

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 301 OF 2013

Dated: 5th September, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

North Municipal Corporation of Delhi,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi-110002

Through its Commissioner ... Appellant

VERSUS

1. Delhi Electricity Regulatory Commission,
Vnayamak Bhawan, 'C' Block,
Shivalik, Malviya Nagar, New Delhi-110017
Through its Secretary ... Respondent
2. Tata Power Delhi Distribution Limited,
Grid Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009
Through its Managing Director
3. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019
Through its C.E.O.
4. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi ... Respondents/
Through its C.E.O. Petitioner

Counsel for the Appellant(s) ... Mr. B.P. Agarwal
Mr. Ujjwal Kumar Jha

Counsel for the Respondent(s) ... Mr. Manu Sheshadri for R-1
Mr. Alok Shankar for R-2
Mr. Buddy A. Ranganadhan and
Mr. Hasan Murtaza for R-3 & 4

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The Appellant-North Municipal Corporation of Delhi, has filed the instant Appeal under Section 111 of the Electricity Act, 2003 challenging the legality, validity and enforceability of certain observations and findings in the Order, dated 31.7.2013 (hereinafter referred to as '**the Impugned Order**'), issued by the learned Delhi Electricity Regulatory Commission (in short, the '**State Commission**') in the Tariff Petition Nos. 1, 2 and 3 of 2013 on the ground that the impugned order, inter-alia, unjustly and unlawfully disallowed the objections raised by the Appellant regarding raising the bills for public parks on non-domestic tariff with the request to change the public parks at agriculture/domestic tariff. The Appellant has also requested the State Commission to charge the street light at highest slab of domestic tariff, which was, though, considered and highest slab of domestic tariff was made applicable to the street light but a separate category for unmetered street light was created and tariff for which was kept at Rs.7.50/unit which was on the higher side and also against section 55 of the Electricity Act, 2003 and also against the various tariff orders passed by the State Commission.

2. The relevant facts giving rise to the present Appeal are stated as under:

- (a) that the Appellant-North Municipal Corporation of Delhi (NDMC) is established through notification issued by the Government of NCT of Delhi. The core functions of the Corporation is providing essential public services to the urban and rural populations, resettlement of colonies, authorizing of unauthorized colonies, settlement of Jhuggi Jhopari (JJ) squatter, settlement slum areas commonly known as 'basties' and private 'katras'. Beside this, the Corporation has to

perform various functions as per sections 42 & 43 of the Delhi Municipal Corporation Act.

- (b) that Respondent No. 1 is the State Commission, a statutory authority constituted under the Electricity Act, 2003 with limited and specific powers vested by law including determination of electricity tariff for retail supply in the NCT of Delhi. The Respondent No.2 to 4 are distribution licensees under the Electricity Act, 2003 and are in the business of distribution and retail supply of electricity in the NCT of Delhi.
- (c) that the Respondent No.2 to 4 have filed separate Petitions being Petition No. 1, 2 & 3 of 2013 before the State Commission on 10.12.2012 for True-up for FY 2011-12, Review and Provisional True-up for FY 2012-13 and Annual Revenue Requirement (ARR) for Distribution (Wheeling and Retail Supply) Business for FY 2013-14. A public notice was published in newspapers of English and Hindi inviting objections from the general public on the ARR Petition filed by the distribution licensees and the objectors were advised to file their objections with the Secretary of the Commission. The Appellant also filed written objections on 1.4.2013 and also attended the public hearing on various dates and, thereafter, the Commission passed the impugned order on 31.7.2013 by which the objections filed by the Appellant against raising the bills on non-domestic tariff by the Respondent No.2 to 4, as stated above, have been disposed of.
- (d) that the Appellant filed the following objections before the State Commission through its representation, dated 1.4.2013:-
 - (i) that the core functions of the Corporation is providing essential public services to the urban and rural populations, resettlement of colonies, regularization of unauthorized colonies, re-settlement of JJ clusters and

has to perform various functions as per section 42 & 43 of the Delhi Municipal Corporation Act (DMC Act).

- (ii) that the Corporation receives the entire municipal fund either through grant given by the Govt of NCT or through the collection of various taxes/license fee etc as per provisions of DMC Act and the entire fund is spent in performing its obligatory and discretionary functions and as such it is engaged and involved only to the welfare of the people of Delhi and the public purposes and due to this reason, the tariff for running the dispensary/hospital/public library/school/college/ working women's hostel/orphanage/charitable homes, etc run by the Corporation are presently being charged at the domestic rate of tariff for electricity.
- (iii) that taking into consideration the factors for the use of street light and finding that it is only for public good and having not charging for the same from the public, the public street light was always considered to be an allied activity of the public and since it is bulk supply, therefore, it was kept in the domestic category. However, a separate category was created as the same is permissible under section 62(3) of the Electricity Act, 2003 under the head 'purpose for which the supply is required' and tariff for this category was kept lower than the non-domestic and industrial tariff. Even after creating the separate category, tariff rate for the public street light was at par with the domestic tariff and this rate was applicable till the tariff 2011-12.
- (iv) that all of a sudden and without inviting any response/objection, either from MCD or from the public, the tariff for the year 2012-13 for the purpose of street light was illegally, unreasonably and unfairly raised which was

higher than the domestic although previous domestic tariff rate was continued

- (v) that the public street light cannot be treated at par with the commercial places like mall, shopping hub, multiplexes, cinema theaters, hotels and other like commercial entities and, the Appellant North DMC does not carry any commercial activities nor does it has any profit making endeavors but it is working for the welfare by providing the amenities to the public, development of the society and by providing the street light to the public, which is not the luxury nor can it be, by any stretch of imagination, be categorized as commercial venture and, therefore, keeping the objectives of the Corporation, it is essential to have a re-look at the proposed tariff for the year 2013-14 and the domestic tariff be levied for the public street light because public street lighting are only a public utility services and it cannot be treated differently.
- (vi) that the tariff fixed for public street light is unreasonable, arbitrary and illegal in view of the fact that the finances for the Municipal bodies are mainly sourced by the government on no profit basis and the proposal of the distribution licensees for charging higher tariff from the civic body is a colorable exercise on the part of the distribution companies.
- (vii) that in other States like, Tamil Nadu, Chhattisgarh, Maharashtra, etc., the public street light is kept under the head tariff applicable for the State/Central Government, meant for the schools, colleges, hospitals, etc. Since in Delhi schools/hospitals, etc. are run by the Corporation, domestic tariff is applicable and hence the same tariff should be applicable for the public street light also. It is solemn duty of the power companies as well as the State

Commission to keep the public interest and welfare at its top priority and while deciding the rates to be charged from Corporation (public welfare body) and keep the same at the lowest so that public fund available with the Corporation can be utilized for other welfare work.

- (viii) that domestic tariff may be charged for FY 2013-14 instead of charging highest tariff because the dark places are vulnerable points for criminal activities and act as an aid for anti-social people and thus, by proper street lighting, the Municipal Corporation (Appellant) is contributing and aiding the police in maintaining the law and order of NCT of Delhi and helping in reducing crimes.
- (e) that while deciding the tariff by the impugned order, dated 31.7.2013, the objection raised by the Appellant with respect to the street light was considered but two separate categories were created (i) metered street light and (ii) unmetered street light. The tariff for the metered street light was kept at Rs.7.00/unit which is at par with the highest slab of the domestic tariff but for un-metered street light, the rate was fixed at Rs.7.50/unit. The impugned order of the State Commission is against the various tariff orders passed by the State Commission and also against the judgment passed in Appeal nos. 8/2008 and 9/2008 in which Respondent No.3 was directed to meter the street light 100% and similar directions were also given to all the DISCOMs while issuing various tariff orders.
- (f) that despite repeated directions given by the State Commission to the Respondent No. 2 to 4 to meter the street light, till date the same was not done intentionally and after passing the impugned tariff order, there is no possibility to comply with the aforesaid directions issued by the State Commission because rate of the unmetered street light is higher than the metered street light.

- (g) that as per Section 55 of the Electricity Act, 2003, no distribution company will supply electricity except through the correct meter after the expiry of two years from the appointed date but more than ten years have elapsed, the Respondent No. 2 to 4 have not fully installed the meter on all the street light and are supplying the electricity to the street light without installing the meter on many electricity poles. Even they have not taken permission for extension of time which was expired in the year 2005 as observed in Appeal Nos. 8/2008 & 9/2008.
- (h) that the impugned order passed by the State Commission is also against the tariff orders issued for the year 2009-10, 2011-12, 2012-13 in which the State Commission has directed to the Respondent No.2 to 4 to install the meter 100% on the street light but the said orders were not complied with by them and the State Commission, instead of penalizing them, has given them incentives by allowing them to charge the un-metered street light at higher rate than the metered street light.
- (i) that such demand of the distribution company to allow them to charge at the higher tariff is per-se illegal and unjustified in the absence of any justification for their demand. Merely because they have demanded for revision of the tariff should not ipso facto be a ground of the revision of tariff. It must be on the basis of the cogent evidences and not on the mere asking of the distribution companies.
- (j) that the Appellant in the instant Appeal, has prayed for granting the following reliefs:
- (i) set aside the tariff order, dated 31.7.2013, passed by the Respondent No. 1 in the ARR Petitions bearing No. 1/2013, 2/2013 and 3/2013 filed by the Respondents No. 2 to 4 with respect to the public parks and unmetered street light and;

- (ii) direct the Respondent No.1 to re-look the tariff order issued for the period 2013-14 with respect to the public parks and direct the Respondent No.1 to keep the public parks under the agriculture/domestic category or in alternative a separate category be created for such parks and tariff be kept less than the non-domestic tariff and;
- (iii) direct the Respondent No.1 to re-look the tariff order issued for the period 2013-14 with respect to the unmetered street light and direct the Respondent No.1 to withdraw the separate category created in the tariff order for unmetered street light and;
- (iv) pass such other or further order/s as this Appellate Tribunal may deem fit and proper in facts and circumstances of the case.

3. We have heard Shri B.P. Agarwal and Mr. Ujjwal Kumar Jha, the learned counsel for the Appellant, Shri Manu Seshadri, the learned counsel for Respondent No.1, Shri Alok Shankar, the learned counsel for Respondent No.2 and Mr. Buddy A. Ranganadhan and Mr. Hasan Murtaza, the learned counsel for the Respondent No.3 & 4. We have deeply gone through written submissions of the parties, the evidence and other material available on record including the impugned order passed by the State Commission.

4. The following issues arise for our consideration:

- (A) whether the State Commission has acted inconsistent with the provisions of the Electricity Act, National Electricity Policy and Plan notified by the Central Government provided under Section 3 of the Electricity Act, 2003, Tariff Regulations, 2007, and the binding precedents of this Appellate Tribunal while determining the tariff, vide impugned order, for the period 2013-14?
- (B) whether the State Commission has ignored the phrase 'purpose for which the supply is required' appearing in Section 62(3) of

the Electricity Act, 2003 while fixing the tariff for public parks for the period 2013-14 and allowed the Respondent No. 2 to 4 to charge the non-domestic tariff for the public park?

- (C) whether the State Commission has acted arbitrarily while fixing the tariff for public park for the FY 2013-14 which is at par with the tariff applicable to the mall, shopping hub, multiplexes, cinema theatres, hotels and other like commercial entities, etc.?
- (D) whether the State Commission has acted, arbitrarily without considering the provisions of Section 55 of the Electricity Act, 2003 while passing the impugned order?
- (E) whether the impugned order of the State Commission is against the tariff orders issued for the year 2009-10, 2011-12 and 2012-13 in which the State Commission had directed to the Respondent No.2 to 4 to install the meter 100% on street light which were not complied with by the Respondent No. 2 to 4?

OUR ISSUE-WISE CONSIDERATION:

5. **Issue Nos. (A), (B) & (C)** : Since the issue nos. (A), (B) & (C) are inter-connected, we are taking and deciding them together:

5.1 The contentions raised on behalf of the Appellant on these three issues are as under:-

- (a) that the impugned tariff order issued by the State Commission is arbitrary as the public parks cannot be treated at par with the commercial places like mall, shopping hub, multiplexes, cinema theatres, hotels and other like commercial entities as the public parks have never rendered entertaining services nor have any profit making attempts. In fact, public parks are the lifeline of public of Delhi for keeping them fit and healthy, which is not the luxury or the centre of entertainment nor can it be by, any stretch of imagination, be categorized as commercial venture and hence for public park either domestic tariff may be charged or a separate category may be created.

- (b) that keeping the objectives of the public parks, the tariff fixed by the impugned order for the year 2013-14 requires a relook.
- (c) that for the public welfare and good only the agriculture/ domestic tariff be levied for the public parks as they are the need of the hour to keep the public fit and healthy and it cannot be treated differently than the public utility services but the State Commission has failed to consider all these factors and ignored the same while fixing the tariff for the year 2013-14 which is, therefore, liable to be revised w.e.f. 1.8.2013.
- (d) that the impugned order is bad in law because, even the commercial functionaries are paying lesser tariff than as has been charged from pure civic body as the commercial establishment like Delhi International Airport Limited, which provides electricity to luxury shops in the Airport is being charged at the lower rate i.e. Rs.7.10/unit, similarly lower rate is charged for DMRC and Railway traction which are the commercial establishments. Charging higher tariff than such commercial ventures once again shows the complete non-application of the rationality, as the public parks cannot be charged more than the commercial establishments/ventures.
- (e) that while deciding the tariff by the impugned order, the State Commission has not considered the facts that the public parks have to be treated differently as allowed under Section 62(3) of the Electricity Act, 2003 under the head 'purpose for which the supply is required'.
- (f) That, while determining the tariff by the impugned order, the State Commission has not followed the procedure prescribed for tariff order stipulating that application for determination of tariff under section 62 of the Act shall be made by a generating company or licensee in such manner and accompanied by such fee. The applicant shall publish the application as specified by the Appropriate Commission and the Appropriate Commission

shall, within 120 days from the receipt of the application, after following the procedure prescribed therein, issue the tariff order and accepting the application with such modification or condition or reject the application for reasons to be recorded in writing after giving reasonable opportunity of hearing to the applicant.

- (g) that the scheme of the Electricity Act, 2003 provides that while determining the tariff, the Commission shall not show undue preference to any consumer but at the same time it may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity, nature and purpose for which the electricity supply is required. As provided under Section 62(3) of the Electricity Act, 2003, the public parks are not commercial service and it is a public utility service which is opened for the benefit of the society, whereas the other commercial categories are simply profit making establishments catering to the luxury of elite class. Clubbing such two group together for the purpose of determination of tariff is not correct because the purpose of public parks is quite different from the malls, hotels etc.
- (h) that the Hon'ble Supreme Court, in the case of Association of Industrial Electricity Users vs. State of AP & Ors, reported in (2002) 3 SCC 711, held that on the basis of the Electricity Act, 2003, the classification of consumers according to the purpose for which the electricity is used is permissible. 'Purpose for which the supply is required', as used in Section 62(3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The overt act of the person must be looked at so as to find out the effect of the transaction.

- (i) that the impugned tariff order is bad in law because in many States, public parks are kept under the domestic category whereas in Delhi, the same is kept under non-domestic category.
- (j) that the State Commission has decided to give DIAL, a tariff which is higher than the Delhi Jal Board but lower than that of non-domestic HT consumers. Hence, public parks are required to be kept in a separate category and a separate tariff should be determined for the public parks if not agriculture/domestic tariff is allowed.
- (k) that the State Commission has failed to consider the practice followed in other States and the tariff applicable in the said States. Delhi is different from the other States because in Delhi, the streetlight is under the private utilities companies whereas in the States like Haryana and some other States, streetlights are under the control of Municipal Corporation and in those States if the tariff for unmetered streetlight is higher than the metered streetlight, then the Municipal Corporation will be force to install the meter in order to save the public fund. But in Delhi, it is reverse because private utilities companies are beneficiary if the meter will not be installed on the streetlight because they will get Rs. 0.50/unit more for unmetered streetlight and due to this reason, they have not metered the streetlight 100% in Delhi.
- (l) that the **impugned order placing the public parks in Delhi under non-domestic category is illegal** because in many States public parks are kept under the domestic category and the State Commission of Delhi should also adopt the same practice.

5.2 **Per-contra**, the following submissions have been made on behalf of the Respondent No.1/State Commission:

- (a) that the Appellant, in the instant Appeal, has raised the issue of un-metered streetlights and separate category of tariff for streetlights of public parks on the following grounds:
- (i) that the impugned order, dated 31.7.2013, is arbitrary and illegal because the State Commission has not considered the objections raised by the Appellant in respect of tariff of streetlights and public parks.
 - (ii) that there may be a separate category of tariff for public parks.
 - (iii) that electric power to the streetlights be provided through metered supply only.
- (b) that the objections of the Appellant have been duly considered by the State Commission before finalizing the tariff for the year 2013-14 and the tariff for metered streetlights has been kept at Rs.7.00/unit which is at par with the highest slab of domestic tariff which fact has been admitted by the Appellant in para VII(vii) of the Appeal Memorandum.
- (c) that it was only after the due consideration, the tariff for the streetlight was decided at the highest of the domestic tariff and no further categories were created and thus, it was not necessary to create separate category for public parks.
- (d) that there are already 12 separate categories of consumers existing in the Tariff Schedule of Delhi and it would not be desirable to create minute categories, which would be otherwise administratively difficult.
- (e) that the Appellant's contention that commercial tariff is charged in respect of public parks is misplaced and is based on wrong presumptions of facts. It is the non-domestic category which is applicable in respect of any other categories which do not find place in the existing list of categories and, therefore, public parks are charged non-domestic tariff. In other words, it falls

in 'Residual Category'. Non-domestic category does not mean commercial category as it may be seen that this category also includes hostels, schools, colleges, hospitals (other than those run by MCD or Govt. of NCT of Delhi).

- (f) that it is wrong to say that DIAL and DJB are provided with a category with less tariff. In fact, the Appellant has failed to understand that the case of DIAL and DJB case has also no comparison to the public parks.
- (g) that DISCOMs (Respondent No. 2 to 4), through affidavits have submitted before this Appellate Tribunal in the instant Appeal that as of now all the streetlights have been metered and, therefore, the issue, raised by the Appellant that the supply to the streetlights must invariably be provided through meters, has lost its relevance in view of the aforesaid metering of streetlights by the DISCOMs.

5.3 In addition to the afore-stated submissions made on behalf of the Respondent No.1/State Commission, the following submissions have been made on behalf of the Distribution Licensees :

- (a) that this Appellate Tribunal has interpreted the provisions of section 62(3) of the Electricity Act, 2003 in Mumbai International Airport Pvt Ltd vs. Maharashtra Electricity Regulatory Commission in Appeal No. 195 of 2009 decided on 31.5.2011 as under:

"69. One of the factors contained in Electricity Act, 2003 to be considered while determining the tariff is the purpose for which the supply is required. This factor has not been mentioned in Indian Electricity Act, 1910. But the same has been mentioned both in the Electricity Supply Act 1948 and the Electricity Act, 2003. The consumers of electricity power differ widely depending upon their requirement of power. Therefore, it is appropriate to categorize the consumers into various categories. The utility classifies the consumers into the following broader categories:

- i) Residential
- ii) Agricultural
- iii) Industrial
- iv) Commercial
- v) Others.

70. All these 3 Acts require that no undue preference should be shown to any consumer but however different tariffs could be fixed depending upon the various factors; one of them being purpose for which supply is required. While referring to the various factors in Section 62 (3) of the Electricity Act 2003, there is a technical rationale behind setting different tariffs depending upon those factors. As far as categorization based on the purpose for which supply is required is concerned, it would give the following different meaning:

The use of electricity is mainly for lighting, heating or cooling and to power a motor by almost all categories of consumers. Thus heating/cooling, lighting, etc., may not be the 'purpose' for which supply is required in terms of provision of the Act. The purpose of supply is the object for which supply is taken, which may be for domestic use, agriculture, industry, education, research, public transportation, medical treatment, public water supply, public lighting, etc. Consumer categories could be classified on the basis of purpose of supply. For example, Railway Stations, Bus Terminus, and Airport could be classified together on the basis of common purpose of supply related to public transportation. The purpose in broader terms could also be public utility service which may combine different purposes such as transportation, such as Railway Station, Bus Terminus and Airport, water supply & sewage, etc., having similar power supply arrangements.

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75. The reading of the entire Section 62(3) of the Electricity Act, 2003 would clearly reveal that the section does mandate neither differentiating nor categorizing tariff to all the categories of consumers. On the other hand, the said section provides certain specified criteria as provided under Section 62(3) of the Electricity Act. As mentioned earlier, the word "may" used in the said section of the Act does not provide absolute discretion upon the State Commission to take other factor into account or not. The term "may" used in this section indicates that as and when situation arises, the State Commission in exercise of its judicial discretion shall utilize certain or all of the criteria specified under this section. When the discretion is being used as provided in the section, it has to be exercised in an appropriate manner having regard to relevant facts and circumstances to ensure that no undue preference is given to any consumer and no discretion is made against any consumer. Section 62(3) of the Act embodies the same principle which is enunciated in Article 14 of the Constitution of India.

76. It is settled law that equality before the law does not mean that things which are different shall be treated as they were the same"

- (b) that the public parks are also illuminated using the street light network and, therefore, no separate category for lightings in the public parks were created. All lightings whether on the street or in public-park are categorized under non-domestic category and billed at the highest rate of domestic tariff.

5.4. We have gone through the judgment, dated 20.10.2011, in Appeal No. 110/2009 & batch and Appeal No. 70/2010 & batch in the case of Association of Hotels vs. Maharashtra Electricity Regulatory Commission and Anr cited by the learned the Appellant. In the cited judgment, this Tribunal found that the State Commission had wrongly placed all the consumers including the Appellant who were neither domestic nor industrial nor falling under any of the categories under the Commercial Category and the purpose for which the supply is required by the Appellants cannot be equated at par with other consumers in the Commercial Category. This citation does not squarely apply to the Appeal in hand.

5.5 After considering the aforesaid rival contentions, we do not find that the tariff order of the State Commission, dated 31.7.2013, is in any way, arbitrary and illegal because the State Commission after considering all the objections raised by the Appellant in respect of tariff of streetlight and public parks, passed the impugned order and fixed the tariff for the streetlights and public parks of Delhi. The State Commission has pointed out the difficulty in creating a separate category where already 12 separate categories of consumers are in existence in the Tariff Schedule of Delhi and further, noted that it would not be desirable to create minute categories which would be otherwise administratively difficult. We are of the opinion that the impugned order determining the tariff of streetlights and public parks is correctly legal, just and proper. We also agree to the findings recorded by the State Commission in the impugned tariff order which is based on the proper and just appreciation of the material on record. The State Commission has rightly refused to create a separate category for the public parks of Delhi. All the lightings, whether on the street or the public parks, have been categorized under non-domestic category in the impugned order and billed at the highest rate of domestic tariff category to which we also agree.

5.6 We also note that the impugned order has been passed by the State Commission in accordance with the provisions of Electricity Act, National Electricity Policy and Tariff Regulations and the law laid down by this Appellate Tribunal on these issues. **Consequently, all the issues i.e. issue no. (A), (B) & (C) are decided against the Appellant and the findings recorded regarding these issues in the impugned tariff order are liable to be affirmed.**

6. **Issue Nos. (D) and (E)**: Since both the issues i.e. (D) and (E) are inter-woven, we are taking and deciding them together:

6.1 The contentions raised on behalf of the Appellant on these issues are as under:-

- (a) that the tariff decided by the impugned tariff order is against the provision of Section 55 of the Electricity Act, 2003 which mandates that no licensee shall supply electricity, after the expiry of two years from the appointed date except through installation of a correct meter in accordance with the Regulations to be made in this behalf by the authority. More than 10 years have elapsed from notification of the Electricity Act, 2003, but the Respondent No.2 to 4 have not fully installed the meter on all the street light in Delhi and if the rate of unmetered street light would be higher than the metered street lights, then the Respondent No. 2 to 4/Distribution Licensee will never have metered the street light 100%.
- (b) that even after the lapse of more than 10 years from the date of enforceability of the Electricity Act, 2003, the Distribution Licensees have not fully installed the meter on all the street light and are supplying electricity to the street light without installing meter on many electricity poles. Even the Distribution Licensees have not taken permission for extension of time which had expired in the year 2005 as observed by this Appellate Tribunal in Appeal No. 8 & 9 of 2008.

- (c) that while deciding the tariff vide order, dated 31.7.2013, it was not considered by the State Commission that in Delhi, the street light is under the Respondent No. 2 to 4, who are Private Companies and these Power Utilities companies are responsible for installing the meter on the street light and maintaining the street light. Prior to taking over the street light by the Respondent No. 2 to 4, street lights were under the control of Delhi Vidyut Board (DVB – A Govt. Undertaking) but after having taken control of the same, it was their duty to meter the unmetered street light and maintain it.
- (d) that as per the clause 35(i) of the Delhi Electricity Supply Code and performance Standards Regulations, 2007, the Respondent No. 2 to 4 are required to supply the electricity through the meter except the premises which are specifically exempted by the State Commission, but the Distribution Licensees have not complied with this provision of the Supply Code, 2007 and to continue with the supply of electricity through the unmetered street light.
- (e) that the State Commission has completely ignored its own earlier tariff orders whereby it ordered the 100% metering of the street light and parks. In the earlier tariff orders the State Commission had directed the Respondent No. 2 to 4 to install the meter 100% on the street light. But the State Commission instead of penalizing them has given incentive to them by allowing them to charge @ Rs. 7.50/unit for unmetered street light and charging @ Rs. 7.00/unit for metered street light.
- (f) that prior to 2012-13, the tariff for street light was the highest tariff for the domestic category but during the period 2012-13 non-domestic tariff was charged for the street light without inviting any objections from the Appellant or public.

6.2 **Per-contra**, the following submissions have been made on behalf of the Respondents:

- (a) that the State Commission/Respondent No.1, time and again, through its tariff orders had asked the DISCOMs to go for metering of the streetlights and it is the persistence through the orders of the Commission that finally the DISCOMs have metered the streetlights.
- (b) that the Commission has noted in para 5.76 (pertaining to public lighting) of the impugned order that the largest number of streetlights in the city are owned by the MCD. Moreover, in order to ensure that the MCD takes expeditious steps to have metering installed for all its streetlights (and in order to incentivize the same), the Commission decided that tariff for public lighting which is metered will be lower than tariff for public lighting which is unmetered. Therefore, the Commission by the impugned tariff order has prescribed different tariff for metered and unmetered public lighting.
- (c) that the State Commission has directed that 100% metering shall be done for street-lighting. Separate proceedings are pending before the State Commission under Section 142 of the Electricity Act, 2003 with respect to complying with the Commission's earlier orders directing the distribution licensees to have 100% metering installed at all streetlights.
- (d) that in other States such as Haryana and Uttar Pradesh, there is difference between unmetered and metered consumption with the unmetered consumption being on the higher side. This is in order to ensure and incentivize parties who have the responsibility of ensuring street lighting, to install meters for streetlights. A uniform practice is being followed by the State Commission in the various States to distinguish between unmetered and metered consumption for public lighting with the charges for un-metered consumption being on the higher side.

- (e) that the Commission has clearly distinguished the tariff through the impugned order to consumers according to load factor, power factor, supply voltage, total consumption of electricity and even time of use and the same is apparent from para 5.30 of the impugned order. The State Commission has determined the tariff as per the provisions of section 62(3) of the Electricity Act, 2003 and the Appeal merits disposal.

7. We have considered the rival submissions made on these issues, but we do not find any cogent reason to accept the submission of the Appellant. It is true that the State Commission had in the earlier tariff orders directed the Respondent No. 2 to 4 /Distribution Licensees to provide for 100% metering on the street lights and the same direction was given by this Appellate Tribunal but the said direction could not be complied with by the Distribution Licensees for several reasons. The Respondent No. 2 to 4 could not take expeditious steps to have metering installed for all its street lights due to variety of reasons. For non-compliance of the said direction regarding failure of 100% metering of the street lights by the Distribution Licensees, the proceedings under Section 142 of the Electricity Act, 2003 are admittedly going on before the State Commission and the Commission is going ahead with the said proceedings.

8. Section 142 of the Electricity Act, 2003 provides for punishment for non-compliance of the directions given by the Appropriate Commission. On our query during the hearing of the instant Appeal, the Distribution Licensees/Respondent No. 2 to 4, through affidavits, have intimated to this Appellate Tribunal that as of now, all the street lights have been metered. The learned counsel appearing for the Distribution Licensees, have candidly submitted that by now, there has been 100% metering of the street lights and the issue raised on behalf of the Appellant has now become insignificant as the same has lost its importance.

9. What the State Commission can, at the most, do in case of non-compliance of its directions or orders, it can initiate the proceedings under Section 142 of the Electricity Act, 2003 and the said proceedings are pending before the State Commission at the moment. Apart from it, we have been assured on behalf of the Distribution Licensees/Respondent No.2 to 4 that there have been effective 100% metering of the street lights, inspite of non-cooperative attitude of the Appellant-North Municipal Corporation of Delhi in having meter installed expeditiously at certain points of electricity poles.

10. Thus, we hold that the State Commission has considered the provisions of Section 55 of the Electricity Act, 2003 while passing the impugned order and the said order cannot be said to be capricious or arbitrary or illegal. The State Commission has tried its best to get its earlier tariff order regarding 100% metering of the street lights implemented in letter and spirit and on finding that the Distribution Licensees were not in a mood to make full compliance of the said directions, it initiated proceedings under Section 142 of the Electricity Act, 2003 against them. By now, as stated before us on behalf of the Distribution Licensees that 100% metering on the street light has been done and the work of installing meter 100% has been completed, we do not find any cogent reason to interfere with the impugned order. **In view of the above discussion, both the issues i.e. issue nos. D & E are hereby decided against the Appellant and the findings recorded thereon are affirmed by us. Resultantly, the Appeal is liable to be dismissed.**

11. **SUMMARY OF OUR FINDINGS:**

11.1 The State Commission, while passing the impugned order, dated 31.7.2013, has acted in-consistent with the provisions of the Electricity Act, National Electricity Policy and Plan notified by the Central Government provided under Section 3 of the Electricity Act, 2003 and the Tariff Regulations, 2007 and also in accordance with the judgments of this Appellate Tribunal. We further observe that none of the provisions of the

Electricity Act or Tariff Regulations has been violated by the State Commission in passing the impugned order.

11.2 The State Commission has passed the impugned order in accordance with the provisions prescribed under Section 62(3) of the Electricity Act, 2003 after giving due consideration and thought to the purpose for which electricity supply was required and also the nature of the supply of electricity. The State Commission has legally and correctly allowed the Respondent No. 2 to 4/Distribution Licensees to charge Rs.7.50/unit for unmetered and Rs.7.00/unit for metered street lights.

11.3 The State Commission has passed the impugned order in a judicial and judicious way after considering the provision of Section 55 of the Electricity Act, 2003 and the said impugned order cannot be said to be arbitrary or against the provisions of the Electricity Act, 2003.

11.4 The State Commission has tried its best in getting its earlier tariff orders regarding 100% metering of the street light implemented by initiating the proceeding under Section 142 of the Electricity Act, 2003. We have accepted the affidavit on behalf of the Distribution Licensees/Respondent No. 2 to 4 in informing us that there has been, by now, 100% metering of the street light and electricity supply is being made through the correct meters on the street light.

12. Consequently, the instant Appeal has no merits and is accordingly dismissed and the impugned order, dated 31.7.2013, passed by the Delhi Electricity Regulatory Commission, is hereby affirmed. No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 5TH DAY OF SEPTEMBER, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**