

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

O.P. No. 1 of 2011

Dated :7th -July, 2011

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

Tariff Revision
(suo-motu action on the letter received
from the Ministry of Power

Counsel for the Appellant(s): Mr. M.G. Ramachandran
Mr. R.K. Mehta
Mr. Amit Kapur
Mr. Buddy A. Ranganadhan, Amicus Curiae

Counsel for the Respondent(s): Mr. Arijit Maitra for MERC with
Mr. Palaniappan
Mr. Sanjay Verma, Director (Tariff) &
Mr. Rajesh Monga, Law Officer for HERC

Mr. V.G. Pandit, Director (Tariff), KERC
Dr. Rama Rao for APERC
Mr. P. Dave, Jt. Secy.(Law), RERC
Ms. Surbhi Sharma for MPERC

ORDER

In pursuance of our directions, we have received reports from various State Commissions.

Today the representatives from Rajasthan, Haryana, Karnataka, Andhra Pradesh, Maharashtra and Madhya Pradesh State Commissions are present. So far 21 State Commissions have sent their reports.

Out of these State Commissions, the State Commissions of Tamilnadu and Tripura have raised some questions with reference to the jurisdiction. Tamilnadu State Commission in its affidavit dated 2nd March, 2011 has stated as follows:

“7. I submit that the Appellate Tribunal is empowered to issue orders, instructions or directions to a State Commission for the performance of its statutory functions under this Electricity Act, 2003. A relevant question is whether the power of the Appellate Tribunal extends to issue of directions to Appropriate Commissions for the performance of their functions under the Tariff Policy of the Ministry of Power.

12. I further submit that Section 64, thus, mandates an application from the licensee and also fixes a time limit for issue of tariff order. Section 64 apparently does not visualize suo motu revision of tariff. Suo motu revision of tariff proposed in clause 8.1.7 of the tariff policy conflicts with the requirement of an application from the licensee under Section 64 of the Electricity Act, 2003”.

In its additional affidavit dated June, 2011 it has stated as follows:

“10. I further submit that issues such as Regulatory gaps, Truing up, Fuel surcharge mechanism are quasi judicial matters which come under the purview of State Electricity Regulatory Commissions. On such issues, the aggrieved parties have the right of appeal under Section 111 of the Electricity Act to this Hon’ble Tribunal. Furthermore, I submit, that the Electricity Act has to be amended suitably to make the filing of Annual Revenue Requirement/tariff petitions by the utilities on annual basis, mandatory. It may further be seen that all the issues framed by this Hon’ble Tribunal related to tariff determination exercise can be initiated

only when a licensee or a generating company files a petition under Section 64 of the Electricity Act, 2003. Hence, it is stated that the scope of the petition has been broadened in the order No. OP-1/2011 dated 19.5.2011 by including various new issues which are within the domain of the SERCs”.

Similarly, in Tripura Report dated 23rd June, 2011, the State Commission has also raised some issue with regard to the question of jurisdiction in last two paragraphs with reference to the views against issue no. (f) as under:

“Views against Issue No. (f):- From the present status as seen by the Commission the utility very seriously has undertaken the process of compilation of Annual accounts for the current and previous years. It is hoped that on completion of the Annual accounts tentatively in the month of August 2011 the ARR shall be submitted along with the petition and the determination process of tariff shall be undertaken by the Commission thereafter.

The Commission i.e. TERC reserves its view on Suo Motu determination of tariff and for Suo Motu action to determination of ARR fixation for following reasons:

That if the Commission takes the responsibility for fixation of tariff at its own the public may raise objection fingering that once the utility is not willing to submit the petition why Commission takes such decision which is suffering to the consumers budget.

Now keeping in mind the Clause 8 and Clause 9 of Section 61 and for the safeguard of the consumer interest as well considering the sustainability of

the utility the Suo Motu process for determination of tariff may please be reviewed”.

In the light of the above issues raised by both Tamilnadu and Tripura State Commission, it would be appropriate to direct the Tamil Nadu and Tripura State Commissions to appear before this Tribunal either through their counsel or by any representative to make submission on these issues to assist this Tribunal in deciding these issues.

On these issues, it is open to the other Commissions also to give their suggestions and views.

Post the matter on **25th July, 2011 at 2.30 p.m.** for hearing.

(V.J. Talwar)
Technical Member

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Vs/ss