Before the Appellate Tribunal for Electricity
Appellate Jurisdiction

Appeal No. 112 of 2007

Dated: 10th March, 2008.

Present: Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

Tamil Nadu Electricity Board …Appellant

Versus

PPN Power Generating Co. Pvt. Ltd. & Ors. ….Respondent

Counsel for the Appellant(s) : Mr. R. Venkataramani, Sr. Adv.
Mr. S. Vallinayagam, Mr. Alijo K. Joseph,
Mr. T. Harish Kumar,

Counsel for the Respondent(s): Mr. Jayant Bhushan, Sr. Adv.
Mr. Rajiv Nayar, Sr. Adv.
Mr. Rajiv Sakhdar, Sr. Adv.
Mr. Rishi Kumar Duggar
Mr. Mahesh Agarwal
Mr. Rajiv Agarwal

JUDGMENT

Per Hon'ble Mr. Anwar Ahmad Khan, Technical Member

Appellant, the Tamil Nadu Electricity Board (hereinafter to be referred as the 'Board') wholly owned by the Government of Tamil Nadu and responsible for integrated operation of Generation, Transmission and Distribution of electricity in the State has preferred this

Appeal against the impugned order of Tamil Nadu Electricity Regulatory Commission (For brevity the 'Commission') passed on 02 Apr. 2007. Respondent No. 1, the PPN Power Generation Company (for short the 'Company) is a private company which has established a generation capacity of 330.5 MW situated at Pillaiperumainallur village, Tharangambady Taluk, in the district of Nagapattinam. The entire electricity generated from this power plant is sold to the appellant under a Power Purchase Agreement (PPA) executed on 03 Jan. 97 between the Appellant and the Respondent No. 1.

Contention of the Appellant Board

2. The Appellant has stated that start-up power supply was given to the company w.e.f. 11 Aug 2000 through two HT- service connections Nos. 54 and 55 with sanctioned demand each of 1000 KVA, under the urgent circumstances and pressure from the Company with mistaken belief that it has already made application and paid necessary charges and deposit [i.e. Registration Fees, Development Charges and EMD/Current Consumption Deposit (CCD)] when the PPA was executed between the Board and the Company way back on 03 Jan 97. The Appellant has further alleged that the fact of non-submission of application and non-payment of charges for the said connections were not disclosed by the company prior to the commencement of power supply. The Circle of the Appellant that provided the service connection learnt about it only later after commencement of supply to Company.

3. Appellant raised its first bill for current consumption on 30 Aug 2000 which was paid by the Company on 20 Sep. 2000 under protest that it was to be only for one service connection and not for two and the company issued two letters dated 20 Sep. 2000 and 20 Oct. 2000 to that effect. The Circle vide its letter dated 21 Nov. 2000 to Chief Engineer (IPP) sought confirmation whether the service connections to consumers is to be continued as two or it should be treated as one. It is pertinent to note that the company's representation dated 20 Oct. 2000 and 7 Nov. 2000 issued earlier were also addressed to Chief Engineer (IPP). The Circle of the Board asked the company vide its letter dated 6 Dec. 2000 to submit 2 sets of application forms for service connections 54 & 55 for service affected on 11 Aug 2000 with associated agreement for each connection and relevant Test Reports. The company was also asked to submit two separate Additional Load Applications with associated agreements and Test Reports, one for additional load of 6500 KVA from 01 Nov. 2000 and second for additional load of 8500 KVA from 01 Dec. 2000. The aforesaid letter in its last paragraph states that "*The SC No. 54 is deemed to have been disconnected from the date of opening …..*". Yet the company was asked to submit application for both service connections 54 & 55. Pursuant to the aforesaid letter the company had submitted one set of application for one service connection and two sets of applications for additional load in Nov. 2000. The Appellant, however, vide letter dated 16 Dec. 2000 returned the documents submitted by the company back to it with the observation that it was required to re-submit two sets of applications i.e. one each for two HT-Service connections.

4 The Appellant states that monthly current consumption bills for two service connections each of 1000 KVA were raised for the period from 11 Aug 2000 to 20 Feb. 01. Additionally the company was charged with penal charges on the basis of recorded maximum demand being beyond 1000 KVA. The company continued to pay raised bills till 26 Apr. 2001, the date of commercial operation (COD).

5. From the Minutes of Meeting (MOM) convened on 05 Apr. 2002 by the company which was attended by the senior officials of the Board, it was agreed that the two service connections will be regularized as single service connection with sanctioned demand of 1000 KVA with effect from 01 Aug 2000 to 20 Feb. 01 and the bill will be accordingly revised. The Company, however, insisted that the Additional Demand of 7000 KVA be sanctioned with retrospective effect from 11 Dec 2000, the date on which request for additional load demand was submitted and not from 01 Aug 2000 as proposed by the Board. The company also contested that the service connection was discontinued from 20 Feb 01 i.e. the date of synchronization and not from 26 Apr. 2001 which is the date of commercial operation. As per the said MOM the company also pointed out that since the power drawn for start up of the plant is similar to post-COD, only energy consumption charges are payable. The Company in other words has communicated that only energy charges is payable not only in pre-COD but also in post-COD phase of operation. The company was advised to take up the matter with Board Headquarters. Even at this stage, the Appellant did not indicate that the company was liable to pay for initial charges including Development Charges, deposits etc.

6. The Appellant Board, on 09 Nov. 05, finally accepted the request of the company for one service connection from 11 Aug 2000 and Additional load demand of 7000 KVA from 11 Dec 2000 to 26 Apr 01. The letter dated 09 Nov. 05 conveying the decision was addressed to Chief Engineer, Distribution, Trichy which in addition to the resolution as mentioned in para 5 above, also indicated that:

(a) the company has accepted 1% transformer losses in the computation of current charges.

(b) HT-tariff billing prior to COD is not accepted as it is regulated by Article 4.5 of PPA which indicates that the company shall pay for such energy in accordance with the then prevailing tariff rate for Industrial consumers. And the tariff billing up to COD (i.e. 26 Apr. 01) is to be done accordingly.

7. It has nearly taken three and a half years from the date of the aforesaid meeting held on 05 Apr. 02 for the Appellant board to finally firm-up its opinion on issues raised earlier.

8. Article 4.5 of the PPA reads as under:

"*4.5* ***Energy Prior to completion****. Upon the company's request, TNEB shall provide, at the sole cost and expense of the company, energy for construction, testing, commissioning and project start-ups. The company*

shall pay TNEB for such energy in accordance with TNEB's then prevailing tariff rate for industrial consumers."

9. The billing on the basis of the above decision took one more year and was referred for pre-audit. The pre-audit on 06 Sep. 06 found that the statutory charges i.e. HT service charges, Registration Charges, Development Charges and current consumption deposit have not been p aid by the company and the same has become due from 09 Nov. 05.

10. The Appellant has submitted that based on the pre-audit on 13 Sep 06 it intimated the company that while it will receive the refund of Rs. 70.21 lakhs, it is to pay to the Appellant, outstanding dues of Rs. 84.01 lakhs as under:

S. No.	**Details**	**For 1000 KVA**	**Addl. Demand for 7000 KVA**
I.	Registration Charge	500	500
II	Development Charge @ Rs. 350/KVA	3,50,000	24,50,000
III	EMD/CC Deposit @ Rs. 7000/KVA	7,00.000	49,00,000
	TOTAL	**10,50,500**	**73,50,500**

Grand Total = Rs. 84,01,000.00

Thus, about Rs. 13.80 lakhs as outstanding dues is to be cleared by the company.

11. The respondent company filed a petition no. DRP 5 of 2006 before the Commission. The Commission passed the impugned order on 02 Apr 07. Being aggrieved the Appellant has appealed against impugned order before us.

12 The story so far narrated adversely reflects deficiencies in service as well as in performance of the Circle of the Appellant and systemic infirmities of the Board. We observe the following:

(a) In the absence of any documents what was the basis of providing two service connections when the company was entitled for only one HT-service connection? Each SC of CD/MD of 1000 KVA appears to have been provided on adhoc basis without any authorization or evaluation of load.

(b) The Appellant having admitted in its letter of 06 Dec. 2000 that "*the SC No. 54 is deemed to have been disconnected from the date of opening…..*" Why did it keep on harping on two SCs and kept on billing on that basis to company till COD? It has caused avoidable harassment to the Company.

(c) Why did not the Board's claim include the development and other charges and deposit alongwith the billing of the current consumption charges at least on the basis of adhoc CD/MD of 1000 KVA load? Even the Company was not formally cautioned about its liability to pay such charges as and when they are quantified?

(d) The Appellant in the meeting held on 05 Apr. 02 did not counter the claim of the company that it was liable to not only pay the current consumption charges in pre-COD but also in post-COD phase also. The acquiescence of the Board points out to its own understanding of the PPA.

(e) It has taken nearly five years three months from the date of commencement of supply and three and half year from the date of above mentioned meeting before the Appellant Board could firm-up its decision on 09 Nov. 05. The billing, however, took further nearly one year when the Appellant Board on 13 Sep. 06 demanded for the first time the charges on account of development, ED/CD deposit etc, to be payable by the company.

(f) Prima-facie dues demanded from the Company is barred by the Limitation Act.

Contention of Respondent No. 1, the Company.

13 The Respondent No. 1 admittedly did not submit (nor it was enforced by the Appellant) requisite Application seeking HT-service connection (SC) prior to 11 Aug 2000 on which the service connection was provided but the same was actually submitted on 11 Dec. 2000 for one SC connection alongwith the application for additional demands but the same was returned by the Appellant as incomplete. It has stated that it came to

know later that the Appellant has provided two SCs each of 1000 KVA instead of one. The company has further stated that it had not requested for two SCs. The record produced before us does not show that the company had even requested for one SC.

14 The Respondent NO. 1 further stated that it kept making payment against the bills for two SCs containing the charges towards current consumption under protest for fear of disconnection till the COD of the plant. It has further submitted that both SCs were discontinued as no longer required after the Plant achieved synchronization with the grid. It has averred that the fact that the Appellant never made any demand prior to the impugned letter of 13 Sep 2006 is a clear admission that no service connection subsists and hence no amounts are due from the Company.

15 The Respondent No. 1, the company continued to request for regularization of the two SCs as one and revision of bills from 11 Aug 2000 which finally was accepted by Board on 09 Nov. 05. The regularized bills were subjected to pre-audit and the company was eventually intimated on 13 Sep 06 stating *inter alia* that a sum of Rs. 70,21,017.00 was to be refunded to the company and the Company is to pay an outstanding dues towards registration charges, Development charges etc. amounting to a sum of Rs.84,01,000.00, not paid earlier by the Company. After adjustment, the respondent no. 1 was asked to pay the shortfall of Rs. 13,79,983.00 in dues. The Appellant also informed subsequently on 18 Sep. 06 that CCD and other deposits will not be refunded to the company as in terms of Article 8.1(g) of PPA, it was obliged to supply energy to restart the plant during outages and will be retained till the agreement lasts. The

company has stated that even if the alleged amount of Rs. 84,01,000.00 is payable it is barred by the limitation period and the Appellant has forfeited its rights to recover it.

16 The Respondent NO. 1, the company filed DRP No. 5 of 06 on 19 Oct. 06 before the commission and the Commission in its order passed on 02 Apr. 07 allowed the petition and directed the Appellant to refund the sum of Rs. 70,21,017.00 to the company without interest and rejected the claim of recovery by the Appellant being barred by the Limitation Act. The Commission in its impugned order firstly has declared the claim of recovery on account of Development charges and other charges not admissible as per Art. 4.5 of the PPA, and secondly even if it was admissible it is barred under the provisions of Limitation Act. The Commission has drawn distinction between the cause of action for the refund that has arisen only in 09 Nov. 05, and the cause of action for the recovery claim of the Board has arisen from the date of commencement of supply (i.e. 11 Aug. 2000) and has applied limitation period of 3 years as per the provisions of the Limitation Act. The company ultimately received the refund of the aforesaid amount on 17 Feb. 07.

Issues that arise

17 Leaving the lapses and deficiencies in service and lacaidisical approach of the Board aside, the following issues arise in this Appeal.

(a) Do the terms and condition of bilateral Power Purchase Agreement executed on 03 Jan 97 between the parties impose liability on the

Company to pay for Development and other charges in addition to current charges of energy consumption?

(b) Should the company be treated at par, without any discrimination, with other HT-industrial consumers insofar as consumption of power from Board is concerned? If so with what effect?

(c) Whether the Respondent NO. 1 company having enjoyed the benefit of service from the Appellant, without complying with the Board's standard terms and condition of supply of electricity, is liable to pay the applicable Registration charges, Development charges, and other charges?

(d) What are the effects of Limitation Act on the claims of the parties?

Decision with Reasons

18 Article 4.5 of the PPA reads as under:

"*4.5* ***Energy Prior to completion****. Upon the company's request, TNEB shall provide, at the sole cost and expense of the company, energy for construction, testing, commissioning and project start-ups. The company shall pay TNEB for such energy in accordance with TNEB's then prevailing tariff rate for industrial consumers."* (Emphasis supplied)

19 The above Article contains two charges firstly, cost of service represented by '*at the sole cost and expenses of the company*' covering the cost incurred in the infrastructure, appurtenance, etc. providing connection to the company, and expenses on

its operations and maintenance and secondly energy charges on consumption which will be payable by the company at the prevailing tariff rate applicable to industrial consumers. There is no dispute on the liability of the company to pay for energy as per prevailing tariff rate for industrial consumers. The dispute is whether the company is liable to pay for 'cost of service' which includes Development Charges, EMD/CCD deposit etc. worked out on the basis of Maximum Demand. These charges cannot be levied in an arbitrary manner but in accordance with the TNEB's Terms and Conditions of Supply of Electricity applicable for all categories of consumers. The Board has submitted the 'Terms and Conditions of Supply of Electricity' issued on 24 Dec. 88 (as amended up to 31 Jan. 01), which is the applicable policy in the instant case for the relevant period and has since been in public domain. The Respondent No. 1 cannot claim ignorance of it to its own advantage. The charges as stipulated for other HT-industrial consumers shall also be applicable to the company without any discrimination. It will be grossly unfair to contemplate that Board has not incurred any cost or expenses and the Company is to simply pay for the energy consumed. The cost actually incurred by the Board but not recoverable is bound to compromise the public interest.

20 We also observe that Article 7.4 of the PPA which is titled 'No Waiver' reads as under:

> *"7.4 **No Waiver***
>
> *(a) No waiver by either Party of any default or defaults by the other Party in performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or*

defaults whether of alike or different character or shall be effective unless in writing by a duly authorized representative of such Party.

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one party to the other shall act as waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder which shall remain in full force and effect.

21 Thus, the default on part of any of the two parties in performance of the terms of the PPA shall not be construed as waiver unless exchanged by the parties in writing. As per the record no waiver has been issued by either parties in writing. Also neither failure by either party to insist on performance of the terms and conditions of the agreement shall amount to acceptance or relinquishment of any right under the agreement.

22 Further Article 8.1(g) of the PPA states that *"upon the request of the Company, TNEB shall provide the Company with energy sufficient to start or re-start the Projects' electric generation after the Project experiences an outage. Such amounts of energy shall be subtracted on a monthly basis at rate which shall not exceed any rate charged by TNEB to any other actual industrial customer not affiliated with TNEB from the amount of invoiced energy provided to TNEB by the Company and the bills for such energy provided by the Company shall be reduced accordingly."* Thus, the PPA casts obligations on the Board to continue to maintain and operate infrastructure establishing

connectivity of 230 kv feeder and associated appurtenance etc. with the grid at one end and interconnection facility installed by the Company in its switch yard at its costs at the other end. The interconnection facility switches the 230 kv feeder to import power from Board to start/re-start the Plant or to export generated power to Board. The same grid-connectivity infrastructure is utilized in both modes of operations.

23. The Company has submitted that the service connection having been closed on 20 Feb 2001 on synchronization of the plant with Board-grid, the electricity generated by it is being transmitted to Board through interconnection facility post-COD utilizing the feeder operated and maintained by the Board. The same feeder and appurtenances alongwith interconnection facility is also utilized for importing power from Board for start/re-start of the plant in post-COD. The Company argues that since no service connection subsists, it is liable to pay only energy charges and does not require to pay Maximum Demand and other charges/deposits for start/re-start of the plant post-COD. It does not sound reasonable as the configuration of the feeder to supply power to plant for start/re-start remains the same as prior to COD. Whatever charges are payable prior to COD should also be liable to be charged for start/re-start operation of the plant during Post-COD.

24. The Company argues that since the interconnection facility has been installed at its cost, the development and other charges are not payable by it. We observe that the installation of interconnection facility connecting the Company's system to interconnection point is the obligation of the Company. The "Project" as defined in the

PPA includes interconnection facilities amongst others and the company is recovering the cost alongwith the return through the tariff charged for the energy sold to the Appellant. It is further observed that there being no special terms and conditions entered into between the Board and the Company for any exemption of charges, the claim of the Company for not being liable to pay initial charges including Development Charges/EMD/COD etc. is, therefore, not sustainable and is rejected. Clause 8.10 and 8.11 of Terms and Conditions of Supply specify as under:-

> *"8.10 Having agreed on the position of point of supply as above the Engineer will render to the intending consumer an estimate for the cost of laying the service line. Any work of the laying the service line will be taken up only after the intending consumer pays the estimated amount in advance in full. The charages payable by the intending consumer for service line shall be as prescribed by the Board from time to time.*
>
> *8.11 The entire service line, even if a portion thereof has been paid by the consumer, will be the property of the Board and the Board will maintain it at its cost."*

25. Thus, the company is liable to pay in advance for any work for laying the feeder up to the interconnection point and will be liable to pay all charges as specified by the Board. The entire service line will be the property of the Board even if a portion thereof has been paid by the consumer. The Board will maintain it at its own cost. Therefore, the

liability of the company to pay miscellaneous non-tariff charges inclusive of Development Charge arises of its status as an HT-consumer and is in addition to the payment for energy consumed at the tariff rate applicable to industrial consumers. The aforesaid charges are independent of applicable charges when the company is operating as a generator to supply power to the Board.

26. The Appellant has stated that the initial charges / deposit (i.e. Registration Fees, Development Charges, EMD/CCD) to be collected from the HT-consumer is assessed on the Maximum Demand and since the same remained in dispute till it was regularized in Nov. 2005, the aforesaid charges could not be assessed and no demand could be raised on the company earlier. The learned Senior Counsel for the Appellant has vigorously argued that Article 4.5 of PPA provides that the energy to facilitate construction, testing, commissioning and project start-up is to be provided at the sole cost and expense of the Company and comes under purview of the HT-Billing and the company is liable to pay all applicable miscellaneous charges to TNEB beside payment of energy charges at the then prevailing tariff rate for Industrial consumers.

27. The dispute in the instant case is, however, is the non-payment of initial charges including Development charges and deposits by the company for availment of energy in pre-commissioning phase (i.e. 10 Aug. 200 to 20 Feb. 01) as applicable to other HT-industrial consumers.

28. The Commission in the impugned order referring to Article 4.5 of PPA has decided that:

> "T*he expression 'prevailing tariff rate' occurring in said Art. 4.5 of PPA would refer to the tariff rates namely electricity charges and it would not refer to development charges. In the Tariff order dated 15.03.2003 the Commission has specified the tariff rates for various categories of consumers. In the miscellaneous order dated 31.08.2004 issued in MP No. 41 of 2003 filed by TNEB, the Commission has dealt with the development charges and other miscellaneous charges. Development charges fall within the purview of the order dated 31.08.2004 which relates to <u>non-tariff related charges</u>. The above position would indicate that development charges cannot be termed as tariff so as to fall within the purview of the said Art. 4.5 of PPA.*

It goes further to conclude that:

> *"There is no mention about the collection of non-tariff related charges from the petitioner in Article 4.5 of the PPA. When that being the case, the audit remarks of liability of the Petitioner to pay the development charges being the non-tariff related charge is not valid i.e. an unjustified audit remarks"*

29. The Commission's Tariff order dated 15 Mar 2003 and 31 Aug. 04 deciding that development charges and other miscellaneous charges are non-tariff charges will be inconsequential as it will not alter the fact that the same are payable by the company as any other HT-industrial consumer.

30. In view of the above, we hold that the company as any other industrial consumer is liable to be charged the Development charges and other miscellaneous charges in addition to charges on energy consumption. Points No. 16(a), 16 (b) and 16 (c) are decided in favour of the Appellant.

31. Having held that the Respondent Company is liable to pay energy charges in addition to Development and other miscellaneous charges we will now examine whether parties followed the conditions specified in the Terms and Conditions of Supply. The commission in the impugned order has examined this issue in the following manner:

> *"As per Clause 12.01 of the **Terms and Conditions of Supply of Electricity** a 30 days notice to the intending High Tension consumer shall be issued to pay development charges meter caution deposit and service connection charges and to execute agreement. The probable date of availability of supply shall be incorporated in the above notice. On completion of Board's work a notice of supply of availability shall be*

issued to intending consumer incorporating that the monthly minimum charges will be levied from the date of issue of notice for a period of three months in the case of High Tension supply."

32. Clause 13.03 of the **Terms and Conditions of Supply** reads as under:

"13.03 The agreement shall come into force from the date of commencement of supply (vide clause 2.01 –vi) and shall be informed till it is terminated. Every consumer shall pay to the Board, from the date of commencement of supply till the agreement is terminated, current consumption charges/minimum monthly charges/fixed charges/special guarantee, if any, and other charges as provided in the Tariff Notification, Terms and Conditions of Supply of Electricity and "Restriction and Control" orders from time to time.

33. The agreement hereinabove refers to the HT-consumer, Terms and Conditions of Supply agreement and not PPA. Referring to the clause 13.03 the impugned order decides the applicability of impugned charges stating that *"in view of the said clause 13.03 the Development charges and other charges due from the petitioner in respect of service and additional service are payable from the date of commencement of supply (i.e. 11 Aug 2000) which is earlier to the date of first billing i.e. 01 Sep. 2000. The said charges cannot be said to be due from the date of regularization of supply i.e. 09 Nov. 05*

as contended by the Respondent Board which is contrary to the said Clause 13.03 of the Terms and Condition of Supply."

34. There are serious lapses on the part of the Appellant Board in not ensuring the submission of the application from the company for registration of HT-service connection with registration fee and EMD, not issuing 'Notice to Proceed' 30 days prior to schedule date of supply and yet providing service connections without evaluating the load to the company and without executing any HT-supply agreement with the company. The Appellant Board remained unmoved to the issue despite numerous reminders from its field staff allowing the company to take undue advantage of it.

35. The Company also cannot escape its share in not following the terms and conditions of supply. Most importantly Art. 4.5 of the PPA pre-purposes that it will be invoked only upon the company's request enabling the Commencement of supply to take place. The request ought to have been made formally through registration of application as HT-Industrial consumer and completion of other formalities in pursuance to the standard terms and conditions of supply of electricity and PPA. These had not even been attempted leave aside their compliance. The ignorance of the Board's statutory terms and conditions of supply of electricity applicable for all consumers being in public domain cannot be condoned and the charges on account of Registration, development and other miscellaneous charges are liable for payment by the company in terms of PPA even if exclusive agreement for supply is not executed. Putting it mildly the connection given was irregular in absence of the non-compliance of the Terms and Conditions of supply

and Art. 4.5 of PPA. The Company cannot claim to be unaware of its liability for the aforesaid charges which have accrued from the date of commencement of supply (i.e. 11 Aug. 2000) and consumption thereof.

36. We will now deal with the appellant's plea that the limitation starts running when the service connections were regularized. This plea has not found favour with the Commission. The Commission refers to 13.3 of the Terms and Conditions of supply of Electricity which requires a consumer to pay to the Board from the date of commencement of date of supply till the agreement is terminated, current consumption charges /minimum / monthly charges / fixed charges, special guarantee, if any, and other charges as provided in the tariff notification, terms and conditions of electricity and restriction and control orders from time to time. The charges in dispute were payable when the supply began for the first time. Once the limitation starts running the subsequent regularization of the service connection or an audit will not save the limitation. The appellant further pleads that the delay in making the claim was caused by a mistake in which case section 17 of the Limitation Act 1963 will apply. Section 17 prescribes that where the suit or application is based upon a fraud of the defendant or respondent or where the suit or application is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff or applicant has discovered a fraud or the mistake. The section proceeds to add that the mistake should be such which could not have been discovered despite due diligence. Mistake is not lapse or default. It is not the case of the appellant that there was any lack of information with the appellant which caused the appellant's failure to claim the non-tariff miscellaneous

charges including development charge which the appellant claims from any HT consumer. Nor is the respondent No.1 in any way responsible for the appellant's failure to raise a bill for the non-tariff miscellaneous charges inclusive of development charge recoverable on account of HT connection given to the respondent No.1 by the appellant. We are constrained to say that the appellant is not entitled to take shelter under section 17 of the Limitation Act, 1963. The claim for non-tariff miscellaneous charges inclusive of development charge is, therefore, hopelessly time barred under the Limitation Acts, 1963 and the liability of the Company to pay aforesaid charges is extinguished. Issue at paragraph 17(d) is decided against the Appellant.

Conclusion

37. In view of the above, we conclude the following:

(a) Since the Company has been making excess payment for two service connections instead of one under protest right from the date of the first demand bill on current consumption, is entitled for refund of the excess payment from the date of commencement of the supply (i.e. 11 Aug 200) and is not attracted by the provisions of the Limitations Act. The Company has also acknowledged having received the refund of the excess amount paid by it.

(b) The liability of the Company to pay to the Board on account of non-payment of Development Charges and other charges from the date of commencement of the supply (if not earlier) even though held admissible, in terms of the PPA, is not payable as the appellant has defaulted on so many counts and has raised the demand notices after lapse of more than six years of creation of liabilities and is consequently barred by the Limitations Act.

38. In view of the above, we dismiss the Appeal with no order as to costs.

Pronounced in the open court today, the 10th March, 2008

(A. A. Khan)
Technical Member

(Manju Goel)
Judicial Member