

MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

1st Floor (Front Block Left Wing), New Administrative Building Lower Lachumiere,
Shillong – 793 001.

MSERC Case No. 9 of 2023 with
MSERC Case No. 10 of 2023
MSERC Case No. 11 of 2023
MSERC Case No. 12 of 2023
MSERC Case No. 13 of 2023
MSERC Case No. 14 of 2023
MSERC Case No. 15 of 2023
MSERC Case No. 16 of 2023
MSERC Case No. 17 of 2023
MSERC Case No. 18 of 2023

In the Matter of : Review petition filed under clause 22 of MSERC Regulations 2014, Clause 21 of MSERC (Conduct of Business) Regulations 2007 and section 94 and 181 of Electricity Act 2003, in respect of order of this Commission dated 11th April 2023 in relation to determination of Distribution Tariff for FY 2023-2024.

And

In the matter of:

1. Green Valley Industries Ltd.
2. Meghalaya Steels Ltd.
3. Meghalaya Cements Ltd.
4. M/s Shillong Ispat & Rolling Mills.
5. M/s Ri-Bhoi Ispat & Rolling Mills.
6. M/s Sriram Wire Products
7. Hills Cements Company Ltd.
8. Pawan Casting Pvt. Ltd.
9. Meghalaya Cast & Alloys Pvt. Ltd.
10. RNB Cements Pvt. Ltd.

...Petitioners

Versus

Meghalaya Power Distribution Company Limited
Integrated Office Complex,
Lum Jingshal, Short Round Road
Shillong – 793001

...Respondent

Coram:

P.W. Ingty, IAS (Retd) Chairman, MSERC
R.K. Soni, District Judge (Retd.) Member, MSERC

Counsel for the Petitioners : Kaustav Paul, Sr. Advocate & S. Chanda, Advocate
Counsel for the Respondent : Aditya. K. Singh, Advocate & Anukriti Jain, Advocate
Date of Hearing : 05.03.2024 (Heard through video conferencing)
Date of Order : 13.03.2024

ORDER

Dated 13th March, 2024

1. Commission has issued the Tariff Order dated 11.04.2023 for determination of ARR and Distribution Tariff for FY 2023-24.
2. Green Valley Industries Ltd and Others has filed the Review petitions as per Regulation 22 of MSERC MYT Regulation 2014, Clause 21 of MSERC (Conduct of Business) Regulations 2007 and Sections 94 and 181 of Electricity Act 2003, against determination of Distribution Tariff for FY 2023-24 dated 11th April 2023.
3. Commission taking into consideration of all the facts and records, passed the order on the Review petition filed by Green Valley Industries Ltd and others in the chapters annexed to this Order.

Sd/-

Shri. R.K. Soni, District Judge(Retd.)
(Member)

Sd/-

Shri. P.W.Ingty, IAS(Retd.)
(Chairman)

Petitioner's Submission

1. The petitioners are a private Limited Company registered under the Companies Act, 1956 having their registered office in different parts of Meghalaya. The Petitioners are filing the instant Review Petitions under Section 94(1)(1) of the Electricity Act, 2003 read with Rule 22 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 [MYT Regulations] before this Hon'ble Commission to Review its order dated 25.03.2023 determining the Distribution Tariff for FY 2023-2024, effective from 01st of April, 2023 as the same contains error apparent on record which are detailed in the present petition.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

2. That the Petitioners states that in the year 2020, MePDCL realizing that there has been a reducing trend of industrial consumption which was affecting the HT: LT ratio of sales. MePDCL decided to sell its power to the companies in the State and to encourage Industrial consumption in the State. Thereafter MePDCL entered into a Memorandum of Understanding in Short "MOU" between Byrnihat Industries Association, (hereinafter BIA) for creation of a special tariff for the industries.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

3. That the petitioners states that upon execution of MoU dated 07.10.2020. MePDCL filed an application before this Hon'ble Commission for incorporation of Special tariff for HT and EHT Industrial consumers which was registered as MSERC Case No. 10 of 2020. The Hon'ble Commission thereafter vide Its order dated 19.10.2020 taking cognizance of the issues that were placed before the Commission, approved the Special Tariff for an initial period of three years as per the MOU entered between BIA and MePDCL.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

4. That the petitioners states that in terms of Special Tariff Order, the petitioner company entered into a agreement with MePDCL for supply of electricity as per the Special tariff.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

5. That the petitioners states that to the utter shock and surprise the petitioner came to know from the Secretary BIA that MePDCL through its director invoked clause 17 of the MOU unilaterally, alleging non-maintenance of the required load factor and therefore issued a notice dated 26.10.2021, for termination of MOU.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

6. That the petitioners states after receiving the notice dated 26.10.2021, B1A through its Secretary filed a reply dated 09.12.2021 highlighting the issues that were not considered by the MePDCL. In the said reply letter BIA also highlighted various issues and requested MePDCL to furnish details of load factor penalty, the amount paid In that regard, details of power supplied and to withdraw the notice.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

7. That the petitioners states that Respondent Corporation vide letter dated 17.01.2022 informed the petitioner of discontinuation of Special Tariff in terms of the Termination Notice dated 26.10.2021. The said notice stated that if the Petitioner desires to avail power from the Respondent Corporation, the same shall be considered as per the regular/normal tariff as applicable to HT/EHT consumers as determined by the commission in its order dated 25.03.2021 for the period of FY 2020-21 and after execution of fresh agreement and security deposits as per the contract load.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

8. That the petitioner's states that thereafter challenging the notice dated 17.01.2022, the petitioner preferred a writ petition before the Hon'ble high Court of Meghalaya registered as WP(C) No.10 of 2022. And vide judgment and order dated 01.07.2022 the Hon'ble High Court allowed the writ petition.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

9. That the petitioner's states that being aggrieved by the judgment and order dated 01.07.2022, the Respondent Corporation preferred an appeal against the Judgment dated 01.07.2022 and the same was registered as WA No. 33 of 2022. The Hon'ble High Court disposed of the said appeal setting aside the order passed on 01.07.2022 by the Ld. Single Judge of the Hon'ble High Court of Meghalaya. In the said judgement and order dated 05.09.2022 The Hon'ble High Court of Meghalaya while observing as under disposed off the Appeal granting liberty to the Petitioner to approach this Hon'ble Commission:

“Since the writ petitioner raised disputes pertaining to the failure to meet the load factor, the writ petitioner had to carry the grievance to the State Electricity Regulatory Commission and not invite the writ court to go into the disputed facts.”

It was however clarified by the Hon’ble High Court while disposing off the said appeal that the observations made in the order were only for the purpose of adjudicating the appeal and no part of the observations in the order would prejudice the rights of any of the parties before any forum including this Hon’ble Commission.

It is submitted that on the basis of the aforesaid liberty and observation, the Petitioner Company approached this Hon'ble Commission.

Commission’s Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner’s Submission

- 10.** That the petitioner’s states that acting In terms of the order dated 05.09.2022, passed by the Hon’ble High Court of Meghalaya, the Petitioner approached the Hon’ble Commission by way of MSERC Case No. 11 of 2022 for quashing and setting aside the notice dated 17.01.2022 and to allow the Petitioner company to pay the electricity dues as per the Special tariff fixed by this Hon’ble Commission.

Commission’s Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner’s Submission

- 11.** That the petitioner’s states that thereafter the Petitioner’s filed an IA application for stay of disconnection of electricity in view of the subsequent notice dated 24.09.2022, issued by the Respondent Corporation. The Hon’ble Commission after hearing the Petitioner passed an order of status quo restraining the Respondent Corporation from disconnecting electricity supply to the petitioner’s company until further orders.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

- 12.** That the Petitioner's states that challenging the status quo order dated 13.10.2022 passed by this Hon'ble Commission, the Respondent Corporation preferred a writ petition registered as WP(C) No. 466 of 2022. That during the pendency of the matter, the status quo order passed by the Hon'ble Commission was made absolute vide order dated 05.12.2022 and the Respondent Company again challenging the order dated 05.12.2022 filed another writ Petition before the Division bench of the High Court of Meghalaya which was registered as WP(C) No. 515 of 2022. The Division Bench of the Hon'ble High Court of Meghalaya, however while declining to interfere in the matter vide order dated 16.12.2022 disposed of the writ petition with a direction to the Respondent Corporation to avail alternative remedy as available under law. And as a consequence, WP (C) No, 466 of 2022 also came to be disposed of vide order dated 31.01.2023 in view of the order dated 16.12.2022 passed in WP (C) No. 515 of 2022.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

- 13.** That the Petitioner's states that the Respondents thereafter preferred a Special Leave Petition before the Hon'ble Supreme Court of India registered as SLP (CIVIL) Dairy No. 6072 of 2023 (Meghalaya Power Distribution Corporation Ltd & Anr -vrs- Meghalaya State Electricity Regulatory Commission & Ors assailing the order dated 16.12.2022 passed by the Hon'ble High Court of Meghalaya In WP(C) No 515 of 2022. The said SLP was however withdrawn by the Respondents herein with liberty to pursue the matter in terms of the liberty granted by the High Court.
To the best of the knowledge of the Petitioners, no appeal against the orders passed by this Hon'ble Commission has been filed by the Respondents till date.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

14. That the Petitioner's states that meanwhile the Tariff for the FY 2023-24 was due for fixation by this Hon'ble Commission. As such this Hon'ble Commission vide order dated 15.03.2023 fixed the tariff for the present financial year 2023-24. However, through oversight this Hon'ble Commission did not take into consideration the Category of Special Tariff originally fixed for a period of three years and which is still continuing in terms of the earlier orders passed by this Hon'ble Commission.

Commission's Analysis

The Commission had issued the Tariff Order for FY 2023-24 on 11.04.2023 but not on 15.03.2023 as stated in the petition, and the claim of oversight for issue of special Tariff is denied.

Commission had notified the Tariff for FY 2023-24 effective from 01.04.2023, while no special tariff rates are notified in respect of the petitioner industries in view of the fact that Tariff petition filed by Respondent MePDCL does not include the petitioner's category of special tariff.

Petitioner's Submission

15. That the Petitioner's states that order dated 15.03.2023 was passed by the Hon'ble Commission without considering the fact that Special tariff was fixed for a period of three years and that there was an order of status quo passed by this Hon'ble Commission. The Hon'ble Commission while fixing the tariff for the present financial year did not appreciate these vital facts and the same being an error apparent on the face of the record, the present review application is being preferred on and among the following grounds.

Commission's Analysis

No error was found in the Tariff petition filed by the Respondent MePDCL for FY 2023-24. Tariffs are notified vide Order dated 11.04.2023 considering the petition indicating all HT/EHT Industries in one group category.

GROUNDS

Petitioner's Submission

- (I) An error apparent on the face of record has crept into the order of tariff dated 15.03.2023 in as much as this Hon'ble Commission had fixed the Special Tariff for a period of three years and the said period would expire only in October 2023. The same being an integral part of the present existing tariff was not taken into consideration by the Hon'ble Commission while fixing the tariff for the present financial year 2023-24 and as such the order dated 15.03.2023 is liable to be reviewed.
- (II) The Order dated 15.03.2023 passed by the Hon'ble Commission for Distribution Tariff for FY 2023-2024 has been passed without considering the fact that the Special tariff was created for a period of three years w.e.f 1.11.2020 to 1.11.2023 and the same was approved by this Hon'ble Commission by order dated 19.10.2020 passed in MSERC CASE No. 10 of 2020. The Hon'ble Commission without considering this aspect passed the tariff order for the FY 2023-2024 without Including the Special tariff category in the approved tariff, as such the Impugned Order dated 15.03.2023 is liable to be reviewed.
- (III) The Special Tariff was created for a period of three years and the same is still continuing In terms of the orders passed by this Commission and as such omission of the Special Category of Tariff from the tariff for the FY 2023-2024 would be an error apparent on the face of the record. As such the Impugned Distribution Tariff Order dated 15.03.2023 is liable to be reviewed.
- (IV) It is trite law that once tariff is approved by the commission, the same has to be followed until and unless the same has not been revoked by an order passed by the commission. It is submitted that in the instant case the Special tariff as approved by this Honb'le Commission for a period of three years is still continuing and there is no

order by which the said position of Special Tariff has been altered/revoked/annulled or has been set aside. Therefore, non in-corporation/inclusion of the Special tariff in the Tariff order dated 15.03.2023 is an error apparent on the face of the record. As such, impugned Order dated 15.03.2023 is liable to be reviewed.

- (v) The order dated 15.03.2023 fixing tariff also did not take into notice the factum of an existing dispute between the Petitioner and other similarly situated parties with the MePDCL before this Hon'ble Commission and the existence of an order of status quo. As such the order dated 15.03.2023 is liable to be reviewed to this limited extent

Commission's Analysis

Commission considers no error was crept in the Tariff Order notified for FY 2023-24.

ARR and Tariff for FY 2023-24 was determined after analyzing the Revenue required and the expected Revenue from the existing Tariffs considering the Energy sales projected by the Respondent MePDCL.

Conclusion & Order

Commission considers no error was crept in on the face of the Tariff Order for FY 2023-24 dated 11.04.2023.

Regulation 23.1 of MSERC MYT Regulations 2014 specifies that – *“No Tariff or part of any tariff may be ordinarily amended, more frequently than once in any financial year”*

The Review of Tariff Order already issued for FY 2023-24 is not possible as per the Regulations.

Thus the Petition filed by Green Valley Industries Ltd. and others stands disposed off.

Sd/-
**Shri. R.K. Soni, District Judge(Retd.)
(Member)**

Sd/-
**Shri. P.W.Ingty, IAS(Retd.)
(Chairman)**