

**IN THE JHARKHAND STATE ELECTRICITY
REGULATORY COMMISSION AT RANCHI**

Case No. 10 of 2016

Damodar Valley Corporation (DVC) &
Jharkhand Bijli Vitran Nigam Limited Petitioners

Versus

Union of India & State of Jharkhand Respondents

- 1) Association of DVC HT Consumers of Jharkhand
2) M/s Shivam Iron & Steel Co. Limited
3) M/s Electrosteel Steels Limited Objectors/Opp.
Parties

**CORAM: HON'BLE MR. (DR) ARBIND PRASAD, CHAIRPERSON
HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)**

For the Petitioner : Mr. P.S. Narasimhan, Addl. Solicitor General of
(DVC) India, Mr. Srijit Choudhury, Sr. Advocate,
Mr. Sakya Singha Choudhary, Mr. Avijeet Lala,
Ms Shreya Mukherjee, Ms Kanika Chugh,
Ms Puja Priyadarshi, Ms Srija Choudhury,
Mr. Alok Kumar and Mr Shivam Singh, Advocates
For the petitioner : Mr. Ajit Kumar, Mr. Navin Kumar, Mr. Amit Sinha
(JBVNL) and Mr. Amitabh, Advocates
For the Respondents: None.
For the Objectors/ : Mr. Nitin Kumar Pasari and Ms Ranjana
Opp. Parties 1 & 2 Mukherjee, Advocates
For Opp. Party No.3: Mr. Sudarshan Shrivastava, Advocate

ORDER

Date - 18th July 2018

1. The petitioners, Damodar Valley Corporation (DVC) and Jharkhand Bijli Vitran Nigam Limited (JBVNL), filed a joint petition on 24.8.2016 praying to provide a roadmap/mechanism to create a level playing field between the petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interest.

2. The said prayer has been sought for remedying the situation by levying a regulatory surcharge on all high voltage consumers situated in the common supply area of DVC and JBVNL and utilizing such amount to meet the cross subsidy burden for JBVNL.

CASE OF THE PETITIONERS

3. The fact, in brief, of the case, as submitted by the petitioners, is that the petitioner no.1 (DVC) is supplying electricity at 30 kV or above voltage level only to the HT or bulk consumers comprising mainly of industrial and commercial loads in seven districts in the State of Jharkhand viz. Dhanbad, Bokaro, Ramgarh, Hazaribagh, Koderma, Giridih and Chatra (hereinafter referred to as 'DVC Area of Supply'). The load profile of DVC and its consumer mix in the DVC Area of supply are as follows:

(i) Load Profile of DVC and its consumer mix in DVC Area of supply:

		DVC	
		LOAD(MVA)	No. of Consumers
HT	(I) Industrial *	837	113
	(II) Traction	251	14
	Total HT (I+II)	1088	127
LT	(III) Domestic	8.675	1120
	(IV) Commercial		403
	(V) Agriculture		NIL
	Total (III + IV+V)	8.675	1523

(ii) Further, in order to serve its consumers, DVC has over the years developed a well-laid out high voltage distribution system across the DVC Area of Supply to supply consumers at 30 kV and above. The network details of DVC are as follows:

DVC Sub-Stations

33 kV	132 kV	220 kV
1	10	5

Transmission/Distribution Line in Circuit Kilometre.

33kV	132kV	220kV	400kV
947.65	2555.01	1037.15	-

(iii) The petitioner No.2, JBVNL, in its capacity as distribution licensee supplies electricity to all categories of consumers at different voltage levels, including low end subsidized consumers comprising of Agricultural, Below Poverty Line (BPL) and domestic loads in the entire State of Jharkhand, except few pockets which are served by other distribution licensees viz. Tata Steel Ltd. Steel Authority of India Ltd., Jamshedpur Utility & Services Company and MES. The load profile of JBVNL and its consumer mix are as follows:-

	JBVNL		
		LOAD(MVA)	No. of Consumers
HT	(I) Industrial	1242.179	1486
	(II) Traction	262.5	13
	Total HT (I+II)	1504.679	1499
LT	(III) Domestic	3580.66	2610271
	(IV) Commercial	493.52	166219
	(V) Agriculture	68.11	36406
	Total (III + IV+V)	4142.29	2812896

(iv) The further case of JBVNL is that since it supplies electricity to consumers at different voltage levels across the length and breadth of the State, it has accordingly created vast network of distribution lines and infrastructure at both HT and LT levels. The details of JBVNL's distribution system are as follows:

Particulars	Numbers	Capacity (MVA)
Transformation Capacity		
11 KV/LT Distribution Transformers	66,836	3,448
33 KV/11 KV Substations	320	3565
132 KV Substations	29	2655
220 KV Substations	6	2220
440 KV Substation	NIL	

Transmission Lines

Particular	Length (cKM)
132 KV	1867.63
220 KV	1295
400 KV	180

Distribution Lines

Particulars	Length (cKM)
33 KV	7520.74
11 KV	52884.41
LT Line	79761.09

(v) From the above it would appear that that the petitioners (both DVC and JBVNL) have evolved historically under different statutory dispensations i.e. DVC Act and the Electricity Laws respectively. This has resulted in significant differences between DVC and JBVNL in relation to consumer mix, consumer load, infrastructure, cost of supply, cross subsidy levels etc. as shown below:

Consumer Mix

		DVC		JBVNL	
		Load (MVA)	No. of consumers	Load (MVA)	No. of consumers
HT	(I) Industrial*	837	113	1242.179	1486
	(II) Traction	251	14	262.5	13
	Total HT (I+II)	1088	127	1504.679	1499
LT	(III) Domestic	8.675	1120	3580.66	2610271
	(IV) Commercial		403	493.52	166219
	(V) Agriculture				
	Total (III+IV+V)	8.675	1523	4142.29	2812896

LT-HT Ratio

DVC	JBVNL
1 : 84.9	1.59 : 1

Consumption Levels

Consumption (MU)			
	DVC	JBVNL	Total
LT	76	5060	5136
HT	6422	3184	9606

Network Spread Sub-Stations

	33 kV	132 kV	220 kV
DVC	1	10	5
JBVNL	320	29	6

Transmission/Distribution Line in Circuit Kilometer

	33 kV	132 kV	220 kV	400 kV
DVC	947.65	2555.01	1037.15	-
JBVNL	7520.74	1867.63	1295	180

Average Cost of Supply (Rs./kWh)

DVC	JBVNL
4.64	5.54

Cross Subsidy Levels

DVC	JBVNL
--	Rs.1126.77 crores

(vi) The further case of the petitioners is that Electricity Act, 2003 has brought significant reforms and changes in the electricity sector with increased focus on safeguarding consumer interest and ensuring free and fair competition amongst the utilities and, therefore, with the above objectives, certain significant changes viz. (i) unbundling of State Utilities into separate generation, transmission and distribution companies, (ii) introduction of parallel licensee within the same area of supply allowing more than one distribution licensee to supply power through its own network; (iii) introduction of distribution franchisee; (iv) regulations for distribution activities including licensing and tariff fixation by an autonomous regulatory Commission; and (v) introduction of Open Access in distribution have been introduced in the distribution and supply of electricity by the petitioner No.2 (JBVNL).

(vii) Further, under the provisions of Electricity Act, 2003, both the petitioners i.e. DVC and JBVNL are parallel distribution licensees with respect to the DVC Area of Supply and the DVC is being directed from time to time to supply electricity to all consumers within its area without any discrimination to voltage level. Therefore, the petitioner No.1 (DVC) is required to connect and supply electricity to any consumer who seeks supply from it subject to the availability and feasibility of the existing network. But due to historical reasons development of DVC network has happened at a particular voltage level and above, which can cater to high voltage consumers. As such, to augment and expand the network at LT level requires the DVC to re-plan its distribution activities in a manner that network expansion takes place in synergic, coordinated and optimum manner. In this regard it is stated that network planning and development is a time consuming exercise which is dependent on a number of factors some of which are beyond the reasonable control of the utility. Further, Electricity Act 2003 does not envisage a distribution licensee to

be 'network ready' at all times throughout its area of supply. As such, during such period DVC will continue to have a minimal or no cross-subsidy burden on account of retail -supply in contradistinction to JBVNL which has substantial cross-subsidy burden of more than Rs.1100 crores out of its total ARR of Rs.4566 crores during the period 2015-16. It has further been stated that majority of high voltage heavy duty bulk consumers are concentrated in the DVC Area of Supply and continue to draw supply from DVC due to the absence of cross-subsidy burden and there are various high voltage consumers situated in JBVNL area of supply, the average load and consumption of such consumers are significantly lower even though they contribute about 1/3rd of the entire cross-subsidy burden of JBVNL.

(viii) In view of the above it has been submitted that the Commission may consider for remedying the afore-described situation by levying regulatory surcharge on all high voltage consumers situated in the common supply area of DVC and JBVNL and utilizing such amount to meet the cross-subsidy burden for JBVNL.

4. The case was heard at length and by order dated 10.11.2016 DVC was directed to publish a general notice inviting comments/objections/suggestions from general public/consumers falling within the common area of supply of electricity by DVC as well as JBVNL. In the meanwhile DVC and JBVNL were also directed to deliberate and suggest mutually acceptable and workable methodology for consideration of the Commission and further order.

5. The petitioner No.1 (DVC), in compliance of the order dated 10.11.2016 passed by the Commission, published notice inviting comments/objections/suggestions from general public/consumers falling within the common area of supply of electricity by DVC as well as JBVNL. In response to the said notice, M/s Electrosteel Steel Limited, M/s Shivam Iron & Steel Co. Ltd. and Association of DVC HT Consumers of Jharkhand appeared and filed their objections mainly on the following grounds:-

- i) That the instant joint petition is not maintainable, misconceived malafide and ill motivated and hence deserve to be dismissed.
- ii) That the relief prayed for is contrary to the objects and reasons of the Electricity Act 2003. The Electricity Act 2003 has been enacted

generally for taking measures conducive to development of electricity industry, promoting competition and for protecting interest of consumers.

iii) That in the garb of creating level playing field in order to promote free and fair competition among the DISCOMS, the petitioners want to form a combination and syndicate to frustrate the interest of the consumers. From the pleadings it is evident that both the petitioners are interested in taking care for each other than to their respective consumers. None of the statutory provisions of the Electricity Act 2003 and the regulations framed thereunder empowers the Regulatory Commissions to allow such endeavours which is apparently against the spirit of the statute.

iv) That the petitioners want enhancement of tariff indirectly as it is not available to them directly under the statute. Thus nothing can be allowed indirectly which is prohibited directly. The petition cannot be entertained either under Tariff determination function of the Commission under Section 62 of the Electricity Act 2003 or under the Regulatory and adjudicatory powers of the Commission under Section 86 of the Electricity Act 2003.

v) That the petitioners' reliance upon Regulation 40 of JSERC (Conduct of Business) Regulations 2011 is misplaced because the Conduct of Business Regulations 2011 provide for a procedural framework as to the manner in which the Commission shall perform its diverse functions and it cannot create new powers for the Commission beyond the procedural aspects relating to transaction of business by the Commission. It is a settled principle that any subordinate legislation cannot be interpreted to confer powers that are beyond the scope of the parent enactment.

vi) That the petitioners are seeking a relief which will unavoidably burden the HT consumers of DVC with a cost not incurred by DVC for supply of electricity to such consumers.

vii) That in the light of the statutory scheme underlying the Electricity Act 2003, saddling the HT consumers with a cost element which is not

germane to supply of electricity to them would neither satisfy the test of “recovery of the cost of electricity in a reasonable manner” nor conform to the requirement of the tariff reflecting “the cost of supply of electricity”. Therefore, the petitioners are seeking a relief which is against the principal object of the Electricity Act and the specific provisions thereof. There is nothing in the Electricity Act, 2003 which allow the consumers of a distribution company to be cross-subsidised by the consumers of another distribution company and, therefore, the relief, if granted, would indisputably result in DVC’s HT consumers cross-subsidising the consumers of JBVNL in a manner impermissible under the provisions of the Act.

6. Learned counsels for the parties including the objectors/ opposite parties were heard on various dates at length.

FINDINGS

7. We verified from the records and found that DVC as well as JBVNL were directed to deliberate and suggest mutually acceptable and workable methodology for consideration of the Commission and for further orders. From the record we find that no concrete suggestions have been brought by the petitioners –DVC as well as JBVNL which are mutually acceptable and workable methodology for consideration of the Commission despite several adjournments even after a lapse of about two years.

8. In view of the said admitted position and the facts and circumstances appearing on record, we are of the view that no purpose would be served in keeping the case pending for decision in the absence of any concrete suggestions mutually acceptable and workable methodology. The petitioners are at liberty to approach this Commission after arriving at concrete suggestions and formulate workable methodology, which are mutually acceptable to them and are legally tenable.

9. With the above observations, the petition is disposed off accordingly.

Sd/-
(R.N. Singh)
Member (Engg)

Sd/-
(Arbind Prasad)
Chairperson