

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 5 of 2008 and 63 of 2008

Dated: 25th February, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member

In the matter of:

Appeal No. 5 of 2008

Steel Furnace Association of India
(Punjab Chapter)
C/o Upper India Steel Mfg. & Engg. Co. Ltd
Dhandari Industrial Focal Point
Ludhiana-141010

... Appellant

Versus

1. The Punjab State Electricity Regulatory Commission,
SCO Nos.220-221, Sector 34-A
Chandigarh-160034 (New) 1600222 (Old)
(Through its Chairman)
2. Punjab State Electricity Board
The Mall, Patiala-147001.
(Through its Chairman)
3. State of Punjab
Through the Secretary
Department of Power
Chandigarh-160 009.

.....Respondents

Counsel for Appellant(s) : Mr. Sanjay Sen
Mr. Achintya Dvivedi &
Ms. Sikha Ohri

Counsel for the Respondent(s): Ms. Sneha Venkatramani for
PSEB
Mr. Sakesh Kumar for PSERC
Mr. Rajah Singh, Dy. Dir.
(Rep.)

Appeal No.63 of 2008

Government of Punjab
Department of Power
Mini Secretariat, Sector 9
Chandigarh-160 001.

... Appellant

Versus

1. Punjab State electricity Regulatory
Commission
SCIO: 220-221, Sector 34-A
Chandigarh-160 034.
(Through its Chairman)
2. Punjab State Electricity Board (PSEB)
The Mall, Patiala
Punjab-147 001.
(Through its Chairman) ... Respondent(s)

Counsel for Appellant (s): Mr. Rajah

Counsel for Respondent(s): Ms. Sneha Venkataramani for
PSEB

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

These two Appeals being Appeal No.5/2008 and Appeal No.63/2008 have been filed by (1) the Steel Furnace Association of India; and (2) the Government of Punjab, Department of Power respectively as against the impugned order dated 13.9.2007. The impugned order in these Appeals is common. Therefore, this common judgment is being rendered.

2. Steel Furnace Association is the Appellant in Appeal No.5 of 2008. The Government of Punjab is the Appellant in Appeal No.63 of 2008.

3. The facts in Appeal No.5 of 2008 are as follows:

- (i) Steel Furnace Association of India, Punjab Chapter Appellant is an association of Steel Furnace Units who are high energy users

constituted all over the country. The Punjab Electricity Board, the Respondent 2 filed a petition before the Punjab State Commission (R-1) seeking for the fixation of tariff on the basis of the Aggregate Revenue Requirement for the years 2002-03 and subsequent years.

The Appellant association filed objection in response to the Aggregate Revenue Requirement for the said tariff year 2002-03 and for subsequent years. Ultimately, the Punjab State Commission passed the tariff orders for the years 2004-05, 2005-06 and 2006-07.

- (ii) Being aggrieved by these Tariff Orders, the Punjab Electricity Board preferred two Appeals in Appeal Nos. 54 and 55 of 2005 before this Tribunal. After hearing the Punjab Electricity Board and other persons, the Tribunal allowed the said Appeals and remanded the matter back

to the State Commission directing to decide in respect of 3 issues afresh. These 3 issues are as follows:

- (1) Allocation of cost of Ranjit Sagar Dam Project between the Electricity Board and the Irrigation Department;
 - (2) Diversion of funds towards meeting out revenue requirement of the Electricity Board;
 - (3) Determination of category-wise cost of supply.
- (iii) In pursuance of the remand order passed by this Tribunal, the State Commission took up the matter and decided those issues by the Order dated 13.9.2007. Aggrieved over this order, mainly on the ground that the directions given in remand order issued by the Tribunal, have not been fully complied with by the State

Commission, the Appellant Steel Furnace Association of India has filed this Appeal No.5/2008.

4. The facts in Appeal No. 63/2008 are as follows:
 - (i) The Government of Punjab, Department of Power the Appellant herein, invariably used to help the State Electricity Board (R-2) in the development of the infrastructure from time to time. The Appellant has provided loans to the State Electricity Board. The Electricity Board had not only availed itself of loans from the Government but also obtained the same from other financial institutions also for the purpose of Capital Expenditure.
 - (ii) Over a period of time, the State Electricity Board has diverted significant portion of these

loans availed for capital expenditure to meet its revenue expenses. On the application filed by the State Electricity Board (R-2), the Tariff Orders were passed by the State Commission for the Financial Years 2003-04, 2004-05, 2005-06 and 2006-07. In these Tariff Orders, the State Commission disallowed the interest to the extent of Rs.100 crores every year on account of diversion of funds and from the Aggregate Revenue Requirement of State Electricity Board. Thereupon, some of the consumers filed the appeals before the Tribunal seeking exclusion of the entire interest cost paid by the State Electricity Board on the diverted fund from the Aggregate Revenue Requirement.

- (iii) The Tribunal after hearing the parties by the Order dated 26.5.2006, set aside the Tariff Orders and remanded the matter with direction

to the Punjab State Commission to decide the issue relating to the extent of interest that can be allowed as pass-through and determine the same in respect of the revenue exercise for the year 2006-07.

- (iv) In compliance with the order of the Tribunal dated 26.5.2006, the Punjab State Commission carried out an inquiry to the extent of the funds diverted by the State Electricity Board for revenue purposes. Ultimately, the State Commission passed the order holding that it was not possible to pinpoint the specific funds that had been diverted by the State Electricity Board. Having held so, the State Commission calculated that the cumulative amount of serviceable debts that had been diverted was Rs.3,190.88 crores. On the basis of the said calculation, the State Commission determined

the interest payable as Rs.389.92 crores for the year 2006-07. Later, this Tariff Order had been reviewed by the State Commission, and the order had been passed on 17.9.2007 depriving the Government of claiming interest earning of Rs.289.93 crores for the two years for the loans made by the State of Punjab to the Electricity Board.

- (v) Having aggrieved over the disallowance of the interest cost on the diverted funds to the tune of Rs.289.93 crores, the State of Punjab has filed this Appeal in respect of the said issue alone.

5. Let us now deal with the Appeal No. 5 of 2008. The grievance of the Appellant, Steel Furnace Association in Appeal No.5/2008, is that the various directions given by the Tribunal by the Order dated 26.5.2006 by remitting back the matter to the

Commission to decide the issues on the basis of the findings and observations made by the Tribunal have not been fully complied with. The gist of the arguments advanced on behalf of the Appellant is as follows:

(A) In the remand order, the Tribunal after setting aside the impugned order gave the directions to the State Commission as under:

- (i) The State Commission has to determine and allocate the cost of Ranjit Sagar Dam Project which is to be allocated to the Electricity Board;
- (ii) The State Commission may seek the assistance of experts for the said determination;

(iii) The consequential effect of allocation of reduced cost by the State of Punjab must be given to the Electricity Board.

(B) Without adhering to these directions, the State Commission proceeded to enquire into the matter and decided the same on the basis of old report of Chatha Committee which is a Committee constituted by the State Government. As a matter of fact, the State Commission being an independent body has been directed by the Tribunal to determine the cost of Ranjit Sagar Dam Project by getting Expert's opinion so that independent conclusion could be arrived at. In this case, the State Commission simply relied upon the Chatha Committee Report, without resorting to get the opinion of the independent experts as directed by

this Tribunal. This report was submitted earlier by the Chatha Committee, appointed by the State Government. In fact, the State Government is one of the parties in the proceedings before the State Commission. Therefore, the Chatha Committee Report cannot be held to be independent report and as such, it ought not to have been relied upon.

- (C) In the remand order, the Tribunal has given clear directives to the Commission that the State Commission is not bound by the cost of Ranjit Sagar Dam Project as reflected in the Books of Accounts of the Electricity Board as it is a tariff issue. Despite this, the State Commission has opted to go by the historical cost of Ranjit Sagar Dam Project as recorded in the

Books of Accounts. This is not in compliance with the direction of the Tribunal.

(D) There is a specific direction given by the Tribunal to determine the cost of Ranjit Sagar Dam Project. But without complying with the said order, the State Commission mentioned in the impugned order that re-determination of cost of RSD Project is not advisable in view of the inter-state cost allocation implication. This is clear violation of the remand order passed by the Tribunal.

(E) With regard to the diversion of the funds, the Tribunal directed the Commission to give relief to the consumers on the basis of the diversion of funds as it exists. Instead of complying with the said directions, the

State Commission made an attempt to re-determine the quantum of funds diverted. This is also a clear violation of the direction of the Tribunal.

(F) The Tribunal directed the State Commission to determine the category-wise cost of supply and to ascertain the magnitude of cross subsidisation from that level. But the State Commission has simply dealt with the Tariff Order 2007-08. The directions issued by the Tribunal were applicable for the years 2006-07 and not 2007-08. Thus, this direction also has not been complied with.

6. The reply by the Respondent is as follows:

(i) The Remand Order directed the State Commission only to relinquish the

apportionment of the cost of Ranjit Sagar Dam Project. It did not give any finding with reference to the issue. Earlier the State Commission had not gone into the question of cost allocation. Now the State Commission applied its mind and came to the conclusion of allocating 79.1% to the Board on the basis of the materials placed before the Commission.

- (ii) Though the Tribunal refers to the desirability of the outside consultant, no such direction had been given. On the other hand, the Tribunal left it to the discretion of the State Commission. Therefore, on the basis of the materials available and also on the basis of Chatha Committee Report which was already available, the conclusion has been arrived

at. With reference to the diversion of funds and interest on Government loan, the Tribunal mainly directed the State Commission to examine the issue of diversion of funds and interest.

(iii) Accordingly, the State Commission found out that there was a diversion of Rs.3828.23 crores and after adjustment, the Commission calculated the figure at Rs.3,190.88 crores. The rate of interest also was correctly calculated as 12.22% and after disallowing Rs. 100 crores, the State Commission directed the State Government to refund the amount of Rs.289.92 crores. Therefore, there is no infirmity in the impugned orders passed by the State Commission.

7. In the light of the above submissions made by the learned Counsel for the parties, we are mainly concerned with the following question:

“(i) Whether the direction issued by this Tribunal in the Judgment dated 26.5.2006, remanding the matter to decide the issues in the light of the observations made by the Tribunal have been complied with by the State Commission in its impugned order dated 13.9.2007?”

8. Let us deal with this question now. There is no dispute whatsoever in the fact that this Tribunal by order dated 26.5.2006 in the batch of Appeals in Appeal Nos.4, 13, etc; of 2005 had issued three directions to the State Commission after setting aside the earlier Tariff Order passed by the State Commission dated 14.6.2005. In this judgment

dated 26.5.2006, the Tribunal directed the State Commission:

- (i) To determine the cost of Ranjit Sagar Dam Project which is required to be allocated to the Electricity Board (R-2);
- (ii) To seek assistance of experts for the said determination purpose and
- (iii) To give the consequential effect of allocation of reduced cost to the Electricity Board.

9. While issuing these directions, the Tribunal remanded the matter to the State Commission asking the Commission to decide on three issues afresh. They are as follows:

- (i) Allocation of cost of Ranjit Sagar Dam Project between the Electricity Board and Irrigation Department;

- (ii) Diversion of funds towards meeting of revenue requirement of the Electricity Board;
- (iii) Determination of category-wise cost of supply;

10. As pointed out by the learned Counsel for the Appellant in Appeal No.5 of 2008, this Tribunal has given a clear direction in its judgment dated 26.5.2006, to the effect that “the accounts of the Board which reflect the cost of RSD Project allocated to the Board are not binding on the Commission even though the allocation may have been done by the State of Punjab as the allocation is a Tariff issue.” Despite this, the State Commission opted to go by the historical cost of Ranjit Sagar Dam as recorded in the Books of Accounts.

However, the Respondent-3 (State Govt.) has submitted that the only matter remanded to the

State Commission was apportioning of the cost of RSD Project to power and Irrigation.

11. The issue raised in Appeal No. 4, 13, 14, etc., was allocation of the cost of Ranjit Sagar Dam Project to Power and Irrigation. The Appellant had submitted that apportionment of 79.1% made by the State Government towards power component was absolutely arbitrary and the Board had been unjustifiably burdened with huge cost, which has resulted in fixation of higher tariff. It was noted by the Tribunal in its Judgment dated 26.5.2006 that the same position had been echoed by the State Commission in its various tariff orders for the years 2002-03 to 2005-2006. The Tribunal after examination of the matter in its Judgment had

directed as under:-

“In view of the aforesaid analysis, we hold and direct that:-

- (i) Commission is not powerless to issue orders and directions relating to matters having a bearing on and nexus with the determination and fixation of tariff and its directions shall be binding on all persons and authorities including the State Government in this case.*
- (ii) The accounts of the Board which reflect the cost of the RSD project allocated to the Board are not binding on the Commission even though the allocation may have been done by the State of Punjab as the allocation is a tariff issue.*
- (iii) The allocation of 79.1% of the cost of Ranjit Sagar Dam to the Board is arbitrary and a clear anomaly resulting in undue burden on the Board. Since such*

fastening of liability is a continuous wrong and affects the tariff, the Commission shall determine the cost of the project by due diligence and fair study of the cost which is to be allocated to the Board.

- (iv) It will be open to the Commission to secure the assistance of experts for determining the cost which is to be allocated to the Board in accordance with law.*

- (v) The Board and the State of Punjab shall file all the relevant documents before the Commission for determining the cost chargeable to the power component of the project and if there is a non-compliance, it is open to the Board to draw adverse inference as well.*

- (vi) In case the Commission allocates a reduced cost of the RSD project to the Board, consequential effect shall be given*

to it by the State of Punjab. It shall also be entitled to all consequential reliefs.

(vii) The Commission shall complete its determination within six months from the date of communication of this judgment.

(viii) Since the determination will take place in future, the relief, subject to the outcome of the Commission's determination regarding allocation of cost of RSD Project to the Board, shall be made available to the consumers after the truing up exercise for the year 2006-07 and the outcome of the truing up exercise shall be given effect to.

(ix) Such relief shall be available to all the consumers and shall not be confined to the industrial consumers alone who have filed appeals before us”.

12. Thus the main issue which was subject matter of the Appeal and remanded to the State Commission was apportionment of cost to the Electricity Board. The State Commission in the

impugned order has gone into the above issue. It has been noted by the State Commission in the impugned order that after the observation of the State Commission regarding sharing of cost of RSD Project in the Tariff order for the year 2002-03 on 6.9.2002, the State Government on 5.5.2003 appointed a one man Committee headed by Shri A.S. Chatha to go into the cost allocation of the Project. The Chatha Committee recommended retention of allocation of project cost in the ratio of 79.1%: 20.9% between the Electricity Board and Irrigation and the report was accepted by the State Government. This fact came to the notice of the State Commission only in September, 2004.

13. The State Commission has also re-examined the issue and available data and has taken note of the following regarding apportioning of the project

cost:

- i) Detailed Project Report containing statistical data of the past 50 years considered by the State Government and Planning Commission.
- ii) State Government's approval of cost apportionment was based on 'Facilities Used Method', recommended by the Government of India.
- iii) The cost sharing of 79.1%:20.9% was approved by Central Water Commission.
- iv) Chatha Committee also recommended to retain the same cost sharing ratio.

14. We have examined the documents which were considered by the State Commission and have noted

the following:

- i) In the Project Report of RSD Project the cost share between Power and Irrigation was allocated in the ratio of 88.6% and 11.4% based on Separate Costs Remaining Benefit Method (SCRB Method).
- ii) Government of India vide its letter dated 11.4.1967 addressed to all State Governments recommended the “Use of Facilities” Method for allocation of cost. Accordingly, the Government of Punjab revised the cost allocation based on ‘Use of Facilities’ Method to 79.1%:20.9%.
- iii) Central Water Commission vide its letter dated 24.3.1999 has accepted the revised cost allocation of 79.1% and 20.9% between Power and Irrigation (in place of 88.6% and 11.4%).

- iv) The Planning Commission has also accepted the above cost allocation vide its letter dated 5.11.2001.

- v) There is only marginal increase in water used for irrigation as a result of RSD Project while the entire water has been used for power generation providing 600 MW of power generation. The detailed calculation of the relative increase in use of water in Irrigation and Power generation after commissioning of RSD Project has been provided.

15. The scrutiny of above documents indicate that apportionment of cost of RSD Project has not been done arbitrarily and is based on “Use of Facilities” Method as recommended by the Government of India. The apportionment of 79.1%:20.9% between

Power and Irrigation has also been approved by the Central Water Commission, an apex body of the Government of India on River Valley Projects and the Planning Commission. In view of these facts we uphold the finding of the State Commission regarding apportionment of cost to the Electricity Board.

16. Let us now deal with the issue of Diversion of Funds:

i) The Tribunal in its Judgment dated 26.5.2006 had directed the following:

“129. It appears to us that the breach of financial discipline by the Board violates the provisions of Section 61 of the Act of 2003 and corresponding provisions of Section 29(2) of the Act of 1998. Since the issue of diversion of funds is interlinked with other issues namely RSD cost allocation, subsidy,

high rate of interest on Government loans etc., the controversy relating to the extent of interest which can be allowed as a pass through can not be resolved unless the other issues are also decided by the Commission as directed by us. The resolution of these issues are bound to take time and cannot be decided without relevant data. Therefore, relief can only be given to the consumers for the future years.

130. In view of the foregoing, we direct that for the year 2006-07 the issue relating to the extent of interest which can be allowed as a pass through shall be determined and resolved by the Commission alongwith the determination of the issue relating to RSD cost allocation, subsidy and high rate of interests on Govt. loans. This shall be

accomplished during the truing up exercise for the year 2006-07”.

- ii) The State Commission has carried out detailed exercise regarding diversion of funds and has determined year-wise quantum of funds diverted for revenue purpose for the years 2002-03 to 2005-06. However, the State Commission could not work out the funds diverted in the year 2006-07 due to non-availability of the accounts for FY 2006-07. The State Commission has tentatively adopted the figures of Rs. 3824.23 crores of diverted fund worked out for FY 2005-06 for FY 2006-07 also subject to review on availability of audited accounts for the FY 2006-07. After accounting for RBI bonds amounting to

Rs. 637.35 crores having no interest liability the net amount of diversion has been worked out as Rs. 3190.88 crores. On the basis of weighted average interest rate of 12.22% in respect of State Government loans the State Commission has worked out interest on diverted funds as Rs. 389.92 crores. Out of this Rs. 100 crores has already been disallowed by the State Commission in the Tariff Order for FY 2006-07. The balance Rs. 289.92 crores has been directed to be disallowed from the interest payable on Govt. loans in the APR for 2006-07 when the same is reviewed in Tariff Order for 2007-08.

- iii) We find that the State Commission has allowed the relief according to the directions of this Tribunal.

17. The next issue is with reference to the determination of category-wise cost of supply and capping of consumption by subsidised category of consumers. In the remand order passed by the Tribunal, a specific direction had been issued by the State Commission to determine category-wise cost of supply and to ascertain the magnitude of cross subsidization from that level. It was also further directed that the State Commission shall put up a cap on the consumption of energy by subsidized category of consumers to be allowed at subsidized tariff. Without considering the same, the State Commission in the impugned order has simply mentioned that the directions of the Tribunal in the Remand order pertained to the year 2007-08 and accordingly, the State Commission would deal with it only in Tariff Order for the year 2007-08. The State Commission has, however, not indicated any

action plan or given any directions for carrying out studies and collection of data required for implementation of the directions of the Tribunal.

18. Further, in the Tariff Order 2007-08, the State Commission has not been able to determine category-wise cost of supply and resultant impact of cross subsidization. In fact, the State Commission has just expressed its inability to determine the same in the absence of data made available by the Electricity Board.

19. In respect of determination of normative level for consumption of energy in terms of directions given by this Tribunal in the Remand Order, the State Commission has again expressed its limitation in evolving normative levels of agricultural consumption in view of variations in agro climatic and differing crop pattern in the State. It is also observed by the State Commission that even if the

normative level of consumption is evolved, they would not get monitored in the absence of complete metering of agricultural consumption. Thus, by virtue of these observations, the State Commission has continued to allow agricultural consumption on actual basis casting additional burden of cross subsidization to be borne by the subsidizing category of consumers.

20. From the discussion made above, it is apparently clear that the State Commission has not complied with the directions issued by this Tribunal in Remand Order. That apart, the State Commission while passing the impugned order has not taken into consideration the various principles while dealing with the Tariff related issues in terms of Section 61 of the Act 2003. The State Commission being an independent regulatory

authority is supposed to be guided by the following factors:

- i) the principles and methodology specified by the Central Commission for determination of tariff applicable for Generating Companies and Transmission Licensees;
- ii) The generation, transmission, distribution of and supply of electricity are conducted on commercial principles;
- iii) The factors which should encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- iv) The safeguarding of consumers' interests and the recovery of the cost of electricity in a reasonable manner;

- v) The tariff should progressively reflect the cost of supply of electricity and also should reduce the cross subsidy within the period to be specified by the State Commission;

21. The State Electricity Boards are bound to function on commercial principles. They are supposed to safeguard the interests of the consumers while charging tariff which reflects cost of supply of electricity and reduce the cross subsidy.

22. The Electricity Board is bound to remain efficient and competitive while making economical use of resources and optimising through investment. Accordingly, the reasonable costs which are efficiently incurred in competitive environment by making optimum use of the investment by State Electricity Board can only be passed on to the consumers. Thus, the State Commission is

supposed to take into consideration all these principles while considering tariff related issues which should aim at passing on only reasonable and efficient cost to the consumers while making optimum use of the investment.

23. Thus, it is clear that the State Commission not only violated the specific directions issued by this Tribunal in the impugned order which are binding on the State Commission but also did not comply with the mandatory provisions contained in the Act.

24. SUMMARY OF OUR FINDINGS.

I. The State Commission has complied with the directions of the Tribunal given in the remand order on issues (1) & (2).

II. On the third issue the State Commission is again directed to carry out the Tribunal's directions of determining category wise cost of

supply and setting limit of consumption for subsidised consumers for which support through cross subsidy may be provided.

25. Thus the Appeal No. 5 of 2008 is partly allowed.

No costs.

APPEAL NO.63 OF 2008:

26. In respect of Appeal No.63/2008 it is contended by the Appellant Government of Punjab that the directions issued by the State Commission in the impugned order restraining the Electricity Board from paying interest to the State of Punjab on various Government loans on the ground that since the Electricity Board who is controlled by the State of Punjab had diverted the capital for revenue purposes, the burden of interest for diverted amount has to be borne by the State of Punjab is not valid

as the State Commission has exceeded the scope of jurisdiction under Section 86 of the Electricity Act.

27. In the impugned order, the State Commission decided to burden the Appellant with interest cost on diverted funds to the tune of Rs.289.92 crores on the ground that the Appellant State of Punjab has been exercising the pervasive powers over the State Electricity Board and, therefore, the State Commission directed that interest of Rs.289.92 crores would not be payable to the Appellant on the loans given by the State of Punjab to the Electricity Board.

28. It further directed that if any amount had been paid by the Electricity Board to the Appellant towards interest, the same should be refunded by the Appellant.

29. According to the Appellant, this direction issued by the State Commission in the impugned order is not within the scope of jurisdiction under Section 86 of the Act 2003.

30. We are unable to accept this contention of the Appellant. The relevant observations of the State Commission in the impugned order with reference to this issue is as follows:

“4.12 The Tribunal has in para 53 of its judgement observed that while the Board is undoubtedly a statutory body, it is also evident at the same time that ‘it is the hand and voice of the State Government’ which has a controlling interest in the Board and exercises pervasive control over it. In this view of the matter, a major portion of the liability of interest on diverted funds must fall upon the State Government. It is at the same time necessary to appreciate that

diversion of funds occurred largely on account of the need to meet the gap between revenue requirements and income of the Board. The Tribunal has referred to issues such as high cost of RSD Project, non-payment of subsidy by the State Government and high rate of interest on government loans. Other reasons for mis-match between resources and expenditure of the Board could be its sub-optimal performance in respect of critical parameters such as T&D loss and administrative costs, failure to review tariffs from time to time in order to cover up increase in the legitimate costs of the Board or even the high cost of power purchase. The actual cost may be a combination of several factors. While it may not be necessary to dwell upon all these issues in any further detail, it would be fair to observe that despite the pervasive control of the State Government, the Board must also bear a portion

of the responsibility for such state of affairs. For this reason, the Commission proposes to maintain the disallowance of Rs.100 crores out of interest cost of the Board as already disallowed in the year 2006-07 in the Tariff Order of 2006-07. The remaining burden must, for reasons brought out above, be borne by the State Government. Moreover, it would be inadvisable to further adversely impact the financial health of the Board or without adequate justification penalize the consumers.

4.13 Accordingly, the balance interest cost of Rs.289.92 crores is directed to be disallowed from the interest payable on government loans in the ARR for the year 2006-07 when the same is reviewed in the Tariff Order for 2007-08. This amount shall not be paid by the Board to the State Government and if it has already been

paid/adjusted against subsidy due, the State Government will refund this amount to the Board. This would result in a relief of Rs.289.92 crores to the consumers on account of transfer of this liability to the State Government for the year 2006-07.

4.14 In Para 130 of the order, the Tribunal has also directed the Commission to resolve the issue of high rate of interest on State Government loans and the extent to which interest can be allowed as a pass through. In this connection it may be mentioned that the Commission has all along been allowing interest costs of the Board in each of its Tariff Orders. It had, at the same time, noted that the carrying cost of loans of the Board was on the higher side especially, keeping in view the prevalent rates of interest in open market. Accordingly, the Commission, in Tariff

Orders for the years 2002-03 to 2005-06 had directed the Board to approach its financial institutions including the State Government for rescheduling/restructuring of loans with the objective of bringing the rates of interest in line with the prevailing market rates.”

31. The reasons given by the State Commission in the impugned order, as referred to above with reference to the disallowance of the interest, are perfectly valid.

32. SUMMARY OF OUR FINDINGS

The State Commission correctly decided to burden the Appellant the interest on diverted fund to the tune of Rs. 289.92. The interest cost of Rs. 289.92 crores is directed to be disallowed from the interest payable on Government loans

in the ARR for the year 2006-07 when the same is reviewed in the Tariff Order for the year 2007-08. This amount shall not be paid by the Board to the State Government. If it is already been paid the State Government will refund this amount to the Board. This will result in relief of Rs. 289.92 crores to the consumers.

33. In view of our above findings, we do not find any merit in this Appeal No.63/2008 as such it does not call for interference. Accordingly, this Appeal is dismissed. No order as to costs.

(Justice P.S. Datta) (Rakesh Nath) (Justice M. Karpaga Vinayagam)
Judicial Member Technical Member Chairperson

Dated: 25th February, 2011

REPORTABLE/NON-REPORTABLE