

COURT-I

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

O.P. NO. 01 OF 2011

Dated: 23rd September, 2019

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

In the matter of:

**Tariff Revision
(Suo-Motu action on the letter received from Ministry of Power)**

Advocates (Amicus Curiae) : Mr. M.G. Ramachandran, Sr. Adv.
Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Sanjay Sen, Sr. Adv.
Mr. R.K. Mehta
Mr. Amit Kapur
Mr. Buddy A. Ranganadhan

Advocates Present : Mr. Sethu Ramalingam, TNERC

Mr. Arijit Maitra
Mr. Hasan Murtaza
Mr. Pratyush Singh
Mr. Girik Bhalla
Mr. Yashaswi Kant
Mr. Aniket Prasoon

ORDER

1. O.P. No. 1 of 2011 was initiated by this Tribunal pursuant to a letter from the Secretary to the Ministry of Power, Government of India dated 21.01.2011. The said letter pointed out various difficulties faced by distribution utilities and the resulting serious implication/impact on the financial status of the electricity sector. After hearing the matter at length

with the assistance of Amicus Curie counsel and some other advocates representing Commissions and Discoms, by Judgment dated 11.11.2011 this Tribunal issued several directions. At Para Nos. 65 and 66 such directions were given, which read as under:

“65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

(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 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011-12 should be decided before 1st 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, true-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.

66. We direct all the State Commissions to follow these directions scrupulously, and send the periodical reports by 1st 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.”

2. It is noticed from record that subsequent to the Judgment dated 11.11.2011, through Forum of Regulators the State Commissions filed annual reports in the form of compilation. Accordingly, they were web hosted as per the directions of this Tribunal. Series of orders came to be passed in the same proceedings and the last order seems to be dated 03.11.2014. In this order after considering the report of Forum of Regulators and submissions made by learned Amicus Curiae counsel further directions were given to the State/Joint Commissions, which read as under:

“This Tribunal by its order dated 11.11.2011 had given certain directions to the State Commissions regarding timely determination of tariff. The State Commissions were directed to follow the directions in this order scrupulously and to send periodical report by 1st June of the relevant financial year about their compliance to the Secretary, Forum of Regulators, who in turn will send the status report to this Tribunal and also place it on its website.

2. *Accordingly, the Tribunal has been receiving the reports from the Secretary, Forum of Regulators and has been giving directions to the State Commissions from time to time.*

3. *The last order was passed on 30.06.2014 in which certain directions were given to the State Commissions/Joint Commissions. Subsequently, hearings were held on 28th August, 2014 and 11th September, 2014, in which the Secretary, Forum of Regulators submitted a compliance report.*

4. *We have heard Learned Amicus Curiae Counsel on the Report*

submitted by the Secretary, Forum of Regulators.

5. After considering the Report of the Forum of Regulators and the submissions made by the Learned Amicus Curiae Counsel, we give the following directions to the State and Joint Commissions:

- i) **Andhra Pradesh Commission**: The Andhra Pradesh Commission in response to direction regarding Amendment to the Conduct of Business Regulations has stated that the Government of Andhra Pradesh has been requested to take action keeping in view of the order of the Tribunal. We find that the response of Andhra Pradesh Commission does not show compliance of the directions of this Tribunal. The Conduct of Business Regulations have to be amended by the State Commission in terms of Section 181 of the Electricity Act, 2003. Accordingly, the Andhra Pradesh Commission is directed to immediately begin the proceeding of amending the Conduct of Business Regulations and send a report in matter to Secretary, Forum of Regulators after compliance.
- ii) **Joint Commission (Manipur and Mizoram)**: It has been reported that Tariff Order for FY 2013-14 was issued on 28.02.2014. Since the time frame contained in the main Order dated 11.11.2011 has not been complied with, the Joint Commission is directed to comply with the same in a time bound manner in future.
- iii) **Jharkhand**: The Jharkhand Commission has not reported about the amendment of Conduct of Business Regulations providing quorum of one Member. The Jharkhand Commission is directed to furnish its response to Secretary, Forum of Regulators immediately.
- iv) **Punjab**: It has been reported that the MYT Regulations

have been notified on 1.7.2014. However, we find from Regulation 4.2 of the MYT Regulations that the Commission has to notify the date of commencement of MYT framework for determination of tariff in the State. Thus, even though the Regulations have been notified the same are yet to be implemented. Therefore, we direct the Punjab Commission to immediately provide a time frame within which it will implement MYT framework in the State.

- v) **Meghalaya:** The Meghalaya Commission has indicated that the MYT Regulations are ready for publication and the same will be notified after examining its consistency with the Central Commission's Regulations. Regarding true up for FY 2009-10, it has been reported that the provisional true up has been carried out and the final true up is in the final stage of completion. Meghalaya Commission is directed to send a report after compliance in the above matters to the Secretary, Forum of Regulators.
- vi) **Tamil Nadu:** The Tamil Nadu Commission in its report has not indicated the status of the amendment of the Conduct o Business Regulations. Tamil Nadu Commission is directed to take immediate action in the matter and report the same to the Secretary, Forum of Regulators.
- vii) **West Bengal:** The report of the State Commission does not show the status of the Tariff Order for the State Distribution Company and whether there has been any compliance of the Tribunal's order in respect of the State Distribution Company. The Commission is directed to provide updated data to the Secretary, Forum of Regulators.
- viii) In our order dated 30.06.2014, we had also sought information from the State and Joint Commissions regarding

issuance of Tariff Order for FY 2014-15, truing up of accounts, FPPCA mechanism and regulatory assets. The reports have been received in this regard. We find that there has been some delay in passing the Tariff Orders for FY 2014-15. However, several of the Commissions have explained the delay in passing such orders on the ground of the directions given by the Election Commission of India. Some other State Commissions have also put forth other reasons such as non-submission of data, etc. It is apparent that almost all the State Commissions are cognizant of the necessity of passing timely tariff orders. In the circumstances, no further directions are needed in this regard except to reiterate the timelines mentioned in the main order dated 11.11.2011.

- ix) As regards the truing up of orders, a majority of the Commissions have conducted True up of FY 2012-13. Some of the State Commissions have undertaken true up till 2011-12. A small minority of Commissions have not conducted true up even till 2011-12. These Commissions are Madhya Pradesh, Kerala, Punjab, Andhra Pradesh, Arunachal Pradesh and Nagaland. The said Commissions are directed to complete the true up process at least for FY 2011-12 within a period of next four months.*
- x) Regarding putting in place an FPPCA mechanism, we find that most of the State Commissions have put in place a Fuel Adjustment mechanism. The Commissions which have not done so far are: Sikkim, Arunachal Pradesh, Nagaland and Tamil Nadu. The said Commissions are directed to comply with the main order dated 11.11.2011 in respect of putting in place a Fuel Surcharge Mechanism, as applicable to them.*
- xi) On the issue of Regulatory Assets in the Tariff Order for FY 2014-15, among the State Commissions which have*

passed Tariff Orders for FY 2014-15, the Commission which has created a Regulatory Assets for FY 2014-15 is Karnataka. The Commissions for which the status of the creation of Regulatory Assets is not known are: Kerala, Delhi, West Bengal, Assam, Rajasthan and Tamil Nadu who have not yet passed the Tariff Order for FY 2014-15. The said Commissions are directed to send a report regarding the Regulatory Assets as sought in our order dated 30.06.2014 to the Secretary, Forum of Regulators.

xii) The Secretary, Forum of Regulators is directed to put up the information received from the State/Joint Commissions in pursuance of the above directions on its website. It may also send the Report to this Tribunal regarding compliance of this Tribunal's directions, by the State Commissions/Joint Commission concerned.

6. With the above directions, O.P. No. 1 of 2011 is disposed of.

7. The Registry is directed to send a copy of this order to all State and Joint Commissions, Secretary, Forum of Regulators and Secretary (Power), Government of India."

3. Subsequent to 03.11.2014, no further reports have been received either individually or in the form of compilation from the Forum of Regulators for the years 2015-16, 2016-17, 2017-18 and 2018-19.

4. In the Note submitted by Amicus Curiae counsel several problems including serious financial and credit worthiness problems faced by several

stakeholders are also brought on record. Be that as it may, at this stage, we opine that first we must secure information “*whether the directions at para Nos. 65 and 66 of the main Judgment dated 11.11.2011 and subsequent directions in the order dated 03.11.2014 are complied with or not*”? Therefore, we direct all the State/Joint Commissions to furnish the necessary information to the Secretary of Forum of Regulators, who shall in turn file compilation of compliance reports furnished by State/Joint Commissions before this Tribunal. This exercise is to be completed on or before 31.10.2019.

5. The Registry is directed to send a copy of this order to all State and Joint Commissions, Secretary, Forum of Regulators and Secretary (Power), Government of India.

6. List the matter on **01.11.2019 at 11.00 am.**

7. Pronounced in the open court on this the 23rd day of September, 2019.

(Ravindra Kumar Verma) (S.D. Dubey) (Justice Manjula Chellur)
Technical Member Technical Member Chairperson

~~REPORTABLE/NON-REPORTABLE~~