

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.121 of 2012

Dated: 03rd July, 2013

Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER

In the Matter of:

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL),
Block C, First Floor, Vidyut Sadan,
Vidyut Nagar,
Hissar, Haryana

...Appellant

Versus

- 1. Haryana Electricity Regulatory Commission**
Bays 33-36, Sector-4,
Panchkula-134 112
Haryana
- 2. Uttar Haryana Bijli Vitran Nigam (UHBVNL)**
Vidyut Sadan, Plot No.C-16,
Sector-6, Panchkula,
Haryana

..... Respondent

Counsel for the Appellant(s) : Mr. Amit Kapur,
Mr. Vishal Anand
Mr. C K Rai
Mr. Ravin Dubey
Ms. Awantika Manohar

Counsel for the Respondent(s): Ms. Sikha Ohri (for R-1)

J U D G M E N T

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

1. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) is the Appellant herein. The Appellant filed a Petition for Aggregate Revenue Requirement for the Financial Year 2012-13. In that Petition, Haryana State Commission passed the impugned order dated 31.3.2012 denying some of the claims made by the Appellant.
2. Aggrieved by the denial of those claims, the Appellant has filed this Appeal.
3. The short facts are as follows:
 - (a) The Appellant, Dakshin Haryana Bijli Vitran Nigam Limited is a State Government owned Company. It became a licensee for Distribution and Retail Supply business in the State of Haryana in the year 2004. The area of Distribution and Retail Supply of electricity by the Appellant is the South Zone of Haryana.
 - (b) Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), the Second Respondent, is another Licensee for Distribution and Retail Supply Business in the State of Haryana. The area of distribution and retail supply of electricity is the North Zone of Haryana.

(c) Haryana State Commission who regulates the power sector in the State of Haryana is the First Respondent.

(d) The Appellant on 30.11.2011 filed a Petition for Aggregate Revenue Requirement for the Financial Year 2012-13.

(e) The State Commission, after observing all the formalities and hearing the parties, passed the impugned order on 31.3.2012. In this impugned order, the State Commission dealt with the common issues of the ARR of the Appellant as well as UHBVNL, the Second Respondent, together.

(f) Aggrieved by the denial of some of the claims, the Appellant has preferred the present Appeal against the portion of the impugned order which is applicable to the Appellant affecting its ARRs and tariff.

4. The Appellant has raised the following issues in this Appeal:

(a) Refusal to true-up interest on working capital borrowings.

(b) Disallowance of Return on Equity

(c) Erroneous demand of banking of power resulting in the wrongful deduction of Rs.224.8 Crores from the un-recovered gap at the end of Financial Year 2011-12

(d) Wrongful and unachievable assumption of 100% collection efficiency.

5. Though several other grounds have been raised in this Appeal, the learned Counsel for the Appellant has pressed and confined himself to the above four issues only.

6. Therefore, let us refer to the submissions of the Appellant with regard to these issues:

(a) **Wrongful Denial to True-Up the interest on Working Capital Borrowings**

Interest on working capital borrowing is an uncontrollable factor which is evident from the definition of uncontrollable factor in Regulation 7 (9) (ii) of the HERC (Terms & Conditions for determination of wheeling tariff and distribution & retail supply tariff), Regulations, 2008. This Tribunal in its judgment dated 11.8.2011 in Faridabad Industries Association Vs HERC reported in 2011 ELR (APTEL) 1527 directed the State Commission to initiate true-up of financials including the issues with regard to interest and finance charges etc., but the State Commission has refused to true-up the interest cost on working capital.

(b) **Disallowance of Return on Equity**

The State Commission did not consider it appropriate to allow any Return on Equity in respect of Financial Year 2012-13 as in the past in violation of the Regulation 16 of the Tariff Regulations, 2008. That apart, the finding given by the State Commission on this issue is against the ratio decided by this Tribunal in the judgment dated 18.4.2012 passed in the case of HVPNL Vs HERC reported in 2012 ELR (APTEL) 1315;

(c) **Wrongful Deduction of Rs.224.8 Crores from the unrecovered gap at the end of Financial year 2011-12**

The State Commission while calculating the total un-recovered revenue gap of Rs.364.59 erroneously reduced the same by an amount of Rs.272.2 Crores treating this amount as income in the hands of the Appellant. This Rs.272.2 Crores includes an amount of Rs.224.8 Crores which actually relates to the banking of power. In fact, the banking of power is a regular practice followed in the Sector whereby power during the months when the demand is low is banked with other States and drawn down during the months when the demand is high. For banking of power,

no sale is made. Hence, it is not an income but merely a value has been assigned to record this transaction in the book of accounts. While considering the claim of the Appellant, no explanation was sought for by the State Commission from the Appellant. Therefore, the finding on this issue is wrong.

(d) **Calculation of Collection Efficiency**

The State commission has erroneously computed the income of the Appellant on accrual basis assuming 100% collection efficiency as against the billed amount. While making such a computation, the State Commission has failed to consider that 100% collection efficiency is never achieved in the normal course of business and average collection efficiency of the last 10 years comes to only 96.92%, which illustrates that more than 3% of revenue remains uncollected every year. This deteriorates the financial condition of the Appellant. This fact has been recognised by the Government of Haryana. However, the State Commission has failed to take note of this. As such, the finding on this issue is wrong.

7. The learned Counsel for the Respondent made a detailed reply in justification of the impugned order. Let us now discuss each of the issues.
8. In respect of the **First Issue**, i.e. the wrongful denial to true-up the interest on working capital borrowings, it is submitted by the Appellant that the State Commission has refused to true-up the interest on working capital although the same is an uncontrollable factor as per the definition of the “uncontrollable cost” referred to in Regulation 7 (9) (ii) of the Haryana Tariff Regulations, 2008 and in spite of the judgment of this Tribunal in Appeal No.204 of 2010 (2001) ELR (APTEL) 1527.
9. According to the State Commission (R-1), while truing-up the financials of the Appellant, this issue has been decided in compliance of the directions of this Tribunal in Appeal No.204 of 2010 and also in accordance with the Regulations, 2008 and therefore, there is no infirmity in this finding.
10. There is no dispute in the fact that truing-up exercise has to be undertaken by the State Commission subject to the compliance of the following conditions:
 - (a) Prudence check;
 - (b) Norms as per HERC Regulations; and

(c) The directions issued by this Tribunal.

11. On this issue, taking into consideration all these three conditions, the State Commission has given the following finding:

“3.12.2 Truing up of expenses in consequence to the order of the Hon’ble Appellate Tribunal for Electricity in case number 204 of 2010

.....The basis for allowing/disallowing expenditure on true-up is as follows:

1. The interest on working capital is allowed on normative basis in the ARR and Commission has no reason to revise the norm. Therefore, no additional interest on working capital is to be allowed on account of truing-up.”

12. According to the Appellant, the interest on working capital borrowings is an uncontrollable factor as per the Regulation 7(9) (ii) of the Tariff Regulations, 2008. The impugned order indicates that the State Commission adopted the norms for calculation of working capital in accordance with the Regulations, 2008. Thus, the truing-up of working capital borrowings calculated is found to be well within the norms. The State Commission in the impugned order has dealt with this issue by making the following observations:

“3.12.2 Truing up of expenses in consequence to the order of the Hon’ble Appellate Tribunal for Electricity in case number 204 of 2010

UHBVNL has proposed to recover Rs. 16175 million and DHBVNL proposes to recover Rs. 3614.70 million on account of true up of various expenses incurred in FY 2008-09, FY 2009-10 and FY 2010-11. The Commission has examined each head of expenditure that has been in variance with the amount allowed in the ARR. Commission finds that a large number of expenses in the ARR are based on norms and the Commission finds no reason to change the basis of calculation. The expenses claimed by the licensees and amounts allowed by the Commission are as given below:

Table 3.29 DHBVNL Approved Vs Actual Expenses(Rs. Crore)

Particulars	Approved Expenditure	Actual Expenditure	Difference to be true-up	True Up allowed by the Commission
2008-09				
R&M Expenses	59.38	33.39	-25.99	-25.99
A&G Expenses	34.00	60.33	26.33	26.33
Interest Cost on borrowings	77.95	179.74	101.80	0.00
Depreciation	88.33	97.01	8.68	8.68
Other Expenditure	0.00	44.63	44.63	0.00
Income Tax/FBT provisions	0.32	0.44	0.12	0.12
Net Prior period Expenses	20.75	-0.42	-21.17	0.00
Total	280.73	415.12	134.40	9.14
2009-10				
R&M Expenses	46.63	39.71	-6.92	-6.92
A&G Expenses	66.36	80.88	14.52	14.52
Interest Cost on	144.51	251.57	107.06	0.00

<i>borrowings</i>				
<i>Depreciation</i>	90.97	41.75	-49.22	-49.22
<i>Other Expenditure</i>	0.00	63.69	63.69	0.00
<i>Income Tax/FBT provisions</i>	0.44	0.00	-0.44	-0.44
<i>Net Prior period Expenses</i>	0.00	-0.42	-0.42	-0.42
Total	348.91	477.18	128.27	-42.48
2010-11				
<i>R&M Expenses</i>	58.70	36.47	-22.22	-22.22
<i>A&G Expenses</i>	73.53	36.95	-36.58	-36.58
<i>Interest Cost on borrowings</i>	169.95	355.82	185.88	0.00
<i>Depreciation</i>	102.47	68.43	-34.04	-34.04
<i>Other Expenditure</i>	0.00	37.13	37.13	0.00
<i>Income Tax/FBT provisions</i>	0.00	0.00	0.00	0.00
<i>Net Prior period Expenses</i>	0.00	-31.37	-31.37	-31.37
Total	404.65	503.43	98.80	-124.21

The basis for allowing/ disallowing expenditure on true up is as follows:

1. The interest on working capital is allowed on normative basis in the ARR and Commission has no reason to revise the norm. Therefore, no additional interest on working capital is to be allowed on account of truing up.

2. Interest on Capital expenditure has been trued up based on actual capital expenditure incurred,

borrowings to fund the capital additions, rate of interest and IDC.

3. Other expenditure comprises mainly of provisions for bad and doubtful debts. The Commission has allowed the licensees to claim actual write off of receivable only when it has been demonstrated by them that adequate efforts were made by them to recover the dues. No provisional assessment for bad debts is to be allowed. However, expenditure on account for compensation for accidents has been allowed.

4. Prior period expenses comprise mainly of power purchase cost which is allowed to be trued up as part of FSA and therefore cannot form part of truing up at this stage.

5. Prior period expenses for DHBVNL for FY 2008-09 were allowed on actual basis as per prior period audited accounts. Therefore, these are not to be trued up now.

3.14.2 DHBVNL

In spite of having been directed by the Commission in the ARR order for FY 2011-12, the licensee has not quantified the improvements achieved as a result of Capital Investment made and also has not submitted an analysis of the benefits accrued.

.....

The licensees are again directed to quantify the improvements achieved as a result of capital investment made every year and enclose an analysis of the benefits accrued along with the investment proposals of the ensuing year.

13. The above observations and findings would show that the State Commission has taken into consideration the relevant clauses of the Regulations, 2008. This Regulation provided for truing-up of capital cost and power purchase cost on the basis of the actual cost incurred by the licensee, which has been allowed by the State Commission in the impugned order. However, under those Regulations, the State Commission fixed the interest on working capital as the short term prime lending rate of SBI as applicable on 01 April of every year.

14. The relevant provisions of the Regulations are reproduced hereunder:

11. Capital Cost:

.....

(2) The admissibility of the capital cost shall be subject to the prudence check by the Commission. This shall, however, be limited to the reasonableness of the capital cost, financing structure, interest during construction, working capital margin, efficient technology and such other matters. Any benefit from capital restructuring shall be passed on to the consumers.

Provided that where the actual cost incurred on a capital expenditure project exceeds the estimate of original cost approved as part of the investment plan or where the distribution licensee has reasonable ground to believe that the actual cost will exceed such approved estimate, then the distribution licensee shall

apply to the Commission for approval for variation in the estimate of original cost of the project.

19. Interest on Working Capital : (1) The rate of interest on working capital shall be equal to short-term Prime Lending Rate of State Bank of India as applicable on 1st April of the year in which the capital expenditure project has been commissioned or the rate of interest as claimed by the distribution licensee(s) whichever is lower.

(2) The working capital shall be equivalent to one month's O&M expenses of the distribution licensee (s).

.....

22. Cost of Power Purchase- (1) The distribution licensee (s) shall procure power in accordance with the provisions of the Regulations made by the Commission.

.....

(7) Any variation in cost arising out of variation in the volume and cost of power purchase, at the allowed transmission loss level, for reasons beyond the control of the distribution licensee (s) including hydel- thermal mix, shall be allowed to be recovered by the distribution Licensee (s) by way of FSA, as per the formula approved by the Commission.”

15. The State Commission pointed out the particulars of the objections of the consumers with regard to the interest and finance charges being utilised by the Utility for funding its inefficiencies. The particulars of the objection are as follows:

“2.8.16 Loan funds, interest expenses and current assets / liabilities Objection

Only those loans taken for capex should be allowed after prudence check. Loans for making up inefficient operations should not be allowed. Costly loans of DHBVNL should be got refinanced. Interest and finance charges of DHBVNL have increased by 250% from 2008-09 and by 167% over the FY 2010-11. The loans have been provided for creation of assets but have actually been used for funding inefficiencies. The interest on working capital of Rs 557.46 Crores as claimed by DHBVNL is much higher than the interest of Rs 179.02 Crores on long term loans. Increasing working capital of DHBVNL is on account of inefficiencies which should not be passed on to consumers.”

16. Refuting the contention of the Appellant that the interest on working capital borrowings is uncontrollable cost, the State Commission has pointed out that it is not an uncontrollable cost under the Regulations.
17. As pointed out by the learned counsel for the State Commission under Regulation 7(9) (ii), only the following uncontrollable costs can be permitted as a pass through:
 - (a) fuel cost;
 - (b) cost on account of inflation; and
 - (c) taxes and duties etc.,
18. The State Commission thus, has taken note of these elements and trued-up the financials of the Appellant in

compliance of the directions of this Tribunal and in accordance with the Regulations, bearing in mind the ultimate consumers interest.

19. Therefore, the contention urged by the learned Counsel for the Appellant on this issue does not deserve acceptance. Accordingly, this issue is decided as against the Appellant.
20. The **next issue** is with reference to the **disallowance of Return on Equity**.
21. According to the Appellant, the refusal to allow any Return on Equity is contrary to Regulation 16 of the Tariff Regulations as well as the ratio decided by this Tribunal in judgment dated 18.4.2012 reported in 2012 ELR (APTEL) 1315 in the case of HVPNL vs HERC.
22. Let us first refer to the findings given on this issue by the State Commission:

“3.16 Return on Equity

The accumulated losses of the two distribution licensees i.e. UHBVNL and DHBVNL have completely eroded their entire net worth. The Commission, on several occasions, has emphasized the need for recapitalization of the state owned distribution companies and infusion of fresh equity by the State Government over and above the equity component of the annual incremental capital expenditure to be undertaken by the distribution companies to modernize and augment the distribution system to meet the increasing load and consumer base of the

power utilities as well as their obligations to meet the standard of performance specified by the Commission in order to better serve the electricity consumers in Haryana. However, no progress seems to have been made in this direction.

In view of the above facts, the Commission does not consider it appropriate to allow any return on equity in the FY 2012-13, as in the past, to the distribution licensees.”

23. The above findings would show that the State Commission has concluded that despite the directions given by the State Commission to meet the standards of performance specified by the State Commission, the Appellant utility failed to follow the said directions thereby there was a failure to augment their Distribution system to meet the increasing load and that therefore, the State Commission was constrained to disallow the Return on Equity for the year 2012-13.

24. This finding in our view does not reflect the compliance of the Tariff Regulations,2008. The relevant Regulation is Regulation 16 of the Tariff Regulations, 2008 which is as follows:

“Return on equity shall be computed on the equity base determined in accordance with Regulation 13 @ 14% per annum or more as considered appropriate by the Commission.”

25. Bare reading of the above Regulation makes it clear that the Commission is required to provide minimum rate of Return of

Equity at 14%. The Commission, therefore, cannot reduce the rate of RoE.

- 26.** While dealing with the similar case, this Tribunal in Appeal No.102 of 2011 in the matter of HVPNL Vs HERC in which the very same State Commission allowed Return on Equity only at the rate of 10%, held that the said order was not valid in law since it was contrary to the Regulation 17 of Transmission Tariff Regulations 2008 which provides that the RoE shall be computed at 14% per annum or as determined by the Commission. The relevant observations made by this Tribunal in the judgment in Appeal No.102 of 2011 dated 18.4.2012, are as follows:

“46. In this Case, the Commission’s decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case, the Commission’s decision to allow ROE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff regulations 2008. Once the Regulations have been framed the Commission has to act in accordance therewith.”

- 27.** The reading of the above observations would make it clear that the State Commission should have followed the Regulations which allow the Return on Equity at the rate of 14%. In the event the State Commission decided either to reject the Return on Equity or allow higher rate than 14%,

the State Commission should have declared its view before hand and given opportunity to the Utility by seeking for the comments from them regard to the said issue.

28. However, in the present case Regulation 16 mandates the Commission to allow Return on Equity at minimum rate of 14%. This Tribunal in number of cases has held that the Commission is bound by its own regulations. Accordingly, the Commission should have allowed RoE at 14% per annum. It is submitted by the Learned Counsel for the State Commission that the impugned order was passed on 31.3.2012 but this Tribunal had decided the issue only thereafter i.e. on 18.4.2012 and therefore, the State Commission was not able to follow the said directions. Hence, this issue is decided in favour of the Appellant. In view of this, the State Commission is directed to pass the consequential orders.

29. The **next issue** is with reference to **Wrongful Deduction of Rs. 224.8 Crores for the un-recovered gap at the end of Financial year 2011-12.**

30. According to the Appellant, the State Commission while calculating the total un-recovered revenue gap of 364.59 Crores, has erroneously reduced the same by an amount of Rs.272.2 Crores which is the revenue from inter State sale of power by treating this amount as income in the hands of

the Appellant and in respect of this issue, no explanation was sought for from the Appellant by the State Commission.

31. It is also pointed out that this amount of Rs.272.2 Crores also includes an amount of Rs.224.8 Crores which actually relates to the banking of power which has been shown under inter State sale for accounting purposes.
32. According to the State Commission, the Appellant did not provide for any banked power under any separate head in the balance sheet and the same was reflected under inter-State sales and that apart, the licensee has failed to demonstrate that an amount of Rs.224.8 Crores realized by it from banking has been reduced from the cost of power while estimating the FSA recovery filed by it for the Financial Year 2010-11.
33. Let us see the findings on this issue in the impugned order:

“4.1.....

After determination of the revenue gap arising out of supply to the AP Tube – Well consumers including Fisheries and Horticulture as above and after adjustment of the cross subsidy generated, the Commission finds that the revenue for FY 2012-13 at current tariff falls short of the revenue requirement by Rs. 16668.06 million as given below:

Table 4.1 Calculation of revenue gap at existing tariff for FY 2012-13 (Rs. million)

	UHBVNL	DHBVNL	TOTAL

<i>Revenue requirement</i>	72940.53	82848.02	155788.54
<i>Revenue at Current Tariffs</i>	38254.53	611125.31	99379.84
<i>Revenue Gap</i>	34686.00	21722.71	56408.70
<i>Agriculture deficit/subsidy</i>	21731.47	18009.17	39740.64
<i>Uncovered revenue gap for FY 2012-13</i>	12954.53	3713.54	16668.06

In addition to the current revenue gap of Rs. 16668.06 million, the Commission in its earlier orders on ARR of UHBVNL and DHBVNL for Distribution and Retail Supply Business has determined the uncovered revenue gap of Rs. 25338.18 million for previous years as given below:

Table 4.2 - Total uncovered Revenue Gap (Rs. million)

	UHBVNL	DHBVNL	TOTAL
<i>Revenue Gap for FY 2009-10</i>	5870.16	1454.31	7324.47
<i>Revenue Gap for FY 2010-11</i>	11443.44	7866.04	19309.48
Total	17313.60	9320.35	26633.95
<i>Less Revenue from interstate sale of power</i>	2840.22	2722.00	5562.22
<i>Less Additional revenue from revised tariff (as per audited accounts)</i>	2043.49	3343.00	5386.49
<i>Net Revenue Gap upto FY 2010-11</i>	12429.90	3255.34	15685.24
<i>Revenue Gap for FY 2011-12</i>	9262.69	390.25	9652.94
Total revenue gap for previous Years	21692.59	3645.59	25338.18
<i>Unrecovered revenue gap for FY 2012-13</i>	12954.53	3713.54	16668.06
Total uncovered revenue gap	34647.11	7359.13	42006.24

34. The learned Counsel for the Appellant relied upon the following chart which was issued by the HPPC to show the

transactions relating to the Inter-State sale only for accounting purposes. The chart is as follows:

S.No.	Name of the Trader	April'10 March'11 (Power given during the Year		
		Quantum (LUs)	Amount	Rate
1.	DELHI/TATA	34.78109	10295203	2.96
2.	Delhi/TPC	19.80313	5861726	2.96
3.	Assam/NVVN	344.95014	102105242	2.96
4.	West Bengal/NVVN	835.96876	247446753	2.96
5.	Uttar Pradesh/ Mittal Power	1396.55040	413378918	2.96
6.	Himachal Pradesh	1978.80044	585724930	2.96
7.	Tamil Nadu	1083.58088	320739942	2.96
8.	J&K	929.97960	275273962	2.96
9.	GRIDCO/NVVN	642.08826	190058125	2.96
10.	Uttarakhand/Mittal	310.96860	92046706	2.96
11.	Andhra Pradesh/Mittal	17.25885	5108620	2.96
	Total	7594.73016	2248040126	2.96

35. According to the Appellant, the banking of power is a regular practice followed in the sector whereby the power is banked with other States during the months when demand is low and drawn during the months when the demand is high. It is further stated that for banking of power, no sale is made and no income is derived by the Appellant but it is merely a value which has been assigned to record this transaction in the books of accounts and this has not been taken note of by the State Commission.

36. The State Commission in the written submissions submits that the Appellant failed to demonstrate that the amount of Rs.224.8 Crores realised by it from banking has been reduced from cost of power while estimating the FSA recovery filed by it for the financial year 2010-11.
37. Under those circumstances, it will be proper to give opportunity to the Appellant to place all the materials before the State Commission to decide as to whether the amount of Rs.224.8 Crores from the un-recovered gap could be deducted in the light of the plea made by the learned counsel for the Appellant that the said amount was not an income, but was only a value which was recorded in the books of account. Accordingly, the State Commission is directed to consider this issue afresh after giving opportunity to the Appellant. This issue is decided accordingly.
38. The **last issue** is with reference to the **Wrongful Assumption of 100% Collection Efficiency**.
39. According to the Appellant, the State Commission has erroneously computed the income of the Appellant on accrual basis assuming 100% collection efficiency against the billed amount without considering the fact that 100% collection efficiency in the normal course of business can never be achieved. He has also produced the chart to show

that the average collection efficiency of last 10 years would come about 96.92%.

40. This contention is refuted by the learned Counsel for the State Commission.

41. According to the learned Counsel for the State Commission, the table provided by the Appellant is at variance with the submissions made by the Appellant before the State Commission as recorded in Para 2.6 of the impugned order. The same is as follows:

“2.6 Presentation by MD DHBVNL

MD /DHBVNL in his presentation presented the salient features of the ARR of DHBVNL.

.....

Highlighting DHBVNL achievements, he said that DHBVNL has always been able to meet the distribution loss target given by the Commission except for FY2009-10; their collection efficiency has been more than 100% except for slight fall in FY 2010-11 (97.68%), DT Damage rate has been brought down from 19% in 2004-05 to 10-11%; HT-LT ratio has been improved from 0.60 in 2003-04 to 0.92 in 2011-12 (upto September).”

42. It is further contended by the State Commission that under Regulations collection efficiency is not an uncontrollable cost, which can be allowed as a pass through; the relevant Regulation would provide for (a) fuel cost (b) costs on account of inflation (c) taxes and duties, these alone could

be considered to be uncontrollable cost and as such, the deficiency in collection efficiency, as per the Regulations cannot be passed on to the consumers.

43. The State Commission while dealing with this issue has referred to the objections raised by the consumers. Those objections are as follows:

“2.8.16 Loan funds, interest expenses and current assets / liabilities Objection

Only those loans taken for capex should be allowed after prudence check. Loans for making up inefficient operations should not be allowed. Costly loans of DHBVNL should be got refinanced. Interest and finance charges of DHBVNL have increased by 250% from 2008-09 and by 167% over the FY 2010-11. The loans have been provided for creation of assets but have actually been used for funding inefficiencies. The interest on working capital of Rs 557.46 Crores as claimed by DHBVNL is much higher than the interest of Rs 179.02 Crores on long term loans. Increasing working capital of DHBVNL is on account of inefficiencies which should not be passed on to consumers.”

44. In view of the above, the contention of the learned Counsel for the State Commission that a higher working capital and lower collection efficiency assumption sought by the appellant run contrary to the consumers interest, deserves acceptance. Accordingly, this issue is decided as against the Appellant.

45. Summary of Our Findings

(1) The Appellant's contention on the 1st issue relating to Interest on working capital does not deserve acceptance. The issue is decided against the Appellant.

(2) The Commission is bound by its own regulations and accordingly should have allowed Return on Equity at 14% in accordance with the Regulation 16 of the Tariff Regulations,2008.

(3) It will be proper to give opportunity to the Appellant to place all the materials before the State Commission to decide as to whether the amount of Rs.224.8 Crores from the un-recovered gap could be deducted in the light of the plea made by the learned counsel for the Appellant that the said amount was not an income, but was only a value which was recorded in the books of account. Accordingly, the State Commission is directed to consider this issue afresh after giving opportunity to the Appellant. This issue is decided accordingly.

(4) The contention of the learned Counsel for the State Commission that a higher working capital and lower collection efficiency assumption sought by the appellant run contrary to the consumers interest, deserves acceptance. Accordingly, this issue is decided as against the Appellant.

46. In view of the above findings, the impugned order is set aside to the extent indicated above. Thus, the Appeal is partly allowed.

47. The State Commission is directed to pass the consequential order in terms of the observations made above in respect of those issues.

(V.J TALWAR)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 03rd July, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~