

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.149 OF 2009

Dated: 23rd March, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr.V J Talwar, Technical Member

In the Matter Of

1. Reliance Infrastructure Limited
Reliance Energy Centre,
Santacruz (East)
Mumbai-400 055

..... Appellant

Versus

1. The Maharashtra Electricity Regulatory Commission
World Trade Centre No.1
13th Floor, Cuffe Parade
Colaba
Mumbai-400 001

2. Mumbai Grahak Panchayat
Sant Dnyaneshwar Marg,
Vile Parle (W)
Mumbai-400 056

3. Prayas
C/O Amrita Clinic, Athawale Corner
Karve Road,
Pune-411 004

4. Thane Belapur Industries,
Post: Ghansoli,
Navi Mumbai-400 071

5. Vidarbha Industries Association
Civil Lines,
Nagpur-400 041
6. Brihan-Mumbai Electric Supply & Transport
Undertaking (BEST)
Electric House
Shahid Bhagat Singh Marg,
Colaba,
Mumbai-400 001
7. Tata Power Company Ltd (Distribution)
Mumbai Corporate Center,
34, Sant Tukaram Marg,
Carnec Bunder
Mumbai-400 009
8. Maharashtra State Electricity Distribution Co. Ltd.,
Prakashgad, Plot No.G-9,
Bandra (East),
Mumbai-400 051

..... Respondent(s)

Counsel for the Appellant : Mr. J.J Bhatt, Sr. Adv
Ms. Anjali Chandurkar
Mr. Shiv K Suri
Mr. Hasan Murtaza
Ms. Shilpy Chaturvedi
Mr. Saswat Pattnaik

Counsel for the Respondent : Mr. Buddy A Ranganadhan
Ms. Richa Bhardwaja
Mr. Abhishek Mitra for R-8
Mr. Samir Malik for R-8
Mr. Adab Singh Kapoor for R-8
Mr. Varun Agarwal for R-8

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. The Reliance Infrastructure Limited is the Appellant.
2. The present Appeal pertains to the determination of transmission tariff of the Transmission Business of the Appellant for the Financial Year 2009-10.
3. There are two issues which arise for consideration in the Present Appeal.
 - (i) Disallowance of R&M Expenses on Hotline Washing; and
 - (ii) Grossing up of Income Tax
4. In regard to the **First Issue**, the Appellant has contended that the State Commission ought to have allowed the Repair and Maintenance Expenses on Hotline Washing as the Appellant had incurred incremental expenses in hotline washing of Transmission Lines.
5. The State Commission disallowed the said claim on the ground that the amount spent by the Appellant on this head exceeded the MYT projection for the year in question. The differential amount has to be treated as efficiency loss and shared in accordance with the Tariff Regulations. Variations between

the actual and allowed are considered for sharing of loss and as such there is no infirmity in the finding rendered by the State Commission.

6. In the written submission, the Appellant has submitted that the present issue may be kept open for the time being since the Appellant intends to approach the State Commission in future. However, we are not inclined to accept the same in view of the fact that the very same issue had already been decided by this Tribunal in Appeal No.139 of 2009 in the matter of Maharashtra State Electricity Transmission Company Limited. The full bench in the said Appeal No.139 of 2009 has given the findings on the same issue. They are as follows:

“8.3. Similarly, the findings of the State Commission relating to R&M expenses is reproduced below:

*“The Commission holds that activities like **hot line maintenance, etc., are part of routine R&M and cannot be cited as reason for additional expenses.** Also, the Commission observes that under the MYT regime, the Commission has approved R&M expenses after considering audited results for FY 2006-07 as the base and allowing for escalation factor on account of Wholesale Price Index (WPI). **Thus, variation between allowed expenses and actual expenses will have to be considered as a controllable loss/gain, and will have to be shared between MSETCL and the distribution licensees, in accordance with Regulation 19 of the MERC Tariff Regulations**”.*

8.4. *The relevant part of the Regulation 19 of the Tariff Regulations is extracted hereunder:-*

19.2. *The approved aggregate loss to the Generating Company or Licensee on account of controllable factors shall be dealt with in the following manner:*

(a) *One – third of the amount of such loss may be passed on as an additional charge in tariffs over such period as may be specified in the order of the Commission under Regulation 17.10: and*

(b) *The balance amount of loss shall be absorbed by the Generating Company or Licensee*

The above Regulations indicate that $1/3^{rd}$ of loss on account of controllable factors has to be passed on as an additional charge in the tariffs and the balance $2/3^{rd}$ has to be absorbed by the licensee. A&G and R&M expenses are controllable factors. The State Commission has compared the actual audited expenses with the figures projected for the Multi Year Tariff Period for the purpose of sharing the efficiency loss/gain as per Regulation 19.

8.5. *Thus, we find that the State Commission has determined the A&G and R&M expenses according to its Regulations and MYT tariff order”*

7. So, this point has already been decided by Full Bench. Therefore, the contention on this point, is liable to be rejected.
8. The **next issue is relating to Grossing up of Income Tax**. It is admitted by both the parties that this issue i.e. grossing up of income tax has been considered by this Tribunal and decided

in the following cases. In these cases it is held that the income tax is to be allowed by grossing up to ensure the stipulated post tax returns by the State Commission to the generators. Those judgments are as follows:

- (i) Appeal No.173 of 2009-Tata Power Co Vs MERC dated 15.2.2011
 - (ii) Appeal No.174 of 2009- Tata Power Co Vs MERC dated 14.2.2011
 - (iii) Appeal No.175 of 2009- Tata Power Co Vs MERC dated 14.2.2011
 - (iv) Appeal No.49 of 2010-Tamil Nadu Electricity Board Vs Neyvelli Lignite Corporation dated 10.9.2010
 - (v) Appeal No.68 of 2009 – Torrent Power Vs GERC dated 23.3.2010
 - (vi) Review Petition No.9 of 2010 in Appeal No.68 of 2009 dated 5.1.2011
9. According to the State Commission the Commission has not grossed up the return on equity component for income tax since the income tax is allowed as part of the ARR as an expense head in accordance with the MERC Tariff Regulations. Regulation 34.2.1 states that “income tax on the income of the Generation Business of the Generating Company shall be allowed for inclusion in the annual fixed charges”. If the income is equivalent to the Return on Equity,

the difference between the income and expenditure as well as other expenses are being reimbursed through ARR. Accordingly, the State Commission has allowed income tax on RoE component in the impugned order. This is in accordance with the MERC tariff regulations.

10. However, it is to be pointed out that this Tribunal in Review Application No.9 of 2010 in Appeal No.68 of 2009 i.e Torrent Power case dated 5.2.2011 has held as follows:

“The Torrent Power Limited should neither benefit nor loose on account of tax payable which is a pass through in the tariff. Thus, there is no question of the generating company making profit on account of income tax”.

11. This observation would squarely apply to the present case as well.
12. With these observations the above Appeal is disposed of. However, there is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:23rd Mar, 2012

Reportable/Not Reportable