

JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
Case No.13 of 2006-07

CORAM
Shri P.C.Verma, Member (Tech)
Smt. Shakuntala Sinha, Member (Legal)

IN THE MATTER OF:

A petition for setting aside the letter No. 3497 dated 18.01.2006 issued by Chief Engineer (Comml.) DVC (respondent No.2) communicating that the rate of Fuel Cost Surcharge from April 2006 to September 2006 has been calculated and final rate has been arrived at paise 85.74 per unit and provisional claim from October 2006 would be at the rate of 87.74 paise per unit including the ad-hoc amount of 2 paise per unit.

AND

IN THE MATTER OF:

M/s Atibir Hi-Tech (P) Ltd, Giridh Petitioner
Vrs.
Damodar Valley Corporation, Kolkata Respondents

For the petitioner:

1. Shri N.K.Pasari, Advocate
2. Smt. Sheela Prasad, Advocate

For the respondents:

1. Shri S.B. Gadodia, Senior Advocate
2. Shri S.Choudhary, Adovcate
3. Shri B.N.Prasad
4. Shri R.Goswami
5. Shri P.R.Bhagat

For the Commission (1) Shri Sudarshan Shrivastava, Advocate

Order

	16.04.2007	1. Atibir Hi-Tech (P) Ltd., Gridih have filed a petition for setting aside the letter No. 3497 dated 18.01.2007 issued by Chief Engineer (coml.) DVC (respondents No.2) communicating that the rate of Fuel Cost Surcharge from April 2006 to September 2006 has been calculated and final rate has been arrived at paise 85.74 per unit and provisional claim from October 2006 would be at paise 87.74 per unit including the ad-hoc amount of 2 paise per unit and that accordingly a demand of Rs 70,59,679.00 has been raised being the difference of the actual amount billed for nine	
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months ending December'2006 for payment by the petitioner. The hearing was held on 02.03.2007 in which Smt. Sheela Prasad appeared on behalf of the petitioner and Shri M.S. Mittal, Shri S. Choudhry, Shri C.S. Singh, Shri K. Ranjan, Advocates along with Shri B.N.Prasad , Shri R.Goswami, Shri P.R. Bhagat officials of DVC appeared on behalf of the DVC. The case was fixed for further hearing on 15.03.2007.

2. In the mean time the Petition was filed by the petitioner on 06.03.2007 for grant of interim protection to the petitioner till next date of hearing. This petition was also fixed for hearing on the next date of hearing in the matter already fixed i.e. on 15.03.2007.

3. The case was heard on 15.03.2007 in which Shri N.K.Pasari, Advocate and Smt. Sheela Prasad, Advocate appeared from the side of petitioner Atibir Hi-Tech (P) Ltd., Gridih and Shri S.B. Gadodia Senior Advocate appeared from the side of DVC. Mr. M.S. Mittal, Advocate, also appeared and submitted that he is not appearing in the case from the side of DVC and so his name may be deleted from the cause title of the case. Smt. Sheela Prasad, Learned Advocate, for the petitioner contended that DVC is not filling Distribution Tariff petition in the Commission for approval and on the other hand is going on enhancing Fuel Cost Surcharge without maintaining transparency. He further submitted that therefore Chief Engineer (Comm1) DVC Letter No 3497 dated 18.01.2007 communicating the petitioner that the rate of Fuel Cost Surcharge from April 2006 to September 2006 has been calculated and final rate has been arrived at paise 85.74 per unit and the provisional claim from October 2006 would be at paise 87.74 per unit including ad-hoc amount of 2 paise per unit and has

accordingly raised demand of Rs. 70,59,679.00 for payment by the petitioner, being the difference of the actual amount billed for nine months ending December 2006 should be set aside. He further argued that DVC cannot raise any bill enhancing Fuel Cost Surcharge without getting the same approved by the Commission. The Learned Counsel for the respondents DVC, Mr. Gadodia, submitted that today he is not ready to argue the case because reply has not been submitted from the side of DVC and requested that one short adjournment may be granted. He agreed that in the meantime no coercive step for non payment of impugned amount will be taken from the side of DVC. In view of the submission by the respondents the case was adjourned and fixed for hearing on 28.03.2007.

4. The case was again taken up on 28.03.2007. Shri N.K.Pasari, Advocate, Smt. Sheela Prasad and Shri N.K. Pasari, Advocate appeared on behalf of the petitioner. Shri S. Choudhry and Chandra Shekhar Singh, Advocate's appeared on behalf of the respondents and filed reply. Shri P.R. Bhagat, Shri B.N. Prasad and Shri Ajay officials of DVC also appeared on behalf of the respondents. Learned Counsel for the petitioner, Smt. Sheela Prasad, submitted that a copy of the reply filed by the respondents DVC has been served to him today only and therefore he requested for short adjournment to prepare himself for the argument in the case. The Counsel for the respondents did not raise any objection to the prayer for adjournment and so the case was adjourned and next date of hearing was fixed on 02.04.2007 with the observation that in the meantime, as agreed, the interim order for not taking any coercive step by DVC against petitioner

for the non payment of the impugned amount will continue.

5. The case was taken up again for hearing on 02.04.2007 Shri. N.K.Pasari, Advocate and Smt. Sheela Prasad, Advocate appeared on behalf of the petitioner and Shri. S.B. Gadodia, Senior Advocate and S.Choudhary, Advocate appeared on behalf of the respondents. Shri Gadodia submitted on behalf of the respondents that the calculation of the Fuel Cost Surcharge is part of the Tariff of Generation in respect of which only the Central Commission has jurisdiction and that the State Commission has no competency or jurisdiction in respect of or relating to the matter of Fuel Cost Surcharge. He contended that the State Commission has jurisdiction in respect of determination of Distribution Tariff only for which a petition has already been filed by the DVC. He further argued that increase of Fuel Cost Surcharge made by the DVC is reasonable as it has been done on the basis of actual increase in the Cost of Fuel and other consumable used in the generation of electricity and as because even after increasing the Fuel Cost Surcharge DVC is charging less to the consumers than that charged by JSEB another Licensee. He further argued that the respondent DVC and petitioner consumer have entered into an agreement for supply of electricity which is binding on both of the parties and according to which the petitioner should go for arbitration in case of any dispute instead of coming to the Commission. Smt. Sheela Prasad, Learned Counsel of the petitioner argued that Fuel Cost Surcharge is a part of Distribution Tariff of the DVC and so far Distribution Tariff is concerned the same is to be determined by the State Regulatory Commission only. He further argued that there is no dispute or difference

between the DVC and the consumer petitioner in regard to any bill and therefore there is no question of going for arbitration and that the dispute is rather in respect of the power of DVC to increase rate of Fuel Cost Surcharge without getting the same approved by the Commission and without getting Distribution Tariff fixed by the Commission. He contended that therefore the increase in Fuel Cost Surcharge of paise 21.93 from April'2006 to September 2006 and further ad-hoc increase of 2 paise from October'2006 onwards levied by DVC as communicated by Chief Engineer (Comml.) DVC letter No. 3497 dated 18.01.2007 is without authority, having not been approved by the Commission. He further argued that the petitioner has entered into an agreement for power supply with DVC only on 28.08.1998 whereas the law has changed w.e.f. June, 2003 after the enactment of Electricity Act, 2003. He argued that the terms and conditions of the agreement which are not in consonance with the new Act have to be treated to be void.

6. In sum and substance, respondents DVC through their arguments and submission in the written reply, has contended that the calculation of Fuel Cost Surcharge is a part of the Tariff of Generation in respect of which only Central Commission has jurisdiction and that therefore State Commission has no competence and/or jurisdiction in respect of or relating to the matter of Fuel Cost Surcharge and that the State Commission has jurisdiction with respect to the determination of the Distribution Tariff only. Their further contention is that the respondents DVC has entered into an agreement with the petitioner for the supply of electricity and that the same is binding on both the parties and that they have charged the Fuel Cost Surcharge as communicated vide

the said letter No. 3497 dated 18.01.2007 of the Chief Engineer (Comml.) DVC (respondents No.2) only in accordance with the Tariff schedule and computed as per the formula given in the Tariff appended with the agreement and which is part of the agreement and that as per this agreement petitioner consumer should go for arbitration if they have any dispute after the depositing the demand raised instead of coming to the Commission. The petitioner contention, on the other hand, is that the Fuel Cost Surcharge is part of the Distribution Tariff of the DVC and as far the Distribution Tariff is concerned the same is to be determined by the State Regulatory Commission as per the provisions of the Act and therefore they cannot enhance Fuel Cost Surcharge as communicated vide the said letter No. 3497 dated 18.01.2007 of the Chief Engineer (Comml) DVC which has been charged on computation as per the formula given in the Distribution Tariff of the DVC determined by the DVC itself. The same is not approved by the Commission and that DVC has not got Distribution Tariff determined by the Commission. The petitioner has further contended that the said agreement was entered between the petitioner and Respondents DVC before the enactment of Electricity Act, 2003 for supply of Electricity and therefore terms and conditions of this agreement inconsistent with the provisions of the Electricity Act, 2003 has to be treated to be void.

According to the Act the Tariff for Generation fixed by the appropriate Commission has to be under the provisions of Section 62, 1(a) of the Electricity Act 2003 and accordingly it (Tariff for Generation) has to be for- "Supply of Electricity by generating

company to Distribution Licensee” only as explicitly provided under this section. That is so it is clear beyond any doubt that Tariff for Generation has to be fixed for supply of electricity by a generating company to a Distribution Licensee and not for supply to any consumer. Any Tariff that is charged to the consumer including Fuel Cost Surcharge if any is actually the tariff for retail sale of electricity as provided in Section 62, 1(d) and this is the Tariff for Distribution and supply of electricity which is to be determined by the State Commission only Under Section 86, 1(a) of the Electricity Act.2003. Therefore the contention of the respondents that calculation of Fuel Cost Surcharge is part of Tariff for Generation cannot be accepted. The respondent DVC in fact has charged increased Fuel Cost Surcharge as communicated vide the letter No. 3497 dated 18.01.2007 of the Chief Engineer (Comml.) DVC as per the schedule of their Tariff applicable to the consumer that is their retail Tariff i.e. Distribution Tariff which is also a part of their agreement with the petitioner as admitted by the respondents DVC itself in their counter affidavit and this Tariff has been fixed by the respondents DVC themselves which they have not got approved by the Commission or they have not got their Distribution Tariff determined by the Commission as contended by the petitioner and therefore the prayer of the petitioner is allowed and respondents DVC is disallowed to charge the increase in Fuel Cost Surcharge of paise 21.93 per unit for the period from April 2006 to September 2006 and further ad-hoc increase of 2 paise (i.e. total increase of 23.93 paise) per unit from October 2006 onwards as per the enhanced rate of Fuel Cost Surcharge as communicated vide letter No. 3497 dated 18.01.2007

	of the Chief Engineer (Comml) DVC till determination of the Distribution Tariff of DVC by the Commission.	
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Sd/-Smt. Shakuntal Sinha Member (Legal)	Sd/-P.C.Verma Member (Tech)
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Certified to be true Copy

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

