

**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

Petition No.103/2009

In the matter of

Petition for amendment to Regulations, 2009 under Section 94 read with Section 61 of the Electricity Act, 2003

And in the matter of

Madhya Pradesh Power Trading Co. Ltd, Jabalpur

Applicant

Following were present:

1. Shri Pradip Mishra, Advocate, MPPTCL
2. Shri Daleep Kr. Dhayani, Advocate, MPPTCL
3. Shri D. Khandelwal, MPPTCL

ORDER

(Date of Hearing: 23.6.2009)

The application has been made for amendment of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the tariff regulations”) relating to certain financial norms, namely, rate of return on equity (Regulation 15), O&M charges for the transmission system (Regulation 19), and the methodology for sharing of the transmission charges (Regulation 33. 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 read with Section 178 of the Electricity Act, 2003 (the Act), after previous publication and opportunity of oral hearing to the stakeholders.

2. Heard Shri Pradip Mishra, learned counsel for the applicant on maintainability. He explained that the purpose of the application was to set the machinery of the Commission in motion by pointing to certain provisions of the tariff regulations. Learned counsel submitted that the Commission by virtue of its power to frame the tariff regulations under section 178 of the Act, has the inherent power to review and modify those regulations. He, however, submitted that it was within the discretion of the Commission to redress the grievance of the applicant who did not any right to seek amendments to the tariff regulations through the present application. Learned counsel submitted that the issues raised in the application needed proper deliberation and pleaded for admission of the application. Learned counsel made certain submissions on merits of the applicant's case as projected in the application. We are not taking note of those submissions for the purpose of this order as at this stage we are primarily concerned with the question of maintainability of the application.

3. The application has been made on the judicial side of the Commission under Section 94 of the Act and has been termed as the application for amendment of the tariff regulations. The application is, thus an application for review of the tariff regulations. 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 is not maintainable on judicial side and is hereby dismissed.

6. Before parting, we may point out that the tariff regulations were notified after a detailed and thorough consultative process. All the stakeholders, including the applicant were afforded opportunity to present their views on the draft proposals. The applicant in fact availed of the opportunity and made its submissions. Therefore, the applicant's grievance in this regard appears to be misplaced. However, we have taken note of the submissions made by the applicant in support of its plea for amendment of the tariff regulations.

Sd/-
[V. S. VERMA]
MEMBER

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[R. KRISHNAMOORTHY]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

New Delhi, dated 25th June 2009