

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
RANCHI**

Case No. 18 of 2010

MUKHTIAR SINGH, Chairperson
T. MUNIKRISHNAIAH, Member (E)

IN THE MATTER OF

An application for clarification of Tariff Order 2003-04 & 2010-11 in relation to HTS consumers.

AND

IN THE MATTER OF

Jharkhand State Electricity Board

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Petitioner

For the Petitioner:

Shri Rajesh Shankar, Advocate
Shri Abhay Prakash, Advocate
Ms Anita Prasad, EEE (Commercial)
Ms Anjana Shukla Das, EEE/Revenue
Shri Mukul Kumar, AEE (Comml.)
All from Jharkhand State Electricity Board

For the Commission:

Shri Sudarshan Shrivastava, Advocate

**ORDER
(04.09.2010)**

The petitioner-JSEB has filed a petition to clarify the issue relating to charging of the Demand Charge/Fixed charge upon the HTS consumers in terms with the Tariff Order 2003-04 and the Tariff Order 2010-11.

The facts of the case, in brief, are that after promulgation of the Electricity Act 2003, the power of determining the tariff has been vested with the State Regulatory Commissions. Accordingly, the petitioner-JSEB had filed a petition before the Jharkhand State Electricity Regulatory Commission for determination of distribution tariff. The Commission after completing the laid procedures had issued tariff order for FY 2003-04 for the respondent-JSEB effective from 1st January 2004. In the said tariff order the Commission had given tariff schedules for the different category of consumers including HTS consumers. In the said tariff

schedule three different charges viz. Demand charge, Energy charge and Monthly Minimum charge has been given for HTS consumers. The said tariff order was challenged before the Hon'ble Jharkhand High Court by filing a writ petition. But the said writ petition was dismissed and the tariff order 2003-04 attained its finality. Thereafter the petitioner-JSEB continued to bill its consumers of different categories according to the said tariff order 2003-04 till 30.4.2010. In between the Commission had issued tariff order for 2006-07. However, the petitioner-JSEB challenged the said tariff order 2006-07 and did not implement it. The Commission, thereafter, issued the tariff order for 2010-11 effective from 1st May 2010 and the petitioner-JSEB has implemented the said tariff order 2010-11 and is billing its consumers accordingly. After issuance of this tariff order for 2010-11 the petitioner-JSEB has filed the present petition to clarify the issue relating to charging of the Demand charge upon the HTS consumers in terms of Tariff Order 2003-04.

When the case was taken up for hearing on the last date i.e. on 21.8.2010 the learned counsel for the Commission had raised the issue of jurisdiction of the Commission and maintainability of the petition itself. It was also pointed out that a similar issue has been raised before the Hon'ble Jharkhand High Court. He also pointed out that this fact has not been disclosed by the petitioner-JSEB before this Hon'ble Commission.

The learned counsel for the petitioner-JSEB had sought time for making submissions on the points raised by the counsel of the Commission and as such this case was posted today for hearing.

Heard.

The learned counsel for the petitioner-JSEB, at the outset, has said that since the Commission has already decided in another case being Case No. 14 of

2010 (Usha Martin Limited Vrs. JSEB & others) that after issuing the Tariff Order, the Commission become *functus-officio* and has no jurisdiction to alter, modify or clarify the Tariff Order, he has nothing more to say in this case. However, the learned counsel for the petitioner-JSEB did mention about Clause 48 of the JSERC (Conduct of Business) Regulations, 2003 to invoke the jurisdiction of the Commission.

A perusal of the petition filed by the petitioner-JSEB shows that this petition has been filed for a clarification of the tariff orders on the point in question. The process of tariff determination is well laid down in Chapter VII of the Electricity Act, 2003 which has no provision for entertaining a clarificatory petition. According to Section 94 of the Electricity Act, 2003 the Commission is empowered to review its decisions, directions and orders. As per Clause 43 of JSERC (Conduct of Business Regulations) Order, 2003 the review petition has to be filed within 30 days of the order. Admittedly, the petition has not been filed for a review rather it has been filed for clarifying the tariff orders and that too much after the permissible period for filing the review petition.

As regards the status of Regulations vis-à-vis the Act is concerned, the law is settled. The Regulations cannot confer a power which is not in the legislation. Through Regulations one cannot add or subtract the power mentioned in the legislation. Regulation is a creation of the Act and not vice-versa. Had it been so, the legislation would have provided the same along with the review powers. Since the word “clarification” is not there in the Act, the Commission feels that it cannot be inserted through Regulations.

The Commission after going through the pleadings and after hearing the learned counsel for the petitioner-JSEB is of the view that the issue involved in this case is beyond the jurisdiction of the Commission.

It is strange that the petitioner-JSEB has not mentioned about the pendency of the writ petition on the same issue before the Hon'ble Jharkhand High Court. All the parties are supposed to come with clean hands before the various Courts and Forums and then only justice can be done. Hiding something, which is already on the record in some other court, is not a very healthy practice and we refrain ourselves from commenting on this issue.

In view of the discussions made hereinabove, we hold that there is no jurisdiction of the Commission to entertain clarificatory petition on tariff orders and as such the petition is rejected.

In the result, the petition of the petitioner-JSEB is rejected.

(T. Munikrishnaiah)
Member (Engg.)

(Mukhtiar Singh)
Chairperson