

Court-II

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 135 of 2014

Dated : 06th May, 2016

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:

Kerala State Electricity Board

...Appellant(s)

Versus

Kerala State Electricity Regulatory Commission

...Respondent(s)

Counsel for the Appellant : Mr. M. T. George
Counsel for the Respondent(s) : Mr. Ramesh Babu and
Mr. Shivshankar Panickar

ORDER

This Appeal, being Appeal No.135 of 2014, has been filed by the appellant, Kerala State Electricity Board (in short the '**Board**') under Section 111 of the Electricity Act, 2003, against the order dated 25.10.2012, passed by the Kerala State Electricity Regulatory Commission (in short the '**State Commission**') in Original Petition No.27 of 2011 in the matter of trueing up of the accounts of the Electricity Board for the FY 2009-10.

- 2) The main grievances of the appellant in this appeal is that while deciding the true up Petition, the State Commission did not approve all the genuine and actual expenses incurred by the Board during FY 2009-10, which had been audited and certified as in order by Comptroller and Auditor General of India. The total expenditure incurred by the Board during FY was Rs.6,170.66 Crores while the income received by the Board was only Rs.5,183.86 Crores resulting in a revenue gap of Rs.1,227.51 Crores, whereas the State commission had approved an expenditure of Rs.5,713.67 Crores and a total income of Rs.5,183.86

Crores. Hence, according to the approved order of the State Commission there is a revenue gap of Rs.639.43 Crores.

- 3) According to the appellant, the State Commission is not justified in rejecting the genuine expenses actually incurred by the appellant which had put the appellant in a serious and difficult economic situation. In the instant Appeal, being Appeal No.135 of 2014, the Impugned Order has been passed in the true up Petition for the FY 2009-10.
- 4) We have heard Mr. M. T. George, learned counsel for the appellant and Mr. Ramesh Babu for the sole Respondent, namely the State Commission and perused the Impugned Order including the written submissions and counter affidavit of the Respondent Commission and other material on record.
- 5) Following are the grievances, raised by the appellant in this appeal:
 - (a) **Power Purchase Cost:** It has been disallowed to the extent of increase in amount payable on account of purchase of power in FY 2009-10 over FY 2008-09 and disallowed Rs.174.24 Crores. According to the appellant, the true up account for the relevant period in question should be modified and corrected as per the directions given in judgment dated 10.11.2014 in Appeal Nos.1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, in paragraph 19.2 thereof, which is quoted hereunder”

“19.2 The FY 2012-13 is already over. The accounts of FY 2012-13 are required to be trued up. The Appellant shall submit the audited accounts along with the Application for true-up. The State commission shall approve the true-up energy sales and cost of power purchase after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any. Accordingly, directed.”

After considering the aforesaid para 19.2 of our earlier judgment dated 10.11.2014, we dispose of this issue as per directions given by us in the earlier judgment dated 10.11.2014 and the State Commission is directed to decide this issue as per directions contained in para 19.2 of our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

- (b) That the employee cost of the Board amounting to Rs.99.08 Crores has been disallowed by the State Commission in the Impugned order. According to the appellant, this matter/issue is also covered by our aforesaid judgment dated 10.11.2014 (supra), particularly para 8.4 and 8.5 thereof, which are quoted as under:

“8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honoured. The terminal benefits have also to be provided for.

8.5 We find that the State commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had

dismissed the Appeal filed against this judgment, and which were disallowed by the State commission by order in Appeal no. 1 of 2013 should also be allowed.”

After hearing the parties, we decide this issue as per the directions contained in para 8.4 and 8.5 of our earlier judgment dated 10.11.2014. The State Commission is further directed to dispose the said point as per the said directions.

- c) **Repair and Maintenance Cost :** According to the appellant, repair and maintenance, to the extent of Rs.20.42 crores has been disallowed. This issue has been decided against the appellant by the aforesaid judgment dated 10.11.2014. Hence, disallowed and decided against the appellant.
- d) **Administrative and General Expenses:** According to the appellant, the Electricity Board had incurred Rs.86.17 Crores but State Commission had approved only Rs.66.97 Crores and a gap of Rs.19.20 Crores has been made. The learned counsel for the appellant had cited in support of this contention, para 20(vi) dealing with A&G expenses of our judgment dated 04.09.2012 in Appeal Nos. 190 of 2009 and 46 of 2010, are quoted below:

“iv) *A&G Expenses:*

The State Commission shall consider the A&G expenses as per the audited accounts of the Appellant in the true up and allow the same with carrying cost, after prudence check. We have also given directions to the State Commission regarding framing of Regulation for normative expenditure to be allowed for various costs including A&G expenses in paragraph 13.4.”

After going through the judgment dated 04.09.2012 (supra), we dispose of this issue and direct the State Commission to consider and decide this issue as per our direction contained in para 20(vi) dealing with A&G Expenses in judgment dated 04.09.2010 in Appeal Nos. 190 of 2009 and 46 of 2010.

- e) **Return on equity:** This issue has admittedly been decided by this Appellate Tribunal vide judgment dated 10.11.2014 in Appeal No.1 of 2013 and 19 of 2013 (supra). Hence, we decide this issue in favour of the appellant as per judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, para 11.3 of which is reproduced here under:

“11.3 We find that the State Commission has allowed ROE at the rate of 14% in its Tariff Regulations for generation and transmission omission. No Tariff Regulations have been framed by the State Commission. Section 61 of the Electricity Act, 2003 provides that the State Commission in specifying the terms and conditions for determining the tariff will be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to the generating companies and transmission licenses. The Central Commission’s Regulations provide for ROE of 15.5%. In the absence of State Commission’s own Regulations, the State Commission should have followed the Central Commission’s Regulations and allowed ROE of 15.5%. However, the State Commission has decided ROE of 14% without giving any reason. Learned Counsel for the State Commission is now giving reasons for not allowing ROE of 15.5% which is not permissible at appellate stage. Accordingly, we direct the State Commission to allow ROE of 11.5%, as per the Central Commission’s Regulations.”

This issue is disposed of as per direction contained in para 11.3 dealing with return on equity in our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

- f) **Interest on finance charges:** This issue dealing with interest and finance charges, as per the appellant, has been decided in favour of the appellant vide judgment dated 10.11.2014 of this Appellate Tribunal in Appeal Nos. 1 of 2013 and 19 of 2013, passed by this Appellate Tribunal. Relevant portion of para 16.2 and 16.3 are as under:

“16.2 According to the Learned Counsel for the State Commission, the State Commission had come to a reasonable conclusion on the requirements of interest and finance charges. The State Commission has also correctly kept an adhoc provisions of Rs. 20 crores as interest on working capital to meet the short term fund requirements.

16.3 We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital. The interest on working capital is also decided on adhoc basis only. We feel that there is a need to make Regulations for the financial parameters. Till the Regulations are framed, the State Commission should follow the Central Commissions Regulations. As the FY 2012-13 is already over, we direct the State Commission to true up Interest and Finance charges for the FY 2012-13 based on the audited accounts.”

This issue has been decided in favour of the appellant vide our judgment dated 10.11.2014(supra). The State Commission is directed to decide this issue as per directions contained in our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

- 6) In view of the above, **we allow the instant appeal, being Appeal No.135 of 2014**, to the extent indicated above, and Impugned Order is modified to the extent indicated above without imposing any cost. The State Commission is directed to comply with the aforesaid directions in letter and spirit and pass consequential orders within three months from today positively, under intimation to this Appellate Tribunal.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

sh/kt