

**COURT-I**

Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)

**APPEAL NO. 232 OF 2015 &  
IA NOs. 380 & 381 OF 2015**

**Dated: 13<sup>th</sup> July, 2016**

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

**In the matter of:-**

**Open Access Users Association ..... Appellant (s)  
Versus  
Andhra Pradesh Electricity Regulatory Commission & Ors. .... Respondent (s)**

Counsel for the Appellant(s) : Mr. Matrugupta Mishra

Counsel for the Respondent(s) : Mr. K.V. Mohan  
Mr. K.V. Balakrishnan for R.1

**ORDER**

The Appellant, Open Access Users Association, has challenged in this appeal Order dated 15/04/2015 passed by the Andhra Pradesh Electricity Regulatory Commission ("**Andhra Commission**") in O.P. No.8 of 2015, whereby the Andhra Commission has fixed the surcharge and additional surcharge by applying embedded cost method. It is pointed out to us that while the Appellant, Open Access Users Association, has filed the present appeal against Order dated 15/04/2015 many individual parties had filed writ petitions before the High Court of Andhra Pradesh challenging the same order.

Admittedly, the Full Bench of this Tribunal by its Judgment dated 05/07/2007 in Appeal Nos.169, 170, 171, 172, of 2005 and 248 and 249 of 2006 (“**the Full Bench Judgment**”) held that the computation of cross subsidy surcharge for use of open access will be as per the formula given in the National Tariff Policy. The Andhra Commission had filed Civil Appeal Nos.4936-4941 of 2007 in the Supreme Court against the Full Bench Judgment. On 05/05/2008 the Supreme Court issued notice and by interim order stayed the Full Bench Judgment. On 04/12/2009 the Supreme Court admitted the appeals.

We are informed that in the meantime West Bengal State Electricity Regulatory Commission also filed Civil Appeal against the Full Bench Judgment. On 02/04/2009, the Supreme Court dismissed the said appeal. Based on this order, Civil Appeal Nos.4936-4941 of 2007 filed by the Andhra Commission were dismissed by the Supreme Court on 31/03/2016. Thus, the Full Bench Judgment of this Tribunal has been confirmed by the Supreme Court.

We are also informed that the High Court of Andhra Pradesh by Order dated 27/04/2016 set aside Order dated 15/04/2015 in O.P. No.8 of 2015 and disposed of the writ petitions filed by the individual parties on the basis of the Full Bench judgment and remitted the matters to the Andhra Commission for disposal in accordance with law.

In view of the above, we will have to follow the same course. Therefore, we set aside impugned Order dated 15/04/2015 in O.P. No.8 of 2015 and remit the matter to the Andhra Commission. We direct the Andhra Commission to decide the matter in the light of the Full Bench Judgment of this Tribunal dated 05/07/2007 in Appeal Nos.169, 170, 171, 172, of 2005 and 248 and 249 of 2006 in accordance with law.

The Appeal is disposed of in the afore-stated terms. We, however, make it clear that we have not expressed any opinion on the merits of the case.

Needless to say that I.A. Nos.380 and 381 of 2015 shall also stand disposed of accordingly.

**(I.J. Kapoor )**  
**Technical Member**  
ts/mk

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