

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**DFR NO. 3035 OF 2018 &
IA NO. 1127 OF 2018**

Dated: 28th September, 2018

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

The Singareni Collieries Company Limited **Appellant(s)**
Versus
Telengana State Electricity Regulatory Commission **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Hemant Singh
Ms. Soumya Singh

Counsel for the Respondent(s) : Ms. D. Bharathi Reddy

ORDER

We have gone through the letter / impugned order. The main deficit with regard to the order seems to be, as contended by the Appellant that it was not at the hands of the Commission but by the Receiving Officer of the Commission.

The letter / impugned order reads as under:

*“TELENGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD*

*From
Receiving Officer, TSERC,
11-4-660, 5th Floor,
Singareni Bhavan,
Red Hills, Lakdi-ka-pul,
Hyderabad, Telengana – 500 004*

*To
Sri. P. Shiva Rao, Advocate
H. No. 15-21-1, MIG – 82, Balaji
Nagar,
Kukatpally, Hyderabad – 500 072*

Sir,

Sub:- Petition filed by M/s. Singareni Collieries Company Limited seeking truing up of tariff for its thermal power project – Reg.

Ref:- Petition filed on 10.07.2018

The petition has been scrutinized and examined with reference to the Electricity Act, 2003 and Conduct of Business Regulation, 2015 along with levy of the fee for various services rendered by the Commission Regulation, 2016.

2. You have filed a petition in the reference cited seeking truing up of tariff for its thermal power project 2 x 600 MW located at Jaipur, Mancherial under section 86 (1) (a) read with section 62 of the Electricity Act, 2003.

3. The petition was originally filed with certain defects. On scrutiny the OSD (Legal) of the Commission has returned it by letter dated 19.06.2018 and the same was resubmitted by you on 10.07.2018 with necessary replies of the defects.

4. According to the submissions made in the petition, an appeal had been preferred against the order passed by the Commission on 19.06.2017, determining the tariff for FY 2016-17 to 2018-19. It is noticed by the Commission that it has filed its counter affidavit in the appeal referred by you.

5. You have filed the present petition claiming in the petition that “this Commission has adopted CERC Regulations 2014-2019 whereby the depreciation rates fell to such an extent that the depreciation so allowed is becoming insufficient for repaying the loan and in this situation STPP has to repay the loan from its internal resource on which no returns are allowed in the tariffs” and prayed to allow additional depreciation to meet loan repayment obligation as per the loan agreement already entered by SCCL despite the issue being under consideration in the appeal before the Hon’ble ATE.

6. You have filed the present petition for allowing additional depreciation, which is an exercise and process of part of fixation of the tariff, which cannot be undertaken by this Commission at this point of time pending Appeal No. 312 of 2017 on the file of ATE.

7. Not only entertaining the present application pending appeal on the file of ATE is not legal, but the application itself is not maintainable. This Commission cannot entertain any petition in a matter whereas the issue has been seized up by the higher forum.

8. You on behalf of the petitioner may file a petition for determination final completion cost of the project which will form the basis for arriving at the tariff

for the next control period and which would also cover the present relief sought by the petitioner. The present petition is not maintainable and it is liable to be returned. Accordingly, the petition along with demand draft and the petition to condone the delay in filing the original petition along with demand drafts are returned.

9. *The petitioner may file the petition as observed above after the disposal of the appeal, if so desired and advised.*

Yours sincerely,

Encl: As above

RECEIVING OFFICER."

The contents of the order shows that the Receiving Officer has gone into the merit of the matter and passed the order opining that it is not maintainable. Learned Counsel for the respondent Commission submits that the opinion expressed in the letter / impugned order is the opinion of the Commission. We fail to understand the functioning of the Commission, if this letter / impugned order is supported by them. In the absence of any order passed by the Commission, how Commission could take a view that the Receiving Officer's order is their order? Since the order in question is not at the behest of the respondent Commission, we are of the opinion that it has no legs to stand. Accordingly, appeal is allowed and the impugned order is set aside. The Commission is directed to hear the Appellant / Petitioner and then pass necessary orders in accordance with the procedure contemplated.

Order accordingly.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

tpd/kt