

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
RANCHI**

Suo Motu Case No. **01** of **2010**

MUKHTIAR SINGH, Chairperson

IN THE MATTER OF

In compliance with the directions issued by the Hon'ble Appellate Tribunal for Electricity, New Delhi in Appeal No. 129 of 2007 and in I.A. No. 78 of 2009 and for determination of distribution of the licensee-JSEB for FY 2010-11.

AND

IN THE MATTER OF

1. Jharkhand Rice Millers Association, Ranchi.
2. Ranchi Goods Transport Association, Ranchi
3. Madhupur Chamber of Commerce, Madhupur
4. Jharkhand Induction Furnace Association, Dhanbad
5. Aditya Birla Chemicals (India) Ltd., Palamau
6. Jharkhand Small Industries Association, Ranchi
7. Shishir Kumar Poddar, Tirupati Carbons & Chemicals (P), Ltd., Ranchi
8. Federation of Jharkhand Chamber of Commerce & Industries, Ranchi

..... Interveners/Petitioners

For the Petitioners: Shri Madhusudan Mittal, Advocate  
Shri Ajit Kumar, Advocate  
Shri Vijay Kumar Gupta, Advocate  
Shri Biren Poddar, Advocate

For the licensee-JSEB: Shri S.C. Mishra, E.S.E. (Comml.)  
Shri Ashok Kumar  
Shri Naresh Desai

**ORDER**  
**(10.03.2010)**

The present case was posted for today by order dated 20.2.2010 whereby the Commission, after considering the submissions of the licensee-JSEB has decided to proceed to determine the provisional tariff of the licensee-JSEB for FY 2010-11, suo-motu, to comply with the Hon'ble Appellate Tribunal for Electricity's order dated 8.5.2008 passed in Appeal No. 129 of 2007 and order dated 23.9.2009 passed in I.A. No. 78 of 2009 filed on behalf of the licensee-JSEB, on the basis of the materials available with the Commission. Accordingly, a direction was issued to the licensee-JSEB publish notice inviting objections/suggestions/comments on the ARR for FY 2007-08 & 2008-09 and the tariff petition for FY 2008-09 filed by the licensee-JSEB. Pursuant to this direction, the licensee-JSEB had published the said notice in different newspapers inviting comments/suggestions/objections on the said ARR and tariff petition by 9.3.2010. Moreover, the Commission has also published the schedule for public hearings in the various newspapers of Jharkhand edition. Some objections/comments/suggestions have also been received by the licensee-JSEB as well as by the Commission. Therefore, there is nothing remain in this proceeding as the process for determination of tariff has already been initiated.

The Commission has also received intervener applications on behalf of the aforesaid petitioners. The main prayer of the interveners are to allow them to intervene in this suo-motu proceeding. A separate petition has also been filed by Shri Shishir Kumar Poddar, wherein a prayer for rectification/modification/clarification of the order dated 20.2.2010 passed by the Commission in this case.

Heard.

The main argument on behalf of the interveners/petitioners is that this Commission does not have the jurisdiction to proceed, suo-motu, under the Electricity Act, 2003 (hereinafter referred to as the 'Act'). It was argued that Section 64(3) of the Electricity Act, 2003 envisages that the Commission shall proceed for determination of tariff on receipt of an application as provided in sub-section (1) of this Section and the Commission shall complete the exercise of tariff determination within 120 days from the receipt of such application.

On behalf of the licensee-JSEB it was pointed out that Section 64(3) of the Electricity Act, 2003 should not be read in isolation rather it should be read along with other provisions of the Act. Section 3 read with Section 61 (i) of the Act provides for consideration of National Electricity Policy and Tariff Policy while determining the tariff. In this context it was also pointed out on behalf of the licensee-JSEB that the Tariff Policy framed under Section 3 of the Act by the Ministry of Power, Government of India

vide Resolution No. 23/2/2005-R&R (Vol.III) dated 6<sup>th</sup> January 2006 speaks about suo-motu initiation of the proceeding for determination of tariff by the Appropriate Commission.

The Commission though agree with the interveners/petitioners that Section 64(3) of the Electricity Act 2003 speaks about the filing of the application by the licensee and disposal thereof by the Commission within 120 days of its receipt. But this section does not say that the Appropriate Commission shall initiate proceedings **only** on receipt of such application. Had it been the intention of the Legislature, it would have specifically provided so. If the argument of the interveners/petitioners is accepted, it would mean that the Commission, which is a statutory regulatory body enjoined with the powers to determine the tariff and regulate the activities of the licensees, in the interest of the consumers and development of the industries, will be compelled to sit idle and the very purpose of constituting of the Commission would be defeated. This view finds support from the aforesaid Tariff Policy also formulated by the Government of India under Section 3 of the Act. The relevant para of the said Tariff Policy is reproduced below:

*“**Para 8.1(7):** Appropriate Commission should initiate tariff determination and regulatory scrutiny on a suo moto basis in case the licensee does not initiate filings in time. It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee.”*

In this context the Commission also refers provisions of Clause 31.2 of the JSERC (Terms & Conditions for Distribution Tariff) Regulations 2004 according to which it is mandatory for the distribution licensees to file tariff application by 1<sup>st</sup> November every year for the ensuing financial year. Since the licensee-JSEB has failed to file such application, the Commission has initiated suo-motu proceeding.

From the above, it is abundantly clear that this Commission has jurisdiction to proceed, suo motu, for determination of tariff and regulatory scrutiny, if the licensee does not file it in time. The action of the Commission is perfectly in accordance with the provisions of the Electricity Act 2003 and the Regulations framed thereunder. The Commission has also initiated this proceeding so that the order of the Hon'ble Tribunal can be complied with. Hence the argument of the petitioners/interveners that this Commission does not have the jurisdiction to proceed, suo-motu, in the facts and circumstances of this case, is hereby rejected.

The other argument on behalf of the interveners/petitioners is that by initiation of suo-motu proceeding, their interest will be adversely affected and they do not have the alternative remedy but to join as interveners. To me, this argument is based on unfounded apprehensions. The public notice was issued in all the leading newspapers inviting objections/suggestions/comments from all the stakeholders. Besides, the public hearings have already been

notified at five different places in the State of Jharkhand, which also has been given wide publicity. Therefore, the consumers and other stakeholders are at liberty to avail of the opportunity and put forth their comments/suggestions/objections by participating in those public hearings. The Commission is glad to note that the licensee and this Commission's office are already in receipt of some comments/objections/suggestions from various quarters pursuant to the notice published by the licensee.

In view of the above, the Commission do not find any merit in the intervention petitions of the petitioners and as such the same are rejected. As far as other suggestions/objections/comments are concerned, they are at liberty to raise them at the public hearings.

With the above observations the petitions of the petitioners are disposed off.

(Mukhtiar Singh)  
Chairperson