CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram:

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

Review Petition No.77/2007
in
Petition No.128/2006

In the matter of

Review of order dated 15.3.2007 in Petition No.128/2006 - Approval of transmission tariff for 400 kV D/C Kaiga-Narendra transmission line and 400/220 kV sub-station at Narendra including additional capitalization from DOCO (1.11.2005) to 31.3.2006 in Southern Region for the period from 1.11.2005 to 31.3.2009.

And in the matter of

Tamil Nadu Electricity Board, Chennai **... Petitioner**

Vs

Power Grid Corporation of India Limited, Gurgaon **… Respondent**

Review Petition No. No.95/2007
in
Petition No.130/2006

In the matter of

Review of order dated 15.3.2007 in Petition No.130/2006 - Approval of transmission tariff for 400 kV S/C Gooty-Neelmangala transmission line along with bay extension and equipment at Gooty and Neelmangala associated with Ramagundam-III Transmission System in Southern Region for the period from 1.5.2005 to 31.3.2009.

And in the matter of

Tamil Nadu Electricity Board, Chennai **... Petitioner**

Vs

Power Grid Corporation of India Limited, Gurgaon **… Respondent**

The following were present:

1. Shri R. Krishnaswami, TNEB
2. Shri U.K. Tyagi, PGCIL
3. Shri C. Kannan, PGCIL
4. Shri R. Prasad, PGCIL

ORDER
(DATE OF HEARING: 18.9.2007)

The application for review, being Petition No. 77/2007 has been made by Tamil Nadu Electricity Board for review of order dated 15.3.2007 in

Petition No.128/2006 (Approval of transmission tariff for 400 kV D/C Kaiga-Narendra transmission line and 400/220 kV sub-station at Narendra including additional capitalization from 1.11.2005 to 31.3.2006 in Southern Region for the period up to 31.3.2009). Similarly, another application for review, being Petition No.95/2007 has been made also by TNEB for review of order dated 15.3.2007 in Petition No.130/2006 (Approval of transmission tariff for 400 kV S/C Gooty-Neelamangala transmission line along with bay extension and equipments at Gooty and Neelamangala (the transmission line) associated with Ramagundam-III transmission system in Southern Region for the period up to 31.3.2009 after accounting for additional capitalization up to 31.3.2006). Both these applications for review which raise a similar question of law, were heard on 18.9.2007 on admission. For the sake of convenience, we are referring to the facts pertaining to Review Petition No.95/2007.

2. The investment approval for the transmission system associated with Ramagundam STPS Stage-III was accorded by Ministry of Power vide its letter dated 29/30.8.2001 at an estimated cost of Rs. 39012 lakh, including IDC of Rs. 4204 lakh. The apportioned approved cost of the transmission line, declared under commercial operation on 1.5.2005 was Rs. 8983 lakh.

3. The respondent filed Petition No.130/2006 for approval of transmission tariff for the transmission line based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (the 2004 regulations). In the tariff petition, the respondent claimed gross block of Rs. 6587.75 lakh as on 1.5.2005. In addition, the respondent claimed additional capitalization of Rs. 403.18 lakh for the period up to 31.3.2006. The

respondent considered debt-equity ratio of 77.23:22.77 as actually deployed on 1.5.2005. It, however, considered the entire amount of additional capital expenditure of Rs. 403.18 lakh as having been financed through loan.

4. The tariff for the transmission line was approved by order dated 15.3.2007. While approving tariff, the Commission considered debt-equity ratio of 77.23:22:77 as on the date of commercial operation. The additional capitalization of Rs. 403.18 lakh was segregated into debt and equity in the ratio of 70:30, in view of Note 1 below Regulation 53 of the 2004 Regulations. Accordingly, equity of Rs. 1620.69 lakh as on 1.4.2006 was considered by the Commission against the respondent's claim of Rs. 1499.74 lakh on equity on that date.

5. The petitioner has sought review of the order dated 15.3.2007, limited to the question of debt-equity ratio considered for additional capital expenditure. It has been pointed out that the Commission, in view of first proviso to clause (2) of Regulation 54 of the 2004 regulations could not have considered any part of the additional capital expenditure of Rs. 403.18 lakh against equity since the entire expenditure was financed out of debt. According to the petitioner, return on equity cannot be allowed on an amount exceeding the equity actually employed by the petitioner, but restricting to 30% of the cost of the transmission line. It has been contended that clause (2) of Regulation 54 of the 2004 regulations is to be construed in the light of the general principles of interpretation of statutes that a provision is to be read in its entirety, including the proviso. The petitioner has stated that apportionment of additional capital expenditure, financed entirely through debt, into debt and

equity in the ratio of 70:30, is an error of law apparent on the face of record, being contrary to the 2004 regulations and is, therefore, liable to be reviewed.

6. We heard Shri R. Krishnaswamy, for the petitioner on admission and Shri U.K. Tyagi for the respondent.

7. The contentions of the petitioner have been considered very carefully in the light of Note 1 below Regulation 53 of the 2004 regulations and clause (2) of Regulation 54 thereof. The relevant provisions are reproduced below for facility of analysis.

> "53. **Additional capitalisation:** (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:
>
> (i) Deferred liabilities;
>
> (ii) Works deferred for execution;
>
> (iii) Procurement of initial capital spares in the original scope of works subject to the ceiling norm specified in regulation 52;
>
> (iv) Liabilities to meet award of arbitration or compliance of the order or decree of a court; and
>
> (i) On account of change in law.
>
> Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.
>
> Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the transmission system.
>
> ……
>
> **Note 1**
>
> Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred

on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 54."

"54. Debt-Equity Ratio**.** (1) ……..

(2) In case of the transmission systems for which investment approval was accorded prior to 1.4.2004 and which are likely to be declared under commercial operation during the period 1.4.2004 to 31.3.2009, debt and equity in the ratio of 70:30 shall be considered:

Provided that where equity actually employed to finance the project is less than 30%, the actual debt and equity shall be considered for determination of tariff:

Provided further that the Commission may in appropriate cases consider equity higher than 30% for determination of tariff, where the generating company is able to establish to the satisfaction of the Commission that deployment of equity higher than 30% was in the interest of general public".

8. From Note 1 below Regulation 53 of the 2004 regulations, it is to be seen that the additional capital expenditure allowed by the Commission is to be serviced in the "normative" debt-equity ratio specified in Regulation 54. Clause (2) of Regulation 54 lays down that generally for the purpose of fixation of tariff, debt and equity in the ratio of 70:30 are to be considered. However, first proviso lays down that where deployment of equity is less than 30%, the actual equity deployed is to be considered for determination of tariff.

9. The interpretation of proviso to a provision has been considered by the Hon'ble Supreme Court in a number of cases. In Union of India v. Sanjay Kumar Jain [(2004) 6 SCC 708], the Hon'ble Supreme Court held that

"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins* v. *Treasurer of Surrey* (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning*

Factory v. *Subhash Chandra Yograj Sinha* and *Calcutta Tramways Co. Ltd.* v. *Corpn. of Calcutta*), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. **As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.** "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso" said Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance C.* Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal* v. *Raje Ram Sheoran, Tribhovandas Haribhai Tamboli* v. *Gujarat Revenue Tribunal* and *Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd.*] **(Emphasis added)**

……

12. A statutory proviso "is something engrafted on a preceding enactment" (*R.* v. *Taunton, St. James*).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in *Barker, Re*)."

10. In Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal, (1991) 3 SCC 442, it was held that

"6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express

> terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

11. From the law laid down in the above judgements of the Hon'ble Supreme Court, it follows that a proviso to a particular provision of a statute carves out an exception to the main provision to which it has been enacted and the proviso cannot be interpreted to lay down the general rule, enacted in the main provision. It further follows that the proviso deals with a case which would otherwise fall within the general language of the main enactment. Further, where the language of main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it what clearly falls within its express terms.

12. The language used in the substantive provision of clause (2) of Regulation 54 makes it explicit that the general rule or the norm for debt-equity ratio for the purpose of determination of tariff is 70:30. Thus, as per the substantive provisions of Regulation 54, norm for debt-equity ratio should be 70:30. Note 1 below Regulation 53 lays down that for additional capital expenditure, normative debt-equity ratio is to be adopted. It, therefore, follows that the additional capital expenditure, irrespective of the source of financing is to be apportioned between debt and equity in the ratio of 70:30, which is the "normative" debt-equity ratio. This principle of interpretation has been followed by the Commission while fixing tariff for the transmission line. We may also

add that the resultant equity works out to 23.18% on overall basis which is less than the normative equity of 30%.

13. In view of the foregoing, in our opinion, there is no error of law involved in fixation of tariff in Petition No.130/2005. The application for review (Petition No.95/2007) is liable to be dismissed at the admission stage. For similar reason, the other application for review (Petition No.77/2007) is also liable to be dismissed. It is here so ordered.

14. Accordingly, both these applications for review stand dismissed.

Sd/-	Sd/-
(R.KRISHNAMOORTHY)	**(BHANU BHUSHAN)**
MEMBER	**MEMBER**

New Delhi dated the 15th October 2007