

JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION

Case No. 06 of 2006-07

CORAM

Shri S.K.F Kujur, Chairman
Shri P.C Verma, Member (Tech)
Smt. Shakuntala Sinha, Member (Legal)

IN THE MATTER OF:

An application for order/direction for billing of Power on Generation Tariff and wheeling charges as determined by Central Electricity Regulatory Commission.

AND

IN THE MATTER OF:

Jharkhand State Electricity Board	Petitioner
	Versus	
Damodar Valley Corporation, Kolkata	Respondents

For the petitioner :	(1) Shri Rajesh Shankar, Advocate
	(2) Shri A.K.Mishra, Nodal Officer
	(3) Shri A Banerjee
	(4) Shri B.Choudhary.
For the respondent:	(1) Shri M.G.Ramachandran, Sr. Advocate
	(2) Shri M.S.Mittal
	(3) Shri S.Choudhary
	(4) Shri C.S. Singh
	(5) Shri K. Ranjan, Advocate
	(6) Shri S.K. Pal
	(7) Shri S.N. Gupta
	(8) Shri K.K.Singh

For the Commission (1) Shri Sudarshan Shrivastava, Advocate

Order

(15.03.2007)

1. The Jharkhand State Electricity Board had filed a petition for issuance of order/direction upon the

- respondent DVC for billing of power on Generation Tariff and wheeling charges (as determine by CREC). The hearing was held on 12.12.2006 in which a petition on behalf of respondent was filed stating therein that the respondent DVC had filed an appeal before the Appellate Tribunal for Electricity against the order passed by CERC on 03.10.2006 fixing the generation and transmission charges for DVC and the Hon'ble Tribunal had issued notice to the respondents and the matter was fixed for hearing on 22.01.2007. The case was fixed for further hearing on 22.01.2007. Another petition was filed on behalf of DVC on 22.01.2007 stating that matter was due to be heard by the Hon'ble Tribunal on 26.02.2007, hence this hearing be adjourned till disposal of the Appeal by the Hon'ble Tribunal on 26.02.2006, Commission fixed 15.02.2007 for further hearing.
2. The case was again heard on 15.02.2007, in which the learned Counsel for the respondent DVC requested that they were aggrieved by the order of the CERC dated 03.10.2006 and had filed an appeal before the Hon'ble Tribunal for which the hearing was fixed on 26th February 2007 and hence the case be adjourned. But the question put to the learned Counsel for DVC as to how the tariff fixed by DVC itself be acted upon when the tariff has been fixed by CERC as per the provisions of the Electricity Act 2003 and which has not been stayed by the Hon'ble Tribunal. The respondent DVC submitted that the case be adjourned to any date after 26.02.2007 till then the DVC will not raise any bill against JSEB. The learned Counsel of the applicant raised a question as to how DVC could raise the bill on the basis of the earlier tariff when the CERC has passed the tariff order on 0.3.10.2006. This hearing was adjourned with a direction, as agreed by DVC, that DVC will not raise the bill till then. The case was fixed to be further heard on 02.03.07 and the respondent promised to bring in a clear order from the Hon'ble Tribunal by that date.
 3. The case was again taken up on 2nd of March 2007. Shri M.G. Ramachandran, Senior Advocate, Shri M.S. Mittal, Shri S. Choudhary, Shri C.S. Singh, Shri K.Ranjan, Advocate along with Shri S.K. Pal, Shri S.N. Gupta and Shri K.K.Singh appeared on behalf of the DVC. The applicants were represented by Shri Rajesh Shankar, Advocate, Shri A.K.Mishra, Nodal Officer, Shri A.Banerjee and Shri B.Choudhary. The learned Counsel for respondent DVC put forward the argument that this case does not fall within the jurisdiction of the State Regulatory Commission. He pointed out that as per Section 79(1) (a) of the Electricity Act 2003 the Tariff of the generating companies owned and controlled by the Central Government is to be regulated by the CERC. He also pointed that since the tariff in the present case was fixed by the CERC, as per Section 79 (1) (f) of the Electricity Act 2003 the CERC can only adjudicate the dispute. The Commission wanted him to clarify whether Section 86(1) (f) of the Electricity Act 2003 is not attracted as it is the function of the State Commission to adjudicate upon the disputes between the licensees and the generating companies? The Commission also wanted to know as to how the generating companies can operate the tariff which was fixed by themselves when the tariff has now been determined and notified by the CERC and the Hon'ble Tribunal has not stayed the operation of the said order.
 4. The order dated 26.02.2007 of the Hon'ble Tribunal has been produced. The matter was listed for further hearing on 14.03.2007. The Hon'ble Tribunal has ordered as such "In the mean time Jharkhand State Electricity Regulatory Commission and West Bengal Electricity Regulatory Commission can proceed

with the matter but the final order shall not be passed till the disposal of the appeal”.

5. The learned Counsel of the respondent Shri Ramachandran was of the view that this order of the Appellate Tribunal dated 26.02.07 meant a stay on the tariff order of the CERC and according to him since the CERC order was stayed, DVC was to charge the tariff what they had fixed and adjustment will be made once the Hon'ble Tribunal gives the final order. The learned Counsel of the applicant pleaded that the order of the Hon'ble Tribunal dated 26.02.2007 cannot be treated as a stay on the order of the CERC. According to him the Hon'ble Tribunal issued the order after hearing the case presented before the Tribunal by both the respondent and the applicant. In this case the Hon'ble Tribunal has allowed continuing the proceeding before the State Commission and that clearly says that the order of the CERC has not been stayed as was requested by the DVC.
6. Shri Ramachandran, learned counsel of the respondent was of the opinion that the tariff determined by CERC can be enforced by CERC only and not by SERCs. Here we would like to mention that this is not a case of enforcement of the Tariff Order passed by the CERC ; rather this matter is related with the dispute between the generating company and the Licensee.
7. It is clear from the submissions advanced from both the sides that JSEB the Distribution Licensee wants to pay to the DVC for the power supply to it as per the Tariff fixed by the CERC, but the DVC is not ready for that on the ground that it has filed an appeal against the Tariff Order of the CERC in the Appellate Tribunal. The DVC is issuing bills as per their own tariff. We are of the view that this is a clear case of dispute between the DVC and the JSEB and Section 86(1)(f) of the Electricity Act 2003 clearly says that a dispute between the generating company and the Licensee will be adjudicated upon by the S.E.R.C. Therefore, we find that this Commission has got jurisdiction to decide this matter. The learned Counsel Shri Ramachandran has submitted on behalf of the DVC that as the matter is pending before the Appellate Tribunal and the Appellate Tribunal has passed the order as such “In the meantime Jharkhand State Electricity Regulatory Commission can proceed with the matter but the final order shall not be passed till disposal of the appeal”, no final order in this case can be passed by this Commission. On the other hand, the learned Counsel for the JSEB Shri Rajesh has submitted that the operation of the tariff order passed by the CERC has not been stayed by the Hon'ble Appellate Tribunal. The order of the Appellate Tribunal quoted by the learned Counsel for the DVC does not say anything about this particular case. It appears that the part of the order quoted by the learned Counsel for the DVC might be with regard to the distribution tariff of the DVC to be fixed by this Commission and the West Bengal Electricity Regulatory Commission.
8. Admittedly, generation tariff of the DVC has been fixed by the CERC hence the tariff of the DVC fixed by them is not in existence. As the operation of the tariff order of the CERC has not been stayed by the Hon'ble Appellate Tribunal, the DVC should issue bills to the JSEB as per the tariff fixed by the CERC and not as per the tariff fixed by themselves. It is clear from the discussions made above and Section 86 (1)(f) of the Electricity Act 2003 that this Commission has got jurisdiction to adjudicate upon the dispute

which has arisen between the DVC and the JSEB. Even If interpretation of the above quoted part of the order of the Hon'ble Appellate Tribunal as submitted by the learned Counsel for the DVC is taken as correct, that does not say that interim order cannot be passed by this Commission. Therefore, keeping in view the points advanced from both the sides and Section 86(1) (f) of the Electricity Act 2003, the DVC is directed to raise further bills and to raise the bills with effect from 01.04.2006 for the power supply to the JSEB as per the generation tariff fixed by the CERC of course subject to the adjustment of the bills when the final order of the Appellate Tribunal comes.

Sd/- Shakuntala Sinha.
Member (Legal)

Sd/- P.C. Verma.
Member (Tech.)

Sd/- S.K.F. Kujur.
Chairman.

Certified to be true copy.

Secretary,
J.S.E.R.C., Ranchi.