

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

Appeal No. 90 of 2009

Dated: 11th April, 2012

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

In the matter of:

**Orissa Power Transmission Corporation Limited
Janpat, Bhubaneswar, Orissa**

.... Appellant(s)

Versus

- 1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit-VIII
Bhubaneswar -751012** **.... Respondent(s)**
- 2. Western Electricity Supply Company of Orissa Limited
Regd. Office – Plot NO.N/22, IRC Village, Nayapalli
Bhubaneswar – 751015**
- 3. North Eastern Electricity Supply Company of Orissa Ltd.
Regd. Office Plot No.N/22, IRC Village
Nayapalli
Bhubaneswar – 751015**
- 4. Southern Electricity Supply Company of Orissa Ltd.
Regd. Office Plot No.N/22, IRC Village
Nayapalli
Bhubaneswar – 751015**
- 5. Central Electricity Supply Utility of Orissa (CESU)
Regd. Office – 2nd Floor, IDCO Tower
Janptah
Bhubaneswar – 751 022**

Counsel for the Appellant(s):

**Mr. R.K. Mehta
Mr. Antaryami Upadhyay
Mr. Gaurav Srivastava
Mr. Athoba Khaidem**

**Mr. Nitiya Prakash
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Counsel for the Respondent(s): **Mr. Rutwik Panda
Ms. Smita Inna
Ms. J. Rehman
Mr. Junaisa Rahman
Ms. Anjali Chandurkar
Ms. Shilpy Chaturvedi
Mr. Hasan Murtaza
Mr. Shiv K. Suri
Ms. Juraini
Mr. S. Pattnaik
Mr. Saswat Pattnaik**

JUDGEMENT

MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Orissa Power Transmission Corporation Limited against the order dated 20.03.2009 passed by Orissa Electricity Regulatory Commission ("State Commission") in case No.63 of 2008 determining Annual Revenue Requirement (ARR) and Transmission Tariff of the Appellant for the FY 2009-10.

2. The Appellant is a transmission licensee and also carrying out the functions of State Transmission Utility in the State of Orissa. The State Commission is the 1st Respondent. Respondent No.2 to 5 are the distribution licensees.

3. In the present Appeal, the Appellant has challenged the disallowances under the following heads:

- i) Employees Cost;
- ii) Terminal Benefits;
- iii) Repair and Maintenance (R&M) Expenses;
- iv) Administration and General (A&G) Expenses;
- v) Interest on Loan;
- vi) Return on Equity (RoE);
- vii) Interest on Working Capital;
- viii) Pass through Expenses; and
- ix) Contingency Reserves.

The Appellant has also challenged the deduction of a sum of Rs.30.50 crores from the ARR on account of miscellaneous receipts.

4. Ld. Counsel for the Appellant has made the following submissions on the above issues:

4.1 Employees Cost:

In the ARR petition, the Appellant had claimed a sum of Rs.155.22 crores towards employees cost against which by the impugned order the State Commission had allowed a sum of Rs.102.47

crores. Subsequent to the filing of the Appeal, the State Commission has trued up the employees cost based on the audited report allowing a sum of Rs.119.76 crores. Thus the present claim subsequent to the true up by the State Commission is confined to the carrying cost in respect of the differential sum of Rs.17.29 crores (Rs.119.76 – Rs.102.47 crores)

4.2 Terminal Benefits:

The Appellant had claimed the terminal benefits of Rs.228.81 crores for the FY 2008-09 on the basis of the Actuary Report of M/s. Bhudev Chatterjee dated 30.09.2008. However, the State Commission had allowed a sum of Rs.76.94 crores towards terminal benefits on actual payment basis for earlier year in the Tariff Order. Subsequently, the State Commission appointed M/s Darashaw & Company and their report dated 16.12.2010 was considered by the State Commission in the Tariff Order for the FY 2011-12, in which the truing up has been carried out. According to the Appellant, the report of the Actuary appointed by the Appellant should have been accepted by the State Commission as it was based upon up-to-date database and the State Commission in the Tariff Order for the FY 2008-09 had also accepted the Actuary Report of the same company, viz., M/s. Bhudev Chatterjee. Further, interest rate (discounting rate) of 7.5%

and Attrition rate/withdrawal rate considered by the Actuary appointed by the Appellant appear to be more realistic. However, in the alternative, he submitted that since the Report of M/s Darashaw & Company has been accepted by the State Commission in the Tariff Order for the FY 2011-12, this issue may be left open to be considered in Appeal No./DFR No.1995 of 2008 arising out of the Tariff Order for the FY 2011-12 after copies of Reports of both the Actuaries are placed on record.

4.3 Repair and Maintenance (R&M) Expenses:

The Appellant had claimed a sum of Rs.123.74 crores towards R&M expenses against which the State Commission had allowed Rs.47 crores. As per the accounts audited by the CAG the actual R&M expenses are Rs.26.14 crores which has since been trued up by the State Commission. Thus the claim of the Appellant under this head does not survive.

4.4 Administration and General (A&G) Expenses:

The Appellant had claimed a sum of Rs.39.85 crores towards A&G expenses against which the State Commission had allowed Rs.17.50 crores. Subsequently as per CAG Audit, actual A&G expenses are Rs.26.68 crores. However, in the truing up order the State Commission has confirmed allowances of Rs.17.50 crores as

per the impugned order. The State Commission should have allowed the actual expenses as per the audited accounts.

4.5 Interest on Loan:

The Appellant had claimed a sum of Rs.189.51 crores towards interest on loan against which the State Commission had allowed Rs.70.53 crores. As per the CAG audit, actual amount comes to Rs.54.16 crores which has been trued up subsequently by the State Commission in the truing up order. Thus the claim of the Appellant under this head does not survive.

4.6 Return on Equity (RoE):

The Appellant had claimed RoE amounting to Rs.13.30 crores, @ 14% on the equity of Rs.95.07 crores. However, the State Commission did not allow the claim for RoE on the basis of letter dated 17.02.2009 of the Government of Orissa. The letter from the Government of Orissa only referred to freezing of RoE to GRIDCO and OHPC and not the Appellant. The State Commission should have allowed RoE according to the Central Commission's Tariff Regulations.

4.7 Interest on Working Capital:

The Appellant had claimed a sum of Rs.26.39 crores towards the interest on working capital on the basis of the Central Commission Tariff Regulations, 2004. However, the State Commission did not allow any amount towards interest on working capital.

4.8 Pass through Expenses:

The Appellant had claimed a sum of Rs.51.41 crores towards pass through expenses on account of pass through interest liability (Rs.42.35 crores) and past losses up to the FY 2006-07 (Rs.9.06 crores). However, the State Commission disallowed the claim of the Appellant. However, in the Tariff Order for the FY 2011-12 a sum of Rs.18.98 crores has been allowed by the State Commission leaving a balance of Rs.23.37 crores. Since the expenditure of Rs.23.37 crores had actually been incurred towards interest on term loan as per the accounts audited by CAG, the same ought to have been allowed. Regarding loss appropriation, the balance loss upto the FY 2006-07 as per the audited accounts amounts to Rs.9.06 crores. The claim of Rs.9.06 crores should not have been disallowed on the basis of cash flow statement since the same does not reflect the correct financial position which has been provided by the audited figures.

4.9 Contingency Reserve:

The Appellant had claimed a sum of Rs.15.01 crores towards Contingency Reserve against which the State Commission had allowed a sum of Rs.9.08 crores. As per the CAG audit, the actual figure comes to Rs.10.94 crores. However, in the truing up in the Tariff Order for 2011-12, the State Commission has confirmed the allowance of Rs.9.08 crores. The balance amount of Rs.1.86 crores ought to have been allowed.

4.10 Miscellaneous Receipts:

In the impugned order the State Commission had taken a sum of RS.30.50 crores on account of miscellaneous receipts of the Appellant. As per the CAG audit, the actual figure comes to Rs.32.61 crores which has been trued up in the Tariff Order for the FY 2011-12. This issue, therefore, does not survive.

5. On the above issues the Ld. Counsel for the State Commission and Respondent no.2, 3 & 4 made submissions in support of the findings of the State Commission.

6. Issues relating to Employees cost, Repair and Maintenance, Interest on loan and Miscellaneous receipts do not survive as a

result of true up in the Tariff Order for the FY 2011-12. As regards carrying cost on employees cost claimed by the Appellant, the True up order passed by the State Commission subsequent to the filing of this Appeal is not under challenge before us. Further, while the Appellant has claimed carrying cost an additional employees cost allowed in the True up order, no adjustment of interest has been sought by the Appellant for true up of R&M expenses and interest on loan where the trued up amount allowed as per the audited accounts is less than that allowed in the impugned order. Thus, we are unable to give any direction regarding the carrying cost for employees expenses in this order. Similarly, on the A&G expenses and contingency reserve also the claim now being made relates to the actual expenses as per CAG audit which has been considered but disallowed in the true up order. Thus, the issue relating to A&G expenses and contingency reserve would not survive as far as this Appeal is concerned.

7. On the remaining issues, the following questions would arise for our consideration.
 - i) Whether the State Commission should have allowed the terminal benefits according to the Report of the Actuary appointed by the Appellant?

- ii) Whether the State Commission has erred in not allowing any Return on Equity to the Appellant?
 - iii) Whether the State Commission has erred in not allowing any interest on working capital to the Appellant?
 - iv) Whether the State Commission should have allowed the pass through expenses on account of interest liability and past losses upto the FY 2006-07?
8. The first issue is regarding the Terminal Benefits.
- 8.1 The Appellant has contested the Report of the Actuary appointed by the State Commission and which has been accepted by the State Commission in the tariff order for FY 2011-12 and has justified the report of the Actuary appointed by them. The Report of the Actuary which has been accepted by the State Commission in the Tariff Order for the FY 2011-12 is not before us in this Appeal. As rightly suggested by the Appellant this issue may be considered in the Appeal filed by the Appellant against the Tariff Order for the FY 2011-12. Thus, the first issue would not survive as far as this Appeal is concerned.

9. The second issue is regarding Return on Equity:
- 9.1 According to Ld. Counsel for the Appellant, the State Commission should have allowed Return on Equity @ 14% per annum.
- 9.2 According to Ld. Counsel for the Respondents no.2, 3 & 4, the Appellant is not entitled to any Return on Equity in accordance with the wishes of the Government of Orissa which has invested in the equity of the Appellant.
- 9.3 The State Commission in the impugned order has recorded its findings in the transmission Tariff Order for the FY 2008-09 on the issue of Return on Equity on Equity Share Capital of Rs.60 crores. The findings with regard to Return on Equity on share capital of Rs.60 crores are summarized as under:
- I. At the time of demerger of GRIDCO effective from 01.04.2005, the equity share capital of OPTCL was stated at Rs.60 crores. Therefore, the licensee was entitled to RoE @ 14% on Equity Share Capital of Rs.60 crores.
- II. The Government of Orissa vide notification dated 29.01.2003 stated that GRIDCO and OPHC would not be entitled to any

Return on Equity till sector become viable or from the FY 2005-06, whichever is earlier.

III. However, in partial modification of earlier modification, the Government of Orissa vide its letter No.5302 dated 06.05.2003 has stated that GRIDCO and OHPC would not be entitled to any Return on Equity except in respect of the new projects commissioned after 01.04.2006 till the sector became viable or end of 2005-06 whichever is earlier.

IV. The State Government in reply to the State Commission's reference relating to Return on Equity has indicated vide letter dated 17.02.2009 that the Finance Department has already concurred with the proposal of keeping in abeyance up valuation of assets of GRIDCO, OPTCL and OHPC and freezing of Return on Equity to GRIDCO and OHPC from the year 2006-07 to 2010-11 and the matter is going to be placed before the State Cabinet for a decision after which the same will be communicated.

9.5 Regarding RoE on equity support of Rs.35 crores from the State Government during the FY 2008-09, the State Commission has

agreed to consider the same as and when the amount is received in cash by the Appellant from the State Government.

- 9.6 It appears from above that the State Government had frozen RoE till the FY 2005-06. Even though the Finance Department has concurred with the proposal of keeping in abeyance of upvaluation of assets of GRIDCO/OPTCL & OHPC and freezing of RoE from the FY 2006-07 to 2010-11, the State Government is yet to approve the same.
- 9.7 Admittedly there are no Tariff Regulations for RoE to the Appellant. However, the State Commission has felt that the Appellant is entitled to RoE of 14%. We would, therefore, direct the State Commission to take up the issue of RoE on the share capital of Rs.60 crores with the State Government and if no response is received from the State Government within a reasonable time, decide the issue as per law.
- 9.8 Regarding equity support during the FY 2009-10, the Ld. Appellant has submitted documents relating to actual infusion of equity by the State Government during the FY 2009-10. State Commission should consider to allow RoE on the basis of actual equity infusion, as per its findings. Accordingly directed.

10. The third issue is regarding interest on Working Capital.
 - 10.1 The Ld. Counsel for the Appellant has argued that the State Commission should have allowed interest on Working Capital as per the Tariff Regulations of the Central Commission.
 - 10.2 Ld. Counsel for the Respondent no.2, 3 & 4 argued that no Working Capital loan has been availed by the Appellant as is evident from the impugned order. Further, there are no credit sales by the Appellant to the distribution licensees since the Appellant's charges are first charge on the revenue of the distribution licensees which are accrued to GRIDCO and the Appellant. Hence all amounts payable by the distribution licensees to the Appellant are through treasury from the revenue of the distribution licensees. Hence the question of there being any gap between the payment made by the Appellant vis-à-vis the payment to be received by the Appellant does not arise. The Tariff Regulations of the State Commission also do not provide for any interest on Working Capital and right from the FY 2006-07 onwards no interest on working capital has ever been allowed to the Appellant. The application of Central Commission's Regulations would not be relevant to this case.

10.3 The State Commission has also noticed in the impugned order that it was not justified to allow the interest on Working Capital since the transmission charges were the first charge being recovered from the bulk supply payment bill of the distribution licensees. Further, the rebate allowed to Appellant has been considered as a part of the revenue requirement for the FY 2009-10.

10.4 In view of the above submission of the Respondents distribution licensees and in the light of the findings of the State Commission, we do not find any reason to interfere with the order of the State Commission regarding interest on Working Capital. Accordingly, the claim of the Appellant is rejected.

11. The fourth issue is pass through expenses on account of interest liability and past losses upto the FY 2006-07.

11.1 Ld. Counsel for the Appellant has stated that the expenditure of Rs.23.37 had actually been incurred towards interest on term loan as per the accounts audited by the CAG and the same ought to have been allowed. Further, the audited accounts for the FY 2006-07 have been finalized and it has been found that the balance loss

upto 2006-07 amounts to Rs.9.06 which was claimed in the ARR of the FY 2009-10.

11.2 According to Ld. Counsel for the Respondents no.2, 3 & 4, the Appellant, in fact, has a surplus for the previous years and there is no outstanding amount recoverable by the Appellant for the previous years. This has been further reiterated in the order dated 18.03.2011 which indicated that at the end of the FY 2009-10, the Appellant posted an accumulated surplus of Rs.361.54 crores and hence no amount should be recovered on the alleged outstanding of the previous years.

11.3 Let us now examine the findings of the State Commission in the impugned order. The relevant extracts are reproduced below:

“300. OPTCL has claimed that Commission had allowed RS.24.95 crore of accumulated loss upto 31.03.2006 as a pass through in the revenue requirement for 2008-09. The accumulated loss as on 31.03.2008 based on the provisional account is RS.34.01 crore. Hence, OPTCL claimed the differential amount of Rs.9.06 crore (34.01-24.95) to be allowed as a pass through in the revenue requirement.

301. In compliance to Commission’s query, OPTCL has submitted the cash flow statement for the year 2007-08. It is observed from the cash flow statement that OPTCL at the year end posted positive cash balance of Rs.31.77 crore after meeting all the obligations. Hence, Commission does not allow pass through of the past loss of Rs.9.06 crore in the revenue requirement. However, this will be reviewed after receipt of the audited accounts for the year 2007-08.

302. *As stated by OPTCL, the licensee has paid Rs.18.98 crore extra towards interest to PFC for re- scheduling of loan during 2008-09 and claimed as a pass through in the revenue requirement for the year 2009-10. Commission will consider this issue after receipt of the audited accounts of OPTCL for 2007-08 and 2008-09. For the present, Commission is not allowing the same.*

303. *Regarding Rs.23.37 crore of interest liability proposed by OPTCL the Commission would like to point out that for the year 2007-08 the computation of the approved interest was based on certain principles which have been narrated in Para 5.4.4.1 to 5.4.4.21 of Commission's Transmission Tariff order dated 22.03.2007 in Case No.56 of 2006. There is no justification to reconsider the above decision of the Commission again for passing the extra burden of interest."*

11.4 It has been submitted by Ld. Counsel for the Appellant that sum of Rs.18.98 crores has been allowed by the State Commission under the interest head in the Tariff Order for the FY 2010-11. Regarding the claim of past losses, the State Commission has clearly indicated that it would review the claim of Rs.9.06 crores after the receipt of the audited accounts for the FY 2007-08.

11.5 The interest of Rs.23.37 was disallowed in the Tariff Order for the FY 2007-08. We agree with the findings of State Commission that there is no justification for reconsideration to the above decision in the Tariff Order for the FY 2009-10. Thus, we do not find any substance in the claim of the Appellant regarding disallowance of interest of Rs.23.37 crores and accordingly reject the same.

Summary of our findings:

12.1. Terminal Benefits:- As the Actuary Reports disputed by the Appellant is not before us in this Appeal we are not in a position to give any finding on this issue. As suggested by the Appellant, the Tribunal may consider this issue in the Appeal filed by the Appellant challenging the Tariff Order for the FY 2011-12. Thus this issue would not survive as far as this Appeal is concerned.

12.2 Return on Equity: As far as RoE on Rs.60 crores equity on demerger of GRIDCO from 01.04.2005 is concerned, the State Commission is directed to take up the issue with the State Government regarding their final position in the matter and if no response is received within a reasonable time, decide the matter as per law. Regarding ROE on additional equity during the FY 2009-10, the State Commission is directed to consider the same on the basis of documents submitted by the Appellant regarding actual equity infusion.

12.3 Interest on Working Capital: We do not find any reason to interfere with the order of the State Commission in view of

the existing payment mechanism by the distribution licensees to GRIDCO/Appellant.

12.4 Pass through expenses: We do not find any reason to interfere with the order of the State Commission.

13. This Appeal is allowed in part with direction to the State Commission to pass consequential orders in terms of our findings referred to above. There is no order as to costs.

14. Pronounced in open court on 11th day of April, 2012.

**(Rakesh Nath)
Technical Member**

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

REPORTABLE/NON-REPORTABLE

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