Before the Appellate Tribunal for Electricity (Appellate Jurisdiction)

Appeal No. 157 of 2010

Date: 3rd January, 2012

Present :Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta Judicial Member

In the Matter of;

Kerala State Electricity Board
Vydyuthi Bhavanam, Thiruvananthapuram- 695004
Rep. by its Secretary ... Appellant

Versus

Kerala State Electricity Regulatory Commission
Bhavanam, CV Raman Pillai Road,
Vellayambalam,
Thiruvanthapuram- 695010 .... Respondent

Counsel for the Appellant (s): Mr. M.T. George
Mr. M.G. Ramachandran
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. Ramesh Babu

JUDGMENT

HON'BLE MR. JUSTICE P.S. DATTA JUDICIAL MEMBER

1. This appeal has been preferred by the Kerala State Electricity Board (KSEB) against the order dated 15th May,

2010 passed by the Kerala State Electricity Regulatory Commission, the respondent herein in connection with truing up of accounts of KSEB for the years 2003-2004 and 2004-2005 in terms of the judgement on remand dated 12th Nov 2009 passed by this Tribunal in Appeal No. 94 of 2008.

2. The KSEB filed two petitions namely TP No. 20 of 2006 in relation to the financial year 2003-04 seeking for adjustment for the revenue gap of Rs1007.44crore, and TP No. 22 of 2006 in relation to the FY 2004-05 for adjustment of revenue gap of Rs342.77crore. The Commission by order dated 24-11-2007 disallowed a total sum of Rs87.33crore for the yr 2003-04 and Rs.124.29crore for the yr 2004-05 based on the C&AG audited accounts. Aggrieved by the order dated 24-11-2007 the Board preferred an appeal before this Tribunal, being appeal no.94 of 2008 which was decided by this Tribunal by a judgement and order dated 12th Nov 2009. By the said judgement this Tribunal remanded the matter to the Commission for determination of certain issues after affording the Board an opportunity of being heard. Accordingly, the Commission upon hearing the Board partly readmitted Rs.11.26 crore out of Rs 87.33crore in respect of the FY 2003-04 and Rs 62.55crore out of Rs124.29crore for the year 2004-05.

3. Against the order dated 15th May 2010 the KSEB again preferred this appeal to ventilate certain issues which according to the appellant were not decided by the

Commission in terms of the order dated 12th Nov 2009 passed by this Tribunal in Appeal No. 94 of 2008.

4. The Commission did not fix any target of T&D loss reduction for the year 2003-04 but the Board offered a target to reduce the loss from 29.08% to 26.5% for the year 2002-03 and this Tribunal by the judgement dated 12th Nov 2009 directed the Commission to accept the T&D target offered by the Board as the target for the year 2003-04. The actual loss level achieved by the Board was 27.45% which was 0.85% less than the target approved. The Commission arrived at the excess power purchase cost due to non-achievement of T&D loss reduction target for the whole year at 104 MU and did not allow Rs22.26crore from the cost of power purchased for the whole year of 2003-04. The Commission issued the Tariff order for the FY 2003-04 only on 31st Dec 2003, that is at the fag end of the FY 2003-04 and there was hardly less than months left out in that FY to comply with the directions of the Commission. So, if penalty is imposed for under achievement of T&D loss for the year 2003-04 it could be made applicable only for the remaining three months of the FY 2003-04. Therefore, the excess power purchase cost which was not allowed on account of the under achievement of T&D loss reduction target should be 1/4th of the excess power purchase of 104MU for the whole year, i.e, 26MU for the yr 2003-04 applicable from 1st January-2004 to 31st March-2004.

5. It is alleged that the Commission did not reckon the cost of power generated by the Board. The total energy input into the Board's system for the year 2003-04 was 12281MU including generation of 3886MU from the Board's hydel plants, 552MU from the Board's own diesel plants and power purchase of 8015 MU from central generating stations and other sources. The total cost of generation and power purchase for the yr 2003-04 was Rs1860.82crore excluding transmission charges. Thus, the pooled average cost of the energy input into the Board's system for the yr 2003-04 was Rs1.52 per unit. The Commission arrived at the excess power purchase for the year 2003-04 on account of under achievement of T&D loss reduction as 104MU. Thus, the cost of power purchase to be disallowed on account of under achievement of T&D loss would be Rs15.81crore for the whole year. The Commission considered only the power purchase of 8015.55MU instead of the total energy input of 12281MU and imposed a penalty of Rs22.26crore against Rs15.81crore for the whole year. The Commission followed the same methodology for the year 2004-05 also. In this year the Commission disallowed 56 MU from the total energy input for under achievement of T&D loss of 0.45% for the year 2004-05. The Commission arrived at the pooled average cost of power purchase at Rs2.02 per unit considering the power purchase of 6390MU and its cost of Rs1292.90crores only against the total generation and power purchase cost of Rs1373.94crore for 12,505MU. The Tribunal held in the remand order that the additional power purchase and cost on account of under achievement of T&D loss

reduction shall be based on the total energy input into the distribution utility.

6. The Commission ignored the repair and maintenance cost of Rs968.51crore incurred on account of fresh assets added during the year 2003-04 and it allowed an escalation of 5.72% over the approved level for the year 2003-04.

7. The Commission ignored the business growth of the utility including increase in consumer strength and energy sales while approving A&G expenses for the year 2004- 05. The Board had given 4.99lakh new service connection which means that the consumer strength was increased from 73.00lakh during the year 2003-04 to 77.99lakh during the year 2004-05 and the energy sale by the Board increased from 8910.84MU during 2003-04 to 9384.40MU during 2004-05.

8. The Commission ignored the provision of bad debts provided for the year 2003-04 while the same was allowed for the subsequent yr 2004-05. Under the original Truing Up order dated 24-11-2007 the State Commission has allowed Rs17.41crore as bad debts as approved in the tariff order on ARR&ERC for the year 2003-04 as against the actual provision of Rs22.72crore, thus disallowing an amount of Rs.5.31 Crore. Further, for the year 2004-05, the State Commission approved a sum of Rs23.69crore against Rs36.50crore actually incurred, an amount of Rs12.81crore was thus disallowed by the State Commission. In the impugned order dated 15.5.2010 the

Commission allowed the actuals as per the audited accounts for year 2004-05 but did not consider the disallowed amount for the year 2003-04.

9. There is a huge amount to be settled between the Board and the Govt on duty payable by KSEB and subsidy receivable from the Govt for the period prior to the constitution of the State Commission. The adjustment of the revenue gap for a single year put the KSEB into trouble so as to get the adjustment of subsidy receivable from the Govt for the period prior to the constitution of the Commission. Hence, the KSEB by a the letter has requested the State Commission that the revenue gap of Rs218.48crore already approved together with the amount to be re-determined as ordered by this Tribunal may be adjusted against the revenue surplus, if any, approved in the subsequent years. However, while passing the order dated 15-05-2010 impugned herein, the State Commission is totally silent on this issue.

10. As against the above contentions of the appellant the Commission has filed a counter affidavit denying them and asserting that the scope of the appeal must not travel beyond what was directed in the remand order by this Tribunal in the appeal no. 94 of 2008. The respondent has not followed any wrong methodology as alleged and truly followed the directions contained in the remand order of the Tribunal. The Tribunal had clearly set out the principle of the allowance on account of excess T&D loss that the additional units of energy on

account of failure to meet the target for T&D loss reduction shall be disallowed. If the methodology as proposed by the appellant is accepted then the logic of this allowance of the cost of additional energy as ordered by this Tribunal would be defeated. If the methodology of the appellant is to be adopted, all costs pertaining to internal generation including R&M expense, A&G expense, employees costs, and other costs, should be considered instead of mere fuel cost as proposed by the appellant. However, such separation of accounts is not provided by the appellant. This Tribunal had also used such methodology in disallowing power purchase cost in the order in Appeal No. 100 of 2007 in KPTCL Vs KERC, where pooled power purchase cost of KPTCL, which consists of power purchase from KPCL and VVNL was disallowed. The power purchase cost of KPCL and VVNL consists of complete cost of generation and not just fuel cost. Hence, the approach considered by the respondent is correct.

11. Even though R&M expense is a controllable item of expenses, in the impugned order the respondent had allowed 5.72% increase in R&M expenses over the previous year. That is, instead of Rs 66.70crore as was allowed in ARR&ERC for 2004-05, Rs70.49crore was allowed in the remand order against the actuals of Rs74.49crore considering the inflation, though in the ARR&ERC order for 2004-05, the respondent directed the appellant to limit the R&M expenses to Rs66.70crore. It is submitted that the ARR for 2004-05 was passed on April 16, 2004 giving sufficient time for the licensee

to plan for the year ahead. It is also placed before this Tribunal that in the ARR & ERC petition for 2004-05, the appellant has committed to maintain the expenses at the curtailed level of absolute minimum requirement. Based on this undertaking the Commission maintained the allowable repair and maintenance expenses at the same as that of previous year (2003-04). Further, in the order on ARR &ERC for 2004-05 the respondent observed that actual expenses on R&M during FY 2003-04 upto 31.1.2004 were only Rs. 51.65 crore. The respondent directed the appellant to furnish a report covering the details of R&M works undertaken during FY 2003-04, which was not furnished. The Commission has sought from the appellant on specific details with supporting documents on the steps taken by the Board to limit the R&M expenses to the approved level after the issue of ARR & ERC order for the respective years and the follow up action taken up by the appellant. The respondent also sought the addition to GFA proposed in the ARR and the actual so as to correlate the reason for increasing in R&M expenses. In the reply the appellant could not provide any additional information other than what was available in the audited accounts. Instead, the appellant argued that considering the complexities and large number of transmission and distribution assets, it is difficult to estimate the requirements of R&M expenses in advance. The correlation to be made for R&M expenses considering the addition to GFA of previous year is not only incorrect but also misleading. Since the appellant has already overshot the

approved level of expenses, it is now trying to justify the same by creating a relation which does not exist.

12. A&G expenses is a controllable item of expenditure. In the tariff order for the year 2004-05 the Commission approved an expenditure of Rs34.30crore as against which the actual expense was Rs. 40.03crore which is about 20.5%higher than the previous year. The Commission has allowed 8.2% more than the actual A&G expenses in 2003-04, whereas the inflation rate was only Rs5.72%. In the ARR petition for FY 2004-05 the appellant has committed to maintain at the curtailed level of absolute minimum requirement on the basis of which the Commission maintained the allowable A&G expenses as the same as that of the previous year.

13. With regard to the contention that the Commission ignored the provision of bad debts for the year 2003-04 it is contented that this issue is beyond the scope of the remand order in Appeal No. 94 of 2009. The same is the contention of the respondent where the appellant raised the question whether the Commission can adjust the approved revenue gap against an amount due to the Govt. without the prior approval of the Govt.

14. On the basis of the aforesaid pleadings the following points arise for consideration:

(a) Whether the Commission was justified in arriving at the average cost of net energy input of the distribution utility by ignoring the internal generation and its costs for imposing penalty for under achievement of T&D loss which was decided at the fag end of the FY concerned?

(b) Whether the State Commission can ignore the business growth of the utility including new service connections and increase in energy sales after the base year while approving the A&G expenses for the subsequent year?

(c) Whether the State Commission can adjust the approved revenue gap against the amount dues to the Govt without their prior approval?

(d) Whether this Commission was justified while considering the provision of bad debts?

15. Before proceeding to consider the merits or otherwise of the contentions of the appellant it is worthwhile to see as to what exact directions were passed by this Tribunal in appeal no 94 of 2008 while remanding the matter back to the Commission for reconsideration of certain issues. Having gone through the order of the Tribunal between the lines it appears that primarily on three issues as serialled above the Tribunal has made certain directions. With regard to the first point as to whether the Commission could arrive at the pooled average cost of net energy input of the distribution utility by ignoring

the internal generation and its costs for imposing penalty for underachievement of T&D loss it is better to see the observation of the Tribunal in the aforesaid Appeal No. 94 of 2008. The Tribunal observes:-

"19) The appeal relates only to the truing up order. Therefore we proceed to examine the appeal in the light of the above principles. Another thing to be remembered here is that the projections made in the beginning of the year 2003-04 or in the beginning of 2004-05 have not been questioned. Accordingly, no plea about the propriety of the projections can be challenged in the appeal.

Transmission and distribution losses:

20) In the ARR and ERC petition, submitted by licensee for the 2003-04 the licensee committed that it would limit the T&D loss to 26.5%. The Commission fixed the total internal energy input as 12120 MU on the basis of data available as on December, 2003. The Commission arrived at this figure after making due adjustment for the normal growth for the remaining period and reduction in consumption in certain categories and T&D loss during 2003-04. The Commission however, said in the impugned order itself that estimate of T&D loss could not be arrived at due to lack of sales data and that it would undertake a review of sales at the end of the year. In the ARR and ERC exercise for 2004-05 the Commission had undertaken the review of sales based on data up to December 2003 and decided the sales for 2003-04 at 8900 MU and thereby

approved the T&D loss at 26.6%. The audited account showed that the loss level was 27.4%. The actual energy input was 12281 MU. The Commission estimated that with T&D loss of 26.6% energy sales should have been 9018 MU. The difference in sales of 108 MU was found to be excess sales that should have been achieved by the licensee. The appellant contends that the Commission had in fact not set any target for the year 2003-04 and the assumption of 26.5% was merely fictitious. Further how much of the T&D loss can be loaded on the appellant has also been questioned by the appellant. The appellant refers to an earlier judgment of this court in Karnataka Power Transmission Corporation Ltd. Vs. Karnataka Electricity Regulatory Commission and Others in appeal No. 100 of 2007, delivered on 04.12.07. The following part of that judgment dealing with T&D losses is relied upon by the appellant:

> *32. We need to balance the interest of the consumer and the licensee by ensuring that the licensee tries his best to achieve the said targets and is deterred to under achieve loss reduction. In the present case to sell 69 units KPTCL will be allowed purchase cost of 100 unit only as per the target of 31% set by the Commission and the licensee will have to pay for the power required over and above 100 units so that 69 units are sold to consumers. We decide that this deterrent of disallowing cost of electricity required over and above 100 units is sufficient and it will not be correct to assume an imaginary sale of electricity when the*

actual loss level is 35.5% and when the licensee has already been penalized by not allowing it the cost of power procurement over and above 100 units. This will ensure that the licensee functions efficiently. Interest of consumers is not prejudiced because licensee is being allowed only purchase cost of power as per the loss level target set by the Commission.

The question before us is how much of power can be deemed to have been sold and what amount should be taken as the revenue from the sale of power. The Commission cannot be allowed to assess the revenue of the licensee on the imaginary sale of power as indicated above. The licensee has borne the burden of extra purchase of power for meeting the T&D loss over and above the target. The revenue of the licensee can be assessed only on the basis of actual sale. We, accordingly, uphold the objection of the appellant on this aspect and allow the appeal in respect of issues A&B."

21) Our view is also stated in our judgment in appeal No. 9 of 2008. Appeal No. 9 of 2008 challenged the order of Karnataka Electricity Regulatory Commission which was passed pursuant to our judgment in appeal No. 100 of 2007. Our view was expressed in the following language:

"36. … While arriving at the quantum of power purchase to be allowed for revenue requirement, KERC should first reduce the disallowed T&D losses from the quantum of power purchase

entered in the audited accounts of KPTCL. From the figure so arrived, the Commission has to reduce the allowed T&D losses which will give the quantum of power available for sale yielding revenue. ….”

22) The power purchase cost is a reality. So are the actual sales. The appellant has actually not earned any revenue by sale of the units which it should have been able to sell with T&D target at 26.5%. In our view it is more reasonable to disallow the cost incurred for purchasing the additional units of energy on account of failure to meet the target for T&D loss reduction than to penalize the distribution licensee by adding assumed revenue from the sale of the additional units of power purchased.

23) The appellant itself had offered to contain the T&D loss at 26.5% and accordingly it will be appropriate to accept that as the target fixed by the Commission. For 2004-05 the target fixed was 3% below the loss level of 2003-04. The loss level achieved for 2003-04 was 27.4% and hence the target fixed was 24.5%. The same principle as above should be followed for failure to meet the T&D loss level target in 2004-05. The Commission should disallow the additional cost for purchase of additional power rather than adding on the revenue side the amount which could be earned by achieving the T&D loss target.”

16. It is the settled position of law that when a matter is remanded back to the Commission for adjudication in a

certain manner with certain observations the Commission is required to adjudicate in that way alone. The entire matter relates to the order for truing up for the two financial years with regard to the imposition of the penalty for under achievement of T&D loss. The observations of the Tribunal as contained in Paragraph 21,22 and 23 which we have reproduced above are decisive. In respect of the FY 2004-05 the actual loss reduction that was achieved was almost the same as was fixed for that year. For 2004-05 the target fixed was really 3% below the loss level of the FY 2003-04. The loss level achieved for FY 2003-04 was 27.45% and the target fixed for the FY 2004-5 was 24.50%. According to the appellant, the additional power purchase cost and cost on account of under achievement of T&D loss reduction shall be based on the total energy input into the distribution utility i.e., total power purchase and its cost. It is argued that since the Board is generating electricity in addition to the licensed activities of transmission and distribution, the net energy input and into the Board's system includes its generation from its own hydel and thermal station. As such, while arriving at the pooled average cost for imposing penalties for under achievement of T&D loses the net energy input and cost to be considered is for the total energy input of 12281 MU for the year 2003-04 and 12,505 MU for the year 2004-05. This argument is hotly contested by the Commission on the ground that this was not the reasoning of the Tribunal while remanding the matter back to the Commission. It bears recall that there has not been any challenge as to the projection of reduction of T&D loss for the

year 2003-04 and 04-05. It has already been noted above that the projection for the year 2004-05 was much below the actual loss reduction that was achieved in 2003-04 and the percentage of actual loss reduction for the year 2004-05 is slightly higher than what was of the target fixed for that year. The Tribunal was of the opinion that the appellant has actually not earned any revenue by sale of the units which it should have been able to sell with T&D reduction target at 26.5% and as such it is more reasonable to disallow the cost incurred for purchasing the additional units of energy on account of failure to meet the target for T&D loss reduction than to penalize the distribution licensee by adding assumed revenue from the sale of the additional units of power purchase. The Tribunal clearly held that the Commission should disallow the additional cost for purchase of additional power rather than adding on the revenue side the amount which could be earned by achieving the T&D loss target. The expression 'additional cost for purchase of additional power' has a significance in this that it means additional cost of purchase of such power which cannot be said to be the pooled average cost of generation and power purchase for the whole of the year either of 2003-04 or of the year 04-05. In line with the direction of the Tribunal the Commission arrived at the excess power purchase cost for the year of the year 2003-04 on account of under achievement of T&D loss reduction at 104 MU and for the year 04-05 at 56MU the value of which was Rs.22.26crore and Rs.11.31 crore respectively. It has rightly been argued by the learned counsel for the respondent Commission that if the methodology

proposed by the appellant is accepted then the very foundation of disallowance of the cost of additional energy as directed by the Tribunal would be defeated. The appellant referred to the decision of this Tribunal in Appeal No 100 of 07 which was decided on 14th December, 2007 where also the pooled power purchase cost of KPTCL which consists of power purchase from KPCL and another agency was disallowed. Again, if the methodology of the appellant is to be accepted, then all costs in relation to internal generation including R&M Expense, A&G expenses, employees cost and other costs have to be considered instead of only the fuel cost as proposed by the appellant. In Appeal No. 100 of 2008 (KPTCL Vs KERC) this Tribunal has taken the similar view where power purchase cost was disallowed. The observation of the Tribunal in Appeal No. 9 of 2008 which has been referred to by the appellant does not alter the situation.

17. With regard to the repair and maintenance expenses for the year 2004-05 it is the grievance of the appellant that the Commission cannot ignore the cost of Rs.968.51crore which was incurred by the appellant on account of fresh assets added during the year 2003-04. Now, the Commission observed in the earlier judgment that the licensee could not justify in a quantifiable manner the increase in R&M expenses more than the approved level and could not provide any material for the Commission on the efforts made to limit the R&M expenses within the target. The observation of the Tribunal is relevant. The Tribunal held:-

25) It is contended by the respondent Commission that the appellant could not substantiate in any manner the increase in expenditure for R&M beyond its reasonable control for the year 2004-05. It is contended that the appellant could not produce any material before the Commission on efforts made to limit the R&M expenses within the approved limit and also could not substantiate why higher expenses were made. The impugned order also says that the licensee could not justify in any quantifiable manner the increase in R&M expenses more than the approved level. It was contended on behalf of the Commission by Mr. Akhil Sibal that the Commission required to the appellant to produce the relevant data to justify the failure to limit the R&M expenses within Rs.66.70 crores but the licensee did not respond to the same. The truing up petition, as mentioned above, merely states what amount of expenditure was actually incurred on R&M. Although it says that the R&M expenses was much less than what was projected by the appellant itself, there are no facts and figures given in support of such claim. Nothing is mentioned as to how instead of Rs.85.25 crores the R&M was limited to Rs.74.49 crores. In any case there is no explanation why the expenses could not be limited to the approved amount. The Commission says that the respondent was called upon to give a break up as to how the approved amount of Rs.66.70 crores was proposed to be spent and the appellant failed to respond to that notice and therefore, failed to provide any basis to the Commission to examine

whether the expenses incurred for R&M amounting to Rs.74.49 crores could be justified and allowed to be pass through in tariff.

26) Shri Sibal wants to put the onus on the appellant to justify the R&M expenditure claimed in excess of the amount approved in the ARR order. Mr. Ramachandran on the other hand says that the appellant was never put to notice during the truing up proceedings that any information, more than what was already submitted was required by the Commission. The present litigation is not of adversarial nature. Nor were the truing up proceedings. It appears to us that the dialogue between the Commission and the appellant during the truing up proceedings was not sufficient and the Commission confirmed the already sanctioned amount rather than probing into what should the expenses have been. We are of the opinion that the appellant and the Commission need to make further effort in determining the R&M expenses which should be passed through tariff."

18. It bears recall that on account of R&M expenses the Tribunal did not make any categorical direction upon the Commission so as to do a certain thing in certain way. It was simply observed that the appellant and the Commission should sit together to make further effort in determining the R&M expenses which could be passed through tariff. After the appeal was remanded back to the Commission the Commission sought from the appellant specific details with supporting documents on the steps taken by the Board to limit

the R&M expenses to the approved level. The appellant could not provide any additional information. The Commission after the remand order was passed allowed the R&M expenses for the year 04-05 at 5.72% above the approved level for 2003-04. It is the case of the appellant that the R&M expenses incurred by the appellant on account of additional GFA in comparison to the previous year was not taken into consideration. The Commission sought the addition to GFA proposed in the ARR and the actual so as to co-relate the reason for increase in R&M expenses but the appellant did not provide any information. Further, the Commission observed that while approving the R&M expenses the addition to GFA proposed by the Appellant was Rs707.84 crores, whereas actually it was Rs.501.42 in 2004-05. The contention of the appellant that the expenses can not be predicted in advance and expenses of previous year can not be the benchmark were neither sufficient nor convincing to provide the actual R&M expenses. It can be seen from the replies of the appellant that, the actual R&M expense was Rs.74.49 crores, which is about 16.7% higher than the actual R&M expenses for 2003-04, and that no control mechanisms were established by the Appellant. Since the R&M expenses is a controllable item, the Appellant should have taken steps to control it at the approved level. Notwithstanding above noted facts, the respondent allowed the R&M expenses for the year 2004-05 at 5.72% above the approved level for to FY 2003-04 in the remand case. That the appellant failed to correlate the reason for increase in R&M expenses with the addition to the GFA will be evident from the

table prepared by the Commission in the counter affidavit which is reproduced below:

Year	Actual R&M Expenses	Addition to GFA in previous year	Increase in R&M expenses over previous year
	Rs. Crore	Rs. Crore	Rs. Crore
1998-99	49.24		
1999-00	58.13	406.89	8.89
2000-01	79.64	665.36	21.51
2001-02	70.32	1,106.43	(9.32)
2002-03	60.64	947.15	(9.68)
2003-04	63.79	301.37	3.15
2004-05	74.49	969.79	10.70
2005-06	93.82	501.76	19.33
2006-07	110.99	651.65	17.17

19. It is only apparent that the appellant already crossed the approved level of expenses and is now trying to justify the same by fiction of relation to the additional GFA. It can be said that the Commission did not go beyond the direction of the Tribunal.

20. With regard to A&G expenses it is the case of the appellant that the Commission did not consider the business growth of the utility. It appears that the A&G expenses actually was Rs.40.03 Crore which is about 20.5% higher than the previous year and in the ARR order for 2004-05 the Commission approved an expenditure of Rs.34.30 Crore. After the remand order was passed by the Tribunal the respondent allowed 8.2% more than the actual expenses in 2003-04 whereas the rate of inflation was 5.72%. It is a fact that the appellant could not make any effort to control the A&G expenses.

21. As regards employees expenses, the appellant in the memo of appeal has not put any grievances although in the remand order chance was given to the appellant to explain the employees expenses.

22. With regard to bad debts it is the grievance of the appellant that the Commission ignored the provision of bad debts provided for the year 2003-04 while the same was allowed for the subsequent year 2004-05. We find that in the order impugned the Commission allowed the actuals as per the audited accounts for the year 2004-05. With respect to the

year 2003-04 the Commission allowed Rs17.41 crore as bad debts as approved in the tariff order for that year, and according to the appellant an amount of Rs5.31 crore was disallowed. It is not clear whether the amount of Rs5.31 crore was the audited accounts or not.

23. We do not find any infirmity in the order impugned. We accordingly dismiss the appeal but without cost.

Pronounced in open Court on this 3rd day of January, 2012.

(P.S.Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE/NON -REPORTABLE

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