

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION, SHIMLA, H.P.

In the matter of: -

Removal of difficulties in the implementation of the
Direction No.9.4.14.2 (Employee Cost) of the Tariff Order
for 2004-05.

The H.P. State Electricity Board
Vidyut Bhawan, Shimla-4

... Petitioner.

Petition No. 101/09
(Decided on 16.09.2009)

CORAM:-
YOGESH KHANNA
CHAIRMAN

Counsel:-
for the petitioner

Sh. Narinder Singh Thakur,
Advocate.

Consumer Representative
(Under Section 94(3) of the
Electricity Act, 2003)

Er. P.N.Bhardwaj

Order

(Last heard on 22.08.2009 and orders reserved)

The facts in brief involved in this case are that the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) vide its Tariff Order dated 2nd July, 2004 (hereinafter referred as “the Tariff Order”), approved the Annual Revenue Requirement (AAR), Transmission and Bulk Supply Tariff and Distribution and Retail Supply Tariff for FY,2004-05, in relation to the Himachal Pradesh State Electricity Board (hereinafter referred as “the Board”). The tariff determined by the Commission and the directions given in Section –9 of the Tariff Order were quid pro-quo and mutually inclusive. In other words the tariff determined was subject to the

compliance of the said directions to the satisfaction of the Commission. To tackle the burgeoning employee cost, and the precarious Board's finances, this Commission directed the Board to reduce the burden of employee cost, by resorting to various measures, which interalia included the policy to regularise all daily rated workmen by ensuring that the said policy shall be strictly in conformity with judicial orders and whenever these persons retire, the posts will be deemed to have been abolished forthwith.

2. The Board filed a review petition for review of the Tariff Order for F Y, 2004-05 to permit it to regularise the daily wagers as per the Government Policy prevalent at that time. But the said review petition was not accepted vide Commission's order dated 28th September, 2004. This Commission again on 6.11.2004 and 10.11.2004, reiterated that the policy for regularisation of the daily waged workers should be strictly in conformity with judicial orders.

3. In compliance to the Supreme Court judgment in appeal NO.WR (c) No.787/97, **Sh. Mool Raj and others Vs. State of Himachal Pradesh**, the Board had taken a policy decision to regularise the daily wage workers, who had completed 10 years of their services as per judicial order. Subsequently the State Government framed a policy for regularisation of the daily wagers, who have completed 8 years daily wage service up to 31.03.2008. The State Government is stated to be insisting upon the compliance of the said policy decision. According to the Board there are only 57 daily wagers who have completed 8 years up to 31.03.2008 and their regularisation will involve an extra expenditure to the tune of Rs.37.20 lacs.

4. In view of the fact that the impugned direction 9.4.14.2 provides for framing of regularisation policy by the Board strictly in conformity with the judicial orders, the Board is experiencing difficulties in implementing the Government Policy. The Board has approached this Commission for substitution of the words "the policy framed by the State Government" for the existing words "Judicial orders" in the said direction, so that the Board may frame its policy to regularise its employees in accordance with the State Government Policy. In support of its prayer the Board has argued that under

section 108 of the Electricity Act,2003 (hereinafter referred as “ the Act”) in the matter of the policy involving public interest the directions given by the State Government are required to be implemented.

5. After hearing the arguments, addressed on behalf of the applicant Board, the Commission observes that the provisions of section 108 of the Act empowers the State Govt. to give directions to the State Commission on matter involving public interest and on the question as to whether or not a direction involves the public interest the decision of the State Govt. is to be final. The High Court of Delhi in **WP(C) No.2705/2002- Gajender Halder Vs. State of NCT and 2007 ELR (Delhi) 1429** has clarified that the policy directions are only to guide the Commission and not to usurp the Commission functions.. The general policy decisions of the State Govt. cannot be deemed to be the specific policy directions to the Commission under section 108 of the Act, and even if such general directions are deemed to be so, those are intended to guide the Commission in discharge its functions assigned to it under the Act. The power under section 108 of the Act cannot be exercised to circumvent the statutory provisions of the Act. Therefore the modification purposed by the Board, cannot be considered to be consistent with the spirit and purposes of the Act.

6. Simultaneously the Commission is conscious of the fact, that the employees of the Board should be extended benefits at par with other employees of the State Government and its instrumentalities. But the Commission is to exercise powers vested in it within the four corners of the Act. In this context it would be appropriate to quot para-22 of the Appellate Tribunal’s order dated 21.07.2006 made in **Appeal Nos 155,156,157 of 2005 in BSES Rajdhani Power Ltd. Vs Delhi Electricity Regulatory Commission New Delhi, 2007 ELR (APTEL) 1370,** which reads :-

“22. The Regulatory Commission being a Statutory Authority exercising statutory powers in required to act in the manner the statutory provisions of the Act and statutory regulations prescribe. When the Regulatory Commission, a Statutory Authority is required to determine Tariff fixation in the particular manner and in terms of statutory regulations as well as the provisions of the Act, it shall be

done only in that manner or not at all. This is the settled legal position as held by the Hon'ble Supreme Court in **Bhavnagar University v. Palitana Sugar Mills (P) Ltd. (2003 (2) SCC 111.**"

7. While determining the tariff under sections 62,63 and 86 of the Act, financial liabilities accruing therefrom are to be reflected in the A.R.R. of the Board. The State Commission is to follow the intent and spirit of the objects and purposes of the Act and cannot follow the State Govt. policy decisions mechanically, without exercising the prudence check and without considering the statutory limitations imposed on it.

8. The Apex Court in **AP Electricity Regulatory Commission Vs. RVK Energy Pvt.Ltd. and another 2008 ELR (SC) 0550** has ruled that keeping in view the purported objectives of the Act the Commission is bound to give due weightage to the policy decisions taken by the State Govt. The powers vested in it need to be exercised by the Commission in a transparent manner, so that the consumers are not unnecessarily burdened. The Commission would, therefore not normally interfere in the administrative activity of the Govt. issuing policy directions. The Commission can only approve the policy of the Board, which is in conformity with the provisions of the Act.

9. The ratio decidendi of the judgment of the Supreme Court dated 03.03.2009 given in case **U.P.Power Corporation Ltd. Vs. National Thermal Power Corporation Ltd. And others ,2009 ELR (SC) 0013** reads as under:-

“Application for determination of tariff due to increase in salary with retrospective effect is to be filed within the period during which the tariff order is in force and cannot be subject matter for determination of Tariff in an other period.”

10. The APTEL in its decision rendered in **Power Grid Corporation of India vs. Central Electricity Regulatory Commission and others 2007 APTEL,778**,and also in **NEEP CO Ltd. V/s Tripura State Electricity Corporation Ltd.and others 2007 APTEL, 306** has confirmed that there could not be any objection for modification in the order if it is just consequential and error committed in determining tariff can be corrected if it is a continuous wrong

and affects tariff determination for future as well, it can be corrected by the regulatory authority, notwithstanding the fact that an error took place a few years back .

11. In light of the submissions made by the applicant; the arguments addressed on its behalf, and the judgments cited in this order, and taking cognizance of the fact that the employees cost is linked with and has impact over the ARR of the Board, the Commission is unable to accept the prayer for substitution of the “policy framed by the State Govt.” for “the Judicial Orders” in direction 9.4.14.2 of the Tariff Order FY 2004-05. However, considering the fact that for the present the Board has been submerged in to the Government itself by an order under section 131 of the Act, and that control envisages harmonising the two policies till such time as new entities are created and also taking into consideration the circumstances involved in this case the Commission approves the regularisation of the 57 daily wagers, who have completed 8 years daily waged since on 31.03.2008, subject to the condition that the said regularisation in service shall be with prospective effect and the expenditure involved will be taken into consideration while approving the ARR of the Board.

It is so ordered.

(Yogesh Khanna)
Chairman