

**COURT-I**

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 289 OF 2018 &  
IA NOS. 204 & 523 of 2019**

**Dated : 28<sup>th</sup> August, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S. D. Dubey, Technical Member**

**In the matter of:**

**TANGEDCO** ... **Appellant(s)**  
**Versus**  
**Central Electricity Regulatory Commission & Ors.** ... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. Geet Ahuja  
Mr. S. Vallinayagam

Counsel for the Respondent(s) : Mr. Vishrov Mukerjee  
Ms. Raveena Dhamija  
Ms. Yashaswi Kant for R-2

Mr. Anup Jain  
Mr. S. Rama for R-3

Mr. Ranjitha Ramachandran  
Ms. Poorva Saigal  
Mr. Shubham Arya  
Ms. Tanya Sareen for R-6

**ORDER**

1. Learned Counsel for the Respondent Generator submits that subsequent to 26.08.2019, one month bill of January 2019 came to be cleared by the Appellant – DISCOM. However, arrears pertaining to change in law as well as regular bills are still pending from January 2019 onwards. Response of the TANGEDCO with regard to payment of dues payable to Respondent Generator shall be by 06.09.2019.

2. At this stage, the Suo-Motu action on OP No.1 of 2011 initiated by this Tribunal which came to be disposed of on 11.11.2011 was brought to our notice in which Tamil Nadu State Commission was also a party to the proceedings. This Suo-Motu Original Petition, in fact, is with reference to all Regulatory Commissions.

3. Based on the letter sent by the Power Ministry, suo-moto petition in OP No.1 of 2011 was initiated against the Regulatory Commissions. Four advocates namely, 1. Mr. M. G. Ramachandran, 2. Mr. R. K. Mehta, 3. Mr. Amit Kapur, and 4. Mr. Buddy A. Ranganadhan were appointed as Amicus Curiae by the Tribunal. Three Commissions i.e. Tamil Nadu, Rajasthan and Tripura alone participated in the proceedings.

4. After considering various aspects, two questions were framed in the said OP for consideration of the Tribunal which are as follows:

- “(i) Whether the State Regulatory Commissions have the jurisdiction to suo-moto initiate proceedings for determination of tariff under section 62, 64 and 86 of the Electricity Act, 2003 in the absence of the Tariff application to be filed by the Utilities under Section 64 of the Act?”*
- “(ii) Whether the Appellate Tribunal has got the powers to issue directions under section 121 of the Act, 2003 to appropriate Commissions for the performance of their functions under the tariff policy issued by the Ministry of Power by taking suo moto action for determination of tariff in the absence of the Tariff application?”*

5. Several directions were given to the State Commissions at Para 65 of the judgment dated 11.11.2011, which read as under:

“65. ...

*(i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.*

*(ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1<sup>st</sup> April of the tariff year. For example, the ARR & tariff for the financial year 2011-12 should be decided before 1<sup>st</sup> April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.*

*(iii) In the event of delay in filing of the ARR, trueing-up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.*

*(iv) In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying*

*cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.*

*(v) Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.*

*(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/mechanism."*

**6.** Further directions were given at Para 66, which read as under:

*"66. We direct all the State Commissions to follow these directions scrupulously, and send the periodical reports by 1<sup>st</sup> June of the relevant financial year about the compliance of these directions to the Secretary, Forum of Regulators, who in turn will send the status report to this Tribunal and also place it on its website."*

7. This judgment of the Tribunal has reached finality since there was no challenge to it by anyone.
8. In this respect, we have also received a letter from Ministry of Power seeking suitable orders for enforcement of the directions which were issued by this Tribunal in the order dated 11.11.2011 in the above said OP. Therefore, we feel it appropriate to know steps taken by Commissions for complying with the directions already issued in the above judgment.
9. List the instant Appeal No. 289 of 2018 **at 2.30 p.m. on 06.09.2019.**
10. List OP No.1 of 2011 **at 2.30 p.m. on 06.09.2019** before Larger Bench comprising the Chairperson, and two Technical Members (Mr. S.D. Dubey, and Mr. Ravindra Kumar Verma) after the proceedings of Special Bench for Appeal No. 289 of 2018 are over.

**(S. D. Dubey)**  
**Technical Member**  
*tpd/mkg*

**(Justice Manjula Chellur)**  
**Chairperson**