

**In the Appellate Tribunal for Electricity, New Delhi**  
**(Appellate Jurisdiction)**

**Appeal no. 141 of 2016 and**  
**Appeal no. 142 of 2016**

**Dated: 25<sup>th</sup> November, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson**  
**Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of:**

**Appeal no. 141 of 2016**

**South Bihar Power Distribution Company  
Limited (SBPDCL)  
Vidyut Bhawan, Bailey Road  
Patna – 800 021**

**... Appellant**

**Versus**

**1. Bihar Electricity Regulatory Commission,  
Ground Floor, Vidyut Bhawan-II  
B.S.E.S Campus, Jawahar Lal Nehru  
Marg (Bailey Road),  
Patna – 800 021**

**...Respondent No.1**

**2. Bihar Industries Association  
Industry House, Sinha Library Road  
Patna – 800 001**

**...Respondent No.2  
(the Intervener)**

**Counsel for the Appellant(s):** **Mr. M.G. Ramachandran**  
**Ms. Poorva Saigal**  
**Ms. Anushree Bardhan**  
**Mr. Shubham Arya**  
**Mr. Pranav Kumar**  
**Mr. Purushottam Prashad**  
**Mr. Navin Prakash**

**Counsel for the Respondent(s): Mr. Nadeem Ahmad  
Mr. Lakshman Bhakta for R-1**

**Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Sandeep Rajpurohit  
Ms. Aditi Mohaptra for Intervener**

**Appeal no. 142 of 2016**

**North Bihar Power Distribution Company  
Limited (NBPDCCL)  
Vidyut Bhawan, Bailey Road  
Patna – 800 021**

**... Appellant**

**Versus**

**1. Bihar Electricity Regulatory Commission,  
Ground Floor, Vidyut Bhawan-II  
B.S.E.S Campus, Jawahar Lal Nehru  
Marg (Bailey Road),  
Patna – 800 021**

**...Respondent No.1**

**2. Bihar Industries Association  
Industry House, Sinha Library Road  
Patna – 800 001**

**...Respondent No.2  
(the Intervener)**

**Counsel for the Appellant(s): Mr. M.G. Ramachandran  
Ms. Poorva Saigal  
Ms. Anushree Bardhan  
Mr. Shubham Arya  
Mr. Pranav Kumar  
Mr. Purushottam  
Mr. Navin Prakash**

**Counsel for the Respondent(s): Mr. Nadeem Ahmad  
Mr. Lakshman Bhakta for R-1**

**Mr. Anand K. Ganesan**  
**Ms. Swapna Seshadri**  
**Mr. Sandeep Rajpurohit**  
**Ms. Aditi Mohaptra for Intervener**

## **JUDGMENT**

### **PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER**

1. Appeal No. 141 of 2016 has been filed by South Bihar Power Distribution Company Limited (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 21.03.2016 (“**Impugned Order**”) passed by the Bihar Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in Petition No. 50 of 2015 filed by the Appellant for True-up for FY 2014-15, Annual Performance Review (“APR”) for the FY 2015-16 Annual Revenue Requirement (“ARR”) for the control period FY 2016-17 to FY 2018-19.
2. The Appellant is a company incorporated under the Companies Act, 1956 and is a Distribution Licensee under provisions of Electricity Act, 2003 having licence to distribution electricity in southern area of Bihar State.
3. Appeal No. 142 of 2016 is being filed by North Bihar Power Distribution Company Limited (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 21.03.2016 passed by the Bihar Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in

- Petition No. 49 of 2015 filed by the Appellant for True-up for FY 2014-15, Annual Performance Review (“APR”) for the FY 2015-16 Annual Revenue Requirement (“ARR”) for the control period FY 2016-17 to FY 2018-19 challenging order dated 21.03.2016 (“Impugned Order”).
4. The Appellant is a company incorporated under the Companies Act, 1956 and is a Distribution Licensee under provisions of Electricity Act, 2003 having licence to distribution electricity in northern area of Bihar State.
  5. Respondent No.1 is the State Commission and Respondent No.2 is the Bihar Industries Association, the Intervener.
  6. Since the same issues are considered by both the Appellants, the learned counsel for the Appellants and the State Commission agreed to take up Appeal No. 142 for our consideration and our decisions thereto would be applicable to the other Appeal No. 141 of 2016 to the extent that the same principles would be considered for this Appeal since the figures might be different and the status of audited accounts might be different.
  7. The Appellant filed its Petition before the State Commission being Case No. 49 of 2015 for True-up for FY 2014-15, Annual Performance Review (“**APR**”) for FY 2015-16, Annual Revenue Requirement (“**ARR**”) for second control period of FY 2016-17 to FY 2018-19.
  8. The State Commission held public hearings and after seeking all clarifications from the Appellant passed the Impugned Order dated 21.03.2016 whereby disallowing various claims of the Appellant in the truing up for FY 2014-15, Annual Performance Review (“**APR**”) for FY 2015-16, Annual Revenue Requirement (“**ARR**”) for second control period of FY 2016-17 to FY 2018-19.

9. Aggrieved by the Impugned Order dated 21.03.2015, the Appellant has preferred the present Appeal.

**Facts of Appeal No. 142 of 2016.**

10. (A) The State Commission vide its Impugned Order dated 21.03.2016 has made disallowances in the claims of the Appellant under the following heads related to the True-up of financials for FY 2014-15;
- a) Power Purchase Cost
  - b) Depreciation
  - c) Return on Equity; and
  - d) Net Prior Period Credit / (Charges)
- (B) The State Commission in its Impugned Order dated 21.03.2016 has made the followings disallowances in the claims of the Appellant related to the Annual Performance Review (“**APR**”) for FY 2015-16;
- a) Energy sales
  - b) Depreciation
  - c) Previous period income
- (C) In respect of Annual Revenue Requirement (“**ARR**”) for FY 2016-17 to FY 2018-19 in the Impugned Order, the following disallowances in respect of the claims of the Appellant have been made;
- a) Energy sales
  - b) Employees cost
  - c) Distribution loss trajectory

11. As per the Appellant, the following questions of law arise for our consideration;
- a) **Whether the State Commission is right in rejecting the Power Purchase Cost paid/payable to the generating companies/suppliers for the electricity procured as per the bills raised by them, after having approved the quantum of purchase? The State Commission has arbitrarily reduced the Power Purchase Cost from some of the generating stations/suppliers?**
  - b) **Whether the State Commission is right in reducing the per unit cost of Power Purchase from Rangit and Pista Hydro Stations of NHPC Limited on the ground that the other distribution licensees SBPDCL had for the relevant period paid a lower weighted average per unit rate without taking into account that the accounts of the Appellant had been finalised by the time the NHPC had shared the extra benefits?**
  - c) **Whether the State Commission is right in considering the funding of the capital assets as being entirely through grants, when such funding has been through grant, equity and loan and consequently in not allowing the depreciation of such assets funded through equity and loan?**
  - d) **Whether the State Commission has properly considered the weighted average rate of depreciation on the capital assets for the purpose of tariff?**
  - e) **Whether the State Commission is right in not considering the amount of Rs. 2641.16 crores being the amount contributed by the Government of Bihar (shareholder of the Appellant) towards equity but pending allotment of equity?**

- f) Whether the State Commission is right in not considering the substantial part of the prior period expenses on the ground that the Appellant had not given details with monthly break up, overlooking the fact that the Appellant had duly furnished all such details running into several volumes in a digital manner (through pen drive)?**
- g) Whether the State Commission has properly taken into account the quantum of energy sales to be considered for different categories of consumes of the Appellant?**
- h) Whether the State Commission is right in not fully allowing the claim of the Appellant in regard to the scheme envisaged for providing electricity connection in the rural areas in accordance with the various schemes evolved by the Central and State Governments and for which the Appellant is receiving substantial grants?**
- i) Whether the State Commission is right in determining an amount of Rs. 465.56 Crores as revenue surplus of the Appellant being related to the past period up to FY 2013-14, when the same related to the period when BSEB was in operation, without considering that the Appellants are new entities established to function as per the financials notified by the State Commission?**
- j) Whether State Commission is right in considering the revenue surplus of BSEB period as available to the Appellant without taking into account the substantial amount of liability retained by the Government of Bihar and the Appellant having been given a re-structured balance sheet under the statutory Transfer Scheme to ensure viability of the Appellant?**

- k) Whether the State Commission has correctly determined the escalation to be allowed in the employees cost from the base figures of 2014-15 taken by the State Commission for determination of the revenue requirements for the FY 2016-17, FY 2017-18 and FY 2018-19?**
  - l) Whether the State Commission has correctly determined the administrative and general cost of the Appellant taking into the account the actual cost of the base year 2014-15 and the escalation to be allowed on such cost for determining the revenue requirements for the FY 2016-17, FY 2017-18 and FY 2018-19?**
  - m) Whether the State Commission has properly accounted for and given the cost towards employees cost taking into consideration and new and additional employees to be deployed for operation and maintenance of assets established under the various schemes?**
  - n) Whether the State Commission has properly determined the distribution loss trajectory to be allowed to the Appellant?**
12. We have heard at length Mr. M.G. Ramachandran, the learned counsel for the Appellant and Mr. Nadeem Ahmad and Mr. Anand K. Ganesan learned counsel for the Respondents and considered their written submissions and arguments. Gist of the same is discussed hereunder;
13. The Appellant has made the following submissions for our consideration;



**(A) True-up for FY 2014-15****Power Purchase Cost**

- (i) While considering True-up of Power Purchase Cost for FY 2014-15, the State Commission has not considered the entire cost of power purchases from various sources as incurred by the Appellant and the Appellant had duly filed with the State Commission the entire bills raised by the generating companies/suppliers of the electricity to the Appellant with supporting dates. The State Commission has arbitrarily without any analysis and particulars given and by merely stating that by prudence check, disallowed Power Purchase Cost to the extent of Rs. 8.49 Crores as stipulated hereunder;

Sl No.	Generation Station	Admitted Power Purchase (MU)	Approved Power Purchase (MU)	Gap (MU)	Admitted Power Purchase cost (Rs Cr)	Approved Power Purchase cost (Rs Cr)	Gap (Rs Cr)
1	Farakka	1,663.61	1,663.61	0.00	653.58	651.59	1.99
2	Dadri	563.70	566.32	-2.62	297.09	295.95	1.14
3	Adani	648.32	648.32	-	315.54	310.18	5.36
	Total	3,007.19	3,009.80	(2.61)	1,318.61	1,288.27	8.49

- (ii) In addition to the above, the State Commission had also reduced the Power Purchase Cost namely the per unit rates of purchase from Rangit and Teesta Project of NHPC Limited on the ground that the per unit rate of power purchase done by the South Bihar Power Distribution Company Ltd. was lower from the same projects without seeking any explanation or clarification from the Appellant. The

reason for the lesser per unit rate was clear as NHPC had regulated the supply of power to Bihar, namely to the both Distribution Licensees and had effected sale to third parties of such regulated quantum at a price higher than the per unit rate payable by the Distribution Licensees. The higher quantum of price recovered was to be shared with the Appellant and SBPDCL. By the time NHPC had accounted for and paid the sharing benefits, the Appellant had finalised its audited accounts and therefore could not account for the receipts in the accounts of FY 2014-15 and the same has been accounted for in the subsequent FY 2015-16 as prior period income in accordance with the established accounting practice. However, the audited accounts of the Appellant in respect of South Bihar was not finalised at the time of the receipt of amount from NHPC and therefore the amount have been accounted for in FY 2014-15 itself resulting into reduction in the per unit rate. The State Commission has wrongly reduced the per unit rate applicable for the Appellant on the purchase of power from NHPC.

**Depreciation**

- (i) The Appellant has claimed depreciation on assets capitalised to the extent of funding of such assets through equity and loan and not through grant from the Central and State Governments. In the audited accounts of the FY 2014-15, it has been specially stated that no depreciation has been claimed to the extent of the funding of the assets through grant. The accounts duly audited by the auditor therefore had accounted for depreciation on the gross value of assets funded otherwise through grant. The assets established by the Appellant are by utilisation of the funds from the grant and funds

from equity and loan in proportionate manner and the same could not have been funded exclusively through grant.

- (ii) The State Commission in the Impugned Order proceeded in a presumptive manner that the assets to the extent of INR 80.76 Crores was exclusively funded by grant as the State Commission has only gone on the basis that the proportionate depreciation on assets created through grants is higher than the depreciation on assets and has not allowed any depreciation.
- (iii) The State Commission ought to have considered the capitalization owing to grant equity and loan on pro-rata basis and should not have considered the grant in a disproportionate manner while making capitalisation schedule. As per the annual audited accounts, the depreciation worked out is as under;

Particulars	Account Code No.	As 31 <sup>st</sup> March 2015
Depreciation	77.1 to 77.2	
Less:- Transferred to prior period expenses		1,60,69,59,216
Less:- Transferred from Reserve/ Amortisation of grant		79,92,89,123
Total		80,76,70,093

- (iv) In addition to the above, there is an error in the weighted average rate of depreciation to be considered. The Appellant had claimed the weighted average rate of 5.81%. Whereas the State Commission has wrongly considered the weighted average rate as 5.08%.

### **Return on Equity**

- (i) The State Commission has considered the equity capital of Rs. 385 Crores only for allowing Return on Equity whereas the audited accounts of the Appellant for FY 2014-15 clearly disclose that in addition to the equity shares, there is an amount of Rs. 2641.16 Crores duly contributed by the Government of Bihar towards Equity Capital pending for allotment by Government of Bihar and the same is accounted for as pending allotment. The Appellant further submitted that Government of Bihar has already confirmed that the above mentioned amount of Rs. 2641.16 Crores being converted into paid up capital.
- (ii) In view of above, the amount of Rs. 2641.16 Crores being towards equity capital ought to have been considered towards as equity and taking into account the aggregate of above two sums of Rs. 385 Crores and Rs. 2641.16 Crores i.e. Rs. 3026.16 Crores ought to have been considered for determining the equity component considering 30% of the same and the balance as normative loan but to the extent of the Gross Fixed Assets value.

**Net prior period credit/(charges)**

- (i) As per the audited accounts for FY 2014-15 the prior period items are as detailed hereunder;

Particulars	Amount (Rs Cr)
Income relating to previous years	
a. Prior period revenue Grant/Subsidy	47.4
b. Prior period Sale of power	(58.53)
c. Other income related to prior period	1.75
Total prior period income	(9.38)
Expenses relating to previous years	
a. Prior period Power Purchase	32.07
b. Employees cost – prior period	7.34
c. Other expenses – Prior period	7.14
Total prior period expenses	46.54
Net prior period expenses	55.94

- (ii) As against the above, the State Commission has approved net prior period income at Rs. 2.60 Crores for FY 2014-15 in True-up primarily on the ground that the Appellant had not given full yearwise break up details of period for which the amount pertains to.
- (iii) The Appellant submits that the above claim comprise several thousand entries and as such had given the details in an electronic format to the State Commission in the tariff proceedings.

- (iv) Further, as per the annual accounts of the Appellant, the income relating to the previous years is Rs. 9.38 Crores and the expenses relating to the previous year are Rs. 46.54 Crores.

Relevant details from the annual accounts are as under;

Particulars	Account Code.	FY 2014-15
Income relating to Previous Years		
(a) Prior Period Revenue Grant/ Subsidy	Separately each Sub-Account 65.1 to 65.9	47,40,15,670
(b) Prior Period Sale of Power		(58,53,58,465)
(c) Other Income related to Prior Period		1,74,89,573
Total Income Relating to Previous Years		(9,38,53,222)
Prior period Expenses/Losses		
(a) Prior Period Power Purchase	Separately each Sub-Account 83.1 to 83.9	32,06,76,441
(b) Employees Cost Related to Prior Period		7,33,93,274
(c) Other Prior Period Expenses/ Losses		7,13,58,118
Total Prior Period Expenses/Losses		46,54,27,833

- (v) In light of the above, there is no justification for disallowing the claim of the Appellant for net prior period expenses to the extent of Rs. 55.93 Crores.

## **(B) Annual Performance Review of FY 2015-16**

### **Energy Sales**

- (i) It is the obligation of the of the Appellant to meet the commitment for providing “24x7 Power For All”. As such, the Appellant is bound to release the connections to DS-I category whereas the State Commission has curtailed the number of connections the Appellant intends to release under 24x7 plan thereby reducing the energy sales to such category.
- (ii) The Appellant submits that during FY 2014-15, the 24x7 plan was not formulated and the supply hours were much lower. The methodology of opting 3.28 units per consumer per day for DS-II consumer adopted by the State Commission in its Impugned Order has resulted in much lower sales projection. There is a disallowance of 1,483.92 MU for DS-I and DS-II category which will have an implication on the average billing rate/realisation rate. Due to higher approved average billing rate, there will be a gap of Rs. 113.08 Crores which will have adverse affect on the financial position of the utility.
- (iii) The State Commission ought to have considered the projections made by the Appellant instead of restricting the same merely because of the previous year performance.

### **Depreciation**

- (i) The Appellant reiterated its submissions made earlier for computation of depreciation for the FY 2014-15 while computing depreciation with reference to Annual Performance Review of FY 2015-16.

### **Recovery of gap, surplus of past period**

- (i) The State Commission in its Impugned Order has determined the notional revenue surplus of the previous years of Rs. 465.56 Crores of past period upto 2013-14 as per tariff order dated 16.03.2015 and the said period pertains to erstwhile B.S.E.B which remained with the State Government. The Appellant did not get any surplus amount in the opening balance sheet notified by the State Government through transfer scheme. The State Commission has therefore proceeded on a notional review surplus without any justification.

### **(C) Annual Review Requirement (“ARR”) for the second control period for FY 2016-17 to FY 2018-19**

#### **Energy Sales**

- (i) The Appellant has reiterated its submissions as made above in regard to FY 2014-15.
- (ii) The State Commission has stated that the shortfall in the electrification for DS-I programmed during FY 2015-16 is distributed equally during the years FY 2016-17, FY 2017-18 and FY 2018-19 to meet the target of electrification of DS-I households in “24x7 Power Supply”. The details of disallowances and implications are as under;

	FY 2016-17	FY 2017-18
Disallowed consumer for DS-I category (number)	11,14,606	5,51,912



Approved Category-wise Energy Consumption (Kw.hr/consumer/day)	1.9	2.2
Sales projection of disallowed consumer of DSI category (MU)	772.98	443.19

- (iii) Due to disallowance sales of DS-I category, the average billing rate approved by the State Commission has increased drastically than the projected value.
- (iv) The revenue gap due to the higher approved average billing rate works out to Rs. 389.97 Crores for FY 2016-17, Rs. 593.43 Crores for FY 2017-18 and Rs. 824.16 Crores for FY 2018-19.

#### **Employee Cost + Administrative and General Cost**

- (i) The Appellant projected the employee cost based on the actual expenditure as per the audited annual accounts for FY 2014-15 with the escalation at 8.11% (5 years CAGR inflation index).
- (ii) The State Commission considered the employee cost approved in the True-up for the FY 2014-15 as the base employee cost with the escalation for inflationary indexation at 4.65%. The State Commission should have calculated employee cost for FY 2015-16 based on the principle followed and subsequently employee cost for FY 2015-16 should have been used for calculating employee cost for FY 2016-17, FY 2017-18 and FY 2018-19. In addition the State Commission capitalised 5% of employees cost, however most of the undergoing projects are on turnkey basis and therefore employees are involved only in monitoring. Therefore, 5% capitalisation is over estimation of employee cost which is to be capitalised in subsequent

years. The State Commission has also not considered the provision for adding new employees.

- (iii) The State Commission ought to have escalated the amount twice to determine the cost for FY 2016-17 namely, the first one to bring it to FY 2015-16 and second one to bring to FY 2016-17 and the same principle is required to be adopted by the State Commission for computing the administrative and general cost.

### **Distribution Losses Trajectory**

- (i) The State Commission had fixed distribution loss trajectory for the control period of FY 2013-14 to FY 2015-16 for both the Discoms in the Tariff Order dated 15.03.2013 as below;

Year	Distribution Loss approved (%)
FY 2013-14	23.00
FY 2014-15	21.40
FY 2015-16	20.00

- (ii) In the second control period of MYT the State Commission has defined the loss trajectory based on the trajectory defined in the first control period.
- (iii) The Government of Bihar has committed to Government of India under UDAY Scheme that AT&C losses in Bihar will be reduced to 15% by FY 2019-20 whereas the State Commission has approved the distribution loss trajectory without taking the commitments under UDAY Scheme claimed under consideration. The State Commission

should have been given due consideration to the Distribution loss trajectory as committed under UDAY Scheme.

14. The learned counsel for Respondent No. 2, Bihar Industries Association/ the Intervener in the present Appeal has made the following submissions for consideration;

**(A) True up for FY 2014-15**

(i) True-up is the exercise to fill in the gaps between the actual expenditure incurred at the end of the year and the anticipated expenses in the beginning of the year after prudence check by the State Commission. It is not a time to change the principle of tariff determination. Also, it is not that the audited accounts are binding on the State Commission merely because it reflects the incurring of a particular expenditure that does not mean that the same should be allowed in the tariff.

The principle of truing up has been discussed by this Tribunal in the following judgments as under:-

a) North Delhi Power Limited Vs. Delhi Electricity Regulatory Commission (Judgment dated 23.05.2007 in Appeal No. 265 of 2006

*“47. **Second truing up** : Second truing up has been done on three scores namely employee expenses, depreciation and interest. It is contended by the appellant that the second truing up is warranted only when there is difference between provisional accounts on the basis of which the first truing up is done and audited accounts which may, have been furnished after such truing up. In the present case admittedly there has not been any substantial change between the provisional accounts and the audited accounts. On all the three scores the Commission has done the second truing up on the basis of a revised policy. E.g. on the count of depreciation it says that no depreciation should have been allowed on assets created by APDRP grant. Since the accounts were*

*already before the Commission if it was not to grant any depreciation on the assets created out of APDRP grant the same should have reflected in the tariff order of the appropriate year. After the tariff order based on those accounts, namely for the financial year 2004-05, there is no occasion for the Commission to now introduce a new philosophy and approach for such assets acquired out of APDRP fund. It may further be said here that there is no rationale for declining to allow depreciation for assets acquired out of the APDRP grant because depreciation is a source of funding required for replacement of assets. Therefore, unless the Commission is able to say that APDRP grant will be available every year and there is no need to create funds for replacement of such assets, it cannot say that no depreciation on such asset may be given. Similarly, coming to the question of employees cost the Commission says, that other costs and allowance which were being paid to the existing employees had nothing to do with VSS scheme and therefore Commission decided to de-link other costs and allowances from the normative employee cost allowed by the Commission. This is again rethinking on the subject of employee cost. The previous years account cannot be trued up on such rethinking. The appellant on the other hand says that such allowances and costs could not have been de-linked as those who availed of VSS would have been paid these allowances had they continued in the employment.*

*48. Similarly, so far as interest is concerned the second truing up is not based on difference between the audited account and the provisional account and therefore could not have been done by the Commission. The Commission has no alternative but to allow all these expenses in the next truing up mechanism.*

*.....*  
*.....*

*60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the tariff petition of the utility the Commission has to reasonably anticipate the revenue required by a particular utility and such assessment should be based on practical considerations. It cannot take arbitrary figures of increase over the previous period's expenditure by an arbitrarily chosen percentage of 4% or 20% and leave the actual adjustments to be done in the truing up exercise. The truing up exercise is mentioned to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the*

*Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence. In any case, the method adopted by the Commission has not helped either the consumer or the utilities. It can only be expected that the Commission will properly understand its role in assessing the revenue requirement of the utility and in determination of the tariff in accordance with the policy directions and the relevant law in force.”*

b) Kerala State Electricity Board v. Kerala State Electricity Regulatory Commission (Judgment dated 12.11.2009 in Appeal No. 94 of 2008)

*“16) Most petitions before this Tribunal challenge the ARR and ERC order of the appropriate Commissions in which the Commissions estimates, on various parameters, the revenue required by a licensee in order to distribute energy to the consumers in its area. The Commission in the process is required to also estimate the amount of energy required by the consumers in the area in the given period, the transmission and distribution loss as well as the cost to be incurred in distributing the energy. At the end of the given period, say one year, the accounts are examined in order to determine the actuals. In the truing up process the actual expenditures are examined and the expenditures with various heads are trued up. So far as the effect of audit is concerned, it establishes the genuineness of accounts and expenditure incurred. The audit does not certify the wisdom of expenditure incurred. The Commission has to allow only as much expenditure as pass through as meets the targets set by it or is found to be prudent and necessary.*

.....

*18) Although in the appeal petition the appellant has pleaded that the commission should have gone by the audited accounts, at the time of arguments Mr. M. G. Ramachandran Advocate for the appellant did not subscribe to any such view. He accepts the Commission’s discretion to seek explanations and to allow the justified expenditure and insist on*

*meeting targets set in the beginning of the year. His case is that on the submissions made by the appellant the Commission should have accepted the expenditures incurred and should have allowed the entire revenue gap as pass through. It will be worthwhile to mention the observations of the Supreme Court made in West Bengal Electricity Regulatory Commission Vs. CESC Ltd. (2002) (8) SCC 715 which is extracted below. The judgment relates to the Electricity Regulatory Commissions Act 1998 but deals with the question at hand.*

*“The 1998 Act mandates the Commission to take into consideration of the efficient management by the licensee of its Company, as also the interests of consumers while determining the tariff, therefore, if these two factors which go in favour the consumers are in conflict with the definition of expenditure ‘properly incurred’ in Schedule VI to the 1948 Act then it is for the Commission to reconcile this conflict and decide whether to accept the expenditure reflected in the accounts of the company or not. In this process the Commission in our opinion is not bound by the Auditors’ report.*

*Herein we notice that the objects of the 1948 Act are entirely different from the objects of the 1998 Act. The 1948 Act under Schedule IV does not contemplate taking into account the factors like good performance of the Company as also the consumers interest in its expenditure while considering a particular expenditure as ‘properly incurred expenditure’ While the 1998 Act specifically mandates that these factors also should be taken into account while considering whether a particular expenditure is ‘properly incurred expenditure’ or not, there it is not correct to say that each and every expenditure maintained under the provisions of sixth schedule ipso facto becomes binding on the Commission.*

*The High Court further came to the conclusion that in view of the fact that there is no challenge to the accounts of the Company by the consumers, the said accounts of the Company should be accepted by the Commission. Here again we are not in complete agreement with the High Court. There may be any number of instances where an account may be genuine and may not be questioned, yet the same not reflect good performance of the Company or may not be in the interest of the consumers.*

*Therefore there is an obligation on the Commission to examine the accounts of the Company, which maybe genuine and unchallenged on that count still in the light of the above requirements of Section 29(2)(g) to (h). In the said view of the matter admitting that there is no challenge to the genuineness of the accounts, we think on this score also the accounts of the Company are not ipso facto binding on the Commission.”*

*19) The appeal relates only to the truing up order. Therefore we proceed to examine the appeal in the light of the above principles.*

*Another thing to be remembered here is that the projections made in the beginning of the year 2003-04 or in the beginning of 2004-05 have not been questioned. Accordingly, no plea about the propriety of the projections can be challenged in the appeal.”*

- (ii) While considering the power purchase cost, in light of the above Tribunal's judgment, the audited accounts are not binding on the State Commission. The total amount claimed by North Bihar Power Distribution Company Limited (“**NBPDCL**”) and South Bihar power Distribution Company Limited (“**SBPDCL**”), the Appellants was of Rs.1627.77 Crore for power purchase of 4130.30 MU. However, the State Commission on prudence check found that total amount payable was only Rs. 1623.79 Crore towards power purchase from Farakka - 1, 2 and 3. In the given circumstances, there was difference of Rs. 3.98 Crore. Therefore, the State Commission on prudence check only disallowed Rs. 1.99 Crores.
- (iii) Further, it is stated that the disallowance in the power purchase costs is due to the per unit power purchase cost of the Appellant from Rangit and Teesta power projects of NHPC Ltd. The State Commission has

considered lower per unit costs as the very same power by the SBPDCL the other Distribution Licensee has been purchased at much lower rates. The Appellant has not given any explanation for higher per unit cost for power purchase from the same source than as claimed by SBPDCL. Merely because the Appellant could not audit its accounts in time does not mean that the additional burden of the same can be passed on to the consumers.

### **Depreciation**

- (i) The Appellant has contended that once it has utilised a grant to fund assets, the value of the assets should be divided in the proportionate/ normative debt - equity ratio and thereafter, the depreciation should be allowed to the Appellant on the same.
- (ii) It is not understood as to what is the grievance of the Appellant. From the Tariff order, it becomes clear that the State Commission has computed the depreciation on grant of Rs. 198.04 Crores for FY 2014-15 as against the claim of the Appellant for Rs. 198.68 Crores. Since there is no dispute on the amount of the grant for FY 2014-15, the depreciation is only a resultant computation and cannot be faulted with. It becomes clear that as against a depreciation of Rs. 160.75 Crores on the GFA added through equity and loan, the depreciation on assets funded through grant is Rs. 198.04 Crores. Therefore, the addition to the GFA is only through grants and not through debt/equity in FY 2014-15. The State Commission has computed the depreciation accordingly.

### **Return on Equity (“ROE”)**

- (i) The contention of the Appellant that it ought to be allowed return on equity on amount of Rs. 2641.15 Crores is not correct. The grants received from the State Government should not be considered for the



purpose of return on equity. Further, it is stated that this Tribunal in series of judgments has held merely by giving figure of equity in the Transfer Scheme, the same cannot be taken to artificially increase the equity contribution and claim additional ROE as the consumers including Respondent No. 2 will be burdened unreasonably.

(ii) This issue stand delivered in the following judgments by this Tribunal;

a. Mawana Sugar v. PSERC (Judgment dated 17.12.2014 in Appeal No. 142 and 168 of 2013).

*“38. Admittedly, the Transfer Scheme as notified by the State Government is not under challenge. However, the State Commission is authorized to carry out a prudence check of the balance sheet. This Tribunal in the past has held that the State Commission is not bound to accept the figures as given in the audited balance sheet in toto and can determine the return on equity and other expenses after prudence check. In this case, there was no induction of fresh funds and the equity as on the date of transfer has been increased from Rs. 2946.11 crores to Rs. 6687.26 crores. The increase as explained by PSPCL in their letter dated 26.2.2013 is on account of treating the consumer contribution and grants and subsidies towards the capital assets as standing in the audited accounts of the Electricity Board as equity. In our opinion, the State Commission should have allowed return on equity on the actual equity of Rs. 2946.11 crores to be apportioned to PSPCL and PSTCL.”*

b. CSPDCL v CSERC (Judgment dated 09.10.2015 in Appeal No. 308 of 2013

*“33.14 The Commission has not restructured the Chhattisgarh State Electricity Board as alleged by the Appellant. The Commission has only decided that consumers cannot be saddled with certain costs as reflected in the accounts of the Appellant merely on account of*

*notification of the transfer scheme and new values shown in the books of the Appellant. The Commission has only allowed the costs in the ARR and Tariff after prudence check of the books of accounts of the Appellant. Therefore, we do not find any reason to interfere with the findings of the Commission in this regard.”*

- (iii) It is submitted merely because the State Government has contributed an amount of Rs. 2641.16 Crores which has been converted as a paid up capital does not mean that the consumers will have to bear the additional ROE on such an amount through tariff. The Appellant is free to show this amount as an equity in its books. However, the consumers having already paid for the assets of the Appellant on a certain date cannot be asked to pay for the additional ROE because the Government has notified some amounts to be a paid up share capital.
  
- (iv) In the present case, the Appellant cannot be inflate the amount of equity merely by getting a letter from the State Government, show the inflated equity in its accounts and then claim that the State Commission to be bound to recognise the same and allowed return on equity on the said basis. Thus, there is no merit in the claim of the Appellant for return on equity.

### **Net Prior Period Expenses**

- (i) The State Commission has purely provided on the details given by the Appellant to the State Commission. The State Commission has clearly recorded that the Appellant did not produce the yearwise break up of the expenses. Therefore, the State Commission has correctly computed the prior period expenses.

**(B) Annual Performance Review of FY 2015-16**

**Energy Sales**

- (i) The contention of the Appellant that the State Commission ought to have allowed the entire sales to the DS-I category of consumers in FY 2014-15 since the Appellant was bound by Central and State Government Scheme to give “24x7 power for all” is wrong and misconceived.
  
- (ii) It is submitted that the State Commission has clearly observed that the Appellant will not be in a position to meet the target to electrify the required number of household as the same is unrealistic and practically not possible in the remaining period. Since it has only achieved 7% of the target connection till November, 2015 and the balance 93% cannot be achieved in the remaining period of 4 months in the financial year.
  
- (iii) It is not that the State Commission is only restricting the energy sales figures proposed by the Appellant. To DS-II category the State Commission has approved a much higher figures of 963858 consumers as against the figure of 781145 consumers approved in the Tariff Order. However, for DS-I, as against 897221 consumers approved in the Tariff Order, the Appellant claimed 3410806 consumers which is astronomically high. While the State Commission has approved a figure of 2816618 consumers and this is also subject to the final truing up.

**Recovery of Gap/Surplus of previous period**

- (i) It is stated that the Appellant is a successor to the erstwhile BSEB. It is not that the Appellant is a new entity and has nothing to do with the

surplus in the hands of BSEB merely because a Transfer Scheme has been notified .

- (ii) It is not disputed that the Transfer Scheme is to be issued by the State Government and the State Commission has no role in formulation of terms and conditions of the re-organisation of the erstwhile Bihar State Electricity Power (“**BSEB**”) under Section 131 of the Electricity Act, 2003. However, it is not that the Electricity Board is wound up and a new business is established. There is only a re-organisation. The Appellant is the successor for undertaking the distribution and retail supply of electricity in the State of Bihar.
- (iii) On account of reorganisation, there cannot be any revaluation of the assets to be considered for the purposes of tariff. The consumers at large have already paid for the capital cost of the assets prior to reorganisation and they cannot be asked to service such asset value at a higher amount option reorganisation. The value of the undertakings transferred for the purpose of tariff is the depreciated book value.

**(C) Annual Revenue Requirement (“ARR”) during FY 2016-17 to FY 2018-19**

**Energy Sales**

- (i) In absence of the final figures, the State Commission has estimated a basis for the energy sales for financial year based on the energy sales for the past period and further projected a trajectory for the second control period. This trajectory is perfectly logical and justified.

### **Employees Costs**

- (i) The State Commission has decided that the employees costs based on the final figures for FY 2014-15 and computed the employee cost for the second control period. There is no infirmity in the same.
  
- (ii) The State Commission has determined the employees cost as per Regulation 22(a) and 22(i) of the BERC (Multi Year Distribution Tariff) Regulations, 2015. The said Regulations provide for the past 3 years audited figures which were not available with the Appellant. Also, the figures for FY 2015-16 were not finalised and were based on estimates. Therefore, the State Commission considered the figures of FY 2014-15 as base year.

### **Administrative and General Expenses**

- (i) The same submissions as in the case of employees expenses are being reiterated.

### **Distribution Loss Trajectory**

- (i) The Appellant has contended that since it has signed tripartite Memorandum of Understanding to participate in the UDAY Scheme, the State Commission is bound to accept the distribution loss targets as committed by the Appellant to the Central Government under the UDAY Scheme. This submission needs to be rejected at the outset.
  
- (ii) It is stated that as a sector regulator, the State Commission has been fixing the tariff for the last several years and has been considering a distribution loss level trajectory in all the past orders. By merely participating in the UDAY Scheme, the State Commission is not bound to accept the same. The Appellant has to point out as to what is the error in the methodology followed by the State Commission instead of

contending that the State Commission is bound by the UDAY Scheme targets.

15. Learned Counsel for the State Commission has defended the impugned findings of the State Commission in respect of the above issues contested by the Appellant and stated that there is no merit in the Appeal.
  
16. After careful perusal of the contentions of the rival parties stated as above, our issue-wise observations are as under:-

### **True up for FY 2014-15**

#### **Power Purchase Cost**

- (i) This issue pertains to power purchase cost to be allowed on true up for FY 2014-15. The grievance of the Appellants is that while the total quantum of power purchases from various sources at 7,512.26 MUs have been taken, the State Commission has not considered full cost of such power purchases related to such quantum. The Appellant has submitted the complete details of the power purchase sources where the full costs have not been considered. These are for Farakka and Dadri power stations of NTPC, Rangit and Teesta project of NHPC Ltd. and Adani power project. The Appellant has stated that they had filed all the details raised by such generating stations along with the supporting datas before the State Commission. Further, the audited accounts of the Appellant filed with the State Commission corroborates amounts paid towards such purchases. The State Commission, however, disallowed some of the costs on the grounds of unavailability of details. The State Commission in its impugned findings disallowed some of the power

- purchase costs on the sole account that the Appellant had not provided details of the bills raised on it by the generating companies and its prudence check.
- (ii) We have observed that the generating companies such as NTPC, NHPC Ltd. are central sector entities whose tariff has been determined by the Central Commission and such tariff is taken by State Commission as provided in rule 8 of the Electricity Rules, 2005. There is no fresh determination by the State Commission.
- (iii) We have also noted that the accounts of Appellant are duly audited and as such there can be no serious dispute on the fact of power purchase cost incurred by the Appellant. The quantum of power purchase to be considered is also not in dispute. There is no finding by the State Commission that any particular power purchase has been made by the Appellant in an imprudent or inefficient manner. In our opinion the disallowance of power purchase cost in a general manner by the State Commission on the grounds of details not being available is not appropriate. The State Commission is required to give an opportunity to the Appellant to make the same good before deciding the issue.
- (iv) We have also noted that an additional aspect has been challenged related to adjustments in the rate of power purchase cost in Appeal No. 142 of 2016 concerning purchases from Rangit and Teesta project of NHPC Ltd. The State Commission has reduced the rate on the ground that per unit rate of the other distribution company i.e. SBPDCL was lower and that the power purchases are being made by both the Appellants commonly.

- (v) We have observed that during the FY 2014-15, NHPC Ltd. had regulated the supply of power to the Bihar namely to both the Appellants and had effected sale to third parties of such regulated quantum at a price higher than per unit rate payable by the Appellants. The higher quantum of price thus recovered by the NHPC Ltd. was to be shared with the Appellants. NHPC had to account for the same and pay the sharing benefits to each of the Appellants in due course. NHPC had undertaken the same and had passed on the benefit to the Appellants. There is no dispute on the above developments. However, by the time NHPC had accounted for and passed on the benefits to NBPDCCL, the Appellant in Appeal No. 142 of 2016 had already finalised its audited accounts and therefore could not account for the receipts in the accounts of FY 2014-15. The receipt could be and has been accounted for in the subsequent FY 2015-16 as prior period income in accordance with the accounting practice followed. However, audited accounts of SBPDCL, the Appellant in Appeal No. 141 of 2016 could account for such receipts from NHPC in the accounts of FY 2014-15 and as a result the effective per unit rate for SBPDCL was much lower than that claimed by NBPDCCL. In the Impugned Order, the State Commission has proceeded on the basis that the two distribution companies should have the same rate of power purchase and it should not recognise different rates for the two.
- (vi) We have observed that there is otherwise no dispute in regard to the above aspect of power purchase cost from generating stations of NHPC Ltd. The Appellant in Appeal No. 142 of 2016 has filed reconciliation statements and states that the Appellant has given effect to the above receipt from NHPC in the next financial year. The Appellant's grievance



is limited to the accounting treatment given to the receipts in the FY 2014-15.

- (vii) In the given circumstances when there is no adverse effect to the consumers and the Appellant in Appeal No. 142 of 2016 is not seeking in an overall manner any extra expenditure and the receipts from NHPC having been accounted for in FY 2014-15, there is no reason for the State Commission to rework financials of FY 2014-15 to account the receipts from NHPC Ltd. While the State Commission is not bound by the audited accounts on the aspects of prudence of expenses incurred and the State Commission can certainly disallow the expenses not properly incurred on undertaking prudence check of the audited accounts recognising the same, it is, however, not appropriate to have a treatment distinct from the accepted accounting practices in regard to matters such as year in which the expenditure or income should be accounted for.
- (viii) In respect of this Issue, we direct the State Commission to re-examine to the extent to which the power purchase cost is to be allowed on the quantum of power purchase allowed with reference to all the bills from the generators and other sources of power procurement and if the State Commission finds any specific quantum of power purchase claim is not supported by such bills may seek specific documents from the Appellant in this regard. The State Commission should also treat the power purchase rate of NBPDCCL for FY 2014-15 as per audited accounts as there is eventually no adverse impact on the consumers.,

### **Depreciation and Gross Value of Assets.**

- (i) The issue of depreciation to be allowed is dependent on the gross value of the fixed assets to be considered by the State Commission in the relevant financial year. The Appellant has stated that there have been three sources for funding the assets of the distribution activities of the Appellant namely debt, equity and grants. The Appellant does not dispute that the servicing of the capital cost through tariff is restricted to the gross value of the assets capitalised and put to use and further only on the debt and equity part of the funding. It is accepted that the grant part is not to be serviced at all through tariff. The grievances of the Appellant are restricted to the State Commission's considering the various assets capitalised as being funded by grant in a disproportionate manner, whereas the Appellant claims that such funding by grants has to be considered along with debt and equity in a proportionate manner. It has been submitted by the Appellant that no asset has been funded only through grant without deploying any debt or equity and its claimed in the manner provided in the tariff Regulations, the depreciation on the assets excluding the proportionate funding through grants.
- (ii) In the Impugned Order, the State Commission has proceeded on the basis of existence of cash and bank balances as representing the funding of assets by grant. The State Commission has also proceeded on the basis that since grants were available, the same ought to have been utilised instead of debt and equity funding. The Appellant submitted that the grants given had to be used with matching debt and equity.
- (iii) Depreciation is the tariff element which enables the utility to repay the debt borrowed for funding the assets. The depreciation is calculated on

the gross value of the assets (excluding land) and is allowed up to 90% of the value.

- (iv) In our opinion, the depreciation is an important segment and needs to be re-examined by the State Commission keeping in view the relevant details submitted by the Appellant subject to its prudent check. The Appellant is entitled to raise the issue of rate of depreciation also before the State Commission while the depreciation amount is being re-examined by the State Commission.

### **Return on Equity**

- (i) The State Commission in its Impugned Order has stated that in the past years, the State Commission has considered equity capital only to the extent of Rs. 385 crores and continued the same even for the subsequent years including the period considered in the Impugned Order.
- (ii) The State Commission observed that if the equity capital as claimed by the Appellant is accepted, it shall be much in excess of the gross fixed assets.
- (iii) The matter for consideration is only whether the amount contributed by the State Government towards equity capital should be considered equity or not. To be fair to the Appellant, the State Commission is directed to re-examine whether the contribution of the State Government towards equity capital should be considered as equity or not and accordingly pass an appropriate order.

### **Net Prior Period (Credit/Charges)**

- (i) On this issue, we have noted that the State Commission had disallowed the claim after applying the prudence check. However, no detailed

reasoning has been given for such allowance. We have also noted that the Appellant claimed that it has furnished in digital form all the details in view of the large number of entries and also that the same is supported by the audited accounts and the abstract of the consumer ledger has been provided to the State Commission.

- (ii) The State Commission is hereby directed to look into this issue based on the details claimed by the Appellant to have been furnished and even the audited accounts of the Appellant.

### **Energy Sales**

- (i) The Appellant has stated that it has been implementing schemes initiated by the Central and the State Government for providing “24x7 power for all” pursuant to a joint initiative of Central and State Government and joint agreement is signed by both the Central and State Government of Bihar. Under the above, it is the obligation of the Appellant to meet the commitment made by the State Government to Government of India. The Appellant further contended that the above would result in the considerable increase in consumer number and average consumption and it is required to release the connections to DS-I category which is domestic rural supply.
- (ii) The State Commission has not approved the claim of the Appellant and curtailed the number of connections. The Appellant intends to release under the “24x7 power for all” in the initial years for the reasons that the past performance and results of 8 months’ connections given as indicated above was significantly low as compared to the estimation and as such the energy sale projections made by the Appellant have been reduced substantially. The State Commission has proceeded on the

ground that the Appellant may not be in a position to implement the scheme of the Central and State Government for aggressive electrification in the rural areas.

- (iii) We have noted the submissions of the Appellant that during 2014-15, the “24x7 power for all” plan was not formulated and the supply hours were much lower and the substantial reduction on the sales estimated by the Appellant has increased the average billing rate which will have an adverse effect on the financial position of the utility.
- (iv) We have noted the submissions made by the Appellant that they have awarded the contracts for electrification of the unelectrified consumers for FY 2016. The contracts shall be completed in the FY 2017 enabling release of connections to such consumers as envisaged in the “24x7 power for all” programme or contracts and they are committed to release connections in the defined timelines.
- (v) Our observation on this issue is limited to the point that the progress on the part of the Appellant in implementing these schemes in the remaining part of the current financial year could be kept under close watch and if considerable progress is achieved by the Appellant in the ensuing period, the State Commission can reconsider the projections and consumers mix etc. afresh for FY 2017-18 onwards.

### **Recovery of Gap/Surplus of the past period**

- (i) The State Commission in its Impugned Order has to adjust the past period surplus on the basis that the surplus was due to excess monies recovered from the consumers in the past and such surplus revenue should go back to consumers.

- (ii) We have noted the Appellant's contention to the extent that surplus amount was related to the past years pertaining to the then BSEB and the Appellant has not been given revenues of BSEB period and the Appellant has no such revenue to account for in its books and the State Government cannot be compelled to give the amounts which are outside the scope of the notified transfer scheme. The Appellant has also claimed that in the Impugned Order, the State Commission has not given effect to the carrying cost to be allowed for deficit determined in the true up orders.
- (iii) In the order dated 14.07.2013 in Case No. 18 of 2015 dealing with the Review Petition of SBPDCL, it was stated as under:

*“The True up order of the Commission for FY 2013 and the Tariff Order for FY 2015-16, stand reviewed to the extent and as per the observations made in para 5.3.7 and 5.3.9 of the order. The issue of carrying/holding cost on the deficit/surplus in the true up order for FY 2013-14 as discussed in para 5.3.6 above shall be considered at the time of true up of ARR for FY 2015-16.”*

- (iv) We have observed that in the Impugned Order, the State Commission had deferred the carrying cost.
- (v) We observe that the surplus of the past period pertaining to the erstwhile BSEB and also the issue regarding disallowance of carrying cost need to be reviewed by the State Commission.

## **Employee Cost and A&G Expenditures**

- (i) We have noted that the Appellant had projected the employee cost based on actual expenditure as per audited annual accounts for FY 2014-15 with escalation at 8.11% (5 years CAGR Inflation Index). The State Commission has however considered the employee cost approved in the true up for FY 2014-15 as base employee cost with escalation for inflationary indexation at 4.65%.
- (ii) The State Commission has taken the employee cost as per audited accounts for FY 2014-15 to estimate the employee cost for FY 2016-17 and FY 2017-18 and FY 2018-19. Even for A&G expenses, the State Commission has similarly considered A&G expenses approved in the true up for FY 2014-15 as base A&G expenses with escalation for inflationary indexation at 4.65% for the FYs 2016-17 to FY 2018-19.
- (iii) In light of the fact that the details of both these employees cost and A&G expenses for FY 2015-16 are now available as stated by the Appellant, the State Commission may look into the employee cost and A&G expenses for the FY 2015-16 and subsequently employee cost and A&G expenses for FY 2015-16 should be considered a base year for estimating the same for the FY 2016-17 onwards. Since the matter is being remanded to the State Commission, the Appellant is given the liberty to raise the above aspect in the remand proceedings with satisfactory details for consideration in regard to Employees Cost and A&G expenses.

### **Distribution Losses Trajectory**

- (i) The Appellant has challenged the order of the State Commission of approving the loss trajectory in the Impugned Order as against the claim of the Appellants based on the Central and State Commission schemes.
- (ii) We take note of the submission of the Appellant that they have signed Memorandum of Understanding with Ministry of Power, Government of India and Government of Bihar for achievement of financial turnaround. While participating in the UDAY scheme, the Government of Bihar has committed to the Government of India that the AT&C losses in Bihar will be reduced to 15% by FY 2019-20.
- (iii) We have also noted that the reasoning of the State Commission to the effect that a non-achievement of loss level as per the trajectory already decided by the State Commission is on account of the inefficiencies of the Appellant and the consumers should not be burdened for such inefficiencies.
- (iv) We do not wish to interfere with the impugned findings of this State Commission in its Order since the State Commission is in a better position to ascertain the efficiency of the Appellant. However, since the matter is being remanded to the State Commission for various issues as brought out above, we would like to state only that the State Commission should have to relook and decide only to the extent that such numbers should not become unachievable but not on account of the inefficiencies of the Appellant, if the State Commission observes so.



**ORDER**

In light of above, the Impugned Order dated 21.03.2016 pertaining to Appeal No. 141 of 2016 as well as the Impugned Order dated 21.03.2016 pertaining to Appeal No. 142 of 2016 are set aside and the matter is hereby remanded to the State Commission for passing an appropriate order within four months of this judgment. Accordingly, both these Appeals are disposed of.

No order as to costs.

Pronounced in the Open Court on this **day of 25<sup>th</sup> November, 2016.**

**(I.J. Kapoor)**  
**Technical Member**

√

**REPORTABLE/~~NON-REPORTABLE~~**

mk

**(Mrs. Justice Ranjana P. Desai)**  
**Chairperson**