

Before the Appellate Tribunal for Electricity
Appellate Jurisdiction

21st April, 2006

Appeal No. 126 of 2005

Indian Tea Association & Ors. ... Appellants
Vs.
Assam State Electricity Regulatory Commission & Ors ... Respondents

Appeal Filing Regn. No. 61 of 2006

Tata Tea Ltd. ... Appellant
Vs.
Assam State Electricity Regulatory Commission & Ors ... Respondents

Appeal Filing Regn. No. 62 of 2006

Bahani Tea Ltd. ... Appellant
Vs.
Assam State Electricity Regulatory Commission & Ors. ... Respondents

Present: **Hon'ble Mr. Justice Anil Dev Singh, Chairperson**
Hon'ble Mr. A.A. Khan, Technical Member

Counsel for the Appellant : Mr. Amit Sharma, Mr. K.P. Ray, Mr. Arijit Raha for Indian Tea and Tata Tea Ltd.
Mr. Prayag Sharma, Ms. Kanika Mehra for Bahani Tea Ltd.

Counsel for the Respondent : Mr. H.M. Sharma, Mr. N. Zaman

Order

These appeals are directed against the Tariff Order passed by the Assam State Electricity Regulatory Commission (for short 'ASERC') dated July 21, 2004.

On June 10, 2003 the Electricity Act, 2003 came into force. Assam State Electricity Board filed petitions before the ASERC for revision of tariff for the years 2003-04 and 2004-05 on July 1, 2003 and Feb. 28, 2004 respectively. On receipt of the petitions, the ASERC issued public notice requiring objections to be filed by May 31, 2004. The public hearing was accorded to the interested parties on July 5, 2004. Subsequently, on July 21, 2004, tariff order was passed. The appellants are aggrieved of the aforesaid tariff order.

The appellants have presented in court today written submissions, highlighting the following issues:

Issue No. 1: Tariff increased not consistent with declared increase as per the order of the Commission.

Issue No. 2: Violation of provision of the Electricity Act, 2003.

Issue No. 3: Discrepancy in tariff determination and the tariff design enunciated in the Order of the Commission.

Issue No. 4: Cross Subsidy (increase in cross subsidy instead of decrease as per the Electricity Act, 2003).

Issue No. 5: Fixed charges.

Issue No. 6: Irrational and irregular method of determining Contract Demand.

Issue No. 7: Transmission and Distribution Loss (along with associated matters like Trading etc”).

It appears that ASERC did not undertake truing up exercise close to the end of the period in question for which tariff was fixed. In order to point out the importance of the truing up exercise, we would like to state one of the grievances of the appellants. It was pointed out on behalf of the appellants that the tariff was fixed by the ASERC on the basis of projected sale of 353 million units of electricity, while allegedly 173 units were sold. It is claimed by the appellants that as a result of this, the Board was able to collect more tariff than what it was justifiably entitled to collect in accordance with law.

Several other points have also been raised by the appellants in support of the contention that the Board collected more revenue than what it was entitled to collect and in case truing up exercise was undertaken by the Commission, this fact would have been established and corrective action could have been taken by the Commission.

It is well known that tariff determination is undertaken by a Commission for the future and is grounded on estimates and projections. By the time there is need to work out the tariff for the subsequent spell of time, actual revenue generated on the basis of tariff fixed by the Commission would be known. Even audited accounts for the earlier period would also be available. On the basis of the actual data or near actual data truing up exercise must be undertaken by the Commission.

In the circumstances, therefore, we direct the ASERC to undertake the truing up exercise and examine the submissions and contentions of

the appellants with reference to our earlier order dated March 14, 2006, rendered in Appeal No. 3 of 2005 and in accordance with law. The Commission shall afford an opportunity of hearing to the affected parties before arriving at the determination in the truing up exercise. The truing up exercise shall be undertaken by the Commission expeditiously and shall be concluded within a period of three months. The Commission, on completion of the truing up exercise, shall act in accordance with law for giving effect to the same.

Before parting with the order, it needs to be recorded that the learned representatives and counsel for the appellants stated that they are giving up the contention regarding the non-applicability of Tariff Schedule-VI of the 1948 Act.

The appeals are disposed of in the light of the above directions.

(Mr. A. A. Khan)
Member

(Mr. Justice Anil Dev Singh)
Chairperson