

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.263 of 2014

Dated: the 10th April, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

1. Prime Ispat Ltd
Village-Bana
Via-Hirapur-Tendua
Distt-Raipur
Chhattisgarh-493225

2. Mahamaya Steel Industries Limited,
Sector-C, Sarora, Urla Industrial Complex,
Raipur
Chhattisgarh-493 221

..... Appellant(s)

Versus

1. Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony,
Shanti Nagar,
Raipur-492001
Chhattisgarh

2. Chhattisgarh State Power Distribution Company Limited
Daganiya,
Raipur-492013
Chhattisgarh

...Respondent(s)

Counsel for the Appellant(s) : Mr. Aashis Anand Bernard

Counsel for the Respondent(s): Mr. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh for R-1
Mr. K Gopal Choudary
Mr. A Bhatnagar
Mr. Nehar for R-2

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal has been filed by the Appellant u/s 111 of the Electricity Act, 2003 before this Tribunal against the Order dated 12.6.2014 passed in Petition No.7 of 2014 by the Chhattisgarh State Electricity Regulatory Commission in respect of the tariff order.
2. The Appellant No.1 is M/s. Prime Ispat Limited, a public limited Company having its registered office at Village Bana, Distt-Raipur, Chhattisgarh which is having a structural Rolling Mill along with Induction Furnance with CCM. The connected load of the Company is 14000 KVA on 132 KV. The Appellant No.2 is M/s. Mahamaya Steel Industries Limited having its registered office at B-8/9, Sector C, Sarora, Urla Industrial Complex, Raipur, Chhattisgarh State.
3. Respondent No.1 is Chhattisgarh State Electricity Regulatory Commission, Raipur Chhattisgarh. Respondent No.2 is Chhattisgarh State Power Distribution Company Limited, Raipur, Chhattisgarh.
4. The facts of the case leading to this Appeal are as under:
 - 4.1 The Appellant No.1 and 2 named above, are a Company incorporated under the Indian Companies Act, 1956 and renowned Steel and Iron manufacturer in the State of Chhattisgarh.
 - 4.2 Chhattisgarh State Electricity Regualtory Commission passed an Order (Impugned) regarding tariff for the year 2014-15 on 12.6.2014. In the tariff order, the Commission approved optional tariff benefit to only 33 KV line users and similar type of optional tariff was not provided for EHV-3 Steel industries consumers and the Commission has approved KVAH billing to the Appellant in place of KWH billing.

5. On going through submissions made by the learned Counsel for the Appellant Mr. Aashish Bernard and learned Counsel for the Respondent 1, Ms. Swapna Seshadri , the following question would arise for our consideration;

(a) **Whether the State Commission discriminated the 132 KV consumers vis a vis 33 KV consumers who have been given the choice of optional tariff?**

(b) **Whether the State Commission erred in implementing the KVAH billing in place of KWH billing for the 132 KV Consumers without examining the impact of the same and directed the Respondent-2 i.e. Chhattisgarh State Power Distribution Company Limited to undertake the implementation of the changed billing system from KWH to KVAH billing ?**

6. Since both these issues are inter-related hence, these will be taken together.

6.1 **The following are the submissions made by the learned Counsel on these issues in favour of the Appellant:**

6.2 that the learned Commission in the Impugned Order has discriminated between the Appellants who are drawing power at 132 KV and those steel industries which are drawing power at 33 KV. Further, the Commission while passing a cryptic order has introduced a new concept of optional tariff and has made it applicable to only those units who are drawing power at 33 KV and has not extended this benefit to other units drawing power at 132 KV and 220 KV.

6.3 that the extension of optional benefit of taking the optional tariff to 33 KV line users and not to other categories is completely arbitrary, discriminatory and against the established principles of law.

6.4 that the Commission has without studying and examining the effect of the introduction of KVAH billing instead of the currently ongoing KWH billing, has directed the Respondent No.2 in para 7.4.1 of the Impugned Order to start the

billing in KVAH and submit a report to it in the next Tariff Petition. The Commission has failed to discharge its function under section 86 of the Electricity Act, 2003, as it has sought the implementation of a billing system without examining the likely negative impact on the consumers such as Appellant.

6.5 that the Commission has implemented the changeover to KVAH billing system without examining in detail the impact of this changeover and has instead postponed the same to the next tariff petition. However, it has directed the recovery of tariff on this changed billing pattern from the current year. The Commission has failed to discharge its function and as such the changed system of billing should not be implemented till a complete study is undertaken by the Commission.

6.6 that a perusal of the comparative chart demonstrates that when the April, 2014 bill is taken for the consumption of April, 2014, when the bill is taken in KWH basis then the total units consumed is 5402400 and when the same consumption is taken in KVAH basis the total units consumed comes to 5473800. In other words there is an increase of about 71000 (seventy one thousand) units for the same amount of consumption for the month of April, 2014. This in turn leads to a higher bill as 71000 more units have to be paid for by the Appellant at a higher tariff leading to a severe financial strain on the Appellants.

7. Per contra, the following submissions have been made by the Respondent:

7.1 that it is not that the equals have been treated unequally. The Appellants are not in the same category as the 33 KV consumers. The manner of billing of the Appellant is quite different from that of 33 KV consumers. Further, the tariff of the 132 KV consumers is also less than that of the 33 KV consumers. Most of steel industries are on 33 KV voltages and therefore, the State Commission has introduced the optional tariff for the first time to see how it works.

7.2 That there are several conditions attached to the optional tariff as under-

“Tariff Schedule for High Tension (HT) Consumers

This tariff schedule is for consumers who avail supply at 33 or 11 KV.

8.1.4.1 HV-1 Steel Industries

1. Applicability

This tariff is applicable to steel industries i.e. for mini steel plants, rolling mills, sponge iron plants, Ferro alloy units, steel casting units, and combination thereof including wire drawing units with or without galvanizing unit; for power, lights, fans, cooling ventilation etc. which shall mean and include all energy consumption in factory and consumption for residential and general use therein including offices, stores, canteen, compound lighting etc.

2. Tariff:

Category of Consumers	Demand Charge (Rs./kVA/month)	Energy Charge (Rs. per kWh)
HV-1.1: 33 kV	360	3.60
HV-1.2: at 11 kV	370	3.70

Optional Tariff

Option 1

Category of Consumers	Demand Charge (Rs./kVA/month)	Energy Charge (Rs. per kWh)
HV-1.3 33 kV	200	3.80

Option 2

Category of Consumers	Demand Charge (Rs./kVA/month)	Energy Charge (Rs. per kWh)
HV-1.4: 33 kV	360	3.30

Note:

I. The following option 1 and option 2 may be opted by steel industry of this category for one year or revision of next tariff whichever is earlier.

II. Consumer under this tariff (option II) shall be subjected to bear minimum guaranteed payment of electricity bills for demand charges on contract demand and energy charges at 70% load factor on contracted demand with 0.9 PF and Power-on-hours on annualized basis or over the period upto next tariff order whichever is earlier. However, monthly bills shall be raised on the basis of 70% load factor on contracted demand with 0.9 PF or actual consumption basis whichever is more till last but one month of the period and adjusted for minimum guarantee in the last month of period

III. Power-on- hours is defined as total hours in the billing period minus hours of load restriction enforced by CSPDCL/ CSPTCL.

3. Determination of Demand

The maximum demand of the supply in each month shall be four times the largest number of Kilo Volt Ampere hours delivered at the point of supply during any consecutive 15 minutes in the month as per sliding window principle of measurement of demand.

That the above basis of billing of 0.9 PF and 70% load factor cannot be applied to the 132 KV consumers who are being billed on KVAH basis and not on KWH basis. Therefore, it is no possible to give the above option as it is to the Appellants.

- 7.3 that the tariff for 132 KV consumers is much lower i.e. Demand Charges of Rs 345 per KVA per month and Energy Charges of Rs3.50 per unit as compared to the tariff of 33 KV consumers which is Demand Charges of Rs 360 per KVA per month and Energy Charges of Rs 3.60 per unit. Therefore, it is not the case that the same class of consumers have been treated differently by the State Commission.
- 7.4 that the State Commission is progressively shifting to KVAH billing for all consumers. This issue has been going on since the year 2006 and three reports on the same have been submitted to the State Commission. The KVAH billing was firstly introduced for 400 KV consumers, subsequently followed by 220 KV consumers and now to 132 KV consumers.
- 7.5 In the Judgment dated 10/07/2006 in Appeal No. 130 of 2005, this Tribunal had approved the KVAH billing for 400 KV consumers holding as under-

“(c) The respondent Commission in its tariff order has specifically introduced KVAh billing which provides inbuilt incentive for the appellant’s category, which will automatically take care of power factor incentive and disincentive for the high and low power factor respectively.”

7.6 Further, that most States have moved to KVAH billing since this is a better methodology and helps the grid by incentivizing consumers to maintain a high power factor. In KWH billing, power factor incentive and penalty is imposed whereas in KVAH billing, this is taken into account automatically. If the consumer maintains good power factor, there will be no increase in units even in KVAH billing.

7.7 that the year 2014-15 is over and the Appellants will make a representation for consideration of optional tariff for the next year i.e. 2015-16. If such a representation is made, the State Commission will examine the feasibility of extending the options to the 132 KV consumers and after considering all detailed facts including the feasibility will pass an order in this regard.

8. **Our discussion and conclusion:**

8.1 In order to decide the issues, let us first discuss the functions of the State Commission. The relevant Clauses of Section 86 of the Electricity Act, 2003 are as under:

“Functions of the State Commission

(1) The State Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

PROVIDED that where Open Access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

.....

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under Section 3.

8.2 Thus, the Electricity Act, 2003 clearly specifies that the Commission is having jurisdiction for determination of tariff for generation, transmission and distribution within the State and also the State Commission shall ensure transparency while exercising its powers and in discharge of its functions also the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.

8.3 The State Commission while approving the tariff of the Distribution Company follows the procedures laid down in Section 64 of the Electricity Act, 2003. Accordingly, the State Commission directs the Distribution Licensees to keep the proposed ARR and tariff in the Web Site of the Distribution Licensees and also direct the Distribution Licensees to publish the same in the Press Notifications and direct to invite the public comments on the proposed ARR and tariff. Further, the State Commission conducts public hearing at various places of the licensed area of the Distribution Companies and obtains public comments and remarks and then approves the tariff for the succeeding years. Hence, the State Commission after obtaining the views/remarks of various stake holders, consumers etc., has passed the Impugned Tariff Order dated 12.6.2014.

8.4 During the public hearing some of the Steel Plant consumers of the Chhattisgarh State raised the issue regarding demand charges. The relevant portion of the same is quoted below:

“2.3.7 Demand Charge

The Objector submitted that the demand charge payable under HV-1 category should be Rs.200/KVA/Month;

CSPDCL's Reply:

As far as fixation of particular tariff for a particular category is considered it is the prerogative of Hon'ble Commission only. CSPDCL as a distribution licensee only worries about the recovery of the approved Annual Revenue Requirement and not from whom it should be recovered.

Considering such request of the Association, this Hon'ble Commission carved out an optional tariff during FY 2013-14 for the Mini Steel Plant consumers with Rs.250/KVA/MKonth demand charge as against the normal demand charges of Rs.360/KVA/Month but none of the Association members ever availed this option during the entire year.

Commission's View:

The Commission has reviewed the optional tariff of HV-1 category and because none of the consumer has availed this option during FY 2013-14. The issue has been appropriately addressed in the Chapter of Tariff principles and tariff design for FY 2014-15".

- 8.5 Thus, during the process of public hearing, the Commission pointed that none of the HT-1 category consumers have availed the optional tariff during Financial Year, 2013-14. Further, at the time of public hearing, none of the 132 KV consumers raised their demand for implementation of optional tariff and also against the KVAH billing system.
- 8.6 Further, Section 62 (3) of the Electricity Act, 2003 states that the State Commisison while determining the tariff shall not show undue preference to any consumer of electricity. The same is as under:

"Section 62(3) of the Electricity Act, 2003

The State Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required".

- 8.7 Thus, the State Commission had prepared the tariff orders in a transparent manner and without any undue preference to any consumer of electricity.

8.8 The State Commission has already implemented the KVAH billing for 400/220 KV consumers and in this Impugned Order the same type of billing system i.e. KVAH billing system was introduced on 132 KV consumers and directed the Distribution Companies to study the impact of this KVAH billing system over the KWH system and submit the report in 2015-16 tariff.

8.9 Now we explain the advantage of High Power Factor and KVAH billing as under::

(a) Higher the Power Factor, lower is the Load Current and thereby Technical Losses of the transmission lines i.e. I^2R losses will be reduced considerably.

(b) Due to increase of Power Factor (nearer to one) , the consumer's demand charges will be reduced and also the KVAH billing will also be correspondingly reduced.

(c) The Higher Power Factor will reduce the demand on the system and improve the systems Voltage.

(d) Increases the available transmission and distribution system capacity.

(e) The improvement in Power Factor will reduce the licensee's expenditure on Power Purchase and thereby the consumers will be benefited with lower tariff.

8.10 In view of the above, most of the States are changing their billing system from KWH to KVAH billing system.

8.11 The learned counsel of the Appellant has contended that due to KVAH billing, bill amount has been increased and thereby the Appellant burdened with higher power bill. We do not find any merit in the contention for the following reasons:

$$\text{Because Power Factor} = \frac{\text{KWH}}{\text{KVAH}}$$

If Power Factor is unity, then KWH = KVAH

In the instant case, the Power Factor is less than unity and hence the consumption recorded in respect of KVAH is high compared to KWH consumption.

Further, the power factor surcharge/rebate will not be there in KVAH billing.

Thus, the KVAH based billing will drive the consumers to reach unity power factor and thereby the system performance will be improved and also reactive power drawal from the system will be minimised and thereby better system voltages for the tail end consumers also.

8.12 Further, this Tribunal in Appeal No.130 of 2005 has taken into consideration this KVAH billing. The relevant portion of the judgment is quoted as below:

“Para 17(iv) (c & d):

(c) The Respondent Commission in its tariff order has specifically introduced KVAH billing which provides inbuilt incentive for the Appellant’s category, which will automatically take care of power factor incentive and disincentive for the high and low power factor respectively.

8.13 In view of the above discussion we do not find any sufficient or cogent reason to interfere with the tariff system fixed by the learned State Commission through the impugned order. Further the FY 2014-15 is already over, it is not advisable and proper to disturb the order of the State Commission. The learned counsel for the State Commission during the course of hearing has candidly submitted that since the FY 2014-15 is already over, the appellants may make a representation for consideration of optional tariff for the next FY i.e. 2015-16. In case such a representation is made on behalf of the Appellants, the State Commission will examine the feasibility of extending options to 132 KV consumers like the Appellants and after considering the facts

and other material including feasibility, the Commission will pass appropriate order at the relevant stage in this regard.

- 8.14 All the contentions raised on behalf of appellants are sans merit. Both these issues are decided against the appellants and the instant appeal is liable to be dismissed.

9. Summary of Our Findings

- 9.1 We observe that the learned State Commission has not discriminated against the 132 KV consumers vis-à-vis 33 KV consumers who have been given choice of optional tariff. We note that the State Commission has not discriminated against the 132 KV category consumers compared to 33 KV consumers by not approving the optional tariff in the impugned order and also rightly implemented KVAH billing in place of KWH billing for 132 KV category steel mill consumers like the Appellants.**
- 9.2 We feel that the State Commission did not show any undue preference to the 33 KV category consumers with respect to 132 KV consumers while approving the Impugned tariff order dated 12.6.2014. The State Commission prepared the tariff order duly considering the remarks/suggestions made by the various stake holders, consumers and followed the procedure laid down in Section 64 of the Electricity Act and as per the National Tariff Policy.**
- 9.3 Further, we find that introduction of KVAH billing in place of KWH billing by the State Commission was already effective for the 400 KV/220 KV consumers in the State of Chhattisgarh. In the present tariff order the Commission has introduced this KVAH billing system for 132 KV category consumers. Further, the State Commission has directed the Distribution Licensees to submit the report regarding impact of KVAH billing over the KWH billing along with the proposed tariff for the Financial Year 2015-16. Hence, the State Commission, in the interest of the consumers, has implemented the KVAH billing because the KVAH billing will improve the stability of the Grid System and also is**

advantageous to the consumers for better Tariff due to reductions in Power Purchase expenditure to the licensees and thereby it will reduce the tariff burden to the consumers by implementing KVAH billing.

10. In view of the above, the instant appeal is hereby dismissed as it does not bear any merit. The impugned order dated 12.06.2014 passed by the State Commission in Petition No. 7 of 2014 is hereby affirmed with the direction that since the year in question namely FY 2014-15 is already over, and if the Appellants make a representation for consideration of optional tariff for the FY 2015-16, the Commission shall examine the feasibility of extending the options to 132 KV consumers like the Appellants and after considering the relevant facts and feasibility etc. the Commission will pass an appropriate and reasoned order. There shall be no order as to costs.

Pronounced in the Open Court on this **10th day of April, 2015.**

**(T Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

Dated :10th April, 2015

✓ REPORTABLE / ~~NON-REPORTABLE~~