

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 771 OF 2024 in APL No. 275 OF 2015 &
IA No. 776 OF 2024 in APL No. 408 OF 2022 &
IA No. 772 OF 2024 in APL No. 22 OF 2022

Dated : 17th February, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

IA No. 771 OF 2024 in APL No. 275 OF 2015

Damodar Valley Power Consumers Association & Anr. Appellant(s)

Versus

West Bengal Electricity Regulatory Commission & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Rajiv Yadav
Rahul Chouhan for App.
1 Rajiv Yadav
Rahul Chouhan for App. 2

Counsel on record for the Respondent(s) : C.K. Rai for Res. 1

Shri Venkatesh
Shryeshth Ramesh Sharma
Bharath Gangadharan
Ashutosh Kumar Srivastava
Nihal Bhardwaj
Siddharth Nigotia
Shivam Kumar
Kartikay Trivedi
Aashwyn Singh
Punyam Bhutani
Suhael Buttan
Manu Tiwari
Himangi Kapoor
Vineet Kumar
Nikunj Bhatnagar
Aditya Tiwari
Priya Dhankar
Harsh Vardhan

Anant Singh
Abhishek Nangia
Abhishek Nangia
Kunal Veer
Chopra Nehal
Jain
Vedant Choudhary
Mohit Gupta for
Res. 2

IA No. 776 OF 2024 in APL No. 408 OF 2022 &
IA No. 772 OF 2024 in APL No. 22 OF 2022

Damodar Valley Power Consumers Association Appellant(s)
Versus
West Bengal Electricity Regulatory Commission & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Rajiv Yadav
for App. 1

Counsel on record for the Respondent(s) : C.K. Rai for Res. 1

Shri Venkatesh
Shryeshth Ramesh Sharma
Bharath Gangadharan
Ashutosh Kumar Srivastava
Nihal Bhardwaj
Siddharth Nigotia
Shivam Kumar
Kartikay Trivedi
Aashwyn Singh
Punyam Bhutani
Suhael Buttan
Manu Tiwari
Himangi Kapoor
Vineet Kumar
Nikunj Bhatnagar
Aditya Tiwari
Priya Dhankar
Harsh Vardhan
Anant Singh
Abhishek Nangia
Abhishek Nangia
Kunal Veer
Chopra Nehal
Jain
Vedant Choudhary
Mohit Gupta for
Res. 2

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this common order, we propose to dispose off the three separate but identical applications filed on behalf of the Appellant – Association seeking permission to raise certain additional grounds of appeal by way of amendment in the memo of appeal.

2. In Appeal No. 275 of 2015, the Appellant Association has impugned the order dated 24th August, 2015 of the 1st Respondent – West Bengal Electricity Regulatory Commission (hereinafter referred to as “the Commission”) whereby the Commission determined the Annual Revenue Requirement (ARR) of 2nd Respondent – Damodar Valley Corporation (in short “DVC”) for Financial Years 2009 to 2014 and retail tariff for the Financial Years 2013-14 with respect to supply of power by DVC to its consumers within its command area falling in the State of West Bengal.

3. In Appeal No. 22 of 2022, the Appellant -Association has assailed the tariff order dated 19th March, 2020 passed by the 1st Respondent whereby the Commission has fixed the retail tariff for Financial Years 2009 to 2013 for supply of power by DVC to its consumers within its command area falling in the State of West

Bengal . In doing so, the Commission has proceeded on the basis of its previous order dated 24th August, 2015 (impugned in Appeal No. 275 of 2015) whereby ARR of DVC was determined for the Financial Years 2009 to 2014.

4. In third Appeal, bearing No. 408 of 2022, the Appellant - Association has impugned the order dated 31st May, 2021 passed by the Commission whereby the Commission has undertaken Annual Performance Revenue (APR) of DVC for Financial Years 2009 to 2013 with respect to supply of power by it to its consumers within its command area falling in the State of West Bengal.

5. By way of the amendment, the Appellant seeks to agitate following additional grounds in challenge to the respective orders impugned in the three appeals :-

(i) The Commission has erroneously treated the entire Transmission and Distribution (T&D) cost approved by Central Commission as recoverable from command area consumers in the States of West Bengal and Jharkhand and resultantly, the Central Commission approved T&D cost has been loaded entirely on to the West Bengal consumers in proportion to West Bengal share in the DVC's total supply to the command area. The Commission ought to have allocated T&D cost in proportion to supply of West Bengal

consumers vis-à-vis total quantum supply by DVC including supply to the beneficiaries outside the command area.

(ii) The Commission has ignored the double allowance of sinking fund contribution by the Central Commission. The Commission ought to have noticed the fact that there has been “Double Allowance” of the principle amount reflected in the bonds repayable to the subscribers at the time of redemption on account of following two tariff elements allowed to DVC as part of the Annual Fixed Charges (AFC);

(a) Contribution to sinking fund for payment of amount to subscribers at the time of assumption.

(b) Depreciation on capital assets corrected by utilizing the bond amount.

6. In Appeal No. 408 of 2022, third additional ground is sought to be raised by way of amendment which relates to recovery of Annual Fixed Cost (AFC) of ISTS lines (meant for export of power to Discoms outside the command area) from command area consumers, stating it to be impermissible.

7. We have heard the Learned Counsel for the Appellant as well as the Learned Counsel for Respondent No. 2 (DVC). We have also perused the written submissions filed by the Learned Counsels.

8. It is argued on behalf of the Appellant that the additional grounds urged above could not be identified at the time of filing of appeal by the Members of Appellant Association, who are the consumers of DVC running their respective industries and are not well-versed with the diverse and complex factors governing tariff determination. It is argued that the issues sought to be raised by way of amendment involved the thorough examination of the relevant tariff orders as well as the applicable statutory provisions/tariff regulations and such an exercise could not reasonably be undertaken by the consumers. It is further submitted that allowing the amendments to the memo of appeal would not cause any prejudice to the DVC as it would still recover cost plus tariff in accordance with the provisions of Electricity, Act, 2003 as well as the applicable tariff Regulations but on the other hand, the refusal to amend the memo of appeal would gravely prejudice the members of the Appellant – Association who have been burdened with unreasonable and excessive tariff in violation of the principles envisaged under Section 61 of Electricity, Act, 2003.

9. The application is vehemently opposed on behalf of DVC. Learned Counsel for DVC pointed out that there has been considerable delay in raising the additional grounds of appeal by way of amendment as sought vide the applications under consideration. He submitted that in Appeal No. 275 of 2015, the application has been filed after a delay of 8 years and in the other two appeals bearing No. 22 of 2022 and 408 of 2022, the application for amendment has been filed after a delay of four years and two years respectively. It is his submission that since no plausible explanation has been put forward for such huge delay in seeking amendment in the memo of appeal, the applications are liable to be rejected outrightly on this very scope.

10. Learned Counsel further argued that by way of amendment to the memo of appeal, the Appellant Association seeks to raise new claim which is impermissible in view of the principles envisaged under Order 6 Rule 17 of CPC read with Order 41 Rule 2 of CPC. He cited the judgement of High Court of Allahabad in Oriental Insurance Company Ltd. Vs. Sunita Singh and ors. 2015 SCC online All 336 to canvass that while preferring an application for amendment to the memo of appeal under Order 41 Rule 2 CPC, it is incumbent to show good reasons for not raising such grounds earlier.

11. Learned Counsel also further pointed out that the Appellant had previously also filed an application dated 7th February, 2024 in all the three appeals for seeking permission to add additional grounds by way of amendment in the memo of appeal and before the same could be disposed off by this Tribunal, it has filed the instant 2nd application on 6th May, 2024 on similar lines. It is his submission that in view of the pendency of the 1st amendment application, the instant application for amendment to the memo of appeal deserves outrightly rejection.

12. We have considered the rival submissions of the Learned Counsels and have perused the applications, replies filed by DVC as well as the written submission filed by the Learned Counsels.

13. At the outset, we may note that on account of filing of 2nd application for amendment in the memo of Appeal in all the three appeals (which have been heard in detail and are being disposed off vide this common order), the earlier applications dated 07/02/2024 filed by the Appellant shall be deemed to be not pressed and accordingly stand dismissed as such.

14. The parameters which are to be considered at the time of deciding the application for amendment are no longer res integra. It has been observed by the Hon'ble Supreme Court in a catena of

judgements that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the large interest of doing full and complete justice to the parties before the court.

15. The tests to be applied at the time of deciding the amendment application is whether the proposed amendment is necessary to decide the real dispute between the parties. If the answer is in affirmative, the amendments shall be allowed and if the answer is in negative, the amendment shall be refused. It is also a settled principle of law that while considering whether or not an application for amendment should or should not be allowed, the Court/Tribunal should not go into the correctness or the falsity of the case put up in the amendment. It should not record a finding on the merits of the amendment which shall have to be adjudged at the final stage.

16. In the instant case, the Appellant – Association, by way of amendment, seeks to urge afore-stated additional grounds in challenge to the impugned orders of the Commission even though highly belatedly.

17. We may note that in all the three appeals, the Appellant Association has assailed the tariff determination done by the Commission in respect of power supplied by DVC to its consumers

within the command area falling in the State of West Bengal on various grounds.

18. It is argued on behalf of the Appellant-Association that the new grounds sought to be urged by way of an amendment with regard to the 100% T&D charges considered for command area consumers in the State of West Bengal, double allowance by way of seeking fund contribution and recovery of AFC in case of ISTS lines could not be identified at the time of filing the appeal by the Members of Appellant – Association who are not well versed with diverse and complex factors governing tariff determination. Learned Counsel for the Appellant submitted that these fresh grounds came to his notice while preparing for hearing of these appeals.

19. In our opinion, the new grounds sought to be urged on behalf of the Appellant-Association relate directly to the tariff determination and, therefore, cannot be said to be irrelevant or alien to the dispute involved in all these three appeals. Once the legality and validity of the tariff determination done by the Commission has been impugned in these appeals, it would be against the demands of justice to refuse permission to the Appellant to urge the additional grounds which also relate directly to the tariff determination. Even though there has been considerable delay on the part of the Appellant in seeking

amendment to the memo of appeal yet mere delay in filing the amendment applications is not enough to refuse the amendments. It has been time and again observed by the Hon'ble Apex Court that while deciding amendment applications, the Court/Tribunal should not adopt the hyper-technical approach and liberal approach should be the general rule where no significant prejudice would be caused to the opposite party by way of amendment. In this regard, we find it profitable to quote the observations of the Hon'ble Supreme Court in B.K. Narayana Pillai V. Parameswaran Pillai [(2000) 1 SCC 712]

*"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. **The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court.** It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. **Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.**"*

20. This judgement has been quoted with affirmation by the Hon'ble Supreme Court in subsequent case reported as Estralla Rubber V. Dass Estate (P) Ltd., (2001) 8 SCC 97

"8. It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made

*conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. **However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.***

21. In the case at hand, there is nothing to show that any prejudice would be caused to the Respondent – DVC in case the Appellant is permitted to urge the new grounds by way of amendment to the memo of appeal. It also cannot be disputed that the grounds sought to be urged now by way of amendment are very material to the dispute involved in the appeals and are necessary to be taken into account while examining the legality and validity of the tariff determination done by the Commission. It is true that the applications have been filed by the Appellant after considerable delay but in view of the above noted judgement of the Hon'ble Supreme Court, the prayer for amendment cannot be refused merely on the ground of delay in filing the amendment applications.

22. We are unable to countenance the arguments of the Learned Counsel for DVC that by way of amendment, the Appellant seeks to raise new claim which cannot be permitted. No new claim is sought to be raised by the Appellant by way of these amendments to the memo of appeal. The Appellant only wishes to urge some additional

grounds to assail the impugned orders of the Commission. Whether or not do these additional grounds have any force, would be seen by this Tribunal at the time of final hearing of these appeals.

23. Hence, we allow the applications for amendment in all the three appeals and permit the Appellant – Association to raise the additional grounds of appeal as stated in the applications.

24. The amended memo of appeals be filed within two weeks from today with advance copy to the Respondents who shall file reply to the amended memo of appeals, if any, within three weeks thereafter.

25. List the appeals for hearing on **25.03.2025**.

Pronounced in the open court on this 17th day of February, 2025.

(Virender Bhat)
Judicial Member

js

(Sandesh Kumar Sharma)
Technical Member (Electricity)