

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

Appeal No.250 of 2015

Dated: 11th May, 2017

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

In the matter of :-

Jaigad Power Transco Ltd. (JPTL)
JSW Centre, Bandra Kurla Complex
Bandra (East)
Mumbai-400 051

... Appellant

Versus

Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No. 1,
13th Floor, Cuffee Parade
Mumbai- 400 005

...Respondent

Counsel for the Appellant(s): Mr. Aman Anand
Mr. Manpreet Lamba
Mr. Aman Dixit

Counsel for the Respondent(s): Mr. Buddy A Ranganadhan
Mr. D V Raghu Vamsy
Mr. Raunak Jain
Ms. Aditi Sharma

JUDGMENT

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

1. The present Appeal is being filed by M/s Jaigad Power Transco Ltd. (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 26.06.2015 (“**Impugned Order**”) passed by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”), in Case No. 208 of 2014, for Mid-Term Performance Review Petition seeking approval of True up of Aggregate Revenue Requirement (ARR) for FY 2012-13 and FY 2013-14 and Revised estimates of ARR for FY 2014-15 and FY 2015-16 in accordance with MERC (Multi Year Tariff) Regulations, 2011. The present Appeal is concerning about the consideration of Delayed Payment Charges (DPC) as a part Non-Tariff Income (NTI) of the Appellant while approving the Revised estimates regarding ARR for FY 2015-16, recovery of carrying cost on overdue ARR and calculation of carrying cost for FY 2012-13 and FY 2013-14 on the basis of simple interest as against on the basis of compound interest.
2. The Appellant, M/s Jaigad Power Transco Ltd., a Transmission Licensee is a Joint Venture Company (JVC) between JSW Energy Ltd. (JSWEL) and Maharashtra State Electricity Transmission Company Ltd. (MSETCL), set up for the purpose of developing, operating and maintaining a transmission system, consisting of two transmission lines along with associated equipment and terminal bays at MSETCL’s New Koyana and Karad Sub-Stations.

3. The Maharashtra Electricity Regulatory Commission is the Regulatory Commission for the State of Maharashtra, exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.

4. **Brief of Issues raised in the present Appeal:**

a) The State Commission on 04.2.2011 notified the Maharashtra Electricity Regulatory Commission's (Multi Year Tariff) Regulations, 2011 (herein referred as Tariff Regulations, 2011). These Regulations are applicable for the control period FY 2011-12 to FY 2015-16. The applicability of these regulations was from 01.04.2011.

b) The State Commission vide order dated 20.12.2012 in Case No. 57 of 2012 approved the Business Plan of the Appellant from FY 2012-13 to FY 2015-16. The State Commission vide order dated 16.8.2013 approved the ARR of the Appellant for the period from FY 2012-13 to FY 2015-16 based on the petition filed by the Appellant. In this order the State Commission directed the Appellant to submit the petition for Mid-Term Review (MTR) with detailed reasons for deviation in performance. The Appellant filed the MTR petition being Case No. 208 of 2014 based on actual audited expenditure for FY 2012-13 and FY 2013-14 and revised estimates of the expenses for FY 2014-15 and FY 2015-16.

c) In the MTR petition (Case No. 208 of 2014), the Appellant made prayers for:

- i. True up of ARR for FY 2012-13 and FY 2013-14.
 - ii. Approval of estimates of ARR for FY 2014-15 & revised ARR projections for FY 2015-16.
 - iii. Approval of 2 months overdue ARR amount of Rs. 14.46 Cr. for FY 2012-13, missed out inadvertently in the Tariff Order dated 14.8.2014 and
 - iv. Approval of carrying cost while approving the Tariff for FY 2015-16.
- d) The State Commission vide Order dated 26.06.2015 (Impugned Order) decided Case No. 208 of 2014. In this order the State Commission has considered Delayed payment Charges (DPC) amount of Rs. 16.73 Cr. as Non Tariff Income (NTI) for FY 2015-16. The State Commission has also not allowed carrying cost on overdue ARR amount and full carrying cost for delay in recovery of ARR of FY 2012-13 and FY 2013-14 on the basis of compound interest.
- e) Aggrieved by the Impugned Order dated 26.06.2015 passed by the State Commission, the Appellant has preferred the present appeal on the issues mentioned at 4 d) above.

5. **QUESTIONS OF LAW**

The Appellant has raised the following questions of law in the present appeal:

- a. **Whether the State Commission was justified in including the DPC payable by the STU to the Appellant in the non tariff income and thereby deducting the same from the ARR of the Appellant?**

- b. Whether the State Commission is required to provide for carrying cost till actual recovery of the unrecovered ARR?**
 - c. Whether the State Commission was justified in calculating the carrying cost on the basis of simple interest and not on the settled basis of compounded interest as sought by the Appellant in its petition before the State Commission?**
 - d. Whether the State Commission has discharged its obligations in conducting a fair and impartial mid-year review of the Appellant while following accepted commercial principles and sound application of the MYT Regulations?**
6. We have heard at length the learned counsel for the parties and considered carefully their written submissions, arguments put forth during the hearings etc. Gist of the same is discussed hereunder.
7. The learned counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:
- a) The Regulation 62 of the Regulations, 2011 states that the amount of NTI related to transmission business shall be deducted from ARR while determining the annual transmission charges of the Transmission Licensee. The Appellant in the petition has submitted the details of NTI (Rs. 0.44 Cr under the head Income from contingency Reserve Investments for FY 2015-16) as per Regulation 36 of the Tariff Regulations, 2011.

- b) The State Commission in the Impugned Order has erred in considering DPC payable by the STU to the Appellant as a part of NTI while approving revised ARR projections for FY 2015-16. The State Commission relied on its order dated 12.12.2014 in Case No. 151 of 2014 where it had disallowed waiver of DPC by MSEDCL to the STU. Further, this DPC amount has not been included in the ARR of MSEDCL which will tantamount that the discom will further delay the payments.
- c) The Tariff Regulations, 2011 allow Interest on Working capital (IWC) on normative basis for 45 days only while the tariff bill remain unpaid for a period of more than 6 months requiring infusion of additional working capital. This calls that DPC should not form part of NTI.
- d) The Tariff Regulations, 2011 do not specify DPC as a part of NTI for Transmission and Distribution Business under Regulation 62.1 and 93.1 as done in the case of Generation Business under Regulation 43.1. Thus these Regulations in case of DPC treat Generation and Transmission/ Distribution Businesses separately.
- e) The State Commission in MYT Regulations, 2015 excluded DPC from being treated as NTI for all segments i.e. Generation, Transmission and Distribution Businesses. Thus the Impugned Order is arbitrary and lacks legal & commercial basis. Accordingly, DPC amount of Rs. 16.73 Cr should not be treated as NTI.
- f) The State Commission while allowing the recovery of Rs. 14.46 Cr. pertaining to previous years i.e. FY 2010-11 and FY 2011-12 (which

was to be recovered as per order dated 21.5.2012 in Case No. 51 of 2012) during FY 2015-16 had disallowed the carrying cost on the same.

- g) The State Commission had accounted the the said amount of Rs. 14.46 Cr. in order dated 13.5.2013 in Case No. 56 of 2013. However in this order the ARR allowed by the State Commission was based on the approved Business Plan of the Appellant, as the order on the Multi Year Tariff (MYT) petition of the Appellant was not issued by the State Commission till that date. In this order the State Commission had assured that adjustment of under recovery along with interest due to difference in ARR approved in respect of MYT orders vis a vis ARR considered as per Business Plan orders shall be suitably accounted during amendment exercise. The Appellant could not include this amount in MYT petition in Case No. 27 of 2013 as this petition was filed on 18.2.2013 i.e. prior to order in Case No. 56 of 2013. The Order in the Case No. 27 of 2013 i.e. MYT petition of the Appellant was issued by the State Commission on 16.8.2013.
- h) The Appellant got opportunity for the first time to file the recovery of the said amount of Rs. 14.46 Cr. in the petition bearing Case No. 208 of 2014 for which the State Commission had issued the Impugned Order on 26.6.2015. The State Commission in the Impugned Order had not allowed the carrying cost on the allowed recovery amount of Rs. 14.46 Cr. till its recovery during 2015-16 by stating that the State Commission in Case No. 27 of 2013 vide order dated 16.8.2013 had allowed the Appellant to recover the carrying cost to the tune of Rs. 12.20 Cr. with the assumption that such

revenue will be completed during FY 2013-14. The revenue gap was actually not recovered in FY 2013-14 since this was not recognised in MYT tariff order dated 16.8.2013.

- i) This had led to an anomaly that the past revenue i.e. unrecovered ARR of Rs. 14.46 Cr. is allowed in FY 2015-16 without its carrying cost, necessitating the Appellant to fund the interest/carrying cost on this amount from its own resources. The decision of the State Commission is devoid of any legal or commercial reasoning.
- j) The State Commission has allowed additional carrying cost for FY 2012-13 and FY 2013-14. The Appellant stated that the actual recovery of ARR for FY 2012-13 and FY 2013-14 could commence only in June, 2013 due to transitory phase between old regulations and Regulations, 2011. This has led to additional carrying cost to the Appellant. The Appellant sought an additional amount of Rs. 27.43 Cr. for FY 2012-13 and Rs.11.15 Cr. for FY 2013-14 towards carrying cost considering recovery on monthly basis and normative working capital interest rate.
- k) The Appellant relied on judgement of this Tribunal dated 15.2.2011 in Appeal no. 173 of 2009 in case of Tata Power Company Ltd. Vs Maharashtra Electricity Regulatory Commission wherein it was held that *“....the Appellant is entitled to carrying cost on his claim of legitimate expenditure”*
- l) The State Commission has accepted the contention of the Appellant and has allowed carrying cost of Rs. 15.80 Cr for FY 2012-13 and Rs. 5.26 Cr. for FY 2013-14 based on calculation on simple interest

whereas the Appellant has sought carrying cost on the basis of compounded interest. The State Commission has overlooked the fact that the Appellant has to pay interest to commercial banks which is compounded quarterly. It is a settled issue that carrying cost was to be calculated on a compounding basis. This has led to the denial of legitimate amount of carrying cost to the Appellant.

8. The learned counsel for the Respondent has made following arguments/submissions on the issues raised in the present Appeal for our consideration:
 - a) The Tariff Regulations, 2011 provide for Late Payment Surcharge i.e. DPC. This is legitimate income for the Transmission Licensee and is entitled to recover in accordance with Regulations, 2011.
 - b) The State Commission had reasoned out for considering DPC as a part of NTI for FY 2015-16 as below:

“Commission’s Analysis

4.10.3 In its Order dated 12 December, 2014 in Case No. 151 of 2014 (Petition of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) for waiver of Delayed Payment Charges (DPC)), the Commission has disallowed waiver of DPC on delayed payment of Transmission Charges to the State Transmission Utility (STU). Accordingly, as regards the inclusion of DPC in the Non-Tariff Income, the Commission has sought details of DPC to be recovered by each Transmission Licensee from the STU. From the details submitted by the STU, it is observed that a total of Rs. 16.73 Crore of DPC are to be

recovered by JPTL from the Transmission System Users (TSUs) i.e. the Distribution Licensees. The Commission accordingly, considers Rs. 16.73 Crore as Non-Tariff Income to be recovered in FY 2015-16 over and above the projections of JPTL.

.....”

As the State Commission has not waived the DPC payable by the Distribution Licensee/ Transmission System Users, it has considered DPC as a part of NTI.

- c) The Appellant had alleged that the State Commission has not included the DPC amount in the ARR of the Distribution Licensee which will further delay the payment of DPC to the Appellant. The State Commission in its order dated 12.12.2014 in case No. 151 of 2014 has observed that cash flow and fund management have to be dealt by MSEDCL with due diligence and the provision of DPC in Tariff Regulations, 2011 is intended to promote payment discipline by penalising the defaulter. Accordingly, the State Commission has not waived the DPC payable by MSEDCL.
- d) The contention of the Appellant that transmission revenue due for more than 45 days leads to higher working capital requirement and higher interest costs which are not accounted in ARR is devoid of merit as the approved value of the IWC and petitioned figures are not at much variance and the same have been approved as per Tariff Regulations, 2011.

- e) As Recovery of Transmission charges is a commercial/contractual issue between the Appellant and the Transmission System Users, the Appellant should have made all efforts to ensure timely recovery of the same as per the Transmission Tariff Orders of the State Commission.
- f) The Appellant had made a case that DPC is not specified as a part of NTI for Transmission Licensee, whereas it is expressly specified for generating companies. The State Commission has specified the indicative list of various heads to be considered for NTI for Generating Companies and such list is not specified for Transmission Licensees. These provisions cannot be interpreted to contend that DPC shall not be considered under NTI for Transmission Licensees. Since provisional true up of FY 2015-16 is carried out by the State Commission, it is deemed fit for considering DPC under NTI for FY 2015-16.
- g) The comparison of MYT/Tariff Regulations, 2015 with Tariff Regulations, 2011 by the Appellant is not justified as the applicability period of both are different and the Impugned Order has been issued under the Tariff Regulations, 2011.
- h) On the issue of disallowance of carrying cost for under-recovery of Rs. 14.46 Cr. related to FY 2010-11 and FY 2011-12 ARR in initial two months of FY 2012-13, it is brought to the notice of this Tribunal that the Appellant had not claimed the said amount in its MYT petition in case No. 27 of 2013 which was disposed of by the State Commission vide order dated 16.8.2013, while allowing the carrying cost of Rs. 12.20 Cr. on the same. The same has been

detailed out in the Impugned Order. Further, the said under recovery also did not figure in the Intra State Transmission (InSTS) Order in case No. 123 of 2014 which computed the difference owing to revision in approved ARR for FY 2013-14 and revenue gaps/ past recoveries to be considered in those years as per the latest MYT order in Case No. 27 of 2013.

- i) The State Commission in the Impugned Order corrected this discrepancy by treating this under recovery as legitimate claim as the disallowance of the same would affect the business of the Appellant. The State Commission had allowed the recovery of the carrying cost on the said amount considering recovery of revenue in FY 2013-14 itself. Accordingly, the State Commission deemed fit not to allow the carrying cost in the Impugned Order.

9. After having a careful examination of all the aspects brought before us on the issues raised in Appeal and submissions made by the Appellant and the Respondents for our consideration, our observations are as follows:-

- a. The present case pertains to decision of the State Commission vide its Impugned Order considering Delayed Payment Charges (DPC) as a part Non-Tariff Income (NTI) of the Appellant while approving the revised estimates regarding ARR for 2015-16, disallowance of carrying cost on overdue ARR and calculation of carrying cost for FY 2012-13 and 2013-14 on the basis of simple interest as against on the basis of compound interest.

b. On Question No. 5 a. i.e. Whether the State Commission was justified in including the DPC payable by the STU to the Appellant in the non tariff income and thereby deducting the same from the ARR of the Appellant?, we decide as follows:

i. The Non-Tariff Income in the State Commission’s Tariff Regulations, 2011 is defined as below:

“2.1(1) (42) Non-Tariff Income” means income relating to the regulated business other than from tariff, excluding any income from Other Business and, in case of the Retail Supply Business of a Distribution Licensee, excluding income from wheeling and receipts on account of cross-subsidy surcharge and additional surcharge on charges of wheeling;”

The Non-Tariff Income in the Section related to Generation Business is defined as below:

“43.1 The amount of non tariff income relating to the Generation Business as approved by the Commission shall be deducted from the Annual Fixed Cost in determining the Annual Fixed Cost of the Generation Company:

Provided that the Generation Company shall submit full details of its forecast of non tariff income to the Commission in such form as may be stipulated by the Commission from time to time.

The indicative list of various heads to be considered for non tariff income shall be as under:

.....

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- e) Interest on delayed or deferred payment on bills;
 - f) *Interest on advances to suppliers/contractors;*
 - g) *Rental from staff quarters;*
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-
- k) *Any other non tariff income”*

The Non-Tariff Income in the Section related to Transmission Business is defined as below:

“62 Non-Tariff Income

62.1 The amount of non-tariff income relating to the Transmission Business as approved by the Commission shall be deducted from the aggregate revenue requirement in determining annual transmission charges of the Transmission Licensee:

Provided that the Transmission Licensee shall submit full details of its forecast of non-tariff income to the Commission along with its application for determination of aggregate revenue requirement.”

From the above, it can be seen that the State Commission has in general defined NTI at 2.1(1) 42 of Regulations, 2011 as income related to regulated business other than tariff with some specific exclusions like income from other business, wheeling charges and cross-subsidy surcharge/ additional surcharge for on wheeling charges for discoms.

The definition of NTI under Generation Business and Transmission Business is similar except that the indicative list of income to be considered under NTI is given under Generation Business which includes interest on delayed or deferred payment of bills i.e. DPC.

The DPC is arising out of from the following provisions of the Regulations, 2011:

“68.3 All TSUs shall ensure timely payment of Transmission Tariff to STU so as to enable STU to make timely settlement of claims raised by Transmission Licensees.

68.4 Where there is delay in payment by any TSU, late payment surcharge at the rate of 1.25% per month or part thereof shall be applicable.”

Further, the definitions at Regulation 43.1 and 62.1 make it clear that after its prudent check, amount of NTI needs to be approved by the Commission. Although there is no specific reference to DPC as non-tariff income in the definition of NTI under clause 62.1, the State Commission is empowered to approve DPC income as NTI under the said clause of the Tariff Regulations, 2011 as it deemed fit. Moreover, this is important for the State Commission to have harmony in various provisions of the said regulations.

- ii. The State Commission in the Impugned Order held as below:

“Commission’s Analysis

4.10.3 In its Order dated 12 December, 2014 in Case No. 151 of 2014 (Petition of Maharashtra State Electricity Distribution

Co. Ltd. (MSEDCL) for waiver of Delayed Payment Charges (DPC)), the Commission has disallowed waiver of DPC on delayed payment of Transmission Charges to the State Transmission Utility (STU). Accordingly, as regards the inclusion of DPC in the Non-Tariff Income, the Commission has sought details of DPC to be recovered by each Transmission Licensee from the STU. From the details submitted by the STU, it is observed that a total of Rs. 16.73 Crore of DPC are to be recovered by JPTL from the Transmission System Users (TSUs) i.e. the Distribution Licensees. The Commission accordingly, considers Rs. 16.73 Crore as Non-Tariff Income to be recovered in FY 2015-16 over and above the projections of JPTL.

4.10.4 The Commission has considered the submission of JPTL with regard to the estimation of Non-Tariff Income and has accordingly approved the Non-Tariff Income in line with its submission of JPTL for the remaining Control Period as summarised in the Table below:

Table 76: Non-Tariff Income for FY 2014-15 and FY 2015-16 approved by the Commission (Rs. Crore)

Particulars	FY 2014-15			FY 2015-16		
	MYT Order	JPTL Petition	Approved in this Order	MYT Order	JPTL Petition	Approved in this Order
Non-Tariff Income	0.43	0.32	0.32	0.54	0.44	17.17

4.10.5 The Commission approves the Non-Tariff Income of Rs. 0.32 Crore and Rs. 17.17 Crore for FY 2014-15 and FY 2015-

16 respectively, which includes DPC recovery of Rs. 16.73 Crore in FY 2015-16.”

Though in the present case, it has not been clearly spelt out that the DPC is to be treated as NTI but the State Commission is empowered to approve the NTI and in its due diligence considered DPC as NTI.

- iii. In view of our discussions on the Tariff Regulations, 2011 as above and submissions made by the State Commission, we are of the considered opinion that there is no infirmity in the State Commission's decision in considering DPC as NTI and deducting the same from the ARR of the Appellant.
- iv. The Appellant had submitted that the MYT Regulations, 2015 notified by the State Commission do not include the DPC as a part of NTI. The Appellant had also quoted the judgement of Hon'ble Supreme Court in case (2008) 9 SCC 622 Commissioner of Income Tax I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd. in its support wherein it was opined that "It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole." This judgment is not applicable in the present case as the present Appeal deals with the Tariff Regulations 2011 and the subsequent MYT Regulations 2015 are for a different control period.

On perusal of the provisions of the Tariff Regulations, 2015 it is clear that the applicability of these regulations is from 1.4.2016 to 31.3.2020. The applicability of the Tariff Regulations, 2011 was from 1.4.2011 to 31.3.2016. It is clear that the said regulations were/are applicable to different control periods of time as defined in them. These regulations were also framed after due consultative process of all the stake holders. Further the regulations evolve over a period of time based on the various circumstances / issues prevalent at that point of time. Accordingly, in our considered opinion the provisions of the Tariff Regulations, 2015 cannot be applied retrospectively and the judgement of the Hon'ble Supreme Court quoted does not apply to this case.

- v. The Appellant has also quoted the judgement of the Hon'ble Supreme Court in 1990 (2) SCC 134 Pushpa Devi Vs. Mikhi Ram in support of its arguments on "unless the context otherwise requires" in Clause 2.1 of the Tariff Regulations, 2011. In light of earlier observations, this judgement does not find any relevance in the present case.
- vi. The Appellant has also submitted that the judgement dated 18.4.2017 of this Tribunal in appeal no. 199 of 2015 does not apply to it as it was in reference to the Generating Company where the definition of NTI includes DPC. In view of our discussions at 9 b above, this argument does not survive.
- vii. Hence this issue is decided against the Appellant.

- c. On Question No. 5 b. i.e. Whether the State Commission is required to provide for carrying cost till actual recovery of the unrecovered ARR?, we decide as follows:**
- i. This question is specifically related to the Appellant's demand of allowing carrying cost on un-recovered ARR amount of Rs. 14.46 Cr. till its recovery in the FY 2015-16.
 - ii. It is important to understand the facts and circumstances which led to allowance of recovery of the said amount (Rs. 14.46 Cr.) during FY 2015-16 to the Appellant by the State Commission.
 - iii. The unrecovered ARR amount of Rs. 14.46 Cr. pertains to the period FY 2010-11 and FY 2011-12. The State Commission vide order dated 21.5.2012 in Case No. 51 of 2012 in the matter of suo motu determination of transmission tariff for InSTS for FY 2012-13 of the second MYT control period determined the transmission tariff of the transmission licensees in the state of Maharashtra including that of the Appellant. In case of the Appellant, the tried up ARR for FY 2010-11 (along with approved carrying cost) was allowed with ARR for FY 2011-12 through Total Transmission System Cost (TTSC) for FY 2012-13 for the purpose of recovery. This order was applicable w.e.f 1.6.2012. Hence, the Appellant could recover only Rs. 72.32 Cr. out of total approved ARR of Rs. 86.78 Cr. leading to under-recovery of Rs. 14.46 Cr. (for the months of April and May' 2012) as the amount was to be recovered on monthly basis. It means that the Appellant was aware of the under-recovery of the revenue.

- iv. The Appellant filed the petition for truing up of ARR for FY 2011-12 and for approval of ARR as per MYT Principles for second control period from FY 2012-13 to FY 2015-16 being case No. 27 of 2013. The State Commission in the Impugned Order had pointed out that the Appellant has not made claim of under recovery of revenue in this MYT petition being Case No. 27 of 2013 filed on 18.2.2013.
- v. The State Commission in its suo motu order dated 13.5.2013 in Case No. 56 of 2013 recognised under recovery of ARR for FY 2010-11 and FY 2011-12 amounting to Rs. 14.46 Cr. due to late implementation of the previous InSTS order in case No. 51 of 2012. While going through the order dated 13.5.2013, it is found that the State Commission had accounted for the under recovery in the ARR and the ARR for that particular year includes the value as approved in the Business Plan of the Appellant as MYT tariff order of the Appellant in the Case No. 27 of 2013 was yet to be disposed of by the State Commission. The State Commission approved MYT of the Appellant in Case No. 27 of 2013 vide order dated 16.8.2013. The State Commission in this order allowed carrying cost to the Appellant to be recovered during FY 2013-14. It is important to mention here that the Appellant though was aware of the fact regarding under recovery, has not claimed the same in Case No. 27 of 2013.
- vi. The State Commission vide order dated 14.8.2014 in Case No. 123 of 2014 regarding suo-motu amendment of InSTS tariff determined by the State Commission in order dated 13 May, 2013 in Case No. 56 of 2013 had considered the ARR as approved in the MYT orders of the Transmission Licensees. In case of the Appellant, the State

Commission considered order dated 16.8.2013 in Case No. 27 of 2013. Since the Appellant has not claimed the under recovery of Rs. 14.46 Cr. in the said MYT petition, this has led to under recovery of the said amount in the order dated 14.8.2014.

- vii. The Appellant in Case No. 208 of 2014 claimed the unrecovered amount with carrying cost. The State Commission issued Impugned Order allowing the recovery of the unrecovered amount of Rs. 14.46 Cr and carrying cost as allowed in order dated 16.8.2013 in Case No. 27 of 2013. For the sake of clarity, the chronology of the various petitions/orders involved related to the present appeal are produced below:

S.No.	Case No./ Date	Order date	Remarks
1	51 of 2012	21.5.2012	Suo motu determination of transmission tariff for InSTS for FY 2012-13. Order was applicable from 1.6.2012 leading to under recovery of revenue of Rs. 14.46 Cr. to the Appellant.
2	57 of 2012	20.12.2012	Approval of MYT Business Plan of Appellant for the Second Control Period from FY 2012-13 to FY 2015-16.
3	18.2.2013		Appellant filed MYT petition: Truing up of ARR for FY 2011-12 and for approval of ARR for second control period from FY 2012-13 to FY 2015-16. This petition does not include un recovered amount.
4	56 of 2013	13.5.2013	Suo motu Determination of InSTS for FY 2013-14 to FY 2015-16 of the second MYT Control Period.

			The State Commission considered under recovered amount of Rs. 14.46 Cr. in the ARR of the Appellant.
5	123 of 2014	14.8.2014	Suo-motu amendment of InSTS determined by the Commission in Order dated 13 May, 2013 in Case No. 56 of 2013. Amendment was carried out based on MYT order of the Appellant, which does not include unrecovered amount Rs. 14.46 Cr. This led to under recovery of 14.46 Cr.
6	27 of 2013 (filed on 18.2.2013)	16.8.2013	Truing up of ARR of Appellant for FY 2011-12 and for approval of ARR as per MYT Principles for second control period from FY 2012-13 to FY 2015-16. The State Commission approved the MYT petition and also allowed the carrying cost to be recovered during 2013-14.
7	208 of 2014	26.6.2015 (Impugned Order)	Mid-Term Performance Review for MYT Second Control Period from FY 2012-13 to FY 2015-16 of the Appellant. The State Commission allowed Rs. 14.46 Cr. and carrying cost as per MYT order dated 16.8.2013.

- viii. The State Commission while disallowing the claim of carrying cost of the Appellant till FY 2015-16 has held as below:

“Commission’s Analysis

4.12.3 The Commission observes that, in the InSTS Order in Case No. 56 of 2013, it had recognised the under recovery of

ARR for FY 2010-11 and FY 2011-12 amounting to Rs. 14.46 Crore due to late implementation of the previous InSTS Order in Case No. 51 of 2012. Accordingly, the Commission has allowed recovery of Rs. 14.46 Crore along with recovery of ARR for FY 2013-14 through InSTS Order in Case no. 56 of 2013. However, the Commission has considered the ARR approved in the Business Plan Order since the MYT Order had not been issued at that time.

4.12.4 Subsequently, the Commission has approved MYT Orders of all Transmission Licensees and accordingly revised the InSTS Tariff in Case No. 123 of 2014. Further, in the InSTS Order dated 14 August, 2014 in Case No. 123 of 2014, the Commission has calculated the difference owing to revision in approved ARRs for FY 2013-14 and revenue gaps/ past recoveries to be considered in those years as per the latest MYT Order 16 August, 2013.

4.12.5 The Commission observes that the recovery of Rs. 14.46 Crore was not considered in the MYT Order dated 16 August, 2013. The Commission notes that JPTL had not claimed this under recovery in its MYT Petition. Accordingly, it was not considered in the MYT Order and the subsequent InSTS Order which was issued considering the said MYT Order as the base.

4.12.6 However, the Commission is of the view that disallowance of under recovery of Rs. 14.46 Crore would affect

the business of JPTL and is a legitimate claim. Hence, it has been considered for recovery in the present Order.

4.12.7 Further, the Commission had allowed recovery of Rs. 14.46 Crore through InSTS Order in Case No. 56 of 2013 dated 13 May, 2013 and also allowed carrying cost for late recoveries of ARR of FY 2010-11 & FY 2011-12 through MYT Order in Case No. 27 of 2013 dated 16 August, 2013 amounting to Rs. 12.20 Crore. As recovery was allowed in FY 2013-14 and carrying cost was also allowed with consideration that revenue will get recovered in FY 2013-14, there is no need to allow carrying cost now.

Table 79: Under Recovery of FY 2010-11 and FY 2011-12 ARR approved by the Commission (Rs. Crore)

<i>Particulars</i>	<i>JPTL Petition</i>	<i>Approved in this Order</i>
<i>Under Recovery of ARR</i>	<i>14.46</i>	<i>14.46</i>
<i>Carrying Cost over Under Recovery</i>	<i>4.89</i>	<i>-</i>
<i>Total Recovery</i>	<i>19.35</i>	<i>14.46</i>

4.12.8 The Commission approves under recovery of Rs. 14.46 Crore pertaining to FY 2010-11 & FY 2011-12 without carrying cost.”

From the above, it is concluded that the discrepancy in respect of the under recovery has arisen due to non claiming of the said unrecovered amount by the Appellant in its MYT petition in Case No. 27 of 2013.

ix. In view of our discussions as above from 9 c. i. to viii and the decision of the State Commission, we are of considered opinion that the situation of under recovery had arisen due to non-claiming of the said under recovered amount by the Appellant in its MYT petition (Case No. 27 of 2013) filed with the State Commission. The Appellant was aware of under- recovered amount at the time of filing of the referred MYT petition with the State Commission. Moreover, the Appellant has also not taken up the matter with the State Commission in the intermittent time available with it during the issuance of the orders dated 13.5.2013 (Case No. 56 of 2013) and 16.8.2013 (Case No. 27 of 2013). We do not find any fault on the part of State Commission disallowing the carrying cost beyond FY 2013-14 while allowing the under-recovered amount of Rs. 14.46 Cr. during FY 2015-16.

x. Hence this issue is decided against the Appellant.

d. On Question No. 5 c. i.e. Whether the State Commission was justified in calculating the carrying cost on the basis of simple interest and not on the settled basis of compounded interest as sought by the Appellant in its petition before the State Commission?, we decide as follows:

i. The Appellant has claimed the carrying cost for recovery of ARR for FY 2012-13 and FY 2013-14 on the basis of compounded interest. The State Commission has allowed the same on the basis of simple interest.

ii. The State Commission in the Impugned Order has held as below:

“Commission’s Analysis

4.13.3 In this Order, the Commission has undertaken final True up of FY 2012-13 and FY 2013-14. For the purpose of carrying cost computation, the Commission has considered Trued up ARR of FY 2012-13 and FY 2013-14. The Trued up ARR for these years considered for the purpose of carrying cost computation excludes availability incentive since that is due for recovery only after completion of the specified period which is being approved only vide the True up exercise for FY 2012- 13 and FY 2013-14 under the present Order.

4.13.4 For calculation of carrying cost, JPTL has considered actual revenue collected from TSUs in place of revenue billed to them. The Commission considers this inappropriate as the entire ARR process is based on accrual principles rather than on cash basis. Accordingly, the Commission has considered the revenue on accrual basis for the purpose of computation of carrying cost.

4.13.5 The revenue recovery for the purpose of computation of the carrying cost has been considered in line with the applicable InSTS Orders during the period. Further, the carrying cost is computed as simple interest on the relevant gap using the weighted average SBAR interest rate prevailing during that period. Accordingly, the following Table summarises the computations of carrying cost approved by the Commission in the present Order.

Table 81: Carrying cost for FY 2012-13 & FY 2013-14 approved by the Commission (Rs. Crore)

<i>Particulars</i>	<i>JPTL Petition</i>	<i>Approved in this Order</i>
<i>Carrying cost for FY 2012-13</i>	<i>27.43</i>	<i>15.80</i>
<i>Carrying cost for FY 2013-14</i>	<i>11.15</i>	<i>5.26</i>
<i>Total Recovery</i>	<i>38.58</i>	<i>21.06</i>

4.13.6 The above carrying cost shall be recoverable in FY 2015-16 along with the ARR approved for FY 2015-16 and other past period revenue / surplus approved in the present Order.”

In support of its decision the State Commission has submitted that the contention of the Appellant that it has to bear the brunt of carrying cost by paying interest to the commercial banks compounded on quarterly basis is flawed. This is mainly because the State Commission has allowed the IWC in accordance with the Tariff Regulations, 2011. According to the State Commission if the concept of allowing interest on interest is accepted, it would be endless. There is also no concept of interest on interest while dealing with items such as interest on loan by the Licencees/ Generating Companies.

- iii. While going through the Tariff Regulations, 2011 we do not find any clause related to interest on carrying cost. The relevant clause from these regulations is produced below:

“11.3 The scope of the Mid-term Performance Review shall be a comparison of the actual performance of the Generating Company or Transmission Licensee or Distribution Licensee with the approved forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges and shall comprise of the following:

(a) a comparison of the audited performance of the applicant for the previous two financial years with the approved forecast for such previous financial year; and

(b) a comparison of the performance of the applicant for the first half of the current financial year with the approved forecast for the current financial year.

(c) carrying cost on surplus/deficit amounts, if any, at the time of Mid-term Performance review.”

Thus, while regulations provide for carrying cost there is no mention of the rate of interest applicable on it. The State Commission has been following the concept of simple interest in its orders for the purpose of the calculation of the carrying cost. We tend to agree with the State Commission's view that there is no concept of compound interest in dealing with various provisions related to interest calculations in the Tariff Regulations, 2011. Thus the principle applied by the State Commission in absence of specific provisions of interest rate of carrying cost is equitable and just and there is no need of interference by us on the same.

- iv. Hence this issue is also decided against the Appellant.

- e. **On Question No. 5 d. i.e. Whether the State Commission has discharged its obligations in conducting a fair and impartial mid-year review of the Appellant while following accepted commercial principles and sound application of the MYT Regulations?, we decide as follows:**
 - i. In view of our observations at 9 b. to d. above, we are of the considered opinion that the State Commission has discharged its obligations in conducting a fair and impartial mid-year review of the Appellant while following accepted commercial principles and sound application of the MYT Regulations.

 - ii. Hence this issue is also decided against the Appellant.

ORDER

We are of the considered opinion that the issues raised in the present appeal have no merit as discussed above. The Appeal is hereby dismissed.

The Impugned Order dated 26.06.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **11th day of May, 2017.**

(I.J. Kapoor)
Technical Member

✓

(Mrs. Justice Ranjana P. Desai)
Chairperson

REPORTABLE/NON-REPORTABLE

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