

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:14th Nov, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

APPEAL NO.313 OF 2013

In the Matter of:

Maharana Pratap Bagh Resident's Welfare Association
"C" Block (Regd)
Through President, Mr. Saurabh Gandhi,
R/O C-6/7, Rana Pratap Bagh,
Delhi-110 007

..... Appellant

Versus

- 1. Delhi Electricity Regulatory Commission**
Viniyamak Bhawan,
"C" Block, Shivalik,
Malviya Nagar,
New Delhi-110 017
- 2. BSES Yamuna Power Ltd.,**
Shakti Kiran Building,
Karkardooma,
New Delhi-110 092
- 3. BSES Rajdhani Power Ltd.,**
BSES Bhavan, Nehru Place,
New Delhi-110 019

4. **Tata Power Delhi Distribution Ltd.,
Through Chief Executive Officer,
33 KV Grid Sub-Station,
Hudson Line,
Kingsway Camp,
Delhi-110 009**

...Respondent(s)

Counsel for the Appellant(s) : Mr. N L Gupta
Mr. Saurabh Gandhi
Mr. Vijay Singh
Mr. Kuwar Ajay Pratap
Mr. G L Bhatia
Mr. Mukesh Suman

Counsel for the Respondent(s): Mr. Raj Kuamar Mehta
Mr. Elangbam
Ms. Ranaljit Kaur
Mr. Antaryami Upadhyay
Ms. Ishita C Das Gupta for R-1
Mr. Vaibhav Choudhary for R-2
Mr. Alok Shankar for TPDDL
Mr. Parth Mullick for R-4

J U D G M E N T

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

1. Maharana Pratap Bagh Resident's Welfare Association is the Appellant herein.

2. The common Order dated 3.5.2013 passed by the Delhi Electricity Regulatory Commission regarding Power Purchase Cost Adjustment Charges for the Quarter-4 in the Application filed by the Tata Power Delhi Distribution Ltd, BSES Yamuna Power Limited and BSES Rajdhani Power Ltd has been challenged in this Appeal filed by the Appellant.

3. The short facts are as follows:

(i) The Distribution Companies Tata Power Delhi Distribution Ltd, BSES Yamuna Power Limited and BSES Rajdhani Power Ltd filed Petitions in Petition No.24 of 2010, Petition No.22 of 2010 and 23 of 2010 before the Delhi commission seeking implementation of the Power Purchase Cost Adjustment Formula on quarterly basis for timely true-up of variance between estimated Power Purchase Cost and the Actual Power Purchase Cost. In these Petitions, the Delhi Commission issued public notice on 10.7.2011 seeking comments on the issue of Power Purchase Cost Adjustment claim by the Distribution Companies.

(ii) Accordingly, the Delhi Commission received comments and objections from the stake holders.

(iii) The Delhi Commission held public hearing on 4.8.2011.

(iv) After hearing the various stake holders including the consumers and Distribution Companies, the Delhi Commission issued the order dated 26.8.2011.

(v) In the said order, the Delhi Commission approved the implementation of the Fuel Price Adjustment w.e.f. quarter/December, 2011 which was to be carried out in accordance with the Fuel Price Adjustment Formula specified in the Order.

(vi) At this stage, this Tribunal in OP No.1 of 2011 issued the following directions in suo-motu proceedings. The same are as follows:

“vi. Fuel and Power Purchase Cost is a major expense of the distribution company and is uncontrollable. Every State Commission must have in place a mechanism for adjustment of Fuel and Power Purchase cost in terms of Section 62(4) of the Act. The fuel and power purchase cost adjustment should preferably be on monthly basis as per the Central Commission Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula mechanism in place must within 6 months of the date of this order must put in place such formula and ensure its implementation latest by 01.04.2013”.

(vii) On the basis of these directions, the Petitions filed by the Distribution Companies for true-up of expenses for the year 2010-11 and approval of ARR and generation tariff for the year 2012-13 to 2014-15 were entertained by the Delhi Commission.

(viii) Public notices were issued inviting comments on the tariff Petitions. Accordingly, public hearing was held by the Delhi Commission from 26.4.2012 to 30.4.2012.

(ix) Ultimately, the Delhi Commission passed the tariff order dated 13.7.2012. In the said tariff order, the Delhi Commission approved the implementation of the Power Purchase Adjustment Cost on quarterly basis in order to adjust the changes in the Power Purchase Cost levied by the Generating Companies on the Distribution Companies. The Formula for Power Purchase Cost was specified in the said order.

(x) In pursuance of the order, the Distribution Company Tata Power on 17.4.2013, BSES Rajdhani Power on 25.4.2013 and BSES Yamuna Power on 26.4.2013 sought for levy of the surcharge on

account of Power Purchase Adjustment Cost Quarter-4 and requested to approve the claim.

(xi) The proposal of the Distribution Companies was examined by the State Commission. Ultimately, by the Impugned Order dated 3.5.2013, the Delhi Commission has approved the Power Purchase Cost Adjustment for the period from 1.5.2013 to 31.7.2013 provisionally which is the subject to filing the true-up in accordance with the Formula specified in the Tariff Order dated 13.7.2012.

(xii) This order is challenged in this Appeal.

4. The learned Counsel for the Appellant has urged the following grounds:

(i) The Petitions filed by the Distribution Companies for Power Purchase Adjustment Cost have not been published in the News Paper issuing public notice. Consequently, there is failure to conduct public hearing in these matters in violation of Section 64 of the Act.

(ii) U/s 64 (3), the State Commission shall consider all suggestions and objections received from the public in issuing the tariff order. However, contrary

to the statutory provisions in Section 64 (3), no public hearing was conducted by the Commission before passing the order in the Power Purchase Adjustment Cost Application which resulted in the revision of tariff. This is in gross violation of the principles of Natural Justice.

(iii) The tariff cannot be amended more than once in a Financial Year except in respect of any changes expressly permitted under the terms of the Fuel Surcharge Formula.

(iv) The Delhi Commission had earlier revised the Formula for FSA on quarterly basis by way of an Order dated 26.8.2011. Any revision of the tariff for accommodating any expenses allowed more than once in a financial year other than those in relation of the Fuel Surcharge is in violation of Section 62(4) of the Act.

5. On these points, the Appellant prays for setting aside the Impugned Order and for remanding the matter to give opportunity to the public as well as to the consumers to make the suggestions before passing the Power Purchase Cost Adjustment Order.

6. In reply to the above submissions, the learned Counsel appearing for the Delhi Commission has submitted that the issues raised by the Appellant is covered by the judgment of this Tribunal in the case of Rohit Ferro Tech Ltd Vs WBERC reported in 2001 ELR (APTEL) 1375 in which it was held by this Tribunal that no publication inviting all objections is required for permitting the Distribution Licensees to recover provisional Power Purchase Cost Adjustment Surcharge and therefore, in view of the above, the Appeal has to be dismissed being devoid of merits.
7. The question that may arise for consideration in the light of the rival contentions are as follows:
- (i) Whether the Impugned Order is void because of the fact that the Order has been passed without notice to the public and thereby being violative of Section 64 (1) of the Electricity Act and the Regulations there under and also being in contravention of the principles of Natural Justice?
 - (ii) Whether the Impugned Order is violative of Section 62 (4) of the Electricity Act, 2003 which categorically prohibits amendment of tariff more frequently than once in a Financial Year except any

changes permitting under terms of any Fuel Surcharge Formula?

8. Since both the questions are interconnected, we will consider both the issues by taking them together.
9. The Appellant challenging the validity of the Impugned Order passed by the Commission approving the Power Purchase Cost Adjustment for the period 1.5.2013 to 31.7.2013 based on the difference in actual Power Purchase Cost and base cost of Quarter-4 of Financial year 2012-13 provisionally mainly on the ground that no public notice was issued and no hearing was held before issuance of the Impugned Order.
10. At the outset, it shall be mentioned that the issue has been dealt by this Tribunal in 2011 ELR (APTEL) 1375 in the case of M/s. Rohit Ferro Tech Ltd Vs WBERC. The findings is as follows:

“(ii) Section 62(4) of the Act, permits revision of Tariff under any fuel surcharge formula as specified. The State Commission’s Regulations provide for Fuel and Power Purchase Cost Adjustment at the end of the year based on a formula but, also permit under Regulations 2.8.7.3, ad hoc fuel and power purchase cost at any time provisionally subject to final adjustment of the same in FPPCA for that year. Thus, ad hoc increase in fuel and power purchase cost

under Regulation 2.8.7.3 may not require pre-publication and inviting objections and suggestions from public as envisaged for Tariff Order under Section 64 of the Act'.

11. This finding in our view would squarely apply to the present case. As such, the points urged by the learned Counsel for the Appellant do not deserve acceptance.
12. That apart, by the Impugned Order, the Delhi Commission has only approved the Power Purchase Cost Adjustment for the period from 1.5.2013 to 31.7.2013 provisionally.
13. Admittedly, the said approval is subject to the filing of true-up in accordance with the Formula specified in the Tariff Order dated 13.7.2012.
14. Since, the Power Purchase Cost has to be ultimately trued-up as MYT Regulations 2011, as per Clause 4.21 (a) of the MYT Regulations, 2011 it was not necessary to issue any public notice or hold a public hearing before the approval of the Purchase Adjustment Cost.
15. As pointed out by the Delhi Commission, the Appellant neither filed any objections to the proposal for Power Purchase Cost Adjustment as contained in the Tariff Petitions nor challenged the original tariff order dated 13.7.2012 specifying the formula for recovery of Power

Purchase Cost Adjustment. In the absence to the challenge to the Order dated 13.7.2012, it is not permissible for the Appellant to challenge the present Impugned Order dated 3.5.2013 provisionally approving the recovery of such Power Purchase Cost Adjustment.

16. According to the Appellant, there has been amendment of tariff by which the tariff has been revised by virtue of the Order dated 3.5.2013.
17. This submission is misplaced since the Delhi Commission has merely allowed the recovery of Power Purchase Adjustment Cost provisionally which is to be ultimately trued-up as per Formula specified in the tariff order dated 13.7.2012.
18. In view of the above, there is no merit in the grounds urged by the Appellant in this appeal.
19. At this stage, it is brought to our notice that the Commission has already trued-up the Power Purchase Cost pertaining to the FY 2012-13 in the tariff order dated 23.7.2014 as per the MYT Regulations, 2011.
20. In view of the above, there is no merit in the Appeal.

21. To Sum-Up:

(i) No publication inviting of objections or hearing is required for permitting the Distribution Licensees to recover provisionally Power Purchase Cost adjustment Surcharge as per the Formula decided in the main Tariff Order.

(ii) The Impugned Order has been passed in the light of the directions given by this Tribunal in suo-motu proceedings in OP No.1 of 2011 and as per the Formula decided in the main tariff order dated 13.7.2012. Therefore, there is no infirmity in the Impugned Order.

22. In view of the above, the Appeal is dismissed being devoid of merit.

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

(Rakesh Nath)
Technical Member
Dated:14th Nov, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

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