

Before the Appellate Tribunal for Electricity (Appellate Jurisdiction)

Dated : 21st July, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson.
Hon'ble Mr. V.J. Talwar, Technical Member**

Appeal No. 143 of 2009

In the matter of:

Tamil Nadu Electricity Board

Appellant

Versus

1. Central Electricity Regulatory Commission
3rd Floor, Chadralok Building
36 Janpath, New Delhi - 110001
 2. Power Grid Corporation of India
B 9, Qutab Institutional Area,
Katwaria Sarai, New Delhi 110016
 3. Karnataka Power Transmission Corporation Ltd.
Cauvery Bhawan, Bangalore 560009
 4. Transmission Corporation of Andhra Pradesh
Vidhyut Soudha
Hydrabad -500049
 5. Kerala State Electricity Board
Vaidyhi Bhavanam, Pattom
Thiruvananthapuram – 695004
 6. Electricity Department,
Government of Pondicherry
Pondicherry

Respondents

Counsels for Appellant	Mr Ramji Srinivasan Mr P R Kovilan Poongkuntran Ms Geetha Muthu Perumal
Counsels for Respondents	Mr M G Ramachandran for (R 2) Ms Swapna Seshadri

Judgment

Per Hon'ble Mr. V.J. Talwar, Technical Member

1. Tamil Nadu Electricity Board is the Appellant. Central Electricity Regulatory Commission (Central Commission) is the 1st Respondent and Power Grid Corporation of India (Powergrid) is the 2nd Respondent. 3rd and 4th Respondents are the Transmission Utilities in the states of Karnataka and Andhra Pradesh respectively. Kerala State Electricity Board is the 5th Respondent and Department of Electricity, Government of Pondicherry is the 6th Respondent.
2. By an Order dated 15.3.2007, the Central Commission has determined the tariff for the 400 kV S/C Gooty-Neelmangala Transmission Line associated with the Ramagundam III

Transmission system ('Gooty System') of the 2nd Respondent for the period 1.5.2005 to 31.3.2009 with additional capitalization incurred for the period 2005-06. By another Order also dated 15.3.2007, the Central Commission also determined the tariff for another transmission system – 400 kV Kaiga - Narendra transmission line of 2nd the Respondent.

3. Aggrieved by these orders of the Central Commission, the Appellant has filed this appeal.
4. Brief facts of the case are as under:
5. The investment approval for the transmission system associated with Ramagundam STPS Stage-III was accorded by Ministry of Power vide its letter dated 29/30.8.2001 at an estimated cost of Rs. 39012 lakh, including IDC of Rs. 4204 lakh.
6. On 26.3.2004 the Central Commission notified Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2004 ('2004

Regulations). These Regulations were effective for the tariff period 1.4.2004 - 31.3.2009.

7. The Central Commission determined provisional tariff for Gooty system on 13.2.2006. Powergrid Corporation, the 2nd Respondent declared commercial operation of the Gooty system w.e.f 1.5.2006. The apportioned approved cost of the transmission line was Rs. 8983 lakh.
8. On 1.6.2006 the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First amendment) Regulations, 2006 amending, inter alia, Regulation 54 of Tariff Regulations 2004.
9. The Powergrid Corporation (R2) filed Petition No.130/2006 for approval of transmission tariff for the transmission line based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (the 2004 Regulations). In this petition, the 2nd Respondent claimed a capital expenditure of Rs. 6587.75 lakh incurred as on 1.5.2005. In addition, the 2nd Respondent claimed additional

capitalization of Rs. 403.18 lakh for the period up to 31.3.2006. The 2nd Respondent considered debt-equity ratio of 77.23:22.77 as actually deployed on 1.5.2005. It also claimed the entire amount of additional capital expenditure of Rs. 403.18 lakh as having been financed through loan.

10. The tariff for the transmission line was approved by the Central Commission vide its order dated 15.3.2007. While approving tariff, the Central Commission considered debt-equity ratio of 77.23:22:77 as on the date of commercial operation. The additional capitalization of Rs. 403.18 lakh was segregated into debt and equity in the ratio of 70:30, in accordance with the provision of Note 1 given below Regulation 53 of the 2004 Regulations. Accordingly, equity of Rs. 1620.69 lakh as on 1.4.2006 was considered by the Commission against the Respondent's claim of Rs. 1499.74 lakh on equity on that date.

11. The Appellant - Tamil Nadu Electricity Board filed a Review Petition being no. 130 of 2006 before the Central

Commission for review of the Order dated 15.3.2007 in Petition No. 130 of 2006. The Appellant also filed a review petition, being No. 128 of 2006 for review of the Order of the Central Commission for the Kaiga- Narendra transmission line.

12. The Central Commission, by a common Order dated 15.10.2007 dismissed the Review Petitions No. 130 and 128 of 2006.
13. Aggrieved by the Central Commission's order dated 15.3.2007 confirmed in review order dated 10.10.2007, the Appellant has filed this appeal.
14. Mr Ramji Srinivasan, Sr. Advocate arguing for the Appellant submitted that the Central Commission in its impugned order dated 15.3.2007 and review order dated 15.10.2007 had erred in respect of following:
 - I. The Central Commission has considered the proviso of Regulation 54 of Tariff regulations, 2004 for the expenditure up to the date of commercial operation.

However, the Central Commission did not consider this proviso to Regulation 54 for the additional expenditure incurred after date of commercial operation.

- II. The Central Commission has wrongly held that Note 1 of the Regulation 53 of Tariff Regulations 2004 provides that additional capitalization shall be serviced in the normative debt equity ratio specified in Regulation 54. Therefore normative debt equity ratio of 70:30 as per Regulation 54 has to be considered. While arriving at such a conclusion, the Central Commission has ignored the first proviso of Regulation 54(2) wherein it is mandated that where deployment of equity is less than 30% the actual equity deployed is to be considered.
- III. The Central Commission by considering the proviso for expenditure incurred up to date of commercial operation and not considering the same for expenditure incurred after the date of commercial operation has adopted two different contradictory stands.

15. Mr M G Ramachandran, Ld Counsel for the 2nd Respondent on the other hand replied to these contentions in justification of the findings of the Central Commission in its review order dated 15.10.2007. He further cited number of orders of the Central Commission in cases where the 2nd Respondent had funded the entire additional capitalization by deploying its equity, the Central Commission had fixed debt-equity ratio on the normative 70:30 basis.
16. We have heard the Learned Counsel for the parties who argued at length. We have also given anxious consideration to their submissions.
17. In view of the rival contentions referred to above urged by the learned counsel for parties, the only limited question arises for our consideration is related to interpretation and application of Regulations 53 and 54 of Tariff Regulations,
18. In order to appreciate the point at issue, it will be necessary to set out the findings of the Central Commission and Regulations 53 & 54 of Tariff Regulations 2004.

19. Findings of the Central Commission's order dated 15.3.2007

in petition No.130 of 2006 read as under:

"DEBT- EQUITY RATIO

14. Clause (2) of Regulation 54 of the 2004 regulations inter alia provides that,-

"(2) In case of the transmission system for which investment approval was accorded prior to 1.4.2004 and which are likely to be declared under commercial operation during the period 1.4.2004 to 31.3.2009, debt and equity in the ratio of 70:30 shall be considered:

Provided that where equity actually employed to finance the project is less than 30%, the actual debt and equity shall be considered for determination of tariff:

....

15. The Note 1 below Regulation 53 lays own that any expenditure on account of committed liabilities within the original scope of work is to be serviced in the normative debt-equity ratio specified in Regulation 54.

16. The petitioner has considered debt-equity ratio of 77.23:22.77 as actually deployed on the date of commercial operation. The petitioner has further considered entire amount of additional capitalization against loan. We have considered the debt-equity ratio of 77.23:22.77 on the date of commercial operation.

The additional capitalisation on works of Rs. 403.18 lakh has been segregated into debt and equity in the normative debt-equity ratio of 70:30 in view of Note 1 below Regulation 53. Accordingly, for the purpose of tariff, an amount of Rs. 1499.74 lakh has

been considered as equity as on 1.5.2005 and Rs. 1620.69 lakh as on 1.4.2006. {Emphasis added}

20. Above findings of the Central Commission show that it has just adopted debt equity ratio of 70:30 in view of Note 1 below Regulation 53. It did not elaborate it any further. However, the Central Commission had dealt with the issue in detail in its review order dated 15.7.2007. Relevant portion of review order is reproduced below:

"The contentions of the petitioner have been considered very carefully in the light of Note 1 below Regulation 53 of the 2004 regulations and clause (2) of Regulation 54 thereof. The relevant provisions are reproduced below for facility of analysis.

"53. Additional capitalisation: (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:

...

Provided that

Provided further that ...

.....
Note 1

Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 54.”

“54. Debt-Equity Ratio.

(1)

(2) *In case of the transmission systems for which investment approval was accorded prior to 1.4.2004 and which are likely to be declared under commercial operation during the period 1.4.2004 to 31.3.2009, debt and equity in the ratio of 70:30 shall be considered:*

Provided that where equity actually employed to finance the project is less than 30%, the actual debt and equity shall be considered for determination of tariff:

....

8. From Note 1 below Regulation 53 of the 2004 regulations, it is to be seen that the additional capital expenditure allowed by the Commission is to be serviced in the “normative” debt-equity ratio specified in Regulation 54. Clause (2) of Regulation 54 lays down that generally for the purpose of fixation of tariff, debt and equity in the ratio of 70:30 are to be considered. However, first proviso lays down that where deployment of equity is less than 30%, the actual equity deployed is to be considered for determination of tariff.

9. *The interpretation of proviso to a provision has been considered by the Hon'ble Supreme Court in a number of cases.*

....

11. *From the law laid down in the above judgements of the Hon'ble Supreme Court, it follows that a proviso to a particular provision of a statute carves out an exception to the main provision to which it has been enacted and the proviso cannot be interpreted to lay down the general rule, enacted in the main provision. It further follows that the proviso deals with a case which would otherwise fall within the general language of the main enactment. Further, where the language of main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it what clearly falls within its express terms.*

12. ***The language used in the substantive provision of clause (2) of Regulation 54 makes it explicit that the general rule or the norm for debt equity ratio for the purpose of determination of tariff is 70:30. Thus, as per the substantive provisions of Regulation 54, norm for debt-equity ratio should be 70:30. Note 1 below Regulation 53 lays down that for additional capital expenditure, normative debt-equity ratio is to be adopted. It, therefore, follows that the additional capital expenditure, irrespective of the source of financing is to be apportioned between debt and equity in the ratio of 70:30, which is the "normative" debt-equity ratio. This principle of interpretation has been followed by the Commission while fixing tariff for the transmission line. We may also add that the resultant equity***

works out to 23.18% on overall basis which is less than the normative equity of 30%.

21. On perusal of the above finding of the Central Commission we find that the Central Commission has adequately substantiated the rational for adopting normative debt equity ratio of 70:30 for additional capitalization.
22. It is settled law that intention of a statute is to be looked into the statute itself. Intention of framers of Tariff Regulations 2004 is to be found from these Regulations only.
23. The Note 1 below the Regulation 53 provides that any expenditure on account of committed liabilities within the original scope of works shall be serviced in the **normative** debt equity ratio specified in Regulation 54. Regulation 54 provides that debt equity ratio shall be taken as 70:30. However, if the actual deployed equity is less than 30%, actual equity would be considered. In other words, if actual deployment of equity is equal to or more than 30%, it would be restricted to 30% for determination of tariff. If equity is

less than 30% then actual deployment of equity would be considered. The wordings of Regulation 54 make it clear that specified debt equity ratio of 70:30 is the normative ratio.

24. If the intention of the framers of the Tariff Regulations, 2004 was to restrict the equity component in additional capitalization to actual deployment of equity, Note 1 below regulation 53 would have been worded differently e.g.:

“Note 1

Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced ‘in accordance with’ debt-equity ratio specified in regulation 54.”

25. Just by replacing word ‘normative’ with ‘in accordance with’ would have changed meaning to the “Note 1” and would have given effect as interpreted by the Appellant. However, the Note 1 below Regulation 53, in its present form, provides for normative debt equity ratio specified in Regulation 54

i.e.70:30. The Central Commission had adopted the same in accordance with its Regulations.

26. In the light of above discussions we find that the Central Commission has correctly interpreted and applied Regulations 53 and 54 of Tariff Regulations 2004. We do not find any reason to interfere with it.
27. The Appeal is accordingly dismissed. There is no order as to costs.
28. Pronounced in the open court today, the 21st July 2011

(V J Talwar)

Technical Member

(Justice M Karpaga Vinayagam)

Chairperson

INDEX : REPORTABLE/NON-REPORTABLE