Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 30th June, 2014
Present:
HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal No. 192 of 2013

Tamil Nadu Transmission Corporation Ltd.
1st Floor, 5-B Block,
144 Anna Salai,
Chennai-600 002

... Appellant

Versus

Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmani Lakshmipathy Salai
(Marshalls Road)
Egmore,
Chennai-8

Respondent(s)

Counsel for the Appellant : Mr. S Vallinayagam

Counsel for the Respondent (s): Mr.Balathandayuthapani,
(Director, TNERC)
Ms. K Dhanalakshmi
(Deputy Director, TNERC)

J U D G M E N T

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

1. Tamil Nadu Transmission Corporation is the Appellant herein.

2. Challenging the Impugned Order dated 20.6.2013 passed by the Tamil Nadu State Commission in the Transmission Tariff Petition filed by the Appellant, the present Appeal has been filed.

3. The short facts are as follows:

   (a) The Appellant, Tamil Nadu Transmission Corporation Limited (TANTRANSCO) is engaged in the business of transmission of electricity in the State of Tamil Nadu.

   (b) Tamil Nadu Electricity Board was constituted under the Electricity (Supply Act) 1948. It was in the business of transmission and distribution of electricity in the State of Tamil Nadu.

   (c) Tamil Nadu Electricity Board was restructured into TNEB Limited and two subsidiary Companies (1) Tamil Nadu Generation and Distribution Corporation

(TANGEDCO) and (2) Tamil Nadu Transmission Corporation Limited (TANTRASCO).

(d) The State Government issued Transfer Scheme, 2010 for the purpose of transfer and vesting of property, rights and liabilities of the Tamil Nadu Electricity Board in the State Government.

(e) As per the Scheme, the assets transfer is provisional for a period of one year and employees transfer is provisional for a period of three years.

(f) The Appellant filed its Petition for approval of final true-up for FY 2010-11, Provisional true up for FY 2011-12, Annual Performance Review of FY 2012-13 and Revision of Tariff for FY 2013-14.

(g) In the said Petition, the Appellant sought Return on Equity @ 14% on the opening equity base of Rs.1,927.50 Cr allotted to it as per the tariff Regulations, 2005.

(h) The State Commission ultimately passed the Impugned Order on 20.6.2013. In this Impugned Order, the State Commission disallowed 14% Return on Equity on the opening equity of Rs.1,927.50 Cr allotted to the Appellant by the Government of Tamil Nadu on restructuring.

(i) In this Order, the State Commission allowed Return on Equity only to the extent of equity additions made during the FY 2011-12 and for the subsequent years by the Appellant. Thus, the State Commission did not consider the Opening Equity base of Rs.1,927.50 Cr allotted by the Government of Tamil Nadu.

(j) Aggrieved over this order, the Appellant has filed the present Appeal.

4. The learned Counsel for the Appellant has made the following submissions assailing the Impugned Order:

(a) Non grant of Return on Equity @ 14% will adversely impact the Appellant's ability to meet operational expenditure as well as in making investments for development of new transmission system.

(b) The finding of the State Commission that the source of funds for capital assets is higher than actually required for funding the capital expenditure has been arrived at based on the accounts of erstwhile Tamil Nadu Electricity Board for the period from 2003 to 2010. This finding is contrary to the transfer scheme and objectives of the Electricity Act. Section 61 of the Electricity Act lays down the guidelines which specifically provide for the factors that generation and supply of electricity are conducted on commercial principles.

(c) The Opening Equity base is assigned by the State Government to the Appellant. This cannot be linked to the erstwhile Tamil Nadu Electricity Board. The State Commission by disallowing the Return on Equity at the rate of 14% as claimed by the Appellant, has violated the principles laid down by this Tribunal in Appeal No.108 of 2012 by the judgment dated 14.12.2012 (Haryana Power Generation Corporation Limited Vs Haryana Electricity Regulatory Commission).

5. In reply to the above submissions, it was submitted by the Respondent that the State Commission in the Impugned Order found that there has been a significant diversion of the capital funds towards revenue expenditure prior to unbundling of the erstwhile Tamil Nadu Electricity Board and accordingly, the State Commission has taken a correct and practical view in line with the methodology adopted in its last tariff order dated 31.7.2010 by allowing the entire loans allocated to the TANTRANSCO while disallowing the Return on Equity on opening equity base and that therefore, the Impugned Order does not call for interference.

6. In the light of the above submissions, the only question which would arise for consideration is this:

> **"Whether the State Commission is justified in disallowing Return on Equity @ 14% on the Opening Equity Base of Rs.1,927.50 Crore ?**

7. Let us now discuss this issue.

8. The present Appeal has been filed by the Appellant challenging disallowance of Return on Equity by the Transmission Corporation Limited in its Order dated 20.6.2013 on Opening Equity base of Rs.1927.50 Crores from the Financial Year 2010-11 allocated by the Government of Tamil Nadu.

9. The Appellant filed its Transmission Tariff Petition for the 2nd Control Period i.e. Financial Year 2013-14 to 2015-16 along with the true-up Petition in February, 2013.

10. While issuing the Transmission Tariff Order in the above Petition dated 20.6.2013, the State Commission disallowed the Return on Equity @ 14% on the Opening Equity base of Rs.1927.50 Crores allocated by the Government of Tamil Nadu.

11. According to the Appellant, the State Commission did not give proper reasons for disallowing the Return on Equity and also for differing from its earlier findings in respect of grant of

Return on Equity for transmission activities of erstwhile Tamil Nadu Electricity Board through its order dated 31.7.2010 and as such, the State Commission cannot take contrary stand on the issue of Return on Equity in respect of equity base pertaining to the very same period.

12. On perusal of the entire records including the Impugned Order, the following aspects are noticed:

(a) In the tariff order dated 31.7.2010, the State Commission allowed Return on Equity on the entire equity base held by the erstwhile Tamil Nadu Electricity Board

(b) In the Tariff order dated 20.6.2013 which is now challenged in the present Appeal, the State Commission declined to grant Return on Equity @ 14% on the revised equity base allocated by the Government of Tamil Nadu under the transfer scheme pertaining to the 2nd control period.

13. As pointed out by the State Commission, the Tariff Order dated 30.3.2012 which did not allow Return on Equity pertaining to the 1st control period has not been challenged. The Appellant has chosen to challenge the present tariff order dated 20.6.2013 pertaining to the 2nd control period.

14. The main reason given by the State Commission in the Impugned Order for disallowing the Return on Equity is that

the Appellant is responsible for diversion of funds of erstwhile Tamil Nadu Electricity Board during the Year 2003 to 2010.

15. While discussing the issue, it is appropriate to refer to the following aspects:

(a) During the hearing, this Tribunal directed the Appellant to file written submissions to prove that there has not been any diversion of the capital funds. Though, written submissions have been filed, the Appellant has not furnished any material to establish that the capital funds were not diverted to the revenue expenses.

(b) The State Commission has pointed out the following facts to show that the capital borrowings have been diverted to meet the revenue expenses:

(i) The State Commission found that there is a mix-up between the capital account as well as the revenue account. Equity of capital borrowings had been diverted by the Respondent to meet the revenue expenses.

(ii) The Return on Equity cannot be permitted if equity has been diverted for meeting the revenue expenses. The borrowings are more than the investments in the capital expenditure. This would indicate that the borrowings have been diverted for revenue expenses.

16. According to the State Commission, the Regulations of the State Commission are for normal situation and do not cover a situation like the present one.

17. Under those circumstances, the State Commission has to take a practical view taking into consideration of the ground realities on this issue.

18. The option available to the State Commission is either to disallow the entire interest cost on the entire borrowings in excess of the capital works or to disallow the Return on Equity in line with the tariff Regulations.

19. In the present case, the State Commission has allowed the entire expenses of interest cost for entire borrowings in excess of the capital works but disallowed Return on Equity after taking note of the present situation.

20. We do not find any infirmity in the said finding of the State Commission especially when the Appellant has neither provided any details nor any calculation to prove that there has not been any diversion of the funds. That apart, the Appellant has also failed to prove that the methodology adopted by the State Commission has resulted in the Appellant to recover a lower ARR.

21. According to the Appellant, for entire financial viability and sustainability, the State Government would have to restructure the liabilities of the State Electricity Board to ensure that successor Companies are not burdened with the past liabilities.

22. From this statement, it is clear that it is the responsibility of the State Government for restructuring the liabilities of the State Electricity Board and it is not the responsibility of the State Commission for doing the same.

23. In fact, the State Commission has to consider the past liabilities of the State Electricity Board. During the tariff determination process, the consumers of the State will be burdened due to the past liabilities and therefore, the Appellant has to approach the State Government to ensure that the successor Companies are not burdened.

24. The Appellant has submitted that in the Tariff Order dated 31.7.2010, the State Commission has allowed the Return on Equity on the entire equity base held by the erstwhile Tamil Nadu Electricity Board and as such, a similar approach should have been adopted by the State Commission in the present case particularly when the Appellant is not responsible for diversion of funds of erstwhile Tamil Nadu Electricity Board during the year from 2003 to 2010.

25. As rightly pointed out by the State Commission, the State Commission was unable to carry out the exercise for determination of the quantum of capital funds diverted towards the revenue expenses due to the non availability of the proven data furnished by the Appellant. Therefore, the State Commission was unable to make any comments on this subject while issuing the tariff order as it was a provisional order which is subject to the true-up.

26. In view of the above, the State Commission was constrained to hold that there was a diversion of capital funds.

27. It is also pointed out that it was the tariff order issued by the State Commission for determination of tariff for Tamil Nadu Electricity Board prior to the functioning of the TANTRANSCO and TANGEDCO as a separate entities and hence at the time of issuing the tariff order for 2010 it did not have any details pertaining to the loans and equity allocated to these separate entities. However, in 2012, the State Commission, based on the provisional transfer scheme and provisional accounts for these separate entities had carried out analysis of capital funds.

28. During this analysis, the State Commission found that there has been significant diversion of capital funds towards the revenue expenses.

29. In this context, the State Commission has cited the judgment rendered by this Tribunal in Appeal No.102 of 2012 pertaining to the allowance of interest cost on the loans borrowings. In this judgment, this Tribunal did not accept the claim of the Appellant challenging the Commission's approach of allowing interest on loans more than the gross block on the basis of the transfer scheme while disallowing Return on Equity.

30. The relevant portion of the judgment is extracted below:

> *"31. We find that the transmission tariff of the Tamil Nadu has not been revised since the year 2005-06 and has been revised now after a lapse of 7 years.*
>
> *Similarly, the distribution tariff in the Tamil Nadu has also been revised after a long time and tariff order was issued only after the restructuring of the Electricity Board. The long gap in determination of tariff has resulted in revenue gap and excess borrowings and diversion of capital funds to revenue account. Even though the State Commission has deviated from its Regulations, the State Commission has now given a calculation, according to which, if the Regulations are followed and Return on Equity is allowed as per the Regulations, it will only result in increase in ARR and tariff and there will not be any reduction in tariff assought by the Appellant. The State Commission has also stated that adjustment will be made after finalization of the balance sheet and the restructuring of the loans as per the recommendations of the committees appointed by the Government of India.*
>
> *32. According to the learned counsel for the Appellant, the interest on loan should be allowed as per the Tariff*

> *Regulations but the Return on Equity should not be allowed as it was not pressed by the Respondent no. 2. We are unable to accept this contention. Firstly, the Respondent no. 2 had sought Return on Equity as per the Regulations. Secondly, if the interest on loan has to be allowed as per the Regulations then the Return on Equity has also to be allowed as per the Regulations. Even though we feel that the State Commission should have determined interest on loan and Return on Equity as per the Regulations, in view of the submissions made by the State Commission that allowing ROE and interest on loan as per Regulations will only result in increase in ARR and tariff and that the adjustment will be made after finalization of the balance sheet of the successor companies of the Electricity Board viz. Respondent nos. 1 and 2 and the proposed restructuring of loan, no purpose will be served by interfering with the order of the State Commission.*
>
> *33. In view of above, we do not want to interfere with the findings of the State Commission regarding the treatment given to the interest on loan in the impugned order.*

31. So, from this judgment, it is clear that the Return on Equity can be allowed only when the equity is used for creation of capital assets and not when the amount claimed to be equity by the Appellant is used to meet the revenue expenditure.

32. In view of the provision of Regulation 21 of the TNERC (Terms and Conditions for determination of Tariff) Regulations, 2005, it cannot be made applicable to the present case.

33. The learned Counsel for the Appellant cited various decisions of this Tribunal in Appeal No.189 of 2005 dated 14.9.2006 , Appeal No.121 of 2005 dated 16.5.2006 and Appeal No.108 of 2012 dated 14.12.2012.

34. We have gone through the said judgments. These judgments would not be of any help to the Appellant as in these decisions, the issue raised in the present case has not been dealt with.

35. Therefore, we are of the view that the conclusion arrived at by the State Commission is perfectly justified. As such, there is no reason to interfere in the Impugned Order.

36. **<u>Summary of Our Findings</u>**

In this case, the borrowings of the Appellant are more than the cost of the Capital Works due to mix-up between the Capital Account and Revenue Account. The Capital borrowings have been diverted for revenue expenditure. The State Commission has taken a practical view of the situation and allowed the entire interest cost and disallowed Return on Equity. We do not find any infirmity in the Order especially when the Appellant has neither provided any details nor has been able to establish that there has not been any diversion of fund.

37. In view of the above findings, we see no merit in the present Appeal. Hence, the Appeal is dismissed.

38. However, there is no order as to costs.

(Rakesh Nath) **Technical Member**

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

Dated: 30th June, 2014
√REPORTABLE/~~NON REPORTABLE-~~