

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

**Appeal No. 1 of 2008**

**Dated : 11<sup>th</sup> January, 2012**

**Coram;** HON'BLE MR. RAKESH NATH, TECHNICAL  
MEMBER  
HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL  
MEMBER

**In the matter of**

**Military Engineering Service, Punjab**

**Through its Chief Engineer, Jalandhar Zone,**

**Jalandhar Cantt.,**

**Punjab**

**... Appellant**

**Versus**

**1. Punjab State Electricity Regulatory Commission**

**Through its Registrar**

**SCO-220-221, Sector- 34 A, Chandigarh**

**2. Punjab State Electricity Board**

**Through its Chairman**

**The Mall, Patiala, Punjab**

**... Respondents**

**JUDGEMENT**

**HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER**

This appeal by Military Engineering Services, Punjab is directed against the order dated 17.9.2007 passed by the respondent No. 1 Punjab State Electricity Regulatory Commission whereby it though considered the appellant's status as a deemed licensee refused to extend to it a differential treatment from other categories of consumers in the matter of tariff structure and thereby allegedly violated provision of section 61 (g) of the Electricity Act.

2. In response to the application for determination of tariff in respect of the respondent No. 2, the Punjab State Electricity Board for the FY 2007-08, the appellant filed written objections wherein it contended that the appellant was treated as a bulk consumer but it is a deemed licensee within the meaning of section 14 of the Electricity Act and thus the tariff structure in respect of the appellant category

should not be like that of commercial or industrial consumer. The Commission is said to have admitted that the appellant is a deemed licensee, yet it treated the appellant at par with the other consumers.

3. The appellant contends as follows:
  - a. The Commission committed an error in not noticing the mandate of section 61(g) of the Act that provides that the tariff should be cost based, mentioning thereby cost of supply would include (a) cost of power, (b) wheeling charges and (c) trading margin. The appellant being a deemed licensee is entitled to be treated differently from bulk supply consumer and the only tariff that the appellant could have been subjected to was cost of supply.
  - b. Section 61(g) of the Act stipulates that cross subsidy component was unavailable to be applied for the appellant as the appellant was not a consumer.

- c. The cross subsidy is payable and will apply only in respect of categories of consumers to which the appellant does not fall under.
- d. Section 2(15) of the Act clearly reveals that the appellant is not a consumer and read with section 2 (39) of the Act it makes it clear that the intentions of the legislators was to treat a consumer differently from the deemed licensee.
- e. The appellant is a non-profit making organization and is neither industrial nor commercial consumer. The appellant takes the responsibility to construct houses for its employees for residential use and the total load catered to various establishments in the State of Punjab.
- f. Though the Tribunal by a judgment dated 26.5.2006 in batch of appeals namely 4 of 2005 etc. directed the Commission to determine the cost of supply of electricity to different clauses and categories of

consumers and further directed the State Commission to determine the average cost of supply the Commission failed to do so.

g. The objections raised by the appellant in course of determination of tariff in respect of the respondent No.2 for the FY 2007-8 in these terms as aforesaid were not considered by the Commission in the impugned order although the Commission was inclined to categorize the appellant as a deemed licensee which is clearly distinguishable from the category of consumers. The Commission ignored the fact that the appellant receives electricity at a single point having one meter and the network required for distribution including transformers/switch gears, etc., are made and constructed at the cost of the appellant and the respondent No. 2 is not to incur any maintenance on that account. Further, there is no scope for T&D losses in respect of transmission of electricity by respondent No. 2 to the appellant.

4. The respondent No. 2, PSEB now designated as Punjab State Power Corporation Ltd. preferred to file a written note of arguments, not an affidavit in reply. Its main contention is that the appellant was not entitled to differential treatment by virtue of it being a deemed licensee because a deemed licensee under the law purchases power directly from the generator and then distributes the power within its area of supply. But as the appellant chooses to purchase power from the distribution licensee like respondent No. 2, it would be treated as a consumer of the distribution licensee regardless of the question whether the purchase of power by the appellant is for own consumption or distribution. There is no provision in the Act to confer upon the appellant a special category, as such, no obligation is cast on the State Commission to determine a differential tariff for the appellant on account of being a deemed licensee.
5. The Annual Revenue Requirement of the Respondent No. 2 is required to be fully protected. There cannot be any

adverse impact on the revenue requirement of the respondent no. 2 on account of any change in the tariff design. If there has to be any variation in tariff in respect of the appellant then the respondent No. 2 is to be fully compensated. Accordingly minimum charges are part of the tariff design to recover the cost of the respondent No.2 to supply power till the point of delivery. The fact that the respondent No. 2 is not involved in the further distribution of power from the point of delivery in the area of supply of the appellant is irrelevant to the recovery of cost.

6. As the appellant is taking the supply of electricity in bulk from the respondent No.2, it is entitled to be treated at par with other bulk supply consumers in the State of Punjab. Further, like the bulk consumer of the respondent No.2, the appellant is also entitled to the same rebate and the other terms and conditions of tariff as applicable to other consumers.
7. The respondent No. 1, the Punjab State electricity Regulatory Commission also did not file any counter

affidavit but filed a written note of arguments wherein it contended that appellant is a deemed licensee under section 14 of the Act the effect of which is that the appellant can transmit and distribute electricity and can also undertake trading of electricity. There is no provision in the Act that entitles the appellant to be dealt with separately requiring a special tariff. Hence, the Military Engineering Services, the bulk supplier, can not be treated differently from other bulk supply consumers. Considering the last financial scenario of the Board the provision of any relaxation to a particular category will impose additional burden on the Board. The electricity consumed by the appellant may be exempted from taxes and duties as per Article 287 of the Constitution of India. Octroi levied erroneously by the Board at some stations should be refunded/adjusted in the future electricity bills.

8. It is lastly contended that the appellant though it is a deemed licensee buys its power from another licensee. Hence, the tariff has to be determined under section 62 and 64 of the Act on the application of the State utility. In order to determine the cost of supply of electricity to different classes and categories of consumers the Commission had called for requisite data from the Board. The later intimated that it had appointed consultants for

this purpose who had in due course submitted their report. The Board was, however, unable to agree with the findings of the study carried out by the consultants as it was of the view that the same was based on inadequate and unrepresentative samples with the findings arrived at on the basis of a large number of assumptions. With the Board not accepting the findings of the consultants, no reliable data is presently available with the Commission to proceed further in working out cost of supply for different classes and categories of consumers. In view of the same, average cost of supply has been determined by the Commission applying the same methodology as in its previous tariff orders.

9. On the pleadings as aforesaid the points that arise for consideration are as follows:-
  - a) Whether the Commission was justified in fixing tariff for FY 2007-08 applicable to the appellant at par with other bulk supply consumers
  - b) Whether the Commission was justified in saddling the appellant, said to be a deemed licensee, with the component of cross subsidy when a deemed licensee is not a consumer.

10. The questions are treated comprehensively. The appellant is a military engineering service in the State of Punjab, as such, is a unit of the Defence Department of the Government of India. As the fact stands, the appellant receives electricity at 11/33/66/132 KV at a single meter from the respondent No. 2, then called Punjab State Electricity Board and distributes electricity mainly to the residents of military officers and military stations. From a single point where it receives electricity it distributes electricity to different residential houses and installations according to its road map. Section 14 of the Act that deals with grant of licence provides that upon an application being made to the Commission under section 15 of the Act the Commission may grant a licence to any person (a) to transmit electricity as a transmission licensee (b) to distribute electricity as a distribution licensee (c) to undertake trading in electricity as a trader in electricity in any area as may be specified in the licence. Thus, transmission, distribution and trading are the three distinct functions which three distinct entities are entitled to carry out in terms of licence granted to them under section 14 read with section 15 of the Act. The third proviso which is resorted to by the appellant, mistakenly calling it to be sub section (3), provides that when an appropriate government within the meaning of section 2(5) transmits electricity,

distributes electricity or undertakes trading in electricity, such a government shall be deemed to be a licensee under the Act but shall not be required to obtain a licence under the Act. The reason is not far to seek. When a government intends to transmit electricity, distribute electricity or trade in electricity then obviously for such a government no license is required because it is a sovereign domain that can engage itself in any of the functions of transmission, distribution and trading; needless it to say that there is also no prohibition for appropriate government to engage itself in the generation of electricity for which no licence at all is required under the law. That is to say, like a private transmitter/distributor/trader/generator a government may also carry out any of these functions. The third proviso to section 14 does not point out anything beyond what is found in the letter and the spirit of the section and the proviso connected therewith. It only speaks of no requirement of any licence. It does not dilute the position in this way that when an "appropriate government" becomes a deemed licensee in so far as the activities of distribution is concerned would be different from a distribution licensee who requires a license under the Act for distribution of electrical energy. The section does not deal with any situation as to what will follow when such

an appropriate government purchases power like other bulk consumers from a distributor for the purpose of distribution of electricity in turn to its military officers and military installations. It does not deal with the question whether a deemed licensee is entitled to be treated differently from other bulk consumers when it itself purchases its power for the purpose of distribution from a distribution company which in this case is a commercial entity. The function of distribution which a distribution licensee within the meaning of section 2 (17) operates has to be the same or is to be contemplated to be the same which a government so does in terms of third proviso to section 14. What is meant to be conveyed is that when a government undertakes the activities of transmission, distribution and trading it does the same thing as other distribution companies for whom licence is of course required do so. Significantly, as a non-governmental distribution company carries out the business of distribution on commercial principle an appropriate government also may carry out the same function of distribution and transmission on commercial principle.

11. Now, we are to consider the position of the appellant vis-à-vis the Punjab State Electricity Board. The appellant is a military engineering service and the memorandum of

appeal avers that it is a subordinate organization of the Ministry of Defence engaged in the supply of electricity after availing itself of the electrical energy from the Punjab State Electricity Board. Our attention is invited to annexure A-1, a government letter dated 26.7.2003 which qualifies the appellant to be a deemed licensee under the Act. In terms of section 2 (17) a distribution licensee has to supply electricity to the consumers of its own in its area of supply. The military engineering service distributes electrical energy to its own consumers within its area of supply and such consumers include its officers and their families. Now, it is not a case where the appellant that claims to be a deemed licensee purchases power for distribution to its own military officers and installations from a generating company. A distribution company as the respondent No. 2 is has necessarily to purchase power on cost of supply plus basis from a generating company or trader and after purchasing such power as per tariff determinable by the Commission it supplies power on commercial principle to the consumers which may include a bulk consumer. Though, the appellant claims to be a deemed licensee it does not purchase power from a generator, it procures power from a distributor in the bulk like other bulk purchasers from distribution company for supply to the end consumers. The picture is clear in this

that the appellant receives electrical energy at a single point from a distributor and not from a generator and then distributes power to its officers. Therefore, the position of the appellant vis- a-vis the respondent No. 2 cannot be qualitatively distinguished from a position of a bulk purchaser and bulk consumer. In fact, it is a bulk consumer vis-a-vis the respondent No.2. The function contemplated of an appropriate government within the meaning of section 2(5) of the Act requiring no licensee in accordance with the third proviso to section 14 is really not the same function which is being carried out by the appellant in its dealing with the Punjab State Electricity Board. Much is talked about annexure A-1 the Government of India's letter dated 26.7.2003 addressed to the Secretaries of the State Commissions saying that the appellant qualifies to be deemed licensee under the provisions of the Act. The question arises as to the legal position of this letter. This is a letter by Director in Ministry of Power, Government of India. It is not necessary for the disposal of the appeal to examine in details the question as to whether the appellant is a deemed licensee or not. Only it can be said that it cannot be argued that by this letter the status of the deemed licensee can be conferred upon the appellant in a way different from what is contemplated in the third proviso to

section 14 read with section 2(5) and section 2(17) of the Act . It is not necessary for us to reproduce the abovementioned sections of the Act because the parties to the proceeding very well know the provisions of the Act and their implications and connotations and, in fact, for the disposal of this appeal no interpretation of the aforesaid provisions is really now called for and it can only be said that it is the Court or the Tribunal which can be approached when the occasion would arise. The third proviso to section 14 of the Act clearly provides as to when an entity can be qualified to be a deemed licensee and who can be a deemed licensee.. If the letter has intended to follow the third proviso then there ends the matter. It is necessary to point out that a HT consumer or EHT consumer when it receives power at or about the same voltage installs its own transformer and by that it cannot be said that the appellant or for that matter a HT or E category of consumer undertakes the business of transmission. The letter has not said that the appellant would be considered to be deemed licensee vis-à-vis respondent no.2 when it purchases its power from a distribution licensee for internal distribution to its own officers and also that a special category of tariff structure should be determined for it for that purpose. Therefore, it cannot be said that the appellant requires a differential

treatment in such circumstances. The respondent No. 2 is a commercial establishment and tariff for the consumers payable to the respondent No.2 has to be on commercial principle and unless the respondent No.2 is compensated for, there cannot be any differential treatment in respect of the appellant. All equals have to be treated equally; likewise all unequals deserve to be treated unequally. A bulk consumer of electricity has to pay a tariff to be determined by the Commission, and if the appellant fulfils the character of a bulk consumer it deserves to be treated in the same manner and if the government does have an intention to give any preferential treatment in such circumstances to the appellant category of consumers then the law has to take care of the situation by enactment or modification or amendment; but so far as the law now stands we cannot say that the Commission committed any illegality . Once the position is thus made clear, the argument that the appellant is not liable to bear cross subsidy and that it is entitled to rebate does not gain ground. There is no provision in the Act or in the National Tariff Policy for a special category of deemed licensees. The annual revenue requirement of the respondent No.2 after having been approved by the Commission any subsequent concession of differential treatment in favour of the appellant could involve

interference and revision of such ARR and subsequent tariff structure which is not desirable. The Commission rightly observed that the appellant is presumed to be covered as bulk supply consumer and considering the financial loss scenario of the PSEB any relaxation to a particular category in respect of which there is no specific provision will impose additional burden on the Board. With regard to the point that the electricity consumed by the appellant may be exempted from any taxes/duties/octroi as per the provision of Article 287 of the Constitution of India the Commission points out that it is the State Government that levies electricity duties/tax and if the Government desires that the appellant category of consumers should be exempted from paying electricity duties it can bring forth any order to that effect.

12. With regard to the determination of cost of supply of electricity consumer category wise it was submitted by the learned Counsel for the Commission that it appointed consultants who submitted a report with which the Board did not agree, and in view of the fact that no reliable data is presently available with the Commission to proceed further in working of the cost of supply for different classes and categories of consumers, average cost of

supply has been determined by the Commission applying the same methodology as in its previous tariff orders.

13. The point as to necessity taking permission from the Board against nominal fee of Rs. 50 per KVA in case of instillation of DG sets is not necessary to deal with in view of the forgoing analysis.
14. In view of the reasoning with respect to the issues canvassed in the memorandum of appeal, we are to say that the appeal is not maintainable and we dismiss the same but without costs.

(P.S. Datta)  
Judicial Member

(Rakesh Nath)  
Technical Member

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