

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

**Appeal No. 282 of 2014**

**Dated: 19<sup>th</sup> January, 2017**

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

**In the matter of :-**

**Haryana Vidyut Prasaran Nigam Limited  
Shakti Bhavan, Sector - 6  
Panchkula, Haryana- 134108**

**... Appellant**

**Versus**

- 1. Haryana Electricity Regulatory Commission  
Bays 34-39, Sector - 4  
Panchkula, Haryana-134112**

**...Respondent No.1**
- 2. Hindustan National Glass & Industries Ltd.  
2, Red Cross Place,  
Kolkata- 700001**

**...Respondent No.2**
- 3. Punjab General Industries Pvt. Ltd.  
Plot No. 149-150  
Sector 24, Faridabad- 121005  
Haryana**

**...Respondent No.3**
- 4. Escorts Ltd. Agri Machinery- Tractor Plant  
Plot No. 3, Sector-13  
Faridabad- 121007**

**...Respondent No.4**
- 5. Uttar Haryana Bijli Vitran Nigam  
Limited (UHBVNL)  
Vidyut Sadan, Sector-6  
Plot No C 16, Panchkula  
Haryana**

**...Respondent No.5**

6. **Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)**  
**Vidyut Sadan, Vidyut Nagar**  
**Hisar - 125005**  
**Haryana**

...Respondent No.6

**Counsel for the Appellant(s):** **Mr. Anand K. Ganeshan**  
**Ms. SwapnaSeshadri**  
**Ms. Mandakini Ghosh**  
**Mr. Ishaan Mukherjee**  
**Mr. Ashwani Kumar Gupta**  
**Mr. Sandeep**  
**Ms. Neha Garg**  
**Ms. Saloni Sacheti**

**Counsel for the Respondent(s):** **Mr. Buddy A. Ranganadhan,**  
**Mr. D. V. Raghuvamsy,**  
**Mr. Raunak Jain,**  
**Mr. Abhishek Upadhyay and**  
**Ms. Malavika for R-2 to 4**

**Mr. Rajiv Jain and**  
**Mr. Nirmal Singh (Rep.) for R-5**

## **JUDGMENT**

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

1. The present Appeal is being filed by Haryana Vidyut Prasaran Nigam Ltd. (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 14.08.2014 (“**Impugned Order**”) passed by the Haryana Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in Petitions No.1, 3 & 18 of 2014, in the matter

concerning the levy of Departmental/ Supervision Charges on deposit works by the Appellant i.e. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) on Respondents 2-4 and O&M charges on Respondent No. 3.

2. The Appellant, Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) is the transmission company and also functions as the State Transmission Utility under Section 39 of the Electricity Act, 2003 in the State of Haryana.
3. The Respondent No 1 is the Electricity Regulatory Commission for the State of Haryana exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
4. The Respondent No.2 - Hindustan National Glass & Industries Ltd. is engaged in manufacturing of Glass Containers (Bottles) and is a large supply consumer of UHBVNL. The Respondent No. 3 - Punjab General Industries Pvt. Ltd. is a large supply industrial consumer of DHVBNL. The Respondent No. 4 - Escorts Ltd. Agri Machinery-Tractor Plant is a large supply industrial consumer of DHVBNL. The Respondent No 5 & 6 are the Distribution licensees in the State of Haryana and are responsible for distribution of electricity within its licensed distribution area in the State of Haryana.

**5. Facts of the present Appeal:**

- a) The State Commission on 26.07.2005 notified the HERC (Duty to supply electricity on request, power to recover expenditure incurred in providing supply) Regulations, 2005 (hereinafter referred as

'Regulations, 2005'). These Regulations provide levy of 1.5% supervision/ departmental charges by distribution licensees on works related to extension of distribution network carried out by consumers at their own cost and supervised by distribution licensees for the benefit of the consumers. These Regulations are applicable to distribution licensees of Haryana.

- b) However, there are no such regulations notified by the State Commission for levying of supervision/ departmental charges on the works carried out for extension of the transmission system by the consumers and supervised by the transmission licensee for providing safe and secure supply of power to the consumers in Haryana.
- c) In absence of such regulatory provisions and to fulfil its duties under Section 39 of the Electricity Act, 2003, the Board of Directors of the Appellant approved the levy of departmental/ supervision charges on deposit works @ 4% of the estimated cost of the works required to be executed by client/institution/ Govt. departments by following HVPNL specification/ guidelines and the same is to be taken over by HVPNL. The same was issued by the Appellant vide circular dated 26.06.2007.
- d) On the basis of requests received by HVPNL for re-routing of existing transmission lines and substitution of lines by EHV cables, the Board of Directors of HVPNL approved the "Guidelines for substitution of overhead transmission lines and part project by providing EHV XLPE underground cables". These guidelines were issued on 8.9.2010. These guidelines hereinafter are referred as

'Guidelines, 2010'. These guidelines include the levy of cost of future maintenance of cable @ 5% of the total cost of replacement towards the maintenance cost of the cable.

- e) Further, after approval of the Board, HVPNL on 25.04.2012 issued "Detailed Guidelines for Self-Execution of the Deposit Works" (hereinafter referred as 'Guidelines 2012'). These guidelines contain the nature/ category of works covered in deposit estimates and the mode of self-execution of deposit works by the consumers.
- f) The Appellant in 2011 & 2012 granted the approval to Respondent Nos. 2 - 4 for execution of works related to Respondent Nos. 2 - 4 with scope of work, mode of execution with condition of levying of supervision charges. The works mentioned in the approval were exclusive works of Respondent Nos. 2 - 4. However, some works were to be executed by the Appellant as deposit works for Respondent Nos. 2 and 3. Subsequently on request of the Respondents 2 and 3, all the works were to be executed on self-execution mode by the Respondents and amendment to the earlier approvals were granted by the Appellant vide Memo dated 21.5.2012, based on the 'Guidelines 2012'. In case of Respondent No. 4, there was no need for revision as its works on self-execution mode were already approved based on Guidelines 2012. The memos issued to Respondents have provisions for levy of departmental charges by the Appellant.
- g) The Respondent Nos. 2 - 4 entered into Tripartite Agreement with the Appellant and the distribution licensee (UHBVNL/DHBVNL) of their respective area on 30.5.2012, 13.9.2012 and 20.2.2013

respectively. The Tripartite Agreements also have specific provisions for levy of supervision charges by the Appellant.

- h) Accordingly the Appellant, vide Memo dated 19.11.2012, 13.02.2013 and 09.04.2013 raised supervision charges @ 4% of the tentative estimated cost of the works required to be executed by the Respondent Nos. 2 - 4 respectively. The said charges were paid by the Respondent Nos. 2 - 4 to the Appellant.
- i) Aggrieved by the levy of Departmental/ Supervision charges on deposit works by the Appellant, the Respondent Nos. 2 - 4 approached the State Commission through the Petition Nos. 1, 3 and 18 of 2014 and prayed for withdrawal of Memo dated 19.11.2012, 13.02.2013 and 09.04.2013 by the Appellant & to examine and approve the levy of departmental/ supervision charges on deposit works of consumers, direct the Appellant to withdraw the demand raised & refund the excess amount already charged, with 12% interest rate and direct the Appellant to desist from issuing any circular which has financial implications without prior approval of the State Commission.
- j) The State Commission after hearing the parties, on 14.08.2014 passed an order in Petition Nos. 1, 3 and 18 of 2014 wherein the State Commission has allowed levy of 4% supervision charges only on the deposit works which were to be taken over by the Appellant by following HVPNL's specifications/guidelines. The State Commission has not allowed the recovery of supervision charges from the Respondent Nos. 2 - 4 for their exclusive works which were not to be taken over by the Appellant. The State Commission has

also not allowed recovery O&M charges for 66kV XLPE cable and terminations from Respondent No. 3. The State Commission directed Appellant to refund the excess amount charged from the Respondents and to submit all relevant documents for levy of departmental/supervision charges for examination/ review by the State Commission.

6. Aggrieved by the Order dated 14.08.2014 passed by the State Commission, the Appellant has preferred the present appeal on following grounds:
- i. What is the rationale behind the levy of supervision charge from Respondent Nos. 2 - 4 and maintenance charges from Respondent No. 3?
  - ii. Whether the Appellant supervises the exclusive works of the Respondent Nos. 2 - 4 and maintaining 66kV underground cable for Respondent No.3?
  - iii. Whether the State Commission was correct in disallowing the levy of supervision charges on exclusive works by the Appellant.

**7. QUESTIONS OF LAW**

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

- a. **Whether the Appellant was acting in accordance with the Electricity Act and its various circulars and guidelines while collecting supervision charges from the consumers?**

- b. Whether in respect of supervision charges, any differentiation can be made between works to be taken over by the Appellant and the exclusive works of Respondents Nos. 2 - 4, in view of the Electricity Act and the Duty to supply electricity on request, power to recover expenditure incurred in providing supply (Regulations, 2005)?**
8. We have heard at length the learned counsel for the parties and considered their written submissions and the arguments put forth during hearings. Gist of the same is discussed hereunder;
9. The learned counsel for the Appellant has made following arguments/submissions for our consideration :
- a) The State Commission has erred in holding that the Appellant cannot recover the supervision charges from the Respondent Nos. 2 - 4 for exclusive works of the Respondents which are not to be taken over by the Appellant.
- b) The State Commission failed to appreciate that the supervision charges are levied on the works carried out by the consumer for extension of transmission network. The charges are levied for constant supervision and monitoring by the Appellant during construction/execution of works by the consumers as per HVPNL specifications. This is important as the interest of the grid at large is involved since these lines and sub stations are to be eventually connected to the state transmission system.
- c) The Guidelines 2012 provides supervision of every aspect of construction by the Appellant. The supervision charges imposed by the Appellant are in accordance with the circular dated 26.6.2007

and the ensuing Guidelines 2012. The State Commission has erred in making specific distinction in the works carried out by the consumers for the purpose of levy of supervision charges, to be taken over by the Appellant and not to be taken over by the Appellant. The works not to be taken over by the Appellant also forms the part of transmission network and are to be constantly monitored by the Appellant.

- d) The State Commission has also ignored the fact that the Respondent Nos. 2 - 4 had willingly and with full knowledge agreed to pay the requisite supervision charges in accordance with Tripartite Agreement. The State Commission has also ignored that the Respondent No. 3 had agreed to pay the O&M charges as agreed in Tripartite Agreement.
- e) In response to the submissions made by the Respondents, the Appellant submitted that the State Commission has not found any fault with the Appellant on levying 4% supervision charges. However, the State Commission has directed the Appellant to submit the details and circulars for its examination.
- f) The Appellant also submitted that the contention of Respondent Nos. 2 - 4 that the transmission system is a deemed distribution system and supervision charges of 1.5% to be applied as per Duty to supply Regulations, 2005 of the State Commission has been rejected by State Commission in its order stating that these Regulations are applicable only to Distribution Licensee which supervises network till 33 kV voltage. The Appellant supervised the works of the consumers at the voltage levels of 66 kV & 132 kV.

g) In response to the contention of Respondent Nos. 2 - 4 that no charges at all ought to have been levied by the Appellant, the Appellant submitted that the Respondent Nos. 2 - 4 had not made any appeal against the Impugned Order. The judgement of this Tribunal dated 11.3.2011 in Appeal No. 197 of 2009 has no application in this case as the finding in this judgement is that the charges sought to be levied by the Distribution Licensee had no validity. Contrary to this, the State Commission in this case has decided that the supervision charges are correctly levied by the Appellant. The only issue to be decided whether charges are leviable even on works not taken over by the Appellant.

**10.** The learned counsel for the Respondent Nos. 2 - 4 has made following arguments/submissions on the issues raised in the present Appeal for our consideration:

a) After the advent of the Electricity Act, 2003, no charge can be levied either by Distribution Licensee or a Transmission licensee without the prior approval of the Commission. This has been accepted by this Tribunal in judgement dated 11.3.2011 in Appeal No. 197 of 2009 titled MSEDCL vs. MERC. Hence the Guidelines, 2012 and circular dated 26.6.2007 issued by the Appellant are invalid under the Act.

b) The combined reading of Section 2 (19), 2 (72), 2 (73) of the Electricity Act, 2003 and Rule 4 of the Electricity Rules, 2005 makes it clear that that all lines and other electrical plants involved in this matter are deemed to be part of distribution system. Hence

the Appellant's contention that they are the part of transmission system is completely incorrect. The Rule 4 of the Electricity Rules has been accepted and applied by the Supreme Court in M/s Sesa Sterlite Vs OERC- CA No. 5479 of 2013 in judgement dated 25.4.2014 paras 34-35 onwards.

- c) The Appellant was required to raise demands on account of departmental charges @ 4% of the cost of the works, which were to be finally taken over by it. However, the Appellant raised the demand even on other works which were exclusive works to be executed.
- d) Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply) Regulations, 2005 provides for levy of supervision/departmental charges for execution of extension works by the consumer and the same are prescribed as 1.5% of the cost of such extension work carried out by the consumer. Nowhere the supervision charges are to be calculated on the cost of the exclusive works of the consumers also which are not to be taken over by the Appellant. Thus the action of the Appellant in raising claim/recovery of departmental/ supervision charges on the estimated cost of the exclusive works of the Petitioner is contrary to the provisions of the aforesaid Regulations.
- e) The Appellant has committed the irregularities by issuing instructions vide circular dated 26.06.2007 for recovery of departmental charges without seeking prior approval of the State Commission, forced the Respondents to pay departmental charges

on the works executed by Respondent Nos. 2 - 4 at their own end to receive power supply at higher voltage, charged departmental charges @ 4% instead of approved rate of 1.5% by the State Commission on the works connected with extension of the system and recovered maintenance charges on cost of interlinking cable in violation of provisions under regulation 4.7 of the Regulations, 2005.

- f) The Respondent Nos. 2 - 4 prayed for refund of the extra amount charged to them by the Appellant with appropriate interest.

**11. 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 on:
- (i) Disallowance of supervision/ departmental charges levied by Appellant on the exclusive works of the Respondent Nos. 2 - 4 which are not to be taken over by the Appellant.
  - (ii) Disallowance of O&M charges levied by the Appellant on Respondent No. 3.
- b. **On the Question No (a) i.e. Whether the Appellant was acting in accordance with the Electricity Act and its various circulars and guidelines while collecting supervision charges from the consumers?, we observe as follows:**
- i. As per the Appellant, the issue pertains to Section 39 of the Electricity Act, 2003 which mandates the State Transmission Utility

(STU), to discharge all functions of planning and co-ordination relating to intra state transmission system with licensees and to ensure development of an efficient, co-ordinated and economical system of intra- state transmission lines for smooth flow of electricity from a generating station to the load centres.

- ii. While disallowing the supervision/ departmental charges levied by Appellant on the exclusive works of the Respondent Nos. 2 - 4 not to be taken over by the Appellant, the State Commission relied on the circular dated 26.6.2007 issued by the Appellant after approval of its Board of Directors. The relevant para of the circular is as below:

*“..... levy of departmental charges on deposit works as under:  
..... iv. Where the work has been carried out by the consumer/  
client/ institution/ Govt. departments by following HVPNL  
specification/ guidelines and the same is to be taken over by  
HVPNL - 4%.”*

This circular provides levy of departmental charges only on works to be taken over by the Appellant and not on the works not to be taken over by the Appellant.

- iii. The Regulations, 2005 talks of levying supervision charges at the rate of 1.5% in case the Applicant opts for execution of Extension of Distribution System at his own cost through licensed contractor. These regulations are applicable to the Distribution licensee only.

iv. The State Commission has not considered the Guidelines, 2012 which were also approved by the Board of Directors of the Appellant. The relevant provisions of Guidelines, 2012 are as below:

*“.... Detailed guidelines for self execution of the deposit works. Mainly the following nature/ category of works are covered in the deposit estimates:*

- a) Creation of bays at HVPNL substation for independent feeders of different voltage ratings viz 33kV to 132kV.*
  
- b) Connectivity between HVPN substations to the consumer substation with independent feeders through underground cables/ over head transmission lines.*

.....  
.....  
.....

*..... The consumers be allowed to carry out the self execution of work, if so desired by the consumers, with the following condition:*

.....  
.....  
.....

- b) The works will be executed strictly as per technical specification/ drawing of the Nigam after obtaining due approval of the competent authority of the Nigam.*
- c) The work shall be carried out under the supervision of HVPNL.*

d) The consumer will deposit the departmental charges as per Nigam instruction from time to time as applicable for the deposit works to be executed by the Nigam.

.....

.....

.....

h) *In case the consumer opts for self execution of underground cables the responsibility of maintenance as per norms of HVPNL will also be of consumer.”*

According to these Guidelines, 2012 the consumers are allowed to carry out self execution of works of particular nature/ category as per Technical Specification/ drawing of the Appellant under its supervision after deposit of departmental charges as applicable for deposit works executed by the Appellant.

v. The situation has arrived in absence of any regulatory provisions to levy charges by the Appellant for such nature of jobs in the state of Haryana. The Board of Directors of the Appellant has tried to fill the void to perform its duties under section 39 of the Electricity Act, 2003 and after considering similar type of arrangements prevailing in other states/utilities in the country. Thus we are of the view that the Appellant was acting in accordance with section 39 of the Electricity Act, 2003 and its various circulars and guidelines while collecting supervision charges from the consumers.

vi. From the above, it can be seen that the power to levy supervision/ departmental charges on deposit works carried out by consumer (as per circular 26.06.2007)/on self-execution basis (Guidelines, 2012)

flows from the decision of Board of Directors of the Appellant. The circular 26.06.2007 defines rate of charge as 4% on deposit works by consumers and the same is to be taken over by the Appellant. The Guidelines, 2012 extend the levy of departmental/supervision charges as applicable for the deposit works to be executed by the consumers on self-execution basis based on HVPNL specifications and guidelines under the supervision of HVPNL. These Guidelines also clearly define the nature/category of works.

- vii. The works carried out by the Respondent Nos. 2 - 4 on self-execution basis not to be taken over by the Appellant, fall well within the nature/ category of work defined under Guidelines, 2012.
- viii. Further, the approval letters for the works to be carried out by Respondent Nos. 2 - 4 issued by the Appellant and the Tripartite Agreements signed between Appellant, Respondent Nos. 2 - 4 and concerned distribution licensee have specific provisions for levy of supervision/departmental charges by the Appellant.
- ix. It is clear that the State Commission has erred in analysing the issue in totality by relying only on circular dated 26.06.2007. It failed to appreciate the Appellant's circular dated 26.06.2007 as well as the detailed guidelines (Guidelines, 2012). The State Commission has also not given any weightage to the provisions of the Tripartite Agreement regarding payment of supervision/ departmental charges. The charges have been levied by the Appellant for the supervision/monitoring services provided by the Appellant for the execution of these works as carried out by the Respondent Nos.2-4.

The works carried out were actually supervised by the Appellant and there is need that appropriate cost be recovered by them.

- x. From the above discussions, it can be concluded that the supervision/ departmental charges levied by the Appellant on the self-execution works of the consumers not to be taken over by Appellant are leviable and payable for the services rendered by the Appellant in view of its duties to be performed under the Act as the Appellant being STU is responsible for the intrastate transmission network in the state of Haryana and the fact that all these works executed by the consumer will be ultimately connected to the Appellant's transmission system.
- xi. We are in agreement with the contention of the Appellant on this aspect of levy of supervision/ departmental charges from the Respondent Nos. 2 - 4. Accordingly this issue is decided in favour of the Appellant.
- xii. The State Commission has already directed the Appellant to submit the circular date 26.06.2007 along with all the relevant details regarding levy of supervision/departmental charges with justification for its review/examination. The State Commission is hereby directed to come up with appropriate Regulations/Guidelines/ Directions for smooth execution of such type of works in future.
- c. **On Question No (b) i.e. Whether in respect of supervision charges, any differentiation can be made between works to be taken over by the Appellant and the exclusive works of Respondent Nos. 2 - 4, in view of the Electricity Act and the**

**Duty to supply electricity on request, power to recover expenditure incurred in providing supply Regulations, 2005?, we now decide the other issue whether the amount charged by the Appellant from the Respondent No. 3 towards the operation and maintenance of 66kV XLPE cable and terminations is in order or not:**

- i. The contention of the Respondent Nos. 2 - 4 that the combined reading of Section 2 (19), 2 (72), 2 (73) of the Electricity Act, 2003 and Rule 4 of the Electricity Rules, 2005 makes it clear that that all lines and other electrical plants involved in this matter are deemed to be part of distribution system. The sub-sections 19, 72, 73 of the section 2 of the Electricity Act, 2003 defines 'distribution systems', 'transmission lines' and 'transmission licensee'. The Rule 4 of the Electricity Rules, 2005 further extends the definition of 'Distribution System'. The analogy drawn by the Respondent Nos. 2 - 4, that all lines and other electrical plants involved in this matter are deemed to be part of distribution system is misplaced as the Electricity Act, 2003 clearly distinguishes various elements of the electricity sector i.e. power generation, transmission and distribution activities under various sections.
- ii. The Respondent Nos. 2 - 4 have also quoted this Tribunal's judgement dated 11.3.2011 in Appeal No. 197 of 2009 MSEDCL Vs. MERC and Supreme Court judgement dated 25.4.2014 M/s Sesa Sterlite Vs OERC- CA No. 5479 of 2013. These judgements have no relevance in this case. The Tribunal's case was related to an issue between the consumer and the Distribution Licensee wherein the Tribunal has upheld the order of Maharashtra State

Commission. The Supreme Court case is related to deemed distribution licensee in SEZ / Cross Subsidy Surcharge application issue in specific circumstances which cannot be generalised as done by the Respondent Nos. 2 - 4 in their submissions.

- iii. The Duty to supply electricity on request, power to recover expenditure incurred in providing supply Regulations, 2005 were issued by the State Commission in exercise of the powers conferred under Sub Section 2 (t, v), of Section 181 read with Section 43, 46 & 47 of the Electricity Act 2003 and all other powers enabling it in this behalf. These sections are related to regulations to be made for the distribution licensee to recover expenditure. Regulations, 2005 has the following provisions:

*“4.9 Special Provisions in case Applicant opts for execution of Extension of Distribution System at his own cost*

*4.9.1 The applicant can get the extension of distribution system carried out through a Class – I licensed contractor provided that the applicant pays supervision charges to the Licensee. The Licensee shall charge supervision charges at the rate of 1.5% of estimated cost of such extension or as approved by the Commission, prepared on the basis of standard cost data book.*

*4.7 All equipments except the meter (if supplied by the applicant), upon energisation, shall become the property of the Licensee & the Licensee shall maintain the same without claiming any operation & maintenance expenses, including replacement of defective/damaged material/equipment from the consumer.”*

- iv. The Regulations, 2005 also provides for the following:

*“3.4 It shall be the responsibility of the Licensee to have necessary commercial arrangements with the respective transmission Licensee(s) to ensure that the required supply at Extra High Tension (EHT), i.e. above 33 KV, is made available within the time frame specified under regulation 3.3 above.”*

- v. The Regulations, 2005 talks of levying supervision charges at the rate of 1.5% in case Applicant opts for execution of Extension of Distribution System at his own cost through a Class – I licensed contractor and upon energisation all works becomes the property of the Distribution Licensee and will carry out O&M without claiming any expenses from the consumer. There is also provision of commercial arrangement between Distribution Licensee and STU to ensure required supply at EHT is made available to the consumer within the specified time frame. These regulations differentiate between the works to be taken over by the Distribution Licensee and the works not taken over by the Appellant to the extent that as per the Regulations, 2005 all the works carried out by the consumer becomes the property of the Distribution Licensee after energisation. The State Commission may specify the appropriate regulations for STU under appropriate section of the Electricity Act, 2003. It is left to the State Commission to specify the nature of works and the supervision/ departmental charges to be levied there upon.
- vi. From the above it can be seen that in respect of levy of the differentiation between works to be taken over by the Appellant and the exclusive works of Respondent Nos. 2 - 4 depends on the

regulations which State Commission makes after due consultative process under appropriate section of the Electricity Act, 2003.

- vii. The State Commission while dealing on the issue of disallowance of O&M charges levied by the Appellant on Respondent No. 3., at para 4.5 & 4.7 iii) of the Impugned Order observed as below:

*“4.5 The Commission also agree with the contention of the Petitioner (PRO-3 of 2014) that the Respondent (HVPNL) has wrongly charged maintenance charge @ 5% for future maintenance of XLPE cable and terminations at the two ends as the O&M cost for these works which are taken over by the Respondent is duly taken care of in the ARR of the Respondent (HVPNL).*

*4.7 iii) The amount charged from the Petitioner (PRO-3 of 2014) towards operation and maintenance of 66 kV XLPE cable and terminations shall also be refunded by the Respondent-1 to the Petitioner.”*

- viii. The charges were levied by the Appellant based on Guidelines, 2010.

*“.....vi) To ensure the cost of future maintenance of cable 5% of the total cost of replacement should be added towards the maintenance cost of the cable.”*

However, as per order of the State Commission these assets were to be taken over by the Appellant and its O&M will be reflected in the Annual Revenue Requirements (ARR) of the Appellant.

- ix. We agree with the view of the State Commission that the O&M cost of the said works which are taken over by the Appellant is duly taken care of in the Annual Revenue Requirements (ARR) of the Appellant and hence levying O&M charges by the Appellant on Respondent No. 3, in our view is not in order. On this aspect the Impugned Order of the State Commission is upheld.
- x. Accordingly this issue is decided against the Appellant.

### **ORDER**

We are of the considered opinion that some of the issues raised in the present appeal have merit as discussed above. The Appeal is partially allowed.

The Impugned Order dated 14.08.2014 passed by the State Commission is hereby set aside to the extent as brought out above and the order is remanded back to the State Commission on the first issue regarding the aspect of levy of supervision/departmental charges.

No order as to costs.

Pronounced in the Open Court on this **19<sup>th</sup> day of January, 2017.**

**(I.J. Kapoor)**  
**Technical Member**

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

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**REPORTABLE/NON-REPORTABLE**

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