



entered appearance through their Advocates. None appeared for Second Respondent.

- 2) Heard Mr. M. N. Krishnamani Senior Counsel and Mr Romy Chacko Advocate appearing for the appellant. Mr. M. T. George Advocate appearing for Respondent No. 1 and Mr. A. M. Narayanan Advocate representing M/s.Lawyers Knit & Co. Advocates for the third Respondent, Regulatory Commission. Arguments were heard.
- 3) As the appeal is restricted with respect to levy of penal interest, during the hearing on 06.01.2006 it was suggested to the parties that in the event the appellant corporation is ready to remit entire tariff arrears representing 25% difference from the inception, the first Respondent may waive the interest. Taking advantage of the suggestions Mr. M.N. Krishnamani Learned Senior Counsel appearing for the appellant corporation readily agreed to remit the entire tariff arrears (representing 25% difference) provided the first respondent waives the entire interest. Mr. M. T. George Advocate and Mr.R.Balachandran representing the first Respondent Board took time to get instructions. After the conclusion of hearing, the appeal was adjourned to 20.01.06 to enable the learned counsel appearing for the first Respondent to get appropriate instructions. On 20.01.2006, Mr. George learned counsel appearing for the first Respondent board, on instructions represented that the board is not ready to waive entire interest, while adding that it is acceptable for the Board to reduce the rate of interest from 24% to 18%.
- 4) As there was no consensus, further arguments were addressed by the learned counsel Mr. Romy Chacko appearing for appellant as well as counsel

appearing for Respondents 1 and 3. On 20.01.2006 at the end of hearing Mr. George learned Counsel appearing for first Respondent, represented that this Appellate Tribunal may fix a reasonable rate of interest but not less than 12% P.A. Mr. George learned Counsel for the first Respondent placed reliance on the pronouncements of the Hon'ble Supreme Court : in (i) Kerala State Electricity Board Vs. M.R.F Ltd. reported in 1996(i) SCC 597 and (ii) South Eastern Coal Fields Ltd. Vs. State of M.P. and others reported in 2003(8) S.C.C. 648, besides Sec 61 of the Sale of Goods Act 1930 and regulation 32(e) of the Regulations relating to conditions of Supply of Electrical Energy 1990 framed by the first respondent board. The learned counsel appearing for the third Respondent Commission, while producing the file relied upon the provisions of Sec 3 and 4 of The of Interests Act 1978 and sought to sustain the order appealed against.

- 5) In the light of the discussions and factual matrix, the only point that arises for consideration in this appeal is :-

Whether the appellant is liable to pay interest / penal interest on the arrears of consumption charges due and payable by it to the first Respondent Electricity Board?

- 6) Factual matrix leading to the present appeal requires to be summarized to decide the point. The first Respondent, Kerala State Electricity Board moved the third Respondent Regulatory Commission, under Sec 86(i) (b) and (f) of The Electricity Act 2003 for the following reliefs :-

- a) to direct the appellant corporation to remit the electricity charges as per the prevailing tariff notification,
  - b) to direct the appellant corporation to pay outstanding dues along with interest and penal interest and penalty in respect of electricity charges since 29.11.2002, the date of inception of commission,
  - c) to permit the first respondent board to take measures including disconnection of supply to the appellant corporation, in the event of default of payment of electrical charges,
  - d) to permit the first Respondent Board to take revenue recovery action for recovery of dues and
  - e) to revoke the license, if the appellant fails to remit the charges.
- 7) The appellant corporation mainly contended that neither the Board nor the state Government has any legal or moral right in denying concessional tariff rate at which the corporation was permitted to avail electricity from the Board. The Corporation also disputed the details of arrears claimed by the Board. The Commission followed a detailed procedure of hearing apart from receiving objections, responses, additional objections, various report and furnishing copies there of to the parties.
- 8) The appellant Corporation though initially raised jurisdictional objection but ultimately realized and submitted that the Commission do have the jurisdiction and authority to entertain the petition and adjudicate the dispute between the

first respondent Board and the appellant corporation in the light of the statutory provisions of The Electricity Act 2003.

- 9) After due consideration of the respective cases and materials placed before it, the Regulatory Commission recorded its findings as here under :-
- (i) The Regulatory Commission has the authority and locus standi to adjudicate and decide the dispute set out in the Petition filed by the first Respondent Board,
  - (ii) The Regulatory Commission while fixing the tariff has followed the procedure prescribed by the provisions of The Electricity Act 2003 and the Regulations framed there under and after affording adequate opportunity to all individuals and organizations concerned fixed the tariff. The Appellant Corporation had failed to take part in the tariff fixation proceedings and it has to blame itself. Such tariff fixation is binding on all including the Corporation as held by the Supreme Court in the West Bengal Regulatory Commission Versus CESC,
  - (iii) There is no legal obligation for the Board or the State Government to continue the concession in favor of the appellant Corporation and the tariff rates as fixed is binding on the Corporation. The tariff rate is applicable to all Licensees including appellant Corporation
  - (iv) The plea of the Corporation that concession shown earlier, ought to have been continued is without any legal basis or merits.
  - (v) There is no justification on the part of the appellant to make short remittances on the bills raised by the Board, on electrical energy supplied as per the tariff rates.
  - (vi) The revenue generated by the appellant Corporation is adequate to pay the Electricity charges due as raised by the Board on the Corporation and the

Corporation has excess income over expenditure on the perusal of the ARR submitted by the appellant Corporation.

- (vii) The appellant Corporation is liable to pay interest / penal interest on belated payments.
- (viii) The Corporation is liable to pay interest as applicable to other consumers of the Board on par with HT & EHT consumers under Section 3 of Kerala Electricity surcharge (levy & surcharge) Collection Act 1989. The appellant Corporation is liable to pay surcharge.

Apart from the above, the Regulatory Commission also recorded various findings on a detailed consideration.

- 10) In the light of the above findings the Regulatory Commission ordered that the appellant Corporation shall pay electricity charges to the first Respondent Board as per the bill raised by the Corporation which are in line with the tariff orders in force from time to time, from 29.11.2002 onwards including interest at the rate applicable to other consumers on arrears within 60 days from the date of this order. The Regulatory Commission also directed the Board to examine the dispute raised by the Corporation regarding the bills such as quantum of surcharge and duty and reconcile the same within 15 days of the order. The Regulatory Commission further ordered that in the event of default to pay by the appellant Corporation, the first Respondent Board may take measures for disconnection of supply as envisaged under Section 56 of the Electricity Act, while taking necessary action for recovery of dues including revenue recovery.

- 11) The Commission also directed the appellant Corporation to submit a draft agreement within one month of the order for power purchase, for approval in terms of Sec 86(1), while giving liberty to the first Respondent Board to move for revocation of license, if the appellant Corporation acts in a manner warranting action under Section 19 of the Act. The Commission also issued few other directions.
- 12) As already stated above, this Appellate Tribunal admitted the appeal only on the ground of question of penal interest, as it was of the prima facie view that no case has been made out in other respects. The learned senior counsel also did not challenge the other findings or conclusions of the Commission at the time of the hearing and confined the arguments with respect to the only question, namely interest.
- 13) At the outset it is to be pointed out that the Board has been adopting extra caution in observing procedures and in moving the application before the Regulatory Commission presumably because it may have to face the wrath of residents within Corporation limits in case of stoppage of supply. When once the tariff has been fixed it is not open to the appellant Corporation to still claim 30% concession, which has no legal basis and the refusal to pay the tariff at the rate notified by the Regulatory Commission deserves to be deprecated. In terms of the provisions of the Electricity Act 2003 as well as regulations framed there under, the appellant Corporation which draws power from the Board is bound to pay the tariff rate fixed by the Regulatory Commission. There cannot be any plea of excuse and mercy, because the appellant

happened to be a local body or before few decades its generating station has been taken over by the state.

- 14) No material has been placed by the appellant before the Commission that it is entitled to a concessional tariff. The appellant has not produced any material or notification in support of its claim for concessional tariff. Uniform tariff rate has been fixed as per tariff notifications and the appellant Corporation be it a consumer / bulk consumer / a deemed licensee is bound to pay for the supply drawn by it at the rate notified by the Regulatory Commission and there is no escape. It is not necessary to examine any other contentions except the payment of interest / penal interest. Concedingly the appellant Corporation collects penal charges belated surcharge from the consumers to whom it distributes power within its area of supply. The appellant Corporation has not placed copy of agreement entered with the board to show that it is not liable to pay interest / penal interest on belated payments. Raising a boggy of dispute the appellant Corporation has been withholding 30% of the consumption charges for several years despite repeated demands made by the first Respondent Board. The short remittance i.e. 30% of the withheld amount has reached a staggering figure of Rs. 59.48 crore which includes interest. A working sheet has been placed by the learned counsel appearing for the first respondent at the time of hearing. For the period Dec. 2002 to Nov. 2005 the short remittance accrued due comes to Rs.17,39,60,764/-, the interest accrued due as on 31.12.05 comes to Rs.6,38,66,931/- and in all aggregating to Rs. 23,78,27,695/-.



- 15) It was also pointed out by the learned counsel for first respondent that for the period prior to December 2002 the appellant Corporation owe a huge sum, namely Rs. 22,90,06,801/- towards short remittance and Rs. 34,93,11,540/- towards interest and in all aggregating to Rs. 57,83,18,341/-. All put together, arrears prior to December 2002 and after December 2002 comes to a staggering sum of Rs.81,61,46,036/-. We are not concerned with arrears prior to November 2002 as separate action has already been taken by the first Respondent to collect the said arrears.
- 16) Concedingly at no point of time the appellant had been collecting consumption charges from its consumers at rates lower than tariff rates notified or as fixed by the Regulatory Commission after its constitution under The Electricity Act 2003. Having collected charges including penal charges at the rate of 2% per month from its consumers, it is not open to the appellant Corporation either to claim concession or to contend that it is not liable to pay penal charges / belated payment surcharge / interest as the case may be. It is not open for appellant to contend that the appellant Corporation is not liable to pay penal charges / interest / belated surcharge. It was contended out of frustration that the Appellant Corporation is not a consumer under the provisions of the earlier enactment. In our view the appellant Corporation, be it a bulk consumer or deemed licensee is bound to pay for the supply charges at the tariff rate and it is not justified in withholding payments or raising the claim of concession without any basis.

17) The appellant has collected the charges from its consumers and retained a portion without remitting to first respondent Board and it is liable to pay as per tariff. On first principles as well, it is pointed that the appellant is liable to pay interest on the consumption charges withheld by it. In this respect the learned counsel for the appellant is well placed in placing reliance upon the two pronouncements of the Supreme Court in South Eastern Coal Fields Ltd. Versus State of M. P. and others report in (2003) 8 Supreme Court Cases 648 as well as Kerala State Electricity Board Vs M.R.F. Ltd. report (1996) 1 Supreme Court Cases 597. The learned Counsel for the first respondent Board also rightly relied upon the provisions of the Sale & Goods Act 1930 as well as The interest Act 1978. We find merit in the contention advanced by the learned counsel for the first respondent Board and contentions advanced on behalf of the appellant deserves to be negated.

That apart the first respondent placed reliance on regulation 39(e) of the Regulations relating to conditions of supply of Electrical Energy 1990 which provides for payment of interest. The learned counsel for the appellant Corporation has not produced any agreement or notification or order issued either by the first Respondent or by the State of Kerala to show that there is an exemption in its favour from payment of interest or conferring any special privilege for not remitting charges for years together. The counsel for appellant Corporation has not produced the copy of agreement, under which it became licensee to claim exemption from payment of interest / penal interest. As already discussed above on first principle, as laid down by the Supreme Court, the contentions of the appellant deserved to be negated. Hence, we

hold that no case has been made out to interfere with the order passed by the 3<sup>rd</sup> Respondent the Commission.

- 18) However, we find that the commission has permitted the first Respondent Board to collect interest and other charges as is being collected from other customers. It is stated at the hearing that penal interest at the rate of 2% per month for belated payment is the prescribed rate of interest being collected by the Board. So also the appellant from its consumers. Though there is no compelling reason to interfere with the order appealed against taking into consideration of the fact the appellant is a local body, and the fact that first respondent is unable to enforce the recovery by disconnection apprehending strong reaction from the residents of Thrissur, part of Kerala state, which is reputed to be very sensitive. We are persuaded to direct a concession being shown as a one time measure. In fact the counsel for the first Respondent Board also stated during arguments that this Appellate Tribunal may fix the rate of interest at 12% per annum.
- 19) Taking a clue from the submissions made by the counsel for first respondent we modify the order of the 3<sup>rd</sup> respondent Regulatory Commission only to a limited extent so as to enable the Board to collect the arrears at an early date.
- 20) Accordingly we direct, that if the appellant Corporation remits the entire arrears of consumption charges with interest at 9% P.A. from the date on which the charges fell due for the period commencing from December 2002 to

December 2005, within eight weeks from the date of this order, the first respondent shall waive the difference in interest. If the appellant corporation fails to remit the entire arrears, namely short remittances for the said period, within 8 weeks, it is well open to the first respondent Board to collect interest at the rate of 24% per annum and also it is at liberty to disconnect the supply of electricity forthwith and initiate such appropriate or further action as it may be open to it in law.

- 21) In other respects we decline to interfere with the order appealed against. The parties shall bear their respective costs in this appeal.

**Dated this 25<sup>th</sup> day of January, 2006**

**( H. L. Bajaj )  
Technical Member**

**( Justice E. Padmanabhan )  
Judicial Member**