

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

JUDGMENT
IN
APPEAL NO. 140 OF 2015 &
IA NOS. 263 OF 2016 & 491 OF 2018
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 1st April, 2019

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

Jaipur Metro Rail Corporation Ltd

Having its registered office at:

Khanij Bhawan

Behind Udyog Bhawan

Tilak Marg, C.Scheme,

Jaipur- 302 005

..... Appellant

VERSUS

1. Rajasthan Electricity Regulatory Commission

Vidyut Viniyamak Bhawan,

Near State Motor Garage,

Sahakar Marg, Jaipur – 302 021

2. Jaipur Vidyut Vitran Nigam Limited

Vidyut Bhawan, Janpath,

Jaipur – 302 005

3. Ajmer Vidyut Vitran Nigam Ltd.

Vidyut Bhawan, Panchsheel Nagar,

Makarwali Road,

Ajmer – 305 004

4. Jodhpur Vidyut Vitran Nigam Ltd.

New Power House,

Industrial Area, Jodhpur

Rajasthan 342 003

..... Respondents

Counsel for the Appellant(s) : Ms. Shikha Ohri

Counsel for the Respondent(s): Mr. R.K. Mehta
Ms. Himanshi Andley for R-1

Mr. Ajatshatru Singh
Ms. Pooja Nuwal for R-2 to R-4

The Appellant has presented this Appeal for considering the following Question of Law:

- A. Whether the Respondent No. 2 is entitled to charge tariff upon the Appellant without taking approval of the Respondent No.1 Commission?
- B. Whether the Appellant is entitled for a reimbursement from the Respondent No.2 on account of the wrongful imposition of the much higher tariff pertaining to the NDS/HT-2 category, instead of the LP/HT-5 category with 10% discount as per the orders dated 06.06.2013 and the impugned order?
- C. Whether the Respondent No.1 Commission failed in appreciating the fact that the Appellant has to be given a preferential tariff as compared to the Railways on account of having separate technical specifications and separate purposes and hence should be treated as separate categories?
- D. Whether the Respondent No.1 Commission erroneously did not take into consideration the objections filed by the Appellant with respect to the Appellant being treated as a separate category and having a single tariff on single point tariff?
- E. Whether the Respondent No.1 Commission failed to take into account that the fact that with respect to Metro Services running in other parts of India, combined traction and non-traction loads has been adopted by the State Commissions and separate single tariff category has been provided?

- F. Whether the Respondent No.1 Commission failed to take into account the fact that the Electricity Act, 2003 under Sections 61 and 62 permits differentiation on the grounds of geographical position of any area and the purpose for which a supply is required?
- G. Whether the Respondent No.1 Commission and the Respondent No.2 failed in appreciating the fact that on account of the nature of service being provided by the Appellant, the Appellant should have been given a preferential tariff?
- H. Whether the Respondent No.1 Commission and the Respondent No.2 failed to consider the fact that the Appellant has limited revenue potential as it provides only passenger services unlike the Railways?
- I. Whether the Respondent No.1 Commission failed to appreciate that the Respondent No.2 has failed to integrate the maximum demand for the Appellant since the Appellant is sourcing power from two sub-stations of the same Discom?

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. In the instant Appeal, the Appellant, Jaipur Metro Rail Corporation Ltd., Jaipur is questioning the legality, validity and propriety of the impugned Order dated 20.02.2015 passed by Rajasthan Electricity Regulatory Commission (1st Respondent herein) in Petition No. RERC 456/14.

2. The Appellant has sought the following reliefs in Appeal No. 140 of 2015:

- i. Set aside the findings rendered in the impugned order dated 20.02.2015, passed by the Rajasthan Electricity Regulatory Commission in Petition No. RERC 456/14 to the extent as detailed in the present appeal;
- ii. Direct that the Appellant has to be always given a preferential tariff than the Railways;
- iii. Direct that power supplied to the Appellant shall be billed at a single tariff category (Combined for traction and non-traction load to run the metro services);
- iv. Direct that the Appellant has to be provided with the benefit of integrated maximum demand of all its sub-stations while computing maximum load/demand;
- v. Direct the Respondent No.2 to refund/reimburse the Appellant the excess amount of money collected in terms of the energy bills of 132 KV three phase receiving sub-stations at Mansarovar and Sindhi Camp from 09.07.2013 along with interest @ 18% p.a.; and
- vi. Pass such other and further order or orders as this Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.

3. The learned counsel for the Appellant, Ms. Shikha Ohri, has filed a Memo dated 01.04.2019 on behalf of the Appellant, the same was taken on record.

4. The counsel for the Appellant submitted that, in the light of the statement made in the Memo dated 01.04.2019 filed on behalf of the Appellant and for the reasons stated therein, the instant appeal filed by the Appellant may kindly be disposed of in terms of the reasoning assigned in the aforesaid Memo dated 01.04.2019 in the interest of justice and equity.

5. The learned counsel for the Respondent Nos. 1 and 2 to 4, inter-alia, contended and submitted that, in the light of the statement made in the Memo dated 01.04.2019 filed on behalf of the Appellant, the instant appeal filed by the Appellant may be disposed of at the risk of the counsel for the Appellant.

6. Submissions of the counsel appearing for the Appellant and the Respondent Nos. 1 and 2 to 4, as stated supra, are placed on record.

7. We have heard the learned counsel, Ms. Shikha Ohri, appearing for the Appellant, the learned counsel, Mr. R.K. Mehta appearing for the 1st Respondent and the learned counsel, Mr. Ajatshatru Singh, appearing for the Respondent Nos. 2 to 4.

8. The statement made in the Memo dated 01.04.2019 filed on behalf of the Appellant reads as under:

“MEMO ON BEHALF OF APPELLANT

1. *The Appellant has challenged the impugned order dated 20.02.2015 passed by the Hon’ble Rajasthan Electricity Regulatory Commission (hereinafter referred to as the “Commission”) in Petition No. 456 of 2014 while determining the ARR and Tariff along with Investment Plan of the Discoms for FY 2014-15. By the Impugned Order, the Respondent Commission has allowed a rebate of 10% on energy charges of LP/HT-5 category on the traction load for the Appellant for a period of 5 years from electrification and ordered that non-traction load shall be billed under the respective tariff categories applicable to the load.*
2. *The Appellant has challenged the impugned order, inter alia, on the following grounds:*
 - (i) *Traction and non-traction load for the Appellant has to be treated as one and a single part tariff category has to be made;*
 - (ii) *Benefit of Integrated Maximum Demand is to be provided to the Appellant which is already being provided to the Indian Railways;*
 - (iii) *Without prejudice to issue (i) hereinabove, Respondent No. 2 is not even charging the tariff which has been specified in the impugned order qua the Appellant (that is, LP/HT-5 Tariff category) and on the contrary has been arbitrarily billing the Appellant at a much higher tariff (NDS/HT-2 Tariff category) which has not been approved by the Commission.*
3. *At this stage the Appellant submits that the present appeal can be disposed off upon consideration of the following facts:*
 - i. *The Committee constituted pursuant to the directives of the Hon’ble Commission in the Impugned order recommended that single combined tariff may be considered for Jaipur Metro*

in line with other cities where the metro services is functioning in the country. The tariff based on the decision by the Commission may be considered for the applicability of single tariff to Jaipur metro of the existing connections since 07.06.2013.

- ii. *The Hon'ble Commission by an order dated 22.09.2016 passed in Petition No. RERC 552/15, 553/15 and 554/15, while determining the ARR and Retail Supply Tariff for the Discoms for FY 2015-16 and approved True upto of ARR for FY 2013-14 and Investment Plan for FY 2015-16 has held as follows:*

"Commission's view

6.12.4. As per the joint meeting of JVVNL and JMRC officials, the segregation of traction and non traction loads is not feasible and after detailed deliberation and discussion, all members of the committee were of the opinion that a single combined tariff may be considered for metro service in line with other cities where the metro service is functioning in the country. JMRC had also apprised that its load on traction is approximately 30% and that of non traction is 70%.

6.12.5.

...

The Commission accordingly accepts the proposal of Discom to bill JMRC at HT large industrial tariff without 10% rebate till the traction and non traction loads of the Metro are identified and separated.

6.12.6. As far as the issue of integrated maximum demand is concerned, the Commission has observed that this facility has been allowed to Railways in respect of Traction Load only and, in view of the fact that segregation of traction and non-

traction load is not feasible in the case of Metro, the request for allowing the facility of integrated maximum demand on traction load to JMRC cannot be considered further.”

- 4. In view of the aforesaid facts, this Hon’ble Tribunal may consider permitting the Appellant to file an appropriate petition or application before the Hon’ble Commission whereby the Hon’ble Commission may consider the applicability of single tariff to Jaipur metro on the existing connections since 07.06.2013, without any requirement for segregation of traction and non-traction loads and without being influenced by the findings in this regard as recorded in the impugned order dated 20.02.2015.*
- 5. On the issue of Integrated Maximum Demand, Respondent Nos. 2-4 have stated that in order to extend this benefit additional spare capacity with the help of extra transformers will have to be installed. This Hon’ble Tribunal may consider permitting the Appellant to file an appropriate petition/ application before the Hon’ble Commission demonstrating the expenses incurred by the Appellant for installing the substations at Mansarovar and Sindhi Camp and for laying down a 2 circuit 132kV underground cable separately for both the receiving sub-stations. This Hon’ble Tribunal may consider directing the Respondent Commission to consider this issue afresh without being influenced by the findings in this regard as recorded in the impugned order dated 20.02.2015.*
- 6. The Appellant prays that the appeal can be disposed off in terms of the aforesaid.*

*THROUGH
SHIKHA OHRI/MATRUGUPTA MISHRA
ADVOCATES FOR THE APPELLANT*

.....

*Dated: 01.04.2019
Place: New Delhi”*

9. In the light of the submissions of the counsel appearing for the Appellant and the counsel appearing for the Respondent Nos. 1 and 2 to 4, as stated supra, and in terms of the statement made and for the reasons stated in the Memo dated 01.04.2019 filed on behalf of the Appellant, the instant appeal filed by the Appellant stands disposed of.

ORDER

For the forgoing reasons, as stated above, the instant appeal, being Appeal No. 140 of 2015, filed by the Appellant stands disposed of.

All the contentions of both the parties are left open.

IA NOs. 263 OF 2016 & 491 OF 2018

In view of the Appeal No. 140 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, on account of which, reliefs sought in these two IAs do not survive for consideration as having become infructuous, hence, stand disposed of.

Order accordingly.

Parties to bear their own costs.

(Ravindra Kumar Verma)
Technical Member
vt/ss

(Justice N.K. Patil)
Judicial Member