

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 111 of 2013**

**Dated : 22<sup>nd</sup> August, 2014**

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

**In the matter of**

- 1. Snam Alloys Pvt. Ltd. ... Appellant (s)  
Kariamannickam Village  
Nettapakkam Commune,  
Puducherry – 605 106**
- 2. Chemfab Alkalis Ltd.  
Gnananade Place, Kalapet,  
Puducherry – 605 014**
- 3. Pulkit Metals Pvt. Ltd.  
Eripakkam Village, Nettapakkam  
Commune,  
Puducherry – 605 106**
- 4. Meenakshi Steels  
14/5, Thethampakkam Village P.O.  
Suthukeni,  
Puducherry – 605 502**
- 5. AKS Alloys Pvt. Ltd.  
Eripakkam Village, Nettapakkam  
Commune, Puducherry – 605 106**

- 6. Kannappan Iron and Steel Co. Pvt. Ltd.  
R.S. No. 10/1 Nagoor Main Road,  
Melavanjoor, T.R. Pattinam  
(PO), Karaikal – 609 606, Pondicherry**
- 7. National Oxygen Limited  
Pondy Villupuram Road  
Thiruvandarkoil  
Pondicherry – 605 102**
- 8. Sumangala Steels Private Limited  
PipdicIndl Estate, Mettupalayam  
Puducherry**
- 9. Inox Air Products Ltd.  
R.S. No. 26, Kaniiyakoil – Bahour  
Main Road, Utchimedu Village  
Manapet Post  
Puducherry – 607 402**
- 10. AML Steel Ltd.  
R.S. No. 33/5, Pt. 6, 34/12  
Pt. 13, Eripakkam village, Nettapakkam  
Commune, Puducherry – 605 106**
- 11. JBA Steels Pvt. Ltd  
6/1 Thondamanatham Village  
Villianur Commune,  
Puducherry – 605 502**

**Versus**

1. **Joint Electricity Regulatory Commission for the State of Goa and Union Territories** ...Respondent(s)  
**2<sup>nd</sup> Floor, HSIIDC Office**  
**Vanijya Nikunj Complex**  
**Udyog Vihar, Phase – V**  
**Gurgaon – 122 016**
2. **Government of Puducherry**  
**Electricity Department**  
**137, Netaji Subhash Chandra Bose**  
**Salai, Puducherry – 605 001**

**Counsel for the Appellant(s):** **Mr. Buddy A. Ranganadhan**  
**Ms. Richa Bharadwaja**

**Counsel for the Respondent(s):** **Mr. R. Venkataramani, Sr. Adv.,**  
**Mr. V.G. Pragasam,**  
**Mr. S. Prabu Ramasumbramanian,**  
**Ms. Neelam Singh,**  
**Mr. S.J. Aristotle ,**  
**Mr. A.M. Shodhan Babu, and**  
**Ms. V. Vijayalakshmi for R-2**

**Mr. Varun Pathak,**  
**Mr. Suyash Guru and**  
**Mr. Ravi Prakash for R-1**  
**Mr. Anish Garg, Rep. for JERC**  
**Mr. J. Sreedharan, Rep. for JERC**

## JUDGMENT

### RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Snam Alloys Pvt. Ltd. and others challenging the tariff order dated 10.04.2013 passed by the Joint Electricity Regulatory Commission for State of Goa and Union Territories (“Joint Commission”) in respect of Electricity Department of Puducherry for the FY 2013-14 and True-up for FY 2009-10 and FY 2010-11, Provisional True-up for FY 2011-12 and Review for FY 2012-13.

2. The Appellants are the EHT and HT consumers having their manufacturing premises in the UT of Puducherry. The Joint Commission and the Electricity Department, Government of Puducherry are the Respondent no.1 and 2 respectively.
3. The Appellants are aggrieved by the following:

- i) Violation of principles of natural justice and transparency.
  - ii) Not accounting for the net impact of UI sales made outside the territory by the Electricity Department in the ARR.
  - iii) Not accounting for grant-in-aid received by the Electricity Department and recovering the expenses covered by the grant-in-aid in tariff.
  - iv) Retrospective effect of the tariff order.
4. On the above issues the submissions made by the Appellants are:

**A. Violation of Principles of Natural Justice and Transparency:**

- i) The impugned order prima facie, states that the Joint Commission had interaction with the Electricity Department on 14.03.2013 after the public hearing process was completed on 08.03.2013. After the public hearing process was over, there was correspondence and exchange between the Joint Commission and the Electricity Department. The correspondence is stated to have included various queries of the Joint Commission and replies by the Electricity Department. Such interaction without any public notice behind the back of the consumers is in violation of the fundamental tenets of transparency as mandated under Section 86(3) of the Electricity Act, 2003.
- ii) The Appellants are not aware of as to what was the interaction between the Joint Commission and the Electricity Department on the tariff petition, what were the queries of the Joint Commission and what data or explanation was

provided by the Electricity Department as the same are not in the public domain. No opportunity was given to the Appellants to offer objections on the data and clarification provided by the Electricity Department subsequent to the public hearing.

- iii) Thus, the entire tariff proceedings have been held in contravention of Sections 64(2) and 86(3) of the Electricity Act, 2003 and on that ground itself the impugned order is liable to be set aside.

**B. Not accounting the net impact of UI sales made outside the territory by the Electricity Department in the ARR:**

- i) The Joint Commission excluded the sale of energy as proposed by the Electricity Department outside the Union territory under UI mechanism.

- ii) The Joint Commission has acknowledged that the revenue from such external sales is more than the average cost of power purchase. Hence if the Joint Commission had taken the cost of power purchase and the sale of power outside UT of Puducherry, the net gain would have reduced the ARR and consequently the retail supply tariff.

**C. Not taking into account the grant-in-aid:**

The Joint Commission has failed to take into account the grant-in-aid of Rs. 150 crores received by the Electricity Department from the Central Government for the purpose of paying past dues of Rs. 143 crores for electricity supply to TANGEDCO. The Appellants in the objection raised before the Joint Commission, had requested that the sum of Rs. 143.58 paid by the Electricity Department to TANGEDCO out of the grant-in-aid received from the Central Government

should be deducted from the ARR. However, the Joint Commission without any finding on this issue allowed the payment made by the Electricity Department to TANGEDCO as expenses in the ARR.

**D. Retrospective effect of the order:**

The tariff order was issued on 10.04.2013 and made the new tariff effective from 01.04.2013 i.e. from a date anterior to that of the tariff order. There is no power under the Electricity Act which would permit the Joint Commission to fix a tariff retrospectively.

5. On the above issues, we have heard Mr. Buddy Ranganadhan, the Learned Counsel for the Appellants, Mr. Varun Pathak, Learned Counsel for the Joint Commission and Mr. Venkataramani, Learned Senior Advocate

representing the Respondent no.2. They have also filed written submissions.

6. Keeping in view the rival contentions of the parties, the following questions would arise for our consideration:

- i) **Whether Joint Commission has violated the principles of natural justice and not maintained transparency by raising queries and obtaining additional information from the Electricity Department after the public hearing was completed and considering the information for tariff determination, without giving an opportunity to the consumers to file objections on the additional information?**
  
- ii) **Whether the Joint Commission has erred by not accounting for the net impact of the sales through UI**

**mechanism by the Electricity Department outside the territory of the UT of Puducherry?**

- iii) Whether the Joint Commission has erred by not accounting for the grant-in-aid received by the Electricity Department from the Central Government for the purpose of liquidating the past power purchase dues to TANGEDCO and not deducting the same from ARR of the Electricity Department?**
  
  - iv) Whether the Joint Commission has erred in making the tariff effective retrospectively?**
7. Let us now examine the first issue regarding violation of principles of natural justice and transparency.

8. Learned Counsel for the Appellants has pointed out to the following interaction/correspondence between the Joint Commission and the Electricity Department, as mentioned in the impugned tariff order, which were held after the completion of public hearing:

*“1.5 Interaction with the Petitioner*

*The Commission interacted regularly with the Petitioner to seek clarifications and justification on various issues essential for the analysis of the tariff petition. The Petitioner submitted its replies, in response to the queries raised by the Commission’s office, which have been considered for the computation of the ARR and the resultant tariff thereof, of the Petitioner. The technical validation session was held at the Commission’s office on March 14’ 2013.”*

*Table 1: List of Correspondence with EDP*

<i>S. No.</i>	<i>Date</i>	<i>Subject</i>
<i>1.</i>	<i>15.03.2013</i>	<i>Queries and additional data sought by the Commission after the technical validation session</i>
<i>2.</i>	<i>18.03.2013</i>	<i>Reply to the queries sought by the Commission</i>
<i>3.</i>	<i>08.04.2013</i>	<i>Response on the query of Depreciation methodology”</i>

9. In reply, the State Commission has submitted that there was no such interaction through which any new material, information or aspect of the matters had been exchanged and considered subsequent to the public hearing. The interaction with the Electricity Department was in the process of prudency check by the Joint Commission wherein clarification and documentary evidence was necessary from the Electricity Department. The crux of the argument of the Appellants that the Joint Commission could not have asked for details after the public hearing is contrary to the provisions of the Electricity Act, 2003. There is no such restriction on the Joint Commission. According to Regulation 20 of the Conduct of Business Regulations, the Joint Commission may at any time before passing orders on any matters require the parties to produce the documentary or other evidence as the Joint Commission considers appropriate.

10. According to Learned Counsel for the Joint Commission this issue is covered by judgment of this Tribunal in Appeal no. 257 of 2012 in the matter of the Southern India Mills Association Vs TANGEDCO and Anr.
11. The Electricity Department, the Respondent no.2, has submitted as under:
- i) No such interaction through which any material, information or aspect of the matter, which had not been exchanged during the course of tariff hearing has been brought on record.
  - ii) The Joint Commission also did not seek any material with respect to which no deliberations took place during the public hearing.
  - iii) The information supplied to the Joint Commission was in the form of further details or split of information of materials

already submitted before the Joint Commission and were available before the public hearing. Further details were entirely for the purpose of demonstrating the basis or the foundation of the material already made available.

12. This Tribunal in judgment dated 09.04.2013 in Appeal no. 257 of 2012 had considered this issue and decided as under:

*“9. The first question is regarding making available the documents furnished by the distribution licensee in response to the clarification sought by the State Commission, in public domain.*

.....

*9.4 Let us first examine Section 64 of the Electricity Act, 2003 regarding procedure for tariff order. The relevant part of Section 64 is reproduced below:*

***“64. Procedure for tariff order.—***

*(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and*

*accompanied by such fee, as may be determined by regulations.*

- (2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*
  
- (3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,— (a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order; (b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force: Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application”.*

*Thus, according to Section 64, the applicant has to publish the application in such abridged form and manner as specified by the Appropriate Commission. Further the State Commission has to issue the tariff order after considering all suggestions and objections received from the public.*

.....

9.7 *We notice that the State Commission has sought certain clarifications from the distribution licensees and the correspondence exchanged between them between 27.11.2011 and 23.3.2012 are listed as an Annexure to the impugned order.*

.....

9.9 *We are in agreement with the contentions of the State Commission that the clarification sought by the Commission and reply furnished by the licensee in the process of prudence check need not be put to public notice for suggestions/objections. Section 64 of the Electricity Act also envisages publication of the application filed by the licensee in abridged form as specified by the Commission. The Regulations also provide for publication of the application in an abridged form as per the directions of the Commission and making available copies of the petition and the documents filed on payment besides hosting them on website. However, the Regulations do not provide making available to public the replies to the clarifications sought by the Commission in the process of prudence check of the data furnished with the petition by the licensee.*

9.10 *The Appellant has also not been able to clearly specify how they were prejudiced by non-availability of the clarifications furnished by the distribution licensee on the queries raised by the State Commission in the process of prudence check or point out any particular discrepancy in the facts and figures in the tariff petition and that given in the tariff order. The Appellant has challenged the specific findings of the State*

*Commission by which it has been aggrieved in this Appeal which have been dealt with in this judgment.*

*9.11 The tariff determination proceedings are not adversarial proceedings like adjudication of disputes u/s 86(1) (f) of the Act and the State Commission has to apply prudence check to the documents submitted by the licensee in support of its claim for ARR tariff and in the process it can seek clarification from the licensee.*

*9.12 Thus, we do not find any reason to set aside the impugned order only because the clarifications furnished by the licensee on the queries raised by the Commission in the process of prudence check was not put in public domain in this case.*

*9.13 Having decided the issue in this Appeal, we want to give certain directions to the State Commission on this issue for future.*

*9.14 In order to avoid any controversy in future and for maintaining complete transparency in tariff determination process, the State Commission may consider to review and amend its Regulations so as to put any information furnished by the licensee or generating company to the State Commission subsequent to filing of the petition on its website, in view of the fact that justice is not only to be done but also appears to be done.”*

13. In the present case the Joint Commission has followed the procedure as laid down under Section 64 of the Electricity

Act, 2003 by inviting suggestions and objections from the public on the Petition of the Electricity Department and also holding public hearing. We find that staff of the Joint Commission held technical validation service with the Electricity Department on 14.03.2013. Such validation was basically to validate the data submitted by the Electricity Department in its petition which was already in public domain. The queries and additional data sought by the Joint Commission on 15.03.2013 was as a consequence of the technical validation session held in the process of prudence check. The response dated 08.04.2013 was reply to the clarification sought by the Joint Commission to check the computation of depreciation claimed by the Electricity Department. Thus, all the queries and additional data sought by the Joint Commission was in the process of prudence check of the data filed by the Electricity Department in its petition earlier.

14. Shri Buddy Ranganadhan, the Learned Counsel for the Appellants has specifically referred to the computation of Gross Fixed Assets and capitalization and depreciation based on Fixed Assets Register which was not put to public notice and the same was furnished to the Joint Commission by the Electricity Department after the public hearing.
15. We are not able to agree with Mr. Buddy Ranganadhan that the verification of Fixed Assets Register and computation of Gross Fixed Assets and Depreciation should have been put to the public notice for obtaining the objections of the public. The verification of GFA/additional capitalization and depreciation with reference to the Fixed Assets Register is a part of the prudence check by the Joint Commission as part of its function and the same need not be again subjected to public notice. We find that the Joint Commission examined the validation data/information submitted by the Electricity Department and only after it was satisfied with the response

of the Electricity Department, the data furnished in the Petition was accepted.

16. We are of the view that the findings of this Tribunal in judgment dated 09.04.2013 in Appeal no. 257 of 2012 will squarely apply to the present Appeal. Therefore, the failure to issue the subsequent public notification of the additional information sought by the Joint Commission in the process of prudence check of the data/information furnished in the Petition of the Electricity Department for obtaining objections of the public would not affect the validity of the impugned order. However, as advised by this Tribunal in the judgment in Appeal no. 257 of 2012 dated 09.04.2013, the Joint Commission may consider to review and amend its Regulations so as to have a provision for putting the information furnished by the licensee or the generating company to the Joint Commission subsequent to the filing of

the Petition which has been made public or after the public hearing is over, as the case may be, on its Website.

17. Accordingly the first issue is decided as against the Appellants.
  
18. The second issue is regarding non-consideration of net impact of Unscheduled Interchange (UI).
  
19. According to Mr. Buddy Ranganadhan, even though the Joint Commission was aware that the Electricity Department had surplus energy available with it under firm commitments over and above the requirement of Puducherry, yet it failed to consider the net revenue from UI sales in the ARR for FY 2013-14.
  
20. According to Learned Counsel for the Joint Commission, the Joint Commission has considered merit order dispatch

principles while approving Power Purchase Cost and has neither considered sale of surplus energy under “Revenue from outside sales/UI sales” nor purchase of surplus energy under “Cost of Power Purchase”. However, any benefit arising out of sale of surplus energy will be considered at the time of truing up and shall be passed on to the consumers after prudence check.

21. We find that the Electricity Department had proposed UI sales at 426.8 MU and revenue from UI sales at 142.3 crores for FY 2013-14.
22. Let us examine the procedure adopted by the Joint Commission in deciding the Power Purchase Cost and revenue from sale of surplus power.
23. The Joint Commission has considered the merit order principle for estimating the power purchase cost. The “must

run stations” have been assumed at the top of the merit order and variable cost for meeting the energy requirement within the state has been calculated from the plants at the top of the merit order. However, fixed charges have been considered from all the generating stations for arriving at the Power Purchase Cost. Thus, no surplus power has been considered for FY 2013-14 and power purchase corresponding to meeting the requirement of the territory of UT of Puducherry has been estimated. Similarly, no UI charges for overdrawl by Puducherry has been considered. Accordingly, the Joint Commission approved Power Purchase Cost of Rs. 924.91 crores by the Electricity Department. The Joint Commission has, therefore, not considered the revenue from outside sales for FY 2013-14 and decided to consider the same as per actuals at the time of true up.

24. We do not feel that the procedure adopted by the Joint Commission is perverse or illegal. UI mechanism is not meant for sale of surplus power. The present Regulations of Central Commission also do not permit Unscheduled Interchange beyond the specified quantum in the interest of grid security. Therefore, we do not find any reason to interfere with the finding regarding consideration of UI sales as claimed by the Appellants. However, we feel that in future, the Joint Commission should take into account the anticipated availability from all the approved sources with which power procurement has been tied up by the Electricity Department and also should consider the fixed and variable charges in the Power Purchase Cost and work out the surplus energy available for sale outside the Union Territory of Puducherry and the likely rate and the revenue which is expected to fetch in the market keeping in view the short term market data available in public domain to have more

realistic assessment of the ARR and to avoid any controversy. The Joint Commission is also directed to true up the Power Purchase Cost and sale of surplus power by the Electricity Department in the true up for FY 2013-14. This issue is decided accordingly.

25. The third issue is regarding non-consideration of grant-in-aid by the Central Government.
  
26. According to Mr. Buddy Ranganadhan, Learned Counsel for the Appellant, the Joint Commission ought not to have considered the entire amount paid to TNEB which was made out of grant-in-aid received from the Central Government, as a part of expense in the ARR, without giving any finding on the objections of the Appellants.

27. According to the Learned counsel for the Joint Commission, the Electricity Department has made payment of Rs. 143.58 crores accruing to TANGEDCO as per the directions of UT Administration. As per GO Rt No. 123/ID(P)D/2012 dated 15.11.2012, the expenditure is debitable to the Department head of account. The amount so paid by the Electricity Department is a cost and accordingly is recoverable form tariff.
28. According to Shri Venkataramanai, Learned Senior Counsel for the Electricity Department Government of Puducherry, the Non-Plan grants are provided by the Central Government in order to meet the expenses and liabilities which become due immediately or which are in the nature of continuing liabilities e.g. interest payment, cost of maintenance of assets like roads, dam, etc. The planned grants are for the purpose of subsidies, welfare schemes

and building assets such as roads and dams. The grant-in-aid received from the Government of India is neither a revenue receipt nor an idle surplus which is available to the Electricity Department. The grant-in-aid was only by way of an advance release, as part of normal central assistance to the UT of Puducherry, and the said amount has been adjusted by the Central Government in the subsequent monthly releases at the time of granting the normal grants for the FY 2012-13. Even though the reason for urgent release was the demand made by the UT of Puducherry, it was made in the context of Non-Plan deficits. Grant-in-aid received as part of Non-Plan demands to be adjusted later, can never be treated as a resource available for bridging the revenue gap, as sought by the Appellants.

29. We find that the stakeholders had made and raised specific suggestion/objection that the sum of Rs. 143.58 crores received by the Electricity Department from the Government

of India as grant-in-aid towards payment of arrears of Power Purchase Cost to TANGEDCO should be deducted from the Power Purchase Cost allowed to the Electricity Department in the ARR.

30. In reply to the above objection by the stakeholders the reply given by the Electricity Department was that UT Administration had directed them to recover the above amount for tariff and as per G.O. Rt no. 123/ID(P)D/2012 dated 15.11.2012, the expenditure is debitable to the Electricity Department's head of account and the amount is a cost for the Electricity Department to be recoverable in tariff. It was further clarified by the Electricity Department that the amount sanctioned by the Government of India is not an exclusive grant-in-aid but a release of Rs. 150 crores against the State Government Annual Grant as communicated vide

letter no. 15039/80/2012-Plg.Cell dated 29.10.2012 of Ministry of Home Affairs.

31. We are of the opinion that the Joint Commission has simply allowed the amount of arrears paid by the Electricity Department to TANGEDCO towards Power Purchase Cost for the past period in the ARR without considering the objections raised by the objectors and without adducing any valid reason.
  
32. The Appellants have filed a copy of the letter dated 29.10.2012 for the Ministry of Home Affairs, Government of India indicating sanction for the payment of grant-in-aid of Rs. 150 crores as Non-Plan Grant to Government of Puducherry for making payment to TANGEDCO under Grant no. 56 – Transfer to UT Governments during the financial year 2012-13.

33. We feel that the matter has to be reconsidered by the Joint Commission in light of the relevant documents and the submissions made by the parties. We, therefore, remand the matter to the Joint Commission to consider all facts and the submissions made by the Appellants afresh and to pass the reasoned order after hearing all the parties without being influenced by its earlier finding. We make it clear that we are not giving any opinion on the merits of this issue as we feel that the matter has to be re-examined by the Joint Commission. Accordingly, this issue is decided.
34. The last issue is regarding retrospective option of the impugned order.
35. We find that the impugned tariff order was issued on 10.04.2013 and was made effective from 01.04.2013.

36. This issue has already been covered by this Tribunal's judgment dated 31.05.2013 in Appeal no. 179 of 2012 in the matter of Kerala High Tension and Extra High Tension Industrial Electricity Consumer's Association Vs. KSERC & Anr.

*"81. We do not find that the Commission was wrong in its approach by giving effect to the tariff order from the aforesaid retrospective date as the tariff was fixed for the tariff year 2005-06, which commenced on 1<sup>st</sup> April, 2005. If the submission of the Industrial Consumers is accepted, a consumer could initiate some proceedings in a Court against the Commission with a prayer for seeking an interim order restraining the Commission from revising the tariff on some ground or the other. This could delay the passing of the tariff order in case an interim order interdicting the determination of tariff is passed pending the proceedings. In such a contingency, it is only after the interim order is lifted by the Court that the Commission would be in a position to pass the tariff order. Obviously, it would only be just and fair that the tariff order relates back to and commences on the first day of the year for which the tariff determination is made. In Kanoria Chemicals & Industries Ltd. & Anr. Vs. State of U.P. & Ors. (1992) 2 SCC 124, a question was raised with regard to the competence of the Electricity Board to determine tariff with retrospective effect. The Supreme Court*

*was of the view that retrospective effect to the revision of tariff was clearly envisaged in law. In this regard, the Supreme Court held 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”.*

*82. Section 62, which provides for determination of tariff by the Commission, does not suggest that the tariff cannot be determined with retrospective effect. In the instant case, the whole exercise was undertaken by the PSERC to determine tariff and the annual revenue requirement of the PSERB for the period*

*April, 1, 2005 to March 31, 2006, therefore, logically tariff should be applicable from April 1, 2005.*

*83. According to sub-section (6) of Section 64 of the Act of 2003, a tariff order unless amended or revoked continues to be in force for such period as may be specified in the tariff order. Thus the Commission is vested with the power to specify the period for which the tariff order will remain in force. The Commission deriving its power from Section 64(6) has specified that the order shall come into force from April 1, 2005. No fault can be found with such a retrospective specification of the Commission.*

*84. The learned counsel for the industrial consumers relied on the decision of the Supreme Court in Sri Vijay Lakshmi Rice Mills vs. State of Andhra Pradesh, AIR 1976 SC 1471, wherein it was held that a notification takes effect from the date it is issued and not from a prior date unless otherwise provided by the statute, expressly or by appropriate language from which its retrospective operation could be inferred. This decision is of no avail to the industrial consumers, in view of the provisions of Section 64 (6) of the Act of 2003, which empowers the Commission to specify the period for which the tariff order will remain in force. In other words, the Commission is empowered to specify the date on which the tariff order will commence and the date on which it will expire.*

*85. The Board in consonance with the cost plus regime is entitled to recover all costs prudently incurred for providing service to the consumers. Besides, the*

*Board is entitled to reasonable return. Since the cost prudently incurred has to be recovered, therefore, in the event of the tariff order being delayed, it can be made effective from the date tariff year commences or by annualisation of the tariff so that deficit, if any, is made good in the remaining part of the year or it could be recovered after truing up exercise by loading it in the tariff of the next year. All these options are available with the Commission*

*86. There is one more aspect which needs to be considered. In case the Commission had lowered the tariff rates, relief to the consumers could not be denied on the ground that the tariff order is being operated retrospectively.*

*87. For all these reasons we hold that the Commission had the jurisdiction to pass the tariff order with retrospective effect. Therefore, we reject the submission of the learned counsel for the industrial consumers that the tariff cannot be fixed from a retrospective date.*

*75. In the above judgment the Tribunal has relied on the findings of the Hon'ble Supreme Court in (1992)2 SCC 124 in the matter of Kanoria Chemical Industries Vs State of UP in which the Hon'ble Supreme Court upheld the retrospective revision of tariff. The findings of the Tribunal in the Siel case will be applicable to this case also.*

.....

*77. If the tariff is made applicable from the date of order i.e. 25.7.2012, the revenue gap in the ARR due to short recovery of the approved revenue will have to be allowed in the ARR and tariff of the subsequent year with carrying cost which will unnecessarily burden all the consumers with the carrying cost.*

*78. In any case the bills for the month of July 2012 at the revised tariff have to be raised only in the month of August 2012, i.e. after the date of the impugned order. Thus, there will not be any recovery of past arrears by the distribution licensee from the consumers on account of revision in tariff w.e.f. 1.7.2012.*

*79. In view of above, this issue is decided as against the Appellant.”*

37. In the present case also the proceedings for determination tariff for FY 2013-14 commenced during the previous year. The public hearing was also completed in March 2014. The billing for the month of April 2014 will be raised only during May 2014. We feel that the findings of this Tribunal in Appeal no. 179 of 2012 will apply to the present case. Accordingly, we do not find any reason to interfere with this finding.

**38. Summary of our findings:**

**i) Violation of principles of natural justice and transparency:**

**The Joint Commission has followed the procedure as laid down under Section 64 of the Electricity Act before passing the impugned tariff order. The data and information sought by the Joint Commission from the Distribution Licensee after the public hearing was in the process of prudence check for which no further public notice was necessary. Findings of this Tribunal in judgment dated 09.04.2013 in Appeal no. 257 of 2012 will apply in the present case. However, as decided in the judgment dated 09.04.2013, the Joint Commission may consider to review and amend its Regulations so as to have a provision of putting the information furnished by the licensee or the generating company to the Joint Commission subsequent to the filing of the Petition**

which has been made public or after the public hearing is over, as the case may be, on its Website.

**ii) Non-consideration of net impact of UI in the ARR:**

**We do not feel that the procedure adopted by the Joint Commission in the matter is perverse or illegal. UI mechanism is not meant for sale of surplus power. The present Regulations of the Central Commission also do not permit UI beyond the specified quantum in the interest of grid security. Therefore, we do not find any reason to interfere in the matter. However, we feel that in future the Joint Commission should take into account the anticipated availability from all the approved sources with which power procurement has been tied up by the Electricity Department also consider the fixed and variable charges in the Power Purchase Cost and work out the surplus energy available for sale outside the Union Territory of Puducherry and the likely rate and**

**the revenue it is expected to fetch in the market keeping in view the short term market data available in public domain to have more realistic assessment of the ARR and to avoid any controversy. The Joint Commission is also directed to true up the Power Purchase Cost and revenue from sale of surplus power by the Electricity Department in the true up for the FY 2013-14.**

**iii) Consideration of grant-in-aid by the Central Government:**

**We are of the view that the Joint Commission has simply allowed the amount of arrears paid by the Electricity Department to TANGEDCO towards Power Purchase Cost for the past period in the ARR without considering the objections raised by the objectors and without giving any valid reasons. We feel that the matter has to be reconsidered by the Joint Commission in light of the relevant documents and the submissions made**

by the parties. We, therefore, remand the matter to the Joint Commission to consider all facts and the submissions made by the Appellants on this issue and to pass the reasoned order without being influenced by its earlier finding after hearing all the parties. We want to make it clear that we are not giving any opinion on the merits of the issue as we feel that the matter has to be re-examined by the Joint Commission.

**iv) Retrospective application of the Tariff order:**

In the present case the proceedings for determination tariff for FY 2013-14 commenced during the previous year. The public hearing was also completed in March 2014. The billing for the month of April 2014 will be raised only during May 2014. We feel that the findings of this Tribunal in Appeal no. 179 of 2012 will apply to the present case. Accordingly, we do not find any reason to interfere with this finding.

39. In view of above, the impugned order on this issue is set aside to the extent indicated above and the Appeal is allowed in part. Accordingly, the matter is remanded to the Joint Commission for consideration of grant-in-aid by the Central Government afresh. The Joint Commission shall re-consider the issue and decide after hearing all the parties herein and pass a reasoned order within 90 days of communication of this judgment uninfluenced by its earlier findings. There is no order as to costs.

40. Pronounced in the open court on this 22<sup>nd</sup> day of August, 2014.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~  
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