

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

Appeal No. 29 of 2009

Dated: 2nd September, 2014

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

In the matter of:

Western Electricity Supply Company of Orissa Ltd. (WESCO),

Represented through the Chief Executive Officer,

Registered office at Plot No. 123,

Sector-A, Zone-A,

Mancheswar Industrial Estate,

Bhubaneswar-751019

... **Appellant**

Versus

- 1. Orissa Electricity Regulatory Commission,**
Bidyut Niyamak Bhawan,
Unit-VIII,
Bhubaneswar-751 012,
Distt. Khurda, Orissa
- 2. Grid Corporation of Orrisa Ltd.,**
Janpath, Bhubaneswar, Orissa
- 3. Shri Jayadeva Mishra,**
N-4/98, Nayapalli,
Bhubaneswar, Orissa
- 4. Orissa Consumers Association & FOCO,**
Biswanath Lane, Cuttack.
- 5. Confederation of Indian Industry (CII)**
8, Forest Park, Bhubaneswar
- 6. Shri K.C. Mahapatra, Chairman, PDC,**
F/6, BJB Nagar, Bhubaneswar.
- 7. Ferro Alloys Corporation Ltd.,**
GD-2/10, Chandrasekharapur,
Bhubaneswar-751023

- 8. Mr. Mangu Srinivas, AGM (Tech.)**
Rawmet Ferros Industries Pvt. Ltd.,
2B, Fortune Powers, CS Pur,
Bhubaneswar
- 9. Utkal Chamber of Commerce & Industry,**
N/6, IRC Village, Nayapalli,
Bhubaneswar.
- 10. Nesco,**
Januganj, Balasore-756 019
- 11. Balasore Alloys,**
Balgopalpur, Balasore
- 12. Mr. R.P. Mahapatra,**
775, Jayadeva Vihar,
Bhubaneswar-11.
- 13. Southco,**
Courtpeta, Berhampur,
Ganjam, Orissa-760 004
- 14. Mr. G.N. Agarwal,**
General Secretary,
Samabalpur District Consumers Federation,
Balaji Mandir Bhawan,
Khetrajpur, Sambalpur.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza,
Mr. Aditya Panda

Counsel for the Respondent(s) : Mr. B.K.Nayak, Mr. Rutwik Panda,
Mr. P. Sahu for R-1
Mr. Raj Kumar Mehta,
Mr. Anthryami Upadhyay,
Ms. Ishita C. Dasgupta
Mr. David A. for R-2
Mr. Rajiv Ranjan Pathak
Mr. Elangbam

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The present Appeal seeks to challenge the order dated 20.3.2008 of the Orissa Electricity Regulatory Commission (“State Commission”) *inter alia*, determining the Bulk Supply Price for sale of electricity by GRIDCO to the Distribution Licensees for the FY 2008-09.

2. The Appellant Western Electricity Supply Company of Orissa Ltd. (“WESCO”) is one of the Distribution Licensees in Orissa. The State Commission is the Respondent no. 1. Grid Corporation of Orissa (“GRIDCO”) is the Respondent no. 2 which is responsible to procure power for supply to the Distribution Licensees in the State.

3. The brief facts of the case are as under:

(i) On 30.11.2007 GRIDCO filed application before the State Commission for approval of Bulk Supply Price (“BSP”) for FY 2008-09.

(ii) After the public hearing and after considering the suggestions and objections of the stakeholders, the State Commission passed the impugned order dated 20.3.2008. In this order the State Commission decided differential BSP for the different Distribution Licensees with a view to keep uniform Retail Supply Tariff across the State.

(iii) WESCO, the present Appellant, filed a Review Petition before the State Commission seeking review of the order on Bulk Supply Price. This Petition was dismissed by order dated 12.8.2008 of the State Commission, confirming the order dated 20.3.2008.

(iv) Aggrieved by the impugned order dated 20.3.2008, WESCO has filed this Appeal.

4. The following issues have been raised in this Appeal:

- (i) Computation of differential Bulk Supply Price amongst various distribution companies for keeping uniform Retail Supply Tariff across the State.
- (ii) Liquidity cash flow statement
- (iii) Computation of Demand and Energy charges.
- (iv) Treatment of Revenue from export of power.

5. The issues at (ii) & (iii) above have not been pressed by the Appellant as they have been covered in the truing up order passed subsequently by the State Commission.

6. The issue at (iii) above is covered by Full Bench judgment dated 9.11.2010 of this Tribunal and also judgment of the Division Bench in Appeal no. 88 of 2010 dated 30.8.2011. The issue pertains to the inclusion of revenue for sale of power outside the State in the ARR. The Full Bench of the Tribunal directed that the same must be tried up in the ARRs. In Appeal no. 88 of 2009 the Tribunal allowed GRIDCO's Appeal against the Bulk Supply Price ("BSP") order and directed the State Commission to include the revenue from export/UI sales in the ARR.

7. Thus, the only issue surviving for consideration in this Appeal is the first issue. The issue is as follows:

“Whether the State Commission has erred in determining differential Bulk Supply Price payable by each of the four Distribution

Licenseses in the State such that the Retail Supply Tariff to be charged by the Distribution Licenseses from their consumers remains uniform throughout the State?

8. On this issue we heard learned counsel for the parties.

9. Shri Buddy Ranganadhan, learned counsel for the WESCO has made the following submissions:

(i) In the impugned order, the State Commission has wrongly sought to have differential Bulk Supply Price (“BSP”) payable by each of the four Distribution Companies such that the Retail Supply Tariff (“RST”) to be charged by them from similar categories of consumers remains uniform throughout the State.

(ii) As per Section 61 and 62 of the Electricity Act, 2003, the Retail Supply Tariff (“RST”) of each Distribution Licensee has to be calculated with reference to the costs, expenses and revenues of the licensee. Thus, the action of the State Commission for keeping differential BSP for the Distribution Companies with a view to have a uniform RST throughout the State is in contravention to Section 61 and 62 of the Act.

(iii) The aforesaid proposition of law has been mandated in the judgment of this Tribunal in BESCOM Vs. Karnataka Electricity Regulatory Commission reported as 2009 ELR 1012.

(iv) Despite the above, the State Commission has sought to discriminate between the Distribution Licensees of the State *inter alia*, on the basis of the

consumer mix of each of the Licensees for determination of the BSP.

(v) Section 62(3) of the Act allows differentiation between the consumers on the basis of the criteria mentioned therein. However, such differentiation cannot be kept between the Distribution Licensees on account of the consumer mix.

(vi) Normally while determining the Tariff of a generator, the State Commission would determine the cost of each unit of the power on the basis of allowable costs of the generator. Each unit of electricity sold by the generator should be at the same rate for all the Distribution Licensees.

(vii) There is no requirement to have uniform RST across the Distribution Licensees as held by this Tribunal in 2009 ELR 1012.

(viii) The Tribunal in Mulla Parvara Electric Co-operative Society vs. MERC in judgment dated 28.1.2008 in Appeal No. 24 of 2007 held that one licensee should not be allowed to cross subsidize another licensee.

(ix) One of the primary ingredients of Section 61 is that Tariff should be determined on commercial principles. This has been given complete go-bye by the State Commission in the impugned order.

10. In reply Shri R.K. Mehta, learned counsel for GRIDCO has made following submissions:

(i) WESCO does not have locus-standi to challenge the impugned order since entire amount of their expenditure has been allowed as pass through in full in the Retail Supply Tariff order. No prejudice

whatsoever is caused to WESCO by the impugned order and as such WESCO is not a “person aggrieved”.

(ii) Impugned BSP order is for FY 2008-09 and the said period is already long over and at this stage consideration of BSP is an academic exercise.

(iii) Other Distribution Licensees should have been impleaded as any change in BSP will affect them.

(iv) Uniform RST and consequently differential Bulk Supply Price is prevalent in many States.

(v) Cross subsidization is permissible under the scheme of the Act as per Sections 61(d) and 62(3) of the Electricity Act, 2003.

(vi) The social and economic situation in majority of the States in the country is not conducive for a different RST in different areas of the State and it is

not feasible to have region-wise tariff in a State like Orissa.

(vii) The State Commission has given valid, cogent and sufficient reasons for adopting a uniform RST.

11. Learned counsel for the State Commission has reiterated the reasons given by the State Commission in the impugned order for deciding a differential BSP with the objective of having a uniform RST throughout the State.

12. Since Shri Mehta, learned counsel for GRIDCO has raised the preliminary objection on the basis of the issue of locus standi of WESCO for challenging the RST order, let us first consider if the Appeal is maintainable before examining the main issue raised in this Appeal.

13. The impugned order pertains to determination of Bulk Supply Price that is to be charged by GRIDCO for supply of power to the Distribution Licensees. The Appellant filed objections/suggestion on the proposal of GRIDCO. The Appellant is now aggrieved by the BSP decided by the State Commission for supply of power by GRIDCO to them. Even if power purchase cost is a pass through in the ARR of the Distribution Licensees, minimizing its expenditure and consequently the Retail Supply Tariff should be a matter of concern for the Distribution Licensee and as such WESCO is an aggrieved party. Therefore, we reject the contention of Mr. Mehta, learned counsel for GRIDCO about locus standi of the Appellant to challenge the impugned order and hold that the Appeal is maintainable.

14. We, however, agree with Mr. Mehta that FY 2008-09 is long over and at this stage it would not be proper to disturb the BSP and consequently the RST determined for the Distribution Licensees for FY 2008-09. He also wanted that the other distribution licensees should also be heard in the matter. However, as agreed by Mr. Buddy Ranganadhan, learned counsel for the Appellant, we feel that it is better to lay down the principles and to give directions to the State Commission for implementation in future after hearing all the stakeholders. Even though the industry associations and consumers and other two Distribution Licensees, viz., NESCO and SOUTHCO who had filed objections/suggestions before the State Commission, are parties as Respondents in the present Appeal they

have chosen not to participate in the Appeal proceedings before us.

15. In view of above, we reject the contentions of Mr. R.K. Mehta and proceed ahead to consider the issue of differential BSP fixed by the State Commission for WESCO.

16. Let us first examine the impugned order dated 20.3.2008. This order has been passed in the matter of an application filed for approval of Annual Revenue Requirement and determination of Bulk Supply Price by GRIDCO under Section 86(1)(b) of the Electricity Act, 2003. The State Commission in the order has noted that the State Commission u/s 86(1)(b) has to fix the procurement price structure for Distribution Companies. Under the existing Bulk Supply Agreement with GRIDCO, the Distribution Companies

are under obligation to purchase power solely from GRIDCO. The State Commission has further noted that even though GRIDCO as deemed trading licensee under 5th Proviso to the Section 14 is outside the purview of the Section 62 of the Act, it has taken the filing of GRIDCO into consideration to fix the procurement price of the Distribution Companies.

17. The State Commission in the impugned order has determined the Bulk Supply Price of GRIDCO. However, the State Commission has determined different Bulk Supply Price for each distribution company in such manner that with the expected estimated revenue at the disposal of the utilities, they shall be in a position to pay the power procurement cost, transmission charges and meet the expenses towards establishment, maintenance and other allied expenses.

18. The reasons given by the State Commission for deciding differential BSP to be charged from the four Distribution Companies are as under:

(i) The four Distribution Companies in the State have different consumer mix. However, uniform retail supply tariff is applicable throughout the State i.e. similar categories of consumers are charged the same tariff throughout the State.

(ii) There has been high load growth in the State due to rapid pace of industrialization. However, this high load growth is mostly restricted to Western and North Eastern/Central Orissa. On the other hand, the Southern part of the State is not witnessing the growth of HT and EHT load due to absence of requisite

resources. Most of the Aluminum/ Charge Chrome industries in Southern Orissa are old and have their own Captive Power Plants. Therefore, while HT/EHT sale in WESCO & NESCO is 70.8% and 66.1% respectively that of other two Distribution Companies viz., CESU and SOUTHCO is 43% and 33.2% respectively. Southern part of the State is tribal dominated area with low income population and is dependent on low voltage consumers, mostly domestic, for its revenue.

(iii) For the last few years, the consumers have been benefited from the State being power surplus. While low cost hydro power was utilized within the State, the higher cost thermal power was exported by GRIDCO and gains thus accrued have been passed on to the consumers. However, in the coming years due

to high growth of HT and EHT loads, most of the power produced in the State will be consumed within the State and no or little power will be available for export outside the State.

(iv) Further, open access has been introduced in the State w.e.f. 1.4.2008 for consumers with load of 1 MW and above. It is, therefore, difficult to predict the expected revenue earning from the EHT/HT consumers with load of 1 MW and above.

(v) The Distribution Companies with higher sale of EHT/HT have been found to be totally inefficient in reducing LT losses. They try to manage with revenue earned from EHT/HT consumers from the margin available to them between the BSP and the consumer tariff. The difference between purchase price and the revenue is the margin of the company. Essentially this

margin should be used for cross subsidy among the companies.

(vi) The State Commission has been following uniform retail supply tariff policy. The consumers of Orissa should not feel discriminated by levy of a differential retail supply tariff because of functioning of separate distribution companies. Thus, in view of the public interest, BSP is being determined with a view to keep a uniform retail supply tariff.

(vii) Uniform Retail Supply Tariff is also in line with the National Tariff Policy as described in paragraph 8.4(2).

(viii) Only when the distribution companies show appreciable rise in levels of efficiency by reducing T&D losses, a question of rewarding efficiency by differential retail tariff may arise. This is not the case now.

(ix) Distribution Companies have little contribution in development of EHT industries and yet they would reap substantial higher revenue.

(x) Higher bulk pricing mechanism should give signal to the utility having higher HT consumers to improve performance at LT through higher LT sale to enable the utility to get power at lower rate.

(xi) Some amount of judgment is to be exercised while determining the BSP for distribution companies. The process should be such that the revenue earned by the utilities are adequate to service all their expenditure. Thus, BSP is fixed in a manner to make all the distribution utilities more or less financially viable.

19. Thus, the main reasons given by the State Commission for differential BSP are difference in mix of consumers in the Distribution Companies, maintaining uniform retail supply tariff throughout the State and maintaining financial viability of the Distribution Licensees. In this manner, cross subsidization amongst the Distribution Companies has been effected by deciding differential BSP. The State Commission has however, indicated that it would consider differential retail supply tariff with a view to reward the efficiency of the Distribution Licensees only when they show appreciable rise in their efficiency by reducing T&D losses.

20. Let us now examine the law laid down in this respect.

(i) Section 43 imposes a duty on the Distribution Licensee to supply electricity on request. Thus, the Distribution Licensee has to be responsible to procure power to meet its universal supply obligation in its licensed area.

(ii) The last proviso to Section 14 stipulates that the Distribution Licensee shall not require a licence to undertake trading in electricity. There is a purpose for this provision. The Distribution Licensee has to carry out advance planning to procure projected energy and power requirements of its consumers. However, the actual energy and power requirement and availability will not always match. It is possible that a Distribution Licensee has made excessive power procurement based on its demand projections that could not materialize due to reasons beyond its control. In such a case, the Distribution Licensee could sell its surplus

to third parties. Similarly in case of its requirement exceeding the availability, the Distribution Licensee may have to procure additional power. Thus, a Distribution Licence can do buying and selling of power without taking any trading licence to meet its universal supply obligation.

(iii) Section 61 provides that the Commission while specifying the terms and conditions for determination of tariff have to be guided *inter alia*, by

(a)

(b)

(c) the factors which encourage competition, efficiency, economical use of the resources, good performance and optimum investments.

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.

(e) the principles rewarding efficiency in performance;

.....

(g) the tariff progressively, reflects the cost of supply of electricity, and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;

(h)

(i) the National Electricity Policy and tariff policy.

(iv) Section 62 of the Act provides as under:

“(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for—

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.”.

(v) Section 62(3) of the Electricity Act, 2003 stipulates that the Appropriate Commission shall not, while determining the tariff, show undue preference to any consumer but may differentiate *inter alia*, according to the geographical position of any area.

(vi) Section 86(1)(b) provides that the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

(vii) Section 5.3.4 of the National Electricity Policy stipulates that the Power Purchase Agreements with the generating companies would need to be suitably

assigned to the Distribution Companies, subject to mutual agreement.

(viii) The Tariff Policy also has similar provision. The relevant sub clause under clause 8.4 is reproduced below:

“2. The National Electricity Policy states that existing PPAs with the generating companies would need to be suitably assigned to the successor distribution companies. The State Governments may make such assignments taking care of different load profiles of the distribution companies so that retail tariffs are uniform in the State for different categories of consumers. Thereafter the retail tariffs would reflect the relative efficiency of distribution companies in procuring power at competitive costs, controlling theft and reducing other distribution losses.”

Thus, the Tariff Policy envisages assignment of PPAs with generating companies to the successor

Distribution Companies of the State. Initially, while assigning the PPAs, the load profiles of the Distribution Licensees have to be considered i.e. licensee having lower mix in terms of electricity consumption of subsidising to subsidised consumer could be assigned more power from the cheaper power stations. However, once the assignment of allocation of the PPAs has been done, thereafter, the retail supply tariffs will reflect the relative efficiency of distribution companies in procuring power at competitive costs and controlling theft and reducing distribution losses.

21. This Tribunal in the judgment dated 1.10.2012 in Appeal no. 31 of 2012 in the matter of PTC India Ltd. vs. GERC & Anr. has held as under:

“32. In some States, including Gujarat, State Trading companies have been constituted following the reorganization of the State Electricity Board,

which are responsible for bulk purchase and supply to the distribution licensees in the State. All the PPAs with generating companies have also been assigned to the State Trading Company. However, the cost of power supply to various distribution licensees is not the average cost of procurement of power by the State Trading Company. The cost of supply to a distribution licensee is decided by the Commission with a view to keep the retail supply uniform for all the distribution licensees irrespective of their relative efficiencies. This is against the provisions and spirit of the Electricity Act, National Electricity Policy and Tariff Policy to promote competition.”

In the above judgment it was decided by this Tribunal that keeping a uniform retail supply tariff for all the distribution licensees, in a State irrespective of their relative efficiencies is against the law.

22. In judgment dated 15.12.2011 in Appeal no. 4 of 2011 in the matter of Noida Power Company Limited vs. UPERC, this Tribunal held as under:

“12.8 We also find that the State Commission has adopted the same retail supply tariff for the appellant as determined for the state distribution licensees. In our opinion this is not a correct approach. There are wide dissimilarities between the state owned distribution licensee and the appellant. The state distribution licensees have high distribution losses, lower cost of procurement of power due to power being procured by the State owned UPPCL mostly out of allocation of power from the Central and State Sector generating stations, etc. On the other hand, the appellant is receiving less than 50% of its power requirement from UPPCL at its pooled cost and has very low distribution loss. The composition of consumer profile is also different for the appellant and the State owned distribution licensee. The Regulations also do not provide for adoption of same tariff as

applicable to other distribution licensee for the appellant. Therefore, the ARR and tariff of the appellant has to be determined independently according to Section 61 and 62 of the 2003 Act and the Regulations”.

23. In 2008 ELR (APTEL) 0135 in the matter of Mula Pravara Electric Co-operative Society Ltd. vs. MERC & Ors., this Tribunal held as under:

“53. Licensees are required to file their Annual Revenue Requirement (ARR) and tariff proposal to the Commission who determines the ARR and the Retail Supply Tariff for various categories of consumers falling in the licensee’s area. We agree with the contentions advanced on behalf of the respondent Commission that due to various reasons of varying cost of supply, consumer mix etc. it is not possible to arrive at uniform Retail Supply Tariff in the state across all licensees. The cost to serve depends upon various factors such as cost of power procured, transmission and distribution losses, operational and administrative

expenses etc. which is bound to be different for different licensee's areas and, therefore, there is no way in which the Retail Supply Tariff can be kept at uniform level in the state. We are not able to agree with the contention of the applicant in IA No. 80 of 2007 in appeal number 24 of 2007 wherein it is alleged that the impugned order is violative of Article 14 of the Constitution of India as tariffs for MSEB and MPECS consumers set by MERC are different. The Commission has to set tariffs for various licensees areas individually and common tariff for consumers falling in different licensees area is envisaged in the Act. Section 62(3) of the Act permits the Commission to fix even differential tariff within a licensee's area for consumers. In view of this no interference with the orders of the Commission is called for in this view of the matter."

24. This Tribunal in *Bescom vs. KERC* 2009 ELR 1012 has held as under:

"27. The determination of tariff for each distribution licensee is based on the cost and expenses, power

availability of the particular distribution licensee, consumer base and consumer mix of the distribution licensee, their efficiency of operations, distribution losses etc. etc. In order to encourage efficient operation, it is only necessary that the different licensees have competition amongst themselves to carry out their operations in more efficient manner. In view of this, this Tribunal held that the State Commission may determine differential tariff, according to the geographical location of the consumers, different distribution licensees could have differential tariffs for their respective area of operations”.

25. Considering the provisions of the Electricity Act, National Electricity Policy and Tariff Policy and the dictum laid down by this Tribunal, the following aspects would emerge:

(i) A Distribution Licensee has to be responsible for procurement of power supply for meeting

requirement of its consumers and meet its universal supply obligation.

(ii) In order to carry out its above function the Act also exempts the Distribution Licensee from obtaining licence to undertake trading in electricity.

(iii) While specifying the terms and conditions for determination of the tariff, the State Commission has to be governed by *interalia*, factors which encourage competition, efficiency, economical use of resources, good performance and optimum investments and principles rewarding efficiency in performance and consumers interest.

(iv) The State Commission while determining the tariff shall not show undue preference to any consumer but can differentiate as per the various

factors given in Section 62(3) of the Act which includes consumers' geographical position.

(v) National Electricity Policy stipulates assignment of PPAs to the distribution licensees.

(vi) The Tariff Policy envisages assignment of PPAs according to the load profiles (consumer mix) of the Distribution Licensees but once the assignment is done, the retail supply tariffs would reflect the relative efficiencies of distribution companies.

(vii) The dictum laid down by this Tribunal in various cases is that keeping same BSP for distribution licensees in the State with a view to keep uniform RST irrespective of their relative efficiencies is against the law and there could be different RST in different licenced areas in a State.

26. In Orissa, all the PPAs and allocation of power in various power projects have been assigned to GRIDCO by the State Government and a single buyer model has been in practice since the reorganization of the power sector in the State. In the present case, the issue of legality of functioning GRIDCO as deemed licensee as trader responsible for bulk power purchase for sale to the Distribution Licensees is not before us. Nor the legality of determination of BSP for sale of power by GRIDCO to the Distribution Licensee has been challenged by the Appellant. What we have to consider in this Appeal is the legality of differential BSP determined by the State Commission for the four Distribution Companies of the State.

27. As stated above, the Tariff Policy provides for assigning the existing PPAs taking into account the

respective load profiles of the distribution companies so that retail tariffs are uniform throughout the State. Thereafter, the retail tariffs should reflect the relative efficiency of the distribution companies. In case of Orissa, the assignment of PPAs/power allocation to the Distribution Licensees has not been effected and instead the same are assigned to GRIDCO. Therefore, in terms of the Tariff Policy, adjustment is required to be made in the average BSP for GRIDCO for determining the BSP applicable to each of the Distribution Company to account for the consumer mix of the Distribution Companies.

28. The State Commission has accepted principle of differential retail supply tariff to reflect the respective efficiencies of the Distribution Licensee but has stated that the present time is not opportune for the same as the Distribution Companies which have larger

consumer mix of HT/EHT load are still very inefficient having high T&D losses and they have done little to reduce the T&D losses. Further, there are uncertainties due to continuing growth of industry in only some areas and in estimating the sales to HT/EHT consumers due to introduction of open access for consumers with load of 1 MW and above.

29. In the present scenario of single buyer model prevailing in the State of Orissa, we are not directing that a uniform BSP be made applicable to all the Distribution Companies irrespective of their respective consumer mix. However, the State Commission should gradually move to a model to recognize the relative efficiency in reducing distribution losses and other controllable expenditure by a Distribution Company to be passed on to the consumers of that Company in retail supply tariff to give right

commercial signals to the Distribution Companies and the consumers in line with the provisions of the Electricity Act, 2003 and the principles laid down in the National Electricity Policy and Tariff Policy. Thus, while adjustment in BSP can be made only to the extent of consumer mix but the relative efficiency of the Distribution Licensees in terms of reduction of distribution loss and other controllable expenditure shall be passed on to the consumers in retail supply tariff. The State Commission may also consider to allocate the share of power from various power sources in the portfolio of GRIDCO depending upon the consumer mix of the Distribution Companies so as to equalize the RST of all the Distribution Companies. In subsequent years, the ARR & RSTs of the different Distribution Companies can be determined independently considering the BSP computed on the

basis of respective shares allocated in the various power projects in the portfolio of GRIDCO. The allocation of shares in the various Power Projects should only be for the purpose of computing the BSP for the respective Distribution Companies.

30. We find that the State Commission while determining the BSP for each Distribution Company has in order to ensure uniform retail supply tariff in the entire State has ensured that the Distribution Companies are not only compensated for the consumer mix but also the revenue earned by them is adequate to service all their expenditure. Therefore, the relative efficiencies of the distribution licensees in terms of distribution losses and other controllable expenditure is not passed on to the consumers.

31. Following conclusions are arrived at out of the above discussion:

(i) In the prevailing system of single buyer mode, adjustment for consumers mix has to be made in average BSP of GRIDCO to determine the BSP to be charged from the various Distribution Licensees.

(ii) The benefit of relative efficiency of a distribution company in terms of distribution loss and other controllable expenditure has to be passed on to the consumers and to that extent there has to be a difference in the retail supply tariffs amongst the various distribution companies.

(iii) Thus, the difference in BSP of different distribution companies can be only to the extent of

accounting for the difference in revenue recovery of the different distribution companies from its consumers due to difference in consumer mix. However, the difference in revenue due to relative efficiencies of the distribution companies should not be accounted for while determining the differential BSPs for the distribution companies. The alternative proposed in paragraph 29 for allocation of share in various power sources in the portfolio of GRIDCO on the basis of consumer mix of the Distribution Licensees for the purpose of computation of respective BSPs of the Distribution Companies may also be considered.

(iv) In the impugned order, the State Commission has determined the differential BSP with a view to equalize the RST and has not accounted for relative efficiency of the distribution

companies in terms of distribution loss and other expenditure. The effect of higher efficiency of a distribution company should be passed on its consumers, in terms of the Tariff Policy.

(v) We feel that the State Commission should prepare a paper for methodology to achieve the objective of giving effect to determination of differential BSP on account of difference in consumer mix and at the same time passing on the impact of relative efficiencies of the distribution licensees and invite objections/suggestions of the public and thereafter finalise the methodology after considering the objections/suggestions of the public and pass consequential order. Accordingly, directed.

32. This Appeal is disposed of with above directions. The State Commission is directed to pass consequential order in terms of the directions given in this judgment within 180 days of communication of this order. No order as to costs.

33. Pronounced in the open court on this **2nd day of September, 2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~

Vs