

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a licensee engaged in the business of distribution of electricity in North and North-west area of National Capital territory of Delhi. It has a contractual arrangement with first respondent - *Delhi Transco Limited* ("DTL"), an intra-state Transmission Licensee operating in the NCT of Delhi, it being a long term open access consumer of the transmission lines of the first respondent.

2. The issue involved in the present proceedings is governed by *Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff Regulations, 2011)* (in short "the Regulations"). It is not in dispute that in terms of the said regulations, the revenue earned from *Short Term Open Access* ("STOA") is treated as revenue for "other business" and the transmission licensee (the first respondent) is obliged to adjust the charges collected from STOA customers towards reduction of open access charges payable by long-term and mid-term users of its transmission lines.

3. DTL had admittedly given regular credit of STOA charges to the appellant till January 2013. The payment not having been made thereafter, the appellant had made a request to the State Commission on 13.04.2015 for certain amendments to be brought in the regulatory framework so as to align it with the corresponding regulations of Central Electricity Regulatory Commission. Eventually, the matter of non-payment of dues towards STOA charges was taken by the appellant before the State Commission by petition no. 27 of 2015 seeking following reliefs:

“Issue appropriate directions to DTL to disburse the STOA adjustment to the Petitioner urgently and without any further delay;

Initiate proceedings against DTL for non-disbursement of STOA charges”

4. On 03.01.2017, during the pendency of the above-mentioned petition, adjustment was given for the STOA charges collected by DTL in tariff invoices for the period of April 2016 to July 2016. By the said petition, the claim had also been made for delayed payment surcharge to be allowed for withholding of the amount on the said subject by DTL for over three years in violation of the Regulations. A specific prayer to this effect was added by the application (no.03 of 2019) moved on 29.01.2019 seeking reliefs set out as under:

“23. (A) Allow amendment of Petitioner No.77 of 2015 to specifically include a prayer for interest on delayed disbursement of the STOA Charges;

(B) Direct payment of interest on STOA Charges on the same rate as charged by the Respondent on delayed payment;

(C) Pass any other order which this Hon’ble Commission may deem fit in the facts and circumstances of the case”

5. The petition for levy of interest has been disallowed by the State Commission by order dated 13.05.2019, the issues to be addressed having been stated thus:

“9. After reconciliation of account and adjustment of STOA charges the prayer of the Petitioner for reimbursement of STOA charges does not survive. Only question left for adjudication before this Commission is about grant of interest on late payment of STOA charges, as prayed in the interim Application. To adjudicate on the issue following two points have to be decided:

- i. Whether interest is payable on the delayed payment treating it wrongfully withholding the money when there are claims and counter claims;*

- ii. *Whether this Commission has justification to grant interest in such cases;*
- iii. *Whether the Petitioner can resile from the cancellation process”*

6. The following provisions contained in the Regulations are relevant:-

“ A3 (1) Subject to the provisions of the Act, Rules and Policies, these Regulations shall apply in all cases of determination of Transmission tariff under Section 62 of the Act. It shall however, not apply in the case where tariff has been determined through a transmission process of bidding in accordance with the guidelines issued by the Central Government as per the provisions of Section 63 of the Act.

...

A6 (21) “25% of the charges collected from the short term open access customer shall be retained by the transmission licensee and the balance 75% shall be considered as non-tariff income and adjusted towards reduction in the transmission service charges payable by the long term and medium term users.

...

A7 (7) Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the Transmission Licensee shall refund to or recover from the beneficiaries within six months along with simple interest at the rate equal to Base Rate of State Bank of India plus 150 basis points on the 1st April of the concerned respective year.

...

A7(11) Where after the truing up the tariff recovered exceeds the tariff approved by the Commission under these regulations the Licensee shall refund to the beneficiaries excess amount so recovered along with simple interest at the rate equal to Base Rate of State Bank of India plus 150 basis points on the 1st April of the respective year.

A7 (12) Where after the truing up the tariff recovered is less than the tariff approved by the Commission under these regulations the Licensee shall recover from the beneficiaries under-recovered amount along with simple interest at the rate equal to Base Rate of State Bank of India plus 150 basis points on the 1st April of the respective year.

A7 (13) The amount under-recovered or over-recovered, along with simple interest at the rate equal to Base Rate of State Bank of India plus 150 basis points on the 1st April of the respective year, shall be recovered or refunded by the Licensee in six equal installments starting within three months from the date of the tariff order issued by the Commission after the truing up exercise”.

7. Pertinent to note the following provision, contained in Section 62(6) of the Electricity Act, 2003:

...

“ If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.

8. Clearly, even a bare reading of the above-quoted regulations shows that there is an obligation cast on the transmission licensee to adjust the charges collected from STOA customers against charges leviable on long term and mid-term open access consumers, apparently on pro-rata basis. The charges are collected upfront and given the very nature of the stipulation, the adjustment would have to be made later. The Commission has accepted the grievance of the appellant that withholding of the adjustment of the STOA charges was not correct. In these circumstances, the money withheld amounts to excess recovery within the meaning of Section 62(6), it having been rendered excess upon the adjustment becoming due. Unilateral withholding of the adjustment has led to denial of the refund in time and, therefore within the mischief of the provision contained in Section 62(6) of the Electricity Act, 2003, that also being the spirit of the other provisions of the regulations quoted above.

9. In our considered view, the approach adopted by the State Commission has been wholly misdirected. The Commission is duty bound to enforce its own regulations and cannot say that it had no jurisdiction to give directions of the nature prayed for. It has failed to bear in mind the statutory provisions and the regulations framed by itself. This renders the impugned decision wrong, perverse, unfair and unjust.

10. For above reasons, the impugned order must be set aside. We order accordingly. We hold that the State Commission had the jurisdiction to issue the necessary directions and a proper case for award of interest has been made out. With these observations, the appeal is disposed of directing the State Commission to hold further proceedings for computing the amount payable in the name of interest and giving necessary directions in such regard.

11. The appeal is disposed of in above terms.

Pronounced in open court on this 15th Day of November, 2022

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson