

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 262 OF 2016

Dated: 2nd March, 2020

Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member
Hon'ble Mr. Justice R.K. Gauba, Judicial Member

In the matter of:

Chennai metro Rail Limited

Rep. By its Director/Systems & Operations,
Admin Building, CMRL Depot,
Poonamallee High Road, Koyambedu,
Chennai – 600 107

... Appellant

Versus

1. Tamil Nadu Generation and Distribution Corporation Limited

Rep. By its chairman and Managing Director
144, NPKRR Maaligai,
Anna Salai,
Chennai – 600 002

2. Tamil Nadu Electricity Regulatory Commission

No.19-A, Rukmini Lakshmipathy Salai,
(Marshalls Road), Egmore,
Chennai – 600 008

... Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
Mr. Senthil Jagadeesan

Counsel for the Respondent(s) : Mr. G. Umapathy
Mr. S. Vallinayagam for R-1

Mr. Sethu Ramalingam for R-2

J U D G M E N T

PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER (ORAL)

1. The Appellant Company was established to execute what is known as Chennai Metro Rail Project (“CMRP”). On 15.02.2011, a Memorandum of Understanding (“MoU”) was entered into between the Government of India, Government of Tamil Nadu and Chennai Metro Rail Limited (“CMRL”), the Appellant herein, *inter-alia*, for the purposes of sharing the financial burden of setting up of CMRP, the objective whereof concededly was to provide reliable, faster, economical and eco-friendly public transport services in the city of Chennai, the project undertaken being similar to the projects that have come up in different metro-cities of India including Delhi and Bangalore.

2. The CMRL began to avail power supply for a maximum demand of 5 MVA from the first Respondent Distribution company/TANGEDCO w.e.f. 26.07.2013 and the Distribution Company decided to levy HT commercial tariff (III) for such supply with fixed demand charges which were later revised, the billing having been raised ever since at 800 paise/unit and demand charges at Rs. 350/KVA for the Traction and other Utilities.

3. The second Respondent i.e. Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as the “*State Commission*” or

“Commission” or “TNERC”), had issued a Tariff Order dated June, 2013 based on the Tariff Petition filed by the Respondent Discom in which revision of tariff was sought with respect to certain other categories. In December, 2014, the Commission issued a suo-motu order for determination of tariff for generation and distribution.

4. During pendency of the then existing tariff order, the appellant filed Miscellaneous Petition No. 3 of 2016 on 20.01.2016 seeking following reliefs:

“(i) to fix the Railway traction Tariff for the appellant for the period of trial operation from July 2013 to June 2015, and

(ii) to fix a tariff for the appellant as a special category and provide tariff during revenue operation based upon the actual cost of supply at 110 KV level excluding both the subsidy and cross subsidy elements in line with the National Tariff Policy and on par with DMRC/BMRCL.”

5. The said miscellaneous petition seems to have been resisted by TANGEDCO. It was decided by the State Commission by Order dated 01.08.2016 the relevant part whereof for the purposes of the present appeal reads thus:-

“6.19.18 The Commission is not inclined to create any special category as on date for revenue operation period based on the actual cost of supply at 110 KV level excluding both the subsidy and cross subsidy elements during the mid-course of operation of Tariff Order and therefore the Commission directs that the TANGEDCO can study the load, consumption pattern, etc. of CMRL and other consumer classes who have also made similar demand for Special Categorization and while filing next tariff petition, the creation of a special/separate category can be proposed if supported by necessary data.

6.19.19 However, the Commission is also seized of the fact that the CMRL is in the service of public necessarily catering to the commuting passengers to provide reliable, faster, economical and ecofriendly transport services in the city of Chennai. The Commission finds it unwise to categorise them under miscellaneous tariff even though they have mixed load. The petitioner has also cited various reasons for nonsegregation of their load. However, they are willing to include other commercial services like Kiosks, Stalls, ATM, hotels, etc. under miscellaneous tariff category. There is a separate tariff for railway traction, HT I (B), which is the lowest among all the HT Categories. Though the CMRL has mixed load of railway traction and other miscellaneous activities as it is incidental to the main service, Commission considers that ends of justice will be met only if CMRL is classified under HT Tariff I (B) for all the connected load of CMRL. Other loads like, ATM, Kiosks, stalls, hotels, etc. shall be separately metered and charged under miscellaneous category and the above consumption shall be deducted from the main energy consumption metered at the CMRL's point of supply. This Order shall take effect from the date of this order.

With the above orders the present petition is disposed of."

[Emphasis supplied]

6. Feeling aggrieved by above decision of the State Commission, the present appeal was filed which has been pending since September, 2016 before this Tribunal.

7. At the hearing, it was brought out that over the period subsequent to the impugned order being passed, the State Commission has passed only one Tariff Order (dated 11.08.2017) wherein no decision on the prayer of the Appellant for special category status was taken for the reason that this appeal is pending before this Tribunal, the matter consequently being *sub judice*.

8. It is clear from the aforequoted observations in the impugned order of the State Commission that in effect no decision was taken by the State Commission on the prayer of the Appellant for special category status. The appellant places reliance in this regard, *inter-alia*, on the judgment of this Tribunal in Appeal No. 268 of 2006 *Northern Railway v DMRC* decided on 13.03.2007 and Tariff Orders dated 31.07.2013 and 14.05.2018 of Delhi Electricity Regulatory Commission (DERC) and Karnataka Electricity Regulatory Commission (KERC) for the Financial Years 2013-14 and 2018-19 respectively on the Petitions of BSES Rajdhani Power Ltd and Bangalore Electricity Supply Company Ltd, the observations and conclusions recorded wherein are stated to have a bearing on the issues which are raised.

9. By the above quoted observations in 6.19.18, the State Commission only indicated that it was disinclined to take a decision as “*on date*” of the said order on the claim of the Appellant for special category status and for being excluded from the burden of the subsidy and cross subsidy on account of the service rendered by it to the public at large, it being a green-field project. In spite of a direction to the respondent TANGEDCO by the same very order for a proposal to be brought for consideration by the State Commission, no steps have been taken till date towards that end either by the respondent TANGEDCO or by the State Commission. We find this scenario an attempt to run away

from responsibility or, shall we say, abdication of the jurisdiction. It is unfortunate that the State Commission deferred the decision to some future occasion and then has not followed it up by enforcing it to any effect or in any part.

10. At the hearing, it was submitted by the counsel for the respondent TANGEDCO that inspite of requisite data being demanded, the Appellant has failed to come up with the same. If this were the case, there was no reason why the respondent TANGEDCO could not have approached the Commission pointing out the default on the part of the Appellant in such regard leaving it to the Commission to take a decision one way or the other.

11. To put it simply, matters requiring such decisions as concern the public at large, particularly the consumer whose interest is at the core of the legislative scheme of the Electricity Act, cannot be put off indefinitely. The call has to be taken expeditiously by the Commission on which the legislation places the responsibility.

12. For the foregoing reasons, we would allow the appeal though with a direction for remit.

13. Since the arrangement of calling for a proposal in the next tariff application has not worked out, we direct the State Commission to take up the matter on the basis of the miscellaneous petition of the Appellant

and after hearing both sides, take a clear decision as to whether it is entitled to the special category status and also on the claim that the tariff to be levied against it would exclude it from the burden of subsidy or cross-subsidy.

14. Lest it prejudices either side, we do not wish to express opinion on the above said issues at this stage. The Commission, we are happy to note, is already conscious of the fact that the Appellant is in the service of public necessarily catering to the commuting passengers so as to provide reliable, faster, economical and eco-friendly transport services in the city of Chennai. Suffice it to observe that in taking the call, the Commission would be expected to bear in mind the legislative intent and public policy adopted by the State. This includes the expectation that the tariff determination exercise would progressively reflect the cost of supply of electricity and also reduce cross-subsidy (Section 61) and also that, in such determination, the Electricity Regulatory Commission may “differentiate” upon considerations also of “*the nature of supply*” and “*the purposes*” of such supply (Section 62). Further, it needs to be borne in mind that the understanding between the three entities which have overseen the development of CMRP is reflected in Clause 12.7 of MoU dated 15.02.2011 which obliges them “*to ensure that electric power is made available to the project on a no-profit no-loss basis, subject to the*

applicable law and orders of the State Electricity Regulatory Commission.”

15. The impugned order to the extent thereby the request for special category status was not immediately considered is set aside. The State Commission is directed to consider the said request and determine appropriate tariff in respect of CMRP in light of decision thus taken by passing a fresh order. The matter to that extent is remitted.

16. The parties are directed to appear before the State Commission on **06.04.2020**. We request the State Commission to decide the matter as expeditiously as possible, preferably within three months of the first date of hearing set by us.

17. The appeal is disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 2ND DAY OF MARCH, 2020.

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Technical Member

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