

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

Appeal No. 247 of 2014

Dated: 18 November, 2015

**PRESENT: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF:

The Kerala High Tension and Extra High Tension
Industrial Electricity Consumer's Association
Productivity House
Jawahar Nehru Road
Kalamassery – 683 104
Cochin, Kerala

...Appellant(s)/Petitioner

Versus

1. Kerala State Electricity Regulatory Commission
C.V. Raman Pillai Road
Vellayambalam
Thiruvananthapuram – 695 010, Kerala

2. The Kerala State Electricity Board Ltd.,
Vydhyuthi Bhawan, Pattom
Thiruvananthapuram – 695 004,
Kerala

... Respondent(s)

Counsel for the Appellant(s): Mr. Joseph Kodianthara, Sr. Advocate
Mr. Atul Shankar Vinod
Mr. M.P. Vinod
Ms. Neelam Saini

Counsel for the Respondent(s): Mr. Ramesh Babu, Sr. Advocate
Mr. M.T. George
Ms. Kavita K.T.

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal has been filed under Section 111 of the Electricity Act, 2003 by the Appellant/Petitioner, the Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association against the impugned Order dated 14.08.2014 of the Kerala State Electricity Regulatory Commission wherein the State Commission determine the retail supply tariff for the Financial Year 2014-15 for the State of Kerala.
2. The Appellant/Petitioner is an Association of Industries principally of High Tension and Extra High Tension Industrial Consumers of Electricity in the State of Kerala, represented by its Secretary. The Appellant is a Society duly registered under the Travancore – Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.
3. Respondent No.1 is a State Electricity Regulatory Commission, constituted in November 2002. The Respondent No. 2 is a State Electricity Board.

4. The brief facts of the case leading to this Appeal before the Tribunal are as under:

4.1 Chairman and Managing Director, Kerala State Electricity Board Ltd., filed a Petition being OP No. 9 of 2014 for approval of Annual Review Requirement (ARR) and Electricity Regulatory Commission (ERC) and for revision of tariff for Financial Year 2014-15.

4.2 In the Petition, Kerala State Electricity Board Ltd., (KSEBL) has projected a revenue gap of Rs. 2931.21 crore, out of which Rs. 1423.63 crore was proposed to be made up by tariff revision.

4.3 The first Respondent Kerala State Regulatory Commission passed a tariff order dated 25.07.2012 in O.P. No. 23 of 2012 for the year 2012-13.

4.4 Challenging the said tariff order, the Appellant filed Appeal No. 179 of 2012 before this Tribunal.

4.5 The above Appeal No. 179 of 2012 was disposed of by the Tribunal vide Judgment dated 31.05.2013.

4.6 The relevant findings of Judgment dated 31.05.2013 of this Tribunal are quoted below:

“However, we give directions to the State Commission to determine the voltage-wise cost of supply for the various categories of consumes within six months of passing of this order and take that into account in determining the cross subsidy and tariffs in future as per the dictum laid down by his Tribunal”.

4.7 Accordingly, this Appeal was disposed of with the directions to the State Commission for determination of voltage-wise cost of supply in future.

4.8 That the first Respondent State Electricity Regulatory Commission passed a further Tariff Order dated 30.04.2013 for the year 2013-2014 without considering voltage-wise cost of supply and this tariff order was not challenged and attained finality.

4.9 The second Respondent Kerala State Electricity Board Ltd., filed a Petition being O.P. No. 9 of 2014 dated 14.05.2014 before the State Commission with respect to ARR & ERC and determination of Tariff for the Financial Year 2014-2015.

4.10 The State Commission after following the due procedures laid down in the Electricity Act 2003 passed the Impugned Tariff Order dated 14.08.2014.

4.11 That the Appellant/Petitioner aggrieved by the impugned Order dated 14.08.2014 has filed this Appeal before this Appellate Tribunal and prayed the following relief:

- a) To set aside the impugned Order of the Kerala State Electricity Regulatory Commission dated 14.08.2014 with consequential reliefs to the Appellant's members.
- b) To issue such other orders as are deemed just and necessary in the facts and circumstances of the case.

5. Having heard arguments of the Learned Counsel for the Appellant, Shri Joseph Kodianthara, and Learned Counsel for the Respondents, Shri Ramesh Babu and after going through the written submissions made by the rival parties, following issues arise before this Tribunal for consideration:

- a) **Issue No. 1: Whether the State Commission failed to determine the tariff on the basis of voltage wise cost of supply and instead determined the tariff on the basis of average cost of supply (Impugned Order dated 14.08.2014) without compliance of the Judgment of this Tribunal in Appeal No. 179 of 2012 dated 31.05.2013?**

- b) Issue No. 2. Whether the State Commission erred in allowing interest expenses of KSEBL corresponding to the bonds issued to master trust to meet the pension fund and terminal liabilities?**
- c) Issue No. 3. Whether the State Commission erred in computing RoE on the equity base of Rs. 3,499 crores against the actual paid-up capital of KSEB of Rs. 5.0 lakhs.**

6. Issue No. 1: Whether the State Commission failed to determine the tariff on the basis of voltage wise cost of supply and instead determined the tariff on the basis of average cost of supply (Impugned Order dated 14.08.2014) without compliance of the Judgment of this Tribunal in Appeal No. 179 of 2012 dated 31.05.2013?

The following are the submissions made by the Appellant:

- 6.1 that the State Commission erred in law in not complying with the directions of this Tribunal's Judgment dated 31.05.2013 in Appeal No. 179 of 2013 particularly with respect to determination of voltage wise cost of supply before passing the Impugned Order.
- 6.2 that the State Commission is bound by the Order and directions of the Appellate Tribunal and should be duty bound to comply with such directions and together fully effect to such directions.
- 6.3 that the Impugned Order which effectively increases the tariff of the Appellant's consumers to more than 60%

effective from July 2012 is grossly unjustified, unreasonable, irrational and illegal.

6.4 that the State Commission itself having notified the procedure for determination of voltage-wise cost of supply on 30 January 2014 had erred in proceeding with the Tariff Order without finalizing the same.

6.5 Further, the procedure as well as findings in the Impugned Order without complying with the aforesaid directions of the Appellate Tribunal has vitiated the Impugned Order.

6.6 that the Appellant submitted the average cost of supply, tariff and cross subsidy for HT & EHT consumers for the last three years in the table below:

Category	2012-13			2013-14			2014-15		
	Avg cost of supply	Tariff	Cross subsidy	Avg cost of supply	Tariff	Cross subsidy	Avg cost of supply	Tariff	Cross subsidy
	(Rs.kWh)	(Rs.kWh)	(%)	(Rs.kWh)	(Rs.kWh)	(%)	(Rs.kWh)	(Rs.kWh)	(%)
HT-I Industrial	4.64	5.21	-12.3	5.04	5.7	-13.1	5.28	6.18	-17.0
EHT-66kV	4.64	4.97	-7.1	5.04	5.35	-6.2	5.28	5.94	-12.5
EHT-110 kV	4.64	4.7	-1.3	5.04	5.15	-2.2	5.28	5.54	-4.9

It can be seen that the cross subsidy for the Appellant category of consumers has been on the increase. As per

section 61(g) of the Electricity Act, 2003 and various judgments of this Appellate Tribunal, cross subsidy can only be reduced. This is a serious injustice which has to be addressed to several SERCs as to the cross subsidy levels in the tariff order. The State Commission has never done that in spite of the requests of the appellant Association for the last several years.

6.7 that the Commission, apparently, prefers to avoiding tariff shock, as the reason for the non-compliance of this Tribunal's order and the provisions in the Act. The Appellant Association has been pointing out the huge cross subsidy enjoyed by the domestic consumers from 2003 onwards. Nothing has been done to reduce the cross subsidy for long 9 years, that has resulted in the present situation today.

6.8 that the Appellant quoted the Hon'ble Supreme Court's Judgment dated 24.09.1991 in the matter of Union of India vs. Kamalakshi Finance Corporation Ltd. The relevant part of the judgment is as under:

“The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable”to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesses and chaos in administration of tax laws.”

Thus, the State Commission failed to follow the order of the higher appellate authority i.e. APTEL.

7 Per Contra, the following are the submissions on behalf of the Respondent No. 2, Kerala State Electricity Board:

7.1 The Electricity tariff in the State of Kerala including the appellant had not been revised consecutively for 10 years during the period from October-2002 to June 2012.

7.2 However, during the year 2012-13, the State Commission is constrained to enhance the tariff w.e.f. July 2012 considering the huge unbridged revenue gap and the critical financial position of KSEBL. Since then, the tariff was revised during the year 2013-14 and 2014-15 as well.

7.3 The average tariff increase of all categories of consumers including the consumers of the appellant (HT-1 Industrial, EHT 66 kV and EHT 110 kV) is extracted below.

Table

Sl No	Tariff Category	Average tariff				% of increase in tariff			
		From Oct-2002 to Jun-2012	Jul-2012 to Apr-2013	May-2013 to 15th Aug-2014	from 16th Aug-2014	2002-2012 to 2012-13	2012-13 to 2013-14	2013-14 to 2014-15	Overall increase of last three revision
1	LT Domestic	2.00	2.81	3.08	3.76	40.50	9.61	22.11	88.04
2	LT V Agricultural	0.92	1.77	1.84	2.39	92.39	3.95	29.96	159.92
3	LT-IX Public Lighting	2.12	2.75	3.00	3.60	29.72	9.09	20.06	69.90
4	HT-I Industrial	4.12	5.21	5.70	6.18	26.46	9.40	8.35	49.90
5	EHT-66 kV	3.72	4.97	5.35	5.94	33.60	7.65	11.03	59.68
6	EHT-110 kV	3.49	4.70	5.15	5.54	34.67	9.57	7.55	58.71

7.4 It can be seen that, the cumulative tariff increase for the consumers of the appellant HT-1, EHT-66 kV and EHT 110 kV during the three year period from 2012-13 to 2014-15 was from 49.90 % to 59.68 %.

7.5 During the same period between 2012-13 to 2014-15, the cumulative tariff increase for the subsidized consumers including Domestic was 88.04%, the tariff

increase for agriculture consumers was 159.92% and the tariff increase for public lighting was 69.90%.

7.6 As detailed above, the tariff increase for the subsidized consumers domestic, agriculture and public lighting was much more than the average tariff increase effected for the consumers of the appellant.

7.7 that the cost coverage of the consumers of the appellant during the last three tariff revision is detailed below.

Tariff Category	Cost Coverage as per tariff		
	for 2012-13	for 2013-14	for 2014-15
HT- I Industrial	112%	113%	117%
EHT -66kV	107%	106%	112%
EHT-110 kV	101%	102%	105%

7.8 that it is seen that, during the last three tariff revision, the tariff of the consumers of the appellant is within +- 20% of the average cost of supply.

7.9 that it is also seen that, the cost coverage of the subsidized categories of consumers including domestic and agriculture consumers also gradually increasing as detailed below.

Table

Tariff Category	Cost coverage			Average realization as per tariff		
	for 2013-14	for 2014-15	Increase in cost coverage over previous year	for 2013-14	for 2014-15	Increase (%)
LT Domestic Total	61%	71%	10%	3.08	3.76	21.90%
LT V Agricultural	37%	45%	8%	1.84	2.39	30.00%
LT XI Pub lighting	60%	68%	8%	3.00	3.60	20.00%
HT- I Industrial	113%	117%	4%	5.7	6.18	8.30%
EHT -66kV	106%	112%	6%	5.35	5.94	11.10%
EHT-110 kV	102%	105%	3%	5.15	5.54	7.50%

7.10 that the cross subsidy of the consumers of the appellant and that of subsidized consumers including domestic and agriculture consumers is detailed below.

Tariff Category	2012-13			2013-14			2014-15		
	Avg cost of supply	Avg Tariff	Cross subsidy	Avg cost of supply	Avg Tariff	Cross subsidy	Avg cost of supply	Avg Tariff	Cross subsidy
	(Rs/kWh)	(Rs/kWh)	(%)	(Rs/kWh)	(Rs/kWh)	(%)	(Rs/kWh)	(Rs/kWh)	(%)
LT Domestic Total	4.64	2.81	-39.4	5.04	3.08	-38.9	5.28	3.76	-28.8
LT V Agricultural	4.64	1.77	-61.9	5.04	1.84	-63.5	5.28	2.39	-54.7
LT XI Pub lighting	4.64	2.75	-40.7	5.04	3.00	-40.5	5.28	3.60	-31.8
HT- I Industrial	4.64	5.21	12.3	5.04	5.70	13.1	5.28	6.18	17.0
EHT -66kV	4.64	4.97	7.1	5.04	5.35	6.2	5.28	5.94	12.5
EHT-110 kV	4.64	4.70	1.3	5.04	5.15	2.2	5.28	5.54	4.9

7.11 that it is pertinent to mention here that, even after the last three tariff revision, the average revenue realization is much less than the average cost of supply.

7.12 that based on the KSERC (Principles for determination of road map for cross subsidy reduction for distribution licensees) Regulations, 2012, the State Commission has been increasing the cost coverage of subsidized categories including domestic, agriculture and public lighting, where as the tariff of the consumers of the appellant has been determining in such a way that the average tariff shall be within +/-20% of the average cost of supply.

7.13 that KSERC (Principles for determination of road map for cross subsidy reduction for distribution licensees) Regulations, 2012 was not challenged by anybody including the appellant in any court of competent jurisdiction.

7.14 that in duly complying the Judgment of the Hon'ble APTEL dated 31-05-2013 in appeal petition No. 179

of 2012, this respondent has prepared and submitted a model for arriving voltage level cost before the State Commission on 07-01-2014. This model was published vide notice dated 30-01-2014 and a public hearing was conducted on 18-03-2014. Further, duly considering the views of the Stake holders during the public hearing, this respondent has submitted a revised model based on the ARR&ERC submitted before the State Commission for the year 2014-15. The State Commission duly considered the voltage level model submitted by the KSEBL before the State Commission while determining the tariff for the year 2014-15.

7.15 that as per the Judgments of this Hon'ble Tribunal vide the Judgment dated 28-05-2014 in appeal Petition No. 131 of 2012 and judgment dated 17th December-2014 in appeal petition No. 142 of 2013 and 168 of 2013, it is a settled position that, the tariff determined based on average cost of supply was not illegal and cannot be set aside.

8 **Our consideration and conclusion on this issue:**

8.1 The contention of the Appellant is that the State Commission failed to implement the orders of this Tribunal in its Judgment in Appeal No. 179 of 2012 dated 31.05.2013 and determined the tariff for FY 2014-15 based on the average cost of supply, which is contrary to the principles laid down by the Tribunal in various Judgments.

Further, the cross-subsidy determined for the Appellant category has been increased in the tariff Order for 2014-15 compared to tariff Order for 2013-14, thus the State Commission failed in following National Tariff Policy, Electricity Act and the decisions of this Tribunal.

8.2 We have examined the tariff of the Appellant i.e. High Tension and extra High Tension electrical consumers.

8.3 The Appellant filed an Appeal against the tariff Order dated 25.07.2012 in OP No. 23 of 2012 for the year 2012-13 vide Appeal No. 179 of 2012.

This Tribunal pronounced Judgment in this Appeal on 31.05.2013. The relevant part of which is cited as under:

- i) We find that in the present case, the State Commission has determined the tariff of the Appellant's category of HT and EHT Industrial consumers within $\pm 20\%$ of the average cost of supply as per the Tariff Policy, the dictum laid down by this Tribunal and as sought by the Appellant in their objections filed before the State Commission. However, we give directions to the State Commission to determine the voltage-wise cost of supply for the various categories of consumers within six months of passing of this order and take that into account in determining the cross-subsidy and tariffs in future as per the dictum laid down by this Tribunal.
- ii) We do not find that the Appellant's categories have been subjected to disproportionate increase in tariff and they have not been subjected to tariff shock.
- iii) We also do not find that the State Commission has violated its Tariff Regulations in determining the tariff of the Appellant's category.

8.4 It is pertinent to mention here that this Tribunal directed the State Commission to determine the tariff based on the voltage-wise cost of supply within six months of the order, but the State Commission determined the tariff for FY 2014-15 based on average-wise cost of supply, thus

the State Commission appears not to have followed the directions of this Tribunal.

8.5 The National Tariff Policy specifies that the voltage wise cost of supply is one of the basic necessities for determination of tariff.

Further, it specifies that the subsidized category, tariff should not be less than 50% of the average cost of supply.

It also specifies that for achieving the object of the policy, that the tariff should progressively reflects the cost of supply of electricity latest by the end of year 2010-11, the tariff should be within $\pm 20\%$ of the average cost of supply, for which the State Commission would notify a road map.

8.6 Further, Section 61 (G) of Electricity Act 2003, states that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidy in the manner specified by the appropriate Commission.

8.7 Further, the Hon'ble Supreme Court in the Judgment dated 10.02.2015 in Civil Appeal No. 4510 of 2006 (*Punjab State Power Commission vs. Punjab State Electricity Regulatory Commission*), held as under:

“The provisions of the Act and the National Tariff Policy require determination of tariff to reflect efficient cost of supply based upon factors which would encourage competition, promote efficiency, economic use of resources, good performance and optimum investments. Though the practice adopted by many State Commissions and utilities is to consider the average cost of supply it can hardly be doubted that actual costs of supply for each category of consumer would be a more accurate basis for determination of the extent of cross-subsidies that are prevailing so as to reduce the same keeping in mind the provisions of the Act and also the requirement of fairness to each category of consumers. In fact, we will not be wrong in saying that in many a State the departure from average cost of supply to voltage cost has not only commenced but has reached a fairly advanced stage. Moreover, the determination of voltage cost of supply will not run counter to the legislative intent to continue cross-subsidies. Such subsidies, consistent with executive policy, can always be reflected in the tariff except that determination of cost of supply on voltage basis would provide a more accurate barometer for identification of the extent of cross-subsidies, continuance of which but reduction of the quantum thereof is the avowed legislative policy, at least for the present. Viewed from the foresaid perspective, we do not find any basic infirmity with the directions issued by the Appellate Tribunal requiring the Commission to gradually move away from the principle of average cost of supply to a determination of voltage cost of supply”.

8.8 The NTP, Electricity Act and Judgment of this Tribunal specifies that the Commission has to reduce the cross-subsidy gradually and bring it down to $\pm 20\%$ but as seen from the submissions made by the Appellant and tariff orders, the State Commission failed to implement the same principal.

8.9 Let us examine the relevant Regulations of the State Commission i.e. KSERC (principles for determination for roadmap for cross-subsidy reduction for Distribution Licensees) Regulations 2012. The relevant part of the Regulation is as under:

“General Principles for cross subsidy reduction is as follows:

3. General principles for cross subsidy reduction.-The general principle for cross subsidy reduction shall be as follows:-

(1). The average tariff of a consumer category/sub-category for the purpose of computing cross subsidy shall be determined by dividing total tariff amount billed by the sales to that consumer category/sub-category. The billed tariff shall include fixed charges, energy charge and all applicable rebates and penalties as per the tariff schedule approved by the Commission for that consumer category/sub-category.

(2). Cost of Supply for a financial year shall be the average cost of supply computed by dividing the Aggregate Revenue Requirement of the distribution

licensee approved by the Commission for recovery through retail tariffs by the total energy sales forecast for that year. This methodology of determining cost of supply shall be applicable for a period of sixty months or such extended time as decided by the Commission. Thereafter the Cost of Supply shall be differentiated for various consumer categories as per the guidelines to be notified by the Commission. Finalization of the cost of supply methodology and its subsequent determination by all the distribution licensees shall be done as per the provisions of these regulations and shall be used for the determination of retail tariffs.

(3). Cross subsidy based on average cost of supply.- The cost of supply computed as explained in clause (2) above shall be used for assessing the cross subsidy levels of different category of consumers. For each consumer category, ratio of the average tariff of that category to the average cost of supply shall be increased/decreased based on whether that consumer category is subsidizing consumer category or subsidized consumer category. The rate of increase/decrease of the ratio shall be decided by the Commission taking into consideration various factors including the target cross subsidy level fixed by the Commission.

(4). The rate of increase / decrease in the ratio shall be determined by the Commission and shall remain fixed for each year of the ARR/ERC or for a period decided by the Commission. The ratio for the subsidized consumer categories, shall be determined considering tariff shock to affected consumers, future increases in distribution and retail costs, changes in consumer mix, cost of alternate supplies, and shall be increased till the ratio is equal to the target value decided by the Commission. The ratio for the subsidizing consumer categories shall be reduced till the ratio is equal to the value decided by the Commission.

8.10 Let us examine the tariff pattern of various category of consumers from 2012 to 2015 as shown below:

Table

Sl No	Tariff Category	Average tariff				% of increase in tariff			
		From Oct-2002 to Jun-2012	Jul-2012 to Apr-2013	May-2013 to 15th Aug-2014	from 16th Aug-2014	2002-2012 to 2012-13	2012-13 to 2013-14	2013-14 to 2014-15	Over all increase of last three revision
1	LT Domestic	2.00	2.81	3.08	3.76	40.50	9.61	22.11	88.04
2	LT V Agricultural	0.92	1.77	1.84	2.39	92.39	3.95	29.96	159.92
3	LT-IX Public Lighting	2.12	2.75	3.00	3.60	29.72	9.09	20.06	69.90
4	HT-I Industrial	4.12	5.21	5.70	6.18	26.46	9.40	8.35	49.90
5	EHT-66 kV	3.72	4.97	5.35	5.94	33.60	7.65	11.03	59.68
6	EHT-110 kV	3.49	4.70	5.15	5.54	34.67	9.57	7.55	58.71

The above Table indicates that the tariff of the L.T. Domestic category has been increased from Rs. 2.0 (in 2012) to Rs. 3.76 (from August 2014 in the 2014-15 tariff order), which is an overall increase of 88.04% and for L.T. Agriculture category increased from Rs. 0.92 to Rs. 2.39 which is an increase of 159.92%.

In respect of Industrial consumers, i.e. H.T., E.H.T.-66 kv, E.H.T. 110 kv has raised from Rs. 4.12 to Rs. 6.18, Rs. 3.72 to Rs. 5.94 and Rs. 3.49 to Rs. 5.54,

respectively and the overall % increase is 49.90, 59.68 and 58.71, respectively.

When compared to 2013-14 to 2014-15, the % increase for L.T. Domestic is 22.11, L.T. Agriculture is 24.96 and for H.T. categories at 8.35, 11.03 and 7.55. Thus, the percentage increase of subsidized category is more than 20% and whereas for Industrial category is only 9% i.e. within the percentage specified in the NTP with respect to average cost of supply.

8.11 Further, as per the comparative statement submitted by the Appellant, voltage wise cost of supply with respect to tariff and effect of cross-subsidy is shown below:

Impact of proposed tariff hike on X- Subsidy

	Unit	HT1(A)	EHT 66kv	EHT 110kv	EHT 220kv
Voltage-wise CoS-2013-14	Rs/kWh	4.05	3.62	3.62	3.62
ABR – Current tariff	Rs/kWh	5.59	5.44	5.05	5.68
X-subsidy – current tariff	%	38%	51%	40%	57%
Voltage-wise CoS-2014-15	Rs/kWh	3.42	3.11	3.11	3.11
ABR – proposed tariff	Rs/kWh	6.65	6.48	6.05	6.70
X-subsidy – proposed tariff	%	94%	108%	94%	115%

As seen from the table, the cross-subsidy is increasing compared to 2013-14 in 2014-15. But the Appellant did not explain how they have arrived the voltage-wise cost of supply, without proper data such as category-wise consumption, line losses as per category wise and hence, the argument of the Appellant cannot be justified.

8.12 The Commission puts on record that the current tariff revision is the third comprehensive annual tariff revision in succession after the commencement of the regulatory regime in the State. Hence the Commission will strive to ensure that existing cross subsidy ranges are not enhanced. In other words, the existing level of cross subsidy provided by the subsidizing consumers will not in general, go up. At the same time the Commission will have to ensure that, the revenue gap for the current year is made good as far as possible by the tariff revision, leaving the unbridged revenue gap, if any, for appropriate consideration in due course.

8.13 Further, we have observed that the average realization from domestic consumers in 2012, before the State Commission embarked upon a major comprehensive tariff revision, was Rs. 1.99 per unit, against the average cost of supply of Rs. 4.64 per unit (42%). This was increased to 60% by the Tariff order dated 25.7.2012. The average cost was again increased to 61.2% by the Tariff Revision dated 30.4.2013. The Commission is aware that the gradual reduction of cross-subsidy cannot be achieved by keeping this at lower levels. Hence the Commission in accordance with the recommendation of Kerala State Electricity Board Ltd., proposes to effect considerable increase in the cost coverage by Domestic consumers in this revision. This is inevitable to avoid the increase in cross subsidy level of subsidizing consumers and to bridge at least a major portion of the revenue gap of the licensee.

8.14 At the same time the Commission is constrained to effect minor increase in cross subsidy levels of

consumers who are within the $\pm 20\%$ band. But their cross subsidy will be limited to the maximum level of 120%. Further, it is observed that the Commission has taken efforts to retain the cross subsidy level of consumers with cross subsidy above 120% at the same level, as far as possible.

8.15 Further, the Commission while approving the tariff for certain category of domestic consumers, who consume power beyond certain reasonable levels are not subsidized. Thus, the high end domestic consumers are barred from subsidy and at the same time, they are made to share cross subsidy of other domestic consumers along with other category of consumers, who are sharing the cross subsidy. The Commission expects such high end consumers will avoid wasteful and extravagant consumption and will also look for alternate sources of energy such as solar and wind power. Similarly while cross subsidy levels of commercial and non-domestic categories, as a whole, will not increase, high end Commercial and Non

domestic consumers will be charged at higher rates to prompt them to conserve electricity in the larger interests of the society and to incentivize them to look for alternate sources of energy such as solar and wind power.

8.16 After carefully considering the proposals submitted by the KSEBL, the written and oral representations of the objectors, the response of KSEBL to the objections of the stake holders, and the views expressed by the members of the State Advisory Committee convened for the purpose of consultation on the tariff determination etc., the Commission approved the tariff for various categories of consumers for the period from 16.08.2014 to 31.03.2015.

8.17. We feel that the State Commission has determined tariff duly verifying the submission of KSEBL and the suggestions of the Stakeholders/consumers, etc.

8.18. We also observe that the Commission has initiated to proceed with voltage-wise cost of supply from average cost of supply and to implement the Judgment dated

31.05.2013 of this Tribunal in Appeal No. 179 of 2012
as follows:

- a) As per the directions of the State Commission, the Respondent State Electricity Board prepared and submitted a model for availing voltage-wise cost before the Commission on 07.01.2014.
- b) This model was published for public comments vide notice dated 30.01.2014.
- c) Public hearing was conducted on 18.03.2014.

Based on the view of the Stakeholders and as per the suggestions of the State Commission, a revised model along with ARR for the FY 2014-15 submitted before the State Commission and also the State Commission has expressed their view towards considering average cost of supply as stated below:

“It is clear that if increase in tariff has to be made based on the cost at different voltage levels, (instead of average cost of supply) the cost coverage of subsidized category of consumers has to increased correspondingly within a period of five years. This will result in tariff shock to such consumers. The Commission has been effecting increase in cost coverage for subsidized category of consumers during the tariff revisions for the years 2012-13 and 2013-14 as can be seen in Table 8.4. In the tariff revision for 2014-15 also the trend continues. Hence cost coverage ratios for subsidizing and subsidized consumers shall be improved further in the ensuing years also and thereafter cost at different

voltage levels can be taken as the basis for improving cost coverage ratios. Commission has duly considered the voltage wise cost of supply also for determining the cross subsidy and tariffs as directed by Hon. APTEL in their order dated 25.07.2012 in the appeal against tariff order for 2012-13. But reduction of cross subsidy beyond a level is not possible now, since tariff shock also has to be avoided. The Commission has made an endeavour to strike a delicate balance among the divergent factors affecting the determination of tariff for different categories of consumers.”

8.19 We feel that the State Commission expressed difficulties in determining the cost of supply in view of the reasons stated above and we feel that the argument of the State Commission is acceptable.

8.20 We, finally conclude that the State Commission has issued guidelines for reduction of cross-subsidy (Roadmap) in their Regulation. Further, the State Commission initiated to gradually proceed towards voltage-wise cost of supply from average cost of supply and the tariff for the consumer category are maintained at $\pm 20\%$ level.

8.21 Further, we observe from the impugned order that the increase in Tariff with respect to subsidized categories

are much higher than the increase in Tariff with respect to Appellant category. However, the State Commission followed average cost of supply instead of voltage-wise cost of supply. We observe that the State Commission initiated the process of voltage-wise cost of supply.

In view of the above discussion, we affirm the impugned order on this issue. Further, we direct the State Commission to issue necessary directions to submit the actual data required for computation of tariff with respect to voltage-wise cost of supply.

Hence, this issue is decided against the Appellant.

9. **Issue No. 2. Whether the State Commission erred in allowing interest expenses of KSEBL corresponding to the bonds issued to master trust to meet the pension fund and terminal liabilities?**

The following are the submissions made by the Appellant:

9.1 that as per the existing scheme, if the Hon'ble Commission does not intervene strongly, the consumers of KSEBL will have to bear the pension liabilities of even those employees who are already retired from KSEB as

well as employees in service as of 31st March 2013, of Rs. 814 crore per annum for 20 years amounting to Rs. 16280 crore in total. It must be kept in mind that this is also a provisional figure, and keeping true to form, we can expect it to rise dramatically!

9.2 that it may also be noted that the consumers shall not be made to suffer the impact of the State Government refusing to take over the unfunded liabilities. The precedence on a similar situation, in the case of Andhra Pradesh is brought to the attention of the Hon'ble Commission.

9.3 that the Appellant quoted the reforms process of power sector in A.P. in 2000 as follows:

“The pension and gratuity liability of erstwhile APSEB employees was vested in the APGENCO through the transfer scheme, the A.P.E.R.C ordered that the expenses towards meeting the interest of bonds raised for pension trust will have to be met from the return on equity rather than the same being allowed as a separate expenses”.

Accordingly, the Appellant requested the Hon'ble Commission to disallow the interest expenses of KSEBL towards meeting the unfunded liabilities in its ARR.

9.4 that the terminal benefit fund (as per Actuarial valuation for funds as on October 2013) indicated in the provisional balance sheet as on 01st April 2013 is substantially higher than what was shown in the second transfer scheme (as per Actuarial valuation for funds as on September 2011) and associated balance sheet. It cannot be understood how the terminal liability fund can increase by 64% within a short period of 2 years.

Table 4: Increase in Terminal Liabilities in Provisional Accounts

	FY 2012 [Rs. Cr.]	FY 2013 [Rs. Cr.]	Increase [Rs. Cr.]	Increase [%]
Terminal Liability Fund	7,584	12,419	4,835	64%

9.5 that to these increased liabilities, the value of bonds proposed to be raised have also increased, which in turn have resulted in a total of Rs. 814.44 crore towards interest charges of bonds raised for funding the terminal liability fund in 2014-15 alone.

9.6 that in this regard, we would like to reiterate that unfunded liabilities are the responsibility of the Govt. of

Kerala, and not of the consumers of KSEBL. The Hon'ble ATE in its Order dated 08.05.2013 in Appeal No. 115 of 2012 has also upheld that the unfunded liabilities of past period shall not be recovered from the consumers.

9.7 that the Hon'ble Commission may disallow the interest expenses corresponding to the bonds issued to Master Trust. The Hon'ble Commission could exercise its advisory power under Section 86(2), and provide statutory advise to the Govt. of Kerala on the need for complete financing of the unfunded liabilities by the Government. Further, we request the Hon'ble Commission should have directed KSEBL to explain how the value of the unfunded liabilities has increased by 64% within two years.

9.8 that KSEBL is yet to issue the bonds and currently it is only a statement of intent in the transfer scheme. The Master Trust is also yet to be created. Under such circumstances, to claim interest charges in the ARR is far-fetched as the liability for interest payments is yet to

be crystallized. On this ground as well, the claim of interest on bonds to Master Trust is liable to be rejected.

10. **Per Contra**, the following are the submissions on behalf of the Respondent No. 2, Kerala State Electricity Board:

10.1 In exercise of the powers conferred under Section 131 (2) of the Electricity Act, 2003, Government of Kerala (GoK) has notified Kerala Electricity Second Transfer Scheme (Re-vesting) 2013 vide GO (P) No. 46/2013/PD dated 31st October 2013. Through this notification all the assets, liabilities, rights and obligations of erstwhile KSEB were re-vested to new successor entity i.e. Kerala State Electricity Board Ltd (KSEBL) w.e.f 31st October 2013. The section 131 (2) of the Electricity Act-2003 is extracted below for ready reference.

Section 131 (2) of Electricity Act, 2003

“(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme,

on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be :

10.2 In the said Government notification, the Government has addressed the terminal liabilities of the erstwhile KSEB, by constituting a Master Trust, which will take care of the unfunded terminal liabilities.

10.3 Pursuant to the transfer scheme, KSEBL has made a revised actuarial valuation and as per the revised estimates, the provisional figure of unfunded terminal liability is approximately estimated at Rs.12419 crore as on 31st October 2013, which was finally approved by the State Government vide the amendment notification dated 28-01-2015. As per the provisions of the Scheme, to fund this terminal liability KSEBL proposed to issue two series of bonds to the master trust, which will meet all future pension liabilities.

- (a) 20 year bond in favour of Master Trust with a coupon rate of 10% for Rs.8144.41 crore.
- (b) 10 year bond in favour of Master Trust with a coupon rate of 9% for Rs.3750.59 crore (Back to

back funding from GoK. Interest and Repayment will be made by the State Government).

- (c) Another Rs. 524 core will be funded by GoK through budgetary provision over next 10 yrs. in equal installments as per GO (MS) No. 43/2011/PD dated 3.11.2011.

10.4 In the above bonds, the debt obligation for the 20 year bond issued to Master Trust is with KSEBL, but it was proposed that the repayment of principal amount on these bonds is not claimed so as to avoid tariff shock for consumers and it is intended to repay the principal amount with additional cash inflow due to increase in RoE.

10.5 In the present case, the Government has taken over only a part of the unfunded liabilities of the Board and balance to be met by the new entity KSEB Limited. In this context, it may be noted that the transfer scheme as per section 131 of the Electricity Act has to be notified by the Government and it is the prerogative of the Government to decide the terms of such scheme. In the said scheme, the Government of Kerala has taken a decision on the

funding of the terminal liabilities. The Commission after considering the proposal of the KSEBL, the Orders of the Government on transfer scheme and the objections of the stakeholders, has decided to accept the scheme taking cognizance of the long term development of power sector in the State. There is no irregularity or illegality in accepting the proposal, which is part of the re-organization of the Board as envisaged in Section 131 of the Electricity Act 2003.

10.6 Hitherto, the pension and terminal benefits are unfunded liabilities and the pension is being paid on 'pay as you go' principle. However, after the corporatization, KSEBL has to follow the relevant Accounting Standards for accounting retirement benefits. It is pertinent to note that, almost all the SEBs in the country faced similar issues in meeting the unfunded terminal liabilities while corporatization.

10.7 that the terminal liabilities estimated for the year 2013-14 as per the 'pay as you go' principle was about Rs 848.00 crore. As against the same, interest

on bonds claimed for the year 2014-15 is only Rs 814.44 crore. This reduction due to the fact that, about 1/3rd of the unfunded liabilities is being met by the State Government. Thus, the consumers of the State including the appellant will be benefited out of creating a master trust for meeting the unfunded pension liabilities.

11. Our consideration and conclusion on this issue:

11.1 The Appellant contends that the interest on the bonds issued to Master Trust should not be loaded in the ARR and pass on to the consumers in the Tariff order.

Further, the Appellant stated that the Master Trust is yet to be created, under such circumstances to claim interest charges in the ARR is far-fetched as the liability for interest payment is yet to be crystallized.

11.2 As seen from the impugned order, the State Commission considered an amount of Rs. 814.44 lakhs submitted by KSEB under the head interest on

bonds issue to Master Trust (as shown in Tale 5.29 of the impugned order).

Further, in the ARR, the amount of Rs. 814.44 lakhs is included along with other interest and finance charge (shown in table 5.48 of the impugned order).

11.3. Let us examine the relevant part of the 2nd transfer scheme of the Government of Kerala:

- a) The new company viz., KSEBL shall manage the activities of Transmission, Generation and Distribution through three strategic business units SBU – T (Transmission Unit), SBU – G (Generation Unit) and SBU – D (Distribution Unit).
- b) The effective date of transfer is 31st October 2013 i.e. the date of publication of Second Transfer Scheme in the Official Gazette.
- c) The Government has drawn up an opening balance sheet for KSEB Limited as on 1st April 2012. The adjustments if any will be made before 31st October 2014.
- d) All the employees shall remain on the rolls of the Kerala State Electricity Board Limited who shall be responsible for their pay, benefits and other service conditions. The personnel needed by the SBUs shall be deputed to them and their cost shall be accounted as part of the cost of the SBUs.

e) A Master Trust will be established and all the future pension liabilities will be met by this trust. As per actuarial valuation carried out, the provisional figure of unfunded terminal liability is approximately Rs. 7584 Crore as on September 2011. As per the Second Transfer Scheme this terminal liability will be funded through two series of Bonds to be issued by the Company, KSEBL as shown below:

- 20 year bond with a coupon rate of 10% p.a. for Rs.5021 Cr (Five thousand and twenty one crore)
- 10 year bond with a coupon rate of 9% p.a. for Rs. 2039 Cr (Two thousand and thirty nine crore).

For this bond, debt obligations will be made by GoK. The State Government will fund Rs. 3186 Cr (Rupees three thousand one hundred and eighty six crore) over a period of next 10 years to Kerala State Electricity Board Limited on annual basis for meeting the interest expenses and repayment for this bond

f) The Government have also taken over another Rs. 524 Cr (Rupees five hundred twenty four crore) through budgetary provision over next 10 years in equal instalments as per GO (MS) No. 43/2011/PD dated 3rd November 2011.

g) In addition to the interest on bonds and repayment of principal, Kerala State Electricity Board Limited will be paying the annual pension contribution based on actuarial valuation to the Master Trust in respect of the personnel transferred to Kerala State Electricity Board Limited The unfunded liability up to the date of transfer will be borne and shared between the State Government and the Kerala State Electricity

Board limited. Any addition over and above the liability of Rs.7584 Cr (Rupees seven thousand five hundred and eighty four crore) accruing upto to the date of transfer will be borne and shared by the State Government and the Kerala State Electricity Board Limited in the ratio of 35.4:64.6.

- h) Actuarial valuation of terminal liabilities at the time of transfer will be made during the provisional period and necessary arrangements will be made by the Transferee and the State Government to ensure the sufficiency of funds for uninterrupted payment of terminal benefits.

11.4 The Commission has engaged M/s ABPS Infrastructure Advisory to study and recommend the changes on account of transfer scheme of KSEBL including the experience in other states and recommended approach to be adopted by the Commission. The submission of the Consultant regarding long-term loans and terminal liabilities is quoted below:

“Long-Term Loans and Terminal Liability Funding : According to the consultant, the contribution to terminal liabilities of Rs.8521.93 crore has been created as per the notified Transfer Scheme (i.e., Balance Sheet as on 01.04.2012), thereby increasing the borrowings on which the interest will have to be allowed. All SERCs, except PSERC (of the SERCs under consideration) have adopted the outstanding loan amount as per the notified Transfer Scheme for the purpose of computing interest expenses. As regards the interest expenses on account of the Bonds to be

issued to the Master Trust for meeting the terminal liabilities as per notified Transfer Scheme, payment of terminal liabilities is a statutory obligation and it would be appropriate to allow the interest on these Bonds in the ARR and tariff. However, the corresponding expenses would have to be reduced from the employee expenses being allowed by the Commission, since the employee expenses allowed in earlier years also include the component of terminal liabilities, as actually incurred. Since the Master Trust is yet to be created and the bonds are yet to be issued, and it may be expected that the bonds may be issued by September 2014, i.e., the interest expenses on the bonds would be payable only for half of FY 2014-15. Under these circumstances, they suggested that the Commission may take a view whether the entire interest expenses on the Bonds should be allowed, or whether 50% of the same should be allowed, with the actual expenses under this head being allowed for the first half of FY 2014-15. In case the entire interest expenses on the bonds are allowed in the tariff order, then the actual expenses on this account may be tried up later”.

- 11.5 Let us examine the relevant clause of KSERC (Terms and Conditions for distribution and retail sale of electricity under MYT framework) Regulations 2006.

Clause 31. Interest on bonds issued by KSEB Limited to service the terminal liabilities of its employees. –

- (1) The interest on the bonds issued by KSEB Limited to service the terminal liabilities of its employees shall be allowed for recovery through tariffs, at the rates stipulated in the relevant orders issued by Government of Kerala.*

(2) The bonds shall be amortized at the same rate as prescribed in the Transfer Scheme notified by the Government of Kerala.

(3) The funds required for repayment of the bonds issued by KSEB Limited to service the terminal liabilities of its employees shall not be allowed for recovery through tariffs.

11.6 According to the transfer scheme, in addition to the interest on bonds and repayment of principal has to be shared in the ratio of 35.4:64.6 between Government of Kerala and KSEB.

Further, the Consultant also pointed out that the Bonds are yet to be issued and it may be expected that the bonds may be issued by September 2014 i.e. the interest expenses on the bonds would be payable only for half of FY 2014-15 and the Consultant has stated that, the Commission may take a view, whether to consider the entire interest expenses on the bonds should be allowed or whether 50% of the same should be allowed. The consultant also pointed out that the corresponding amount has to be reduced from the employees' expenses being allowed by the Commission in the ARR.

11.7 As seen from the impugned order, the Commission stated that in principle, the total amount claimed by KSEB (814.44 lakhs) has considered. Further, the Commission did not mention in the impugned order, the date of issue of Master Bonds and the actual interest to be paid towards the bonds in the FY 2014-15. Further, whether this amount was deducted from the employees' expenses or not.

We feel that taking the entire interest amount claimed by KSEB in the ARR of FY 2014-15 is not correct.

11.8 In view of the above, we direct the State Commission to work out the actual and also verify whether the interest amount is deducted from the employees' expenses or not. Accordingly, the Commission is directed to finalize the figures while truing-up exercise pertains to FY 2014-15 and finalize the revenue gap/surplus pertains to FY 2014-15 and carried forward to subsequent financial year.

12. **Issue No. 3. Returns on Equity: Whether the State Commission erred in computing RoE on the equity base of Rs. 3,499 crore against the actual paid-up capital of KSEB of Rs. 5.0 lakhs.**

The following are the submissions of the Appellant:

12.1 The findings of the Regulatory Commission in the impugned Order with respect to return of equity are also illegal and unsustainable. KSEBL has claimed RoE of Rs. 542.35 crore at the rate of 15.50% on an equity base of Rs. 3,499 crore. The equity base of Rs. 3,499 crore is only an accounting figure introduced in the Second Transfer Scheme without any corresponding infusion of equity. The RoE can be allowed not even on the earlier equity base of Rs. 1,553 crore of the Board, but on the actual equity of the new entity – KSEBL, which is now the licensee. As per the information available in the website of Ministry of Corporate Affairs, Govt. of India, the actual paid up capital of KSEBL is only Rs. 5 lakhs. This figure, as recorded with the Government of India, is the actual capital base of the licensee and therefore, is the only one which has any validity.

Therefore, the Hon'ble Commission should have allowed RoE of only on Rs. 5 lakhs.

13. **Per Contra**, the following are the submissions of Respondent No. 2, KSEBL:

13.1 The equity capital allocated to the KSEBL through the second transfer scheme by the State Government is Rs 3499.00 crore. The equity base of KSEBL represents only 19.79% of the GFA as on 1st April-2013.

13.2 that this Hon'ble Tribunal may be pleased to appreciate the contentions of the Appellant/Petitioner as not sustainable as the equity of the KSEBL as per the website of the Ministry of Corporate Affairs, Government of India is only Rs.5 lakhs and return should be allowed only for that amount. The said amount is the initial equity contribution while registering the company. Subsequently, the Government has taken decision as per Section 131 of the Electricity to transfer all assets, rights, obligations and liabilities of the erstwhile Kerala State Electricity

Board to the new company namely KSEB Limited. The Government vide its order dated 31-10-2013 had issued a provisional transfer scheme and the final transfer scheme was issued vide the Government amendment notification dated 28-01-2015.

13.3 that the Electricity Act-2003 and Tariff policy mandates that, the new company created by corporation of the assets and liabilities of the SEB's shall not be burdened with past liability. In this case, KSEBL submits that,

- (i) KSEBL has not claimed separate provision for meeting the loan repayment for the bonds issued to the master trust.
- (ii) KSEBL has to find additional resources for meeting the investment needs.
- (iii) Considering the above and ensure financial viability on KSEBL, the State Government has converted the electricity duty collected and retained by KSEBL on behalf of the State Government as its equity on KSEBL.

14. Our consideration and conclusion on this issue:

Return on Equity:

14.1 The Appellant KSEBL contested that the equity as Rs.3499 crore after the revaluation of assets and

corresponding adjustments made in the balance sheet. The equity originally in the balance sheet was Rs.1553 crore. The licensee has claimed return on equity at 15.5% as per the CERC norms. The licensee has also claimed that other State Commissions such as PSERC, GERC, WBERC, MERC and MPERC while approving the tariff orders have considered the equity base allocated to the successor companies through transfer scheme for the purpose of estimation of return on equity. It was also mentioned that as per section 131(3), the transfer scheme and the transactions as per the scheme is binding on all persons including third parties. The licensee has also mentioned that the return on the additional equity is being availed for repayment of bonds issued for master trust for funding terminal liabilities. Thus RoE at a rate of 15.5% is claimed on the equity base of Rs.3499 crore for 2014-15, which is Rs.542.35 crore

Views of the Commission:

14.2 The Commission has been maintaining a policy that legitimate return should be allowed to the entities to function in a financially viable manner. Though the licensee has claimed that increase in equity is infusion of capital, in fact it is only accounting entry adjustments to match the increase in assets due to revaluation and to facilitate the repayment of bonds to be issued for funding terminal liabilities. Hence, the equity additionally claimed does not materially enhance any benefits to the consumers, but the Commission as a matter of principle approves the second transfer scheme and hence the enhancement of equity announced by the Government is recognised.

Regarding return on equity, the Commission has been allowing return at the rate of 14% considering the fact that as per KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006, the Commission may decide the return on equity considering the need to promote investments, whereas

as per KSERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT Framework) Regulations, 2006 the return on equity shall be 14%. Hence, the Commission would allow Rs.489.86 crore as return at the rate of 14% on the equity capital of Rs.3499 crore. The return allowed for 2014-15 is Rs.272.44 crore higher than that is allowed for 2013-14.

14.3 The suggestions of the Consultant engaged by the State Commission on Return on Equity are quoted below:

“Equity Capital and Returns: In the case of equity capital, they have stated that the equity base has been increased from Rs. 1553 crore to Rs. 3499 crore as per the notified Transfer Scheme (i.e., Balance Sheet as on 01.04.2012), thereby increasing the equity capital by Rs. 1946 crore, which is entitled for corresponding returns. However, according to the Consultant this is a pure balancing amount, and there has been no actual additional equity infusion into KSEBL. The consultant stated that some SERCs under consideration have adopted the equity capital as per the notified Transfer Scheme for the purpose of computing Return on Equity/Capital Base, whereas some SERCs have not allowed any returns, either because the Utility did not seek any returns or because there were no free reserves and surplus as per the notified opening Balance Sheet. Gujarat Electricity Regulatory Commission (GERC) has considered a lower rate of return on the equity capital as

notified under the Transfer Scheme. In the case of KSEBL, the consultant stated that it is a pure balancing amount, which has been made possible by increasing the asset value through revaluation, and eliminating the Consumer Contribution & Grants used to fund the capital investment, and by showing a reduction in the Regulatory Assets as per the books of KSEBL. If any or all of the other adjustments are not considered for the purpose of ARR and tariff determination, on account of being inappropriate, then the equity capital to be considered would be reduced. Further, in the case of new capitalisation, RoE is allowed only when actual equity is infused into the Company for incurring capital expenditure, else only interest is allowed on the loan component. According to the consultant even under the Companies Act, 1956 and the relevant Accounting Standards, the Revaluation Reserve is not allowed as a source to increase the equity capital, and only actual paid up equity capital is considered for all purposes. Hence, they recommended that the Commission may allow RoE either on the equity capital allowed earlier by the Commission or on the reduced equity capital of Rs. 283.91 crore (Rs. 1553 crore - Rs. 1269 crore)”.

14.4 The Consultant engaged by the Commission has suggested that the Commission may allow RoE either on the equity capital allowed earlier by the Commission or as the reduced equity capital of Rs. 283.91 crore (Rs. 1553 crore – Rs. 1269 crore).

14.5 The Commission as a matter of principle approves the equity specified for the second transfer scheme. The enhancement of equity (Rs. 1553 crore + 1946 crore =

3499 crore i.e. increase over equity base Rs. 3499 crore) has been considered by the Commission and accordingly computed the return on equity at 14% (as per the Regulation of the State Commission) against the Appellant claim of Rs. 15.5% on RoE.

14.6 We find controversy regarding the equity amount i.e. the amount specified by the Consultant and the amount submitted by the KSEB in the ARR.

The Commission considered the amount proposed by the KSEB.

Further, the Appellant is contesting that as per the website of the Ministry of Corporate Affairs, Govt of India, the equity of KSEB is only Rs. 5.00 lakhs.

14.7 We are of the view that since the consultant appointed by the State Commission has studied the whole system and recommended the equity value, hence, we direct the Commission to consider the equity amount specified by the Consultant and 14% rate of return on this amount has to be considered.

14.8 Accordingly, this issue is remanded back to the Commission to go through and compute accordingly instead of accepting the figures of KSEB.

ORDER

The present Appeal, being Appeal No. 247 of 2014 is hereby allowed to the extent indicated above. The Impugned Order dated 14.08.2014 passed in O.P. No. 9 of 2014 by the State Commission is modified to that extent.

There shall be no order as to cost.

Pronounced in the open court on this **18th day of November, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated, 18 November, 2015.

REPORTABLE / ~~NON-REPORTABLE~~