



Chhattisgarh State Electricity Regulatory Commission

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Petition No.33 of 2006(M)

In the matter of review of order dated 17/07/06 passed in Petition No. 28 of 2006 (M) for fixation of tariff of distribution licensee

M/s Jindal Steel & Power Limited : Petitioner
Mandir Hasaud, Raipur

V/s

Chhattisgarh State Electricity Board : Respondent

**Present: S.K. Misra, Chairman
Sarat Chandra, Member**

ORDER (Passed on 29/01/2007)

M/s Jindal Steel and Power Limited (JSPL, for short) has submitted an application for review of the order of this Commission dated 17/07/06 passed in Petition No. 28 of 2006 (M). The petitioner subsequently submitted an amendment application on 13/12/06 which has also been admitted for consideration.

2. The facts of this case, in brief, are that the applicant was granted a distribution license by the Commission on 29/11/05 under Section 14 of the Electricity Act, 2003 (Act, for short). This license was for distribution of electricity in the Jindal Industrial Park (JIP, for short) situated in Tumidih and Punjipathra villages of Ghargoda Tehsil of Raigarh district, and also in the remaining areas of these two villages. As per clause 9 of the distribution license, JSPL is required to submit an application for determination of retail tariff for its consumers. By his application dated 28/06/06, registered as petition No. 28 of 2006 (M), the applicant prayed to the Commission that a tariff ceiling may be fixed by the Commission at the applicable category of tariff as determined for the Chhattisgarh State Electricity Board (CSEB, for short), the first licensee in the area. It was also prayed that the rates specified in the long-term agreements, which the applicant had entered into with the consumers in the JIP, may be maintained since these were lower than the current tariff of the CSEB applicable to such consumers. The Commission by order dated 17/07/06 rejected the prayer for fixation of only a maximum tariff ceiling under Section 62 (1) on the ground that except for the two villages the CSEB has no presence in or around the industrial area. The Commission, however, granted time till November, 2006 for submission of the tariff petition for the year 2007-08. This application is for review of the said order passed on 17/07/06.

3. The petitioner seeks review of the order aforementioned on the following grounds:

- (i) The applicant is not a distribution licensee in the general sense of the term in as much as the applicant is really not in the business of distribution of electricity. The applicant manufactures steel and also has a captive generating plant, which has surplus generation. Some part of this surplus is sold to the CSEB and remaining to the industries located in JIP. The industrial park was formed with the prior permission of the State Government.
- (ii) There are a limited number of consumers in the industrial park, all of whom have entered into long-term power supply agreement with the applicant and have no grievance about the rates (Rs. 2.50/ KWh) which are much lower than the applicable CSEB tariff. The applicant has submitted that no purpose would be served by tariff fixation in the present case as it would not benefit any one. Any reduction in the tariff would make the CSEB tariff even more unattractive. The applicant also does not want any increase in the rates already agreed with the consumers in the JIP.
- (iii) As regards the other consumers in the two villages, the Commission has already directed that the tariff as applicable to such category of consumer of the CSEB should be made applicable to them. CSEB's tariff is fixed for the whole State and is not different for different areas. In case a tariff different from CSEB's tariff is fixed for the applicant's consumers in the two villages, there would be two separate distributors with different tariffs in the same area. For this reason only there is a provision in the second proviso to sub-Section (1) of Section 62 of the Act, that where there are more than one distribution licensee, the Commission may "fix only the maximum ceiling of tariff for retail sale of electricity." The applicant has submitted that all these problems can be obviated by fixing only the maximum ceiling of tariff and that can be the tariff as applicable to the consumers of CSEB. This will enable the applicant to honour its long-term commitments in the agreements entered with the consumers in the JIP and would also enable the consumers to get electricity at economical rates which was promised to them before they set up industries in JIP. It would also enable other consumers in the two villages to get electricity at the rate applicable to CSEB's consumers which is subsidized particularly for agricultural and domestic consumers.
- (iv) As regards segregation of accounts and maintenance of separate accounts in respect of the distribution business as per the directions of the Commission in its order dated 17/07/06, the applicant states that several of the facilities are common for the steel plant and the captive power plant and it would not be possible to segregate the costs for each. Several of the fixed costs viz, the raw material handling costs, cost incurred in the coal mines and various infrastructural facilities etc. are common. Even the low ash coal used for the purpose of running the steel plant and the captive power plant is common. Gases generated from the steel plant are fed into a waste heat recovery boiler and used for power generation. The coal washery is common for supply of coal for the steel plant as well as the captive generating plant. There are a number of other common inputs and fixed costs allocation of which between

the generating plant and the steel unit may not be possible. The applicant, therefore, has prayed for review of the order dated 17/07/06 for fixation of only the maximum ceiling of tariff under Section 62 (1) of the Act, which should be same as that of CSEB for all category of consumers.

4. CSEB in its reply filed on 03/11/06 has stated that it is the first distribution licensee of the entire State of Chhattisgarh and therefore has all the stakes in the activities of other competitor/distribution licensee operating in the same area of license. As per clause 9 of the order granting distribution license to JSPL, it has to file the necessary application under Section 64 of the Act and clause 10 of the CSERC (Details to be furnished by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004, before the Commission, on or before 31/03/06, and thereafter in terms of the same Regulations. Hence, determination of tariff for JSPL as distribution licensee is a mandatory requirement. As to the second proviso to Section 62 (1) of the Act, CSEB has contended that this provision does not exempt any distribution licensee from determination of tariff by the Commission; it contemplates prescribing maximum ceiling of tariff on the basis of actual tariff determined for each licensee. Without determining tariff the Commission can not conclude which is the highest tariff. Besides, there is no such provision in the Act that the highest prevailing tariff will be the maximum ceiling for an area in which more than one distribution license operate. The Commission may fix the maximum ceiling somewhere in between various tariffs. The Act entrusts the function of determination of tariff to the Commission to ensure that the return to the licensees is reasonable and there is no profiteering. In a multi-player distribution system if the highest tariff of any of the licensee is fixed as the maximum ceiling, a licensee even with lower tariff may be able to earn more than the permissible return which will neither provide a level playing field to other licensees nor lead to competition as contemplated under the Act. The maximum ceiling of tariff should be the lowest tariff with reasonable return so that if other licensees want to compete they can supply power at that tariff in the common area. Therefore, in a multi-player licensed area without determining the tariff of individual licensees no ceiling can be fixed and no competition may be expected. Hence, JSPL as a distribution licensee is obliged to get the retail tariff determined according to the provisions of the Act. Their second contention is that Section 51 of the Act provides that each distribution licensee shall maintain separate accounts for each such business undertaking to ensure that the distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

5. In course of hearing and also in the written submission made the petitioner has rebutted CSEB's contention and has stated that while fixation of tariff is no doubt necessary for all distribution licensees, there is a provision in the Act for fixation of only a maximum ceiling of tariff which in this case may be the same as the tariff fixed for the CSEB. The tariff of CSEB has been fixed after taking into account their ARR etc. Clearly any tariff fixed for other distribution licensees should not exceed the tariff of CSEB in the relevant area. The Act does not envisage a specific tariff for one distribution licensee and a maximum tariff for another. Whatever maximum tariff is fixed will be the ceiling for both. Such a tariff can not be below the tariff fixed for the CSEB as in that case, the CSEB would have a grievance since it would be lower than the tariff computed after taking into account the ARR of the CSEB. Similarly,

there is no reason for fixation of the maximum tariff at a level higher than the tariff fixed for the CSEB as this would not be in the interest of the consumers. CSEB can not also demand a maximum ceiling higher than the specific tariff fixed for them, taking into account their ARR. Where there is only one distribution licensee obviously there should a specific tariff fixed such that it takes care of costs and also provides a reasonable return. However, where there are more than one distribution licensee, the Act provides that only a maximum ceiling of tariff may be fixed for retail sale of electricity. In such a situation return on 14% of equity becomes irrelevant. In case, the maximum ceiling is fixed at a rate lower than the CSEB tariff, in that situation CSEB can not supply at a lower rate. Two rates of tariff can not be allowed in the area of supply of one licensee. Whatever maximum rate is fixed should be applicable for the entire State for all the distribution licensees operating in the State.

6. The issues which need to be addressed in this case are:

- (i) Is the second proviso to sub-section (1) of section 62 of the Act applicable in this case?
- (ii) If yes, what should be the modality of fixation of the maximum ceiling of tariff between the two licensees?
- (iii) How are the consumers who have entered into long-term purchase agreement with the licensee at a specified rate, be treated, and what should be the tariff for them?

2. The relevant proviso to Section 62(1) of the Act reads as under:-

"Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity."

The key provisions are that there should be *two or more distribution licensees* and in the *same area*. The applicant is a distribution licensee for the specified area of two villages in Raigarh district in which his industrial park is also situated. He has entered into long-term contract (for 10 years) with the consumers in the industrial park for supply of electricity. The incumbent licensee is Chhattisgarh State Electricity Board (CSEB) which is the deemed licensee under provision 172 of the Act for the whole State of Chhattisgarh of which the petitioner licensee's area is a very small part. The CSEB's statement, in their submission dated 03/11/06, that the Commission has not permitted them to supply electricity to these areas is not factually correct. The Commission has not made any provision in the distribution licence of the petitioner that CSEB is excluded from the area of his licence; nor has the Commission given such direction at any stage of the proceeding of this case. By virtue of their position CSEB is free to supply electricity to the consumers in the area. In fact, in one part of the area of the petitioner licensee i.e. the two villages of Tumidih and Punjipathra, if not in JIP, CSEB is already supplying electricity to the villagers. In other words, there are two distribution licensees in the same area. It is a different matter that the area of one licensee is restricted to only two villages. We, therefore, hold that the provision of section 62(1) aforementioned is applicable in this case and the Commission could fix only the maximum ceiling of tariff for retail sale of electricity in the area, to promote competition between these two licensees.

7. Coming to the second issue, the Act does not have any specific provision nor any provision to indicate as to the manner in which the maximum ceiling of tariff is to be fixed. The maximum ceiling has to be a comparative position and can be decided when there are at least two given tariffs for comparison. In the present case the tariff for retail sale of electricity by CSEB has been determined by the Commission, in terms of the provisions of the Act, the National Tariff Policy as also the relevant Regulations framed by the Commission. In other words, there is some scientific basis to the retail tariff determined for the CSEB. The Commission can not and should not, in the interest of consumers, fix, as the maximum ceiling, a tariff higher than this; it can only be lower. In the absence of any indication in the Act or the Tariff Policy, the maximum ceiling of tariff can be determined only in relation to the actual tariff determined by the Commission. There are no general norms on which retail tariffs may be fixed; it has to relate, under the present dispensation, to the costs of the licensee, unless it has been determined through a transparent process of bidding in accordance with the provisions of section 63 of the Act. Given this position, the balance of convenience lies in adopting the tariff of CSEB as the maximum ceiling. It can be, and has been, argued that the maximum ceiling may be less than the tariff fixed for one licensee. It can be. But the question is whether it is necessary in the given circumstances of the present case in which the tariff being charged by the petitioner licensee is much less than the tariff for consumers of the same category, by the CSEB. The only other issue is that even though the petitioner's tariff is much less, he may still be getting a much higher return than is permissible under the regulations, based on its costs. In a regime under which tariff is being determined on cost plus basis this would be a valid argument. We would, however, not like to interfere with the lower tariff of the petitioner licensee at this juncture for two reasons. First, the accounts of the distribution business of the licensee have not so far been segregated from his other and much larger business. Secondly, there is no grievance from any of the consumers of the petitioner licensee that they have been/are being over-charged. The Commission has received no complaint in this regard. The balance of convenience therefore lies in allowing the present tariff which is much less than the tariff of the second distribution licensee in the same area for the same category of consumers to continue.

8. We would, however, like to make it clear that this can not be a permanent arrangement. The objective of promotion of competition among distribution licensees is to ultimately protect the interest of the consumers. One licensee's rates being higher, apparently on account of it being the licensee for the whole State and with embedded costs which relate to past, there is no reason why the petitioner licensee's tariff should not be still less, if there is any scope, in the interest of the consumers, particularly in a situation where competition is not in full play. We are, therefore, inclined to allow the present position to continue for not more than one year. The licensee shall segregate his account for distribution business as early as possible and submit application for determination of tariff under section 62 of the Act by end November, 2007. We are not inclined to accept the petitioner's plea that the accounts can not be segregated. Segregation is possible, in most elements of cost on actual basis and some elements perhaps on notional basis, based on some rational presumption.

9. That leaves us only with the issue of how to treat the existing long-term contracts for supply of electricity. Generally, and also in consideration of the fact that we have not received any grievance from the concerned consumers, we should refrain from interfering with the long-term agreements. However, in the interest of the same consumers the tariff given in the agreements may change in case the tariff determined by us is below the level at which the agreements have been entered into. That would only be fair to the consumers. As for new industrial consumers (with whom no agreement exists at present) who may come hereafter, the licensee may enter into long-term agreement with tariff at the rate of Rs. 2.50/KWh but with the additional provision that the alternate tariff may be as determined by the Commission.

10. A residual matter is as to which tariff may be applicable to the consumers in the area of two villages of the petitioner licensee. These consumers would generally be agriculturalists or small domestic consumers. The present tariff of CSEB is highly subsidized for agriculture, and to a certain extent for lower domestic consumers also. The licensee may supply electricity to these consumers at the CSEB's rate or below.

11. The review application is thus partially allowed as above.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K. Rupwani)
Secretary