

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

Quorum \*

Shri S.K.Chaturvedi, Chairperson

**Petition No. 96/2013**

**Date of Order 28.10.2014**

**In the matter of**

Petition for ARR and Tariff Determination for FY 2013-14, Review for FY 2012-13, Provisional True-up for FY 2011-12 and True-up for FY 2009-10 & 2010-11 of ED- Puducherry.

**And**

Electricity Department, UT of Puducherry

.....Petitioner/ Respondent

**Versus**

1. Snam Alloys Pvt. Ltd.
2. Chemfab Alkalis Ltd.
3. Pulkit Metals Pvt. Ltd.
4. Meenakshi Steels
5. AKS Alloys Pvt. Ltd.
6. Kannappan Iron and Steel Co. Pvt. Ltd.
7. National Oxygen Ltd.
8. Sumangala Steels Pvt. Ltd.
9. Inox Air Products Ltd.
10. AML Steel Ltd.
11. JBA Steels Pvt. Ltd.

.....Respondents/ Appellants

**Present for Petitioner**

1. Sh. D. Ravi, Superintending Engineer, ED- Puducherry.

**Present for Respondents**

1. Sh. Shridhar Prabhu, Advocate for R-1, R-2 and R-9.

**Order**

The Electricity Department – Puducherry- Licensee herein petitioner filed petition no. 96/2013 for approval of ARR and determination of tariff for FY 2013-14, review for FY 2012-13, provisional true – up for FY 2011-12 and true – up for FY 2009-10 & 2010-11 before this Commission.

The Commission after hearing all stakeholders as per Section 86 (1) (a) of Electricity Act, 2003, JERC (Conduct of Business) Regulations, 2009 and JERC (Terms and Conditions for Determination of Tariff) Regulations, 2009 approved ARR and determined tariff for FY 2013-14, review for FY 2012-13, provisional true – up for FY 2011-12 and true – up for FY 2009-10 & 2010-11 vide order dated 10.04.2013.

Snam Alloys Pvt. Ltd & Ors. herein respondents filed Appeal No. 111/2013 titled Snam Alloys Pvt. Ltd & Ors. Vs. JERC & Anr before Hon'ble APTEL against the order dated 10.04.2013 passed by the Commission in petition no. 96/2013.

The Hon'ble APTEL vide Judgment dated 22.08.2014 partly allowed and partly dismissed the Appeal No. 111/2013. The Summary of findings of the Hon'ble APTEL given in para no. 38 of the Judgment are as under:-

## Quote

### ***"i) Violation of principles of natural justice and transparency:***

*The Joint Commission has followed the procedure as laid down under Section 64 of the Electricity Act before passing the impugned tariff order. The data and information sought by the Joint Commission from the Distribution Licensee after the public hearing was in the process of prudence check for which no further public notice was necessary. Findings of this Tribunal in judgment dated 09.04.2013 in Appeal no. 257 of 2012 will apply in the present case. However, as decided in the judgment dated 09.04.2013, the Joint Commission may consider to review and amend its Regulations so as to have a provision of putting the information furnished by the licensee or the generating company to the Joint Commission subsequent to the filing of the Petition which has been made public or after the public hearing is over, as the case may be, on its Website.*

### ***ii) Non-consideration of net impact of UI in the ARR:***

*We do not feel that the procedure adopted by the Joint Commission in the matter is perverse or illegal. UI mechanism is not meant for sale of surplus power. The present Regulations of the Central Commission also do not permit UI beyond the specified quantum in the interest of grid security. Therefore, we do not find any reason to interfere in the matter. However, we feel that in future the Joint Commission should take into account the anticipated availability from all the approved sources with which power procurement has been tied up by the Electricity Department also consider the fixed and variable charges in the Power Purchase Cost and work out the surplus energy available for sale outside the Union Territory of Puducherry and the likely rate and the revenue it is expected to fetch in the market keeping in view the short term market data available in public domain to have more realistic assessment of the ARR and to avoid any controversy. The Joint Commission is also directed to true up the Power Purchase Cost and revenue from sale of surplus power by the Electricity Department in the true up for the FY 2013-14.*

### ***iii) Consideration of grant-in-aid by the Central Government:***

*We are of the view that the Joint Commission has simply allowed the amount of arrears paid by the Electricity Department to TANGEDCO towards Power Purchase Cost for the past period in the ARR without considering the objections raised by the objectors and without giving any valid reasons. We feel that the matter has to be reconsidered by the Joint Commission in light of the relevant documents and the submissions made by the parties. We, therefore, remand the matter to the Joint Commission to consider all facts and the submissions made by the Appellants on this issue and to pass the reasoned order without being influenced by its earlier finding after hearing all the parties. We want to make it clear that we are not giving any opinion on the merits of the issue as we feel that the matter has to be re-examined by the Joint Commission.*

### ***iv) Retrospective application of the Tariff order:***

*In the present case the proceedings for determination tariff for FY 2013-14 commenced during the previous year, The public hearing was also completed in March 2014. The billing for the month of April 2014 will be raised only during May 2014. We feel that the findings of this Tribunal in Appeal no. 179 of 2012 will apply to the present case. Accordingly, we do not find any reason to interfere with the finding."*

#### Unquote

The Commission in the light of above observations, findings and directions of the Hon'ble APTEL restored the Petition no. 96/2013 on 26.08.2014 and sent hearing notices to the parties. The Commission received written submission from the petitioner in the form of Affidavit dated 22.09.2014 stating that in the Appeal the respondents raised following four issues:-

- 1) Violation of principal of natural justice and transparency.
- 2) Not accounting for the net impact of UI sales made outside the territory by the Electricity Department in the ARR.
- 3) Retrospective effect of the tariff order.
- 4) Not accounting for grant-in-aid received by the Electricity Department and recovering the expenses covered by the grant-in-aid in tariff.

The Hon'ble APTEL decided first three issues against the respondents and decided the fourth issue in favour of the respondents against the petitioner with directions to the Commission to re-examine the issue and decide on merits without being influenced by earlier findings of the Commission. The petitioner stated that in the case of UT – Puducherry, no share in central taxes has been provided as per the recommendations of Central Finance Commission. In order to provide some relief, the Government of India while deciding the total fund allocation for Puducherry would provide certain amount as grant under the head "Non-Plan". The grant sanctioned by the Government of India at BE stage of FY 2012-13 was Rs. 513.00 Crs. under Non-Plan. The Judgment of Hon'ble Madras High Court to pay an amount of Rs. 143.58 Crs. was issued in the month of September, 2012. Hence, there was no possibility for inclusion of this amount at BE stage itself.

The letter dated 29.10.2012 issued by the Under Secretary to Govt. of India, Ministry of Home Affairs addressed to the Principal Accounts Officer, Ministry of Home Affairs mentioned that the sanction of the President has been conveyed for the Payment of Rs. 150.00 Crs. as Non-Plan grant to the Govt. of Puducherry for making payment to TANGEDCO under Grant No. 56-Transfers to UT Governments during the financial year 2012-13 giving the impression at first sight that this was a special grant-in-aid sanctioned to the Government of Puducherry to meet the additional financial liability. However the letter dated 17<sup>th</sup> January, 2013 from Under Secretary (UTL) addressed to Principal Secretary Finance, Govt. of Puducherry shows that the Grant under Non-Plan for Puducherry was Rs. 513.00 Crs. both at the BE as well as RE stages of FY 2012-13. This clearly shows that no additional Grant-in-aid or special Grant-in-aid was given to Puducherry for payment to TANGEDCO. Despite taking up the matter for inclusion in the second batch of Supplementary Demand for Grants, the same was turned down by the Ministry of Finance, as informed by the Ministry of Home Affairs vide letter dated 19<sup>th</sup> February, 2013.

The petitioner further submitted that the Hon'ble Chief Minister of Puducherry had written to the Hon'ble Home Minister on 26.02.2013 regarding the above issue and requested the Central Government to treat Rs. 150 Crs. released for settlement of TANGEDCO dues as an Additional Central Assistance or to provide funds by way of re-appropriation within the MHA Grants at the fag end of financial year 2012-13 due to acute financial crunch faced by UT- Puducherry. This issue was again addressed to Under Secretary to Govt. of India, Ministry of Home Affairs by the Budget officer of Govt. of Puducherry on 13.03.2013 pressing for Additional Central Assistance. But despite repeated and continuous efforts made by the Puducherry U.T. Administration, the Central Government has not agreed to grant additional central assistance for the payment made to TANGEDCO till date.

The petitioner further submitted that the amount of Rs. 143.58 Crs. is part of the regular expenditure of the Electricity Department, the inclusion of the same under expenditure in the ARR petition for 2013-14 is as per the Tariff Regulations of the Commission. The matter was also taken up by the Chief Secretary of Govt. of Puducherry with the Commission on 15.03.2013 explaining the austere financial condition and requesting the Commission to include Rs. 143.58 Crs. in the ARR for FY 2013-14.

The respondents were supplied with copies of the written submissions of the petitioner and the respondents no. 1, 2 and 9 only filed their written submissions through their counsel stating that the petitioner has never disputed receipt of the grant and once it is evolved that the grants have to be duly reckoned and accounted for, the question whether the petitioner received the amount as special grant, additional grant, routine grant etc. is of no consequence to determine the legal/regulatory treatment in the present proceedings.

The Commission held hearings on 26.09.2014 and 28.10.2014 at the Headquarters of the Commission. The Commission heard Sh. D. Ravi, Superintending Engineer-III, Representative for the petitioner and Sh. Shridhar Prabhu, Advocate for the respondents no. 1, 2 and 9 at length and has gone through the petition, objections, written submissions and documents filed by the parties carefully and thoroughly.

The Commission in para no. 7.5 at page no. 105 of the order dated 10.04.2013 in petition no. 96/2013 while dealing with this issue in tariff order pertaining to Provisional True-Up of ARR for FY 2011-12 observed as under:-

**Quote**

*"The Commission has allowed the additional amount of 117.8 Crs. to TANGEDCO in lieu of the increase in tariff to Rs. 3.10/kWh for years 2009-10, 2010-11 and 2011-12 pursuant to the interim order of the Madras High Court. Accordingly, the Commission has allowed Rs. 89.3 Crs. on account of revision invoices, debits and credit notes received from power Suppliers (i.e. Power Generating, Transmission & Wheeling companies) in the financial year 2011-12 which include charges/ credit pertaining to power purchase by the EDP in 2011-12 as well as in prior financial years. It is however seen from the petition that the arrears of Rs. 117.8 Crs. pertaining to FY 2011-12 were actually paid in FY 2012-13. Hence, the Commission has decided to consider the expense of Rs. 117.8 Crs. in FY 2012-13 for the purpose of calculation of carrying cost, when the same is considered."*

**Unquote**

It is noticed that the total claim was Rs. 143.58 Crs. as arrears from 2009-10 to August, 2012, out of which Rs. 117.82 Crs. pertained to the period from 2009-10 to 2011-12.

Aggrieved by above and other observations and findings of this Commission, the respondents filed Appeal No. 111/2013 before the Hon'ble APTEL. The Hon'ble APTEL in para no. 38 (iii) of the judgment dated 22.08.2014 in Appeal No. 111/2013 observed that the Commission has simply allowed the amount paid to TANGEDCO towards power purchase cost for the past period without giving valid reasons and remanded the petition with direction to this Commission to decide this issue afresh after hearing the parties and re-examination of the matter.

The petitioner, ED- Puducherry has submitted written submissions along with copies of the following documents:

- i. Sanction order from Ministry of Home Affairs, Govt. of India dated 29.10.2012- Annexure-I.
- ii. Letter from under Secretary (UTL) addressed to Principal Secretary (Finance & Planning), Govt. of Puducherry dated 17.01.2013- Annexure-II.

- iii. Letter from under Secretary (UTL) addressed to Budget Officer, Govt. of Puducherry dated 19.02.2013-Annexure-III.
- iv. Letter from Hon'ble Chief Minister of Puducherry addressed to the Hon'ble Home Minister, Govt. of India dated 26.02.2013- Annexure-IV.
- v. Letter from Budget Officer, Govt. of Puducherry addressed to Under Secretary, Ministry of Home Affairs, Govt. of India dated 13.03.2013- Annexure-V.
- vi. Letter from Chief Secretary, Govt. of Puducherry addressed to Secretary, JERC dated 15.03.2013- Annexure-VI.

The petitioner also submitted following documents on 25.09.2014:

- i. Letter from Budget Officer, Govt. of Puducherry addressed to Under Secretary, Ministry of Home Affairs, Govt. of India dated 18.10.2012- Annexure-VII.
- ii. Letter from Hon'ble Home Minister, Govt. of India addressed to Hon'ble Chief Minister, Govt. of Puducherry dated 11.12.2012- Annexure-VIII.
- iii. Letter from Budget Officer, Govt. of Puducherry addressed to Under Secretary, Ministry of Home Affairs, Govt. of India dated 29.01.2013- Annexure-IX.
- iv. Letter from Budget Officer, Govt. of Puducherry addressed to Under Secretary, Ministry of Home Affairs, Govt. of India dated 07.02.2013- Annexure-X.

The above documents were submitted by the petitioner before first hearing held by the Commission on 26.09.2014.

Subsequently, the petitioner submitted to the Commission as well as the respondents, the letter from Budget Officer addressed to Under Secretary, Ministry of Home Affairs, Govt. of India dated 17.10.2012- Annexure-XI, requesting Govt. of India for the sanction of additional central assistance of Rs. 150.00 Crs., towards the payment of arrears to TANGEDCO based on orders of the Hon'ble Madras High Court.

The representative for the petitioner vehemently argued that from annexures I to XI the petitioner has been able to prove that the petitioner tried their best that the amount of Rs. 143.58 Crs. paid by the petitioner to TANGEDCO in compliance of the orders of the Hon'ble Madras High Court be treated as additional central assistance. But the Govt. of India and Administration UT-Puducherry did not accede to their request and from the G.O. Rt no. 123/ID(P)D/2012 dated 15.11.2012 it is evident that the said amount is a cost for Electricity Department and recoverable in Tariff. The letter dated 29.10.2012 (Annexure-I) nowhere indicates that the amount of Rs. 150.00 Crs. is additional central assistance over & above the central assistance of Rs. 513.00 Crs. Therefore, the Commission rightly included Rs. 143.58 Crs. in the cost of power purchase recoverable as Tariff.

On the other hand while controverting the arguments advanced by the representative for the petitioner learned counsel for the respondents no. 1, 2 and 9 argued that from G.O. Rt no. 123/ID(P)D/2012 dated 15.11.2012 and letter 11.12.2012 (Annexure- VIII) it is crystal clear that the amount of Rs. 150.00 Crs. received by the petitioner was central aid towards payment to TANGEDCO as per the orders of the Hon'ble Madras High Court, therefore, the same cannot be treated as power purchase cost and cannot be recovered as Tariff.

The Commission after having heard the representative for the petitioner and counsel for the respondents, going through the petition, objections, suggestions, written submissions, documents relied upon by both sides and giving thoughtful consideration to rival submissions made by both the parties as well as after going through the observations and findings of the Hon'ble APTEL in para no. 38 (iii) of the Judgment dated 22.08.2014 at the very outset is of the considered opinion that the arguments advanced

by the representative of the petitioner are forceful and tenable. Whereas the arguments raised and submissions made by the learned counsel for respondents no. 1, 2 and are devoid of any merits. The opinion of the Commission is supported by following reasoning:-

The petitioner has relied upon documents annexures I to XI. The respondent has relied upon G.O. Rt no. 123/ID(P)D/2012 dated 15.11.2012 and letter 11.12.2012 (Annexure- VIII). From reading of the letters dated 11.12.2012 (Annexure- VIII) and dated 29.10.2012 (Annexure-I) it is seen that the sanction of the President has been conveyed for the payment of Rs. 150.00 Crs. as Non-Plan grant to the Govt. of Puducherry for making payment to TANGEDCO under Grant No. 56-Transfers to UT Governments during the financial year 2012-13 giving the impression at first instant that this is a special grant-in-aid sanctioned to the Government of Puducherry to meet the additional financial liability.

Admittedly the petitioner has paid an amount of Rs. 143.58 Crs. in November, 2012 for the bill raised by TANGEDCO out of the funds/ central assistance released by the Govt. of India. The Commission while dealing the main approval of ARR and determination of tariff petition found that the payment of arrears to TANGEDCO as ordered by the Hon'ble Madras High Court arose due to the tariff revision by Central Electricity Regulatory Commission (CERC) in the relevant tariff block. As such, as in the case of other generating stations, the payment of arrears formed part of power purchase cost of ED-Puducherry in the relevant tariff period.

From the other documents relied upon by the petitioner annexures I to VII and IX to XI it is clear that letter dated 17<sup>th</sup> January, 2013 (Annexure -II) from Under Secretary (UTL) addressed to Principal Secretary Finance, Govt. of Puducherry shows that the Grant under Non-Plan for Puducherry is Rs. 513.00 Crs. both at the BE as well as RE stages of FY 2012-13. This clearly shows that no additional Grant-in-aid or special Grant-in-aid was given to Puducherry for payment to TANGEDCO. Despite taking up the matter for inclusion in the second batch of Supplementary Demand for Grants, the same was turned down by the Ministry of Finance, as informed by the Ministry of Home Affairs vide letter dated 19<sup>th</sup> February, 2013 (Annexure-III). The Hon'ble Chief Minister of Puducherry wrote to the Hon'ble Home Minister on 26.02.2013 (Annexure -IV) regarding the above issue and requested the Central Government to treat Rs. 150 Crs. released for settlement of TANGEDCO dues as an Additional Central Assistance or to provide funds by way of re-appropriation within the MHA Grants at the fag end of financial year 2012-13 due to acute financial crunch faced by UT- Puducherry. This issue was again taken up with Under Secretary to Govt. of India, Ministry of Home Affairs by the Budget officer of Govt. of Puducherry vide letter dated 13.03.2013 (Annexure -V) pressing for Additional Central Assistance. But despite repeated and continuous efforts made by the Puducherry U.T. Administration, the Central Government has not agreed to grant additional central assistance for the payment made to TANGEDCO. The matter was also taken up by the Chief Secretary of Govt. of Puducherry with the Commission vide letter dated 15.03.2013 (Annexure -VI) explaining the financial condition of UT- Puducherry and requesting the Commission to include Rs. 143.58 Crs. in the ARR for FY 2013-14.

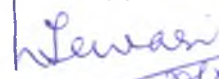
The Commission is further of the opinion that Non-Plan Budget Provision for Govt. of Puducherry was Rs. 585.00 Crs. out of which the Grant element was Rs. 513.00 Crs. both in BE 2012-13 and RE 2012-13 as per letter dated 17.01.2013 (Annexure- II) and the release of Grant of Rs. 150.00 Crs. was considered as part of normal Non-Plan Grant of Rs. 513.00 Crs. Though the Govt. of Puducherry requested to increase the Central Assistance from Rs. 585.00 Crs. to 1334.59 Crs. for RE 2012-13 including arrears payments of Rs. 150.00 Crs. (para no. 7 of Annexure -XI), it is evident from Annexures -II & III that the request was not acceded to by the Govt. of India.

In the light of above observations and findings the Commission is of the considered opinion that the sanction of Govt. of India of Rs. 150.00 Crs. for payment of Rs. 143.58 Crs. to TANGEDCO by the petitioner is not over & above Non-Plan Grant of Rs. 513.00 Crs. and is also not additional central assistance. Thereby the arrears payment is part of the power purchase cost of ED-Puducherry and the inclusion of the same under expenditure in the ARR is as per the Tariff Regulations of the Commission. So, the petition stands disposed off accordingly.

Sd/-  
(S.K.Chaturvedi)  
Chairman  
**Member (Vacant)**

- \* As per Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 "Quorum is two". Whereas as per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 if Chairperson or the Member is prevented from attending hearing of which he has been given notice the Member or the Chairman as the case may be attending the meeting shall validly constitute the Quorum. Post of the Member is vacant. According to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Chairperson only constitute a valid Quorum.

Certified Copy

  
(Keerti Tewari) 20/12/14  
Secretary

**Keerti Tewari**  
Secretary  
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