

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 16 OF 2014

Dated: 18th May, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

D.P. Chirania

Chairman, RSEB, (Retired) Abhiyanta Evam Adhikari
Jan Kalyan Trust Jaipur,
2/668, Jawaharnagar, Jaipur-302004 ... Appellant/Petitioner

VERSUS

1. **Rajasthan Electricity Regulatory Commission,**
Vidhut Viniyamak Bhawan,
Near State Garage, Sahakar Marg,
Jaipur-302005
2. **Jaipur Vidhut Vitran Nigam Limited,**
Vidhut Bhawan, Janpath, Jyotinagar
Jaipur-302005
3. **Ajmer Vidhut Vitran Nigam Limited,**
Old Power House, Hathi Bhata,
Ajmer-305001
4. **Jodhpur Vidhut Vitran Nigam Limited,**
New Power House, Industrial Estate,
Jodhpur-342003
5. **Samta Power,**
54/144, Madhyam Marg,
Mansarovar, Jaipur-302020
6. **Mansarovar Sector-5 Residents Welfare Society,**
52/188, V.T. Road, Mansarovar,
Jaipur-302020

7. **Lok Sampati Sarankshan Samiti, Rajasthan,**
G-144, Shyam Nagar
Jaipur-202019
8. **Sri Ghanshyam Sharma,**
H.No. 3552, Rasta Govind Rajiyon Ka,
Purani Basti
Jaipur ... Respondents
- Counsel for the Appellant ... Mr. Pradeep Misra
Amicus Curiae
- Counsel for the Respondent(s)... Mr. Raj Kumar Mehta
Mr. Elangbam P.S.
Mr. Abhishek Upadhyay for R-1
- Mr. Bipin Gupta
Mr. S.K. Bansal for R-2 to 4

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by D.P. Chirania (in short, the '**Appellant**'), challenging the Impugned Order, dated 8.8.2012, passed by the Rajasthan Electricity Regulatory Commission (in short, **State Commission**)/ Respondent No.1 herein, in Petition Nos. RERC-278/11, 279/11, 280/11 for determination of Annual Revenue Requirement (ARR), Wheeling Charges & revision of Retail Supply Tariff for FY 2012-13 for the Respondents/Distribution Licensees. These petitions were filed before the State Commission by Jaipur Vidhut Vitran Nigam Limited (**JVVNL**), Ajmer Vidhut Vitran Nigam Limited (**AVVNL**), Jodhpur Vidhut Vitran Nigam Limited (**JdVVNL**), which have been disposed-of by the impugned order.

2. The Appellant, D.P. Chirania is a consumer of a Distribution Company. Respondent No. 1, is the Rajasthan Electricity Regulatory Commission, empowered to discharge functions under the Electricity Act, 2003. Respondent No.2, 3 & 4 are the Distribution Licensee in the State of

Rajasthan. Respondent No.5 to 7 are the Social Organizations, who have raised consumer interest issues on the call of public comments. The Respondent No.8 appears to be a consumer.

3. According to the Appellant itself, the instant appeal has been filed against the Review Order, dated 24.12.2012, in Review Petition No. RERC/342/2012, passed by the State Commission seeking review of the main impugned order, dated 8.8.2012,.

4. The Appellant, Mr. D.P. Chirania, filed a Review Petition seeking review of the main order, dated 8.8.2012, passed by the State Commission submitting as under:

- (a) that as per the direction of CERC, APTEL, PFC and Govt. of India, the efficiency of any distribution company is to be adjudged by Aggregate Technical and Commercial (AT&C) loss and Commission is required to fix targets of AT&C losses to arrive at assessment of energy requirement for different categories. The State Commission, in the impugned order (main), dated 8.8.2012, did not consider AT&C losses for that purpose.
- (b) that State Commission took a note of non compliance of its earlier direction on energy audit in the impugned order. Non compliance of direction on energy audit is, in fact, a violation of Section 55 of the Electricity Act, 2003, hence, the State Commission should have reviewed its direction under Para 2.2.3.2 of the impugned order and should have specified a time limit for implementation of proper energy audit of their all 33kV and 11kV feeders. The proposed collection efficiency of Discoms is 100%, the State Commission, in the impugned order, further noted that the target specified by the State Commission for distribution losses shall be the target for AT&C losses, whereas, in the impugned order, the State Commission

directed Discoms to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses.

- (c) that the distribution companies of Rajasthan are maliciously using the word T&D losses to hide actual commercial losses. The figures shown in the impugned order as T&D losses are not the T&D losses but partial AT&C losses. The collection efficiency comes when the billed energy is compared with the energy realized, and at no stage it would arrive 100%.
- (d) that the State Commission, in the impugned order, did not specify any technical and documentary base for accepting the collection efficiency of Discoms as 100%, whereas the collection efficiency of Discoms remained in the range of 80% to 90%. Simply assuming the AT&C losses equal to T&D losses and proceeding on that basis is not correct. If there is 100% collection efficiency then the actual revenue realized should have been in proportion to the approved revenue estimated but from the figures depicted by the Discoms, for most of the categories (metered), the ratio is not maintained but the revenue realized is far below than it should have been. Hence, the State Commission needed to consider and depict the actual state of AT&C losses by reviewing the impugned order.
- (e) that the energy purchase cost would be lower if correct assessment is made in beginning and energy purchase is planned in advance. Avoiding of AT&C losses in energy assessment is thus detrimental to public interest.
- (f) that the Discoms continuously manipulate the projection of distribution losses to hide their inefficiencies and project lesser energy requirement at initial stage. Thereafter, they purchase extra power on higher cost which in turn raises the revenue gap. To bridge this revenue gap, Discoms borrow loans and load

the interest on the consumers to increase the next tariff. Poor performance of Discoms should not be loaded on the consumers by way of increase in retail tariff.

- (g) that Ignoring of commercial losses in assessing of energy requirement has very detrimental effects. This Appellate Tribunal, in Appeal Nos. 192 & 206 of 2010, in the matter of Tamil Nadu Electricity Consumers' Association vs. Tamil Nadu Electricity Board held that ***"It should also be noted that a wrong estimation of AT&C losses would underestimate the power purchase requirement and the fallacy of such an estimate would be seen at the end of the year, when the actual power purchase is more than the estimated power purchase."***
- (h) that the State Commission, in the impugned order, dated 8.8.12, has also violated the this Appellate Tribunal's judgment, dated 30.5.2011, in Appeal No. 102 of 2010 & IA No. 136 of 2010 - Tata Steel Limited vs. Orissa Electricity Regulatory Commission & North Eastern Electricity Supply Orissa Company wherein this Appellate Tribunal held that according to the Tariff Policy, the tariff of all categories of consumers except those below poverty line have to be within $\pm 20\%$ of the total average cost of supply whereas, tariff determined by the State Commission in impugned order, dated 8.8.2012, is not within $\pm 20\%$ range of Average Cost of supply for Non- Domestic and Agriculture category.
- (i) that direction should be given for calculation of category-wise cost of supply within six months and that the future ARR and revision of Retail Supply Tariff petition should be based on voltage wise cost calculation.

- (j) that the losses incurred due to inefficiencies of the Discoms and interest on loans taken to bridge revenue gap should be disallowed.
- (k) that the learned State Commission, while passing the Review Order, dated 24.12.2012, had gone through the review powers of the State Commission and considered whether there is an apparent error justifying review or whether sufficient reasons exist on account of any misconception of fact or otherwise resulting in miscarriage of justice and which calls for review. The State Commission, in the review order, noted that the actual collection efficiency indicated by the Discoms in FY 2010-11 is very close to 100%. The actual collection efficiency for FY 2010-11 reported by the Discoms had been very close to 100% and the Discoms had themselves proposed 100% collection efficiency for FY 2012-13 relevant for tariff determination hence, there is no error in State Commission accepting an improved performance parameter. The variation in collection efficiency has no implication on energy purchases of the Discoms. Lower collection efficiency results in lower revenue than the billed amount. Thus, adoption of improved collection efficiency norms has no adverse impact on consumer's tariff. If the total amount of energy billed is Rs. X and the amount realized is Rs. Y, the collection efficiency would be $Y/X \times 100$.
- (l) that the State Commission, in the review order, dated 24.12.2012, regarding ambit and scope of AT&C losses observed that T&D losses also include commercial losses except component of the AT&C losses relating to Collection Process deficiencies.
- (m) that in case of collection efficiency being 100%; the distribution loss and AT&C loss would be equal. The energy sales are worked out based on energy consumption growth trend of

previous years as well as other relevant parameters, including connected load, specific consumption, etc. For a particular quantum of sale, the energy required at the Discom periphery, would need to be worked out by adjusting the losses from such periphery upto billing, for which distribution loss is a relevant parameter. As collection efficiency relates to post sale/billing losses, it has no relevance in estimation of energy purchases for a particular quantum of sale of energy. In the tariff order, the said methodology has been adopted and the same practice is being followed by the State Commission, since the first tariff order was issued by the State Commission after it came into being in the year 2000. This Appellate Tribunal, in the said judgment, nowhere states that T&D losses cannot be used in tariff determination and instead only AT&C losses have to be adopted. The learned State Commission, in the review order, dated 24.12.2012, also observed that the Commission had taken considered decision as regards cross subsidy and the Commission cannot re-examine the matter on merit in a review petition. Regarding category-wise cost of supply based on voltage-wise cost calculation, the State Commission, in the review order, clearly observed that Regulations of the Commission provide for consideration of the average cost of supply for the purpose of cross subsidy instead of voltage-wise cost of supply and the tariff order had been finalized accordingly. Hence, the judgment of this Appellate Tribunal in Appeal No. 192 & 206 of 2010 is not applicable because the Rajasthan Commission's Regulations provides for estimating cross subsidy based on cost to serve a consumer. By analyzing and considering the various points and pleas raised by the Appellant in the aforesaid review petition, the State Commission did not find any error in its tariff order, dated 8.8.2012, and held that the grounds for review of the impugned tariff order, dated 8.8.2012, did not exist and the State

Commission did not find the review petition fit for admission and disposed off the review petition accordingly by the review order, dated 24.12.2012.

5. The main grievances of the Appellant in the instant Appeal are as under:

- (a) that the State Commission did not specify how the collection efficiency, without billing efficiency, is linked to AT&C losses. The Discoms did not include actual billed energy and actual billed amount in their tariff petitions.
- (b) that the State Commission in the main impugned order, dated 8.8.2012, covered such a statement which the Discoms did not claim. In absence of billing efficiency and past collection efficiency never remaining 100%, equating of AT&C losses to so called T&D losses, on name of 100% projected collection efficiency is a mistake or error apparent on face of the record, attracting provisions of Order 47 Rule 1 of Code of Civil Procedure (CPC).
- (c) that since the Appellant in the capacity of a domestic consumer of JVVNL filed a review petition no. 342 of 2012 before the State Commission on 3.9.2012 (i.e. within 26 days of the impugned order, dated 8.8.2012), the review petition was heard for its admissibility on 29.10.2012 and the State Commission refused the admission of review petition vide its order, dated 24.12.2012 on fictitious grounds.
- (d) that the State Commission, in the review order, dated 24.12.2012, misquoted the figures of collection efficiencies shown by the Discoms in the Form No. 7.3 and the State Commission, on its own, had assumed the energy shown as sold by the Discoms as energy 'Billed', whereas, it was not at all possible to 'Bill' more energy than is permissible on sanctioned load for the flat rate agriculture consumers and that there are

large number of stopped; defective and unread meters in the system of the Discoms for which the energy might be assessed but not billed for the actual consumption. This is evident from the huge difference (lower) of the realized per unit revenue to the estimated per unit realization by the State Commission, the calculations presented before the State Commission, which calculation had been completely ignored in the review order.

- (e) that the main tariff order, dated 8.8.2012, of the State Commission, is erroneous in equating the AT&T losses to the so called T&D losses. The consequence of this erroneous decision is the projection of lower energy requirement (considering lesser losses than the actual AT&C losses) than actually required. Every year, the Discoms are purchasing extra energy on short term basis on exorbitant rates.
- (f) that the main tariff order, dated 8.8.2012, is also defective on the State Commission's no action on non-compliance of Commission's directive on efficiency improvement measures, Commission is not taking note of willful wrong supply of data, Discoms' unwillingness of converting of Agriculture flat rate consumers in Agriculture metered category, violation of National Tariff Policy, Discoms' non-compliance of Commission's directive on voltage/category wise cost of supply and voltage wise loss calculation, Commission's specifying subsidized tariff on Rajasthan Government's assurance but without making provision of subsidy amount in State budget/Advance payment, etc.

6. Before proceeding further, we would like to briefly narrate below the facts detailed in this appeal memorandum by the Appellant:-

- 6.1 The appeal memo mentions the salient features of Indian Electricity Act, 2003, National Tariff Policy, RERC (Terms and Conditions for Determination of Tariff) Regulations, 2009 and

then Discoms' non-compliance of State Commission's Directive, Discoms' negligence on efficiency improvement and Discoms' non-submission of complete forms and correct data along with the aforesaid petitions including blame on the Discoms that the Discoms incorporated incorrect data on collection efficiency. Thereafter, this appeal memo mentions the facts about the State Commission's wrong linkage of AT&C losses with collection efficiency (without billing efficiency) and then the concept introduced by the Government of India on AT&C losses in 2003 stating that there is no relation between collection efficiency and AT&C losses without billing efficiency. The Discoms have more than a million meters, which are either stopped or defective or not read because of their height, which work out to be more than 10% of total consumers of the Discoms. The Discoms are showing energy sale to different consumer categories but with high rate of stopped, defective and unread meters making it clear that it is not the actual recorded and billed energy. Further, the Discoms are neither disclosing actual billed energy for different categories, the actual billed amount, the per unit billing rate, the difference between the per unit billing rate to the per unit estimated revenue for that particular category, nor the State Commission is demanding these data, even after the request of the objectors including the Appellant. The appeal memo further states that the State Commission's directive on conversion of flat-rate agriculture consumers remained unheeded for years together on name of public resistance. The Discoms are using this category to manipulate energy sale and showing even more than 100% of energy sale to flat-rate agriculture consumers. The position of commercial losses in agriculture metered consumers because of difference in per unit revenue realization and that should be based on energy approved and expected revenue by the State Commission. Further, the position of

commercial losses in domestic consumers, non-domestic consumers and the small industrial consumers, because of difference in per unit revenue realization and that should have been, based on energy approved and expected revenue by the State Commission.

6.2 The Appellant has imputed that State Commission has soft attitude on non-submitting of audited statement of accounts towards Discoms, which is against the Electricity Act, 2003 as the Discoms are not submitting the audited statement of accounts and the State Commission fulfilled its responsibility just by directing that the Discoms need to prepare their audited accounts in time and submit it along with petition for ARR/tariff determination in future. Even in the previous order, dated 8.9.2011, the State commission had directed Discoms to prepare their audited accounts in time and submit it along with petition for ARR/tariff determination in future. This persistent default in compliance of State commission's directive should have attracted provisions of section 24 of the Electricity Act, 2003. Section 24 of the Electricity Act, 2003 provides for suspension of distribution license and sale of utility.

6.3 The appeal memo further says that the State Commission further has soft attitude on government subsidy as provided under Section 65 of the Electricity Act, 2003. The State Commission is just writing that in case the subsidy is not received from the Government, the tariff determined by Commission would be applicable but the Commission has not examined how much the subsidy was to be paid and how much has actually been paid and how the tariff will be made applicable if subsidy is not paid or there is a short fall of subsidy paid. In the absence of such analysis and mechanism to recover the revenue based on short fall of subsidy, the burden is directly getting passed on to the general electricity

consumers as the State Commission has not calculated short payment of subsidy while calculating revenue gap.

6.4 In the appeal memo, the Appellant has made the following allegations against the State Commission:

- (a) that on the issue of energy audit, the State Commission repeating its old direction in the order, dated 8.8.2012, noted that Discoms should take energy audit seriously and directed the Discoms to segregate technical and commercial losses. After that the State Commission further directed the Discoms to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses. There is no seriousness on the energy audit issue by the Discoms as well as by the State Commission, which is detrimental to consumer interest.
- (b) that the State Commission repeating its old direction and further stated in its order, dated 8.9.2011, that Discoms should review their purchase and quality control mechanism but the desired improvement has not taken place. The State Commission is very casual by repeating that the Discoms should pay adequate attention in improving inventory management and quality control and to take adequate steps to address the metering and billing related issues.
- (c) that on the issue of voltage-wise cost of supply, the State Commission in its order, dated 8.8.2012, having noted the inability of the Discoms to calculate voltage-wise cost of supply directed them to explain the reasons for the same and indicate a time frame within which this work would be completed.

- (d) that the State Commission is soft on non-conversion of flat rate agriculture consumers and further soft on mounting arrears

7. We have heard Mr. Pradeep Misra, the learned counsel appointed as Amicus Curiae at the request of the Appellant/Shri D.P. Chirania, Mr. Raj Kumar Mehta, learned counsel for the Respondent No.1, Mr. Bipin Gupta, learned counsel for Respondent No.2 to 4. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions.

8. The main prayers in the appeal, as sought by the Appellant, are:

- (a) to issue directions to the State Commission to not accept any future ARR and/or Retail Tariff revision petition from the Discoms without complete data and the audited accounts.
- (b) to direct the State Commission to take action against the Discoms on non-compliance of the directives of the State Commission and not achieving the specified performance parameters, relating to efficiency improvement, energy audit, voltage-wise cost of supply, conversion of flat-rated agricultural consumers to agricultural category and AT&C loss reduction and ensuring such compliance in future.
- (c) to disallow extra energy purchased by the Discoms without approval of the State Commission.
- (d) to direct the State Commission for reworking out of past 'True-up' petitions, and the pending 'True-up' petitions of the Discoms considering correct AT&C losses.

9. The following contentions have been made by the Appellant in support of his prayers made in the instant Appeal:

- (a) that the Discoms i.e. Respondent No. 2 to 4, in the said tariff petitions filed by them for FY 2012-13, have not projected any AT&C losses but only mentioned T&D losses.
- (b) that the energy sales are being shown higher by manipulation by the Discoms. If actual losses are more than approved, in future to cover up the losses, the Discoms have to get more power namely short term power purchase.
- (c) that as per the audited data for the FY 2010-11, submitted by the Respondent Nos. 2 to 4, there were discrepancies in the data as quantum of power sold has increased, but the quantum of revenue realized has decreased, which means that there were commercial losses.
- (d) that AT&C loss is the difference in energy input and energy for which revenue is realized. It differs from T&D losses. T&D losses take into account only T&D system. The AT&C losses are derived from the following formula:

$$\text{AT\&C Loss(\%)} = \frac{(\text{Energy Input} - \text{Energy Realized})}{\text{Energy Input}} \times 100$$

AT&C loss are calculated by subtracting the energy realized from the energy input, where energy realized should be equal to the product the energy billed and collection efficiency (collection efficiency being the ratio of amount collected to the amount billed).

Energy Realized = Energy Billed x Collection Efficiency
 Collection Efficiency (%) = [Amount Realized / Amount Billed] x 100

Or

AT&C Losses = [1 - (Billing Efficiency x Collection Efficiency)] x 100

Where,

Billing Efficiency = Energy billed/Energy Purchased

Collection Efficiency = Amount realized/Amount Billed

- (e) that the Discoms have not placed data before State Commission regarding energy billed and only given the figures of energy sold

from which the correct AT&C cannot be determined. The State Commission has erred in relying upon the data submitted by the Discoms. Thus, there is no data how much Discoms have billed. The Discoms had supplied more energy where the collection efficiency is less.

- (f) that the State Commission has fixed the norms for billing of energy to be supplied to unmetered agricultural connections. The Discoms were also directed to place the meters on unmetered supply. The State Commission has fixed 1945 units per KW/PY for unmetered supply. The unmetered connections have to be reduced gradually.
- (g) that the State Commission, in its order, dated 6.6.2013, has held that the Discoms had not taken any steps in respect of direction to prepare an action plan along with methodology and time frame for implementation of energy audit and segregation of technical and commercial losses.
- (h) that Respondent Nos. 2 to 4/Discoms have placed the meter on the body of transformers making it difficult to take the readings from that meter. Hence, the distribution licensee instead of taking the billed energy, has submitted the data on the basis of assumption and thus the per unit rate, as approved by the State Commission, could not be realized giving artificial losses.
- (i) that in reply to the objection raised on behalf of the consumers, the reply of the Discoms was that they are trying their level best to compute AT&C losses and as described in the petition, a project engaging DT wise metering for computing energy audit and program for network analysis and distribution losses is going on under R-APDRP for urban areas (of 30,000 and more population). The analysis for segregation of losses is, therefore, expected to give results by end of FY 2013-14.

- (j) that the State Commission, in the impugned order, directed the Distribution Licensees to submit the methodology for assumption of energy. However, even in the next tariff order, the said direction has not been complied with.
- (k) that the Distribution Licensees have not claimed 100% collection efficiency, however, the State Commission erred in treating T&D losses as AT&C losses assuming the collection efficiency as 100%.
- (l) that the Discoms have not placed audited accounts within time. The relevant observations of the State Commission in para 2.1.3 are as follows:

As per Regulation 12(2) of RERC (Terms and Conditions of Tariff) Regulations, 2009, the information for the previous year should be based on audited accounts and in case audited accounts for previous year are not available, audited accounts for the immediately preceding previous year should also be filed along with unaudited accounts for the previous year and the Discoms have filed provisional accounts for 2010-11 with audited accounts 2009-10. Discoms need to prepare their audited accounts in time and submit it along with petition for ARR/Tariff determination in future”

- (m) that the stakeholders had also pointed out mismatching in figures at various places in ARR petitions, then Discoms clarified many issues. The State Commission then directed the Discoms to take care and outdated or incomplete information should not get incorporated in the ARR petitions, while filing petitions.
- (n) that the Discoms should be asked to give data as transparency must be adopted in giving data. Billed energy and billed amount should be given. Weighted average of collection charges should also be given by the Discoms.
- (o) that Discoms submitted details of category-wise energy approved for FY 2010-11, the estimated revenue for such

approved category, the actual energy sold and actual revenue they realized.

- (p) that the stated T&D loss disclosed by the Discoms did not represent the correct position of the distribution losses in the system of Discoms, as such cannot make base.
- (q) that the energy sold figures are being manipulated by the Discoms and, therefore, actual energy realized should be back calculated from the actual revenue realized figures.
- (r) that the target set for the distribution losses is for the AT&C losses and that the actual AT&C of the year 2010-11 (the base year for which data were provided in compliance of section 113 of RERC Tariff Regulation) are much more than the so called T&D losses.
- (s) that in the past, the collection efficiency of any of the Discoms never assumed as 100% and as such no projection as 100% can be considered under section 113 of the State Tariff Regulations. Since, the billed amount of each category is not the same, the weighted average has to be taken if overall collection efficiency is to be calculated based on category-wise collection efficiency. The Discoms have not disclosed the actual billed energy and the actual billed amount. Hence, the formula of back calculation of the energy realized from the figures of actual energy realized should be applied.
- (t) that if the correct requirement is assessed at the beginning, then the purchase can be planned on long term basis, avoiding significant short term purchases at higher costs.

10. **Per contra**, the learned counsel for the Respondents/Distribution Licensees have made the following submissions:

- (a) that determination of ARR requires assessment of energy sales as well as cost of various elements like power purchase cost, O&M expenses, interest cost and depreciation, etc.
- (b) that the State Commission, in its order, dated 8.8.2012, had taken the T&D losses and as per the judgement of this Appellate Tribunal, dated 11.8.2011, in the matter of M/s. Faridabad Industries Association in Appeal No. 204 of 2010, wherein this Appellate Tribunal held as under:

“7.13 As far as AT&C losses are concerned, we notice that the data for the same has not been furnished by the Respondents. Though, AT&C loss indicates the performance and collection efficiency of the distribution licensee, it is not a pre-requisite for determination of the ARR and tariff of the licensee. For ARR and tariff of the licensee, we require the distribution losses. The State Commission has determined the ARR with benchmark distribution losses of 23%. Thus, we hold that on account of deficiency in determination of AT&C loss, the ARR and tariff determination does not become invalid.”

- (c) that It is clear from the judgment, dated 11.8.2011, of this Appellate Tribunal that for the purpose of ARR only T&D losses are required and not AT&C losses.
- (d) that the State Commission in its review order, dated 24.12.2012, has clarified each and everything after a detailed discussion.
- (e) that for ARR, actual sales are required and disclosure of billed energy is not required. Actual sales are taken from the computer data of billed energy. The billing work has been given to different computer agencies and the said computer agency gives the year-wise computerized data for the purpose of actual sales on the basis of billed energy. Thus, the actual sale is the billed energy. Thus, the State Commission has committed no illegality in determining the impugned ARR.

- (f) that short term sources power is being controlled by the State Commission and bilateral/ trading electricity of ARR is 1856 million units of total and if the percentage is taken of the total i.e. 51657, then it would amount to only 3% of the total energy requirement. Thus, the apprehension of the Appellant in this regard is baseless. The actual sales, which have been shown by the Appellant are actual billed energy and the data of which is based on the private billing agency, who issues the bills through computer mechanism and that data is made available to the Discom as billed energy, which is actual sales.

11. Mr. R.K. Mehta, learned counsel appearing for the State Commission/Respondent No.1, has made the following submissions:

- (i) that in para 2.2.3 of the impugned order, dated 8.8.2012, the Commission has observed that Discoms should take energy audit seriously and directed the Discoms to segregate technical and commercial losses. The Commission also directed the Discoms to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses. Since then the Commission has been constantly pursuing this matter.
- (ii) that the Commission further in its order, dated 6.6.2013, observed that Discoms have not taken energy audit seriously and instead of preparing an action plant, Discoms had simply indicated factual position in the matter.
- (iii) that, as a result of constant monitoring by the Commission, the Discoms have initiated the process namely; a project enabling DT metering for computing energy audit and programme for net work analysis and distribution losses is going on under RADPRP for urban areas of 30000 or more population. The exact technical losses at various voltage level would be possible only after the completion of metering at the incoming side of all

the sub-stations. The analysis for segregation of losses is expected to come after the installation of DT metering and metering on the incomer side of all the 33/11 KV sub-station.

- (iv) that, to accelerate the process further, M&P wing along with Revenue wing has been made agency for carrying out activities pertaining to implementation of energy audit & segregation of technical & commercial losses. The task of energy auditing has been awarded to a consultant.
- (v) that regarding correctness of data supplied by Discoms, the figures of energy sales, losses and revenue are subjected to true up of ARR by the State Commission. Discrepancies in the figures of sales and losses are taken care at the time of true-up.
- (vi) that, while allowing ARR and tariff, the State Commission, invariably fixes the target for reduction in losses. In case, the Discoms are not able to meet the target fixed by the State Commission, the losses are disallowed during true-up exercise, in accordance with the provisions of RERC (Terms and Conditions of Tariff) Regulations.

12. **Our consideration and conclusion:**

- 12.1 The Distribution Licensee filed the aforesaid petition for determination of Annual Revenue Requirement (ARR), Wheeling Charges & revision of Retail Supply Tariff for FY 2012-13 for the Respondents/Distribution Licensees. The learned State Commission, vide impugned order, dated 8.8.2012, disposed of the said petition. The impugned order, dated 8.8.2012 of the State Commission is under challenge before us in the present Appeal. Hence, we confine to the legality of the impugned order, dated 8.8.2012. The Appellant, who is a consumer himself and Ex-employee of the Rajasthan Electricity Board, has tried to challenge the findings recorded by the State Commission in the Review

Order, dated 24.12.2012, in the Review Petition No. RERC/342/2012. The learned State Commission, while elaborating contention of the Appellant and, points raised in the review petition, after detailed discussions, dealing with every point raised by the Appellant, dismissed the review petition vide Review Order, dated 24.12.2012. Since, the present Appeal is against the main tariff order, dated 8.8.2012, we do not find it proper to go into the correctness of the review order, dated 24.12.2012.

- 12.2 We have considered the allegations and facts mentioned in the Appeal Memorandum and also the contentions raised by Mr. Chirania, who has argued in-person before us at length by filing repeated written submissions/notes of arguments and also gone through the contentions raised by Mr. Pradeep Misra, the learned Amicus Curiae appointed on the request of the Appellant.
- 12.3 As stated above, the main prayer of the Appellant in the instant Appeal is to issue directions to the State Commission to not to accept any future ARR and/or retail tariff revision petition from the Distribution Licensee without complete data and the audited accounts. Further, prayer of the Appellant is that the State Commission be directed to take action against the Distribution Licensees, who are Respondent Nos. 2 to 5 herein, for non-compliance of the directives of the State Commission's earlier order and for non-achieving the specified performance parameters relating to efficiency improvement, energy audit, voltage-wise cost of supply, etc. and ensuring such compliance in future.
- 12.4 For considering the main relief sought by the Appellant in this Appeal, there is no need to go into the merit of the contentions and counter contentions raised by the rival parties. We have in para 12.1 of this judgment, considered the stand taken by the State Commission before us. We believe in the submissions and the stand taken by the State Commission through their counsel Mr. R.K. Mehta.

12.5 The learned State Commission, in para 2.2.3 of the impugned order, dated 8.8.2012, has clearly observed that Discoms should take energy audit seriously and the State Commission directed the Discoms to segregate technical and commercial losses and to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses. The State Commission in its order, dated 6.6.2013, also observed that Discoms have not taken energy audit seriously and instead of preparing an action plan, the Discoms had simply indicated factual position in the matter. It has further been submitted on behalf of the State Commission that as a result of constant monitoring by the Commission, the Discoms have initiated the process namely; a project enabling DT metering for computing energy audit and programme for net work analysis and distribution losses is going on under RAPDRP for urban areas of 30000 or more population in the State. The exact technical losses at various voltage level would be possible only after the completion of metering at the incoming side of all the sub-stations. The analysis for segregation of losses is expected to come after the installation of DT metering and metering on the incoming side of all the 33/11 KV sub-stations. It has further been submitted by the State Commission that in order to accelerate the process further, M&P wing along with Revenue wing has been made agency for carrying out activities pertaining to implementation of energy audit & segregation of technical & commercial losses and the task of energy auditing has been awarded to a consultant.

12.6 Merely making submissions by the State Commission is not sufficient for the purpose of this Appeal. If the Commission passes some order, it is duty bound to get the same order executed and implemented in letter and spirit by all the concerned like power generator or the distribution licensee or consumer, etc. The State Commission should take the implementation and compliance of its earlier orders seriously without allowing any one

to disobey the same, otherwise the orders passed by any Electricity Regulatory Commission would have no legal efficacy leaving any one to comply it or not to comply with it. No one should at all be allowed to make non-compliance of any of the orders passed by the State Commission, otherwise, that would create indiscipline and that would further encourage the others who are complying with the same order in letter and spirit not to obey the same.

12.7 In the instant Appeal, as we have stated above, the Appellant only is seeking a direction to the State Commission to not to accept any future ARR and/or retail tariff revision petition from the Distribution Licensee without having complete data and the audited accounts accompanied with the petition. We think that this submission has legal force and the same should be accepted. Therefore, we find it our duty to direct the State Commission not to accept any ARR or retail tariff revision petition from any of the Distribution Licensees in the State without complete data and audited accounts because there should after all be a transparency in the same. The Discoms cannot be allowed to flout this candid and genuine demand of the Appellant. If the State Commission, in the impugned order, dated 8.8.2012, had observed that Discoms should take energy audit seriously and directed them to segregate technical and commercial losses and to come out with an action plan for implementation of energy audit and segregation of technical and commercial losses, it was still bounden duty of the State Commission to get the said direction implemented and complied with in letter and spirit and there should be no leniency by the State Commission in relaxing or allowing any Distribution Licensee to flout the same directions.

12.8 The learned State Commission, even after making the observation and giving directions in para 2.3 of the impugned order, dated 8.8.2012, and without caring to carry out the said directions in its

further order, dated 6.6.2013, again observed that Discoms have not taken energy audit seriously and instead of preparing an action plan, the Discoms have simply indicated the factual position in the matter. In these circumstances, the State Commission is not expected to further show extra ordinary leniency towards Distribution Licensees, Respondent Nos. 2 to 5 herein, by allowing them disobedience of the repeated directions of the State Commission. There should be an active and proper action on record to justify the non-compliance of the aforesaid directions in the aforesaid orders of the State Commission and merely making the observations in its orders would not serve the purpose.

- 12.9 The main contention of the Appellant is that the Discoms continuously manipulate the projection of distribution losses to hide their inefficiencies and project lesser energy requirement at initial stage and, thereafter, they purchase extra power on higher cost which in turn raises the revenue gap. To bridge this revenue gap, Discoms borrow loans and load the interest on the consumers to increase the next tariff. The poor performance of Discoms should not be loaded on the consumers by way of increase in retail tariff and the losses, incurred due to inefficiency of the Discoms and the interest on loan taken to bridge the revenue gap, should be disallowed.
- 12.10 The other contention of the Appellant is that the Discoms are showing energy sale to different consumer categories but with high rate of stopped, defective and unread meters showing that it is not the actual recorded and billed energy.
- 12.11 The main thrust of the arguments of the Appellant is that even in the previous order, dated 8.9.2011, the State commission had directed the Discoms to prepare their audited accounts in time and submit it along with petition for ARR/tariff determination in future and persistent default in compliance of State Commission's

directive should have attracted provisions of section 24 of the Electricity Act, 2003, which provides for suspension of distribution license and sale of utility of the Distribution Licensees, Respondent Nos. 2 to 4 herein.

12.12 According to the Appellant, the AT&C loss is the difference in energy input and energy for which revenue is realized divided by energy input. It differs from T&D losses. T&D losses take into account only T&D system whereas the AT&C losses are derived from the formula prescribed in the State Commission's Regulations. The Discoms have not placed data before State Commission regarding energy billed and only given the figures of energy sold from which the correct AT&C cannot be determined.

12.13 One more contention of the Appellant is that the Distribution Licensees have not claimed 100% collection efficiency in their impugned petitions, but the State Commission treated the T&D losses as AT&C losses wrongly assuming the collection efficiency as 100%.

12.14 The demand of the Appellant in the instant Appeal is that the Discoms should be asked to give data as transparency must be adopted in giving data. Billed energy and billed amount and amount realized should be given by the Discoms. Further, the T&D losses disclosed by the Discoms do not represent the correct position of the distribution losses in the system of the Discoms and as such the same cannot make the base as there is no proper energy audit.

13. One of the prayers of the Appellant to disallow extra energy purchased by the Discoms without approval of the State Commission is also liable to be allowed.

14. We do not find it proper to direct the State Commission at the moment for reworking out of the past 'True-up' petitions, and the pending 'True-up' petitions of the Discoms considering correct AT&C losses.

15. In view of the above discussions and considering the nature of the prayers made by the Appellant in the Appeal Memorandum, we direct the State Commission not to accept any future ARR petition or retail tariff revision petition from the Discoms without complete data and audited accounts. We further direct the State Commission to take action against the Discoms for non-compliance of the aforesaid directives of the State Commission considering the provisions of Section 24 of the Electricity Act, 2003 or other relevant provisions of law and regulations as the State Commission deems fit and proper. With these directions, the instant appeal being Appeal No. 16 of 2014 is accordingly disposed-of without any order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 18TH DAY OF MAY, 2015.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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