

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 190 of 2012 &
I.A. No. 304 of 2012

Dated: 8th October, 2012

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

Power Corporation of Karnataka Ltd. & Ors. Appellant (s)

Versus

Central Electricity Regulatory Commission & Ors. ...Respondent (s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. Nikhil Nayyar for R.1
Mr. J.J. Bhatt, Sr. adv.
Mr. L. Vishwanathan,
Mr. Anuj Berry
Mr. Narendar Naik for R.2
Mr. Rohit Rao for R.4

ORDER

We have heard the learned counsel for both the parties.

On a short point, this Appeal has got to be allowed.

Admittedly, the provisional tariff Order has been passed on 27.08.2012 without hearing the Appellant. As a matter of fact, it is noticed that though the matter was posted on 09.08.2012, the Central Commission had pre-poned the date of hearing from 09.08.2012 to 26.07.2012 by Order dated 23.07.2012 sending

notice to the parties to appear. This notice was sent to the Appellant also. But according to the Appellant, this notice had not been received by them. The moment they came to know about the same, they filed an affidavit of objection on 02.08.2012. In the meantime, Respondent Nos. 2, 3 & 4 were heard and the impugned order had been passed by fixing the provisional tariff on 27.08.2012.

The main grievance of the learned counsel for the Appellant is that the provisional tariff Order has been passed without hearing the Appellant, which is an interested party, even before notice was served on it. We find force in the contention urged by the learned counsel for the Appellant.

There is no dispute in the fact that the Commission had issued notice to all the parties including the Appellant before passing the provisional tariff Order. Originally, the matter was posted on 09.08.2012. But the Commission pre-poned the matter to 26.07.2012 by the notice dated 23.07.2012. Without verifying as to whether the notice was served on the parties, the Commission took up the matter on 26.07.2012, the date on which pre-poned and heard the Respondents and passed the impugned Order fixing

the provisional tariff without giving opportunity of hearing to the Appellant, even though notice was issued to them.

In view of the above facts, we are of the opinion that the principles of natural justice have been violated. Hence, we feel that the Order impugned has to be set aside.

Accordingly, the impugned Order dated 27.08.2012 is set aside and the matter is remanded to the Central Commission to hear all the parties concerned and pass the appropriate Order in accordance with law.

However, we make it clear that we are not expressing any opinion on the merits of the matter. But we direct the Central Commission to hear all the parties concerned by issuing fresh notice and to pass the Orders as expeditiously as possible.

With these observations, this Appeal is allowed.

(Rakesh Nath)
Technical Member
Ts/vs

(Justice M. Karpaga Vinayagam)
Chairperson