

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No. 12 of 2008

Dated: 28th January, 2009

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkatta – 700 054

-Appellant(s)

V/s.

1. Jharkhand State Electricity Regulatory Commission,
2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar,
Main Road,
Ranchi – 834001

2. M/s Bihar Foundary & Castings Ltd., Ramgarh,
33 A, Jawaharlal Nehru Road,
Chatterjee International,
Kolkatta – 700071

3. M/s Gautam Ferro Alloys, Ramgarh,
33 A, Jawaharlal Nehru Road, Floor II, Flat -7,
Chatterjee International,
Kolkatta – 700071

4. M/s Balmukund Sponge & Iron Ltd.,
18, R.N. Mukherjee Road, 1st Floor,
Kolkatta – 700001

-Respondent(s)

Counsel for the Appellant (s) : Mr. M.G. Ramachandran,
& Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. S. Shrivastava for Resp.1
Mr. Sunil Kumar, Sr. Adv., with
Ms. Anjani Singh and
Mr. Devashish Bharuka

ORDER

We have heard the learned counsel for the parties.

2. While assailing the Order dated 15.01.2008, passed by the Jharkhand State Electricity Regulatory Commission (for short 'the Commission'), Mr. M.G. Ramachandran, the learned counsel for the appellant, would submit that the State Commission on 15.01.2008 as against the appellant has given a wrong finding without notice to the appellant and without hearing the counsel for appellant.

3. Mr. Sudarshan Shrivastava, the learned counsel for the Commission, would submit that the learned counsel for the appellant appeared before the Commission on the earlier hearing of the matter i.e., on 07.01.2008, and on that day only, the matter was adjourned to 15.01.2008 on his request and despite that the learned counsel for the appellant did not appear on the said date and that therefore the Commission had to pass an order without hearing the counsel for the appellant. Let us not go into the said aspect now.

4. The main point urged by the learned counsel for the appellant is that the Commission has no jurisdiction to decide the issue in respect of fuel cost surcharge, which will arise only for generation but not for distribution.

5. We have gone through the records and heard the learned counsel for the consumers and the Commission.

6. In fact, there is no dispute that the impugned order has been passed by the Commission on 15.01.2008, without hearing the learned counsel for the Damodar Valley Corporation, the appellant herein. According to the learned counsel for the appellant, the fuel cost surcharge will arise only in respect of generation but not in respect of distribution and the alleged distinction between the two is only fictitious.

7. Though there is some finding in the order passed by the Commission on 16.04.2007, this argument, on the basis of the various aspects, which is advanced by the learned counsel before this Tribunal has not been dealt with in the order dated 15.01.2008.

8. However, it is better for us not to express any opinion about the merits of the matter now. We are of the view that the proper opportunity must be given to the Damodar Valley Corporation, the appellant herein, to make its submission in respect of the above stated aspect in question. The Commission also has filed its counter affidavit as well as written submissions with reference to the aspect in question. We direct the Commission to hear the appellant as well as the parties concerned and decide the matter on merits considering the issue, on the basis of the documents and the arguments to be advanced by the parties, uninfluenced by any of the statements made by the Commission in its counter and written submissions filed before this Tribunal.

9. We make it clear that we are not expressing any opinion on the issue in question. It is open to the parties to produce the relevant documents as well as the authorities decided on this aspect, before the Commission.

10. We direct the Commission to give priority to this case and decide the matter after affording the opportunity of hearing to both the

parties within eight weeks from the date of receipt of a copy of this order.

Till then, the stay, which was granted by the Tribunal will be continued.

11. With this observation, the appeal is disposed of.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson