

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
RANCHI**

Case No. **33** of **2010**

Shri **Mukhtiar Singh**, Chairperson
Shri **T. Munikrishnaiah**, Member (Engg.)

Dated: **14th March 2011**

ORDER

IN THE MATTER OF

ARR and Tariff Petition for FY 2011-12 of the licensee-JSEB – submission of annual audited Accounts by the licensee-JSEB – relaxation thereof.

1. The licensee-JSEB filed their ARR and tariff petition for determination of distribution tariff for FY 2011-12 along with the petition for truing up the ARR for FY 2003-04 to 2010-11. The licensee-JSEB has also submitted audited annual Accounts for 2001-02 and 2002-03 with compliance report and the annual Accounts approved by the Board for 2003-04 to 2009-10.

2. The JSERC (Terms & Conditions for determination of Distribution Tariff) Regulations, 2010 notified on 1st November 2010 requires audited Accounts. The relevant provision of the said Regulations contained in clause 4.4 is reproduced below:

*“The application shall include statements containing Aggregate Revenue Requirement (ARR) of the licensee for the ensuing year in addition to the current year and the previous year. **The information for the previous year should be based on audited accounts.**”(Emphasis added).*

3. A perusal of the aforesaid clause of the Distribution Tariff Regulations shows that the information for the previous year has to be based on audited annual Accounts. But the licensee-JSEB prayed to the

Commission for determination of tariff for FY 2011-12 without the audited accounts.

4. In order to take a final view on whether the Commission should proceed in absence of the audited annual Accounts or not, a public hearing was held on 12.3.2011. In all 33 persons participated in the said public hearing consisting of representatives from various consumer groups, consumer forums, industries and the licensee-JSEB. A notice to this effect was published on 2nd March 2011 in various newspapers of Jharkhand edition. Also, letters were sent separately to various stakeholders vide No. 739 dated 1st March 2011. The licensee-JSEB presented its case requesting the Commission to admit the petition for tariff determination for FY 2011-12 and process the same without audited accounts. The licensee-JSEB also prayed to relax the provision of clause 4.4 of the Distribution Tariff Regulations, 2010 by exercising its power under clause 13.4 of the said Regulations. On the other hand, the representatives from various groups of consumers strongly advocated that no tariff should be given to the licensee-JSEB without audited annual Accounts.

5. During the course of hearing, the representative of Jharkhand Small Industries Association (JSIA) drew the attention of the Commission to its own stand before the Hon'ble Appellate Tribunal for Electricity in IA Nos.78 & 220 of 2009 filed in Appeal No. 129 of 2007 (JSEB Vrs. JSERC) wherein the Commission had highlighted the conflicting data of the licensee-JSEB; and as such, he emphasized that the annual Accounts submitted by the licensee-JSEB are not reliable and no tariff should be given on the basis of the unaudited annual Accounts.

6. Another representative pointed out to the judgement of Hon'ble Appellate Tribunal for Electricity in the case of Bihar State Hydro Power Corporation (BSHPC) Vrs. Bihar Electricity Regulatory Commission (BERC) wherein the Hon'ble Appellate Tribunal for Electricity upheld the order of the Bihar Electricity Regulatory Commission because the licensee had failed to submit the audited annual Accounts. Relying on the above judgement, it was prayed that in the absence of audited annual Accounts, no tariff should be given to the licensee-JSEB.

7. It was also pointed out that in the Budget for 2011-12, the State Government has made a provision of Rs.750 crores as resource gap to be paid to the licensee-JSEB and, as such, there is no need to proceed for determination of tariff without audited annual Accounts.

8. The Commission has carefully considered the views of the two sides.

9. It is true that the Hon'ble Appellate Tribunal for Electricity in Appeal No. 56 of 2010 (BSHPC Vrs. BERC) has upheld the order of the Bihar Electricity Regulatory Commission wherein the Commission had rejected the tariff petition of BSHPC for various reasons including non-submission of audited Accounts. Besides non-submission of the audited annual Accounts, a large number of other deficiencies were also noticed and a lot of correspondences took place for about a year. In the meantime, the tariff year 2008-09 was nearing completion and the tariff was losing its meaning. In this situation, the BERC rejected the tariff petition. But the same Commission, as is apparent from the order, allowed the tariff for the next year on unaudited annual Accounts because other necessary documents like Profit & Loss Account, Balance-sheet duly approved by

the Board of Directors and other relevant data were made available. The relevant portion of the said order is reproduced below:

“The learned counsel for the Appellant has further argued that for the subsequent year 2009-10, the Commission had determined the tariff without the support of statutory audit, therefore, there was no reason for not determining the Tariff for the previous year. The learned counsel for the Commission informed that the appellant had submitted tariff proposal for 2009-10 along with balance sheet and profit and loss accounts for FY 2007-08 duly approved by the Board of Directors and on that basis the Tariff was fixed by the Commission. No such approval was obtained by the appellant in case of Tariff proposal for FY 2008-09.

The Commission might have given some relaxation to the appellant in tariff determination for the year 2009-10 in the following year with regard to requirement of audited accounts by statutory auditors. However, this could not be taken as a justification for directing the Commission to determine the Tariff for the previous year without submission of the requisite documents as laid down in the Regulations.”

10. From the above, it appears that for the Tariff petition for FY 2008-09, besides other things, even the approval of the Board of Directors was not there on the annual Accounts. But in the present case of the licensee-JSEB - the situation is different. All the annual Accounts of the licensee-JSEB have been approved by the Board of Directors and the audit of annual Accounts for two years have already been completed and rest are in the process, which is likely to take considerable time. Moreover, the licensee-JSEB has assured all cooperation in meeting the queries of the Commission arising in scrutiny of their petition.

11. As far as the Commission’s stand before the Hon’ble Appellate Tribunal for Electricity that the licensee-JSEB was furnishing conflicting data is concerned, that chapter is over because, last year, the Commission issued the tariff order, suo-motu, with the twin objective of complying the directives of the Hon’ble Appellate Tribunal for Electricity

passed in Appeal No. 126 of 2007 (JSEB Vrs. JSERC) and also to update the tariff.

12. Regarding provision of Rs.750 crores as resource gap in the Government Budget for FY 2011-12 is concerned, the budget is yet to be passed. Moreover, the provision in the budget alone is not enough to say that the money is given to the licensee-JSEB. However, as and when the money is paid to the licensee-JSEB, it will be taken into account while determining the tariff for the relevant year.

13. The question arises whether the Commission, in the given situation, should exercise its power vested in it under clause 13.4 of the JSERC (Terms and Conditions for determination of Distribution Tariff) Regulations, 2010 and relax the requirement of submission audited annual Accounts as provided in Clause 4.4 of the said Regulations. The provision of clause 13.4 of the said Regulations is reproduced below:

13.4 : Power of Relaxation – The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations.”

14. The Commission appreciates the concerns of the representative of the consumers on the necessity of the submission of audited annual Accounts by the licensee-JSEB and acknowledges the importance of such Accounts in determination of tariff. The Commission will continue to pursue the issue of submission of audited annual Accounts with the licensee-JSEB and monitor the progress quarterly. The Commission also feels that it is in public interest that the tariff is updated at regular intervals as provided in the Electricity Act, 2003 and aforesaid Distribution Tariff Regulations. If the tariff is not updated from time to time, a situation will arise when unbearable load will suddenly come on

the consumers giving them a “tariff shock”. On the other hand, the licensee will also be deprived of its genuine requirements of funds leading to sub-standard service which again will adversely affect the consumers.

15. In view of the above, the Commission feels that it is in the public interest to relax the requirement of audited annual Accounts and orders accordingly. Moreover, it will be a provisional tariff. The Commission has already done the provisional true-up upto 2006-07 in the Tariff Order for FY 2010-11. Further provisional true-up will be done from the years 2007-08 to 2010-11. When the audited annual Accounts are made available, for which the licensee-JSEB is pursuing at the highest level in the Audit office, these will be taken into account in the final true up.

16. Considering the facts and circumstances mentioned hereinabove, the ARR and the petition filed by the licensee-JSEB for determination of distribution tariff for FY 2011-12 is admitted for further scrutiny.

Sd/-
(T. Munikrishnaiah)
Member (E)

Sd/-
(Mukhtiar Singh)
Chairperson