

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Shri. C. Balakrishnan Chairman.
Shri. C.Abdulla, Member
Shri. M.P.Aiyappan, Member

March 14, 2007

Petition DP No. 29	Dy.No. 00840 dated 26-07-06	Tata Tea Ltd, Munnar Kerala State Electricity Board, Vaidyuthi Bhavanam, Thiruvananthapuram	Petitioner Respondent
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ORDER

1. Background

The petitioner, viz M/s Tata Tea Ltd ,Munnar was a deemed electricity distribution licensee in Munnar. M/s Tata Tea has in petition dated 26-07-06 stated as follows:

1. The petitioner was a Licensee under Section 14 of the Electricity Act, 2003 for the purpose of distribution of electricity in its licensed area viz. Munnar. The Respondent Kerala State Electricity Board (herein after called 'Board')effected revision in the grid tariff which is the tariff which the Petitioner as a licensee pays the Board for electricity supplied to it for distribution in its licensed area. This revision of grid tariff effected in 2003 by notification dated 9.4.2003 with effect from 1.10.2002 was challenged by the petitioner before the Honourable High Court of Kerala in W.P.(C) No. 15833/03 in which stay was granted on 23.5.2003, which after repeated extensions was further extended 'until further orders' on 25.7.2005. On the basis of this order of stay the Petitioner continued to remit electricity charges at the pre-revised tariff.
2. While so the Petitioner had filed their ARR and ERC for the year 2005-06 bearing No. TP7/05 before this Honourable Commission, which has been disposed by the Order dated 28.6.2005 aforesaid.
3. The above order of the Commission inter-alia deals with the power purchase cost of the Petitioner and in particular in paragraph IV 1 (d) this Honourable Commission has stated as follows:-

“d. Power Purchase Cost: The KSEB has hitherto been allowing a rebate of 5% on the total power purchase cost to Tata Tea Limited on account of the difficult terrain in the Munnar area over which the power supply is made. The Commission has not come across any change in the conditions on the basis of which the rebate has been allowed so far. Further, although KSEB has been availing power at 13 points utilizing the distribution network of TTL, it has not been paying any wheeling charges for the usage of distribution network. KSEB was merely allowing a distribution loss of 4% as compared to the overall distribution loss of about 20% occurring in the distribution network of TTL. The Commission also notes that even after allowing a rebate of 5%, TTL are not in a position to eliminate the revenue gap which works out to more than 5% of the aggregate revenue requirement for 2005-06.

Keeping all the above factors in view, the Commission would direct KSEB to continue to allow a rebate of 5% on the power purchase cost to TTL. However, this is on the condition that TTL would make prompt payment against the bills raised by the KSEB for the electricity charges at the prevailing tariff”.

4. In the meantime the Petitioner and the Respondent Board were already in negotiation with respect to various issues including the payments to be effected. During the course of the negotiation the Respondent Board indicated that the 5% rebate would not be granted since according to them prompt payment was not effected by the Petitioner against bills earlier raised by the Respondent Board on the Petitioner. According to Board, for the period covered by the stay granted by the High Court in the Writ Petition aforesaid the payments effected by the Petitioner under the pre-revised tariff could not be treated as prompt full payments thereby disentitling the Petitioner to the 5% rebate. The petitioner then addressed a letter dated 25.11.2005 to the Respondent Board.
5. The Petitioner received a bill No. HTB 21/1014/05-06 dated 3-5-2006 from the Respondent Board for the period September 1999 to November 2005. In the said bill the 5% rebate has been disallowed for the period from October 2002 to November 2005 including the bill for the month of March 2003 which though was settled in full, Board has disallowed rebate on the bill and charged interest on the outstanding so arising. In addition, there are two instances of incorrect billing. Interest was also charged on the arrears claimed even for the period covered by the stay Order granted by the Honorable High Court of Kerala in the aforesaid Writ Petition No. 15833/2003. The issue being one of a bonafide dispute the question of charging any interest do not arise. In any case no interest could be demanded for the period covered by the stay order of the High Court.

6. The Petitioner then addressed a letter dated 12-5-2006 to the Respondent Board. The petitioner also requested to forthwith refund amounts with respect to which no dispute really could be raised by the Board. Till date no action is forthcoming from the Respondent Board nor has the Respondent Board effected any refund to the petitioner.

The petitioner is therefore constrained to approach this Honourable Commission under Section 86 and other enabling provisions of the Electricity Act, 2003 on the following among other grounds:-

GROUND

- A. The Respondent Board has erred in not taking any further action and affecting the refund as claimed in the Petitioner 's letter of 12th May 2006 read with and / or on the basis of the Petitioners letter of 25th November 2005. The refund due to the Petitioner from the Respondent is Rs. 33735282.00
- B. Annexure D bill is also in clear violation of Annexure B order of the Regulatory Commission.
- C. Annexure B Order was passed by the Regulatory Commission after specifically noting the order of stay granted by the Honourable High Court. Thereafter taking note of the facts and circumstances under which rebate of 5% on the total power purchase cost was allowed to the Petitioner. The Regulatory Commission specifically observed as follows:-

“ The Commission has not come across any change in the conditions on the basis of which the rebate has been allowed so far.”

It is thereafter the Commission directed Board to continue to allow the rebate of 5% on the power purchase cost to the Petitioner. The further condition that the Petitioner would make prompt payment against the bills raised by Board for the electricity charges at the prevailing tariff had to be construed prospectively and on normal monthly bills on which the Petitioner has no bonafide disputes. The same would only apply to a bill raised by the Board at prevailing tariff pursuant to the Annexure B order of the Commission and would not be applicable to a bill on which the Petitioner has raised a bonafide dispute which has been admitted by competent Court of Law. In the present case this would apply only to Annexure D bill raised by the Board on the Petitioner. It must be mentioned that despite the disputes raised herein and through Annexures C and E letters, the entire Annexure D bill amount has been paid, as can be seen from Annexure E, so as to avoid any future disallowance. Be that as it may Annexure D clearly ought to have allowed the 5% rebate for the entire period covered by the said bill in view of the specific directions of the Commission.

- D. Without prejudice to the above the total disallowance of 5% rebate for the period from October 2002 is in any case unwarranted, unjustified and erroneous. The Board clearly ought to have allowed the 5% rebate at least to the extent of demand and energy charges which were in fact paid on time. Such proportionate rebate clearly ought to have been granted.
- E. Without further prejudice to the above as pointed out in paragraph 3 of the Annexure C letter an excess payment of Rs.98,92,760 was in fact effected by the Petitioner as on December, 2002 and as per the working attached to Annexure E letter. *Such excess payments were finally adjusted/exhausted only in April, 2003.* Therefore all bills earlier raised up to April 2003 in fact stood promptly and fully paid. Even assuming without admitting that the Respondent's stand is correct, there is absolutely no rational or justification for denying the 5% rebate for the period upto April, 2003 when in fact full and prompt payment was made.
- F. In any view of the matter in Annexure D bill, the amounts demanded under the previous monthly bills issued earlier to the Petitioner with respect to which the stay of the High Court was in force, have been revised and lowered. A comparative statement showing the amounts demanded in the previous monthly bills and the corresponding amount now demanded in Annexure D is annexed as Annexure G. The question of any prompt and full payment of such earlier bills did not and could not arise.
- G. The Respondent has erred in charging interest on the arrears claimed for the period covered by the stay order granted by the Honourable High court of Kerala in Writ Petition (c) No. 15833/2003. There is no enabling provision to demand such interest. In any case going by the proceedings leading to the order of the Regulatory Commission no such interest could be demanded. The Respondent also failed to note that the agreement for payment of the disputed revised grid tariff was in the course of negotiation with Board. The demand of interest is therefore clearly inequitable, unreasonable and unjustifiable.
- H. The Respondent also ought to correct the two instances of incorrect energy and demand charges in Annexure D bill as pointed out in Annexure E letter and a statement showing these two instances of incorrect computation is also annexed as Annexure D1.
- I. The Respondent also ought to refund the rebate disallowed and interest charged aggregating to Rs. 493707.20 in respect of the bill for March 2003 which was settled in full by the Petitioner.

On these and other grounds to be raised at the time of hearing, it is respectfully prayed that this Regulatory Commission may be pleased to allow this petition and direct the Respondent Board to

- (i) Allow the rebate of 5% for the entire period and amounts covered by Annexure D bill:
- (ii) Withdraw the demand for interest raised in Annexure D bill and in any case for the period covered by the order of stay granted by the Honourable High Court in W.P.(C) No. 15833/2003.
- (iii) Reduce the amount demanded in Annexure D bill with respect to the two instances of incorrect computation of energy and demand charges as pointed out in Annexure A computation to Annexure E letter of the petitioner and also an amount of Rs.493707.20 towards rebate disallowed and interest charged in consequence thereof in the bill relating to March 2003 which was paid on time by the petitioner.
- (iv) Forthwith to re-compute the amounts due under Annexure D bill in accordance with prayers (i) to (iii) above and to refund the excess payment effected by the Petitioner with interest at 12% due thereon.
- (v) Pass such other /consequential orders as may be deemed just and necessary to render complete justice in the matter in the facts and circumstances of the case.

The petition was accepted as DP No.29. Copy of the petition was forwarded to Board on 29th August 2006. No comments were received from Board and the petition was posted for hearing on 28th November 2006.

Hearing

- a. Hearing of the petition was held on 28th November 2006 as scheduled. Petitioner while presenting the case stated as follows:

The Respondent (Board)effected revision in the grid tariff which is the tariff which the Petitioner as a Licensee pays the Board for electricity supplied to it for distribution in its licensed area. This revision of grid tariff effected in 2003 by notification dated 9.4.2003 with effect from 1.10.2002 was challenged by the petitioner before the Honorable High Court of Kerala in W.P.(C) No. 15833/03 in which an order of stay was also granted on 23.5.2003, which was after repeated extensions further extended until further orders on 25.7.2005. On the basis of this order of stay the Petitioner continued to remit electricity charges at the pre-revised tariff.

While so the Petitioner had filed it's ARR and ERC for the year 2005-06 bearing No. TP7/05 before this Honorable Commission, which has been disposed by the Order dated 28.6.2005.

The above order of the Commission inter-alia deals with the power purchase cost of the Petitioner and in particular in paragraph IV 1 (d) this Honorable Commission has held as follows: -

“The KSEB has hitherto been allowing a rebate of 5% on the total power purchase cost to Tata Tea Limited on account of the difficult terrain in the Munnar area over which the power supply is made. The Commission has not come across any change in the conditions on the basis of which the rebate has been allowed so far. Further, although the KSEB has been availing power at 13 points utilizing the distribution network of TTL, it has not been paying any wheeling charges for the usage of distribution network. The KSEB has been merely allowing a distribution loss of 4% as compared to the overall distribution loss of about 20% occurring in the distribution network of TTL. The Commission also notes that even after allowing a rebate of 5%, TTL are not in a position to eliminate the revenue gap which works out to more than 5% of the aggregate revenue requirement for 2005-06.

Keeping all the above factors in view, the Commission would direct the KSEB to continue to allow a rebate of 5% on the power purchase cost to TTL. However, this is on the condition that TTL would make prompt payment against the bills raised by the KSEB for the electricity charges at the prevailing tariff”.

In the meantime the Petitioner and the Respondent were already in negotiation with respect to various issues including the payments to be effected. During the course of the negotiation the Respondent indicated that the 5% rebate would not be granted since according to them prompt payment was not effected by the Petitioner against bills earlier raised by the Respondent Board on the Petitioner. According to Board, for the period covered by the stay granted by the High Court in the Writ Petition aforesaid the payments effected by the Petitioner under the pre-revised tariff could not be treated as prompt full payments thereby disentitling the Petitioner to the 5% rebate. The petitioner then addressed a letter-dated 25.11.2005 to the Respondent Board.

The Petitioner received a bill No. HTB 21/1014/05-06 dated 3-5-2006 from the Respondent Board for the period September 1999 to November 2005. In the said bill the 5% rebate has been disallowed for the period from October 2002 to November 2005 including for the bill for the month of March 2003 which though was settled in full, Board has disallowed rebate on the bill and charged interest on the outstanding so arising. In addition, there are two instances of incorrect billing. Interest was also charged on the arrears claimed even for the period covered by the stay Order granted by the Honorable High Court of Kerala in the aforesaid Writ Petition No. 15833/2003. The issue being one of a bonafide dispute the question of charging any interest do not arise. In any case no interest could be demanded for the period covered by the stay order of the High Court.

The Petitioner then addressed a letter dated 12-5-2006 to the Respondent. The petitioner also requested to forthwith refund amounts with respect to which no dispute really could be raised by the Board. Till date no action is forthcoming from the Respondent nor has the Respondent effected any refund to the petitioner.

b. Board while replying to the petition stated as that Board had to withdraw rebate only because the petitioner did not make prompt payment. Further discussions were held with the petitioner on 28th and 29th September 2005 at Trivandrum and all issues reviewed. But no consensus was arrived at. In the next meeting held on 25th April 2006 the issues were discussed again and consensus arrived at. The arrear bill raised in May 2006 was based on the consensus arrived at. The settlement was a package similar to one time settlement. Penal interest was reduced from 24% to 12%.

c. Petitioner replied that there was no consensus. The payment of arrears was made under protest.

d. Commission enquired about the minutes of the meeting held on 25th April 2006. Board replied that it has to be checked whether there was any minutes prepared and signed by both parties. Petitioner stated there was no minutes prepared and signed. It was decided that a further sitting will be held on 19th December 2006 and Respondent agreed to produce a copy of the minutes of the meeting held on 25th April 2006.

In the hearing held on 19th December 2006, Board stated that a minutes was prepared and forwarded to Tata Tea. No objection was raised by Tata Tea. Board had issued an order based on the consensus.

Petitioner stated that consensus was arrived only in the matter of accepting grid tariff as per revision ordered in 2003. Petitioner further stated that no consensus was arrived on interest, rebate errors in billing. Petitioner stated that no interest should be charged as there was stay from the Hon High Court. Petitioner stated that they were making payments only as per Court directives and imposition of penalty was not just as there was no default in payment.

Commission's findings

Rebate of 5% was given to Tata Tea on account of the difficult terrain in Munnar. Further Board has not been paying any wheeling charges.

Commission while allowing rebate specifically mentioned that Tata Tea should make prompt payment if rebate is to be given. As the petitioner has stated that consensus was arrived at regarding acceptance of grid tariff, payment of electricity charges at pre-revision rates cannot be treated as prompt payment and hence claim on rebate cannot be granted. But the excess payment made by Tata

Tea has to be adjusted and the period of such adjustment is eligible for rebate. Also petitioner has to pay interest at 12%, which is reasonable.

Board did not challenge the contention of the petitioner that excess payment was enough for covering the arrears up to April 2003 and also the contention regarding the two instances of errors in billing. Hence if arrears were claimed for the period up to April 2003 also, the same has to be adjusted. Also the error pointed out by petitioner has to be corrected.

Order

For the period during which payment of electricity charges was made at pre-revision rate, Tata Tea is not eligible for rebate. For the period upto April 2003 when KSEB was holding excess payment, the payment shall be admitted as prompt payment and rebate of 5% given for those payments. Also Tata Tea has to pay the arrears with interest at 12%. Errors in billing pointed out by Tata Tea has to be rectified. The arrear bill has to be revised accordingly and excess claimed and collected by Board has to be repaid to Tata Tea Limited. Claims other than admitted above are rejected.

Sd/-
M.P.Aiyappan
Member(F)

Sd/-
C.Abdulla
Member(E)

Sd/-
C. Balakrishnan
Chairman

Authenticated copy for issue

Secretary (in charge)