

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

Appeal No.16 of 2012

Dated:16th February, 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of

**Delhi Jal Board
Varunalaya Phase-II
Jhandewalan
New Delhi – 110 005**

... Appellant (s)

Versus

**1. Delhi Electricity Regulatory
Commission
Viniyamak Bhawan
C-Block, Shvalik
Malviya Nagar
New Delhi – 110 017**

... Respondent (s)

**2. BSES Rajdhani Power Ltd
BSES Bhawan, Nehru Place
New Delhi - 110 019**

- 3. BSES Yamuna Power Ltd.
Shakti Kiran Building
Karkardooma
Delhi -100 092**

- 4. North Delhi Power Ltd.
Grid Sub-Station Building
Hudson Lines, Kingsway Camp
Delhi – 110 009**

Counsel for the Appellant (s): Mr. Suresh Tripathy

**Counsel for the Respondent(s): Mr. Meet Malhotra, Sr. Adv.
Mr. Ranjan Mukherjee
Mr. Ravi S.S. Chauhan
Mr. K.M. Verma
Mr. Rinku Gautam for R-1
Mr. Amit Kapur for R-2 & R-3
Ms. Sugandha Somani for
R-2 and R-3
Mr. Atul Singh for R-4
Mr. Anurag Bansal (Rep.) for
R-4**

ORDER

This Appeal has been filed by Delhi Jal Board against the order of the Delhi Electricity Regulatory Commission dated 27/09/2011 regarding the retail tariff applicable to the Appellant.

2. The brief facts of the case are as under:-

2.1 The Appellant is a consumer of the Respondent nos. 2, 3 and 4, the distribution licensees in NCT of Delhi, and is responsible for providing the services of water supply, sewage disposal and drainage within the National Capital Territory of Delhi. The Appellant filed a petition under section 61, 62 and 86 of the Electricity Act before the Delhi Electricity Regulatory Commission (“State Commission”) on 12.03.2007 for fixation of concessional tariff for electricity supply to its installation as it was providing essential public utility services.

2.2 The State Commission by its impugned order dated 27.09.2011 dismissed the said petition observing that these issues had been raised by the petitioner during the public hearing held in February, 2009 before the State Commission in determination of ARR and tariff for the FY 2009-10 and had already been decided.

2.3. Aggrieved by the impugned order dated 27.09.2011 of the State Commission, the Appellant has filed this Appeal.

3. When the Appeal came up for admission, the learned senior counsel for the State Commission submitted that the Appeal against the impugned order was not maintainable and this Tribunal may decide about the maintainability first. Accordingly,

we heard the learned counsel for the parties on the issue of maintainability.

4. The learned counsel for the Appellant submitted as follows:

“The Appellant was catering to the needs of the society as public utility services and did not have any profit/commercial motive. The State Commission passed the impugned order on 27.9.2011 on the petition filed on 12.03.2007 after more than four and half a years. The reduction in tariff granted to the Appellant in the FY 2009-10 by the tariff order dated 28.05.2009 should have been allowed by the State Commission retrospectively from the FY 2007-08”.

5. Learned senior counsel for the State Commission pointed out that under the provisions of the Electricity Act, the Appellant - a consumer of the distribution licensees, could not file a separate

petition before the State Commission for determination of its retail supply tariff, the State Commission had heard the objections of the Appellant during the public hearing for the determination in ARR and of a retail supply tariff of the respondent distribution licensees for the FY 2009-10 and if had decided to allow a reduction in the tariff applicable to the appellant in the tariff order dated 28.05.2009 which had not been challenged by the Appellant. It is also pointed out by the State Commission that the Appellant has filed an Appeal as against the tariff order for the FY 2011-12 which is pending before the this Tribunal.

5. We have considered the submissions made by both the parties.

6. At the outset, we shall point out that the State Commission under Section 62 of the Act, 2003 has to determine the tariff for supply of electricity by a generating company to distribution licensees, transmission of electricity, wheeling of electricity and retail supply of electricity. According to section 64 of the Act, the application for determination of tariff under section 62 is to be made by a generating company or licensee in the manner as may be determined by regulations. The Applicant has also to publish the application in the manner as specified by the Appropriate Commission and the Commission has to decide the said application after considering all suggestions and objections received from the public. Thus, there is no provision in the Act for individual consumers filing petition before

- the State Commission for determination of their tariff.
7. The consumers have to file their suggestions and objections before the State Commission during the public hearing while determining the ARR and tariff of the distribution licensee.
 8. Hence, in our opinion the petition filed by the Appellant on 12.03.2007 before the State Commission was not maintainable.
 9. However, in this case the State Commission heard the Appellant's petition dated 12.03.2007 on 08.09.2011 and passed impugned order dated 27.09.2011 disposing of the petition in the light of its findings earlier given in the Tariff Order dated

28.5.2009 for the FY 2009-10. The relevant paragraphs of the impugned order are reproduced below:

- “6. The Commission further observed that these issues have been raised earlier during the public hearing held in February, 2009. The Commission in the Tariff order of FY 09-10 acknowledged that the DJB is carrying out a crucial activity for the society at large. As a first step towards moving to cost to serve the energy charges for DJB excluding offices and domestic connections were reduced to the level indicated in the tariff schedule for all metered connections. Wherever meters are not installed, they shall be installed within two months time. So far as the concessional tariff is concerned, it was the considered view of the Commission that it would be ideal to fix electricity tariff for all consumers on a cost to serve basis and any subsidy based on socio-economic factors or otherwise should be extended by the State Government and electricity tariff is not the medium to promote social causes.*
- 7. In the light of above discussion it is clear that the issues raised by DJB in this Petition have already been considered by the Commission in*

its Tariff Order of FY 2009-10. The Commission reiterates its earlier stand on these issues and hence the present petition stands disposed off.”

10. Thus, the State Commission disposed of the petition on the basis of its findings given in the tariff order dated 28.05.2009. The tariff order dated 28.05.2009 admittedly, had not been challenged by the Appellant.

11. In view of the above, we feel that the present appeal challenging the State Commission's order dated 27.09.2011 disposing of the petition of the Appellant on the basis of State Commission's findings in its tariff order passed earlier for the FY 2009-10 is not maintainable.

12. Ld. Counsel for the Appellant has also raised the issue of delay in disposing of his petition by the State Commission. Even though in our opinion the petition of the appellant before the State Commission as well as the Appeal before us are not maintainable, we notice that the Appellant's petition filed on 12.03.2007 has been disposed of by the State Commission after a lapse of more than four and a half years. No reason has been given in the impugned order for the said delay. We are constrained to observe that the time taken by the State Commission in disposing of the petition was abnormally high. The State Commission is directed to take corrective action to avert delay in disposing of the petitions atleast in future.

13. With the above observation, the appeal is dismissed as not maintainable at the admission stage itself. No order as to costs.

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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