

M.A.No.189/06
in
Case No.338/05

Present for: M/s Jayparkash Hydro Power Ltd. Sh.A.B.Chugh.

HPSEB: Er.C.M.Walia,
CE(Comml)

Sh.R.K.Punshi,
Director(SERC)

HP Govt.: Kr. Kuldeep Singh,Sr.Adv.
Sh.Ashok Sharma,
Addl. Secy (MPP&Power).

INTERIM ORDER

Heard.

The tariff application moved by M/s Jai Parkash Hydro Power Ltd. as per section 64 of the Electricity Act, 2003, read with the HPERC (Terms and Conditions of Determination of Tariff) Regulations, 2004 and the HPERC (Revenue Tariff Filing) Regulations, 2005, in relation to the BASPA-II HEP (300 MW) was listed for orders for to-day (i.e. 08.09.06.) In the meanwhile on 7.9.2006 M.A.No. 189/06 has been moved on behalf of the State Government conveying the directions of the State Govt. issued under section 108 of the Electricity Act, 2003 to this Commission to examine the details of the Firm Financial Package (FFP) of BASPA-II HEP before announcing the final Tariff Order in the light of the averments made in the said Miscellaneous Application.

Admittedly the proceedings in relation to the aforesaid tariff application were concluded and the final tariff order is yet to be pronounced. The question which comes up for consideration is whether in such a situation, the Commission can re-open the matter. The Supreme Court in the case of Surendra Singh V/s Sate of UP AIR 1954 SC 194, further relied upon in the case of Mistrimal Jethimal Oswal V/s M.C. Lonavala, AIR 2006 Bom 192, has held that what constitutes judgment is final and formal declaration in open court of the operative decision of the case and until that stage is reached, the Judge can change his opinion. In the light of this verdict of the Apex Court, apparently there is no legal bar to re-open the matter, especially when no pronouncement of the order on the tariff petition has been made and sufficient and reasonable grounds to do so exist.

Tariff fixation is the quasi judicial statutory function delegated to the Commission. The Regulatory Commission, being a creature of the Electricity Act, 2003 is bound to act within the four corners of the Act and it cannot act beyond the power conferred on it under the said enactment. Thus the Commission is always to act consistent with the objects and purposes for which the Commission has been established as an independent statutory body and all its acts, or decisions and orders are to be pursuant to and seek such objectives and purposes.

Section 108 of the Electricity Act, 2003, provides that in discharge of its functions, the State Commission is to be guided by such directions of policy involving public interest as the State Govt. may give to it in writing. If any question arises as to whether any such directions relate to a matter of policy involving public interest, the decision of the State Govt. thereon shall be final. Thus bounden duty has been cast upon the Commission to be guided by the directions given by the State Govt.

under section 108 of the Act. To serve the ends of the justice and the requirements of the natural justice, it is necessary to offer opportunity of being heard to the petitioner company on the issues raised by the State Govt. in the aforesaid directions. The copy of the petition moved by the State Govt. be issued to the representative of petitioner firm to file their reply, if any.

List this matter on 26th September, 2006 at 4.15 PM (or soon thereafter).

Dated: 08.09.2006.

(Yogesh Khanna)
Chairman.

