

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,
AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NOS. 41 & 67 OF 2015

Dated: 26th May, 2016

**Present: Hon'ble Mr. Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

**Chhattisgarh State Power Distribution)
Co. Ltd., 4th Floor, Vidyut Seva)
Bhavan, Daganiya, Raipur-492013)Appellant**

Versus

**Chhattisgarh State Electricity)
Regulatory Commission, Irrigation)
Colony, Shanti Nagar, Raipur-492001)Respondent**

**Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. V.A. Deshmukh
Mr. A. Bhatnagar**

**Counsel for the Respondent(s) : Ms. Swapna Seshadri
Mr. Sandeep Rajpurohit
Ms. Akshi Seem**

JUDGMENT

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

The Appeal being No. 67 of 2015 has been filed by Chhattisgarh State Power Distribution Co. Ltd. (hereinafter referred to as “**Appellant**”) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 12.06.2014 passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”) in the Petition No. 7 of 2014(T). The above Impugned Order dated 12.06.2014 is the common Tariff Order passed in Petition Nos. 05 to 08 of 2014(T) and the Tariff Order for the Appellant in Petition No. 7 of 2014(T) comprised in the Impugned Order dated 12.06.2014.

2. The erstwhile Chhattisgarh State Electricity Board was the distribution licensee for the whole of the State of Chhattisgarh until it was unbundled w.e.f. 01.01.2009 pursuant to the Chhattisgarh State Electricity Board Transfer Scheme Rules, 2008 notified by the State Government by Notification Nos. F 1-8/2008/13/1 dated 19.12.2008 and F1-8/2008/13/1 dated 21.01.2009 in exercise of the power

conferred by Section 131 of the Electricity Act, 2003. The said Rules provided for the transfer of properties, undertakings, interest, rights, obligations, liabilities, personnel etc. from the Chhattisgarh State Electricity Board to the Appellant as Distribution Company and four other companies. Thereupon, the Appellant was the distribution licensee for the state of Chhattisgarh.

3. Chhattisgarh State Electricity Regulatory Commission is the State Commission in terms of Electricity Act, 2003.
4. Aggrieved by the Impugned Order dated 12.06.2014 passed by the State Commission in Petition No. 07 of 2014(T) comprised in the common order of the State Commission passed in Petition Nos. 05 to 08 of 2014(T), the Appellant filed the Appeal No. 212 of 2014 before this Tribunal on 19.08.2014. That Appeal was dismissed by Order dated 10.11.2014 as not maintainable on the ground that the Review Petition on the same issues was pending before the State Commission and liberty was given to the Appellant to file Appeal against the main Order subject to the outcome of the review of the State Commission and subject to condonation of delay.

5. The Review Petition, being No. 35 of 2014 of the Appellant filed on 04.08.2014 before the State Commission was disposed of by an Order dated 08.12.2014 partly allowing the review and partly rejecting. Aggrieved by the Impugned Order dated 12.06.2014 and in so far as the State Commission has rejected the Review Petition of the Appellant vide its Order dated 08.12.2014, the Appellant has filed Appeal No. 41 of 2014 before this Tribunal.
6. Since both these Appeals i.e. 67 of 2015 and 41 of 2015 are against the same Impugned Order i.e. 12.06.2014 read in conjunction with the Review Order dated 08.12.2014, both these Appeals have been considered together for our decision by a common order.
7. **Facts of the Appeal:**
 - (A) The Appeal No. 67 of 2015 arises from the Impugned Order dated 12.06.2014 wherein the State Commission has:
 - (a) Carried out the final true up of FY 2011-12 and FY 2012-13;
 - (b) Determined the Distribution (wheeling) tariff and the Retail Supply Tariff for FY 2014-2015; and
 - (c) Revised the ARR for FY 2014-15.

(B) The Appellant is aggrieved by the decision of the State Commission on the following issues:-

- (i) Short-term power purchase costs for FY 2011-12 and FY 2012-13,
- (ii) Disallowance of delayed payment surcharge paid for FY 2011-12 and FY 2012-13,
- (iii) Disallowance of share of gains for reduction of distribution loss FY 2011-12 and FY 2012-13,
- (iv) Direction with regard to re-routing of power from JPL 4x660 MW TPS and disallowance of inter-state transmission charges,
- (v) Direction not to sell surplus power at less than Rs.3.65 and to otherwise back down tied-up sources of supply,
- (vi) Direction with to surrender power from NTPC Mouda and terminate the PPA, and
Non-observance of the principles of natural justice.

The State Commission in its Impugned Order dated 12.06.2014 stated that it has followed methodologies and decisions in the

earlier Tariff Order dated 12.07.2013 stating therein as follows:-

“The True-up for FY 12, FY 13 and determination of revised ARR for FY 15 under this order are provisional and subject to finalization as per outcome of Appeal No. 308 of 2013 pending for adjudication before the Hon’ble Appellate Tribunal for Electricity at present.”

- (C) Against the Review Petition No. 35 of 2014 filed by the Appellant for the review of the Impugned Order dated 12.06.2014, the State Commission disposed of the same by Order dated 08.12.2014 partly allowing the review and partly rejecting.
- (D) After considering the issues partly allowed by the State Commission in its Review Order dated 08.12.2014, the disputed issues between the parties requiring our consideration are briefly described as under:-
- (i) Short-term power purchase costs for FY 2011-12 and FY 2012-13,
 - (ii) Disallowance of delayed payment surcharge made for FY 2011-12 and FY 2012-13,

- (iii) Disallowance of share of gains for reduction of distribution loss FY 2011-12 and FY 2012-13,
- (iv) Direction not to sell surplus power at less than Rs.3.65 per KWh and to otherwise back down tied-up sources of supply and / or that the average rate of sale of surplus power shall not be less than Rs.3.65 per KWh and
- (v) Non-observance of the principles of natural justice.

8. After perusing the issues brought up above in respect of both the appeals, we need to decide the following:-

- (i) Whether the State Commission in its Impugned Order read in conjunction with the Review Order was right in restricting the short-term power purchase cost of power purchased from M/s. Jindal Steel and Power Ltd. (JSPL) to Rs.1.50 per unit for the FY 2011-12 and FY 2012-13?
- (ii) Whether the State Commission has rightly disallowed the delayed payment surcharge during FY 2011-12 and FY 2012-13 to the Appellant?

- (iii) Whether the State Commission has rightly disallowed the sharing of efficiency gains from reduction in the distribution losses for FY 2011-12 & FY 2012-13 to the Appellant?
- (iv) Whether the State Commission has rightly directed the Appellant not to sell surplus power at an annual average rate of not less than Rs.3.65 per unit and the backing down of generation from other tied up sources if such rate was not obtainable?

9. After having heard at length the Learned Counsel Mr. K. Gopal Choudhary for the Appellant and Ms. Swapna Seshadri, Learned Counsel for the State Commission and considered their written submissions and the arguments put forth by the rival parties before us, the following issues emerged for our consideration:-

- (i) The Appellant stated that it had entered into the short term PPAs with JSPL and also other CPPs/IPPs on terms in accordance with the Orders of the State Commission dated 15.07.2011 and 05.05.2012 read with the Order dated 30.04.2010 and also in accordance with the original draft PPAs

approved by the State Commission for such short term power purchases duly incorporating changes as per the orders of the State Commission from time to time. The short term power purchases were made accordingly and the payments were made as provided for in the PPAs which are binding upon the parties and there cannot be retroactive view on the PPA.

- (ii) The Appellant stated that the State Commission has taken the short term power purchases from JSPL while dealing with on this issue. The State Commission has referred to a load curve of injection pattern of only JSPL and considered the power injected as non firm power. The State Commission has considered non-firm power in a manner contrary to the consideration and provisions of the State Commission's own earlier orders on the basis of which PPAs were entered into.
- (iii) The Appellant further submits that the State Commission's observations that the Order dated 30.04.2010 was for supply based on load factor for stable power and that the load factor based tariffs were determined to care of outages of generating plants and inferences sought to be drawn therefrom are not

correct and are contrary to the State Commission's Order and even considering that the short term supplies from CPPs follow the same load curve. Several short term purchases follow the same injection pattern as that of JSPL. As per the Appellant, this approach of the State Commission for taking such a view on the short term power purchase from JSPL has been discriminative and unreasonable.

- (iv) The State Commission failed to see that the non-purchase by the Appellant would not change anything with regard to the grid operation. The CGPs would continue to inject power to the grid in pursuance of supply to others under open access to which they are entitled. Therefore, so far as the grid is concerned, there would be no difference in the position. In all circumstances, it is the SLDC that has to monitor real time operations and issue backing down or other conditions according to the needs of grid security.
- (v) As regards the disallowance of delayed payment surcharge paid by the Appellant to the generating company during FY 2011-12 and FY 2012-13, the Appellant stated that the

State Commission failed to see that the Appellant was not allowed to recover its entire ARR upon creation of regulatory asset of Rs.343 crores for FY 2011-12 and Rs.828 crores for FY 2012-13. The State Commission ought to have seen that, being starved of such funds by Regulatory Order, the Appellant was seriously affected by financial crunch and as a result the delay occurred in making payments to the generating company on time. Thereby, the delayed payment surcharge became inevitable as a consequence.

- (vi) As per the Appellant, the State Commission failed to see that the interest on the regulatory asset created by it is only an adjustment for the time value of money that ought to have been realized at the appropriate time and actually realized later. It is a compensation for the loss of the intrinsic value of money over time. The State Commission should have appreciated that on account of creation of huge regulatory assets by the State Commission disabled the Appellant from making timely payment due to serious financial constraint and hardship imposed and in such circumstances, State Commission ought

to have allowed delayed payment surcharge paid by the Appellant for the FY 2011-12 and FY 2012-13.

- (vii) As regards the disallowance of share of gains for reduction in distribution loss, the Appellant stated that the State Commission in its Impugned Order has erroneously disallowed the Appellant's share of gains for achieving a distribution loss of 31.30% and 28.89% as against the target of 32% and 30% respectively for FY 2011-12 and FY 2012-13. The State Commission failed to see that the Appellant was entitled to a share of the gain as per Clause 5.9(c) of MYT Regulation 2010 and the same could not be denied on the ground that there were some defective meters. As per the Appellant, MYT Regulations 2010 of the State Commission do not provide for disallowance of efficiency gains on any such ground. This decision of the State Commission is wholly arbitrary, disproportionate and contrary to its own Regulations.
- (viii) As regards the direction not to sell surplus power at the average rate of Rs.3.65 per KWh, the Appellant has been directed that in case the surplus power cannot be sold at the

average price of Rs.3.65 per KWh or more, the generation from other sources tied up under PPAs should be backed own.

- (ix) As per the Appellant, this decision of the State Commission is putting the Appellant at a disadvantage. Merit order is drawn up on the basis of ascending order of variable costs for the long term power purchases which have provisions for the payment of fixed cost and variable cost. The generation from renewable sources and also short term power purchases, including through power exchanges, cannot be backed down. The fixed cost is a sunk cost and will be payable even if the station is asked to back down. Only the variable cost is saved. Therefore, if surplus power is sold at a price more than the variable cost of such sources which can be asked to back down in terms of the PPA, the sale is beneficial. In this aspect, it is also necessary to consider the situation whereas the station is asked to back down by the Appellant but such stations are directed to maintain their generations by the respective RLDC/SLDC on considerations of grid security. Backing down decisions are to be taken by the respective RLDC/SLDC and

entail deemed generation implications/obligations on the Appellant, and the same will have to be taken into consideration.

- (x) The Appellant further submitted that in the Review Order, the State Commission has directed, by way of clarification that the Appellant may sell surplus power at any rate but the annual average rate of surplus power sold should not be less than Rs.3.65 per unit. As per the Appellant, it is not reasonable or practical to ensure that a minimum average rate is obtained over the year in respect of surplus power. The surplus power itself arises at indeterminate points of time and the rates for the sale thereof depend upon the market conditions at the relevant times. The State Commission has not dealt with the consequences of the Appellant for not achieving such an average rate and the Appellant cannot be subsequently put to consequences such as deemed revenue or in any other manner whatsoever.
- (xi) The Learned Counsel for the State Commission stated that the State Commission has not approved any source wise short

term purchase of power and it has given only cost ceiling and the conditions for purchase and it was for the Appellant to choose from which source they wish to purchase.

- (xii) As per the Learned Counsel for the State Commission, it is duty of the Appellant to ensure that while effecting power purchase, there should be no disturbance to the grid or other ill effects on grid. When it came to the notice of the State Commission that the power purchase from JSPL was intermittent and caused grid disturbance, the State Commission decided to limit the cost of such purchase to Rs.1.50 per unit as per the State Commission's Order dated 30.04.2010. The contention of the Appellant that there was no notice given by the State Commission on this issue is wrong and factually incorrect. When this issue was brought to the notice of the State Commission by the SLDC, a letter dated 24.05.2014 was sent by the State Commission to the Appellant which was replied by the Appellant vide its letter dated 27.05.2014 and it is, therefore, very much in the knowledge of the Appellant and there is no question of any violation of natural justice, as

alleged by the Appellant. There is another important aspect in this matter that JSPL, in addition to having its power plant also has distribution license and supplies power to consumers in its industrial area. The State Commission also determines the distribution and retail supply tariff of JSPL. The State Commission has not given any tariff hike since JSPL has not fully complied with the directions of this Tribunal vide its Order dated 07.03.2014 passed in Appeal No. 89 of 2012. In the above background, this Tribunal also clearly found that the PPA entered into between the Appellant and JSPL was not bonafide.

- (xiii) In the memorandum of Appeal, the Appellant has stated that there are other purchases of similar nature and load curve which has been permitted by the State Commission. On this issue, it has been submitted by the Learned Counsel for the State Commission that the instance of JSPL was brought to the note of the State Commission by the SLDC and further this Tribunal's Judgment dated 07.03.2014 was also binding on the State Commission and, therefore, the State Commission limited the costs to be passed on to the consumers in respect of the

power purchase from JSPL at Rs.1.50 per KWh as per its Order dated 30.04.2010. In light of this, the allegations of malafide and discrimination of the Appellant are wrong and are without any merits.

- (xiv) As regards the disallowance of delayed payment surcharge paid to the generating company by the Appellant for FY 2011-12 and FY 2012-13, Learned Counsel for the State Commission submits that the contention of the Appellant on account of creation of regulatory asset of Rs.343 crores for the FY 2011-12 and Rs.828 crores for FY 2012-13 affecting the cash flow of the Appellant and as a result, the Appellant could not pay the bill of the generating company on time and had to incur the delayed payment surcharge. Pursuant to the directions of this Tribunal in the Judgment dated 07.03.2014 in Appeal No. 89 of 2012 directing the State Commission to allow the financing cost/carrying cost on the regulatory asset, the State Commission has allowed the entire financing cost/carrying cost on the amounts of Rs.343 crores and Rs.828 crores as regulatory assets created by the State Commission

for FY 2011-12 and FY 2012-13 respectively. And the same has been subsequently tried up to be recovered through tariff. Therefore, the Appellant cannot seek the double recovery by claiming the same as carrying cost and also as delayed payment surcharge. The end consumers should not be burdened twice for single expense.

- (xv) As regards the Appellant's contention on share of gains for reduction of distribution loss for FY 2011-12 & FY 2012-13 in terms of Regulation 5.9 (c) of the MYT Regulations, 2010 of the State Commission, Learned Counsel for the State Commission submitted that the Appellant through calculations tried to project that it had achieved distribution loss of 31.30% as against 32% for FY 2011-12 and 28.29% as against 30% for FY 2012-13, however, the calculations were based on the meter readings taken from all the consumers of the State including the Lower Voltage (LV) consumers. The State Commission has framed its Regulation, 2006 on Standards of

Performance in Distribution of Electricity which provides as under with regard to defective meters:

Schedule of overall standard of performance

<i>Service Area</i>	<i>Overall standards of performance</i>
<i>.....</i>	<i>.....</i>
<i>15. Faulty Meters (MNR, Burnt, sticky, etc.)</i>	<i>Shall not exceed 2.5 per cent of metered installations</i>

As against the above, the defective meters in the state are 6% on the LV side. The State Commission has also issued repeated directions to the Appellant on defective meters found in the agricultural premises. In this regard, copies of the letters dated 18.03.2013 and 16.06.2015 issued by the State Commission to the Appellant seeking therein the report regarding the installation of meter in the premises of agricultural pump consumers. These communications of the State Commission from time to time have not been clarified by the Appellant. The State Commission has not been able to verify the accuracy of the metering data submitted by the Appellant and, therefore, has not allowed the efficiency gain being claimed by the Appellant and Regulation 5.9 (c) of the MYT

Regulations, 2010 cannot be read in isolation and needs to be corroborated by facts and figures.

- (xvi) On the other contention regarding direction not to sell surplus power not less than Rs.3.65 per KWh, Learned Counsel for the State Commission submitted that the State Commission had clarified vide its letter dated 08.08.2014 to the Appellant that the annual average of the of surplus power sold should not be less than Rs. 3.65 per unit. Further, in the tariff petition filed by the Appellant, the Appellant had itself proposed as under:-

“6.44 Considering the demand supply gap for each year CSPDCL has projected power to be procured from short term sources including CPP and IPP at the rate of Rs.3 per unit. Further, the surplus energy has been considered for sale at the rate of Rs.3.65 per unit which is in line with the recent trends observed by CSPDCL.”

- (xvii) The Learned Counsel for the State Commission stated that the surplus power which is available with the Appellant has a cost and is paid for by the Appellant. The cost of such power purchase is also passed on to the consumers. Therefore, selling the same at a price less than Rs.3.65 per unit will be detrimental to the consumers. In light of this, if the Appellant is

not able to sell the surplus power at an annual average cost of Rs.3.65 per unit as per the State Commission's Review Order dated 08.12.2014, the said power need not be purchased by the Appellant and the generating stations should not be given dispatch instructions to schedule the power. When the power purchase price ceiling has been approved by the State Commission at Rs. 3.10 per KWh (non-peak hours) and Rs.3.25 per KWh (peak hours), the said power also needs to be sold at the higher rate, thereby ensuring some benefit to the consumers. Therefore, the State Commission has fixed average selling price of the surplus power at Rs.3.65 per KWh. The Appellant's contention that as long as the surplus power is sold at a rate more than the variable cost, the sale is beneficial. This is not correct. This is justifiable only when the Appellant is not purchasing short term power. However, if the Appellant is purchasing short term power and selling surplus power simultaneously, it will incur loss in transaction if it could not sell power for more than specified price. Also, the Appellant itself has estimated the rate for sell of surplus power in its petition,

hence the State Commission has fixed a minimum ceiling for sell of surplus power @ Rs.3.65 per KWh. The State Commission has further appreciated the difficulty of the Appellant and has revised the directive and given liberty to sell such power at an annual average price of Rs.3.65 per KWh so that the Appellant as well as the consumers both are not burdened. On the contention of the Appellant that consumers are paying both the fixed and the variable cost and even if the generating stations are backed own, the fixed costs will be paid by the consumer. This contention of the Appellant would only be true if the surplus power is due to virtue of long term agreement and not short term agreement. In light of this, putting a cap on selling price of surplus power is necessary for the benefit of the consumers. In any event, the State Commission has already given the flexibility to the Appellant by changing word “minimum” to “average” so that Appellant has opportunity to sell at a rate lower than cap rate but the weighted rate of the total surplus sell should be Rs.3.65 per unit.

10. After having carefully perused the relevant submissions of the rival parties, we decide all the four issues brought out in the subject Appeal as under:-

(A) Whether the State Commission in its Impugned Order read in conjunction with the Review Order was right in restricting the short-term power cost of power purchased from M/s. Jindal Steel and Power Ltd. (JSPL) to Rs.1.50 per unit for the FY 2011-12 and FY 2012-13?

- (i) The subject issue pertains to the short-term power purchase cost for FY 2011-12 and FY 2012-13 from M/s. JSPL.
- (ii) We have observed that for final true up of FY 2011-12 and FY 2012-13, the provisions of State Commission's (Terms & Conditions of determination of tariff according to MYT principles) Regulations, 2010 have been considered. While determining the true up, the State Commission has stated that they have taken into consideration the directions of this Tribunal in its Order, inter-alia, directing as under:-

- (a) True up the interest on working capital in the truing up of the accounts for FY 2011-12 and FY 2012-13, taking into account the Prime Lending Rate (PLR) of SBI in the respective FYs.
 - (b) True up the interest on consumer security deposit at the truing up of accounts for FY 2012-13.
 - (c) Determine the additional revenue generated at the revised tariff taking into account the period from the date of implementation of the revised tariff till the end of FY.
 - (d) Allow financing cost on un-recovered revenue gap created in the ARR for FY 2012-13 in the next tariff order to be recovered through the retail supply tariff and allow for part recovery of the revenue gap in accordance with the findings given in the Impugned Order in the next tariff order.
- (iii) From the data submitted, the Appellant had purchased 359.32 MU at the average rate of Rs.2.50 per unit in

FY 2011-12 and 980.19 MU at the average rate of Rs.2.66 per unit in FY 2012-13.

(iv) As per the submissions made by the M/s. JSPL in the Appeal No. 89 of 2012 decided by this Tribunal vide its Order dated 07.03.2014, JSPL itself admitted that the surplus power at different time of the day was dependent on the actual consumption of steel plant which varied frequently and had shown inability to supply power from its captive power plant to the licensee area for the reasons stated as under:-

- (a) Increase in demand of electricity in its Steel Plant due to expansion of its steel plant.
- (b) Refusal of CSPDCL to increase contract demand for supply of power to its steel plant consequent to its increase in the power demand of its Steel Plant.
- (c) Fluctuation in quantum of surplus power available from its Captive Power Plant due to fluctuating load of its Steel Plant whereas Jindal Industrial Park required supply on continuous and sustainable

basis. Therefore, the surplus power from its captive Power Plant could not be utilized in Jindal Industrial Park.

From the above, we have noted that the power supplied by JSPL to the Appellant is fluctuating in nature which would affect the Appellant to manage its load generation balance and could result into at times to over draw/under draw from the grid thereby attracting severe penal actions.

- (v) The Appellant has signed Power Purchase Agreement with JSPL for firm power supply and not for non-firm power. This has been noted that the Appellant continued making purchases of such power of poor quality without taking any corrective measures or other remedial recourse. In the Impugned Order dated 12.06.2014, the State Commission has considered the power purchase from JSPL by the Appellant is of non-firm nature and has taken serious note on the issue and directed the Appellant for not to purchase unstable/ non-firm power

which creates disturbance in demand supply balance. The base rate for power supply should be based on load factor for stable power and as such power purchase shall be on the basis of load factor so that the Appellant supplies quality and reliable power to its consumers.

- (vi) In light of above, the State Commission decided in its Impugned Order that the burden of negligence of the Appellant should not be passed on to the consumers and approved minimum base rate of Rs.1.50 per KWh as part of power purchase cost.
- (vii) We are of the considered opinion that injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance. Since the surplus power supply from JSPL has been fluctuating in nature and unstable the purchase price of non firm power cannot be equated with purchase price of firm power and has to be given treatment as in the case of purchase of infirm power and the purchase cost of such type of power has to be

significantly lower than the cost of firm power. We are in agreement with the findings of the Impugned Order of the State Commission on this issue and decide this issue against the Appellant.

(B) Whether the State Commission has rightly disallowed the delayed payment surcharge during FY 2011-12 and FY 2012-13 to the Appellant?

- (i) On the contention of the Appellant that there was a regulatory asset/gap of Rs.343 crores and Rs.828 crores for FY 2011-12 and FY 2012-13 respectively created by the State Commission thereby affecting the cash flow of the Appellant resulting into delayed payments to the generating company and making the Appellant to incur the delayed payment surcharge, we have observed that the State Commission has allowed the entire financing cost/carrying cost on the amounts of Rs.343 crores for FY 2011-12 and Rs. 828 crores for FY 2012-13 as subsequently tried up to be recovered through tariff which is in compliance with the directions of this Tribunal

in its Judgment dated 07.03.2014 in Appeal No. 89 of 2012 allowing therein the financing cost/carrying cost on the regulatory assets so created by the State Commission.

- (ii) The State Commission in its Impugned Order dated 12.06.2014 observed as under:-

“The CSPDCL has paid DPS to CSPGCL and claimed the same as part of power purchase cost which has not been considered by the Commission as per the provisions of the MYT Regulations. IN view of the same, DPS paid by CSPDCL should not be part of power purchase cost and it has to be borne by CSPDCL. The commission continuing with its stand taken in the last tariff order dated 12.07.2013, disallows Rs.25.04 crore and Rs.66.75 crore for FY 2011-12 and FY 2012-13 respectively.”

The findings of the State Commission in its Review Order dated 08.12.2014 are as under:

“20. While examining the request of CSPDCL to review the decision of disallowing Delay Payment Surcharge (DPS) paid by it to CSPGCL, it is found that the basic financial principle has been followed while disallowing the DPS. Commission has allowed carrying cost for the regulatory asset created by it for the corresponding years which compensates for DPS. So if DPS is allowed in this order then it will be unjustified burden on the consumers. Surcharge paid on account of delay in power purchase cost

should be borne by licensee. Hence, this matter of review of disallowing above Delay Payment Surcharge does not qualify for the conditions of the review.”

(iii) Once the Appellant has been given benefit of financing/carrying cost on the account of Rs.343 crores and Rs.828 crores for the FY 2011-12 and FY 2012-13 respectively, the Appellant has been fully taken care on the issue of creation of regulatory assets and the State Commission has very rightly disallowed the delayed payment surcharge during FY 2011-12 and FY 2012-13 to the Appellant as the Appellant cannot justify the claim of delayed payment surcharge on account of creation of regulatory assets when it has already been allowed carrying cost for such regulatory assets.

(iv) In light of the above, we are of the considered opinion that there is no infirmity in the Impugned Order on this aspect.

Hence this issue is also decided against the Appellant.

(C) Whether the State Commission has rightly disallowed the sharing of efficiency gains from reduction in the

distribution losses for FY 2011-12 & FY 2012-13 to the Appellant?

- (i) On this issue, the Appellant has claimed that it has over-achieved the loss level targets for FY 2011-12 and FY 2012-13 so as to entitle him for getting share in the additional gains as per Regulation 5.9(c) of the MYT Regulations, 2010 of the State Commission, the State Commission in its Impugned Order dated 12.06.2014 stated as under:-

“CSPDCL has claimed for efficiency gain based on the performance of distribution losses. For sharing of gains and losses, the methodology proposed by CSPDCL in calculation of distribution loss (which is inclusive of EHV sales) for the year FY 2011-12 and FY 2012-13 is unacceptable. For the sake of argument if the submission of CSPDCL is considered then the distribution loss target will also needs to be modified accordingly. It has been observed that the methodology adopted by CSPDCL is not the same as in the original main petition for determination of tariff. The Commission has finalized the distribution losses in accordance with the methodology adopted in previous main orders.

The distribution losses worked out by CSPDCL raise question when CSPDCL itself has reported that about 6% LV consumer meters are defective. As mandated in the Supply Code, 2011, the defective meters should

not be more than 2.5%. Similarly a large number of 11 KV and 33 KV feeder meters are also lying defective which are meant for energy accounting. In absence of proper energy accounting data, sharing of gains and losses is not permitted. Various stake holders have also expressed their concern on distribution losses.

In such scenario, allowing incentive to CSPDCL is not justified and directs CSPDCL to make extra efforts to minimize defective meters within the permissible limit as per the provision of Supply Code, 2011. Under such circumstances, the Commission at CSERC MYT Order FY 2014-15 91 this stage after prudence check of the information considers the distribution losses as 31.30% for FY 2011-12 and 28.89% for FY 2012-13.”

We have also noted findings of the State Commission on this issue in its Review Order dated 08.12.2014 which is extracted as under:-

“The calculations submitted by UIA was examined. In this calculation, UIA has considered scheduled quantum of power purchase and scheduled quantum of inter-state sale for computation of losses. Power from central generating stations and other inter-state power purchase is done through scheduling mechanism. Similarly inter-state power sale is scheduled. Deviations from scheduled power purchase and inter-state sale is governed through UI mechanism. Actual inter-state power purchase quantum is equal to scheduled power purchase quantum plus or minus UI (Deviations from schedule). Similarly actual inter-state sale can be ascertained. In the main tariff order, metered power

input at 33 KV level has been considered for calculating losses below 33 KV. So the point raised by UIA is not sustainable. As regards the submission of petitioner is concerned, the Commission is of the view that in absence of complete meterisation and billing, the losses submitted by CSPDCL cannot be relied. So the position taken in the tariff order is justified. Accordingly, gains on account of reduction in disturbance losses, which is incorrect, cannot be passed on to licensee burdening the consumers of the State. In view of the above facts, the relief sought by petitioner cannot be reviewed.”

- (ii) From the above, we have noticed that metering data submitted by the Appellant was not sufficient and as such the claim for over achievement of the Appellant is untenable. In the absence of complete meterisation and billing, the achieved loss level as submitted by the Appellant has not been relied upon by the State Commission. The alleged gain on account of reduction of distribution loss is not justifiable in view of the inadequate data submitted by the Appellant and the fact that the defective meters on the LV side to the tune of 6% are much higher than that has been specified by the State Commission. On one hand we appreciate share of gains

on account of reduction in distribution losses but it has to be demonstrated with facts and figures and the prime element which could facilitate its immediate corrective action is by replacing the defective meters and ensuring meterisation.

In absence of the adequate metering data made available by the Appellant to the State Commission, we do not wish to interfere with the findings of the State Commission in its Impugned Order read with its Review Order on this issue. Hence, this issue is also decided against the Appellant.

- (D) **Whether the State Commission has rightly directed to the Appellant not to sell surplus power at the average rate of not less than Rs.3.65 per unit and the backing down of generation from other tied up sources if such rate was not obtainable?**
- (i) Let us first look at the findings on this issue by the State Commission in its Impugned Order dated 12.06.2014, extracted

as under:-

“Based on energy balance, surplus energy available for short-term sale during FY 2014-15 works out to 6557 MU. The Commission estimates short-term sale of 6557 MU at the rate of 3.65/ KWh for FY 2014-15. Surplus power should not be sold less than Rs.3.65/KWh. If buyer is not available at the rate above Rs.3.65/ KWh then backing down of plant should be ensured as per merit order dispatch.”

On the same issue, in its Review Order dated 08.12.2014, the State Commission reiterated its direction of not selling surplus power at a rate not less than 3.65 per KWh read in conjunction with its letter dated 08.08.2014 making it annual average of the surplus power sold should not be less than that Rs.3.65 per unit.

- (ii) The surplus power in question has been procured at somewhat similar cost and is paid for by the Appellant.

In its Tariff Petition, the Appellant has itself proposed as under:-

“6.44 Considering the demand supply gap for each year CSPDCL has projected power to be procured from short term sources including CPP and IPP at the rate of Rs. 3 per unit. Further, the surplus energy has been considered for sale at the rate of Rs.3.65 per

unit which is in line with the recent trends observed by CSPDCL.”

The cost of such power purchase is also passed on to the consumer. If the Appellant sells the surplus power so procured by it at an average price less than what has been prescribed, it would be detrimental to the consumers at large.

- (iii) We have observed that the State Commission had clarified vide its letter dated 08.08.2014 that the annual average of the surplus power sold should not be less than that Rs.3.65 per KWh.
- (iv) In our opinion, the Appellant has to make prudent planning keeping in view the demand supply scenario and has to take all possible actions to ensure that in the event it has surplus quantum to be sold, the same should fetch it an appropriate value arising from such a sale so as to ensure that it does not suffer on this account.
- (v) As regards the Appellant's contention that such a Rule by the State Commission would initiate the backing down of

generation from other tied up sources by the Appellant, we do not find any merit in this contention, particularly keeping in view that the meticulous load planning and better management of demand supply should have to be carried out by the Appellant, which would to a greater extent avoid such a situation.

- (vi) If the Appellant is purchasing short term power and selling surplus power simultaneously, it would have a financial loss if sold at a lower rate. We do not find any substance in the Appellant's contention that as long as the surplus power is sold at a rate more than the variable cost, it is beneficial since the case on hand is relating to the short term procurement of power where one can exercise a better control by making effective planning.
- (vii) Keeping in view that the end consumers should not be made to suffer on this account, we are in agreement with the decision of the State Commission on this issue in its Impugned Order read with its letter dated 08.08.2014. Hence, this issue is also decided against the Appellant.

ORDER

In light of the above, the Appeal is devoid of merits and is hereby dismissed and Impugned Order dated 12.06.2014 read in conjunction with Review Order dated 08.12.2014 of the State Commission is hereby upheld. No order as to costs.

Pronounced in the open court on this **26th day of May, 2016.**

(I.J. Kapoor)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Surendra Kumar)
Judicial Member