

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 100 of 2012

Dated: 30th April, 2013

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

Haryana Vidyut Prasaran Nigam Limited
Shakti Bhawan
Sector 6,
Panchkula-134 109
Haryana

...Appellant(s)

Versus

- 1. Haryana Electricity Regulatory Commission**
Bays No.33-36, Sector-4,
Panchkula (Haryana)
- 2. Uttar Haryana Bijli Vitran Nigam Limited**
Vidyut Sadan, Plot No.C-16,
Sector-6,
Panchkula -134 109
(Haryana)

**3. Dakshin Haryana Bijli Vitran Nigam Ltd.
Vidyut Nagar,
Hisar-125 005
Haryana**

...Respondent(s)

**Counsel for Appellant(s) : Mr. Neeraj Jain, Sr.Adv
Mr. Pradeep Dahiya
Mr. Sanjeev Aggarwal**

**Counsel for the Respondent(s): Mr. Anuraj Sharma
Ms. Shikha Ohri for R-1**

JUDGMENT

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Haryana Vidyut Prasaran Nigam Limited is the Appellant herein.
2. As against the order dated 29.3.2012, passed by the Haryana State Commission in the application filed by the Appellant in the ARR disallowing certain claims, the Appellant has presented this Appeal.

3. The short facts are as follows:

a) The Appellant is having a Transmission Business in the State of Haryana. On 7.12.2011, the Appellant submitted the ARR for its transmission business for the FY 2012-13. The ARR was accompanied with Transmission Tariff Application for its Transmission Business. The Appellant projected an Annual Revenue Requirement (ARR) of Rs.13,413.08 millions for the Financial Year 2012-13. After entertaining the Petition, the State Commission directed the Appellant to furnish the additional information required for carrying out detailed analysis.

b) Accordingly, on 1.2.2012, the Appellant filed its statement along with the supporting and additional data for the Financial Year 2012-13. Thereupon, public notices were issued informing the general public about the salient features of their filing, availability to the necessary documents and procedure for filing objections.

c) In response to the public notices issued, Uttar Haryana Vijli Vitran Nigam Limited and Dakshin Haryana Vijli Vitran Nigam Limited submitted their comments. Then, a date was fixed for public hearing.

d) Accordingly, public hearing was held on 13.2.2012 by the State Commission for consideration of the objection and comments to ARR filed by the Appellant. In the public hearing, the stake holders participated and made their submissions.

e) After considering the materials available on record, the Haryana State Commission passed the impugned order on 29.3.2012 approving the ARR of the Appellant to the tune of Rs.6305.99 millions in respect of its transmission business as against the Appellant's claim of Rs.13,413.08 millions. Thus, the State Commission, in the impugned order dated 29.3.2012 denied some of the claims made by the Appellant and allowed some of the reliefs by imposing certain conditions.

- f) Challenging the denial of some of the claims, the Appellant has filed this Appeal.
4. The Appellant is aggrieved from the non allowance/less allowance of the different heads of the ARR which can be summarized as under:
- a) Depreciation
 - b) Return on Equity & Income Tax thereon
 - c) Interest on borrowings for Capital Works in progress.
 - d) Revenue from Short-term Open Access customers (To redeem the bonds with the amount of revenue from short term open access charges thus allowing less interest on pension bonds).
 - e) Employees Cost
 - f) Debt redemption obligation
 - g) Fringe Benefit Tax
5. According to the Appellant, two issues namely Depreciation and Rate of Return on Equity have already been decided by this Tribunal in favour of the Appellant in the judgment rendered in Appeal No.102 of 2011 dated 18.4.2012 and in

regard to the other two issues, namely Interest on Capital Works and Income from Short Term Open Access Charges, it has been decided by this Tribunal as against the Appellant.

6. Now let us deal with the submissions on these issues made by the learned Counsel for the Appellant as well as the learned Counsel for the State Commission.
7. Let us first take the issue of **Depreciation**.
8. On this issue, the State Commission allowed depreciation of Rs.1627.10 million as against the claim of the Appellant amounting to Rs.2249.06 millions. According to the Appellant, the State Commission while working out the Depreciation for the Financial Year 2012-13, has not allowed the depreciation on the addition of fixed assets to be made during the Financial Year 2012-13. It is further contended that this Tribunal has already decided this issue and directed the State Commission to follow its tariff Regulations including provisions for Advance Against Depreciation (AAD) and on that basis, the Appellant has worked out the depreciation as per the State Commission's Regulations, 2008 and however, the State Commission has not followed those Regulations

and therefore, the Commission may be directed to allow an amount of Rs.1392.81 million towards depreciation for the Financial Year 2012-13 and an amount of Rs.1200.37 million towards Advance against Depreciation for the Financial Year 2012-13 in compliance with its own Regulations, 2008 and as per the judgment of this Tribunal dated 18.4.2012 in Appeal No.102 of 2011, as against the amount of Rs.1627.10 million allowed by the State Commission under Depreciation head.

9. On this issue, it is pointed out by the learned Counsel for the State Commission that following the directions given by this Tribunal in Appeal No.102 of 2011 in respect of Financial Year 2010-11 the State Commission has already passed consequential orders on 02.11.2012 with respect to Return on Equity and Depreciation for the Financial Year 2010-11. In view of the above, the State Commission is directed to determine depreciation and advance against depreciation for the Financial Year 2012-13 as per the findings in the Tribunal's judgment in Appeal No.102 of 2011 dated 18.4.2012.

10. The next issue is in respect of **Return on Equity and Income Tax.**
11. In respect of this issue, it has been pointed out by the learned Counsel for the Appellant that the State Commission has not allowed Return on Equity amounting to Rs.2551.89 million @ 15.5% on an opening balance (Equity) of Rs.16463.81 million and the income tax thereon. The grievance of the Appellant is that the State Commission has not followed its own Regulations. Though in the written submissions, the decision of the State Commissions on this issue has been defended, now it has been pointed out through the additional written submissions filed by the State Commission that after filing the Appeal, the State Commission has implemented the judgment of this Tribunal in Appeal No.102 of 2011 and passed consequential orders with respect to the Return on Equity for the Financial Year 2010-11. In view of the above, the State Commission is directed to pass consequential orders for the Financial Year 2012-13 as per the directions of the Tribunal in Appeal No.102 of 2011.

12. The next issue is **Interest on borrowings for capital works in progress.**
13. According to the Appellant, the State Commission reduced an amount of Rs.1542.41 millions towards interest capitalization from the total interest and the Appellant in fact, is entitled for the interest on CAPEX loan of Rs.1234.36 millions allowed by the State Commission.
14. On this issue, elaborate arguments have been advanced by the Appellant. However, it is pointed out by the learned Counsel for the State Commission that this issue has already been decided by this Tribunal as against the Appellant while deciding the Appeal No.102 of 2011.
15. The learned Counsel for the State Commission has pointed out the findings on this issue in the impugned order which are as follows:

“2.2.1 Capex & Interest on borrowings

Keeping in view the capital expenditure approved by the Commission, as discussed in para 2.7, the borrowings for capital expenditure are estimated to Rs. 6440.58 million for FY 2011-12 and Rs

5025.67 million for FY 2012-13 respectively and interest is calculated accordingly.

The interest on borrowings related to generation business of BBMB (Rs. 196.31 million) and SLDC business (Rs. 21.04 million) are excluded from interest cost for transmission business. The repayment of loans for calculating interest in the ARR has been considered by the Commission as proposed by the petitioner. The Commission has already allowed funds for repayment of market committee loans in FY 2008-09 hence interest cost amounting to Rs. 74.2 million on these borrowings is excluded. In case the petitioner is able to get the interest accrued on this loan waived off, as claimed by them, the same will be adjusted in the subsequent ARR.

The licensee is directed to keep the Commission informed of the latest status on this issue.

The total interest cost for transmission business is further reduced by the amount of interest capitalized i.e. Rs. 1542.41 million as against Rs.1213.60 million projected by the petitioner. On the new capital works to be started during 2012-13 interest is capitalized for a period of six months only as the loans are assumed to be received evenly during the entire year.

In case the licensee is able to provide a detailed month wise capitalization schedule, the Commission will allow the calculation of IDC on prorata basis as proposed by the petitioner. Till then the Commission is not inclined to change the date of commissioning of capital works and make it different for calculation of IDC and for depreciation as stated earlier.

In view of the above, the Commission allows Rs. 1234.36 million towards interest on borrowings, net of capitalization, for capital works for FY 2012-13 as worked out in the Table 2.5.

Interest cost on borrowings for Capital works for SLDC has been calculated on the amount of Rs. 21.04 million at interest rate as proposed by HVPNL”.

16. It is noticed that in the impugned order, the State Commission has clarified that in case, the Appellant is able to provide a detailed month wise capitalization schedule, the State Commission will allow the calculation of interest during construction on prorata basis. According to the State Commission, till such details are provided, it may not be proper for the State Commission to change the date of commissioning of the capital works and adopt differential

treatment for calculation of interest during construction and for depreciation. The stand taken by the State Commission is perfectly justified. Hence, we do not find any merit in the contention of the Appellant on this issue.

17. The next issue would relate to **Interest on Pension Bonds**.
18. According to the Appellant, the State Commission has allowed the interest on pension bonds at Rs.342.61 millions as against Rs.673 million proposed by the Appellant towards interest on pension bonds.
19. It is pointed out by the learned counsel for the State Commission that this issue regarding interest on pension bonds has already been decided in Appeal No.102 of 2011 and accordingly, the State Commission has reduced from the pension bonds balance, 25% of the revenue from short term open access consumers for the Financial Year 2008-09 and the gains from sale of fixed assets.
20. As pointed out by the State Commission, this Tribunal by the judgment dated 18.4.2012 upheld the decision of the State Commission passed on 16.4.2010 and 30.11.2010. The

relevant portion of the findings in the impugned order is as follows:

“In order to achieve the objective of normalizing the transmission cost by minimizing the avoidable burden on consumers of Haryana, the Commission in its order dated 16.4.2010 on the ARR of transmission and SLDC business for FY 2010-11 had adjusted profit of Rs. 605.97 million on sale of land that had accrued to HVPNL during FY 2008-09 and revenue generated as a consequence of the order of the Hon’ble Appellate Tribunal for Electricity in Case No. 27 of 2007, while calculating interest on pension fund bonds to be recovered in the ARR. HVPNL in the hearing objected to the adjustment of profit generated from sale of land and revenue generated as a consequence of the order of the Hon’ble Appellate Tribunal for Electricity in case no. 27 of 2007 for retiring of pension bonds and submitted that such revenues may be allowed to be used for payment of other loans by HVPNL.

The Commission observes from the submissions of the petitioner that they are in agreement with the approach adopted by the Commission i.e. the revenue generated through sources other than transmission tariff and charges can be utilized for

retirement of debt. The only point of disagreement is on the nature of loan that is to be retired. On this issue, the Commission would like to point out that the payment of all other liabilities is covered from one source or the other e.g. liabilities on account of borrowings for capital works are met from depreciation, liabilities on account of borrowings for working capital are covered either through ARR or through penalty levied on distribution licensees for late payment of transmission tariff and charges.

Consequently the liabilities on account of pension bonds and PF bonds alone remain to be taken care of from revenue from generation assets, distribution assets, return on equity and revenues from any other sources generated by HVPNL. Interest on these bonds is allowed to be recovered in the ARR by way of transmission tariff in addition to interest on borrowings for capital works and for working capital which, in opinion of the Commission, is in total contravention of cost causation principle of ARR and accounting principles as no benefit is accruing to the consumers of Haryana for the cost incurred by the Pension and PF bonds. The Commission is of the view that the additional revenue accruing to the licensee from the above mentioned sources ought

to be utilized to reduce the interest cost burden on the consumers, who had not, in any manner whatsoever, caused the expenditure namely pension bonds and are not going to derive any benefit from such expenditure. In case the liabilities still remains unmet, the petitioner, being a Government company, should approach the State government for assistance. In redemption of these liabilities the Commission cannot allow funds for redemption of these bonds out of the ARR of the transmission business in view of the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 58 and 59 of 2007.

In light of the above discussions, the Commission is of the considered view that it will be appropriate to adjust all possible accruals towards reduction of interest cost of these bonds so as to reduce the burden on the electricity consumers. Thus, revenue from short term open access consumers and profit from sale of transmission assets are adjusted against pension bonds so that the interest burden is reduced to that extent. The revenue from short term open access arises only as a consequence of the transmission business. Also, the expenditure base as per the audited accounts used for estimating the allowable expenses of the transmission business for ensuing

year and consequently the transmission tariff include expenses incurred by HVPNL on account of monitoring and control with respect to short term open access related transactions also. In case the revenue earned from sale of transmission assets is not used to partly redeem these liabilities then the same would have been used to reduce the transmission cost because the Distribution licensees have borne the cost of erecting and maintenance of these assets and the revenue from sale of these assets rightly belong to them.

Consequently, the interest on pension bonds is allowed at Rs. 342.61 million, as against Rs. 673 million proposed by HVPNL, calculated on average balance of pension bonds during FY 2012-13 @ 10% p.a”.

21. In view of these findings rendered by the State Commission on the strength of the earlier orders confirmed by this Tribunal, we do not find any merit in the contention of the Appellant on this issue. Accordingly, the same is rejected.
22. The next issue is **Employees Cost.**

23. According to the Appellant, the State Commission while computing the employees cost for the FY 2012-13 has allowed terminal benefits of only Rs.962.53 millions as against the claim of the Appellant amounting to Rs.1570.09 millions. It is contended that the Appellant in his ARR application for the Financial Year 2012-13 has claimed an amount of Rs.1570.09 million towards terminal benefits forming part of the employee's cost based on the actuarial valuation on estimated basis after adjustment of net amount of pensionary liability payable from PSEB/UT/Himachal. It is further contended that Appellant that it has mentioned in the ARR application itself that the Appellant has no objection if the State Commission while allowing the employee's cost including the pension liability as claimed by the Appellant may pass suitable order to true up the same based on the audited accounts of the Appellant for the Financial Year 2012-13 but, this was not taken into consideration by the State Commission.

24. Let us refer to the findings of the State Commission on this issue:

2.1.1 Employee's Cost

Employees' cost includes cost incurred for the working employees as well as the retirees. The cost of working employees comprises of salary, dearness allowance and other allowances such as HRA, CEA, LTC, medical reimbursement, etc. In the case of retired employees and those who would be retiring during the financial year under consideration, HVPNL has to discharge its liability in respect of payment of pension, gratuity, leave encashment & other benefits / payments as admissible to the employees under the service rules. The Commission observes that as per audited accounts of HVPNL for FY 2010-11, the employees cost accounts for over 30% of the total transmission expenditure.

A perusal of the comparative cost break – up of transmission business as presented in the table above reveals that the employee cost in Haryana is higher as compared to that of other Transmission Utilities in the country. Some aberrations in the costs are understandable due to the differences in the voltage level to which the transmission system extends as compared to that of HVPNL whose transmission system comprises of 66 KV and above. However, significant variations are a matter of concern. HVPNL is advised to take a close look at its manpower planning / budgeting with a view to rationalize the cost, outsource wherever possible and make optimum use of its available manpower resources without resorting to new recruitments thereby increasing the number of employees and corresponding costs.

The Commission has examined the calculation submitted by HVPNL for projecting the employee cost and mostly agrees with the same except for the terminal benefits. The Commission is in the process of reconciling the allocation of liability between the three utilities. As the data is voluminous it would take some more time. However, for the purpose of the ARR calculations for FY 2012-13, the Commission has allowed the estimation on account of "current service cost" amounting to Rs. 263.016 million as per audited accounts for FY 2010-11. The Commission also allows Rs. 699.51 million as interest cost on the unfunded portion of Pension liability outstanding as on 31.3.2011 amounting to Rs. 8229.532 million. Having said so, the Commission would like to add a word of caution regarding management of funds by HVPNL pension trust. The Commission believes that a part of the increase in pension liabilities is also due to lower returns earned by the funds managed by the trust. As against the discounting factor used for actuarial valuation of liabilities, the interest earned by pension fund is much less. Resultantly the gap in the funded portion increases. The distribution licensees are borrowing funds @ 13% p.a. for contribution to the fund, while a lower return of 6% as earned by the pension fund in FY 2010-11 would lead to an increase of liability by over Rs.2000 million by way of interest loss only which seems to be against prudent financial management practices.

The Commission vide its order on the ARR for FY 2010-11 had allowed HVPNL to recover Rs. 103.60

million as contribution to New Pension Scheme for employees recruited after 1.1.2006. However, as per the audited accounts for FY 2010-11, the Commission observes that the actual contribution by HVPNL on this account is only Rs. 17 million. Therefore the Commission orders the adjustment of excess amount allowed in the ARR.

In view of the above discussions, the Commission approves the employee cost as proposed by the licensee except for disallowance of Rs. 86.60 million (Rs. 103.60 million – Rs. 17 million) and lower terminal benefit cost. Thus the amount approved by the Commission is Rs. 2842.74 million which includes employees cost of Rs. 43.90 million for SLDC. The computation of employee cost is provided in Table 2.3.

Table 2.3 Employees Cost for FY 2012013 (Rs. Millions)

<i>Particulars</i>	<i>HVPNL Proposal</i>	<i>HERC approval</i>
<i>Basic + DA</i>	<i>1732.00</i>	<i>1732.00</i>
<i>Other Allowances</i>	<i>296.66</i>	<i>296.66</i>
<i>Contract Employees</i>	<i>173.17</i>	<i>173.17</i>
<i>Contribution towards pension trust fund</i>	<i>1570.09</i>	<i>926.53</i>
<i>Contribution towards new pension scheme (NPS)</i>	<i>58.06</i>	<i>58.06</i>
<i>Less</i>		
<i>Disallowance for excess contribution to NPS allowed in the ARR for FY 2010-11</i>		<i>-86.60</i>
<i>Total Employees Cost</i>	<i>3829.98</i>	<i>3135.81</i>

<i>Employees Cost capitalized</i>	289.89	293.07
<i>Net Employee Cost Expensed</i>		
<i>*For SLDC Business</i>	43.90	43.90
<i>*For Transmission Business</i>	3496.19	2798.74

The Commission directs that the licensee shall not divert any subscription received from employees towards provident fund and new pension scheme to its business.

25. The crux of the finding on this issue, is as follows:

- a) The employee's cost in Haryana is higher than the other transmission utilities in the country. Therefore, the Appellant is advised to take a close look at its manpower planning/budgeting with a view to rationalize the cost and make optimum use of its manpower resources without resorting to new recruitments.
- b) The State Commission has examined the calculation submitted by the Appellant for projecting the employees cost. The Commission mostly agrees with the same except for the terminal benefits.

- c) The State Commission is in the process of reconciling the allocation of liability between the three utilities. As the data is voluminous, it would take some more time. However, for the purpose of the ARR calculations, the State Commission has allowed the estimation on account of current service cost as per the audited accounts for the FY 2010-11. That apart, the State Commission allows Rs.699.51 million as interest cost on the unfunded portion of Pension Liability outstanding to Rs.8229.532 million.
- d) The State Commission through its order on the ARR for the FY 2010-11 had allowed the Appellant to recover Rs.103.60 million as contribution to new pension scheme for the employees recruited after 1.1.2006. It is found that as per the audited accounts for the FY 2010-11, the actual contribution by the Appellant on this account is only Rs.17 million. Therefore, the employee's cost as proposed by the Appellant except for disallowance of Rs.86.60 million i.e. Rs.103.60

million – Rs.17 million and lower terminal benefit cost. Thus, the amount approved by the Commission is Rs.2842.74 million which includes the employees cost of Rs.43.90 million for SLDC.

e) While concluding the impugned order, the State Commission had cautioned the Appellant by directing the Appellant not to divert any subscription received from Employees cost towards PF and new pension scheme to its business.

26. As referred to in the impugned order, Employees Cost in Haryana is higher as compared to that of other Transmission Utilities in the country. The learned counsel for the State Commission has provided a table giving the details of the Employee's cost in other States compared to Haryana. The table is as follows:

State	Utility	Average Cost	Employees	O&M	Interest	Depreciation
Delhi	Delhi Transco	0.12	0.03	0.01	0.02	0.02
Haryana	HVPL	0.24	0.11	0.02	0.06	0.03
Uttarakhand	UT Transco	0.15	0.04	0.01	0.03	0.08
Andhra Pradesh	AP Transco	0.10	0.02	0.01	0.02	0.04
Karnataka	KPTCL	0.26	0.05	0.01	0.10	0.08
Gujarat	GETCO	0.17	0.05	0.02	0.04	0.05
Maharashtra	MSPTCL	0.14	0.04	0.03	0.02	0.03

27. The above table reveals as pointed out in the impugned order that the Employee's cost in Haryana is higher as compared to other Transmission Utilities in the country. On the basis of this, the State Commission observed in the impugned order that as per the audited accounts of the Appellant for the FY 2010-11, the employee's cost accounts were for over 30% of the total transmission expenditure.
28. While the State Commission has made detailed observations about the high employees' cost of HVPL, it has allowed all the expenses claimed by the Appellant except the contribution towards pension trust fund. In regard

to the terminal benefits, the State Commission has stated that the Commission is in the process of reconciling the allocation of liability between these utilities and since the data is voluminous, it would take some more time. However, for the ARR calculations for the FY 2012-13, estimation on account of current service account would be as per the audited accounts for the FY 2010-11. Thus, the State Commission has not considered the estimated terminal benefits liability as worked out by the accrual valuation for the FY 2012-13. The Appellant has also submitted that the interest earned on the Pension Trust was 8.99% during the Financial Year 2010-11 and not 6% as mentioned by the State Commission.

29. In view of the above, we direct the State Commission to reconsider the issue of terminal benefit in the True-Up of accounts for the FY 2012-13 and re-determine after considering the allocation of liability before the utilities and accrual valuation of audited accounts etc.
30. The next issue is **Debt redemption obligation.**

31. According to the Appellant, the State Commission has rejected its claim for allowing the amount of Rs.481.93 million towards Debt Redemption Obligation. The submissions made by the Appellant on this issue is as under:

“The State Commission for the Financial Year 2007-08, 2008-09, 2009-10 and 2010-11 allowed an amount of Rs.481.93 millions towards debt redemption obligation through the order dated 8.5.2007, 23.4.2008, 18.5.2009 and 16.4.2010. Keeping in line with these orders of the State Commission, the Appellant has claimed an amount of Rs.481.93 millions towards debt redemption obligation of PF bonds by claiming the same as expenditure in the ARR for the Financial Year 2012-13 under Special Appropriation Head but the same was rejected. The impugned order disallowing the said amount is completely contrary to the orders passed by the State Commission in the earlier years. For the year 2011-12, the State Commission had not allowed an amount of Rs.481.93 million towards redemption of bonds on similar

grounds but the same was rejected. Then, the Appellant had filed the Appeal before this Tribunal but the same was rejected on the ground of limitation. Therefore, the merits of the grounds of the Appellant were not considered by this Tribunal. Therefore, the Tribunal may consider the merits of these grounds and pass an order in favour of the Appellant.

32. We have heard the learned counsel appearing for the State Commission on this issue.
33. Let us first refer to the findings given by the State Commission on the issue of Debt redemption obligation which is as under:

2.4.4 Debt redemption obligation

The recovery of debt redemption amount in the earlier ARR's has been allowed to the licensee in the absence of any other means for the licensee to be able to redeem these debts being of a peculiar nature where assets formed out of these liabilities were not earning sufficient returns.

The above issue was raised by UHBVNL and DHBVNL in the objections filed by them against the ARR and

Tariff application of HVPNL for FY 2008-09. The Discoms had submitted that as per second transfer scheme enacted by the Govt. of Haryana “all obligation in respect of payment of pension and other retirement benefits including provident fund, leave encashment, commutation of pension, medical facilities, superannuation and gratuity to the personnel who have retired from services of HPVNL and/or the board on or prior to the effective date shall be discharged by HPVNL and neither transferee shall have any obligation with respect to such retired personnel. Corresponding assets were also available with HVPNL in the opening balance sheet equal to the amount of this liability. Hence, HVPNL cannot be allowed to recover the repayment of liabilities (debt redemption) as it would amount to double recovery especially when all the liabilities have already been matched by way of corresponding assets, out of which fixed assets are being recovered in the shape of depreciation and the current assets are being paid for by the Discoms”.

In its reply to the above issue the HVPNL had submitted that “it has issued PF & Pension Bonds against its liability. These bonds are due for redemption from FY 2016 onward. It is correct that the total liabilities assigned to each company were matched with the total assets allocated to it. HVPNL was given assets in the shape of investment in UHBVNL & DHBVNL on which HVPNL is not earning any income”.

The Commission while agreeing with the views of the Discoms that the valuation of liability as on the date of the transfer scheme provided for adequate amount of assets to fund the same, observed that “In the last 7 years the Commission has seen that there has been a substantial increase in the terminal benefits on actuarial valuation which does not support the valuation as on the date of transfer. It implies that the Consumers are being made to fund the increase in liability even though they have paid for the liability as on the date of transfer scheme by way of depreciation and interest and now return on equity and Advance Against Depreciation. At this stage to ask them to pay for the redemption of the same liability would, therefore, amount to double charge. The Commission would like to study the matter in depth and then pronounce its view on the same. Meanwhile any amount earned by way of sale of assets or utilization of assets for other business would be used for balancing the deficit arising in the Pension fund.”

The Commission observes that the licensee has to utilize revenues accruing from all sources and assets towards redemption of outstanding PF and pension bonds at the earliest and the same cannot be allowed to be recovered through ARR. The Commission is of the view that the redemption of PF and pension liabilities from part of return on equity of transmission

business and SLDC business and also by utilizing whatever profit it has earned from other businesses to gradually redeem these liabilities will be of help in augmenting cash flow of the petitioner . The impact of these liabilities will be primarily on the owner of Transmission utility i.e. the State Government who is also the rightful owner of these liabilities in terms of provisions of the unbundling scheme.

While hearing the review petition filed by HVPNL against Commission's order dated 16.4.2010, the Commission had directed HVPNL to provide any judgments or rules or regulations that supported re-payment of liability through ARR. HVPNL was unable to satisfy the Commission in this regard and in the filing for FY 2012-13 also, no such supporting documents have been provided.

In view of the above the Commission feels that some other method will have to be devised to redeem the pension and PF liabilities. It is seen that the licensee is earning sufficient revenue through its generation business, additional revenue from short-term open access customers and through return on equity from the transmission business. It has also earned substantial revenue from sale of certain generation assets and transmission assets. Hence it is only the distribution business which is financially stressed.

Thus it is not appropriate for HVPNL to recover the debt redemption amount from transmission tariff without adjusting its earnings from all assets as discussed earlier.

The Commission therefore, disallows recovery of Rs.481.93 million proposed by the licensee. This is also in the nature of capital repayment and does not conform to the Aggregate Revenue Requirement methodology of arriving at tariff that is currently in vogue in Haryana and elsewhere in the country.

This view has also been upheld by the Hon'ble Appellate Tribunal in its judgment dated 9.11.2010 in Appeal No. 58 and 59 of 2007. In the above mentioned appeal the Hon'ble Appellate Tribunal in its judgment has said that "for want of funds if loan is raised and such loan is to be discharged from out of earnings and loan amount cannot be allowed as pass through tariff".

The Commission further observes that as per the second transfer scheme. "all obligation in respect of payment of pension and other retirement benefits including provident fund, leave encashment, commutation of pension, medical facilities, superannuation and gratuity to the personnel who have retired from services of HPVNL and/or the board on or prior to the effective date shall be discharged by HPVNL and neither transferee shall have any

obligation with respect to such retired personnel.” Therefore asking the consumers to pay for these liabilities would tantamount to contravention of the act to a certain extent.

The petitioner may examine the reasons behind increase in the pension liability. For any increase in cost attributable to period prior to 14.8.1998 the petitioner may approach the State government for additional financial support under the relevant provision of the second transfer scheme along with the requisite funds or any other funding mechanism to redeem the pension and PF bonds in case the petitioner is unable to discharge these liabilities out of its income streams.

HVPNL, in its reply on the objection raised by UHBVNL & DHBVNL, vide memo no. 130/131/SE/RAU/F-100 dated 10.02.2012 has stated that the pension and PF assigned to HVPNL as per 2nd Transfer scheme notified by Govt. of Haryana in the year 1999 was peculiar type of liability which can be repaid only by recovering the same in the ARR as part of Transmission Tariff.

It is pertinent to mention here that at the time of transfer of assets & liability as per 2nd Transfer scheme notified by Govt. of Haryana, HVPNL was given an investment of Rs. 9842.60 million in Discoms i.e. UHBVNL & DHBVNL on which the company is not

earning any return. Even the C&AG of India in its supplementary audit on the accounts of petitioner for the FY 2009-10 & 2010-11 has made comments to write off the above investments because of erosion of equity capital of these companies due to huge accumulated losses. This has resulted in build-up of loans from commercial banks, the interest of which is disallowed by the Commission by allowing the interest on working capital loans on normative basis, thus leading to additional burden on HVPNL.

The Commission would like to be made aware of the relevant portion of the 2nd transfer scheme notified by the Govt. of Haryana in the year 1999 whereby it is stated that this liability can be repaid only by recovering the same in the ARR as part of transmission tariff.

Also, the Commission would like to be informed of the build-up of loans resulting from losses of the Distribution Licensee. The build-up must clearly demonstrate the relationship between the losses paid for by HVPNL and the loans from commercial banks. Unless both these supporting details are provided by the licensee, the Commission cannot take cognizance of the statement made by HVPNL as above.

34. The crux of the impugned findings is as under:

- a) The Appellant cannot be allowed to recover the repayment of liability i.e. debt redemption, as it would amount to double recovery when all the liabilities have already been matched by way of corresponding assets. Out of these assets, the fixed assets are being recovered in the shape of depreciation and the current assets are being paid for by the Distribution companies.

- b) In the last seven years, the Commission has seen that there has been a substantial increase in the terminal benefits on actuarial valuation as on the date of transfer. It implies that the consumers are being made to fund the increase in liability even though they have paid for liability as on the date of transfer scheme. At this stage, the consumers cannot be asked to pay for the redemption of the same liability since it would amount to double charge.

- c) The State Commission suggests that the licensee has to utilize the revenues accruing from all

sources and assets towards redemption of outstanding PF and pension bonds at the earliest. This cannot be allowed to be recovered through ARRs.

d) This view of the State Commission has already been upheld by this Tribunal in the judgment dated 9.11.2011 in Appeal No.58 and 59 of 2007. In the said judgment, this Tribunal has held that “for want of funds if loan is raised and such loan is to be discharged from out of earnings and loan amount cannot be allowed as pass through tariff”.

35. The learned Counsel for the State Commission has submitted that the disallowance of the recovery of Rs.481.93 millions proposed by the Appellant is in keeping with the principles up held by the judgment of this Tribunal in Appeal No.102 of 2011; that apart, this Tribunal has given the judgment in Appeal No.58 and 59 of 2007 as referred to in the impugned order and as such, the loan amount raised and discharged, cannot be allowed as a pass through.

36. The Appellant has attempted to distinguish the facts of the Appeal No.58 and 59 of 2007 from the present case. Rejecting this contention of the Appellant, the learned Counsel for the State Commission submitted that this Tribunal in the Appeals preferred by the distribution companies in Appeal No.58 and 59 of 2007 held that the repayment of principal amount of loan cannot be treated as an expense in the Annual Revenue Requirements. Similarly, in the present case, the liability is on account of the PF and the Pension payment obligation upto effective date of transfer in respect of employees.
37. The learned counsel for the State Commission brought to our notice the judgment of this Tribunal dated 13.12.2006 for the Financial year 2006-07.
38. In the light of the said decision, if we look at the facts of this present case, it is clear that the Appellant licensee is earning sufficient revenues through its business, additional revenues from short term open access customers and substantial revenues from sale of certain generating assets and transmission assets. Therefore, it would not be proper for

the Appellant to recover the debt redemption amount from transmission tariff without adjusting its tariff from all assets. As pointed out by the learned counsel for the State Commission, this principle has been laid down by this Tribunal in Appeal No.102 of 2011.

39. In view of the above, there is no merit in the contention of the Appellant on this issue.
40. The last issue is **Fringe Benefit Tax.**
41. According to the Appellant, the State Commission has not allowed the interest of Rs.6.20 millions on fringe benefit tax advance of Rs.62.45 millions in the impugned order.
42. The contention of the Appellant is as follows:

“The disallowance of interest on Fringe Benefit Tax amount to Rs.6.20 millions on Fringe Benefit Tax Advance of Rs.62.45 millions on the reasons is not based on the facts. The State Commission has observed that the State Commission has already allowed Rs.124.19 millions income tax in its ARR for the FY 2010-11 for the transmission business and

Rs.1.04 million for SLDC business against which the Appellant has paid Rs.46.70 million only as a result the excess amount allowed i.e. Rs.78.53 million along with the interest for two years amount to Rs.14.14 million adjusted against the FBT balance. In fact, the Appellant had paid the amount of income tax of Rs.46.70 million as against the amount of Rs.124.19 millions allowed by the State Commission. As such, no adjustment on lower income tax paid can be made by the State Commission”.

43. On this point, the Appellant prays for a direction to be issued to the State Commission to allow FBT advance of Rs.6.20 millions.
44. On the issue of disallowance of interest on FBT advance, the State Commission in its impugned order has held as under:

2.4.1 Fringe Benefit Tax (FBT)

In accordance with the Commission Order dated 26.9.2007 on the review petition on the ARR of transmission business for FY 2007-08, HVPNL was allowed to recover interest, on FBT on contribution to superannuation fund deposited with the income tax

authorities before the date of stay granted by the Hon'ble High Court in this matter. This interest was allowable from the date of deposit of amounts till the date of resolution of the case in the Hon'ble Supreme Court. HVPNL in its filing has stated that assessing authority of income tax department has refunded an amount of Rs.33.19 million inclusive of interest. As interest has already been allowed in the ARR's of the earlier years, the refund of interest now received needs to be reduced from the total amount leaving an outstanding balance of Rs. 62.45 million.

The Commission had allowed Rs. 124.19 million income tax in its ARR for FY 2010-11 for the Transmission business and Rs. 1.04 million for SLDC business against which the licensee has paid Rs.46.70 million. The excess amount allowed i.e. Rs. 78.53 million along with interest @ 9 % p.a for two years amounting to Rs14.14 million is adjusted against the FBT balance. This adjustment now leaves an excess balance recovered by HVPNL amounting to Rs. 30.22 million which is reduced from the total ARR for FY 2012-13. The Commission expects that as and when the credit is given on the FBT paid by HVPNL by the income tax authorities, the same shall be passed on to the Distribution licensees by the petitioner.

45. On the strength of the discussion made by the State Commission in the impugned order as referred to above, the learned counsel appearing for the State Commission has justified the impugned findings.
46. As correctly pointed out by the State Commission in the impugned order passed in the ARR Petition filed for the FY 2007-08, the State Commission by the order dated 26.9.2007 allowed the Appellant to recover the interest on FBT on contribution to superannuation fund deposited with the income tax authorities. Similarly, the State Commission had allowed Rs.124.19 million income tax in its ARR for the FY 2010-11 for the transmission business and Rs.1.04 million for SLDC business. Out of this amount, the learned counsel for the Appellant has paid only Rs.46.70 millions. Therefore, the State Commission adjusted the excess amount against the FBT balance.
47. In view of the above, the Appellant cannot contend that this finding is not on the basis of the facts.
48. Hence, the contention of the Appellant on this issue does not merit consideration.

49. **Summary of Our Findings**

- (a) **Depreciation:** This issue has been dealt with by the Tribunal in its judgment dated 18.4.2012 in Appeal No.102 of 2011 in respect of the Appellant for the Financial Year 2010-11. The State Commission is directed to determine the depreciation and advance against depreciation for the Financial year 2012-13 as per the findings of the Tribunal in Appeal No.102 of 2011.
- (b) **Return on Equity and Income Tax:** The State Commission is directed to pass consequential orders in respect of the Return on equity and income for the FY 2012-13 as per the findings of this Tribunal in Appeal No.102 of 2011.
- (c) **Interest on borrowings for Capital Works:** There is no infirmity in the findings of the State Commission.
- (d) **Interest on Pension Bonds:** In view of the findings rendered by the State Commission on the strength

of the earlier order confirmed by this Tribunal, we do not find any merit in the contention of the Appellant on this issue.

- (e) **Employee's Cost:** The State Commission shall reconsider the issue regarding the terminal benefit in the true-up accounts for the FY 2012-13.
- (f) **Debt Redemption Obligation:** There is no merit in the contention of the Appellant in view of the findings of this Tribunal in Appeal No.58 and 59 of 2007 and Appeal No.102 of 2011.
- (g) **Fringe Benefit Tax:** There is no infirmity in the order of the State Commission on this issue.

50. In view of the above findings, the Appeal is partly allowed to the extent indicated above. The State Commission is directed to pass the consequential orders in terms of the above findings. No order as to costs.

51. Pronounced in the Open Court on the 30th day of April, 2013.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 30th April, 2013

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REPORTABLE/NON-REPORTABLE