

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO.229 OF 2014

Dated: 29th May, 2015.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member.**

IN THE MATTER OF:

Chhattisgarh State Power)
Transmission Co. Ltd)
Vidyut Seva Bhawan, Danganiya,) ... Appellant
Raipur, Chhattisgarh-492013

Versus

Chhattisgarh State Electricity)
Commission, Irrigation Colony,)
Shanti Nagar, Raipur-492001.) ... Respondents

Counsel for the Appellant(s) ... Ms. Superna Srivastava
Mr. Neelmani Pant
Ms. Nishtha Sikroria
Mr. Kumar Harsh

Counsel for the Respondent(s) ... Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

JUDGMENT

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON

1. The Appellant is one of the successor companies of the undivided Chhattisgarh State Electricity Board which has been unbundled in terms of the Chhattisgarh State Electricity Board Transfer Scheme Rules, 2010 notified by the Government of Chhattisgarh under Section 131 of the Electricity Act, 2003 (“**the 2003 Act**”). The undertaking forming part of the transmission undertakings of the Board as set out in the Transfer Scheme stands transferred to and vested in the Appellant and all functions and duties pertaining to transmission of power in the State are being performed by the Appellant as the successor of the Board in terms of the Transfer Scheme. The Respondent is the Electricity Regulatory Commission in the State of Chhattisgarh (“**Respondent Commission**”) and is performing the functions enjoined upon it under Section 86 of the 2003 Act including determination of tariff for the distribution and transmission licensees operating within the State.

2. The Appellant has challenged in this appeal order dated 12.6.2014 passed by the Respondent Commission whereby the Respondent Commission has *inter alia* approved the final true-up of the ARR of the Appellant for FY 2011-12 and FY 2012-13 and also determined transmission tariff for FY 2014-15.

3. It may be stated at the outset that the Appellant has restricted the challenge to the impugned order to two issues. They are as under:

i) Though the Respondent Commission has accepted and acknowledged that the Appellant's claim to transmission losses are the actual transmission losses based on the actual reading of energy meters installed at various points of State's periphery, it has declined to allow to the Appellant for all the three years comprised in the Control Period of FY 2010-11 to FY 2012-13, its statutory entitlement of one-third apportionment of gains on account of reduced transmission losses (totaling to Rs.20.26 crores cumulatively) on the ground of data being "inappropriate" and the bus losses not being

included in the calculations; (**“the claim relating to transmission losses”** for brevity).

- ii) Though the Respondent Commission has approved the Appellant’s claim to O&M expenses for FY 2011-12 and FY 2012-13 which shows reduction against the O&M expenses approved thereby resulting in substantial gains, the Respondent Commission has not considered apportionment of one-third of the said gains “in the interest of consumers” as per the provisions of Section 61(d) of the 2003 Act, thereby denying the Appellant of its statutory entitlement to the tune of Rs.98.08 crores cumulatively for the said years (**“the claim relating to O&M expenses”** for brevity).

4. We have heard Ms. Superna Srivastava, learned counsel appearing for the Appellant and Ms. Swapna Seshadri, learned counsel appearing for the Respondent Commission. So far as the challenge relating to transmission losses is concerned the Respondent Commission while declining to grant the Appellant’s claim has observed that the Appellant has submitted that actual

transmission losses were 4.12% and 3.86% respectively as against the targeted losses level of 4.57% and 4.50% for FY 2011-12 and FY 2012-13 based on the actual reading of the energy meters installed at the various points of State periphery. Dealing with this submission, the Respondent Commission has observed that the energy accounting for interstate exchange of power appears inappropriate and bus-losses have not been incorporated in the calculations submitted by the Appellant. The Respondent Commission has further observed that in the absence of this it was constrained to consider provisional transmission loss as 4.12% and 3.86% for year FY 2011-12 and FU 2012-13 respectively. The Respondent Commission has further observed that in the absence of proper energy accounting data, sharing of gains and losses will not be permissible. Thus it appears that the Respondent Commission is of the view that proper energy accounting data was not submitted by the Appellant.

5. Counsel for the Appellant has submitted that this statement is incorrect and necessary data was submitted. Counsel for the Respondent Commission on the other hand submitted that the

Appellant was specifically called upon to give data, which it has failed to do.

6. In our opinion it is not necessary to go into these rival claims because counsel for the Respondent Commission has submitted a format which indicates what information/data is required to be furnished by the Appellant. We take the said format on record and mark it as **Annexure-“A”**. Counsel for the Appellant submits that the Appellant will furnish the required data as per the said format to the Respondent Commission and wherever there is any difficulty in furnishing data, the Appellant will address the Respondent Commission on that issue. In view of these statements made by the counsel, we are of the opinion that it not necessary for us to go into the rival submissions on the claim of the Appellant relating to transmission losses. The Respondent Commission will have to consider the said claim after the Appellant submits the data and after giving the Appellant a hearing.

7. So far as the claim of the Appellant relating to O&M expenses is concerned the Respondent Commission has observed as under:

“As far as sharing of gains on achievement of lower O&M expenses is concerned, the Commission has computed normative O&M expenses as Rs.302.62 crore for FY 2011-12 ad Rs.327.30 crore for FY 2012-13 as per MYT Regulations, 2010. The gain and losses were included in MYT Regulations 2010 on the basis of normative O&M and actual O&M expenses. However, the gains of O&M expenses have not been considered in the interest of consumers as per the provisions in section 61(d) of EA 2003. Also in the same spirit, the provisions in the MYT Regulations, 2012 related to gains and losses, have been modified based on normative O&M expenses. Various stakeholders have been objecting on the normative O&M expenses considered in the MYT Regulations 2010 and the orders passed based on these Regulations.”

8. As regards this issue, counsel for the Appellant submitted that during the provisional true-up for FY 2010-11 based on the unaudited provisional accounts of the Appellant, the Respondent Commission had passed the Tariff Order dated 28.4.2012 wherein the issue of O&M expenses was dealt with. The Respondent Commission found that the O&M expenses submitted by the Appellant for FY 2010-11 were much lower than the normative O&M expenses. The Appellant had clarified that in the absence of Tariff Order for FY 2010-11, the tariff of FY 2009-10 was continued during FY 2010-11 due to which revenue realization has been lower

than the ARR approved in the MYT Tariff Order. The Respondent Commission approved the O&M expenses submitted by the Appellant and out of the net gain of Rs.112 crores, the Appellant has been allowed to retain 1/3rd of this gain as per the provisions of MYT Regulations i.e. Rs.37.32 crores. The rest 2/3rd of the gain has been passed on to the consumers in the form of reduction in tariff.

9. Counsel further submitted that when final true-up for FY 2010-11 and provisional true-up for FY 2011-12 was carried out the Respondent Commission passed tariff order dated 12.7.2013. In that order with respect to FY 2011-12 the Respondent Commission has noted the Appellant's submission that in its Tariff Order for FY 2012-13 dated 28.4.2012, the Respondent Commission has approved O&M expenses of Rs.203.80 crores, equal to 75% of the normative expense since the Appellant has not incurred O&M expenses to the extent allowed by the Respondent Commission. Since the actual O&M expenses have been less than the normative O&M expenses, the Appellant had claimed incentives for improvement in performance by means of reduction in O&M expenses for FY 2011-12. The Respondent Commission allowed

O&M expenses of Rs.127.72 crores for FY 2010-11 and Rs.149.92 crores for FY 2011-12. The share of gain in O&M expenses has been approved by the Respondent Commission and the Appellant has been allowed to retain Rs.39.10 crores for FY 2010-11 and Rs.43.93 crores for FY 2011-12.

10. As regards the substantial less O&M expenses incurred by the Appellant as against the normative O&M expenses approved by the Respondent Commission in the MYT Tariff Order, counsel submitted that reference may be made to order dated 31.12.2011 passed by the Respondent Commission in Petition No.50/2011(M) wherein the O&M expenses of the Appellant have been noted. The average O&M expenses for the period from 2005-06 to 2009-10 have been found to be Rs.105.83 crores which have increased progressively. The Respondent Commission has also in MYT Tariff Order dated 31.3.2011 recorded that the Appellant has been reducing its transmission losses primarily because of improvement in transmission system and strengthening of network. Therefore, the O&M expenses actually incurred by the Appellant are appropriate. Since the Appellant has incurred actual O&M

expenses less than normative O&M expenses the consequent gain is liable to be retained by it to the extent of one-third portion as per MYT Regulations.

11. Counsel submitted that the Respondent Commission has disallowed the reduction of one-third portion of gains in the impugned order on the ground that it is not in the interest of consumers as per the provisions of Section 61(d) of the 2003 Act. Counsel submitted that consumers' interest has been duly protected by making a provision for passing of one-third portion of the gains to the consumers who are actually receiving two-third portion of gains due to non establishment of required fund. Counsel submitted that retention of one-third portion of gain is the entitlement of the Appellant under the MYT Regulations which is also in consonance with the provisions of sub-clause (b) and (c) of Section 61 which require efficiency in performance to be encouraged for the utility. Therefore, denial of the Appellant's claim on the ground of consumers' interest is totally unsustainable.

12. Counsel submitted that Clause 13 of MYT Regulations, 2012 shows that instead of one-third portion under the earlier MYT Regulations, the Appellant is now permitted to retain 50% of the gains that may accrue on account of reduction from targets fixed for efficiency linked controllable items. Counsel submitted that therefore the Respondent Commission is wrong in relying on the MYT Regulations, 2012 to deny incentives to the Appellant.

13. Counsel further pointed out that vide order dated 31.12.2011 passed in Petition No.50/2011(M) the Respondent Commission has declined to consider any review/modification in MYT Regulations on the ground that the new/modified MYT Regulations are to be finalized shortly. That being so, the Respondent Commission's reasoning that the objections of stakeholders and orders passed by it thereon have precluded it from allowing the Appellant to retain the gains accruing on account of O&M expenses is also unsustainable.

14. Counsel further pointed out that the Respondent Commission has allowed the Appellant to retain the aforesaid gains during the

provisional true-up exercise. It is the settled position of law that same methodology has to be applied in true-up exercise as used in the main tariff order. As such, the Respondent Commission was bound to follow the same methodology and allow the Appellant to retain the said gains during the final true-up exercise also. Counsel pointed that in the written submissions filed before this Tribunal the Respondent Commission instead of explaining the reasoning given in the main tariff order has sought to give completely new reasoning which is not found in the main tariff order. The Appellant had no notice of such points which are now raised in the written submissions. Counsel submitted that therefore the impugned order to the extent it denies O&M expenses to the Appellant needs to be set aside.

15. All these submissions have been strenuously opposed and contested by the counsel for the Respondent Commission. Counsel supported the impugned order. Though, we have reproduced the submissions of the Appellant's counsel, at this stage, we do not want to go into them because we find that Respondent Commission's order is cryptic. The impugned order does not

indicate that the submissions made by the Appellant were considered by the Respondent Commission. It is also necessary for the Respondent Commission to consider the Appellant's response to the submissions which are raised in the written submissions filed before this Tribunal. In the circumstances, we are of the opinion that the Respondent Commission should also hear the Appellant afresh as regards claim relating to O&M expenses. We therefore pass the following order:

16. The impugned order to the extent it relates to the Appellant's claim pertaining to O&M expenses and transmission losses is set aside. The matter is remitted to the Respondent Commission. So far as the claim relating to transmission losses is concerned, the Appellant shall furnish to the Respondent Commission, the data as per format which is tendered in the Tribunal by counsel for the Respondent Commission and which is marked by us as Annexure-"A". If there is any difficulty in furnishing any data, the Appellant shall address the Respondent Commission on that issue. Similarly, so far as the claim relating to O&M expenses is concerned, the Respondent Commission shall hear the Appellant afresh. The

Appellant shall also be given a chance to respond to the points raised in the written submission tendered in this Tribunal. Appropriate order on both the issues may be passed after hearing the Appellant. We make it clear that we have not expressed any opinion on the merits of the case of the parties. The Respondent Commission shall deal with both the issues independently and in accordance with law and pass a reasoned order.

17. The appeal is disposed of accordingly.

18. Pronounced in the open court on this day 29th day of May, 2015.

(T.Munikrishnaiah)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE/~~NON-REPORTABLE~~**