

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Sh. S.K.Chaturvedi, Chairperson
Petition No. 137/2014
Date of Order 27.08.2014

In the matter of

Petition for review of Tariff Order dated 25.04.2014 passed by the Joint Electricity Regulatory Commission for Goa and Union Territories for ED- Puducherry in petition no. 125/2014.

And in the matter of

1. Chemfab Alkalis Limited.
2. Sumangala Steel Pvt. Limited.
3. Inox Air Products Limited.

..... Petitioners

Versus

Electricity Department – Puducherry

..... Respondent

Argued by: for Petitioners

1. Sh. T. Srinivasa Murthy, Advocate.
2. Ms. Harshita Deshwal, Advocate.
3. Sh. R. Sabanayagam, MD, Sumangala Steel Pvt. Limited.
4. Sh. K. Vijaya Kumar, GM, Sumangala Steel Pvt. Limited.

Argued by: for Respondent

1. Sh. K. Mathivanan, Superintending Engineer, ED- Puducherry.
2. Sh. A.S. Jitendra Rao, Executive Engineer, ED- Puducherry.

Order

The petitioners - Chemfab Alkalis Limited and Others have filed the present petition for review of Tariff Order dated 25.04.2014 passed by the Joint Electricity Regulatory Commission for Goa and Union Territories for ED- Puducherry in petition no. 125/2014.

The brief facts giving rise to the present petition are that ED- Puducherry – respondent filed petition no. 125/2014 for approval of ARR and determination of tariff for FY 2014-15. The respondent in para no. 7.2.2 at page no. 59 of the tariff petition submitted as under:-

Quote

"It is submitted to the Hon'ble Commission that considering the tariff increase of 16.08% in FY 2012-13 and 26.48% in FY 2013-14 with 10% additional surcharge from FY 2013-14 and also in view of not giving a tariff shock to the consumers every year, the petitioner has considered not proposing a tariff hike and the same shall be taken up during True-up petition on actual values of expenses."

Unquote

The respondent in para no. 9.1.7 at page 64 of the petition made following prayer:-

Quote

"Grant approval for continuing the Schedule of tariff (considering the prayer under clause 9.1.6), charges for services and schedule of charges along with surcharge as approved in the tariff order for FY 2013-14 in the year 2014-15 also."

Unquote

The Commission after hearing the parties and considering their submissions approved ARR and determined Tariff of ED- Puducherry for FY 2014-15 vide order dated 25.04.2014 and increased monthly charges of HT – III consumers from Rs. 220 per /kVA/month to Rs. 240 per/kVA/month and also increased energy/ variable charges from Rs. 4.50/kWh to Rs. 4.70/kWh. The petitioners challenged the impugned order dated 25.04.2014 on following grounds:-

“Quote

- A. *That the tariff order dated 25.04.2014, in so far as it pertains to the HT-III consumers, with respect, suffers an error apparent on the record of the order and therefore requires exercise of review powers by this Hon'ble Commission.*
- B. *That when the respondent itself has not sought any change in the tariff for any class of consumers, this Hon'ble Commission, with great respect, ought not to have increased the tariff in the case of HT –III consumers.*
- C. *That no reasons have been set out as to why the HT-III consumers have been mulcted with a raise in tariff when even according to the respondent, there have been two significant tariff hikes in FY 2012-13 and 2013-14 in addition to levy of an additional surcharge of 10% from FY 2013-14.*
- D. *That there has been no change in the tariff in respect of HT-I consumers who continue to pay the same tariff as was in place in FY 2013-14 and hence, the HT-III consumers are aggrieved by being singled out for the purpose of increase in tariff, without any justification or rationale.*
- E. *That the tariff Hon'ble Commission has stated that it has rationalized the tariff structure for some of the consumer categories, no reasons have been set out as to why this has been done when even the respondent has not sought any changes and in particular, why the HT-III consumers have been visited with this tariff increase.*
- F. *That the tariff order dated 25.04.2014 has not, with great respect, appreciated that out of 469 HT consumers in Puducherry, only three consumers, the petitioners herein, have their supply in 110 Kilo Volts falling under HT-III category and the remaining 466 HT Consumers are falling under HT-I category, as their supply voltage is 11/22 kV.*
- G. *That in the above circumstances, revising the tariff for HT-III consumers alone, who are contributing very high revenues to the respondent, is without any justification and the tariff order requires to be reviewed.*
- H. *That historically, the HT-III consumers have always had lower tariffs than the HT-I consumers. For instance, in FY 2012-13, the HT-I fixed monthly charge was Rs. 190 per month per connection/kVA/HP while for HT-III consumers, the fixed monthly charges was Rs. 180 per connection/kVA/HP. Similarly, the Energy/ Variable Charges for HT-I consumers were Rs. 3.80/kWh. Similarly, in FY 2013-14, the HT-I fixed monthly charge was Rs. 220 per month per connection/kVA/HP while for HT-III consumers, the fixed monthly charge was Rs. 200 per connection/kVA/HP. Similarly, the Energy/ Variable Charges for HT-I consumers were Rs. 4.70/kWh while for HT-III consumers, the Energy/ Variable charges were Rs. 4.50/kWh. The reason for this differentiation is that the voltage losses are comparatively lower in the 110/132 kV supply. This is also accepted by this Hon'ble Commission at Table 92, Page 122 of the Tariff*

Order. Further, since the supply voltage is high, HT –III consumers such as the petitioners have erected their own sub-station within their premises by incurring huge investment cost. Hence, there was, with respect, no justification in levying higher fixed monthly charges for HT-III consumers vis-à-vis HT-I consumers and same Energy/ Variable charges for HT-III consumers as charged to HT-I consumers.

- 1. That on account of this increase in tariff, the petitioners, who have already incurred huge investment in setting up infrastructure, and are already contributing high revenue to the respondent, will be saddled with further costs which will have a crippling effect on their business activities and result in heavy losses.”*

Unquote

The petitioners prayed for review of the impugned order dated 25.04.2014 and direction to ED-Puducherry – respondent to charge same tariff for FY 2014-15 as was charged in FY 2013-14.

The review petition was received in the Commission on 09.06.2014. The petition was examined and found as per JERC (Conduct of Business) Regulations, 2009 and provisions of the Electricity Act, 2003.

The Commission admitted the petition on 10.06.2014. The Commission sent hearing notice to the parties for 30.07.2014. The respondent in response to the hearing notice submitted reply to the petition in the form of affidavit dated 22.07.2014 which runs as under:-

“Quote

- 1. Puducherry Electricity Department states that under Section 61 and 62 of the Electricity Act, 2003, it is under the purview of the Appropriate Commission (herein referred as “JERC”) to determine tariff for any category of consumers whereby the tariff may be differentiated based on the consumer’s load factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Hence the powers to decide the tariff category vests with the JERC and therefore, PED has no submission with regards to the revision in tariff.*
- 2. However, PED would like to submit that as per Section 62 (4) of the EA, 2003, it is stated as follows:
“No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified”.
It is evident from the above provisions of the Act that the tariff may not be amended more than one in any financial year and only fuel surcharge may vary. Therefore, PED requests the Hon’ble Commission that if the prayer of the petitioner is considered then the same may be made applicable from the next tariff order and from FY 2015-16 in line with the provisions of the EA, 2003 and may not allow the retrospective impact of the tariff.*
- 3. In addition to the above submission, PED would like to submit that being a distribution licensee, PED comes under the purview of the provisions of the EA, 2003 and the clauses specified in all the Regulations issued by the Hon’ble Commission.*
- 4. PED submits that based on the Tariff Regulations, ARR and Revenue for PED is determined on the Cost plus mechanism and therefore, any change in tariff may affect the revenue recovery of PED. Sine PED is a Revenue Neutral Utility, in case the prayer of the petitioner is considered, then it is requested to the Hon’ble Commission to also provide a balance financial impact of recovery of revenue gap which may arise due to change in tariff.*

5. *PED therefore, submits that Hon'ble Commission may pass such order or orders in such circumstances as it thinks just and proper in order to avoid unnecessary burden on beneficiaries and ultimately on end consumers."*

Unquote

The Commission held hearing on 30.07.2014 and on request of the representatives of the respondent allowed them to file additional reply and the petitioners to file rejoinder to the reply of the respondent. The respondent has filed additional reply and petitioners also filed rejoinders to the reply of the respondent.

The Commission held hearing on 21.08.2014 at the headquarters of the Commission and has gone through the main petition no. 125/2014, review petition, replies of the respondent and rejoinders of the petitioners, objections received in the main petition and accompanying documents as well as provisions of Section 61, 62, 86 and 94 (f) of the Electricity Act, 2003, Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 and JERC (Terms and Condition for determination of Tariff) Regulations, 2009 carefully and thoroughly.

The Commission derives powers to review its own orders from Section 94 (f) of the EA, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009. The Commission under Section 95 of the EA, 2003 has the powers of Civil Court. The Civil Courts derives power to review its own orders from Section 114 and order 47 Rule 1 of the Civil Procedure Code, 1908. It is worthwhile to reproduce provisions of order 47 Rule 1 of the Civil Procedure Code, 1908 which reads as under:-

Quote

"1. Application for review of Judgment:-

1. *Any person considering himself aggrieved-*

- a) *By a decree or order from which an appeal is allowed, but from which no appeal has been preferred;*
- b) *By a decree or order from which no appeal is allowed, or;*
- c) *By a decision on a reference from a Court of Small Causes;*

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

2. *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such is common to the applicant and the appellant, or when, being respondent, he can present to the Appellant Court the case on which he applies for the review."*

Unquote

From reading of provisions of order 47 Rule 1 of the Civil Procedure Code, 1908 it is clear that the petition for review is maintainable on the following three grounds:-

- i. *Discovery of new or important matter or evidence which, after exercise of due diligence was not in the knowledge of the petitioner and could not be produced at the time of passing the decree or order;*
- ii. *Mistake or error apparent on the face of record;*
- iii. *Any other sufficient reason for review of the decree or order.*

Thus it is clear that for review of its order by the Commission, the petitioners have to satisfy the Commission that one or more of the above grounds exist. The petitioners in their pleadings have submitted that the Commission's act of increasing the tariff despite respondent's request for continuing with FY 2013-14 tariff amounts to error apparent on the face of the record. In view of this,

the review petition is maintainable. The representatives for the petitioners, have failed to point out that the petitioners have discovered any new or important matter or evidence which even after due diligence was not in their knowledge and could not be produced at the time of passing the order dated 25.04.2014. The representatives of the petitioners also failed to show that there exists any mistake or error on face of record and there are any other sufficient ground to review the impugned order.

The case of the petitioners is that the Commission has increased tariff of HT-III consumers of ED-Puducherry despite the licensee not asking for hike in the tariff. The Commission observes that the order under review is passed under Sections 62 and 86 (1) (a) of the EA, 2003 after considering all the facts and circumstances. The order under review is well reasoned, speaking and as per the provisions of the EA, 2003 and JERC (Terms and Conditions for determination of Tariff) Regulations, 2009. The Commission while determining tariff is not bound by the pleading of the utility. The Commission under Section 62 (3) of the EA, 2003 while determining tariff is required not to show undue preference to any consumer but can differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose of supply. Thus, while determining tariff the Commission, after considering facts of the case, has powers to take independent view which may be at variance with the view of the petitioner.

The Commission arrived at a revenue gap of Rs. 32.53 Crs for FY 2014-15 in their tariff order for FY 2014-15 issued on 25.04.2014. This gap was arrived at considering tariff level of FY 2013-14 and without considering the impact of surcharge. The Commission also observed that the surcharge of 10% approved in the tariff order for FY 2013-14 dated 10.04.2013 was towards liquidation of the Regulatory Asset created upto FY 2012-13. The Commission noted the Hon'ble APTEL in Judgment dated 11.11.2011 in OP No. 1/2011 directed as follows:-

Quote

"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".

Unquote

Accordingly the Commission while issuing the tariff order dated 10.04.2013 approved surcharge to be levied to all consumers over and above tariff rates on fixed and energy charges (excluding taxes etc.). Thus, the additional surcharge is to take care of the Regulatory Asset created in the earlier tariff order dated 12.06.2012 and it is not towards the revenue gap arising during the tariff year 2014-15.

The Commission also took note of the principles laid down in the tariff policy issued by the Govt. of India dated 06.01.2006.

Quote

"For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-11 tariffs are within \pm 20% of the average cost of supply".

Unquote

While determining the tariff for FY 2014-15, the Commission is guided by the Judgment of Hon'ble APTEL dated 11.11.2011 in OP No. 1/2011 and the tariff policy pronounced by the Govt. of India as above. The Commission approved a revenue gap of Rs. 42.62 Crs. for FY 2013-14 at the time of review of FY 2013-14 and a revenue gap of Rs. 32.53 Crs. projected for FY 2014-15 considering the same tariff as in 2013-14. This is in addition to the earlier carried forward balance of Regulatory Asset of

Rs. 103.01 Crs. In order to bridge the revenue gap and to avoid any additional burden to the consumers, the Commission has considered an average tariff hike of 3.82% resulting in additional revenue recovery of Rs. 41.73 Crs. The Commission ultimately arrived at a cumulative revenue gap of Rs. 136.42 Crs. (inclusive of the regulatory assets earlier created) after considering the additional revenue recovery of Rs. 41.73 Crs. While determining the tariff of individual category of consumers, the Commission took care to the extent possible to reduce the cross subsidy limit gradually as laid down by Tariff Policy, Govt. of India. The Commission noted that the Average Cost of Supply as approved by the Commission was Rs. 4.50 ps/ kWh in FY 2014-15 as against Rs. 4.40 ps/kWh in FY 2013-14. The Commission observed that though the fixed charges were increased during FY 2014-15 for HT-III consumers, the average Tariff Rs. 5.37 ps./ per kWh is still less than the average tariff of Rs. 5.40 ps/ per kWh for HT-I consumers. The contention of the petitioners that the increase is only in the HT-III category of consumer is not correct. The average tariff as a percentage of average cost of supply has increased marginally for all groups of HT consumers namely for HT-I it has increased from 119% in FY 2013-14 to 120% in FY 2014-15, in case of HT-II consumers has increased from 120% to 123% and in case of HT-III has increased from 115% to 119%. The Commission noted that while fixing the tariff, the overall impact of tariff revision is to be considered and not the individual components of fixed charges and energy charges. The Commission also rationalized the tariff in case of all categories of consumers keeping in mind the tariff policy principles on cross subsidization. As a percentage of average cost of supply also, HT-III average tariff (119%) compares favorably with that of HT-I average tariff (120%).

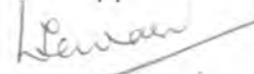
In the light of above discussion and observations, the petitioners have failed to make out a case for review on the grounds provided under Section 94 (f) of the EA, 2003 and order 47 Rule 1 of CPC, 1908. The petitioners also failed to show that the Commission cannot increase or decrease tariff without asking for by the utility. The petitioners also failed to show that there is no hike of tariff of any other category of consumers whereas as detailed above, there is a hike for all the three HT categories of consumers of ED-Puducherry. Whereas even after hike of tariff in the impugned order HT-III category consumers pay 119%, HT-I pay 120% and HT-II pay 123% of ACoS. In this way HT-III consumers pay lowest ACoS of the three HT consumers.

Thus there is no merit in the review petition. The same fails and is hereby dismissed.

Dated 27.08.2014

Sd/-
(S.K.Chaturvedi)
Chairperson

Certified Copy



(Keerti Tewari)
Secretary

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सचिव/Secretary
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