

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 214 OF 2015 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 18th February, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

**West Bengal State Electricity Transmission
Company Limited**

Vidyut Bhavan, Block DJ, Sector II,
Salt Lake City,
Kolkata – 700 091

..... Appellant(s)

VERSUS

West Bengal Electricity Regulatory Commission

Poura Bhavan (3rd Floor) Block-FD, 415-A,
Bidhannagar,
Kolkata – 700 106

..... Respondents

Counsel for the Appellant (s) : Ms. Molshree Bhatnagar

Counsel for the Respondent(s) : Mr. Pratik Dhar, Sr. Adv.
Mr. Sachin Dubey
Mr. C.K. Rai for R-1

The Appellant has presented the instant Appeal seeking the following reliefs:

- (a) Allow the present appeal and set aside the impugned order dated 04.03.2015 passed in TP-60/13-14 to the extent the same has been challenged in terms of the grounds indicated above;
- (b) Direct the Respondent Commission to re-determine the ARR in line with the outcome of the present appeal;

- (c) Pass such further or other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. West Bengal State Electricity Transmission Company Limited, Kolkata (in short, the "Appellant") is questioning the legality and validity of the impugned Order dated 04.03.2015 passed in Case No. TP-60/13-14 on the file of the West Bengal Electricity Regulatory Commission (in short, Respondent Commission), has filed the instant appeal, being No. 214 of 2015, under Section 111 of the Electricity Act, 2003 for considering the following questions of law:

- A. Whether the Learned Commission has acted contrary to the provisions of the MYT Regulations, 2011, precedents and its own previous orders in passing the Impugned Order?
- B. Whether the Learned Commission erroneously rejected the methodology adopted by the Appellant to project its expenditure for different heads under O&M on the basis of CAGR of actual expenses?
- C. Whether the Learned Commission was correct in adopting the hybrid approach of considering wholesale price index and consumer price index for various heads of O&M expenditure to calculate the inflation trend applicable to the Appellant?

- D. Whether new norms have been applied by the Learned Commission according to its own whims and caprices?
- E. Whether the Learned Commission arbitrarily fixed a normative rate of increase not supported by any calculation or data and in contravention of the past trend of the Commission?
- F. Whether the Learned Commission erred in calculating the inflation trend by giving weightage to 60% and 40% on WPI and CPI respectively earlier fixed by CERC by analyzing the actual expense details of central sector utilities?
- G. Whether the Learned Commission erred in considering the annual escalation rate on O&M expenses using the hybrid methodology followed in CERC Tariff Regulations, 2014?
- H. Whether the Learned Commission erred in not considering the weightage of 70:30 to be given to O&M costs of substations and transmission line while determining escalation rate?
- I. Whether the Learned Commission erred in not giving any weightage to increase in substation capacity for working out escalation in O&M expenses?
- J. Whether the Learned Commission erred in considering the inflation rate of 7.63% for the period from October 2011 to September 2014?

- K. Whether the Learned Commission erred in considering the inflationary rate as per the hybrid pricing index while allowing the security expenses of the Appellant?
- L. Whether the Learned Commission erred in not considering the audited accounts for 2013-14 already available with it to determine expenditure trend in the 4th control period?
- M. Whether the Learned Commission has erred in adopting sensitivity parameters for the purpose of computation of expenditure in cases where annual escalation rate or CAGR of past period crosses the concerned inflation of the said past period?
- N. Whether the Learned Commission has erred in determining the ratio of percentage of annual increase in expenses in past period and percentage increase in business volume parameter?
- O. Whether the Learned Commission arbitrarily determined the parameter of additional float being the variable Ad_F without providing any reasoning for the same?
- P. Whether the Learned Commission erred in limiting the State Commission's functions to mechanical computation of tariff based on empirical formulas having whimsical variables and parameters?

- Q. Whether the Learned Commission erred in calculating the business volume growth of the Appellant as 4.42% based on percentage increase in Transmission line length only?
- R. Whether the learned Commission arbitrarily computed the Appellant's expenditure trend on the basis of actual expenses of two years or three years on a case to case basis?
- S. Whether the Learned Commission erred in ignoring the express provision of the MYT Regulations, 2011 which obligates it to consider expenses for past 5 years for projecting expenses in the ensuing years of the control period?
- T. Whether the Learned Commission erred in arbitrarily reducing the expenditure projected by the Appellant on account of Employee Costs?
- U. Whether the Learned Commission erred in disallowing the admitted expense related to ULDC charges (which is part of the SLDC charges) in calculating the GRR of the Appellant?
- V. Whether the Learned Commission erred in ignoring capital additions during the year 2007-08 for arriving at the conclusion that the actual addition to borrowed capital for capital works during the years 2007-08 to 2012-13 is higher than the total normative addition to debt during those years?

- W. Whether the Learned Commission erred in disallowing the amount of Rs.4471.26 lakhs which was already allowed by the Commission to the Appellant in the APR order dated 09.09.2013 in Case No. : APR-32/12-13?
- X. Whether the Learned Commission arbitrarily deducted the amounts of addition to assets for the years 2014-15, 2015-16 and 2016-17 by reducing the capital additions during the MYT period to 50% of the projected net addition to fixed assets for the three years of the fourth control period?
- Y. Whether the Learned Commission wrongly allowed income tax at the MAT rate to the Appellant in the approved ARR for the years 2014-15 to 2016-17?
- Z. Whether the Learned Commission has arbitrarily passed directions regarding the delay in filing of APR petition?
2. We have heard the learned counsel, Ms. Molshree Bhatnagar, appearing for the Appellant and the learned senior counsel, Mr. Pratik Dhar, appearing for the Respondent Commission.
3. The learned senior counsel for the Respondent Commission, on instructions, at the outset, submitted that, in the event, the Appellant herein, is filing necessary petition for consideration a fresh before the Respondent Commission in so far it relates to the issues raised in the instant appeal, the

same will be considered by the Respondent Commission and an appropriate order will be passed in accordance with law. Therefore, he submitted that, the instant appeal may be disposed of reserving liberty to the Appellant to file necessary petition for redressing their grievances before the Respondent Commission in so far it relates to the issues raised in the instant appeal only.

4. ***Per-contra***, the learned counsel, Ms. Molshree Bhatnagarg, appearing for the Appellant, inter-alia, contended and fairly submitted that, in the light of the statement made by the learned senior counsel appearing for the Respondent Commission, as stated supra, the instant appeal may be disposed of reserving liberty to the Appellant to file a necessary petition before the Respondent Commission in respect of the issues raised in this appeal only within a period of six weeks from the date of the receipt of the copy of this order.

5. Submissions of the learned counsel for the Appellant and the learned senior counsel for the Respondent Commission, as stated supra, are placed on record.

6. In the light of the submissions of the learned counsel for the Appellant and the learned senior counsel for the Respondent Commission, as stated supra, the instant appeal, being No. 214 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file necessary petition, in so far it relates to the issues raised in

this Appeal only, before the Respondent Commission within a period of six weeks from the date of the receipt of this order.

7. In the event, such petition is filed by the Appellant, the Respondent Commission is directed to consider the same and pass an appropriate order, as expeditiously as possible, in accordance with law.

8. With these observations, the instant appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

Parties to bear their own costs.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

vt/js

(Justice N.K. Patil)
Judicial Member