

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**WEST BENGAL**

**Petition No. TP(R)-28/18-19**

**Date of hearing: 22<sup>nd</sup> December, 2021**

**Time of hearing: 14.30 hours**

**Quorum:**

**Shri Sutirtha Bhattacharya, Chairperson**

**Shri Durgadas Goswami, Member**

**Shri Pulak Kumar Tewari, Member**

**In the matter of**

**Petition filed by West Bengal State Electricity Distribution Company Limited in pursuance to order dated 18.02.2019 issued by the Appellate Tribunal for Electricity in Appeal No. 215 of 2015 against the tariff order issued by the Commission vide dated 04.03.2015 in case no. TP-61/13-14 for the years 2014 – 2015, 2015 – 2016 and 2016 – 2017 (MYT Tariff) and the tariff for the year 2014 – 2015 under the fourth control period.**

**And**

**In the matter of**

**West Bengal State Electricity Distribution Company Limited  
Vidyut Bhavan  
Block DJ, Sector – II  
Salt Lake City  
Kolkata 700 091**

**..... Petitioner**

**Representatives attended:**

**West Bengal State Electricity Distribution Company Limited (WBSEDCL)  
[Petitioner]**

- 1. Sri Aniket Prasoon, PLA Legal,**
- 2. Smt. Akanksha Tanvi, PLA Legal**

### **CASE IN BRIEF**

1. The West Bengal State Electricity Distribution Company Limited (hereinafter to be referred as 'WBSEDCL' or 'Licensee') has submitted a petition in terms of the judgement order dated 18.2.2019 of the Hon'ble Appellate Tribunal for Electricity (in short 'Tribunal') in Appeal No.215 of 2015, against the order issued by the West Bengal Electricity Regulatory Commission (in short 'Commission') on 04.03.2015 in Case No.TP-61/13-14 determining the Aggregate Revenue Requirement (APR) for all the years under the fourth control period i.e. for the year 2014-15, 2015-16 and 2016-17 and the tariff for the year 2014-15.
2. In their petition WBSEDCL has stated that being aggrieved with the findings of the Commission in the MYT order for fourth control period, they filed an appeal before the Hon'ble Tribunal being Appeal No.215 of 2015 challenging the said order of the Commission.
3. The Hon'ble Tribunal passed an order dated 18.2.2019 and the relevant extract of the said order is appended below:

*"6. In the light of the submissions of the Learned Counsel for the Appellant and the Learned Senior Counsel for the first Respondent, as stated supra, the instant appeal, being No.215 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file necessary petition, in so far it relates to the issues raised in this Appeal only, before the first Respondent within a period of six weeks from the date of the receipt of this order.*

*7. In the event, such petition is filed by the Appellant, the first Respondent is directed to consider the same and pass an appropriate order, as expeditiously as possible, in accordance with law."*

4. In terms of the above order, WBSEDCL has filed the petition before the Commission and the Commission heard WBSEDCL through e-hearing on 6<sup>th</sup> July, 2021 and



directed that WBSEDCL shall submit a written argument giving details of the difficulties arising out of the Tariff Order under the fourth control period, upon receipt of which further direction will be given in the next hearing.

5. Accordingly, the petitioner submitted the written argument on the issues pleaded during the hearing held on 6<sup>th</sup> July, 2021 and upon receipt of the same, the Commission fixed the hearing on 22<sup>nd</sup> December, 2021 at 14.30 hours. The hearing was held as scheduled and the representatives of the petitioner were present.

#### **SUBMISSION DURING HEARING**

6. During the hearing Sri Aniket Prasoon, Ld. Counsel made his submission, inter-alia to the following:

##### **(a) Disallowance of Rates and Taxes:**

The Commission in its review order dated 21.05.2021 for the year 2012 – 2013 and APR order dated 14.07.2021 for the year 2013 – 2014, the Commission has revised the methodology of determining the rates and taxes in sync with the cost allowed in the earlier APR orders. The sensitivity parameters like DLL has not been considered in these cases.

It is submitted that in the case, in question, if the Commission would have undertaken the determination on the basis of the methodology applied in case of the orders dated 21.05.2021 and 14.07.2021 without looking into the sensitivity parameter viz. DLL, the petitioner would have been able to recover the appropriate amount from the consumers, thereby not leading to unnecessary under recovery which in turn impact the operational capability of the petitioner.

Since the rates and taxes are uncontrollable in nature, the Commission should allow the cost of rates and taxes on actual basis.

##### **(b) Methodology for projection of expenditure:**

This issue has already been argued in earlier submission of the petition. The actual expenditure on account of outsourcing and rates and taxes are much higher than the cost projected in the order, in question, based on the formula introduced by the

Commission. The only submission in this respect is that certain sensitivity parameters that have been adopted by the Commission in determination of the order has caused under recovery to the petitioner, which in turn impact the operational capacity of the petitioner.

**(c) Directive regarding the delay in filing of APR and FPPCA petition:**

The delay in filing of any application need to be dealt with by the Commission on a case to case basis after evaluation of the merits in such delay. There may be genuine impediments in filing of a petition on time. Delay in filing APR and FPPCA petition is also caused at times due to delay in issuance of ARR/Tarif order by the Commission. In absence of tariff order for the years 2010 – 2011, 2011 – 2012, 2018 – 2019 and 2019 – 2020 in time, it was not possible for the petitioner to submit its APR petitions in due time. In any event, stipulation of penal provision even on the ground that time extension was sought by the Petitioner, cannot be justified as there is a specific provision i.e., Regulation 2.6. 7 of the WBERC (Terms and Conditions of Tariff) Regulations, 2011, as amended (to be referred as 'MYT Regulations 2011') which limits the power of this Commission to penalize the licensee in case of non-filing of the APR Petition and provides that the Commission may suo-moto undertake the APR exercise of the concerned year.

**(d) Limiting the amount of FPPCA contrary to the provision of regulation 5.8.11 of MYT Regulations, 2011:**

The Commission has limited the claim in FPPCA to the summated value of factors as mentioned in paragraph 8.3 of the MYT. order. While providing such limitation, the Commission has failed to consider regulation 5.8.11 of MYT Regulations, 2011. If the direction of the Commission is allowed to continue then any additional amount which is raised by way of supplementary bill would not be allowed in FPPCA, thereby rendering regulation 5.8.11 a nullity. For the fourth control period the petitioner shall face under recoveries to the tune of Rs. 311.38 crores on account of the said directive of the Commission.



**(e) Limiting the true up of uncontrollable factors contrary to the Tariff Regulations:**

The Commission has directed that truing up of any uncontrollable factor will be considered in the same manner and principle as determined in the Tariff Order in accordance with the sensitivity parameters such as distribution line length/DLL, consumer strength and inflation rate, the applicable ratio and expense increase in percentage on any item and that the sensitivity parameters increase will remain the same as that of the tariff order.

The Commission has limited allowance of uncontrollable expenses to the petitioner contrary to the MYT Regulations, 2011 which categorically provides under regulation 2.5. 5(i) that the expenditure of uncontrollable factors will be passed on through tariff. In fact, the petitioner has suffered under recovery to the tune of Rs. 149.49 lakhs on this uncontrollable expense.

**(f) Inclusion of compensation as controllable factor:**

The Commission has directed that all compensation (viz. loss of obsolete materials, compensation paid to staff / outsiders on injury/death/damage and compensation paid to power traders) will form part of the 'Administrative and General Expenses' except the compensation to consumers and also the Petitioner would not be allowed to seek any such compensation separately.

The amounts of Rs. 593.00 lakh which have been disallowed by the Commission is clear loss with respect to FY 2012-13. Since APR order is not issued, under recovery is not quantified at this point of time. However, it is clear that the under-recovery under this head would be the same amount as that of claim amount if the Commission does not allow the same.

The Commission in the order dated 02.08.2021 has observed that the issues raised under Item C to I of the original submission of WBSEDCL is related to directives and has no impact on ARR or tariff. In this regard, it is respectfully submitted that the aforesaid issued not merely envisages issuance of directive but in fact also entails impact on ARR or tariff as disallowed amounts in form of under-recovery has a direct bearing on ARR or tariff.



**(g) Treatment of complaint management mechanism, collective expenses and lease rental expenses:**

The Commission has directed that the expenses relating to complaint management mechanism, collective expenses and lease rental expenses will be treated as controllable expenses. The constituents of the 'complaint management mechanism' included i) toll free telephone for registering grievances at SCC, ii) SMS charges for forwarding grievance to mobile van, iii) rental charges for VRS system, iv) separate telephone facility at each customer care centre and v) anti-theft toll-free telephone charges. The expenses claimed under the head of 'complaint management mechanism' posits that none of such expenses can be considered controllable in the hands of the licensee as the same depends upon the various charges levied by the telecommunication service providers, which are not under the control of the petitioner.

**(h) Directive to upload drawal schedule and injection schedule in WBSEDCL website:**

The Commission has directed the petitioner to upload the initial drawl schedule and initial injection schedule for the next day by 11 :30 am every day on their website. It is submitted that the petitioner is already providing all the scheduling related data to the West Bengal State Load Dispatch Centre ("WBSLDC") as per the terms of the relevant regulations which is available on SLDC website. Thus, it should not be required to upload such data on its website of WBSEDCL and disclosure of such data will drastically reduce their ability to commercially negotiate with power traders and other distribution companies in case of availability of additional capacity and/or unavailability of requisite capacity. Such disclosure will lead to higher price being charged for short-term procurement of power and lower prices being offered to the Petitioner for additional power thereby increasing the burden on the consumer of the Petitioner.

**(i) Imposition of penalty for non-compliance of renewable purchase obligations:**

The Commission has imposed penalty of 5% from the RoE of Petitioner for non-compliance with its renewable purchase obligation (RPO). RoE of the Petitioner is guaranteed under the MYT Regulations, 2011 and is not subject to compliance of the RPO Regulations. RE Regulations itself provides consequences for non-compliance of the RPO in terms of Regulation 4 of the said Regulations. The consequences of any



non-compliance under the said regulations is limited to the initiation of proceeding under Section 142 of the Electricity Act. Thus, directive issued by the Commission imposing penalty @ 5% from RoE is contrary to the RE Regulations as well as the Electricity Act.

With the above submissions, the petitioner has prayed that the impugned order needs to be reconsidered and consequential order be issued to remove the above difficulties.

### **Observation of the Commission**

7. Upon submission by WBSEDCL, the Commission's observations are as follows:
  - a) As far as the mobile service is concerned, it appears that the petitioner, on a query, could not confirm whether for such engagement they follow any policy. During the preparation of the tariff order, the issue regarding the policy as to the mobile service was raised before the officers of the petitioner who attended the discussions, but the same could not be clarified satisfactorily by them. The Commission opined that there should be laid down principles based on which the mobile service be provided as this component constitutes a handsome amount for determination of tariff and helps the Commission to understand the issue.
  - b) The amount admitted by the Commission on account of Rates and Taxes is based on the documents submitted by the petitioner. However, if proper documents / papers are submitted by the petitioner, the expenses incurred on account of rates and taxes can be considered by the Commission.
  - c) Regarding supplementary bills, it is observed that the same is payable if it is established that the supplementary bills could not be produced in due time for the reasons beyond the control of the petitioner.
  - d) The issue of compensation may be considered on presentation of sufficient documents accompanying with policy for calculation of damage / loss of lives or body-parts of common people.

- e) The issue of non-compliance with RPO, as raised by the petitioner, is required to be looked into.
- f) In fact, the submissions made by the petitioner, may be defined in three categories, i.e., a) introduction of sensitivity parameters, b) directives not in synchronization with the extant Regulations and c) the areas where the sensitivity parameters have impacts.
- g) The petitioner may be given an opportunity to submit their written argument on key issues under the above three categories for consideration and decision of the Commission.

#### **ORDER**

- 8. In view of the above observation, the Commission directs that WBSEDCL shall submit a written argument considering the observation of the Commission under paragraph 7(a) to 7(g) above within 7 days from the date of this order.

Sd/-  
(PULAK KUMAR TEWARI)  
MEMBER

Sd/-  
(DURGADAS GOSWAMI)  
MEMBER

Sd/-  
(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

**DATE: 19.01.2022**

**(SECRETARY)**