

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 158 of 2007**

**Dated: 21<sup>st</sup> January, 2009**

**Present: Hon'ble Mr. Justice M.Karpaga Vinayagam, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

**IN THE MATTER OF:**

Uttar Haryana Bijli Vitran Nigam Limited,  
Shakti Bhawan, Sector 6,  
Panchkula-134109

.... Appellant

Vs.

1. Haryana Electricity Regulatory Commission,  
Bays No. 33-36, Sector-4,  
Panchkula -134109.
2. Haryana Power Generation Corporation Ltd.,  
Shakti Bhawan, Sector-6,  
Panchkula -134109.
3. Dakshin Haryana Bijli Vitran Nigam Limited,  
Shakti Bhawan, Sector-6,  
Panchkula -134109.
4. Haryana Vidyut Prasaran Nigam Limited,  
Shakti Bhawan, Sector-6,  
Panchkula -134109.
5. Northern Railways,  
Baroda House,  
New Delhi-110001.
6. Confederation of Indian Industry, Northern Region,  
Plot No. 248-F, Sector 18, Udyog Vihar,  
Phase-IV, Gurgaon-122015.
7. Laghu Udyog Bharti, Panchkula,  
36B, Sector 5, Mujessar Fatak Road,  
Faridabad-121006, Haryana.

8. Haryana Chamber of Commerce and Industry,  
VPS Agro Oils Pvt. Ltd., Dhanvanti Bhawan,  
Railways Road, Kurukshetra-136118.

Counsel for the Appellant (s) : Mr. M.G. Ramachandran, with  
Mr. Anand K. Ganesan &  
Ms. Swapna Seshadri  
Counsel for the Respondent(s) : Mr. H.S. Sandhu with  
Mr. Sanjay Varma, Director &  
Mr. Rajesh Monga, Law Officer  
for Resp.1

### **JUDGMENT**

#### **Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**

This is an Appeal filed by the Uttar Haryana Bijli Vitaran Nigam Ltd., the Appellant herein as against the Haryana State Commission's Order dated 26/09/07 read with Order dated 08/05/07 whereby the State Commission determined the Annual Revenue Requirement (ARR) and fixed the distribution and retail supply tariff.

2. The facts of the case are as follows:
- i) The Appellant herein, Uttar Haryana Bijli Vitaran Nigam Ltd. (UHBVNL) became a licensee for distribution and retail supply business in the State of Haryana by the Order dated 4/11/04 of the Haryana State Commission.

- ii) The Appellant filed a Petition for determination of its Annual Revenue Requirement (ARR), and for fixation of its distribution and retail supply tariff before the State Commission for the FY 2007-08. The State Commission in response, issued a public notice and invited objections. Subsequently, the State Commission conducted a public hearing on the said Petitions. Ultimately, by the order dated 8/5/07, the State Commission decided the petition as to the Appellant's ARR for the FY 2007-08 and also determined the tariff applicable to the Appellant. Since the said Order required some rectification, the Appellant filed a Petition for review before the State Commission on 5/6/07, seeking for the modified Order in respect of some aspects.
- iii) By the order dated 26/9/07, the State Commission has partly allowed the Review Petition by modifying the order dated 8/5/07 only on some aspects and rejected the Review Petition in respect of the other aspects.
- iv) Aggrieved by this, the present appeal has been filed by the Appellant as against the order dated 26/9/07 passed

in the Review Petition rejecting the other aspects sought to be reviewed by the Appellant.

3. Shri M.G.Ramachandran, the Learned Counsel for the Appellant has raised three points:

- i. The State Commission is not right in restricting the Repair and Maintenance expenditure at 2% of the Gross Fixed Assets, as against the claim of the Appellant at 2.86%.
- ii. The State commission, ought not to have restricted to the distribution loss level of 26%, as against the claim of 28.5% projected by the Appellant.
- iii. The State Commission wrongly held that the interest on working capital will be determined based on one month's receivables because of an advance consumption deposit taken from the consumers as against the claim of two month's receivables projected by the Appellant.

4. While elaborating these points Shri M.G.Ramachandran, the Learned Counsel for the appellant submitted that he does not wish to press the first point as the State Commission allowed the Repair and Maintenance expenditure for the subsequent year at a

higher level, which has compensated the Appellant for any shortfall in the previous year i.e. the FY 2007-08. Even in regard to the third point, it is submitted that he will not be able to press the same in view of the fact that the said point has already been covered in the earlier Judgment rendered by this Tribunal in Appeal Nos. 181/05, 207/05 and 59/06 dated 8/11/06. However, he submits that he requires some clarification with regard to the said point. In view of the above submission made by the Learned Counsel for the Appellant, it is enough for this Tribunal to consider the second point alone.

5. The question with reference to the second point raised before this Tribunal is as to whether the distribution loss level is to be restricted to 26% as fixed by the State Commission as against the claim of 28.5% sought by the Appellant.

6. The crux of the arguments advanced by the Learned Counsel for the Appellant, in respect of the said points is given below:

***“The State Commission wrongly decided on the aggregate transmission and distribution loss levels to be achieved by the Appellant at 26% as against 28.5% projected by the Appellant, ignoring various salient aspects. As a matter of fact, the loss levels allowed by the State Commission in the last year i.e. FY 2006-07 was 30.5%. Now, for this year, the State Commission provided for a steep reduction of loss***

**level by over 4.5%. The area of supply of the Appellant largely consists of semi-urban and rural areas with a wide distribution network of 11 kV and below. The supply of electricity in a State Like Haryana includes a significant part of agricultural consumers and consumers in rural areas. When the supply is to be made to agricultural consumers and rural consumers, invariably, such agricultural consumption consists of un-metered supply. When such being the case, a reduction in the loss levels by a significant 4.5% is onerous. The reduction in the capital loss, reduction in the technical loss etc. cannot be achieved when significant capital investments which are not fully allowed, as sought for by the Appellant. In fact, the State Commission itself complimented the Appellant for having performed well and for having achieved significant reduction in the loss levels over a period of time. Having given such compliments to the Appellant, the State Commission ought not to have penalized the Appellant by fixing the loss levels to the tune of 26% which is a steep reduction of loss levels compared to the previous year. Due to this reduction of loss level to 26%, there has been a substantial reduction in the ARR also and this has seriously affected the cash flow and the overall financial health of the Appellant. Hence the order impugned has to be modified accordingly.”**

7. To substantiate this plea, the Counsel for the Appellant would cite two authorities namely: (i) Appeal No. 251/06 dated 4/4/07 and (ii) Appeal No. 90/07 dated 11/12/07 respectively, both Appeals being M/s. Reliance Energy Limited Vs. Maharashtra Electricity Regulatory Commission.

8. In reply to the above submissions, both the Counsel for the Respondent State Commission as well as the Counsel for the other Respondents including the Northern Railways have filed the

Written Submission. The following is the gist of the objections raised by the Respondent-Commission, to the above-said contentions urged on behalf of the Appellant:

***“The State Commission allowed the licensee an extensive capital investment plan amounting to Rs. 584 crores for the FY 2007-08 as against Rs. 216 crores for the FY 2006-07. In case the licensee was able to deploy the plan funds, the Commission was confident that the utility would be able to restrict the loss to 26%. The State Commission since the FY 20001 allowed capital expenses to the Appellant for upgradation, modernization and strengthening of the distribution system. During the last two years, the Commission allowed in excess of Rs. 2000 crores for this purpose to the Appellant. The cost of the losses have to be borne by the electricity consumers. Resultantly the consumers cannot be burdened twice, first by way of the cost of such loans and then high distribution losses. By virtue of the high distribution losses, the consumers ought not to have been put in a difficult situation due to which they will be burdened more. Therefore, the Commission is right in fixing the distribution losses at 26%.”***

9. We have considered the submissions made by the Counsel for the Petitioner, the Appellant, as well as the Respondents. We have also gone through both the orders dated 8/5/07 and 26/9/07 passed by the State Commission.

10. The question is as to whether the Order of the Commission dated 26/9/07 fixing the loss level of distribution at 26% is justified or not. It is true that the State Commission appreciated the performance of the Appellant with reference to the significant

reduction in losses. However, the fact that the State Commission allowed the extensive capital investment plan amounting to Rs. 584 crores for the FY 2007-08 as against Rs. 216 crores for 2006-07 should not be overlooked.

11. Even according to the Appellant before the Commission, the licensee was able to achieve a loss level of 28.5% for the FY 2007-08 with a deployment of 50% of the sanctioned funds. On that basis, for the FY 2007-08, the Haryana State Commission correctly assumed that a loss level of 26% could be achieved by the Appellant with a proper deployment of the sanctioned funds.

12. The containment of losses to a reasonable level is one of the major objectives of the Act. To achieve this purpose, the Commission from the FY 2001 allowed capital expenses for upgradation etc. to the extent of Rs. 2000 crores for the said purpose. As correctly pointed out by the Counsel for the Commission, the cost of such losses are borne by the electricity consumers. The consumers should not be burdened twice, first by way of cost of fund deployed for upgradation of distribution system and second, by way of high distribution losses.



13. Thus, it is necessary for the Commission to ensure that these losses are brought down to a reasonable level. The Commission could have retained a stricter loss reduction trajectory. However, having considered the much slower achievements in loss reduction by the Appellant, the Commission gave them much relaxed and achievable targets.

14. Haryana has one of the highest tariffs in the country. One important element that is to be noticed is that the high levels of distribution losses, and the percentage reduction in these has the effect of saving as much as Rs. 110 crores. This was the reason that such benchmarks ought to be achieved by the distribution companies, so as to make sure that the tariff charged is at a reasonable level in the State.

15. As per the tariff for the FY 2007-08, the share of sales of agricultural and unmetered tubewells is approximately 40%. The Appellant has failed to take appropriate steps to provide meters at these points. As a matter of fact, the State Commission in the

earlier order passed in the year 2001 had specifically observed that the utilities should carry out load survey of the agricultural consumers and monitor their consumption by installing meters, so that the actual connected load and consumption figures are available. Despite the lapse of several years, this process has not been completed due to the non-compliance of directions of the Commission by the Appellant. For this lapse on the part of the Appellant, the consumers should not be allowed to suffer. The Judgments cited by the Counsel for the appellant would be of no help to the appellant in view of the above facts and situation.

16. For the reasons mentioned above, we do not find any infirmity in the Order impugned passed by the State Commission dated 26/9/07 with reference to the fixation of distribution loss levels.

17. As regards the third point, it has been submitted by the Counsel for the Respondent that he needs some clarification. On a perusal of the Judgment rendered by the Tribunal in Appeal No. 181/05 dated 8/11/06, we feel that no clarification is necessary.

18. Hence, the Appeal is dismissed as devoid of merits. No costs.

**( A.A. Khan )**  
**Technical Member**

**( Justice M. Karpaga Vinayagam )**  
**Chairperson**

Dated: **21st January, 2009.**

**REPORTABLE / NON - REPORTABLE**