Ramachandran appearing for the appellant contended that the Commission had disallowed the entire claim for interest and finance charges of JSEB of Rs. 551.60 crores on the ground that a sum of Rs. 5888.13 crores is

shown in the books available with JSEB as cash in transit and pending the reconciliation and clarification on various issues arising out of the bifurcation of BSEB the consumers in the state of Jharkhand should not be burdened with the interest liability of JSEB. He stated that the Commission has arrived at a figure of Rs. 5888.13 crores as the cash in hand and bank available with JSEB without appreciating that this amount referred to by the Commission are merely entries in the Books of Accounts as cash in transit relating to Zones/areas and it has not been reconciled with the accounts of the Headquarters and these cannot, in any case, be treated as cash available for investments and that the Commission fully ignored the letter dated July 30, 2007 furnished by JSEB pointing out clearly the status of the amount of Rs. 5888.13 crores and as to why the same cannot be treated as cash available with JSEB for investment purposes.

17. Learned counsel stated that this Tribunal has consistently held, including in the case of Karnataka Power Transmission Corporation Limited vs. Karnataka Electricity Regulatory Commission Order dated December 04, 2007 passed in appeal

No. 100 of 2007 with respect to interest and finance charges as under:

*“ 39. In view of the above judgment of this Tribunal the payments of interest and finance charges, pending final approval of the Commission, are merely provisional payments and, therefore the Commission need not discontinue its decades old practice of allowing the interest and finance charges to the licensee till capitalization of the assets. If there is any variation in the expenditure made by KPTCL and the approval accorded by the Commission, adjustments can always be made. Moreover, if the interest payments are not allowed till capitalization then the interest During Construction will also form a part of asset base and for the useful life of the asset the return on the equity portion will be allowed to the licensee and this will not be in the interest of the consumer. It will therefore, be just, fair and equitable to continue to allow the interest and finance charges to KPTCL as per Commission’s well established practice and make required adjustments at the time of capitalization of assets as approved by the Commission. We order accordingly”.*

18. Learned counsel submitted that the Commission is wholly unjustified in disallowing the valid and bonafide claim of JSEB

with respect to interest and finance charges of Rs. 551.60 crores on pure assumptions and surmises without appreciating that the purported amount of Rs. 5888.13 crores is merely a book entry and not hard cash with JSEB.

19. Per contra learned counsel for the Commission denied that it has disallowed the interest and finance charges. The appellant as per un-audited accounts for the year 2005-06 had submitted his balance sheet indicates an amount of Rs. 6233.72 crores as 'Cash and Bank Balance' under Current Assets and that keeping this in view the Commission had asked the appellant to meet these requirements from this resource. Learned counsel further stated that pending reconciliation and clarification it would not be appropriate to burden the consumers with such huge liabilities and therefore it had directed the appellant to submit the audited annual accounts for the previous years with detailed explanations and clarification on the issue. Learned counsel stated that the appellant can explain/correct its accounts, get it approved by the statutory auditor and approach the Commission

for revision of its tariff, which is otherwise also due as per the regulation of the Commission.

**Analysis and decision:**

20. Having decided the issue of the Cash in Transit, the Commission is required to re-work the interest and finance charges in view of the ground reality. We order accordingly.

**(3) Power Purchase Cost and Transmission Charges.**

21. Learned counsel contended that the Commission has allowed only a provision of Rs. 30 crores to be made for the power purchase cost to be paid to Damodar Valley Corporation (DVC) by JSEB on the only ground that the order dated October 03, 2006 of the Central Electricity Regulatory Commission (CERC) has reduced the tariff of DVC without appreciating that the aforesaid order of the CERC was stayed by this Tribunal by its orders dated December 06, 2007 and February 26, 2007 and that at the time of passing of the impugned order, the matter, being appeal No. 273 of 2006 and others relating to DVC, was sub-judice before this Tribunal. He

submitted that this Tribunal by order dated November 23, 2007 has allowed the appeal No. 273 of 2006 in favour of DVC. In any case, the Commission has not appreciated that DVC had continued to bill and claim (though disputed by JSEB) the amount as per the tariff prevalent before the order of the CERC and was enforcing such claim against JSEB. He further submitted that the power purchase from DVC constitutes 45% of the total purchases of JSEB and the Commission has only allowed a cost of Rs. 1.93 per unit as against Rs. 2.86 per unit claimed by JSEB. He also stated that the Commission has not allowed the power purchase cost fully for the following generating stations on patently wrong reasons:

<b>Sl.No.</b>	<b>Generating stations</b>	<b>Rate payable Rs./unit</b>	<b>Rate allowed Rs./unit</b>
1.	Chukha	1.55	1.52
2.	Tala	1.84	1.83
3.	Talchar	1.25	1.11
4.	Farakha	1.74	1.65

22. Learned counsel elaborated that the alleged basis for such disallowance in the case of Chukka and Tala was that JSEB can get prepayment discount and in the case of Talchar on account of adjustments of the past period incentive and in the case of Farakha non-inclusion of water cess charges and income tax charges.

23. He stated that the Commission has also not allowed the full amount of transmission charges of Rs. 25.27 crores based on actuals made by JSEB to Powergrid Corporation of India and has further disallowed delayed payment surcharge paid by JSEB to generating companies.

24. Per contra learned counsel for the respondent Commission submitted that whereas the appellant has contended that the Commission should have provided the power purchase cost from DVC at the rate the DVC was raising the bill, in the appeal filed by DVC before this Tribunal against order of CERC fixing the DVC tariff, JSEB which was a respondent in this appeal has itself maintained that DVC cannot charge the tariff determined by itself and now JSEB is asking to provide the power purchase

cost to be allowed at the rate DVC was raising the bill. CERC had determined the tariff of DVC at Rs. 1.93 per unit which has been allowed by the Commission though the JSEB has been paying at the rate Rs. 1.70 per unit.

25. The learned counsel for the respondent Commission has fairly stated that as this Tribunal has disposed of appeal No. 273 of 2006 and other connected appeals by order dated November 23, 2007, the appellant Board is required to file fresh ARR along with audited accounts and the Commission shall review the cost of power purchase and other charges.

**Analysis and decision:**

26. Learned counsel for the respondent Commission has argued before us that the appellant himself has maintained that the DVC cannot charge the tariff determined by itself and on the contrary JSEB is asking to provide the power purchase cost to be allowed at the rate DVC was raising the bill.

27. We do not find any abnormality in the appellant's approach adopted by it to plead its case as a rival party to DVC. It does

not mean that it should forego its rightful claim for its tariff determination. We note that learned counsel for the respondent Commission has stated that as appeal No. 273 of 2006 has been disposed of by this Tribunal the appellant Board is required to file fresh ARR along with audited accounts and the Commission shall review the cost of power purchase and other charges. We order accordingly.

28. The Commission should also allow the transmission charges paid by JSEB to Powergrid Corporation of India as also the Income Tax and the water cess. As JSEB, in the absence of sufficient funds could not have enjoyed prepayment discounts in case of Tala and Chukha, we direct that the full rate of power purchased be allowed to JSEB.

**(4) Generation cost of Patratu Thermal Power Station (PTPS)**

29. Learned counsel submitted that the Commission has not allowed the actual cost of generation of electricity at PTPS on the ground of inefficiency and lack of improvement without having any regard to the 35 years vintage of PTPS. The Commission has penalized JSEB twice by firstly assuming considerably high

norms for PTPS and further by adopting some of the norms which are applicable for new generating stations established after April 01, 2004 and thereafter, again disallowing a further cost of Rs. 104.58 crores as an additional reduction on account of alleged inefficiencies.

30. Learned counsel for the appellant stated that the Commission has not appreciated the ratio laid down by this Tribunal in the case of Gujarat State Electricity Corporation Ltd. vs Gujarat Electricity Regulatory Commission & Others 2007 APTEL 1066 at paras 17 to 20 as under:-

*“17. In terms of Section 73 of The Electricity Act, 2003, the Central Electricity Authority (hereinafter referred to as CEA) has been constituted and it has undertaken studies and recommended various parameters concerning the technical parameters for operation of generating stations. The appellant placed reliance on various reports and studies undertaken by CEA including the operational parameters of old stations and stations whose capacity is less than 200 MW. Though old stations are required to be discarded and replaced and new generating stations required to be established, however, due to scarcity and to minimize the*

*cost, the appellant continued to operate its generating stations to generate power for the consumers in the state of Gujarat. The continued operation of old generating units which are 25 years old has deteriorated due to poor performance of older units or due to various reasons attributable to basic design deficiencies, lack of appropriate R&M aging, coal quality deterioration and various other factors. Report of the CEA was placed before the Commission with respect to the operation of smaller units of power, which are extremely poor.*

*18. The State Regulatory Commission in fact without reservation accepted the report of the CEA and factually while analyzing the tariff held, that the yield from old stations of lower capacity, PLF, station heat rate, specific oil consumption, auxiliary consumption etc. do not conform to the norms and the R&M of the units requires to be improved for better performance. The Commission has already directed the appellant to take up repair and maintenance measures to improve the performance of the generating units. It is the grievance of the appellant that the Commission having taken a note of the factual position and conditions of various generating stations, the report of the CEA and the performance of old stations, had not given full effect to the operational parameters for different generating stations while*

*determining the generation tariff by the impugned order dated May, 06, 2006.*

*19. It is contended that the Commission ought to have considered the parameters set out by the appellant in light of CEA report and in a manner consistent with the reality of the situation as well as norms and parameters, which could be applied to comparatively newer generating stations.*

*20. It is vociferously contended that the PLF (Plant Load Factor) even in respect of old generating units ought to have been treated on par with a new generating station, which could generate power to its full capacity due to planned and unplanned outage apart from cost of maintenance, shooting up significantly. It is the complaint that the assessment of PLF in respect of all the generating stations had been taken at 80% of total capacity for full fixed cost recovery, cannot be achieved and requires to be interfered in this appeal. Point A is answered in favour of appellant and there will be a direction as set out above.”*

31. Learned counsel submitted that the Commission has ignored the basic principles of tariff setting which are also recognized in the National Tariff Policy that the legitimate power purchase cost should not be disallowed and that losses are to be

brought down but not by denying revenue requirement for power purchase and that essential and rational O&M charges are to be allowed.

**Analysis and decision:**

32. This Tribunal in case of Gujarat State Electricity Corporation Ltd. Vs Gujarat Electricity Regulatory Commission & Others mentioned in the aforesaid para has recognized that consideration needs to be given to old generating units which have deteriorated over the years and accordingly direct that the Commission takes into cognizance our order dated November 23, 2006 in appeal No. 129 of 2006. We order accordingly.

**(5) Revenue Gap of Rs. 77.27 crores and Discrimination.**

33. Learned counsel stated that the Commission has not allowed JSEB tariff to meet the revenue gap of Rs. 77.27 crores. The Commission has adjusted the same treating the amount given by the state Government in the nature of a resource gap funding to be a subsidy. However, in the case of Tata Steel Limited, JSEB has allowed them to retain about Rs. 23.71crores

more than the revenue requirements as held in the order dated March 30, 2006 effective from 01.05. 2006.

34. Per contra, with regard to the revenue gap learned counsel for the respondent Commission submitted that the Commission has indicated the approved ARR for the year 2006-07 with a revenue gap of Rs. 77.27 crore. He referred to the Commission's reply wherein it has been submitted that the Government of Jharkhand has sanctioned altogether Rs. 277.73 crores in the year 2006-07 as resource for revenue gap and that the Commission has allowed Rs. 30 crores as contingent reserve thereby leaving a surplus of Rs. 252.46 crores with the appellant and that even the claim of the appellant Board with regard to disallowing of interest and finance charge of Rs. 116.5 crores is taken into account, still the appellant has got a surplus of Rs. 135.96 crores (Rs. 252.46 – 116.5 = 135.96 ).

**Analysis and decision:**

35. We find no justification in treating the amount given in the nature of a resource gap funding by the Government to be

considered as a subsidy. As a hundred per cent owned entity of the Government of Jharkhand, if JSEB has been provided with funding to bridge the resource gap, it cannot be construed as a subsidy. The tariff determination exercise should not take cognizance of any such contingency funding by the Government and the tariff should be determined independent of this unless it has been given in the form of a subsidy. We order accordingly.

#### **(6) Disallowance of Employees Cost**

36. Learned counsel for the appellant asserted that the Commission erred in disallowing the employees cost as claimed by JSEB including provisioning of Rs. 60 crores for corpus fund for payment of outstanding terminal benefits (only Rs. 22.86 crores allowed as against Rs. 57.04 crores ). He stated that it is now a well settled principle that employees costs are in the nature of standard costs that must be allowed in tariff setting process as held by the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission vs. Calcutta Electric Supply Company (2002) 8 SCC 715.

**Analysis and decision:**

37. The Commission, during the hearing, has informed that JSEB has raised demand of Rs. 386.80 crores from BSEB on the basis of order of the Hon'ble Supreme Court and that therefore, this issue raised in the appeal is not tenable. We direct the Commission that it reconsiders the demands of the appellant with regard to terminal benefits of the employees so that JSEB does not default in its obligations required by Accounting Standard-15 as any failure by the employer to comply with AS-15 attracts severe punishment.

**(7) Other Disallowances by the Commission:**

38. Learned counsel for the appellant submitted that the Commission has disallowed the following:

- (i) provision for bad and doubtful debts sought by JSEB at 2.5% of revenue.
- (ii) Minimum monthly consumption charges as proposed by JSEB.
- (iii) Reconnection charges to JSEB.

(iv) Minimum guarantee charges as proposed by JSEB.

39. He further stated that the Commission has allowed a lower rate of depreciation allowed to JSEB (i.e. 5.11%) and that fuse call rate fixed at Rs. 15 per call as against a highly conservative estimate of Rs. 50 per call proposed by JSEB.

**Analysis and decision:**

40. In our opinion the Commission is required to review all the issues raised above by the appellant. We order accordingly.

**(8) True up for the FYs 2003-04 to FY 2005-06.**

41. Learned counsel stated that the Commission erred in not undertaking true up of financials for the years 2003-04, 2004-05 and 2005-06 on the ground that JSEB did not file the petition for revenue requirements and tariff proposals for the years 2004-05 and 2005-06. The Commission has failed to appreciate that the non-filing of the petition was not deliberate and was due to pending bifurcation issues between BSEB and JSEB due to which it was not in a position to finalize the accounts. Further, in the absence of finalized and bifurcated accounts the

Commission had disallowed legitimate costs and expenses to JSEB in the tariff year 2003-04. He submitted that the Commission's refusal to true up the financials for the years 2003-04, 2004-05 and 2005-06 and thereby depriving the legitimate claims of JSEB to the extent of Rs. 1954.74 crores, even if it is assumed (not admitted ) that there was a default, is excessively harsh and patently unjust. He stated that the Commission can, at the most, deny the carrying or interest cost on the above claims if there was any deliberate delay attributable to JSEB.

42. He submitted that the Commission has, therefore, ignored basic principles of tariff fixation and has gone on to reduce tariff by adopting unreasonable assumptions and denying valid and legal claims of JSEB.

43. He prayed that in the circumstances, the impugned order dated August 31, 2007 passed by the Commission should be directed to allow the impact of the above in the tariff for the JSEB in the following years.

44. Learned counsel for the Commission stated that the Commission had been reminding the appellant if they were exceeding the cost, which were approved by the Commission and that they should file petition for the tariff revision. However, he contended that, the appellant had remained totally indifferent and did not file any petition to revise tariff and that the Board failed to submit and obtain approval of higher cost despite repeated reminders.

**Analysis and decision:**

45. This Tribunal has laid down in appeal No. 269 of 2006, Poddar Alloys vs UERC that “Normally, truing up exercise is undertaken on the basis of available data and information. Second and subsequent truing up can be taken up when audited accounts figures are available.....”.

46. In view of our observations we direct the Commission to take up exercise of provisional truing up if audited data is not available. We order accordingly.

**(9). Cost regarding terminal benefits:**

47. Learned counsel for the respondent stated that as per orders of the Hon'ble Supreme Court, the pension liability and all the retiring benefits of the employees who have retired before the reorganization of the Electricity Board are rested with the BSEB and hence the Commission had directed the Board to provide actuarial study along with the terminal benefit liabilities and the claim was to be revised accordingly. He mentioned that on the basis of the Hon'ble Supreme Court orders, JSEB has now raised the demand of Rs. 386.80 crores from BSEB and that therefore, this point raised in the appeal is not tenable. In view of this we need not interfere with this issue.

**(10). Excesssive T&D Losses and inefficiencies of JSEB.**

48. Learned counsel for the Commission asserted that the functional inefficiency of the Board cannot be passed on to the consumers. It was also contended that the T&D and AT&C loss of the appellant is extremely high and that the honest consumers should not be penalized for such heavy losses. He also

submitted that direction of the Commission for constituting a Task Force to supervise the T&D loss in the tariff order 2003-04 has not been constituted by the appellant Board till date.

49. Learned Advocates representing the domestic and industrial consumers have vehemently represented that the consumers should not be made to bear the brunt of inefficiency, unscrupulous practices and negligence of the appellant Board and its staff. They have drawn comparison of the T&D loss of other licensee which is one fourth of the prevailing loss levels of the appellant and that JSEB Power Plants operate at miserably low levels of PLF.

**Analysis and decision:**

50. Prevalent inefficiencies in the Board, excessive Transmission and Distribution losses are a matter of grave concern and are extremely detrimental to the interest of the consumers. We deprecate the current affairs of the Board and direct that immediate steps will be taken to improve the working of the Board. We direct that the Commission lays down time bound targets for reduction of T&D losses and norms for

improvement of the Power Stations and increasing the overall efficiency of the Board.

51. It is rather intriguing that whereas the Commission has three Members who were present during various hearings for tariff determination but the Tariff Order has been signed only by two Members. However, we are refraining from commenting on this important aspect.

52. In the result, the appeal is allowed to the extent indicated hereinabove. We remand the matter to the Commission and direct that the order be revised within a period of three months in the light of our directions. We have no manner of doubt that the appellant will expeditiously furnish all information sought by JSERC.

No order as to costs.

Appeal and IAs disposed of.

(H.L. Bajaj)  
Technical Member

(Justice Anil Dev Singh)  
Chairperson