

Before the Meghalaya State Electricity Regulatory Commission

Shillong

Case Number 9A/2017of 2018

In the matter of:

Petition for Separate Tariff Categorisation for Ferro Alloy Industries

for FY 2018-19

AND

In the matter of

Byrnihat Industries Association

Coram

Shri WMS Pariat, IAS (Retd), Chairman

Date of Order: 14.11.2018

ORDER

In response to the order dated 22.10.2018 passed by this Commission, in Case No. 9A/2017, BIA has filed its written objection to the review petition filed by MePDCL on 13.10.2018. Also an objection to the petition filed by MePDCL on the issue of jurisdiction of this Commission has been filed by BIA today.

It is to be noted that this Commission vide its order dated 22.10.2018 had permitted BIA to file its necessary objections to the petitions filed by MePDCL on or before 09.11.2018. However the objections have only been filed on 13.11.2018 on the review petition and 14.11.2018 on the issue of jurisdiction respectively. The Commission notes that the State Government had declared the 09.11.2018 and 12.11.2018 as holidays on account of Wangala Dance and Nongkrem Dance respectively, and since the intervening days were in any case non-working days, this had resulted in the Commission being closed for the entire period. In conformity with the relevant Regulations of the Commission, and in order to meet the ends of justice, the objections filed by BIA be therefore taken on record, which is accordingly done.

Mr. S. S. Agarwal, Secretary BIA at the outset of the hearing brought to the notice of this Commission the petition dated 30.10.2018 and more specifically paragraphs 4 and 5 of the said petition wherein it is stated as follows:-

" 4. That as per the aforesaid order dated 22.10/18, passed by the Honble Commission(MSERC) it is understood after reading both the above-mentioned paras that the BIA has been directed to submit their reply/response on both the applications submitted by MePDCL and the next date of hearing on this subject matter would be on 14.11. 18. and no action will be taken till the date of the next hearing.

5. In view of the above, it may be brought to your kind notice that pending hearing and decision on the Review Petition, MePDCL is continuing to raise the bills to the Ferro Alloy consumers as per Tariff Order dated 31.03.18, since the new tariff is under consideration in the Review Petition and depending on the final outcome of the Review Petition, necessary adjustment will be made accordingly."

The Secretary, BIA further submits that this Commission had vide order dated 10.09.2018 fixed a new tariff for Ferro Alloy Industries and subsequently this Commission vide letter No. MSERC/MePDCL/COR/2018/234 dated 20.09.2018 had clarified that " The Commission would like to state that HTSS (ferro Alloy) category with tariff as applicable has come into force with effect from 01.10.2018 as such rates for power supplied with effect from onwards will be at the revised rates and power supplied till 30.09.2018 will be at previous rates". As such the petition filed by MePDCL on 30.10.2018 was in violation of the order of the Commission dated 10.09.2018 and clarification dated 20.09.2018 , and accordingly sought clarification on the issue.

Also heard Mr. K. Paul, Advocate for BIA who submits that MECL by filing the said application has violated the orders of this Commission dated 10.09.2018 and subsequent clarification issued vide letter dated 20.09.2018 . It is his submission that filing of such application by the Superintendent Engineer, MePDCL , supported by an Affidavit , would attract penalties as provided under section 142 of the Electricity Act and unless the said petition is withdrawn proceedings under section 142 of the Electricity Act should be drawn up against the MePDCL for which he would file an appropriate application.

Unfortunately no justification is forthcoming on the said petition on behalf of MePDCL. Mr. Sahkhar, Superintendent Engineer (RA) who is personally present when queried about the said petition also could not give any convincing reason for MePDCL to make such an application to the Commission. Also Heard Mr. S. Sarawagi, Advocate for and on behalf of the MECL who submits that he is under instructions from his senior Dr. N. Mozika to appear in the matter and that he has nothing further

to add to what has been mentioned in the petition. . When countered with the query as to how the petition dated 30.10.2018 came to be filed by the MePDCL inspite of the order dated 10. 09.2018 , the Learned Advocate submits that he countenances the submission made by the Advocate for BIA and Mr. S.S. Agarwal, Secretary BIA that in view of the order dated 10.09. 18 passed by the Commission fixing separate tariff category for Ferro Alloy Industries and no effective order being passed on the review petition, the bills with effect from 1.10.2018 would have to be raised as per the new tariff as fixed by this Commission vide its order dated 10.9.2018 .

After hearing both the parties on the issue as aforesaid, this Commission , for the present, refrains from taking cognizance under Section 142 of the Electricity Act against MePDCL or the concerned officers as raised by the learned advocate of the BIA . However it is hereby reiterated that bills to be raised by MePDCL wef 01.10.2018 in respect of Ferro Alloy units would be as per the new tariff i.e. @ Rs. 4.36/- (132KV) and Rs. 4.46/- (33KV) respectively.

This Commission also considers it appropriate that the issue of jurisdiction of this Commission to hear the case is an issue which needs to be decided first as, it is a core issue which, if so decided in the positive in favour of MePDCL, nothing else would survive for consideration by this Commission. As such this Commission considers it appropriate to take up this issue before proceeding to hear the review petition filed by the MePDCL on merits.

On the issue of jurisdiction of this Commission, as raised by the MECL vide their petition dated 11.10.18 Mr. S. Sarawgi, Advocate submits that he has nothing further to add as the Judgement and order of the Honourable Supreme Court of India passed in Civil Appeal No. 14697 of 2015 State of Gujrat and others versus Utility Users Welfare Association and others is abundantly clear on the issue. He further submits and has produced a newspaper cutting of The Shillong Times wherein it is reported that the Govt. of Meghalaya has decided to henceforth have a Two Member State Electricity Commission. Mr. Sarawgi, Advocate has however prayed for an opportunity to file a rejoinder to the Objection filed by the BIA and assures that the same would be filed by 19.10.2018. Nothing further on the issue has been raised by the officials of MePDCL present in the hearing.

Mr. K. Paul, Advocate for BIA while resisting the application filed by MePDCL questioning the jurisdiction of this Commission has relied on paragraph 125.6 of the Judgement which states that "In case there is no member of law as member in the commission as required aforesaid in para 125.2 of our conclusion, the next vacancy arising in every State Commission shall be filled by a member of law in terms of para

125.2 above”. He has further placed reliance on section 93 of the Electricity Act which provides for “Vacancies etc., not to invalidate proceedings - No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission”. He would submit that para 125.6 of the Judgement rendered by the Honourable Supreme Court would have to read in conjunction with section 93 of the Electricity Act, 2003 and as such the orders and proceedings of this Commission on the issue at hand would not be invalidated, and therefore the question of challenge to the jurisdiction of this Commission is misplaced and liable to be rejected.

On hearing the Advocates for the parties and after perusing the petitions filed by the respective parties, this Commission is of the present view that since MePDCL wants to respond to the objection of the BIA dated 14.11.2018, they are permitted an opportunity to do so and accordingly time is granted to MePDCL to file the requisite rejoinder within 19.11.2018 with an advance copy to the BIA. This fact is indicated during the course of hearing itself. This Commission would thereafter proceed to decide the issue of jurisdiction raised in a separate detailed order.

Fix 19.11.2018 for the rejoinder/reply of MePDCL on the objection filed by BIA.

Sd/-

(WMS Pariat)

Chairman,

Meghalaya State Electricity Regulatory Commission