

COURT-II

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

**ORDER IN APPEAL NO. 57 OF 2014
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI**

Dated : 23rd April, 2018

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

**Himachal Pradesh State Electricity Board Ltd.
Vidyut Bhawan, Kumar House,
Shimla-171004**

... Appellant(s)

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex,
KKhalini, Shimla-171001**
- 2. M/s Auro Spinning Mills
Sai Road Baddi,
District Solan-173205**
- 3. Laghu Udyog Bharti
66 DIC, Industrial Area Baddi,
District Solar-173205**
- 4. Jai Bharat Steel Kala Amb
Himachal Pradesh-173030**
- 5. The Confederation of Indian Industry
(Himachal Pradesh State Council, Northern Region)
Sector-31 A, Chandigarh-160030**
- 6. BBN Industry Association
C/o. Single window Clearance Agency
Industrial Area Baddi,
District Solan-173205**

**7. Parwanoo Industries Association,
HPCED Building, Dept. of Industrial Association
Sector-1, Parwanoo
District Solar-173 220**

... Respondent(s)

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Neha Garg
Mr. Ashun Ramanathan

Counsel for the Respondent(s) : Mr. Pradeep Kr. Mishra
Mr. Manoj Kr. Sharma for R-1

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

The Appellant has sought the following reliefs in Appeal No. 57 of 2014:

In view of the facts mentioned in para 7 above, pints in dispute and questions If law set out in para 8 and the grounds of appeal stated in para 9, the Appellant prays for the following reliefs:

- (a). Allow the appeal and set aside the order dated 26.11.2013 passed by the State Commission to the extent challenged in the present appeal.
- (b). Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

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

- A. Whether in the facts of the case, the State Commission is justified in not revising the applicable Transmission and Distribution loss in the State of Himachal Pradesh?
- B. Whether the State Commission is justified in not allowing the claim of the Appellant with regard to the Survey & Investigation charges?
- C. Whether the State Commission is justified in denying the claim for carrying cost of the Appellant?

- D. whether the State Commission is justified in the nature of determination of the Peak Load Violation Charges in the facts of the present case?

ORDER

1. The Appellant questioning the legality and validity of the Impugned Order dated 26.11.2013 passed in Review Petition No. 88 of 2013 as amended by MA No. 106/2013 on the file of the Himachal Pradesh Electricity Regulatory Commission, Shimla, presented this appeal.
2. We have heard learned counsel appearing for the appellant and the learned counsel appearing for Respondent No.1 for quite some time. During the course of the submissions, the learned counsel appearing for the Appellant, Shri Anand K.Ganesan has filed the memo dated 23.04.2018 and submitted that the statement made in the paragraph 6, may be placed on record and the instant appeal filed by the Appellant may kindly be disposed of in terms of the submission made in the Paragraph 6 in the interest of justice and equity.
3. Further, it is submitted that the appropriate directions may kindly be issued to the Respondent No. 1 to consider the representation to be submitted by the Appellant and dispose of in accordance with the law expeditiously.
4. All the contentions of both the parties may be left open.
5. **Per Contra**, the learned counsel, Shri Pradeep Misra, appearing for Respondent No. 1, inter-alia contented and fairly submitted that in the light of statement made by the learned counsel appearing for the Appellant and in the

light of the submission made in Paragraph 6 of the memo dated 2.04.2018, the instant appeal, being Appeal No. 57 of 2014 may be disposed of. Keeping all the contentions left open on the said issues.

6. The statement made in the memo dated 23.04.2018 is placed on record. Read thus, reproduced herein below:-

1. *The appellant filed present appeal challenging the impugned order dated 26.11.2013 passed by the Himachal Pradesh Electricity Regulatory Commission (hereinafter called the 'State Commission') passed in Petition No. Review Petition No. 88 of 2013 whereby the State Commission has partly allowed the review petition filed by the Appellant and modified the tariff order dated 27.04.2013 passed by the Annual Performance Review for the year 2013-14. In view of the review being partly allowed, the original order has merged into the impugned order which is challenged before the Hon'ble Tribunal.*
2. *The Appellant had challenged the following issues in the present appeal:*
 - (a). *The Transmission and Distribution Losses determined by the State Commission.*
 - (b). *Determination of the Survey and investigation Charges to be allowed to the Appellant.*
 - (c). *Carrying cost not allowed by the State commission on the total revenue gap of the Appellant.*
 - (d). *Imposing the Peak Load Violation Charges only on the days of violation.*
3. *During the course of proceedings, the Appellant had not pressed the following issues for adjudication by the Hon'ble Tribunal;*
 - (a). *Determination of the Survey and Investigation Charges to be*

allowed to the Appellant. The State Commission has allowed the Survey and Investigation Charges in the trueing up process with carrying cost.

(b) Peak Load Violation Charges: The issue is only on tariff design and does not affect the revenue requirements of the Appellant. The year in question is over and the issue does not survive.

- 4. On the issue of carrying cost, the principle submission of the Appellant is that the State Commission, after recognizing the revenue gap of Rs. 683.03 crores, has however not allowed the carrying cost on the total revenue gap and that the State Commission has erred in not allowing the carrying cost on the true up amount arrived at by the State Commission of Rs. 683.03 crores.*
- 5. The other issue raised was the Transmission & Distribution losses which was determined by the State Commission.*
- 6. Pursuant to the last date of hearing before the Hon'ble Tribunal, the Appellant submits that the present appeal may be disposed of by the Hon'ble Tribunal by permitting the Appellant to approach the State Commission on the only issue of carrying cost as raised in the present appeal with all supporting material and details with a direction to the State Commission to consider the claim of the Appellant and pass a reasoned and considered order, without being influenced by the impugned orders of the State Commission on the issue. All contentions may be kept open on the said issue.*
- 7. Subject to the above, the Appellant does not also seek to press the other issue of Transmission & Distribution losses as raised in the present appeal.*
- 8. It is submitted that the present appeal may be disposed of in terms of the submissions made in para 6 above.*

7. The submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No. 1 as stated supra, is placed on record.
8. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No. 1 as stated above and in terms of the statement made in paragraph 6 of the memo dated 23.04.2018 as stated supra, the instant appeal filed, stands disposed of in the interest of justice and equity.
9. The appellant herein is permitted to file his consolidated representation within a period of 4 weeks' from the date of receipt of copy of this order.

The Respondent No. 1 herein is directed to dispose of representation to be filed by the Appellant, and Appellant, disposed of in accordance with law after offering reasonable liberty for hearing to the parties as expeditiously as possible at any rate within a period of 3 months from the date of receipt of the copy of this order.

10. With these observations, the instant appeal, being appeal no. 57 of 2014 filed by the Appellant, stands disposed of.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member