

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 248 OF 2017,

APPEAL NO. 249 OF 2017

AND

APPEAL NO. 345 of 2017

Dated: 09th June, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

IN THE MATTER OF :

**Torrent Power Ltd.,
Having its Registered Office at
"Samanvay", 600, Tapovan, Ambawadi
Ahmedabad-380 015,
Gujarat**

...Appellant

vs.

**Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE, Road 5C, Zone 5,
GIFT City, Gandhinagar – 382 355 (Gujarat)**

...Respondent

Counsel for the Appellant : Ms. Deepa Chawan
Mr. Hardik Luthra
Mr. Alok Shukla

Counsel for the Respondent(s) : Mr. C.K. Rai
Mr. Mohit Rai for R-1

JUDGMENT

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present Appeals have been filed by Torrent Power Ltd. (hereinafter referred to as the "Appellant") under Section 111 of the Electricity Act, 2003 impugning the Orders dated 09.06.2017 ("Impugned Order") passed by the Gujarat Electricity Regulatory Commission (hereinafter referred to as the 'Commission') in Petition Nos. 1627 of 2016, 1628 of 2016 and 1629 of 2016 relating to the Truing up of FY 2015-16, Approval of ARR for FY 2016-17 to FY 2020-21 and Determination of Tariff for FY 2017-18 for Torrent Power Limited –Distribution, Ahmedabad/ Gandhinagar, Surat and Dahej license areas, respectively.

2. Brief Facts of the Case:-

2.1 The Appellant, Torrent Power Limited (TPL) is a company formed under the provisions of the Companies Act, 1956. The Appellant has filed these appeals as distribution licensee for Ahmedabad/ Gandhinagar, Surat and Dahej license areas.

2.2 The Respondent No. 1 is the Gujarat Electricity Regulatory Commission (GERC), established under the provisions of the Electricity Regulatory Commission Act, 1998 presently repealed and so continued in office, by virtue of Section 82 of the Electricity Act, 2003.

2.3 The Respondent No.1 has passed the impugned order in respect of the petitions filed for Truing up of FY 2015-16, Approval of ARR for FY 2016-17 to FY 2020-21 and determination Tariff for FY 2017-18 for Ahmedabad/ Gandhinagar, Surat and Dahej license areas.

2.4 The Appellant has challenged the impugned order of the Respondent Commission to the extent of the following issues:-

A. The Respondent Commission has denied the Carrying Costs (all Appeals).

B. Erroneous treatment of O&M expenses (Appeal No.345 of 2017).

B-1. Variation in O & M Expenses considered as controllable

B-2. Reduction / deduction from O & M Expense contrary to applicable Statutory Regulations

3. Questions of Law:-

The Appellant has raised following questions of law in the present appeals:

3.1 Whether the impugned order is bad in law by denying Carrying Costs misconstruing the decisions of this Tribunal in Appeal no. 190 of 2011 on carrying cost and misinterpreting the regulatory provision?

3.2 Whether impugned order contravenes any provisions of the Electricity Act 2003 and the applicable Statutory Provisions?

3.3 Whether impugned order in respect of carrying cost and O & M Expenses is contrary to settled financial principles and this Tribunal's Judgments?

3.4 Whether the impugned tariff order is in conformity with the statutory stipulations relating to the MYT framework?

4. The learned counsel, Ms Deepa Chawan, appearing for the Appellant, has made following submissions/ arguments in the batch of appeals for our consideration:-

4.1 The Respondent Commission, as per the MYT Regulations, compares the revenue requirement of the utility with its revenue every year as annual exercise. The gap or surplus, arrived at after truing-up of a particular year, reflects the difference between actual revenue and entitled revenue requirement. This trued up gap /(surplus) gets adjusted in the ensuing year's tariff i.e. while determining the tariff of FY 2016-18, the trued-up gap/ (surplus) of FY 15-16 has been considered along with the estimated gap/(surplus) of FY 2017-18. Thus, the trued-up gap/ (surplus) get addressed after two financial years. This trued-up gap/ (surplus) is to be allowed to the utility with carrying cost as per the principles enunciated by this Tribunal in its Judgment dated 28.11.2013 in Appeal No. 190 of 2011 and Appeal No. 162 & 163 of 2012.

4.2 In the impugned order, the Respondent No. 1/Commission has referred to the judgement and order of this Tribunal in Appeal Nos. 190 of 2011 and 162 & 163 of 2012. However, the impugned order dated 09.06.2017 erroneously holds that as per the Tribunal's judgement in Appeal Nos. 190 of 2011 and 162 & 163 of 2012 the Respondent No. 1 Commission requires supporting documents to

verify as to whether the Appellant has incurred the expenses towards the carrying cost as claimed by it or not. The claim towards Carrying Cost is further holds to be required to be substantiated by the Appellant specifying clearly that these expenses have been incurred towards the fund (i) arranged from the lenders, and / or (ii) arranged from promoters, and / or, (iii) arranged through internal accruals.

4.3 The learned counsel submitted that these Appeals are entirely covered by the Judgment and order dated 04.10.2019 in Appeal No. 246 & 247 of 2017 passed by this Tribunal. However, the written submissions dated 18.12.2019 filed by the learned counsel for GERC do not take into consideration the said judgment dated 04.10.2019.

4.4 The learnedcounsel submitted that written submissions dated 18.12.2019 failed to take into consideration the decision of this Tribunal dated 04.10.2019 in Appeal No. 246 & 247 of 2017 and placed on record the said judgment. The learned counsel further submitted that GERC seems to be seeking re-hearing of the same issues in relation to Carrying Cost and demonstrated by Table that very same contentions were raised by the GERC in its written Submissions filed in earlier Appeal Nos. 246 & 247 of 2017, which were allowed by this Tribunal, and also placed on record the copy of written submissions filed by GERC in Appeal No. 246 & 247 of 2017.

4.5 Learned counsel for the Appellant further submitted that all the contentions and submissions made in the present written submissions dated 18.12.2019 by the GERC were made in the

written submissions filed in Appeal No. 246 & 247 of 2017 which culminated in the order dated 04.10.2019.

- 4.6** The order impugned in the present Appeals were passed by the GERC one (1) day after the order impugned dated 08.06.2017 passed in the earlier Appeal Nos. 246 & 247 of 2017. The learned counsel for the Appellant further submitted that learned counsel for GERC cannot obliquely seek a re-hearing of the issue of carrying cost and prayed to allow the present Appeals in terms of the judgment and order dated 04.10.2019.
- 4.7** Without prejudice to above contentions, the learned counsel further submitted that as learned counsel for the Commission in his written submissions dated 18.12.2019 has repeated the submissions and contentions taken in the earlier Appeal No. 246 & 247 of 2017 on merits, the Appellant is also constrained to repeat its submissions thereon.
- 4.8** In response to the submissions made by the learned counsel appearing for the GERC, learned counsel for the Appellant has submitted as under:
- (a) The issue related to Carrying cost is required to be remanded to correct the inadvertent error. The learned counsel has further submitted that the issue of carrying cost is already dealt with in the Judgment and order dated 04.10.2019 passed by this Tribunal in Appeal No. 246 & 247 of 2017. Therefore, the issue in the impugned order be remanded to the learned GERC to relook the issue in accordance with the order and judgment dated 04.10.2019 in Appeal No. 246 & 247 of 2017.

(b)The issues raised in Appeal No. 345 of 2017 in respect of O&M expenses have already been decided by this Tribunal and accordingly, the Respondent Commission be directed to pass consequential order on remand in accordance with the judgment dated 09.05.2019 passed by this Tribunal in Appeal No. 256 of 2016.

5. Learned counsel, Mr. C.K. Rai, appearing for the Respondent Commission, has made following submissions/ arguments for our consideration:-

- 5.1** The issue of carrying cost raised in the present Appeals was raised by the Appellant in Appeal No. 246 & 247 of 2017. The learned counsel appearing for GERC also submitted that grounds raised and submissions made in the present appeals were also made in earlier Appeal No. 246 & 247 of 2017.
- 5.2** In Petition No. 1629 of 2017, the Respondent GERC has inadvertently relied upon the Clause 21.6 of the GERC (MYT) Regulations, 2016 in the impugned order. It is further submitted by the learned counsel appearing for GERC that truing up of FY 2015-16 is governed under the provisions of the GERC MYT Regulations, 2011 and the GERC is ready to re-look upon the matter on remand.
- 5.3** The learned counsel appearing for the Respondent Commission submitted that the issue raised in Appeal No.345 of 2017 in respect of terming the variation in O&M Expenses as controllable is dealt with by this Tribunal in the Judgment dated 09.05.2019 in Appeal No. 256 of 2016 Torrent Power Ltd Vs GERC. The learned counsel for GERC has referred the following extract of the referred

judgment of this Tribunal and submitted that the issue raised in respect of O&M expense is covered by the Judgement of this Tribunal:-

“9.1 The variation in O & M expenses is normally to be treated as controllable. However, in exception cases as in hand, the amount of network Augmentation charges incurred by the Appellant as required by the State Transmission Utility(STU) for connectivity needs to be treated as uncontrollable.

9.2 The deduction of Rs. 2.48 crores from O & M Expenses is contrary to applicable Statutory Regulations of the State Commission.

9.3 The Commission should take consistent stand in all matters on the same plea whether related to O & M expenses or the variation in technical and commercial losses.

10. Accordingly, the appeal deserved to be allowed”

6. Our Findings and Analysis:-

- 6.1** We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Commission and carefully considered the submissions made by both the parties during the hearing.
- 6.2** During the hearing, the learned counsel appearing for Appellant and the learned counsel appearing for GERC, both, have conceded that the issue of Carrying Cost is already covered by the Judgment and order dated 04.10.2019 of this Tribunal in Appeal No. 246 & 247 of 2017.
- 6.3** It is relevant to note that present Appeals impugning GERC Orders dated 09.06.2017 in Petition No. 1627 of 2016, 1628 of 2016 & 1629 of 2016 were passed just one day after the orders dated 08.06.2017 passed by GERC impugned in Appeal No. 246 & 247

of 2017. In these orders, GERC has not allowed the recovery of Carrying Cost by keeping it in abeyance on the ground of documentary evidence not furnished by the Appellant and by erroneous interpretation of various judgments of this Tribunal.

- 6.4** Upon perusal of the above referred judgment and order dated 04.10.2019 of this Tribunal in Appeal No. 246 & 247 of 2017, it is observed that after deliberating the applicable judgments of this Tribunal and principles laid down in those judgments, this Tribunal has already passed the detailed order and judgment on this issue of Carrying Cost in Appeal No. 246 & 247 of 2017. Thus, the said judgment entirely covers the issue of carrying cost raised in the present Appeals.
- 6.5** Regarding the issues of O&M Expenses in Appeal No.345 of 2017, the issue is already covered by the judgment and order dated 09.05.2019 passed by this Tribunal in Appeal No. 256 of 2016.
- 6.6** In view of the above, the impugned order is liable to be set aside to the extent of issues challenged in the present appeals and the State Commission is required to pass the consequential order in line with our consideration & findings, stated above.

7. SUMMARY OF FINDINGS:-

Based on our analysis and findings in preceding paragraphs, we sum up our findings as under:-

A. Appeal No. 248 of 2017 & 249 of 2017

- 7.1** We hold that the Judgment of this Tribunal dated 04.10.2019 in Appeal Nos. 246 & 247 of 2017 entirely covers the issue of Carrying Cost raised in the present Appeals.

B. Appeal No. 345 of 2017:-

- 7.2** We hold that the issue of carrying cost in Petition no. 1629 of 2016 has been erroneously considered by the Commission as per MYT Regulations, 2016 instead of MYT Regulations, 2011. The same needs to be corrected and the carrying cost is required to be allowed in accordance with our Judgment and order dated 4.10.2019.
- 7.3** We hold that Judgment of this Tribunal in Appeal No. 256 of 2016 dated 09.5.2019 entirely covers the issue of O & M Expenses raised in the Appeal No.345 of 2017. Hence, O&M expenses in Dahej area is required to be allowed as per the same.

ORDER

For the forgoing reasons, we are of the considered opinion that issues raised in the present appeals being Appeal Nos. 248 of 2017, 249 of 2017 and 345 of 2017 have merits. Hence, the Appeals are allowed.

The impugned order dated 09.06.2017 in Petition Nos. 1627 of 2016, 1628 of 2016 and 1629 of 2016 passed by Gujarat Electricity Regulatory Commission is hereby set aside to the extent of our findings under Para Nos. 7.1 to 7.3, stated supra.

The matter stands remitted back to the State Commission with the direction to pass the consequential order in accordance with law and the directions of this Tribunal, as stated above, as expeditiously as possible at any rate within a period of three months from the date of pronouncement of this judgment/order.

No order as to costs.

Pronounced in the Virtual Court on this **09th day of June,2020.**

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / NON-REPORTABLE

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