

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 215 OF 2015 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 18th February, 2019

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

In the matter of:

**West Bengal State Electricity Distribution
Company Limited**

Vidyut Bhavan, Block DJ, Sector II,
Salt Lake City,
Kolkata – 700 091

..... Appellant(s)

VERSUS

1. West Bengal Electricity Regulatory Commission

Poura Bhavan (3rd Floor) Block-FD, 415-A,
Bidhannagar,
Kolkata – 700 106

..... Respondent No.1

2. All Bengal Electricity Consumers' Association

27-A, Dhiren Dhar Sarani
Kolkata – 700 012

..... Respondent No.2

Counsel for the Appellant (s) : Mr. Aniket Prason
Mr. Abhishek Kumar

Counsel for the Respondent(s) : Mr. Pratik Dhar, Sr. Adv.
Mr. Sachin Dubey
Mr. C.K. Rai for R-1

Mr. Gaurav Kumar for R-2

The Appellant has presented the instant Appeal seeking the following reliefs:

- (a) Allow the present appeal and set aside the impugned order dated 04.03.2015 passed in TP-61/13-14 to the extent the same has been challenged in terms of the grounds indicated above;
- (b) Direct the Respondent Commission to re-determine the ARR in line with the outcome of the present appeal;
- (c) Pass such further or other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. West Bengal State Electricity Distribution Company Limited, Kolkata (in short, the "Appellant") is questioning the legality and validity of the impugned Order dated 04.03.2015 passed in Case No. TP-61/13-14 on the file of the West Bengal Electricity Regulatory Commission (in short, first Respondent), has filed the instant appeal, being No. 215 of 2015, under Section 111 of the Electricity Act, 2003 for considering the following questions of law:

- A. Whether the Learned Commission has acted contrary to the provisions of the MYT Regulations, 2011, precedents and its own previous orders in passing the Impugned Order?

- B. Whether the Learned Commission erred in considering last six months of data for the purpose of projecting power purchase cost in the present MYT period?
- C. Whether the Learned Commission has erred in disallowing the expenditure for insurance?
- D. Whether the Learned Commission has erred in not considering the expenditure related to complaint management mechanism?
- E. Whether the Learned Commission has erred in considering the CAGR of 2010-11 to 2013-14 to be lower than the inflation rate of the above period?
- F. Whether the Learned Commission has erred in adopting sensitivity parameters for the purpose of computation of expenditure in cases where annual escalation rate or CAGR of past period crosses the concerned inflation of the said past period?
- G. Whether the Learned Commission has erred in considering the return on equity for the fourth control period without providing for adequate funds to pay taxes on such return in accordance with the Tariff Regulation?
- H. Whether the Learned Commission has arbitrarily directed regarding the delay in filing of APR of FPPCA petition?

- I. Whether the Learned Commission has erred in limiting the amount of FPPCA contrary to the provision of Regulation 5.8.11 of 2011 Tariff Regulation?
- J. Whether the Learned Commission has arbitrarily increased the scope of auditors work without providing for additional cost?
- K. Whether the Learned Commission has arbitrarily and illegally directed limiting of the allowance on un-controllable factors contrary to the tariff regulation?
- L. Whether the Learned Commission has erroneously directed inclusion of compensation as controllable factor?
- M. Whether the Learned Commission has arbitrarily and erroneously directed treatment of complaint management mechanism, collective expenses and lease rental expenses?
- N. Whether the Learned Commission has erred in directing imposition of additional conditions for approval of PPA without providing the cost thereof?
- O. Whether the Learned Commission has erred in directing to upload drawl schedule and injection schedule in WBSEDCL website?
- P. Whether the Learned Commission has arbitrarily imposed penalty for non-compliance of renewable purchase obligations?

2. We have heard the learned counsel, Mr. Aniket Prasoon, appearing for the Appellant, the learned senior counsel, Mr. Pratik Dhar, appearing for the first Respondent and the learned counsel, Mr. Gaurav Kumar, appearing for the second Respondent.

3. The learned senior counsel for the first Respondent, on instructions, at the outset, submitted that, in the event, the Appellant herein, is filing necessary petition for consideration a fresh before the first Respondent in so far it relates to the issues raised in the instant appeal, the same will be considered by the first Respondent and an appropriate order will be passed in accordance with law. Therefore, he submitted that, the instant appeal may be disposed of reserving liberty to the Appellant to file necessary petition for redressing their grievances before the first Respondent in so far it relates to the issues raised in the instant appeal only.

4. **Per-contra**, the learned counsel, Mr. Aniket Prasoon, appearing for the Appellant, inter-alia, contended and fairly submitted that, in the light of the statement made by the learned senior counsel appearing for the first Respondent, as stated supra, the instant appeal may be disposed of reserving liberty to the Appellant to file necessary petition before the first Respondent in respect of the issues raised in this appeal only within a period of six weeks from the date of the receipt of the copy of this order.

5. Submissions of the learned counsel for the Appellant and the learned senior counsel for the first Respondent, as stated supra, are placed on record.

6. In the light of the submissions of the learned counsel for the Appellant and the learned senior counsel for the first Respondent, as stated supra, the instant appeal, being No. 215 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file necessary petition, in so far it relates to the issues raised in this Appeal only, before the first Respondent within a period of six weeks from the date of the receipt of this order.

7. In the event, such petition is filed by the Appellant, the first Respondent is directed to consider the same and pass an appropriate order, as expeditiously as possible, in accordance with law.

8. The learned counsel for the Appellant is permitted to file a memorandum to this effect during the course of the day.

9. With these observations, the instant appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

Parties to bear their own costs.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

vt/js

(Justice N.K. Patil)
Judicial Member