

COURT - I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA NO. 32 OF 2017
IN
APPEAL NO. 14 OF 2017**

Dated: 14th March, 2017

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

In the matter of :

Rajasthan Textile Mills Association **...Appellant(s)**

Vs.

Rajasthan Electricity Regulatory Commission & Ors. **...Respondent(s)**

Counsel for the Appellant(s) : Mrs. Swapna Seshadri
Ms. Neha Garg

Counsel for the Respondent(s) : Mr. R. K. Mehta
Ms. Himanshi Andley for R.1

Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Mr. Shubham Arya for R.2 to 4

ORDER

**IA No. 32 of 2017
*(For Stay)***

In this appeal, the Appellant has challenged order dated 01.12.2016 passed by Rajasthan Electricity Regulatory Commission (the State Commission) whereby the State Commission determined the cross-subsidy surcharge applicable from 01.12.2016. It is the case of the Appellant that the cross-subsidy surcharge determined in the absence of tariff petition for the year 2016-17 is directly contrary to the settled position

of law that the cross-subsidy can be determined only along with the tariff petition for the relevant year. Ms. Swapna Seshadri strenuously contended that distribution licensees have not yet filed the tariff petition for year 2016-17 and by the impugned order the State Commission has placed a premium on the defaults of the distribution licensees. Counsel further pointed out that the State Commission has substantially increased the cross-subsidy surcharge which has imposed extra burden on the Appellant as well as other consumers in the State of Rajasthan. Counsel submitted that this is contrary to the basic principle and objective that cross-subsidies and cross-subsidy surcharge need to be progressively reduced. Counsel submitted that the order passed by the State Commission is contrary to judgment of this Tribunal in Appeal No.107 of 2013 & batch of appeals. Counsel submitted that this is, therefore a fit case where this Tribunal should stay the impugned order or at least protect the Appellant by directing that the Appellant could be levied 50% of cross-subsidy surcharge pending the hearing and final disposal of this appeal.

We have also heard Mr. M.G. Ramachandran, learned counsel appearing for distribution licensees. Counsel strenuously opposed the submissions of Ms. Swapna Seshadri, counsel for the Appellant. Counsel drew our attention to the affidavit in reply filed on behalf of Respondents No. 2,3 & 4 particularly to the following portion:-

"The contents of Para 7(BB)- (EE) are wrong and denied. As mentioned in the preliminary submissions herein above, since the applicable tariff is as determined by the State Commission in its order dated 22.09.2016, the same has to necessarily form the basis of computation of the cross-subsidy surcharge for the same period.

Further, as mentioned in the preliminary submissions, the cross-subsidy surcharge was completely insufficient to meet the existing level of the cross-subsidy. While determining the Cross-Subsidy Surcharge for the relevant period, the State Commission has taken into account the tariff design, the cross-subsidy levels etc. as determined in the Order dated 22.09.2016. Thus, the petition for determination of cross-subsidy surcharge for the FY 2015-16 has been determined after the tariff order for the FY 2015-16 has been passed by the State Commission, taking into account the data and financials provided in the Order dated 22.09.2016. Such procedures is in accordance with the provisions of the Tariff Regulations, 2014.

The reliance on the judgment of this Hon'ble Tribunal in Tata Power Company Limited Vs. Maharashtra Electricity Regulatory Commission & Ors, is misconceived. In the said case, the Maharashtra Electricity Regulatory Commission had determined the

cross-subsidy surcharge based on the previous year financials, after deserving order on the MYT Order for the relevant period. Thus, the Maharashtra Commission, after having access to the data for the relevant period, proceeded to determine the cross-subsidy surcharge, on the basis of the previous year financials. It was under these circumstances that the Hon'ble Tribunal set aside the Order passed by the Maharashtra Commission. The facts of the present case are distinguishable. As mentioned herein above, the Cross-Subsidy Surcharge can be determined based on the tariff and cost approved for a relevant period and not necessarily for the current financial year. The tariff applicable for the FY 2016-17 is as determined by the State Commission in its Order dated 22.09.2016 (relating to the FY 2015-16). The Order dated 22.09.2016 shall continue to remain in force and shall be applicable until the next tariff order is passed. The Cross-Subsidy Surcharge has also been determined by the State Commission on the basis of the data and the financials provided in the Order dated 22.09.2016. Thus, the State Commission has correctly determined the Cross-Subsidy Surcharge on the basis of the data available. Accordingly, there is no inconsistency between the revenue requirements, costs for the FY 2016-17 i.e. as determined in the Order dated 22.09.2016 and the Cross-Subsidy Surcharge determined. All allegations to the contrary are wrong and denied”.

Counsel reiterated that the tariff applicable for the FY 2016-17 is as determined by the State Commission in its Order dated 22.09.2016 (relating to the FY 2015-16). The Order dated 22.09.2016 shall continue to remain in force and shall be applicable until the next tariff order is passed. The Cross-Subsidy Surcharge has also been determined by the State Commission on the basis of the data and the financials provided in the Order dated 22.09.2016. Thus, the State Commission has correctly determined the Cross-Subsidy Surcharge on the basis of the data available.

In view of the aforesaid submissions, we are of the opinion that it is not possible for us to stay the impugned order. **The application is, therefore, dismissed.**

Since the matter is ready for hearing, list the matter for hearing on **25.04.2017.**

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

pr/vt