

APTEL SETS ASIDE JSERC'S TARIFF ORDER FOR NON-ADHERENCE OF PRINCIPLES OF NATURAL JUSTICE



The Appellate Tribunal for Electricity (“APTEL”) by its order dated 05.08.2024, addressed a contentious issue between the Damodar Valley Corporation (“DVC”), the Jharkhand State Electricity Regulatory Commission (“JSERC”) and DVC’s consumer association in the State of Jharkhand by setting aside the Order dated 22.01.2024 (“Impugned Order”) which trued-up DVC’s tariff for Financial Year (“FY”) 2021-22, carried out the annual performance review for FY 2022-23 and determined the Aggregate Revenue Requirement & Tariff of DVC for FY 2023-24 to the extent of the determination of Non-Tariff Income (“NTI”) for DVC’s distribution business in the said State.

The Impugned Order was challenged before the APTEL due to the erroneous treatment of certain incomes of DVC as NTI for its distribution business in Jharkhand without any regard to the fact that such incomes were not generated from its distribution business and were in fact generated across its various other business segments i.e., generation, transmission and others.

DVC contended that JSERC’s approach lacked a nuanced understanding of DVC’s consolidated account, which amalgamated earnings from its diverse operations spanning Jharkhand and West Bengal into a common fund in terms of the DVC Act, 1948. DVC further contended that JSERC unjustly categorized its entire consolidated non-tariff income as pertaining solely to its distribution business in Jharkhand, thereby overlooking the distinct nature of its incomes from other states and business functions.

By the Impugned Order, the APTEL noted that DVC was not even put on notice when such NTI for FYs 2006-07 onwards was determined, much less be given an opportunity to be heard or put forth its contentions. The APTEL further found that the extent to which the non-tariff income was unilaterally determined by the JSERC from FY 2006-07 onwards violates principles of natural justice, and the order necessitates interference for JSERC’s failure on this count itself. This ruling not only addresses the immediate dispute, but also reinforces the procedural requirements for future regulatory evaluations, ensuring a balanced approach that recognizes the diverse nature of operations of DVC.

The APTEL was hence, pleased to set aside the Tariff Order to the extent of the determination of NTI for DVC’s distribution business, on the ground that it was passed without hearing DVC altogether, in violation of the principle of audi alteram partem and directed JSERC to put the DVC and it’s consumers on notice and provide a reasonable opportunity to be heard before passing a fresh order on DVC’s NTI in Jharkhand in accordance with law. DVC was also given the liberty to file a separate appeal on the other issues which were raised by it in the said Appeal.

Our Managing Partner, Mr. Shri Venkatesh, assisted by Mr. Bharath Gangadharan, Counsel, Mr. Nihal Bhardwaj, Senior Associate, and Mr. Kartikay Trivedi, Associate, represented DVC in the aforesaid proceedings.

The Order dated 05.08.2024 can be accessed [here](#).