

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**  
**APPEAL No.106 OF 2010**

**Dated: 01<sup>st</sup> March, 2012**

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

**In the Matter Of**

GRIDCO Limited,  
Janpath,  
Bhubaneswar-751 022

Appellant

Versus

1. Orissa Electricity Regulatory Commission,  
Bidyut Niyamak Bhawan, Unit-VIII,  
Bhubaneswar-751 012
2. Western Electricity Supply Company of Orissa Limited,  
Regd Office-Plot No.N/22, IRC Village,  
Nayapalli,  
Bhubaneswar-751 015
3. North Eastern Electricity Supply Company of Orissa Limited,  
Regd Office-Plot No.N/22, IRC Village,  
Nayapalli,  
Bhubaneswar-751 015
4. Southern Electricity Supply Company of Orissa Limited,  
Regd Office-Plot No.N/22, IRC Village,  
Nayapalli,  
Bhubaneswar-751 015

5. Central Electricity Supply Utility of Orissa  
Regd Office, 2<sup>nd</sup> Floor,  
IDCO Tower, Janpath,  
Bhubaneswar-751 022

Respondent(s)

Counsel for the Appellant :Mr. M.G. Ramachandran,  
Ms. Ranjitha Ramachandran  
Mr. Anand K Ganesan  
Ms. Sneha Venkataramani  
Ms. Swapna Seshadri

Counsel for the Respondent :Mr. Rutwik Panda for R-1  
Mr. Buddy A. Ranganadhan  
Mr. Hasan Murtaza for R-2 to 4

## **JUDGMENT**

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

1. GRIDCO Limited is the Appellant herein.
2. Orissa Electricity Regulatory Commission (State Commission) is the First Respondent. WESCO, NESCO, SOUTHCO and Central Electricity Supply Utility of Orissa, the Distribution licensees, are the other Respondents-2 to 5.
3. The GRIDCO is a trading licensee. On 13.11.2009, the GRIDCO filed its application before the State Commission for the approval for its Annual Revenue Requirements and for

Determination of Bulk Supply Price on the estimated bulk sale of electricity to the distribution licensees Respondent 2 to 5 during the Financial Year 2010-11.

4. The State Commission ultimately passed the impugned order dated 20.3.2010, determining the Annual Revenue Requirements and Bulk Supply Price of the Appellant for the year 2010-11. Challenging the disallowances of certain claims, the Appellant has filed this Appeal as against the order dated 20.3.2010. The present Appeal has been filed by the Appellant on the following issues:

- (a) Disallowance of Interest on Loan
- (b) Disallowance of Employees Expenses
- (c) Disallowance of Special Appropriation
- (d) Repair and Maintenance and Administrative and General expenses
- (e) Bridging of the Revenue gap
- (f) Fixation of price cap
- (g) Other inconsistencies in the impugned order

5. It is pointed out by the Appellant that being aggrieved over the earlier Tariff order of the State Commission in respect of the Financial year 2009-10, the Appellant had filed the Appeal in

Appeal No.88 of 2009 and many of the issues which had been raised in that Appeal also have been raised in the present Appeal. This Tribunal in that Appeal, allowed the Appeal filed by the Appellant in respect of various claims. According to him, the said judgment would cover various issues raised in this Appeal also.

6. It is said that the issues (a) i.e. Disallowance of Interest on loan (c) i.e. Disallowance of Special appropriation and (e) i.e. Bridging of the Revenue gap have been covered by the judgment of this Tribunal in Appeal No.88 of 2009 dated 30.8.2011 which is concerned with the determination of the ARR and Bulk Supply Price for the GRIDCO. The issue No. (a) i.e. “Disallowance of Interest on Loan” is covered by Para 9.5 to 9.7 of the judgment in Appeal No.88 of 2009. The said Paras are quoted as under:

*“9.5. We find that the State Government had kept debt service of the loan in abeyance only till FY 2005-06 or sector turn around, whichever is earlier. This period has since elapsed. The State Commission has taken up the matter with the State Government but the State Government has so far not accepted the request. Admittedly, the Appellant has not actually paid the interest to the State Government. In these circumstances, the loan payment remains the liability of the Appellant.*”

*9.6. This is not a desirable position. The State Commission and the Appellant should take up the matter with the State Government to finalise its position in the matter at the earliest. If the State Government does not agree to extend the date in a reasonable time, then the State Commission should pass on the same in the ARR of the Appellant.*

*9.7. As regards the interest on Pension Trust Bond, the Appellant's contention is that it is claiming such portion of the interest on the Pension Trust contribution payable by them. On the other hand, the learned counsel for the Appellant argued that the same is being serviced in the ARR of the Transmission Licensee. The State Commission is directed to verify the claim of the Appellant in the True up of the financials of FY 2009-10 and decide the matter accordingly”.*

7. So, the above decision of the Tribunal would squarely apply to the present fact of the case as well. Accordingly, this point is answered.
8. **Issue No. (c) i.e. “Disallowance of Special Appropriation”** is covered vide Para 10.5 & 10.6 of the said judgment following the judgment in Appeal No.58 & 59 of 2007. Let us refer to the relevant portion of the said judgment:

*“10.5. We find that the issue of repayment of principal amount of loan had already been decided by the Tribunal in its Judgment dated 9.11.2010 in Appeal Nos. 58 and 59 of 2007. The relevant extract of the Judgment is reproduced below:*

*“(C) In Our opinion, the ARR should include the ‘cost’ incurred by the licensee in carrying out its*

*business. The cost of loan is 'interest'. Similarly cost of equity is 'ROE'. This interest and ROE can be booked to Revenue Requirement or Tariff. The principal repayment of loan cannot form a part of revenue requirement. In the present case charging the principal amount of loan taken for generator's bill by GRIDCO to the revenue requirement will result in double counting of expenses".*

*10.6. As regards the shortfall for FY 2008-09, we notice that the State Commission has not carried out the true up for the FY 2008-09 in the impugned order, as the same was not part of the Petition of the Appellant. The State Commission has recorded the following with regard to shortfall of 2008-09:*

*"407. The present position of receipt of trading and UI charges as filed by GRIDCO in its cash flow statement (upto December, 2008) is given in table below:*

**Rs. in Crore**

*UI Charges - 270.20  
Trading - 24.34  
ICCL NALCO - 60.01*

**Total: 354.55**

*408. The Financial year 2008-09 is not yet over. Hence, it is difficult to assess the exact income from trading and UI Charges during 2008-09 to bridge the gap allowed by the Commission. Therefore, after receipt of audited accounts for FY 2008-09 and short-fall if any accrued thereof would be adjusted with the approved gap to be recognized as regulatory asset and the carrying cost will be passed on to ARR in FY 2010-11".*

*Accordingly, the State Commission is directed to carry out the true up for FY 2008-09 and allow the shortfall with carrying cost and also consider the claim of the Appellant regarding the arrears payable to OPGCL”.*

9. In view of the decision taken earlier by this Tribunal, the instant issue is also answered accordingly.
10. In respect of issue **No. (e)**, i.e. **“Bridging of the Revenue Gap”**, the same is covered by Para No.8.5 of the above judgment. Para 8.5 of the above judgment is quoted below:

*“8.5. We agree with the contention of learned counsel for the Appellant that the State Commission should have decided the BSP after considering income from the estimated sale of surplus energy. The actual income from UI and trading for FY 2007-08 may not give the correct picture for FY 2009-10 due to growth in demand. For estimating income from the trading of surplus power available in the state for FY 2009-10, the assessment of requirement and availability of electricity for the FY 2009-10 has to be made. In this case the State Commission appears to have decided to leave the revenue gap with the intent of keeping the BSP at the current level. The proposed support of the State Government to the distribution licensees for augmentation of distribution system is not likely to impact the BSP. The Judgment of the Tribunal dated 9.11.2010 in Appeal Nos. 58 and 59 of 2007 referred to by the Respondents will not be of any help in this matter. In view of above we decide this issue in favour of the Appellant and direct the State Commission to true up the financials of the Appellant for FY 2009-10 and allow actual costs with the carrying cost”.*

11. In view of the decision arrived at by this Tribunal, this point is also covered. Thus, issues (a), (c) and (e) which have already been decided in Appeal No.88/2009 are decided accordingly.
12. In respect of issue **(b)** i.e. **“Disallowance of Employees Expenses”** and issue **(d)** i.e. **“Repair and Maintenance and Administrative and General Expenses”**, the Learned Counsel for the Appellant submits that he does not propose to press these issues as they may be considered by the State Commission in truing-up exercise for the year. In view of the statement of the Appellant, we need not go into the merits of these issues as the same is not pressed and the State Commission may consider these issues while truing up exercise is taken up.
13. Thus, there are only two issues which need to be considered and decided in the present Appeal. They are issues (f) and (g). **Issue (f) is Fixation of price Cap and (g) Other inconsistencies in the impugned order.**
14. In respect of the issue, **‘Fixation of Price Cap’**, the State Commission has held that for the purpose of trading, the Appellant can purchase power at any rate not exceeding Rs. 4.10 per unit and can sell through trading route at any rate which cannot be less than Rs.3.50 per unit.



15. According to the Appellant, the State Commission has determined the Bulk Supply price of the Appellant for the same to the distribution licensees as such, the State Commission regulates the power purchase and supply functions of the Appellant for the supply to the distribution licensees in terms of Section 86 (1) (b) of the Electricity Act, 2003. but in regard to supply of electricity to the 3<sup>rd</sup> parties, the Appellant is acting only as a trading licensees and in those cases, there cannot be any price regulation as it is not covered under Section 86 (1) (b) of the Act.
16. It is further contended that the Act, 2003 only permits the fixation of the trading margin, if any and not to regulate the price at which the electricity is purchased for sale to the 3<sup>rd</sup> party and consequently, it is not open to the State Commission to determine the purchase price or the sale price of the electricity to the 3<sup>rd</sup> parties.
17. In order to substantiate this plea to the effect that there must be a specific finding on the existence of the conditions before the power could be exercised, the Learned Counsel for the Appellant has cited the following decisions:
  - (a) P K Sreekantan and Others v P. Sreekumaran Nair and Other (2006) 13 SCC 574
  - (b) Vatticherukuru Village Panchayat v Nori Venkatarama Deekshithulu, (1991) Supp 2 SCC 228

(c) Mohammed Hasnuddin v State of Maharashtra, (1979)  
2 SCC 572

18. On the other hand, it is submitted by the Respondents that Section 62 and 86 (1) (k) permit the State Commission to fix the minimum and maximum rates for purchase of power from the licensees and this had been upheld by this Tribunal in Appeal No.166 and 168 of 2009, and hence, the above judgment would squarely apply to the facts of the present case and as such, the contention of the Appellant on the strength of the judgments cited by him which are not applicable to the present facts of the case is misconceived.
19. Since the learned Counsel for the Respondent heavily relies upon Sections 62 and 86 (1) (k) of the Act, 2003, let us look into those sections. Section 62 of the Act, 2003 is quoted as under:

*“62. Determination of Tariff: (1) The Appropriate Commission may determine the tariff in accordance with the provisions of this Act for*

*(a) Supply of electricity by a generating company to a distribution licensee:*

*Provided that the Appropriate Commission may, in case shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company or licensee or between licensees, for a period not exceeding one year to ensure reasonable price of electricity.”*

20. The above section reveals that this section clearly permits the Appropriate Commission that i.e. the State Commission to fix the minimum and maximum rates for the purchase of power by any licensee. Admittedly, the Appellant is a trading licensee under the Electricity Act, 2003. It is also responsible for bulk supply of power to the distribution licensees and the Power Purchase Agreements of the erstwhile Orissa State Electricity Board have been vested with the Appellant. GRIDCO is also responsible for short-term arrangements for procurement of power to meet the requirements of the distribution licensee. In case of surplus availability of power, GRIDCO sells the same to other States to earn revenue by trading to meet the shortfall in its ARR. Learned Counsel for the State Commission has argued that the State Commission has suggested a ceiling price for purchase of power under short-term agreement by the Appellant, so as to keep the pooled cost of power at a reasonable rate, which affects the Bulk Supply rate to the distribution licensees.

21. Let us now refer to Section 86 (1) (k) which is quoted as under:

*“86. Functions of State Commission- (1) The State Commission shall discharge the following functions, namely:-*

*(a) to (j) .....*

*(k) Discharge such other functions as may be assigned to it under this Act”.*

22. Under this provision, the Appropriate Commission i.e. the State Commission is fully empowered to discharge the other functions assigned to it under this Act.
23. As pointed out by the Learned Counsel for the State Commission, the power of State Commission to fix such price cap has been specifically upheld in the judgment of this Tribunal in Appeal No.166 and 168 of 2009 dated 04.03.2010 titled CESC Vs. CERC. Let us quote the relevant portion of the said judgment:

*“9. The only question which arises for consideration in this case is whether in terms of Section 62(1)(a) proviso or any other provisions under the Act the Central Commission has got any jurisdiction to fix minimum and maximum ceiling of price for inter-state sale or purchase of electricity on the ground that there exists scarcity of electricity supply with reference to the transaction of power exchanges or inter-state transactions.*

.....  
.....

*27. It is not correct to contend that the proviso to section 62(1)(a) shall be limited to the supply of electricity by generating company to a Distribution Licensee alone as rightly pointed out by the learned senior counsel for the Central Commission. The perusal of the above section, as is evident from the terms of the proviso, it is clear that it does not limit itself to the tariff for supply of electricity by*

*generating company to a Distribution Licensee alone. On the contrary it refers to supply of electricity in pursuance of an agreement entered into between the generating company and the licensee or between licensees. Under section 14 of the Act, the licensees include Transmission Licensee, Distribution Licensees and traders. Therefore, we find force in the contention urged by the Learned Senior Counsel for the Central Commission that as envisaged under section 79(1)(k), the Central Commission can exercise its powers under section 62(1)(a) proviso on the basis of the prevailing circumstances which reflected shortage of electricity as well as escalation of prices, to fix the minimum and maximum ceiling of prices”.*

24. It is clear from the above judgement that proviso of Section 62 (1) (a) and 86 (1) (k) does not put any embargo preventing the State Commission to exercise the other powers specifically when Section 79 (1) (k) confers the powers to the Commission to discharge the other statutory functions as may be assigned to it under this Act.
25. It is true that the above Judgment would refer to the interpretation of Section 62 (1) (a) of Section 79 (1) (k) of the Act, 2003 which relates to the powers of the Central Commission. Since the State Commission is empowered to exercise the powers under Section 86 (1) (k), which is analogous provision with that of Section 79 (1) (k) of the Act., the said decision would apply to the present case, particularly when Section 62 (1) (a) uses the expression “Appropriate Commission” which means the power conferred under the said

section can be exercised either by the Central Commission or by the State Commission. So the existence of the power and exercise of the power cannot be questioned, as the power purchase and sale price of the Appellant will affect the Bulk Supply Rate of the distribution licensees.

26. In view of the above judgment we have to hold that there is no merit in the contention of the Appellant in respect of this issue namely “**Fixation of Price Cap**”. So, this issue is answered as against the Appellant.
27. **The last issue is relating to “Other Inconsistencies in the Impugned order”**. On this issue, the Appellant has contended that the State Commission in the impugned order has stated that the liabilities incurred by the Appellant as on 1.4.1999 were transferred to the four distribution companies, which is contrary to the factual position that all the liabilities are continued to be borne by the Appellant towards the generating Companies. It is further contended by the Appellant that the State Commission has wrongly observed that the Appellant continue to service the liabilities without recovery from the distribution licensees and those observations were inconsistent. Though the Learned Counsel for the Appellant has raised this ground on this issue in the Appeal in view of the stand taken by the State Commission as referred to in its written submissions he does not seek to press the said issue as he got the necessary

clarifications in the written submissions filed by the State Commission. He pointed out the relevant portion of the written submissions filed by the State Commission.

*“Therefore, GRIDCO for maintaining the status of sole bulk supplier to DISCOMs and to discharge the responsibility of maintaining steady power supply to DISCOMs, GRIDCO has entered into an arrangement with DISCOMs, so that all the liabilities prior to 01.04.1999 and after 0.04.1999 of DISCOMs are payable to GRIDCO through back to back payment arrangement such as escrow mechanism so that revenue realized by DISCOMs from consumers are paid to generators (such as NTPC, OHPC, OPGC etc.) and financial institutions such as REC, PFC etc. through GRIDCO as because all the generators and financial institutions are directly the creditors of GRIDCO”.*

28. In view of the above plea made by the Appellant, we need not go into the merits of the issue as the same is not pressed.

29. **Summary of Our Findings**

**i) Disallowance of Interest on Loan: This issue is covered by findings of the Tribunal in judgement dated 30.8.2011 in Appeal No.88 of 2009. Accordingly, the Appellant and the State Commission are directed to take up matter regarding debt service of loan with the State Government to finalise its position in the matter at the earliest. If the State Government does not agree**

**to extend the date for keeping the debt service of loan in abeyance in a reasonable time, then the State Commission should pass on the same in the ARR of the Appellant. Regarding the Pension Trust Bond, the State Commission is directed to verify the claim of the Appellant in the True up of the financials for the Financial Years 2009-10 and 2010-11 and decide the matter accordingly.**

- ii) Disallowance of Special Appropriation: This issue has already been decided by the Tribunal in its judgement dated 30.8.2011 in Appeal No.88 of 2009. Accordingly, the principal repayment of debt can not form a part of revenue requirement. Further the State Commission is directed to carryout the true up for the Financial Year 2008-09 and 2009-10 and allow the shortfall with carrying cost and also consider the claim of the Appellant regarding the arrears payable to OPGCL.**
- iii) Bridging the Revenue gap: This issue is covered in the judgement of this Tribunal in Appeal No.88 of 2009. Accordingly, this issue is decided in favour of the Appellant and the State Commission is directed to true up the financials of the Appellant for the Financial Years 2009-2010 and 2010-11 and allow actual costs with carrying cost.**



- iv) **Fixation of Price Cap: In view of the judgement of this Tribunal in Appeal No.166 and 168 of 2009 dated 04.3.2010, we find no merit in the contention of the Appellant.**
- v) **The Appellant has not pressed the issues relating to Disallowance of Employees Expenses, Repair and Maintenance and Administrative and General Expenses and other inconsistencies in the impugned order.**

30. Accordingly, the Appeal is allowed in part as indicated above.  
No order as to costs.

Pronounced in open court on 01<sup>st</sup> March,2012.

**(Rakesh Nath)**  
**Technical Member**  
Dated: 01<sup>st</sup> March, 2012

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

Reportable/Not Reportable