

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

**Case No. 07 of 2017**

Association of DVC HT Consumers of Jharkhand ..... Petitioner

Versus

Damodar Valley Corporation (DVC) ..... Respondent

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

For the Petitioner : Shri Nitin Kumar Pasari and  
Ms Ranjana Mukherjee, Advocate

For the Respondents: Shri Srijit Choudhury, Sr. Advocate and  
Ms Srija Choudhury, Advocate

**ORDER**

**Date - 19<sup>th</sup> January 2018**

1. The petitioner, Association of DVC HT Consumers of Jharkhand, filed a petition on 2.5.2017 praying for passing the benefits of trueing up for 2006-07 to 2014-15 of DVC, the respondent, to the consumers in the form of refunds in the electricity bills of the consumers

2. The said prayer has been sought on the ground that the trueing up exercise was conducted by the Commission for FY 2006-07 to FY 2013-14 for DVC command area of Jharkhand and the Commission passed an order dated 19.04.2017 in Case (T) No. 02 of 2016 which has resulted in a cumulative surplus of Rs.1428.01 crores upto 31.3.2015, but the Commission has not provided any recovery mechanism for this amount in its order dated 19.4.2017.

3. The fact, in brief, of the case is that the respondent, DVC, filed a petition for True up for FY 2006-07 to FY 2013-14 on 4<sup>th</sup> January 2016 for the distribution and retail supply of electricity to consumers serviced by DVC in the part of Damodar Valley falling within the territorial jurisdiction of Jharkhand.

However, Jharkhand State Electricity Regulatory Commission (hereinafter referred to as 'JSERC' for the sake of brevity) was not proceeding on account of pendency of Civil Appeal No. 4881 of 2010 before the Hon'ble Supreme Court. The said Civil Appeal No. 4881 of 2010 related to the tariff period from 1.4.2006 to 31.3.2009 owing to findings and directions of Hon'ble Appellate Tribunal for Electricity in order dated 10.5.2010 passed in Appeal No. 146 of 2009 and, in case, the said civil appeal was allowed, it could have some impact on the true-up exercise of future years. The Hon'ble Supreme Court in its order dated 26.10.2016 passed in Civil Appeal No. 7383 of 2016 while disagreeing with the justification for the above apprehension, directed the JSERC to take up the true-up issue and to decide it subject to the result of Civil Appeal No. 4881 of 2010. In compliance of the order dated 26.10.2016 of the Hon'ble Supreme Court, the Commission conducted the true-up of DVC, the respondent, for the period 2006-07 to 2013-14 and passed the Order dated 19.4.2017 which resulted in cumulative surplus of Rs.1428.01 crores as upto 31.3.2015.

4. The respondent, DVC, preferred an appeal before the Hon'ble Appellate Tribunal for Electricity being Appeal No. 163 of 2017 challenging the order dated 19.4.2017 passed in Case (T) No. 02 of 2016 mainly on the ground that JSERC while passing order dated 19.4.2017 did not consider the Pay revision impact, contribution towards Pension and Gratuity Fund, Revenue surplus/gap, aggregate T&D losses, entire power purchase cost, implication of bad & doubtful debts and the revenue from sale of power was considered on billed basis and not on realization basis.

5. The petitioner in the instant case i.e. Association of DVC HT consumers of Jharkhand also preferred an appeal before the Hon'ble Appellate Tribunal for Electricity being Appeal No. 198 of 2017 against the order dated 19.4.2017 passed by JSERC seeking relief to set aside the impugned Tariff Order dated 19.4.2017 passed by JSERC with a direction to include all revenue received by DVC in Non-Tariff Income and accordingly reduce the ARR for FYs 2006-07 to 2014-15, allow expense towards contribution to Pension and Gratuity fund as well to sinking fund for FY 2006-07 to 2008-09, by linking the same to actual Availability/Plant Availability Factor, disallow UI charges including Penal UI charges

paid by DVC from its ARR and disallow expense towards Water and Pollution Cess from the ARR of DVC.

6. The case was heard on 9.1.2018.

7. Mr. Navin Kumar, learned counsel for Jharkhand Bijli Vitran Nigam Limited (JBVNL), submitted that JBVNL will also be impacted by the outcome of the case and, therefore, he should be given one week's time to file intervener petition in this case on behalf of JBVNL.

8. The case is going on in the Commission since 2.5.2017 and it was taken up on several dates. However, JBVNL never indicated its interest to become intervener in this case. Even today learned counsel was not ready with the petition but was praying for time for filing Intervener Petition. At this stage the prayer of the learned counsel cannot be granted as it would unnecessarily delay the conclusion of this case. JBVNL is at liberty to file its own petition if it so desires.

9. The Hon'ble Appellate Tribunal for Electricity by its order dated 27.11.2017 passed in Appeal No. 198 of 2017 & IA No. 971 of 2017 directed the Commission to dispose of the application at the earliest. The order of the Hon'ble Appellate Tribunal of Electricity runs as follows:

*"We are informed by learned counsel for the appellant that the application filed by the appellant is fixed for hearing before the State Commission on 9.1.2018. The issue relates to non-tariff income. In view of the Supreme Court's order dated 26.10.2016, to which our attention is drawn, we are of the opinion that the State Commission should dispose of the said application at the earliest.  
List the matter on 23.01.2018."*

10. Learned counsel for the petitioner submitted for disposal of this petition by ordering refund of Rs.1428 crores to the consumers of DVC in the form of refunds in the electricity bills of the consumers.

11. Learned counsel for the respondent, DVC, disputed the said factual position. Learned counsel appearing on behalf of the respondent, DVC, submitted that the instant case pending before the Commission is related to refund of excess charge collected from the consumers during the period 2006-07 to 2014-15 for distribution and retail supply of electricity for the part of DVC area falling within the territory of State of Jharkhand and not related to non-tariff income.

The petitioner has wrongly submitted before the Hon'ble Appellate Tribunal for Electricity that the issue relates to Non-Tariff Income pending before the Commission. He further submitted that the petitioner-Association of DVC HT consumers of Jharkhand has filed an appeal before the Hon'ble Appellate Tribunal for Electricity in Appeal No 198 of 2017 against the True-up Order dated 19.4.2017 passed by JSERC in Case (T) No. 02 of 2016. However, the petitioner did not disclose in its appeal before the Hon'ble Appellate Tribunal for Electricity that they have filed a petition before JSERC for refund of Rs.1428 crores. Moreover, they also did not inform the Commission while filing a petition before the Commission that they have filed an appeal before the Hon'ble Appellate Tribunal for Electricity against the order dated 19.4.2017 passed by JSERC.

12. Learned counsel on the query of the Commission agreed that the petition before this Commission which is being heard today (9.1.2018) relates to refund of cumulative surplus of Rs.1428 crores due to trueing up exercise conducted by JSERC and it does not relate to the issue of Non-Tariff Income. To this extent submission before Hon'ble Appellate Tribunal for Electricity that matter fixed for hearing on 9.1.2018 relates to non-tariff income is not accurate.

13. Learned counsel for the respondent, DVC, further submitted that respondent, DVC, has preferred an appeal before the Hon'ble Appellate Tribunal for Electricity on 17.5.2017 in Appeal No. 163 of 2017 against the order dated 19.4.2017 passed by this Commission wherein the respondent, DVC, has, inter-alia, challenged the methodology adopted for computation of surplus to the tune of Rs.1428 crores during the period from FY 2006-07 to FY 2014-15. It has further been submitted that there are large number of issues which require to be rectified and if these aspects are considered there will be no case for refund of any money by the respondent, DVC, to the consumers at large; rather respondent, DVC, will be required to recover significant amount from the consumers including the petitioners in this case.

14. Learned counsel for the respondent, DVC, produced a copy of the order dated 9.1.2018 passed in IA No. 21 of 2018 in Appeal No. 163 of 2017 & IA No. 399 of 2017 by the Hon'ble Appellate Tribunal for Electricity which runs as follows:

*“I.A.No. 21 of 2018*

*(Appln. For urgent listing)*

*We have heard learned counsel for the applicant/appellant. For the reasons stated in the application, list the I.A. No. 399 of 2017 (Appln. For stay) for hearing on 29.1.2018. Application is disposed of.*

*Learned counsel for the appellant is at liberty to inform the State Commission about listing of I.A. No. 399 of 2017 on 29.01.2018 before this Tribunal.”*

15. In view of the above, learned counsel for the respondent, DVC, prayed that true-up order dated 19.4.2017 is under challenge before the Hon'ble Appellate Tribunal for Electricity by both the parties i.e. respondent, DVC, and the petitioner. Both the appeals are pending before the Hon'ble Appellate Tribunal for Electricity. Therefore, no order for refund may be passed by JSERC.

### **I S S U E S**

- i) Whether the petitioner and other consumers of DVC of Jharkhand area are entitled for refund of cumulative surplus amounting to Rs.1428 crores determined by JSERC in its order dated 19.4.2017 while conducting true-up exercise for FY 2006-07 to FY 2014-15?
- ii) Whether the instant petition relates to Non-Tariff Income as submitted by the petitioners before Hon'ble Appellate Tribunal for Electricity during hearing of Appeal No. 198 of 2017 & IA No. 971 of 2017?

### **F I N D I N G S**

16. We verified from the records and found that petitioners have filed the instant case before the Commission for refund of the excess charges collected from the consumers during the period 2006-07 to 2014-15 for distribution and retail supply of electricity for the part of the respondent, DVC, area falling within the territory of State of Jharkhand which resulted in a cumulative surplus of Rs.1428 crores due to truing up exercise conducted by JSERC. The said truing up exercise for the period 2006-07 to 2014-15 was conducted and finalized by JSERC in its order dated 19.4.2017 passed in Case (T) No. 02 of 2016 on the direction of Hon'ble

Supreme Court passed in order dated 26.10.2016 in Civil Appeal No. 7383 of 2016. We also found that the issue in the instant petition is not related to Non-Tariff Income, as submitted by the petitioners before the Hon'ble Appellate Tribunal for Electricity.

17. From the record it is also seen that an appeal has been preferred by the respondent, DVC, being Appeal No. 163 of 2017 before the Hon'ble Appellate Tribunal for Electricity challenging the order dated 19.4.2017 passed in Case (T) No.02 of 2016 by this Commission and the same is pending before the Hon'ble Appellate Tribunal for Electricity for decision. Moreover, the petitioner has also filed an appeal being Appeal No. 198 of 2017 before the Hon'ble Appellate Tribunal for Electricity for setting aside the impugned order dated 19.4.2017 passed by JSERC in Case (T) No. 02 of 2016.

18. In view of the said admitted position and the facts and circumstances appearing on record, we are of the view that during the pendency of Appeal No. 198 of 2017 filed by the petitioner in this case and Appeal No. 163 of 2017 filed by the respondent, DVC, before the Hon'ble Appellate Tribunal for Electricity, the order dated 19.4.2017 passed in Case (T) No. 02 of 2016 cannot be said to have attained its finality and it would not be proper to pass any order in the instant case for refund of excess charges claimed by the petitioners at this stage.

19. Further, we are satisfied that issue relating to Non-Tariff Income is not the subject matter in the instant petition filed by the petitioner as submitted before the Hon'ble Appellate Tribunal for Electricity.

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

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

Sd/-  
(Arbind Prasad)  
Chairperson