

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction, New Delhi**

Appeal No. 92 of 2008 and IA No. 122 of 2008

Dated : 25th September, 2009

Present: **Hon'ble Mrs. Justice Manju Goel, Judicial Member**
Hon'ble Mr. H. L. Bajaj, Technical Member

IN THE MATTER OF

1. Lower Assam Electricity Distribution Co. Ltd.

Bijulee Bhawan,
Paltan Bazar,
Guwahati – 781 001,
Assam

2. Central Assam Electricity Distribution Co. Ltd.

Bijulee Bhawan,
Paltan Bazar,
Guwahati – 781 001
Assam

3. Upper Assam Electricity Distribution Co. Ltd.

Bijulee Bhawan,
Paltan Bazar,
Guwahati – 781 001,
Assam

... Applicant(s)

Vesus

Assam Electricity Regulatory Commission

Service through its Secretary
Having its office at ASEB Campus,
Dwarandhar, G. S. Road, Sixth Mile,

Counsel for the Appellant(s) : Mr. Rajshekhar Rao
Mr. Karan Lahiri
Mr. Arshdeep Singh
Mr. Hemanta Sarmah

Counsel for the Respondent(s) : Mr. Amit Kapur,
Mr. Shreshth Sharma
Ms. Shobana Masters
Mr. Mohit Jolly

J U D G M E N T

Justice Manju Goel, Judicial Member

The appeal challenges the tariff order for the FY 2007-08, passed by the Assam Electricity Regulatory Commission (the Commission for short), insofar as it relates to the rebate given to domestic category of consumers in calculating only one equipment for higher rating while determining the connected load, if both air conditioner (without heater) and geyser are installed for use for domestic purposes only. The appeal is opposed by the Commission. The appeal being against the tariff order a public notice was published. However, no consumer appeared before us to oppose the appeal.

02) Stated briefly, the ground in the appeal is that the Commission in the tariff order has ruled that in case of domestic category of consumers the higher rating of only one equipment shall be considered for determination of connected load if both geyser and air conditioners (without heater) are installed for domestic purposes only whereas the Regulations are entirely different. The Regulations - Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2004 (First Amendment) 2007, notified on 08.05.2007, defines “connected load” as under:

“1.3 Definitions:

In this Code, unless it is repugnant to the context:

- i) ...*
- ii) ...*
- iii) ...*
- iv) ...*
- v) “Connected Load” means aggregate of the manufacturer’s rated capacities of all energy consuming devices, connected with the distribution licensee mains in the consumer’s installation and which can be simultaneously used; This shall be*

expressed in kW, kVA or HP units and shall be determined as per the procedure laid down by the Licensee with the approval of the Commission as specified in these Regulations.

vi)”

03) The learned counsel for the appellant, Mr. Rajshekhar Rao submits that both the geyser as well as air conditioner can be simultaneously used and therefore going by this definition, the rating of both the geyser and air conditioner could be added to arrive at “connected load”. Our attention is also drawn to Chapter 5 of the Regulation in which we find the following provision regarding rating of installations, connected load and contracted demand:

“5.4 Rating of Installations, connected load, contract demand:

The connected load of domestic, commercial, general category of consumers billed (Fixed charge part) on connected load shall be determined as per the procedure given in Appendix 2. Normally survey of load shall be carried out once in two years. The licensee may also carryout verification of load in selected areas periodically.

However, if the licensee has reasons to believe that a particular domestic connection or a group of domestic connections might be involved in unauthorized abstraction of power, the officer-in-charge may conduct a survey of the consumer's premises at any time at his discretion."

04) The Appendix 2 is a form giving a list of different electrical appliances normally used in a domestic household and the norms for assessment of connected load for each of such appliances. It is submitted that the Commission's findings is in contradiction with the definition of connected load and therefore the order is bad. It is submitted that the impact of the order on the revenue of the appellants is nearly Rs.2.5 Crores.

05) While opposing the appeal the Commission has referred to the order passed on the review petition filed by the appellant. The Commission has the following to say:

"In the Tariff Order for 2007-2008, the concession to the domestic category of consumers was given by way of higher rating of only one equipment shall be connected load if both Geyser and Air Conditioner (without heater) are installed.

The Petitioners apprehension about probable reduction of revenue is not based on facts as they have not been able to substantiate their claims as mentioned in the Petitions.

This facility to domestic category of consumers are extended by several states in the country and decision to extend the concession was taken by the Commission after careful consideration of the matter to protect the interest of domestic consumers.

The order of the Commission in the above regard may be irksome to the Petitioner, but the relief granted to the domestic consumers, in the opinion of the Commission, is justified and reasonable and the grounds set forth in the Petition are not sustainable.”

06) We are constrained to say that the logic expressed in the Commission's order is not quite good. However, there are other reasons for not interfering with the Commission's order. They are as under:

It is true that theoretically both geyser and air conditioner can simultaneously run in a household. However,

the rule saying “*which can be simultaneously used*” has to be read in a pragmatic manner. In a State like Assam, which is cold in the major part of the year, the use of Air Conditioner is limited only to a couple of months of summer when the normal temperature of tap water can be comfortably used for domestic purposes. Therefore, in that particular State it will not be wrong to presume that normally the geyser or the air conditioner will not be simultaneously used and hence the decision of the Commission to consider only the higher of the two ratings will not be altogether wrong.

07) The appellants are distribution companies and they are primarily concerned with the recovery of their cost. Assuming that Rs.2.5 Crores is the shortfall in recovery on account of the concession extended to the domestic consumers, such amount can be recovered in truing up/tariff for the subsequent years. It is a question of tariff design. The appellants do not say that the Commission has directed the appellant to bear the shortfall, if any, on account of the impugned interpretation of the Rule or the concession extended to the domestic consumers.

08) Further, if the appeal is now allowed/ordered the appellants will be led to recover small amounts from a large

number of individual domestic consumers the balance amount payable more than an year back which will not only entail cost but may also lead to other complications like disputes, litigation etc. Further the appellants themselves may not succeed in making full recovery of the amount and may end up recovering only a fraction of it. In this situation, it will be rather better to accept the order and to recover the shortfall, if any, in the usual method of truing up and subsequent tariff fixation.

09) We are told that the Regulations have now been brought in line with the interpretation given by the Commission in the impugned tariff order.

10) The appeal along with the interlocutory application No. 122 of 2008 is accordingly dismissed without costs.

11) Pronounced in open court on this **25th day of September, 2009.**

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member

Reportable / Non-reportable