

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.367 OF 2017

Dated: 07.03.2025

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

In the matter of:

Meghalaya Power Generation Corporation Ltd.

Incorporated under the Companies Act, 1956

Having its Registered Office At -

LumJingshai, Short Round Road

Shillong – 793 001, Meghalaya

... Appellant

Versus

1. The Secretary

Meghalaya State Electricity Regulatory Commission

Having its Office at – 1st Floor, (Front Block, Left Wing

New Administrative Building, Lower Lachumiere

Shillong – 793 001, East Khasi Hills District, Meghalaya

2. The Secretary

Byrnihat Industries Association

13th Mile, Tamulikuchi, Byrnihat,

Rio-Bhoi District, Nongpoh,

Meghalaya – 793 101

... Respondent(s)

Counsel for the Appellant(s) : Sakie Jakharia

Counsel for the Respondent(s) : Buddy A. Ranganadhan, Sr. Adv.
Shri Venkatesh
Shryeshth Ramesh Sharma

Ashutosh Kumar Srivastava
Bharath Gangadharan
Akash Lamba
Nihal Bhardwaj
Siddharth Nigotia
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Harsh Vardhan
Suhael Buttan
Priya Dhankar
Anant Singh
Vineet Kumar
Nikunj Bhatnagar
Kunal Veer Chopra
Vedant Choudhary for Res. 1

Parinay Deep Shah
Ritika Singhal
Mandakini Ghosh
Saransh Shaw for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The present appeal is filed by the Meghalaya Power Generation Corporation Limited (in short "MePGCL") challenging the legality, propriety and correctness of the order dated 30.03.2017 passed by the Meghalaya State Electricity Regulatory Commission (in short "MSERC" or "the Commission") in the review of True up of Annual Revenue Requirement (ARR) for Financial Year (FY) 2013-14, provisional true up of FY 2014-15 and

determination of Generation Tariff for FY 2016-17 for MePGCL for old plants and Sonapani and the tariff order dated 30.03.2016 passed by the Commission. The review petition was filed by the MePGCL against the tariff order dated 30.03.2016 which was a consolidated order for approval of true up for ARR for FY 2013-14, provisional true up of FY 2014-15 and determination of Generation tariff for FY 2016-17 for MePGCL for old plants and Sonapani.

2. Before adverting the facts and circumstances in which the instant appeal has been filed, we may note that in exercise of powers conferred under Sections 131 and 133 of the Electricity Act, 2003, the State Government of Meghalaya notified "The Meghalaya Power Sector Reforms Transfer Scheme 2010" on 31.03.2013 leading to restructuring and unbundling of erstwhile Meghalaya State Electricity Board (MeSEB) into four entities namely (i) Meghalaya Energy Corporation Limited (MeECL), the holding company; (ii) Meghalaya Power Distribution Corporation Limited (MePDCL), the distribution utility; (iii) Meghalaya Power Generation Corporation Limited (MePGCL), the generation utility; and (iv) Meghalaya Power Transmission Corporation Limited (MePTCL), the transmission utility. However, the holding

company MeECL carried out the functions of distribution, generation and transmission utilities from 01.04.2010 to 31.03.2012. Thereafter, vide notification dated 31.03.2012, the State Government notified amendment to the Power Sector Reforms Transfer Scheme leading to effective unbundling of MeECL into MeECL (holding company), MePDCL (distribution utility), MePGCL (generation utility) and MePTCL (transmission utility) from 01.04.2012 onwards.

3. The 1st respondent Commission is an independent statutory body constituted under the provisions of Electricity Act, 2003 and is vested with the authority as well as power to regulate the power sector in the State including determination of tariff for electricity consumers.

4. Now, we shall note the important dates and events which are relevant for our consideration in this appeal.

DATE	EVENTS
31.03.2010	By notification viz. "The Meghalaya Power Reforms Transfer Scheme, 2010" dated 31.03.2010, erstwhile Meghalaya State Electricity Board ("MeSEB") was unbundled into four successor entities.

10.02.2011	Meghalaya State Electricity Regulatory Commission (MSERC) vide notification dated 10.02.2011 issued a regulation named Meghalaya State Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2011 (<i>“Tariff Regulations, 2011”</i>).
01.04.2013	With effect from 01.04.2013, MePDCL, MePGCL and MePTCL started functioning separately and the Statement of Account for each were segregated.
23.12.2013	The Government of Meghalaya finalized transfer scheme with effect from 01.04.2010.
10.04.2014	MSERC approved ARR and retail tariff of MePGCL for FY 2014-15 under MSERC Tariff Regulations, 2011.
15.09.2014	MSERC issued new Multi Year Tariff Regulations 2014 (<i>“Tariff Regulation 2014”</i>).
22.12.2014	Appellant filed Petition under Multi-Year Tariff framework for the FY 2015-16 to FY 2017-18 in accordance with the MSERC MYT Regulations, 2014.

30.03.2015	MSERC approved the ARR for MYT period of FY 2015-16 to FY 2017-18, and Generation tariff for MePGCL for old plants and Sonapani.
5.02.2016	MePGCL filed Petition for True up of ARR for FY 2013-14, and Provisional True up of ARR for FY 2014-15 and Revision of Generation Tariff for FY 2016-17 of MePGCL.
30.03.2016	MSERC passed impugned order for approval of truing up of ARR for FY 2013-14, provisional true up of FY 2014-15 and determination of generation tariff for FY 2016-17 for MePGCL for old plants and Sonapani.
30.05.2016	Aggrieved by the Order dated 30.03.2016 of MSERC, MePGCL filed Petition for Review of Tariff Order dated 30.03.2016 for true up of Generation ARR for FY 2013-14 and provisional true up for FY 2014-15 and revision of Generation tariff for FY 2016-17.
30.03.2017	MSERC passed the order on the petition filed by MePGCL seeking review of tariff order for true up of Generation AR for FY 2013-14 and provision true up for FY 2014-15 and revision of generation tariff for FY 2016-17.

08.08.2017	Present Appeal no. 367 of 2017 filed
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5. The issues raised by the appellants in this appeal are noted hereinbelow: -

A. Erroneous computation of Return on Equity in True up for FY 2013-2014

B. Erroneous computation of Return on Equity in provisional True up for FY 2014-2015

6. We have heard learned counsel for the appellant as well as learned counsel for the respondent Commission. We have also perused the impugned orders as well as the written submissions filed by the learned counsels.

7. At the outset, it was pointed out by learned counsel for the respondent Commission that the instant appeal is barred in view of Order XLVII Rule 7(1) of the Code of Civil Procedure, 1908 (in short CPC) in so far as it assails the findings of the Commission on some of the issues in the order dated 11.08.2015 whereby the appellant's review petition was dismissed. In this regard following sequence of events needs to be noted: -

- (i) On 30.03.2016 the impugned tariff order was passed by the Commission;
- (ii) On 30.05.2016, the appellant preferred the review petition against said order, *inter alia*, on the following issues: -
 - (a) Power Purchase Cost
 - (b) Prior Period Charges
 - (c) Return on Equity
 - (d) Aggregate Technical and Commercial (AT&C) Losses
- (iii) Upon considering the submissions of the appellant and documents placed on record by it, the Commission rejected the review petition vide order dated 30.03.2017.

8. It is the submission of the learned counsel for the Commission that once the issues with regards to Power Purchase Cost, Prior Period Charges, Return on Equity and AT&C Losses had been taken up by the appellant in the review petition which was dismissed vide order dated 30.03.2017, it is not open for the appellant to agitate those issues in the instant appeal. It is pointed out by the learned counsel that where a review petition is dismissed, there is no merger of the review order with the initial main order and therefore appeal is not maintainable Against review order. Various judgments of the

Hon'ble Supreme Court as well as this Tribunal were cited by the learned counsel to buttress his submissions.

9. Rule 7(1) of Order XLVII CPC is extracted hereinbelow: -

“7. Order of rejection not appealable. Objections to order granting application. -

(i) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.”

[Emphasis Supplied]

10. It is manifest from the bare perusal of this legal provision that no appeal lies against the order of a court / tribunal rejecting the application for review. Therefore, we find ourselves in agreement with the submissions of the learned counsel for the respondent Commission that the order dated 30.03.2017 passed by the Commission on the review petition of the appellant, thereby dismissing the same, could not have been assailed in this appeal in view of the clear and specific bar contained in Order XLVII Rule 7(1) CPC. In

such a scenario, the appeal lies against the original order and not against the order on the Review Petition. (See Rahimal Bathu vs. Ashiyal Beevi 2023 SCC OnLine SC 1226) We have, thus, no hesitation in rejecting the appeal in so far as it assails the order dated 30.03.2017 of the Commission and we will confine ourselves to the legality or otherwise of the impugned tariff order dated 31.03.2016 only on the issues agitated by the appellant.

11. We shall now take up the issues raised by the appellant in this appeal.

A. Erroneous computation of Return on Equity in True up for FY 2013-2014

B. Erroneous computation of Return on Equity in provisional True up for FY 2014-2015

12. Since, both these issues raised by the appellant in this appeal relate to determination of Return on Equity, the same are taken up together for adjudication.

13. In the petition, the appellant had claimed Return on Equity of Rs.95.26 crores on an equity of Rs.680.41 crores while seeking the true up of its

business for FY 2013-14. However, the Commission, in the impugned order, has approved RoE of Rs.12.76 crores only on equity base of Rs.303.80 crores.

14. Similarly, for the FY 2014-15, the appellant had claimed RoE of Rs.101.30 crores on an equity of Rs.723.56 crores but the Commission has approved only Rs.12.79 crores towards RoE on equity base of Rs.303.80 crores.

15. It is argued on behalf of the appellant that the Commission has proceeded to compute equity capital on the basis of Gross Fixed Assets (GFA), which is contrary to Regulations 72, 74, 100 and 101 of the Tariff Regulations, 2011.

16. On this issue also we have heard the contentions of the parties in detail in appeal No.46/2016. The relevant portion of the judgment passed by us in the said appeal is quoted hereinbelow: -

“38. Learned counsel for the appellant submitted that in the order dated 20.01.2012 for tariff determination for the FY 2011-12, the Commission had approved RoE of Rs.28.28 crores on an equity base of Rs.202 crores @ 14%, the same

forming the basis of opening balance as on 01.04.2011. She further submitted that in the year 2010 by way of notification dated 31.03.2010, erstwhile Meghalaya State Electricity Board (MeSEB) was unbundled into four successor entities and thereafter vide notification dated 23.12.2013, Government of Meghalaya notified the revised and final statement of assets and liabilities to be vested in MeECL, the holding company with effect from 01.04.2010. She pointed out that as per the transfer scheme dated 23.09.2013, assets in the value of Rs.767.54 crores stood transferred to MeECL as on 01.04.2010 and therefore, the audited balance sheet for the period 2010-11 was finalized taking the equity base as on 31.03.2011 to Rs.903.53 crores after giving effect to subsequent equity additions.

39. She further argued that on the basis of the transfer scheme indicating the transfer of assets and liabilities to the successor companies and subsequent equity additions, the equity base for the period 2011-12 stood at Rs.908 crores which is also reflected in the audited accounts of the

appellant for the FY 2011-12. She argued that the Commission has rejected the claim of appellant for a revised RoE in the impugned tariff order on the incorrect basis that no valid data has been furnished for considering the equity base as Rs.908.18 cores.

40. According to learned counsel, the Commission has failed to take into account the equity amount appearing in the equity balance sheet of the appellant or even as per the transfer scheme notification issued by the Government of Meghalaya for the purpose of calculating the RoE as envisaged by Regulation 101 of Tariff Regulations, 2011 and thus, the methodology adopted by the Commission in determining RoE is not only invalid but in deviation to its own regulations.

41. Learned counsel for the respondent Commission referred to Regulations 100 and 101 of the Tariff Regulations 2011 and submitted that the Commission was right in rejecting the appellants claim for RoE on equity base of

Rs.908.18 crores as no valid data was furnished by the appellant in this regard.

42. In rejoinder, the learned counsel for the appellant submitted that Regulation 100 provides that for determination of tariff, debt-equity ratio of 70:30 will be applied for all new investments and therefore the said Regulation has no application for investments prior to the period 2010-11.

43. We have considered the rival submissions of the learned counsels on this issue.

44. Since both the learned counsels have referred to regulations 100 and 101 of 2011 Tariff Regulations, we find it apposite to quote the same hereunder: -

“100. Debt-equity Ratio

(1) For the purpose of determination of tariff, the debt-equity ratio of 70:30 will be applied for all new investments during the financial year. Where equity employed is more than 30%, the amount of equity for

the purpose of tariff shall be limited to 30% and the balance shall be treated as loan. Where actual equity employed is less than 30%, the actual equity shall be considered. Provided that the Commission may, in appropriate case, consider equity higher than 30% for the purpose of determination of tariff, where the distribution licensee is able to establish to the satisfaction of the Commission that deployment of equity more than 30% is in the interest of general public.

(2) The debt and equity amounts in accordance with clause (1) above shall be used for calculating interest on loan, return on equity, advance against depreciation and foreign rate variation.

101. Return on Equity

(1) Return on equity shall be computed on the equity base determined in accordance with Regulation 100, at a fixed rate of 14 percent, per annum. Provided that

equity invested in a foreign currency may be allowed a return upto the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing. The difference in actual exchange rate and the provisional exchange rate considered while determining the ARR shall be taken into consideration at the time of 'Truing up'.

(2) The equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet was not audited.

(3) The premium received while issuing share capital shall be treated as a part of equity provided the same is utilized for meeting capital expenditure.

(4) Internal resources created out of free reserves and utilized for meeting the capital expenditure shall also be treated as a part of equity.”

45. It is manifest that Regulation 100 talks about new investments during financial year for which the tariff is to be determined and provides that debt-equity ratio for all such new investments shall be considered in the ratio of 70:30. Hence, this Regulation is not applicable to the appellant for the reason that there had been no new investment made by the appellant during the FY 2011-12.

46. The case of the appellant before the Commission was that on account of the transfer scheme whereby the assets and liabilities of the erstwhile MeSEB were transferred to the successor companies including the appellant herein coupled with the subsequent equity additions, the equity base of the appellant for the period 2011-12 stood at Rs.908 cores which is also reflected in the audited accounts of the appellant for the said FY. Such a situation is clearly covered

by Sub-Regulation (2) of Regulation 101 which provides that the equity amount appearing in the audited balance sheet or as per transfer scheme notification will be taken into account for the purpose of calculating the RoE for the first year of operation. Therefore, the Commission was bound to take into account the equity addition to the equity base of the appellant for FY 2011-12 in pursuance to the notification dated 23.12.2013 of the Government of Meghalaya vide which certain assets and liabilities of erstwhile MeSEB came to be vested in the appellant with effect from 01.04.2010. That having not been done by the Commission, the rejection of appellant's claim for RoE on equity base of Rs.908.18 crores cannot be sustained.

47. Hence, we set aside the findings of the Commission in the impugned order on this issue and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile

MeSEB in the appellant in pursuance to the transfer scheme formulated by the Government of Meghalaya.”

17. In view of the above quoted findings given by us in appeal No.46/2016, we set aside the findings of the Commission in the order dated 30.03.2016 also, which has been impugned in this appeal and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile MeSEB in the appellant in pursuance to the transfer scheme formulated by the government of Meghalaya.

18. Accordingly, the impugned order stands set aside and the appeal stands allowed to the extent indicated hereinabove.

Pronounced in open court on this the 07th day of March, 2025

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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~~REPORTABLE / NON-REPORTABLE~~

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