

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri R. Krishnamoorthy, Member
3. Shri S. Jayaraman, Member
4. Shri V.S. Verma, Member

Review Petition No.86/2009

In the matter of

Review of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

And in the matter of

Assam State Electricity Board, Guwahati

Petitioner

Vs

1. North Eastern Electric Power Corpn, Shillong
2. North Eastern Regional Power Committee, Shillong
3. National Hydroelectric Power Corpn, Faridabad
4. Power Grid Corporation of India, New Delhi
5. Meghalaya State Electricity Board, Shillong
6. Government of Arunachal Pradesh, Itanagar
7. Power & Electricity Department, Mizoram
8. Electricity Department, Govt. of Manipur, Imphal
9. Department of Power, Govt. of Nagaland, Kohima
10. Department of Power, Govt. of Tripura, Agartala

Respondents

Following were present:

1. Shri H.M. Sharma, ASEB
2. Shri P.K. Hazarika, ASEB

**ORDER
(Date of Hearing: 9.6.2009)**

The application for review of the operational norms specified by the Commission for thermal and hydro generating stations of North Eastern Electric

Power Corporation Ltd, under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the tariff regulations”). The Commission has notified the terms and conditions for determination of tariff for the period 1.4.2009 to 31.3.2014 by virtue of power under Section 61 and Section 178 of the Electricity Act, 2003 (the Act). The applicant has averred that the relaxed operational norms specified by the Commission are not justified and in support of its contention, the applicant has placed on record some evidence.

3. Heard Shri P.K. Hazarika and Shri H. M. Sharma representatives of the applicant on maintainability.

3. It is a fundamental principle of construction that rules/regulations made under the statute are treated as if they were in the statute and are of same effect. The tariff regulations having been notified by the Commission in exercise of its legislative powers conferred under the Act have become part of the statute and partake the character of legislation. Clause (f) of sub-section (1) of Section 94 of the Act undeniably confers powers of review on the Commission on same basis as vested in a civil court under the Code of Civil Procedure (the Code). The powers of the civil court in regard to review are contained in Section 114 read with Order 47 of the Code. The civil court exercises power to review while performing its adjudicatory functions of settlement of civil disputes. The civil courts do not perform the legislative functions on the lines vested in the Commission under Section 178 of the Act. Therefore, for exercise of powers by the Commission under Clause (f) of sub-section (1) of Section 94 of the Act, a distinction has necessarily to be made between the

power exercised in legislative capacity and that exercised in the judicial or quasi-judicial capacity. It follows that the powers conferred on the Commission by virtue of Clause (f) of sub-section (1) of Section 94 of the Act to review its decisions, directions and orders are limited to the adjudicatory functions of the Commission under the Act or an order made in exercise of quasi-judicial power. In this view of the matter, the provisions of “the tariff regulations are beyond the scope of review under Clause (f) of sub-section (1) of Section 94 of the Act. A view similar to this was taken by the Commission earlier while disposing of the applications made by certain utilities for review of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, also made under Section 178 of the Act.

4. The Appellate Tribunal for Electricity has been consistently following this approach when it has been holding that the regulations made by the Commission under Section 178 of the Act are outside its appellate jurisdiction, they being statutory in nature, get incorporated in the parent statute.

5. Accordingly, the application for review is not maintainable and is hereby dismissed.

Sd/-
[V. S. VERMA]
MEMBER

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[R. KRISHNAMOORTHY]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

New Delhi, dated 22nd June 2009