



ad-hoc increase of 2 paise (i.e total increase of 23.93 paise) per unit from October 2006 onwards. Receiving that letter the petitioners had come to this Commission with a prayer to restrain the DVC from charging fuel cost surcharge at the enhanced rate communicated to them vide its aforesaid letter, without getting the same approved by this Commission because the distribution tariff of any licensee has to be determined by the State Electricity Regulatory Commission and respondent DVC has not got its tariff determined by the Commission. Hearing the parties i.e. the petitioners and the DVC, the Commission had passed order on 16.04.2007 disallowing the respondent DVC from charging the aforesaid increase in fuel cost surcharge till the determination of distribution tariff of the DVC by this Commission. The DVC thereafter discontinued charging fuel cost surcharge at enhanced rate but in the meantime went in appeal against the order dated 16.04.2007 of this Commission. The number of that appeal was 69 of 2007. This Commission received a copy of the order passed by the appellate Tribunal in the aforesaid appeal no.69 of 2007. Concluding portion of the order was as such:- “The learned Counsel for the respondent no.1 states that the State Commission does not have the jurisdiction to determine the fuel surcharge in so far as the appellant is concerned. In view of this statement, the learned Counsel for the appellant states that he does not press the appeal. Accordingly, the appeal is disposed of as not pressed.” After going through the order of the Hon’ble appellate Tribunal, the Commission found that word “generation” was missing in the above quoted order of the Appellate Tribunal for electricity after the word “surcharge.” The Commission decided to file a review petition in the appeal and accordingly review petition was filed. The petition was heard by the Hon’ble Appellate Tribunal for Electricity and the order, adding “generation” after “surcharge for” in the

above quoted portion of the order of the Hon'ble Tribunal has been passed on 28<sup>th</sup> Dec. 2007.

Due to absence of word "generation" in the concluding paragraph of the order of the appellate Tribunal, this Commission felt difficulty in giving any relief to the petitioner without getting the matter cleared after moving before the appellate Tribunal hence no order was passed on these petitions on 25.09.2007 and the cases were fixed for hearing after receipt of the order of the appellate Tribunal on the review petition and accordingly after receiving the order on review petition the cases have been heard today.

The learned counsels on behalf of the petitioners have submitted that after the order of the appellate Tribunal passed in appeal no. 69 of 2007 in which word "generation" was missing, DVC started raising bills adding fuel cost surcharge at enhanced rate without getting the same approved by this Commission, therefore, the petitioners came to this Commission with a prayer to restrain them from charging fuel cost surcharge at enhanced rate which is not in consonance with the order dated 16.04.2007 of this Commission. They have submitted that in the earlier order of the appellate Tribunal also there was no ambiguity because it was in the mind of the DVC that in the said order of the appellate Tribunal, fuel cost surcharge of generation tariff and not of distribution tariff was meant. Here we would like to make it clear that what was in the mind of DVC or any other is immaterial and only the order of the appellate Tribunal was material. It appears that as "generation" was missing in the above quoted portion of the order of the appellate Tribunal the DVC started raising fuel cost surcharge at enhanced rate from its consumers. Now in the order of the appellate Tribunal in I.A. 198/2007 in appeal no. 69/2007 dated 26<sup>th</sup> Dec. 2007, word "generation" has been added

so it becomes clear that the Commission's order dated 16.04.2007 holds good. The Commission had ordered that the increase in fuel cost surcharge, a part of distribution tariff which is realised from the consumers in retail sale, is to be decided by the state Commission and without getting distribution tariff determined by this Commission the DVC could not have realized the same from its consumers.

Accordingly it is ordered that the DVC cannot charge from its consumers the increase in fuel cost surcharge of paise 21.93 per unit for the period from April 2006 to Sep. 2006 and further ad-hoc increase of 2 paise (i.e. total increase of 23.93 paise) per unit from Oct. 2006 onwards as per enhanced rate of fuel cost surcharge communicated vide letter no. 3497 dated 18.01.2007 of the Chief Engineer (Commercial) DVC till determination of the distribution tariff of DVC by this Commission.

If any amount at the enhanced rate of fuel cost surcharge for the aforesaid period has been realized by the DVC from its consumers those have to be either returned or adjusted towards their future bills.

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