# Appellate Tribunal for Electricity
## (Appellate Jurisdiction)

**Dated:17th Sept, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**
**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**APPEAL NO.46 OF 2014**

**In the Matter of:**

**Dr. Subrahmanya Bhat,**
**S/O Dr. Bheema Bhat,**
**Residing at Hegdekodi,**
**Veerakambha Vilalge,**
**Bantval Taluk,**
**Post-Kodapadavu-574 222**
**Karnataka State**

**……. Appellant**

**Versus**

1. **Karnataka State Electricity Regulatory Commission**
   **6th & 7th Floor,**
   **Mahalaxmi Chambers,**
   **No.9/2, M.G Road,**
   **Bangalore-560 001**

2. **Mangalore Electricity Supply Company Limited**
   **Paradigm Plaza,**
   **A B Shetty Circle,**
   **Mangalore**

**...Respondent(s)**

Counsel for the Appellant(s) :Mr. Anantha Narayanan
Mr. Sridhar Prabhu

Counsel for the Respondent(s):Mr. Anand K Ganesan for R-1
Ms. Swapna Seshadri
Ms. Mandakini Ghosh for R-2

# J U D G M E NT

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

1. Aggrieved by the Impugned Order dated 6.5.2013, passed by Karnataka State Commission, the Appellant has filed this Appeal.

2. The short facts are as follows:

(a) The Appellant is one of the consumers of the Mangalore Electricity Supply Company Limited (MESCOM), the 2nd Respondent under domestic category. The Karnataka State Commission is the First Respondent. The MESCOM, the 2nd Respondent, the Distribution Licensee is the successor in interest of the Karnataka Power Transmission Corporation Limited.

(b) The MESCOM (R-2) filed a Petition before the State Commission for approval of his Annual Performance Review for the FY 2012, Annual Revenue Requirement for the FY 2014-16 and

approval of the Revised Distribution and Retail Supply Tariff for the year 2013-14.

(c) The State Commisison invited objections and suggestions from all stake holders in respect of the above Petition. The Appellant as a consumer of the domestic category also filed detailed objections in the said Petition.

(d) Similarly, the State Commission received objections from 2,980 persons against the said Petition. In respect of those objections, the MESCOM (R-2) filed reply. Thereupon, the State Commission held a public hearing on 28.2.2013. Ultimately, the State Commission passed the Impugned Order dated 6.5.2013 revising the electricity charges upwards for all category of consumers including the domestic category to which the Appellant belongs to by giving retrospective effect from 1.5.2013.

(e) Being aggrieved by the Impugned Order dated 6.5.2013 passed by the State Commission; the Appellant has filed this present Appeal.

3. The learned Counsel for the Appellant has raised the following grounds assailing the Impugned Order:

(a) The State Commission has passed the Impugned Order without considering the objections raised by the stake holders numbering 2,980 including the Appellant. This is a clear violation of the settled position of law as laid down by this Tribunal.

(b) The State Commission ought to have followed the provisions of Section 27 (9) of the KER Act before issuing direction to implement the Impugned Order revising the tariff by which the effect of retrospectivity could not be given by giving effect from 1.5.2013 in the Impugned Order dated 6.5.2013.

(c) The State Commission in the Impugned Order has not given effect to the judgment of this Tribunal in Appeal No.108 of 2010 dated 2.1.2013 with reference to the accounts of the MESCOM (R-2).

(d) The State Commisison while passing the Impugned Order has committed an error by not scrutinising the audited accounts of the MESCOM independently but blindly relied upon the said audited

accounts. This is against the principles laid down by the Hon'ble Supreme Court as well as this Tribunal.

(e) The State Commission while computing the Return on Equity ignored the effect of capitalization of the consumer security deposit amounting to Rs.49.03 Crores for the purpose of calculating the Return on Equity for the MESCOM. Thus, the State Commission wrongly allowed ROE/ROR without considering the Debt Equity ratio as provided under the MYT Regualtions.

(f) The State Commission wrongly allowed Depreciation on assets created from consumers' contribution and Government Accounts without following accounting standard 12, relating to the assets created.

(g) The State Commission wrongly made the estimation of the electricity consumed by all IP Sets below 10 HP while the MESCOM is claiming that 92.74% of the total IP Sets were metered before March, 2012. The calculation of consumption on IP Set and Bhagaya Jyothi Installations were not made on the basis of the meter reading recorded on the meters installed to the said installation.

(h) The State Commission erred in allowing the interest on consumer security deposit in the year 2013 at the rate of Rs.8.75% although the RBI Bank Rate was reduced from Rs.8.75% to 8.50% from 19.3.1013 which was further revised downwards to Rs.8.25% with effect from 3.5.2013.

(i) The State Commission while passing the Impugned Order has not done independent scrutiny of accounts of the MESCOM (R-2).

(j) The State Commisison ought not to have entertained the Impugned Petition filed by the Executive Engineer on behalf of the MESCOM in the absence of duly executed power of Attorney executed by the Board of Second Respondent. As per the relevant Article of the Association of the MESCOM, the Board can delegate its powers only to the Committee consisting of Directors to file the Petitions. In the present case, the Executive Engineer who filed the Petition before the State Commisison is only an Officer of the MESCOM and not the Director or other authorised Officer of the MESCOM.

4. In reply to the above submissions on these issues, the learned Counsel for the State Commission as well as the

MESCOM (2nd Respondent) has elaborately argued in respect of each of the issues in justification of the findings rendered by the State Commission on these issues and contended that the Impugned Order is well justified.

5. In the light of the rival contentions, let us now deal with each of the Issues.

**6.** The **First Issue** is "**Non Consideration of the Objection and Suggestions made by the Appellant and other Objectors numbering 2980".**

7. According to the Appellant, the passing of the Impugned Order without considering the objections of the stakeholders numbering 2980 including the Appellant is in violation of the judgment rendered by this Tribunal in Appeal No.109 of 2005 and mere re-production of some of the objections and reply to the same by the MESCOM cannot be construed to be the actual consideration of all the objections by the State Commission on merits.

8. According to the Respondents, the State Commission has considered all the suggestions and objections received from all stakeholders with an independent application of mind after holding the public hearing.

9. While considering this issue, it is to be pointed out that in the Chapter 2 of the Impugned Order, the State Commission referred to the public hearing process and the public hearing that took place on 28.2.2013 and discussions of the proposals of the State Transmission and Distribution Companies in the State Advisory Committee. Chapter 3 of the impugned Order referred to the contents of all the objections raised by the objectors including the Appellant and discussions by the State Commission on the submissions made by various stake holders and the responses made by the MESCOM.

10. The Appellant cannot have any grievance on these issues since each one of the objections and suggestions of the Appellant have been recorded, considered and dealt with by the State Commission in the Impugned Order.

11. As a matter of fact, the State Commission has followed the mandate of Section 64 of the Electricity Act, 2003 and accorded an opportunity of public hearing to the stake holders.

12. As pointed out by the learned Counsel for the State Commission, the State Commission in the Impugned order considered and ruled upon some of the suggestions and objections advanced by the objectors although some of

them failed to file such written suggestions within the time permitted while determining the tariff. Therefore, it cannot be contended by the Appellant that the objections raised by the objectors have not been considered.

13. Thus, the first issue is decided as against the Appellant.

**14.** The **Second Issue** is with reference to the **Grievance relating to the Retrospective Effect given to the Impugned Order.**

**15.** According to the Appellant, the State Commission has failed to comply with the provisions of Section 27 (9) of the Karnataka Electricity Reforms Act, 1999 which mandates that a notice to be issued by the MESCOM informing the public in its area of supply of the new tariff and such a tariff would become effective only after seven days from the date of such application. But, in the present case, the State Commission while passing the Impugned Order dated 6.5.2013 made the tariff order effective from 1.5.2013 retrospectively but the notice was published only on 15.5.2013 and as such, this is in violation of the Clause 27(9) of the Reforms Act, 1999.

**16.** According to the Respondents, Clause 27(9) of the Reforms Act, 1999 would not apply in the present case.

**17.** In the light of the submissions made by the parties, it would be appropriate to refer to the relevant provisions for deciding the issue.

**18.** The provision of the Karnataka Electricity Reforms Act, 1999 being relied on by the Appellant is as under:

> *"27(9) Each holder of the supply licensee shall publish in a daily newspaper having circulation in the area of supply and make available to the public on request, the tariff for supply of electricity within the area of supply and such tariff shall take effect only after seven days from the date of such publication."*

**19.** Section 185 (3) of the Electricity Act reads as under:

> *"(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable."*

**20.** The Karnataka Electricity Reforms Act, 1999 is one of the statutes mentioned in the Schedule to the Electricity Act, 2003. In the Electricity Act, 2003 there is no provision requiring publication. Under Section 61 read with Section 181 of the Electricity Act, 2003, the State Commission can notify Regualtions. The State Commission has notified the MYT Regulations. Regulation 2 (z) reads as under:

> (z) *"Tariff" means a schedule of standard prices or charges for specified services which are applicable to*

*all such specified services provided to the type of customers* ***specified in the tariff published."***

**21.** The perusal of the relevant Clause in the Reforms Act 1999, the provisions in the Electricity Act and the MYT Regulations would make it evident that those provisions would not mandate such a publication and therefore, the question of violation of statute would not arise. The purpose of Clause 27 (9) of the Karnataka Reforms Act, 1999 was that the consumer should know what would be the bills that would be raised on them which have been achieved.

**22.** In the present case, a Notification had been issued much before the date of the first issue of the bill as per the revised tariff under the Impugned Order.

**23.** Clause 27 (9) though provides for publication in the newspaper about the Order and the Order would take effect after 7 days from the date of publication, Section 185(3) of the Act, 2003 would provide that the provisions of the enactments specified in the Schedule would apply only if they are consistent with the provisions of the Electricity Act, 2003.

**24.** As indicated above, the Karnataka Reforms Act is one of the statutes mentioned in the said schedule. Though the provisions regarding publication has been referred to in the

Reforms Act, 1999 there is no such provision requiring publication in the Electricity Act, 2003.

**25.** On the other hand, under Section 61 and 181 of the Act, 2003, the State Commission notified the Regualtions. The State Commission while notifying the MYT Regulations provides for the definition of the tariff which means the prices are charges specified in the tariff published. In such circumstances, it cannot be said that Karnataka Reforms Act, 1999 as well as the Electricity Act are consistent.

**26.** Therefore, there is no infirmity in giving effect to the tariff from 1.5.2013 as mentioned in the Tariff Order dated 6.5.2013. In fact, the very same issue had been raised in the Appeal No.164 of 2010 in Chhattisgarh State Power Distribution Co Ltd. Vs Chhattisgarh Biomass Energy Developers Association & Ors. In the said judgment dated 8.2.2011, this Tribunal has held that the tariff can be fixed from the prior date even though the tariff order is issued at a later date.

**27.** The relevant findings are given as under:

> *"13. In course of hearing of the appeal, Smt. Suparna Srivastava, the learned Counsel for the Appellant solely and exclusively confined her arguments to the issue of retrospectivity of the order impugned giving*

*up other contentions as were averred in the memorandum of appeal. In other words, the learned Counsel did not rather could not dispute the factual scenario that since the State generating utility (CSPGCL) itself procured rice-husk for their biomass based generating plant at Kawardha at Rs.1465/MT and Rs.1615/MT in the year 2007-08 and 2008-09 respectively it was necessary for the Commission to revise the tariff for supply of power by biomass based generators to the distribution licensee. But it was adequately demonstrated before the Commission by Respondent No.1 that revision of energy charges was necessary due to phenomenal increase in the cost of fuel and as such the rate of power as was fixed by the Commission in its order dated 15.1.2008 was unviable. Although the petition of the Respondent No.1 before the Commission was comprehensive one praying for fixed charges and energy charges the Respondent No. 1 gave up the plea for determination of fixed charges as because such determination was a time consuming process and, accordingly narrowed down the scope of the petition to fixation of energy charges on account of rise in fuel price. In this appeal before us thus the learned Counsel for the Appellant has not questioned legality of the price rise with respect to energy charges and confined the Appeal to revision of tariff with retrospective effect i.e.1.4.09.*

*……..*

*22. The question of retrospectivity came up for consideration before The Supreme Court in the Kannodia Chemicals & Anr. V/s State of UP & Ors. Reported in (1992) 2 SCC 124. While upholding the retrospectivity of tariff order the Hon'ble Court observed as follows;*

***"A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this State of affairs, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective".***

*23. This Tribunal in a batch of appeals namely SEIL India, New Delhi V/s PSERC reported in 2007 (APTEL) 931 considered the question of retrospectivity and maintained it. In this decision also the tariff order though made some time after commencement of the financial year was made effective from 1.4.2005 and this Tribunal upheld the order of the Commission. It observed : the cost prudently incurred is to be recovered, therefore, in the event of a tariff order being delayed, it can be made*

*effective from the date tariff order commences or by annualisation of the tariff so that deficit is made good for the remaining part of the year or it can be recovered after truing up exercise by loading it in the tariff of the next year. Thus law empowers the Commission to specify the date from which the tariff is to commence or the date when it will expire.*

*24. It is neither Section 62 nor Section 64 that constitutes bar to retrospectivty of a tariff order.*

*25. We must bear in mind that the Electricity Act 2003 in all its provisions have been made effective by the Central Government through a gazette notification from 10th June, 2003. This enactment speaks of prospectivity. In the same wave the concerned Regulations framed by the authority which is a creature of the Statute is also not retrospective. The Regulation is a current law that mandates how to govern the current activities. When the intention of the legislator or of the Regulator is to give effect to the tariff order from the date of the commencement of a financial year then by necessary implications the so called retrospectivity is permissible. The mere fact that a change is operative with regard to price of fuel last determined does not mean that it is objectionably retrospective. Making tariff order retrospective from the date of the commencement of the financial year does not amount to inflicting legal injury to some other person because whatever is allowed in the tariff is necessarily passed through. Again, it cannot cause legal injury if claim of the Appellant is legally justifiable. The decisions referred to by learned Counsel for the Appellant are out of context.*

**28.** In the present case, the Petition for determination of retail supply of tariff for FY 2013-14 was filed on 10.12.2012. Public Notice was issued on 17.8.2013. The public hearing was held on 28.2.2013. Thus, the public was made aware about the revision in tariff for FY 2013-14 before the beginning of FY 2013-14. However, the impugned order was passed on 6.5.2013 with the tariff to be made applicable from 1.5.2013. The bill for the month of May, 2013 was to be raised only in June, 2013. Thus, the Appellant cannot have grievance on this score. In view of the ratio already decided, we hold that the ground urged by the Appellant on this issue has no merits.

**29.** Accordingly, this issue is also decided as against the Appellant.

**30.** Let us now consider the **Third Issue**. This issue is relating to the **grievance of the Appellant that the judgment of this Tribunal in Appeal No.108 of 2010 dated 2.1.2013 had not been given effect to with reference to the accounts of MESCOM, the Distribution Licensee**.

**31.** According to the Appellant, the MESCOM has not drawn-up its accounts in accordance with the Companies Act, 1956 but adopted the principles under the Electricity Supply (Annual Accounts) Rules, 1985 framed under the Electricity Supply Act, 1948 and the non maintenance of accounts in

accordance with Companies Act is against the conditions of licence granted to the MESCOM and this is in violation of the judgment of this Tribunal in Appeal No.108 of 2010.

**32.** According to the learned Counsel for the State Commission, the said judgment has been given effect to and the State Commission in fact, issued consequential orders on 17.10.2013. Further, it had issued directions to all the Distribution Licensees to maintain their accounts as per the Companies act, 1956.

**33.** Let us refer to the relevant portions of the findings given by this Tribunal in Appeal No.108 of 2010 dated 2.1.2013:

> *"Since Section 69 of the 1948 Act was not applicable to the Companies those were in the business of supply of electricity prior to enactment of the Electricity Act 2003, it cannot be held to be applicable to the companies formed after the enactments of 2003 Act and restructuring of the Board under Section 172 of 2003 Act by virtue of 185(2)(d) of the 2003 Act. The Commission is accordingly directed to direct the 2nd Respondent to submit the Annual Accounts Statement in accordance with the Companies Act . Bare reading of Section 61 would elucidate that the State Commissions have been mandated to frame Regualtions for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission for determination of tariff for generation companies and Respondent to submit the Annual Accounts statement in accordance with the Companies Act henceforth. Depreciation on Grants, consumer's contribution etc shall have to be treated in accordance with Accounting Standard 12 of Institute of Charted Accounts."*

**34.** As per this judgment, the accounts of the MESCOM have to be in accordance with the provisions of the Companies Act, 1956, pursuant to the judgment dated 2.1.2013. In fact, the MESCOM filed instant Petition for determination of tariff before the State Commission on 10.12.2013 i.e. before the Tribunal had rendered the judgment in Appeal No.108 of 2010. This judgment was subsequently clarified by the Tribunal that the Distribution Utilities be directed to submit annual accounts statement in accordance with the Companies Act henceforth.

**35.** In the light of the said clarifications, the State Commission in the Impugned Order has applied the said clarifications given in the judgment of this Tribunal dated 2.1.2013 and considered the accounts prepared in accordance with the Electricity Supply Annual Accounts Rules, 1985 and directed the MESCOM to maintain its accounts as per the provisions of the Companies Act henceforth and filed the same.

**36.** The relevant extract of the Tariff Order are as under:

> **"*Regarding Non-adherence to Accounting Standards***
>
> *It is contended by the objectors that MESCOM has not drawn up its accounts in accordance with the Companies Act, 1956 and also has not followed the relevant Accounting Standards.*

*The Hon'ble Appellate Tribunal for Electricity (ATE), while passing its order dated 2.1.2013 in Appeal No.108 of 2010 filed by the objector (FKCCI), has ordered at Paragraph-57 (ii) as follows:*

> *"Since Section 69 of the 1948 Act was not applicable to the Companies those were in the business of supply of electricity prior to enactment of the Electricity Act 2003, it cannot be held to be applicable to the companies formed after the enactments of 2003 Act and restructuring of the Board under Section 172 of 2003 Act by virtue of 185(2)(d) of the 2003 Act. The Commission is accordingly directed to direct the 2nd Respondent to submit the Annual Accounts Statement in accordance with the Companies Act henceforth. Depreciation on Grants, consumer's contribution etc shall have to be treated in accordance with Accounting Standard 12 of Institute of Charted Accounts.*

*As per the above Order, the accounts of MESCOM have to be in accordance with the provisions of the Companies Act after 2013. Therefore, the accounts filed by MESCOM along with the present application have to be considered. However, it is ordered that the MESCOM has to maintain its accounts hereafter as per the provisions of the Companies Act and file the same."*

**37.** Thus, it is clear that while the Impugned Order was passed, the MESCOM was directed to henceforth maintain its accounts as per the provisions of the Companies act and file the same before the State Commission in the light of the directions given by this tribunal in the judgment in Appeal No.108 of 2010. Therefore, this ground urged by the Appellant does not deserve consideration.

**38.** Accordingly, this issue is also decided as against the Appellant.

**39.** The **Fourth Issue** is with regard to the ground that **the State Commission did not scrutinise the audited accounts of the MESCOM independently by applying its mind.**

**40.** This ground is refuted by the Respondent that the State Commission has not simply relied upon the report of the Auditors but passed the Impugned Order after careful consideration of the Auditors report. It is noticed from the Impugned Order that the State Commission on perusal of the Auditor's Report has sought clarifications in regard to some of the audit objections and in fact took a different view at various places in the Impugned Order.

**41.** That apart, the State Commission has conducted discussions with the State Advisory Committee and taken note of their valued suggestions while passing the Impugned Order. It is also mentioned in the Impugned Order that the State Commission took assistance of the independent Consultant M/s. Price Water House for the tariff determination process and only after getting consultations from the Consultant with regard to the materials available on record including the Auditors report, the State Commission has determined the tariff. Therefore, it cannot be contended

that the State Commission has simply adopted the statutory audit report without any independent application of mind or undertaking independent scrutiny.

**42.** In view of the above, there is no merit in this ground urged by the Appellant. Accordingly, this issue is also decided against the Appellant.

**43.** The **Fifth Issue** is relating to the **Computation of Return on Equity.**

**44.** According to the Appellant, the State Commission has ignored the fact of capitalization of consumer security despot amounting to Rs.49.03 Crores for the purpose of calculating ROE for the Respondent No.2. The Respondent No.2 is claiming ROE on the same and the interest on the consumer security is passed through in the APR as well. The State Commission should have disallowed ROR on the said amount of Rs.49.03 Crore.

**45.** According to the learned Counsel for the State Commission, this issue is covered by the judgment dated 2.1.2013 of this Tribunal in Appeal No.108 of 2010. According to the learned Counsel for the MESCOM (R-2), the consumer's deposit was capitalized as per the Government Order dated 31.5.2003 and they are claiming interest paid on consumer

security deposit as pass through and also ROE strictly in accordance with the provisions of the MYT Regualtions and once the asset has been capitalized in the books, the ROE will accrue in such capitalized assets. He has also relied on the decision of the Tribunal in Appeal No.108 of 2013.

46. Admittedly, the consumer security deposit has been capitalized pursuance to the State Govt order and the Respondent No.2 is claiming ROE on such capitalized sum. We feel that the consumer security deposit is not a capital asset on which ROE can be claimed. Even if the State Government has ordered capitalization of consumer security deposit and accordingly the balance sheet of the Distribution Companies has been drawn up with gross fixed assets including the consumer security deposit, the State Commission should have deducted the amount of consumer security deposit while allowing ROE on the equity component of the capital cost.

**47.** As already held by this Tribunal, the State Commission is not bound to follow the audited accounts and the State Commission can scrutinize the same and allow the expenditure only after prudence check. By allowing ROE on consumer security deposit and also allowing interest paid by the Distribution Licensee to the consumers against

consumer security deposit in the ARR of the Distribution Licensee, the consumer has been burdened unreasonably. On one hand the Distribution Company has been allowed ROE on the security deposit which is contributed by the consumer and on the other hand the interest paid to the consumer on such deposit is also allowed as a pass through in the tariff to be recovered from the consumers. This is wrong.

**48.** Hence, we find force in the arguments of the Appellant that ROE on consumer security deposit amount capitalized in the books of accounts of the Distribution Licensee should not have been allowed in the ARR of the Distribution Licensee. Accordingly, we direct the State Commission to adjust the excess amount of ROE allowed in the Impugned Order from FY 2011-12 onwards in the APR/True up for these years to provide relief to the consumers.

**49.** The learned Counsel for the State Commission and the Respondent No.2 has argued that the issue is covered by the decision of this Tribunal in Appeal No.108 of 2010 as against the Appellant. We do not agree with the same. In the judgment dated 2.1.2013 in Appeal No.108 of 2010, this Tribunal did not go into the issue of inclusion of the consumer security deposit in the gross fixed assets of the Distribution

Company and consequent allowance of ROE on the same being passed on in the ARR and retail supply tariff. The Tribunal only noted the statement of the State Commission that the interest is being paid regularly to the consumers on the consumer's deposit despite the capitalization of the security deposit and held that the issue has become in fructuous.

**50.** Another issue raised by the Appellant is that the State Commission has violated the MYT Regualtions in so far as ROR in APR as well as ARR are concerned and the State Commission has allowed ROE on the equity component (aggregate of equity and free reserve) without considering the debt equity ratio, as per the Regualtions.

**51.** According to the learned Counsel for the State Commission, gross asset in FY 2011-12 is Rs.218 Crores and increase in equity is Rs.57.20 Crore which would show that component of equity was less than 30%.

**52.** We find that the State Commission has not shown the break-up of GFA into debt and equity component. In the absence of the opening and closing GFA figures and corresponding debt and equity components, we are not able to find whether the debt equity ratio and ROE has been allowed as per the Regualtions. The State Commission is

directed to transparently show the opening and closing GFA along with break-up into equity and loan component in the tariff order henceforth**.** The State Commission is also directed to consider the contentions of the Appellant while truing-up the accounts for the FYs 2011-12 to 2014-15. Accordingly, this issue is decided in favour of the Appellant.

**53.** The **Sixth Issue** is relating to the **Wrong Allowance of Depreciation.**

**54.** According to the Appellant, the State Commission wrongly allowed depreciation on assets created from consumers' contribution and Government Accounts without following Accounting Standard-12 relating to the Assets created.

**55.** It is not disputed that up to the year 2011-12, the MESCOM had followed the Electricity Supply Rules, 1985 for recognising grants and consumer's contribution received towards Capital expenditure.

**56.** As per the direction of this Tribunal in the judgment dated 2.1.2013, the MESCOM from 2013 onwards has started implementing the provisions of the Accounting Standard-12 issued by the Institute of Chartered Accountants of India for recognising the grants and contribution received towards the capital expenditure.

**57.** We find that the State Commission for the FY 2011-12 has allowed depreciation as claimed by the Respondent No.2 based on the opening block of gross fixed assets and the actual capitalization/retirement of assets from time to time. However, the State Commission has noted in the Impugned Order that the depreciation allowed in the Impugned Order is subject to review in respect of depreciation on assets created if any out of consumer contribution and grants. In respect of projected depreciation for the control period FY 14-16, the State Commission has recorded in the Impugned Order that the projected depreciation for the control period by the Distribution Company did not separately indicate depreciation of assets on account of contribution by consumers/grants as such the Commission has not considered the projected depreciation on assets from contribution by consumers/grants. However, in accordance with the order, the Tribunal in Appeal No.108 of 2010, the Commission will factor the depreciation of assets created from contribution by consumers/grants during the Annual Performance Review.

**58.** This Tribunal in judgment dated 2.1.2013 in Appeal No.108 of 2010 had held that the depreciation on grants, consumer contribution etc shall have to be treated in accordance with

the Accounting Standard 12 of Institute of Chartered Accountant. The State Commission in the Impugned Order has also held that it would carryout the directions of the Tribunal while conducting the APR for the control period, as the Distribution Company did not furnish separately depreciation on account of assets created by consumer contribution/grants.

**59.** The State Commission is accordingly directed to carryout the directions of the Tribunal given in the appeal No.108 of 2010 in the APR/True up of the Accounts from FY 2011-12 onwards.

**60.** Thus, this issue is disposed of with the above directions to the State Commission.

**61.** The **Seventh Issue** is relating to the **metering of the agricultural IP Pump Sets.**

**62.** According to the Appellant, though the MESCOM has metered 92.74% of the Irrigation Pump (IP Sets) and 89.69% of BJ/KJ installation in the year 2012, the Electricity consumption was not on the basis of the metering but it was merely estimated.

**63.** On this issue, already a decision has been arrived at by this Tribunal in the judgment in Appeal No.108 of 2010 dated

2.1.2013. In this judgment, it has been held that the State Commission has considered IP sets sales on the basis of the consumption recorded in the meters installed at the Distribution Licensee's Transformers level and as such the sales to IP sets have been correctly made.

**64.** The findings of this Tribunal in this regard are as under:

> *"44. Fourth issue for consideration is related to consumption attributed to Irrigation pump sets.*
>
> *45. The learned Counsel for the Appellant submitted that Section 55 of the 2003 Act contemplates that metering of all classes of consumers have to be necessarily be done. The 2nd Respondent BESCOM has not metered the IP set consumers and has always claimed power purchase on assumptions and projections. The Commission in its order has noted that the IP set consumers are not opposed to metering. The Commission has also noted that the data regarding number of IP Set consumers has not been furnished by BESCOM. Further, the Commission has also noted that the data from the meters of Distribution Transformers feeding power predominantly to IP set consumers has not been placed on record. Yet, the Commission has approved 4125.22 Million Units basing its figure on the data furnished by BESCOM. The approach of the Commission is erroneous. It should have disallowed any power purchase on account of IP sets until production of reliable data by BESCOM.*
>
> *46. The Commission has justified the assumption taken by them in regard to consumption by the IP sets and have submitted that it had considered the number of IP sets as per the 2nd Respondent's audited data for FY 2008 and*

*census data produced by the 2nd Respondent BESCOM. The Commission has considered IP sets sales on the basis of consumption recorded in the meters installed at the Distribution Transformer Level. Thus the sales to IP sets has been correctly made.*

*47. This Tribunal in catena of judgments has held that the Commissions ought to approve the power purchase costs subject to prudence check. This Tribunal in its judgment in Appeal No.250 of 2006 in the case of Bangalore Electricity Supply Company Limited & Ors. v/s Karnataka Electricity Regulatory Commission & Ors. 2008 ELR (APTEL) 164 had held as under:*

> *"11. We hold that as the appellant is responsible for meeting the power demand in its area, its projections – unless perverse or grossly wrong – should not be interfered. Any variation in power procurement cost can be taken care of during truing up exercise. In the present case since tariff years 2007-08 and 2008-09 are over and we are in the midst of the tariff year 2009-10, the Commission is directed to i) allow the power purchase cost on the basis of actual available figures and ii) also allow it the carrying cost, while carrying out the truing up exercise."*

*48. In view of findings of the Commission that it has considered IP sets sales on the basis of consumption recorded in the meters installed at the Distribution Transformer Level and in view of this Tribunal's judgment quoted above, we do not find any reason to interfere with the findings of the Commission. The issue is decided against the Appellant."*

**65.** These findings as referred to above, in our view squarely apply to the present facts of the case. Accordingly, we hold

that the State Commission has correctly estimated the electricity consumption of IP sets.

**66.** In fact, the State Commission also has been issuing required directions to the Distribution Companies regarding metering. The MESCOM has also provided the details of realization of unauthorised IP sets in its Petition which is in accordance with the order of the State Commission. Further, the Transmission and Distribution Losses of the MESCOM after realization of IP sets have reduced. The reduction in such losses has been recorded in the Impugned Order by the State Commission. For the year 2012, the State Commission had approved the Distribution Losses of 12.10% for the year 2013. But, now the Distribution Loss level of MESCOM was 12.09% which is lower than the approved target.

**67.** It is contended by the Respondent that the above reduction has been made possible despite the stiff résistance for fixing meters to IP sets by farmers.

**68.** In order to assess the consumption by IP sets, the energy recorded in the meters fixed to the Distribution Transformers Centres is being taken which covers all the IP sets connected to the system. It is also pointed out that the cost of the same is being borne by the Government.

**69.** Therefore, the ground urged by the learned Counsel for the Appellant on this issue has no merit. Accordingly, this issue is decided as against the Appellant.

**70.** The **Eighth Issue** is relating to the **Interest on Consumers' Security Deposit.**

**71.** According to the Appellant, the State Commission has erroneously allowed the interest on consumers' security deposits at the rate of Rs.8.75% for the year 2013 although the RBI Bank Rate was reduced from Rs.8.75% to Rs.8.50% which was further reduced to Rs.8.25% w.e.f. 3.5.2013.

**72.** It is noticed that the State Commission has applied the interest on consumers' deposits as per Regulation 3 of the KERC (Interest on Security Deposits) Regulations, 2005. Regulation 3 mandates that the licensee shall pay interest on security deposits of the consumers at the bank rates prevailing as on 1.4.2014 of the Financial Year for which the interest is due. The relevant Regulations are as follows:

**73.** As per Clause 3.1 of the Regulations, 2005, the Licensee shall pay interest on security deposits of the consumers at the Bank rate prevailing on the 01$^{st}$ April of the Financial Year. The estimation of such expenditure is based on the bank rate declared by the RBI.

**74.** It was submitted by the learned Counsel for the Respondent that the State Commission has approved the interest on consumers' deposits for the year 2014 onwards at the rate of Rs.8.75% and this will be subject to the true-up as per bank rates as on 1.4.2013. For the FY 2013-14, the MESCOM has calculated the interest payable on consumers' deposits at the rate of Rs.8.50% being the rate prevailing on 1.4.2014. However, this expenditure is subject to annual performance review for the year 2014 based on the actual rate of interest prevailing on 01.4.2013. Therefore, we need not interfere on this issue as this may be taken note of by the State Commission while the State Commission undertakes the true-up. This issue is decided accordingly.

**75.** The **Ninth Issue** urged by the Counsel for the Appellant is that **no independent scrutiny of the Accounts of the MESCOM (R-2).**

**76.** This point has been urged by the Appellant without referring any specific particulars and as such, the Appellant has only made a general statement.

**77.** As pointed out by the learned Counsel for the State Commission, the various items of revenue expenditure which was checked with reference to the audited accounts

have been allowed in respect of some expenditure and disallowed in respect of other items by strictly following tariff Regulations, 2000 and MYT Regulations, 2006 which were mandated subsequently.

**78.** Therefore, there is no merit in this ground urged by the Appellant.

**79.** The **last and tenth issue** is relating to the **filing of the Petitions on behalf of the MESCOM by the Executive Engineer without any Board Resolution**.

**80.** According to the Appellant, the Petition filed by the MESCOM through the Executive Engineer was not maintainable since the Executive Engineer is not a Director or Secretary and he is neither an authorised employee nor the duly authorised Power of Attorney as required under Article of Association.

**81.** According to the Respondent, this allegation is not factually correct.

**82.** As pointed out by the learned Counsel for the Respondent as per Clause 17 of Karnataka Electricity Regulatory Commission (General and Conduct of Proceedings) Regulations, 2000 a Petition with an Affidavit has to be filed

by a licensee through an authorised employee is maintainable.

**83.** It is now sub mitted by the Respondent MESCOM (R-2) that in fact, the authorisation has been given to the Executive Engineer after the approval of the Board of Directors in the meeting held on 1.2.2011. In fact, the State Commission has verified that aspect and ascertained that the authorization given by this Board of Directors is in order. Therefore, the Petition filed by the Executive Engineer along with an authorisation approved by the Board of Directors was perfectly maintainable.

**84.** Therefore, there is no question of filing of the Petition by the Executive Engineer being contrary to such allegations. Thus, this ground would also fail.

**85.** Consequently, we have to hold that there is no merit in the ground raised in this Appeal.

**86.** **<u>Summary of Our Findings</u>**

**(i) The State Commission has followed the mandate of Section 64 of the Electricity Act and accorded an opportunity of public hearing to the stake holders. The State Commission has considered the objections raised by the objectors**

**including the Appellant and the response of the Distribution Company before passing the Impugned Order.**

**(ii) There is no infirmity in retrospective application of tariff order dated 6.5.2013 w.e.f 1.5.2013. The issue regarding retrospective application of the tariff order is covered by this Tribunal's judgment in Appeal No.164 of 2010 against the Appellant.**

**(iii) Regarding drawing up of the accounts of the Distribution Company as per the Companies Act, the State Commission has given directions to the Distribution Company to follow the procedure as the Companies Act, 1956 forthwith following the judgment of this Tribunal dated 2.1.2013 in Appeal No.108 of 2010. In this case, the Distribution Company had already filed the Petition and proceedings of the case had commenced prior to the pronouncement of the judgment in appeal No.108 of 2010. The State Commission has correctly given directions in the impugned order to the Distribution Company to follow the accounting procedure as per**

**the Companies Act, 1956 forthwith. Thus, the Appellant cannot have any grievance on this issue.**

**(iv) The State Commission has scrutinised the audited accounts of the Distribution Company independently by applying its mind. Therefore, there is no merit in the contentions of the Appellant.**

**(v) The State Commission ought not to have allowed ROE on the consumer security deposit which has been capitalized in the books of the Distribution Company. Accordingly, the State Commission is directed to adjust the excess ROE allowed to the Distribution Company in the impugned Order in the APR/True Up of the FY 2011-12 onwards.**

**(vi) The State Commission is directed to give treatment to depreciation on assets created by consumer contribution and grants as per the Accounting Standard 12 of Institute of Chartered Account as per the directions given by this Tribunal in Appeal No.108 of 2010.**

**(vii) The issue regarding meeting of IP sets is decided in terms of the findings of this Tribunal in**

**judgment dated 2.1.2013 in Appeal No.108 of 2010 as against the Appellant as the IP sets sales has been decided based on the meters installed on the distribution transformer's supply power to the pump set.**

**(viii) The State Commission has correctly decided the interest in consumer security taking into consideration the interest rate as per the bank rate prevailing on 1st April of the Financial Year as per the Regualtions.**

**(ix) There is no merit in the contentions of the Appellant regarding independent scrutiny of Accounts of the distribution company and filing of the Petition on behalf of the distribution company by the Executive Engineer of the Company without any Board resolution.**

**87.** The Appeal is allowed in part as indicated above.

**88.** The State Commission is directed to pass consequential order in terms of the finding rendered in this judgment on some of the issues.

**89.** No order as to costs.

**90.** Pronounced in the Open Court on **this day of September, 2014.**

**(Rakesh Nath)** **(Justice M. Karpaga Vinayagam)**
**Technical Member** **Chairperson**

Dated:17th Sept, 2014

√REPORTABLE/~~NON-REPORTABALE~~