

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:28th Feb, 2014

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

Appeal No. 109 of 2012

In the Matter of

- 1. Faridabad Industries Association
FIA House, BATA Chowk,
Faridabad-121 001**
- 2. Bahadurgarh Chamber of Commerce & Industry
6, M I E, Bahadurgarh-124 507
Haryana**
- 3. Bhiwani Chamber of Commerce & Industry
15, Industrial Area, Sector-21,
Bhiwani-127 021**
- 4. Oil Mills Association Charki Dadri
C/o O P Cotton & Oil Mills, Kanina Road,
Charki Dadri-127 306**
- 5. Faridabad Chamber of Commerce & Industry
FCCI Centre, Near Tubewell No.4,
Sector-11 B, Faridabad-121 006**
- 6. Faridabad Small Industries Association,
Plot No.23, Sector-24, Faridabad-121 005**
- 7. Gurgaon Chamber of Commerce & Industry
Khandsa Road, Gurgaon-122 001**
- 8. Gurgaon Industrial Association
GIA House, IDC, Mehrauli Road,
Gurgaon-122 001**

- 9. Confederation of Commerce and Industry
C/o Desh Metal Works, Jaroda Gate,
Jagadhari-135 003
Haryana**
- 10. Haryana Copper & Copper Alloys Sheet Manufacturers
Association
C/o Lakshmi Industries, Lakshmi Nagar,
Krishna Colony, Yamuna Nagar-135 001**
- 11. Haryana Chamber of Commerce and Industry,
Plot No.192-193, Industrial Area,
Phase-1, Panchkula-134 112**
- 12. Hissar Industries Association
3, Industrial Development Colony,
OP Jindal Marg, Hissar
Haryana**
- 13. Kundli Industries Association
130, HSIDC, Kundli
Distt-Sonepat-131 028**
- 14. Sonipat Steel Furnace Association
Durga Colony, Near Ram Mandir,
Kundli, Sonapat-135 002**
- 15. Yamunanagar-Jagadhari Chamber of Commerce &
Industry,
Yamunanagar-135 001
Haryana**
- 16. Haryana Plywood Manufacturers Association
C/o EMM DEE
Vill-Jorian,
Yamuna Nagar-135 001**

**17. Confederation of Indian Industry,
Haryana Committee,
Udyog Vihar,
Gurgaon-122 001**

... Appellant(s)

Versus

**1. Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4,
Panchkula-134 112
Haryana**

**2. Dakshin Haryana Bijli Vitran Nigam Limited.,
Vidyut Nagar,
Hissar-125 005**

**3. Uttar Haryana Bijli Vitran Nigam Limited.,
Shakti Bhawan, Sector-6,
Panchkula-134 109**

Respondent(s)

Counsel for the Appellant (s):

**Mr. M G Ramachandran
Mr. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Swagatika Sahoo**

Counsel for the Respondent (s):

**Ms. Sikha Ohri for R-1
Mr. Amit Kapur,
Ms. Aina Duggal
Ms. Awantika Manohar
Mr. Vishal Anand
Mr. Gaurav Dudeja for R-2 & 3**

J U D G M E N T

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

1. Faridabad Industries Association and Others are the Appellants. Aggrieved by the Impugned Order dated 31.3.2012 passed by the Haryana State Commission in the Petitions filed by the Distribution Licensees approving the Annual Revenue Requirements and determining the Retail Supply Tariff for the consumers in the State of Haryana, the Appellants have filed this Appeal.
2. The short facts are as follows:
 - (a) The Appellants being the Association of Industrial Consumers as well as the Industrial Consumers in the State of Haryana are engaged in the manufacture and other industrial activities within the State of Haryana.
 - (b) The members of the Appellants fall within the category of Low Tension (LT) and High Tension (HT) consumers.
 - (c) The Haryana State Commission is the First Respondent.
 - (d) Dakshin Haryana Bijli Vitran Nigam Limited and Uttar Haryana Bijli Vitran Nigam Limited are the Respondents 2 and 3 respectively. They are the

Distribution Licensees in the State of Haryana engaged in the activities of Distribution and Retail Supply of electricity within their respective areas of operation.

(e) Both the Distribution Licensees i.e. R-2 and R-3 filed Applications on 30.11.2011 for the approval of their Annual Revenue Requirements for the Financial Year 2012-13.

(f) On 7.12.2011 and 18.12.2011, the Public Notices were issued inviting suggestions and comments from the stake holders in respect of the ARR etc. Accordingly, the stake holders filed their objections.

(g) In response to this, the Distribution Licensees, R-2 and R-3 filed their replies. Thereupon, public hearing was held in respect of the proposal made by the Distribution Licensees. After observing the required procedure, the State Commission disposed of the Petitions filed by the Distribution Licensees by the Impugned Order dated 31.3.2012 approving the Annual Revenue Requirements and determining the Retail Supply tariff for the consumers in the State in respect of the Financial Year 2012-13.

(h) The Appellants being the consumers, aggrieved by the said Order dated 31.3.2012 wherein the State Commission proceeded to allow higher Annual Revenue

Requirement and increased Retail Supply Tariff for the consumers despite the fact that the Distribution Licensees have failed to improve their efficiency over the years and have acted contrary to the provisions of the Electricity Act, 2003, Regulations of the State Commission and contrary to the various directions issued by this Tribunal, have presented this Appeal.

3. The learned Counsel for the Appellants has raised the following issues while assailing the Impugned Order:

(a) **Non Compliance of the provisions of the Electricity Act and the directions issued by the State Commission and inefficiencies of the Distribution Licensees:** The State Commission had issued repeated directions to the Distribution Licensees to meter the un-metered consumers as well as on other aspects concerning tariff determination. But the Distribution Licensees have not complied with the said directions. As a result of the above, half of the total electricity is not correctly accounted for as metered supply and it is only shown as losses and un-metered supply. With the result, the consumers continue to suffer by way of funding capital expenditure proposal in the tariff while at the same time, there was no improvement in the Distribution System or power supply system of the

consumer as the capital expenditure has either been diverted to fund the inefficiencies of the Distribution Licensees or not correctly spent. A large number of meters installed by the Distribution Licensees are also defective. As such, they have miserably failed in installing correct meters in terms of Section 55 of the Electricity Act, 2003. Therefore, there should not be any increase in the tariff till such time the Distribution Licensee ensures the compliance with the provisions of the Act as well as directions issued by the State Commission.

(b) **The Voltage Wise Cost of Supply Not Implemented by the State Commission:** This Tribunal in various decisions has held that the cost of supply and tariff need to be determined only on the basis of the voltage wise cost of supply but, the State Commission has determined the tariff based on the average cost of supply by taking into account the total losses in the system which is contrary to the provisions of the Act as well as the directions of this Tribunal.

(c) **Non Compliance of the Tribunal's Judgment on the issue of fixed charges to the Low Tension (LT) Consumers:** This Tribunal has decided in the case of Faridabad Industries Association Vs Haryana State Commission reported in 2011 ELR (APTEL) 1527

holding that the fixed charges shall be applied only to the contracted load and not on the connected load. But, the State Commission in violation of the said directions has determined and applied with fixed charges for the Low Tension (LT) consumers on connected load basis.

(d) **Changes in the Tariff Principle in Violation of the Natural Justice:** In the absence of any proposal in the tariff petition filed by the Distribution Licensees, the State Commission proceeded suo-moto with the tariff determination process by making various changes in the tariff design applicable to the consumers without mentioning any proposed change about the tariff design in the public notice issued without giving opportunity of hearing to the consumers and as such, the State Commission has changed the basis for the energy charges on the HT consumers from KWH basis to KVAH basis in violation of the principles of Natural Justice.

4. The learned Counsel for the Respondents has made the following submissions in reply:

(a) (i) On the 1st issue, the allegations of the Appellants that the Distribution Licensees are in violation of the Haryana Commission Regulation to meter the un-metered consumers, is contrary to the records. Both

the Distribution Licensees (R-2 and R-3) have taken substantial steps in complying with the directions to meter the un-metered consumers and are in substantial compliance of the same.

(ii) The percentage of the un-metered consumers in total consumer base is as low as approximately 3% in Dakshin Haryana(R-2) and 7% in Uttar Haryana(R-3). The Respondents have not been able to meter all the agricultural consumers due to non availability of meters besides the stiff resistance from the farmers leading to serious law and order problems. Despite this, the Respondents have taken substantial steps in metering the un-metered consumers.

(iii) Allegations of the Appellants that the Transmission and Distribution Losses of the Respondent are very high and there is no appreciable improvement in the loss levels of the Distribution Losses, is factually incorrect. The perusal of the data for the last 10 years makes it clear that the Distribution Licensees have brought down losses significantly despite the fact that there had been no increase in the tariff in the last 10 years.

(iv) The collection efficiency of the Distribution Licensees has shown consistent improvement in the last few years.

(v) The allegations of the Appellants that the Distribution Licensees have not been using capital expenditure are baseless. The power supply situation has improved in the State of Haryana. This is evident from the fact that the Distribution Licensee has been supplying on an average of 20-22 hours of electricity per day to the industries.

(b) (i) In regard to the 2nd issue, the Appellants have submitted that the State Commission has determined the tariff for the consumers based on the average cost of supply only by taking into account the total losses in the system including un-metered supply to agricultural consumers etc. This allegation is wrong. The State Commission has determined the tariff after computing the category wise cost of supply which is evident from Para 5.2 of the Impugned Order. The cost of supply was determined by the State Commission only after due consideration as per the principle which has been laid down by this Tribunal.

(ii) As regards the calculation of consumption by agriculture consumers, the State Commission has calculated the same by undertaking its own prudent test. In fact, the unmetered supply has been calculated on the basis of the actual consumption recorded by the energy meters installed on 11 KV segregated Agriculture Pump(AP) feeders at the grid substations as well as a small percentage of consumption of AP consumers connected on feeders other than the segregated AP feeders has been suitably accounted for. The State Commission has retained the same methodology for projecting the AP sales as done in the previous order. This methodology has already been approved by this Tribunal in the case of Faridabad Industries Association and Ors Vs HERC, 2011 ELR (APTEL) 1527.

(c) With regard to the 3rd issue, it is submitted by the Appellants that the State Commission has wrongly determined and applied the fixed charges for the low tension consumers on connected load basis despite the directions given by this Tribunal that the fixed charges shall be applied only on the contracted load. This contention is wrong. The State Commission

simply followed the judgment of this Tribunal in Faridabad Industries Association and Ors Vs HERC 2011 ELR (APTEL) 1527. The State Commission initiated suo-moto proceedings to implement the judgment of this Tribunal and passed the order in the suo-moto proceedings on 7.12.2011. However, the Appellants never challenged the said order dated 7.12.2011. Therefore, the said order has attained the finality. So, the issue having attained finality between the parties cannot be re-opened in the subsequent proceedings. Therefore, there is no merit in this contention.

(d) In regard to the 4th issue namely the change in tariff design in violation of the principles of natural justice, the Appellants have submitted that the State Commission made various changes in the tariff design without giving any notice or opportunity for hearing to the consumers and as such, the State Commission failed to follow the principles of natural justice. This contention is not factually correct. The Distribution Licensee filed Petitions before the State Commission for Annual Revenue Requirement. In the said Petition, the Distribution Licensees have prayed to approve the suitable tariff hike. On 18.12.2011, the public notice was issued inviting comments and

objections from the stake holders. The Appellants participated in the public hearing process and also filed objections. Therefore, the allegations of the Appellant that no opportunity was given to them, is false and misleading. The public notice has been issued in the present case. Merely because the Distribution Licensee has not submitted the proposal to change billing from kWh to kVAh basis, the Appellants cannot allege that the tariff fixed is violative of the principles of Natural Justice. It is settled law that the State Commission has got the powers to design the tariff as per its own wisdom.

5. In the light of the rival contentions with regard to the above 4 issues urged by the learned Counsel for the parties, let us now discuss each of the issues.
6. The **First Issue** is this: Non-Compliance of the provisions of the Electricity Act, 2003 and directions issued by the State Commission by the Distribution Licensees and their inefficiencies.
7. The allegation of the Appellant on this issue is with regard to three aspects (i) Un-metered supply (ii) Transmission and Distribution Losses and (iii) Capital Expenditure.
8. With regard to un-metered supply, the Appellant's contention is that the State Commission had issued

repeated directions to the Distribution Licensees to meter the un-metered consumers but despite this, about 30% of the total supply by the R-2 and about 20% of the supply by R-3 continues to be un-metered and further a large number of meters installed by the Distribution Licensees are defective and thus, the Distribution Licensees have failed to install the meter in terms of Article 55 of the Electricity Act, 2003.

9. On this issue elaborate arguments were advanced by the learned Counsel for both the Appellants and the Distribution Licensees, the Respondents.
10. According to R-2, it has taken substantial steps in complying with the directions to meter the un-metered consumers and also it has taken initiative to ensure 100% metering in its licensed area.
11. It is further submitted by the R-2 that since 2006, no new connections have been released without a meter and 96.62% of the consumers in R-2's licensed area are metered.
12. R-2 has produced the following chart to substantiate the above submission:

Category of Consumers	No.of consumer	No.of Electro-mechanical Meters	No.of Electronic Meters	Metering completed	% Metering completed

DS	1854560	458896	1395664	1854560	100.00%
NDS	217735	33673	184062	217735	100.00%
AP	227429	31451	115608	147059	64.66%
HT	5492	0	5492	5492	100.00%
LT	43805	909	42896	43805	100.00%
Others	29448	795	28653	29448	100.00%
Total	2378469	525724	1772375	2298099	96.62%

13. Like this, the R-2 has also produced a chart to show that un-metered connection has considerably reduced over the period of time. The same is as follows:

Year	Un-metered Agri Consumers	Un-metered Agriculture Consumers Metered during the year
2004-05	88309	-
2005-06	87905	404
2006-07	87159	746
2007-08	86484	675
2008-09	85134	1350
2009-10	84204	930
2010-11	81679	2525
2011-12	80370	1309
Total		7930

14. It is also submitted by the R-2 that it is facing stiff resistance from the farmers leading to serious law and order problems in view of the non co-operation of the un-metered agricultural consumers. It is further submitted that it has not been able to meter all the AP consumers due to

non availability of meters on account of the fact that the Respondent-2 requires meters for (i) new connections (ii) change of defective meters and (iii) change from electromechanical meters to electronic meters.

15. The following chart has been given by R-2 to show the number of new connections released from 2006-07 to 2012-13:

FY	DS	NDS	LT Indl.	HT Indl	AP	Bulk Supply	Village Chaupal	Railway Traction	Street Light Supply	MITC T/Well	PWW
2007	88429	11863	2831	584	8905	32	0	0	7	3	680
2008	71408	10327	2729	440	11968	25	0	0	20	0	658
2009	69617	10132	2255	508	11002	32	0	0	26	0	942
2010	87726	11324	2108	436	13635	40	0	0	13	0	818
2011	146554	13686	3034	551	10553	65	0	0	47	5	409
2012	122015	14184	2845	648	11487	52	0	0	48	0	536
2013	48395	6483	1050	265	3859	26	0	0	24	0	312
Total	634144	77999	16852	3432	71409	272	0	0	185	8	4355

16. Similarly, it has produced a chart to show the requirement of the defective meters which is as follows:

Year	Total No.of Metered Connection	Opening Balance of Defective Meters	Additions during the year	Defective Meters Replaced during the year	Closing Balance of Defective Meters	Percentage of defective meters of metered connections
1	2	3	4	5	6=(3+4-5)	7
2003-04	1577980	103334	65648	78651	90331	5.72
2004-05	1652019	90331	49157	61415	78073	4.73

2005-06	1717342	78073	83762	53829	108006	6.29
2006-07	1810830	108006	71290	87228	92068	5.08
2007-08	1878220	92068	112759	83446	121381	6.46
2008-09	1948801	121381	99172	91589	128964	6.62
2009-10	2047816	128964	118096	114818	132242	6.46
2010-11	2187619	132242	84773	88999	128016	5.85
2011-12	2298099	128016	107486	93165	142337	6.19
Total				753140		

17. The above details would show that the R-2 has taken substantial steps in metering the un-metered consumers which is evident from the above chart.
18. The R-2 has also launched various voluntary disclosure schemes through which considerable quantum of unauthorized load was uncovered and consequently the load was extended. As a result, the contracted load and connected load per consumer have increased over the years although the absolute number of un-metered consumers has gone down.
19. As pointed by the Appellants, Section 55 of the Electricity Act, 2003 provides that no licensee shall supply electricity after the expiry of two years from the appointed date except through installation of a correct meter. The licensees have indicated that no new connection is being given without a correct meter. The un-metered supplies in categories other than agriculture category have been provided with

meters. However, the licensees are facing stiff resistance from the agricultural consumers in installation of meters. In the absence of the meters, the State Commission has estimated the consumption of the agriculture consumers on the basis of meters installed on 11 KV Agriculture feeders at the feeding sub-stations. This methodology has been upheld by this Tribunal in its judgment in 2011 ELR (APTEL) 1527 in the matter of Faridabad Industries Association Vs HERC.

20. In view of the above, we are not inclined to set-aside the Impugned Order merely on the ground of un-metered supply to agriculture consumers. However, we direct the Distribution licensees to step up their efforts of metering the un-metered consumers by correct meters and replacing defective meters and electro mechanical meters by electronic meters.
21. The next aspect is Transmission and Distribution Losses.
22. According to the Appellants, there has been no appreciable improvement in the Loss Level of the Distribution Losses as a result, the half of the total electricity has not been correctly accounted for and it is only shown as losses and un-metered supply.
23. On the other hand, it has been submitted by the R-2 that on perusal of the T&D losses data furnished by it for the

losses for the last 10 years, it is evident that the R-2 has brought down losses significantly despite the fact that there was no increase in the tariff in the last 10 years except for 11% increase in 2010-11 and marginal increase in 2011-12.

24. The R-2 has produced this chart indicating the Distribution Losses for the last 10 years. The same is as follows:

Distribution Losses	
Year	Losses
2002-03	35.02%
2003-04	33.34%
2004-05	32.72%
2005-06	30.90%
2006-07	29.65%
2007-08	27.54%
2008-09	25.19%
2009-10	26.97%
2010-11	22.95%

25. So, this chart would indicate that there has been a reduction in distribution loss over the past few years. In the impugned order the State Commission has decided the ARR of R-2 on the basis of distribution loss target of 21.5%. Thus, the State Commission has been gradually reducing the distribution loss target for the distribution licensee(R-2).

26. The AT&C loss is calculated by taking into account both Distribution Losses and collection efficiency into consideration. The State Commission determined the tariff after taking into consideration 100% collection efficiency. Accordingly, at 100% calculation efficiency, there will be no difference between AT&C losses and Distribution Losses.
27. The collection efficiency of R-2 has shown considerable improvement in the last few years. The chart regarding the collection efficiency has been given below:

Collection Efficiency	
Year	Losses
2001-02	92.13%
2002-03	95.39%
2003-04	94.52%
2004-05	93.84%
2005-06	95.15%
2006-07	96.12%
2007-08	102.21%
2008-09	101.70%
2009-10	100.50%
2010-11	97.68%

28. The 3rd aspect is capital expenditure.
29. According to the Appellants, the Distribution Licensees have failed to comply with the directions of the State

Commission on the Capital Expenditure programmes but the State Commission has allowed the interest on Capital Expenditure incurred by the Distribution Licensee both for the past in the truing up and for the future without enquiring into the aspect as to whether the capital expenditure has resulted in any benefits when the Distribution licensees defaulted in providing the requisite details to the State Commission. This has been refuted by the R-2.

30. According to the R-2, it has been able to bring down the Distribution Losses from approximately 35% in 2002-03 to 22.95% in 2010-11 and power supply situation has considerably improved in the State of Haryana since the Distribution Licensee has been supplying electricity at an average of 20-22 hours per day to the industries.
31. It is further submitted by R-2, it has taken various steps for improvement in its efficiencies which are as follows:
 - (a) Respondent No.2 has taken various steps for improvement in its efficiency which can be gauged from the following:
 - (i) Respondent No.2 has always been able to meet the distribution loss target given by the Commission except for the FY 2009-10;

- (ii) Respondent No.2's collection efficiency has been around 100%.
 - (iii) Respondent No.2's Distribution Transformer(DT) Damage rate has been brought down from 19% in 2004-05 to 10-11%.
 - (iv) HT-LT ratio has been improved from 0.60 in 2003-04 to 0.92 in 2011-12 (up to September).
- (b) Respondent No.2 has taken a number of measures to improve quality of consumer services which are inter-alia as follows:
- (i) Establishment of Customer Care centers;
 - (ii) Starting of a single point contact call center for registering no supply complaints,
 - (iii) SMS alert facility for energy billing;
 - (iv) On line bill payment in Rewari District and 17 sub divisions of Gurgaon, Faridabad and Hissar and
 - (v) Implementation of Quality Management System according to ISO 9001:2008
- (c) Respondent No.2 has also taken measures to reduce distribution loss, which are inter-alia as under:

- (i) Plans of installing 30 new 33 KV sub-stations and augmentation of 20 existing 33 KV sub-stations;
- (ii) Replacement of bare ACSR Conductor with Aerial Bunched Cable;
- (iii) Provision of Electronic LT-CT Meters on all new connections having load of 20 kW and above (except for AP consumers);
- (iv) Installation of 3-phase Automatic Reactive Power Managers at sub-stations to control reactive power and improve voltage;
- (v) Constitution of special dedicated teams for arrears recovery and theft detection;
- (vi) Regularization of Kundi connections in rural areas;
- (vii) Board level review of high loss making industrial and independent feeders;
- (viii) GIS based consumer indexing and asset mapping, AMR and SCADA System for data acquisition under R-APDRP;

(ix) Proposal is being under preparation for automated meter reading (AMR) for 10-50 KW consumers;

32. As regards to the interest on Capital Expenditure, the State Commission observed that the allowed interest on borrowings for capital works is dependent on R-2 adhering to the approval capital works. Further, the State Commission has only trued-up the interest on working capital based on the actual capital expenditure incurred by the R-2.
33. As stated above, the information given by the R-2 regarding improvement achieved by it was on account of capital expenditure incurred by the R-2.
34. Therefore, we are unable to accept the contention of the Appellants on this issue. Accordingly, this issue is decided as against the Appellants in regard to R-2.
35. In regard to R-3, it is contended by the Appellant with regard to un-metered supply, the R-3 has not followed the mandate referred to in Section 55 of the Electricity Act, 2003 and 20% of the supply by R-3 continues to be un-metered and a large number of meters are defective.
36. According to R-3, from April, 2000, no new connection had been released without a meter. R-3 also submits that it is facing stiff resistance from the farmers and due to lack of

co-operation from the un-metered agricultural consumers, the R-3 has not been able to improve metering on the AP consumers.

37. In regard to replacement of the defective meters and electromechanical meters to electronic meters, the R-3 has given the following charts:

(a) Replacement of defective meters:

FY	No. of Defective meters in the system at the end of previous year		No. of meters gone defective during the year		Total Defective		No. of meters replaced during the year		No. of Defective meters in the system at the end of the year	
	Single Phase	Three Phase	Single Phase	Three Phase	Single Phase	Three Phase	Single Phase	Three Phase	Single Phase	Three Phase
09-10	115553	10514	63086	12789	178639	23303	58394	11048	120245	12255
10-11	120245	12255	82445	19438	202690	31693	86042	17710	116648	13983
11-12	116645	13983	78201	17125	194846	31108	84984	17412	109862	13696

(b) Replacement of Electromechanical Meters to electronic meters:

Year	No. of Electromechanical Meters at the beginning of the year			No. of Electromechanical Meters replaced with Electronic Meters during the year		
	Single Phase	Three Phase	Total	Single Phase	Three Phase	Total
2009-10	674362	72370	746732	20130	3932	24062
2010-11	654232	68438	722670	40841	16647	57488

2011-12	613391	51791	665182	20611	3174	23785
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38. The percentage of un-metered consumers in total consumer base is approximately 7% according to R-3. It is also seen that the State Commission as regards the calculation of consumption by Agriculture Consumers has calculated the same by undertaking its own prudent check.
39. In regard to the Transmission and Distribution Losses, it is stated by the R-3 that there has been a substantial reduction in Distribution Losses over the past few years. The losses over and above Distribution losses fixed by the State Commission have been absorbed by R-3. Therefore, there cannot be any grievance on account of high Distribution Losses.
40. AT&C loss is calculated by taking both Distribution losses and collection efficiency into consideration. According to R-3 it has been able to improve the collection efficiency from 89.1% in 2002-03 to 92.14% in 2011-12.
41. In respect of Capital Expenditure, it is contended by the Appellants that the Distribution Licensees had failed to comply with directions of the State Commission on the Capital Expenditure Programme and further, the Distribution Licensees have not provided any details of improvements that have been achieved as a result of the capital investments claim to have been made.

42. According to R-3, it has given priority to loss reduction while planning of capital investment schemes and it has segregated the capital investments scheme into four major heads. They are as follows:

- (a) AT&C Loss Reduction
- (b) Load Management
- (c) Reliability Improvement
- (d) Infrastructure Development

43. On the basis of these four major heads, the R-3 has submitted that it has been able to bring down the distribution losses over the years and it has taken various steps for improvement in its efficiency which is evident from the following:

(a) Respondent No.3 has taken various steps for improvement in its efficiency which can be gauged from the following:

(i) Respondent No.3 has been able to bring down AT&C losses from 42.1% in 2002-03 to 36.6% in 2011-12. The State Commission has noted in the Impugned Order that the Distribution losses of the Respondent No.3 for the FY 2010-11 were 33% after reassessing the agriculture consumption. Considering the loss reduction of

3% per annum, the State Commission has fixed loss level at 29%.

(ii) Respondent No.3 is putting all efforts to prevent, detect and penalize theft of electricity. Penalty imposed has increased from Rs.34.69 Crores in 2009-10 to Rs. 52.11 Crore in 2010-11.

(iii) HT-LT ratio has been improved from 0.51 in 2001-02 to 0.97 in 2011-12 (up to December) and Respondent No.3 is likely to achieve HT:LT ratio of 1 which is ideal HT:LT ratio as per the norms laid down by CEA.

(b) Respondent No.3 has also taken measures to reduce AT&C loss, which is inter-alia as under:

(i) System Augmentation and Strengthening works. In FY 2011-12, 16 new sub stations have been commissioned, 17 existing sub stations have been augmented and 84 Feeders have been bi/trifurcated (till December, 2011);

(ii) Replacement of energy meters of 17629 non domestic and industrial consumers with connected load above 20 kW with LT-CT meters;

- (iii) Replacement of electromechanical meters with electronic meters for LT Industrial and NDS consumers with connected load below 20 kW;
- (iv) Periodic Theft Detection and Vigilance Drives;
- (v) Replacement of bare conductor with Aerial Bunched Cables (ABC);
- (vi) Board level review of high loss industrial and independent feeders;
- (vii) Installation of 3-phase Automatic Reactive Power Managers at substations to control reactive power;
- (viii) GIS based consumer indexing and asset mapping under R-APDRP;
- (ix) Recovery based PRM: If total revenue realized from the consumers on a particular feeder shows consistent improvement then the supply hours would be increased for that feeder;
- (x) Dedicated police stations to be functional at circle level to reduce theft of energy;
- (xi) Automatic Meter Reading (AMR) project for 3743 HT Industrial consumers which will help

in remote energy meter reading of HT Industrial consumers without any manual interference;

44. As regards the interest on capital expenditure, the State Commission has observed that the allowed expenditure on the borrowings for capital works is dependent upon R-3 adhering to the approved capital works. The Haryana Commission in the Impugned Order has only tried-up the interest on additional capitalization based on the actual capital expenditure incurred by the R-3.
45. We feel that even though there is large scope of improvement with respect to metering and reduction of distribution losses, the State Commission has decided the ARR based on its own computation of agriculture consumption considering the metered drawal on the 11 KV rural feeders, fixed loss reduction targets of 3% for FY 2012-13 and passed on the loss due to non-achievement of the loss reduction target to the Distribution licensees and allowed addition in capital cost after prudent check. Therefore, we are not inclined to set aside the impugned order on this account. However, the Distribution licensees are directed to step up their efforts to reduce losses on the feeders having high distribution losses, metering of unmetered consumers and replacement of electro mechanical and defective meters by correct meters. The

State Commission is also directed to set targets for the Distribution licensees in respect of these aspects.

46. Accordingly this issue is decided as against the Appellants with some directions to the State Commission and the Distribution licensees.
47. The **Second Issue** is relating to the voltage wise cost of supply not implemented by the State Commission.
48. With regard to this issue, the Appellants have made the following submissions:

“The State Commission has determined the tariff for the consumers in the State of Haryana based on the average cost of supply by taking into account the total losses in the system including un-metered supply to the agricultural consumers etc. This is contrary to the provisions of the Electricity Act and various judgments rendered by this Tribunal. In fact, as per the specific directions given by this Tribunal, the correct methodology should be based upon the consumer category wise and voltage wise cost of supply and not average cost of supply. However, the State Commission has only placed a premium over the default of the Distribution Licensee even in the absence of the relevant data furnished by the Distribution Licensee”.

49. In reply to this submission, the learned Counsel appearing for the Respondents has made the following submissions:

“The State Commission has determined the tariff after computing the category wise cost of supply which is evident from Para 5 of the Impugned Order. The cost of supply was determined by the State Commission after due consideration by adopting the methodology which has been approved by this Tribunal in Appeal No.11 of 2011 in the case of Northern Railways V Haryana Electricity Regulatory Commission”.

50. We have carefully considered the submissions of both the parties on this issue.

51. In the Impugned order, the State Commission has determined the tariff based upon the average cost of supply by taking into account the total losses in the system including un-metered supply to the agricultural consumers etc. This Tribunal has held that the voltage wise cost of supply needs to be determined to transparently determine the cross subsidy in the following decisions. They are as follows:

(a) M/s. Tata Steel Limited v. Orissa Electricity Regulatory commission & Anr (Order dated 30.5.2011, Appeal No.102 of 2010);

(b) M/s. Vishal Ferro Alloys Ltd. & Ors V Orissa Electricity Regulatory Commission (Order dated 2.9.2011, Appeal No.57, 67 etc of 2011);

(c) Bihar Industries Association v Bihar Electricity Regulatory Commission (Judgment dated 10.5.2012, Appeal No.14 of 2011 and batch)

52. The State Commission in fact, has referred to in the Impugned Order about the directions issued to the Distribution Licensee to submit updated consumer category wise cost of services data but the Distribution Licensees have not furnished the same. The relevant direction has been referred to in the Impugned Order:

*“4.2.3 Despite the fact that the Discoms stated in their ARR Petition for FY 2012-13 that they would be submitting an updated consumer category wise cost of service as well as tariff proposal to bridge the projected revenue gap of Rs.10, 234.72 Crores at the existing tariff, they failed to do so. However, in order to take the process forward, the Commission has relied on its own cost of service estimates as in the past as the benchmark for taking a view on the distribution and retail supply tariff for FY 2012-13 as well as wheeling charges and cross subsidy surcharge. **The Discoms are directed to update their cost of service data and submit the same along with the next ARR & Tariff Petition.**”*

53. We find that in the Impugned Order while the State Commission has estimated the cost of supply for determining the wheeling charges and cross subsidy surcharge, for determining the tariff and cross subsidy, it has relied upon the average cost of supply. The

Commission has found that at then prevailing tariff, almost all the categories of consumers including the LT Industry and HT industry were being subsidized. The State Commission in the Impugned Order enhanced the tariffs of all the categories of consumers with the objective of bringing the tariffs within $\pm 20\%$ of the average cost of supply according to the Tariff Policy.

54. Regulation 32 of the 2008 Tariff Regulations of the state Commission provides for Cross Subsidy as under:

“32. Inter Class Cross-Subsidy- (1): The distribution licensee’s tariffs should reflect the reasonable cost of providing service to each consumer class. The licensee shall adopt and submit to the Commission for approval, identification and progressive reduction of any cross subsidy in its tariffs within the timeframe determined by the Commission.

(2) In each tariff application, the licensee shall include a report on how far they have implemented the plan approved by the Commission for reduction of cross subsidy and the measures being proposed in the current application to implement the plan.

55. The above Regulation provides for considering the cost of supply to each consumer class while determining the tariff. However, the Distribution Licensees failed to provide the information regarding cost of supply to each consumer category to determine the cross subsidy with respect to cost of supply.

56. The learned Counsel for the Respondents cited the decisions in Appeal No.11 of 2011 in the case of Northern Railways Vs Haryana Electricity Regulatory Commission to contend that the voltage wise cost of supply is not required.

57. This Tribunal in Appeal No.11 of 2011 has held as under:

“54. These discussions are sufficient guidelines for the Commission to undertake a serious exercise for determination of cost of supply and since this has not been reportedly done, we once again direct the Commission to go into the exercise and the two Respondents to assist the Commission by furnishing all relevant and reliable data, which we think with the long passage of time the Commission might have been now enriched with the report of M/s. ICRA Ltd.,

58. The voltage wise cost of supply details and voltage wise loss levels are required both for calculation of tariff and the applicable cost of Cross Subsidy Surcharge. The default of the Distribution Licensees to provide the necessary information and data, should not be taken as a ground for continuing to determine the tariff contrary to the provisions of the Electricity Act, the policy framed there under and the decisions rendered by this Tribunal.

59. As held by this Tribunal in the various cases the State Commission has to determine category wise/voltage wise cost of supply as also the overall average cost of supply. The Cross Subsidy has to be determined with respect to category wise/voltage wise cost of supply to transparently

indicate the cross subsidy and ensure that the cross subsidy is reduced gradually. The retail supply of tariffs for the various categories has also to be within $\pm 20\%$ of the average (overall) cost of supply according to the Tariff Policy.

60. While the State Commission has observed that the tariffs of the Appellant's category is within $\pm 20\%$ of the average (overall) cost of supply, it has failed to determine the cross subsidy with respect to voltage wise cost of supply for the various categories of consumers.
61. Considering the tariffs of the Appellants' categories at the tariffs prevailing before the revision were below the average overall cost of supply, we cannot find fault with the State Commission to increase in tariff for their categories. However, the State Commission should have also determined the category wise/voltage wise cost of supply to transparently determine the cross subsidy. This Tribunal in Tata Steel Case (Appeal No.102 of 2010) has given a simple method of determining voltage wise cost of supply. The State Commission has to make a beginning for determination of voltage wise cost of supply. We accordingly direct the State Commission to determine the voltage wise cost of supply and cross subsidy with respect to voltage wise cost of supply for the FY 2012-13. This would be used as a base for comparison of cross subsidy in future tariff determination. We are, however not

inclined to set-aside the Impugned Order on account of non-determination of voltage wise cost of supply in the circumstances of the present case. However, the State Commission should take immediate action with respect to carrying out the exercise for determination of voltage wise cost of supply. The Distribution Licensees is also directed to submit to the State Commission the category wise/ voltage wise cost of supply at the earliest. This issue is decided accordingly.

62. The **3rd Issue** is relating to the Non Compliance of the directions issued by this Tribunal on the issue of fixed charges to the LT consumers.
63. On this issue, the learned Counsel for the Appellant has urged the following contentions:

“The State Commission has determined and applied the fixed charges for the LT consumers on connected load basis and has assumed that the fixed charges are to be applied on 80% of the connected load. The fixed charges shall be applied only on contracted load and not on the connected load. The State Commission has proceeded to apply the fixed charges on the connected load on the basis that the Distribution Licensees have not installed the requisite meters. This is not correct since most of the LT industrial consumers have already installed electronic

tri-vector meters capable of recording the maximum demand. Therefore, the fixed charges on the contracted load should be made applicable for such consumers. The State Commission having decided to impose the fixed charges on LT consumers, should have directed the same to be implemented by ensuring appropriate metering and the fixed charges to be left only on the contracted load as directed by this Tribunal in the decision reported in 2011 ELR (APTEL) 1527 in the case of Faridabad Industries Association V Haryana Electricity Regulatory Commission and Ors”.

64. In reply to above submissions made by the Appellant, the Respondents have made the following submissions:

“In the decision given by this Tribunal in 2011 ELR 1527 in the case of Faridabad Industries Association and Ors Vs HERC, this Tribunal directed the Haryana Commission to issue necessary directions in the present matter after hearing the parties and accordingly, the State Commission passed the order in suo-moto proceedings on 7.12.2011. In the said order, various practical problems were taken into consideration keeping in view of the directions of this Tribunal and decided that the fixed charges in case of LT consumers with connected load of above 20 KW

will be chargeable for 80% of the sanctioned connected load with effect from the date of the order. Admittedly, this order was passed only after hearing the representatives of the Appellants. However, the Appellants never challenged this Order. Therefore, the said order attained finality. The State Commission in the Impugned Order has merely followed the said decision in the present Impugned Order. Therefore, the issue having attained finality between the parties, cannot be reopened in a subsequent proceedings as held in the decision of Hon'ble Supreme Court in the case of Shankara Co-op Housing Society Ltd Vs M Prabhakar (2011) 5 SCC 607.

65. We have carefully considered the submissions of the parties on this issue.
66. As found in the Impugned Order, the State Commission has determined and applied the fixed charges for the LT consumers on the connected load basis by assuming that the fixed charges are to be applied on 80% of the connected load.
67. As pointed out by the Appellant, this Tribunal in the said decision reported in 2011 ELR (APTEL) 1527 Faridabad Industries Association Vs Haryana Commission; has held

that the fixed charges shall be applied only on the contracted load and not on the connected load.

68. The relevant portion of the findings is as follows:

“9.4. We notice that the State Commission has given a reasoned order for imposition of the fixed charges for LT consumers above 20 kW load which incidentally will also bring their tariff up to the cost of supply. We do not find any fault with the levy of fixed charges on LT consumers but recovery of fixed charges on connected load does not seem to be correct. The Appellants have also not contested the imposition of fixed charges but have challenged the recovery based on the connected load. We are in agreement with the argument of the learned Counsel for the Appellant that there is diversity in operation of various equipments (machineries, motors, appliances, etc.) installed at the consumer’s premises and all the equipments are not expected to operate simultaneously. Admittedly, for the HT consumers, the recovery is based on the basis of the contract demand/actual demand. Therefore, imposition of fixed charges to LT consumers (above 20 kW) on the basis of the connected load is discriminatory.

9.5 The learned Counsel for the Appellant has stated that the requisite meters for recording maximum demand exist on the LT consumers of above 20 kW load and the Respondents have not contested the same. In fact, the Respondents No.2 and 3 have informed that for excess recorded demand over the connected load a penalty is levied on the LT consumers. However, there is no practice of contract demand for LT consumers. We feel that when fixed charges have been introduced for LT consumer, the existing practice has to be revised for LT consumers on the same lines as for HT consumers for whom the fixed charges have been in vogue in the past.

9.6 In view of the above, we decide this matter in favour of the Appellants. The State Commission is directed to issue necessary directions in this regard after hearing the concerned parties.”

69. On going through this judgment, it is clear that the connected load is only an assessment made by the Distribution Licensees of how much electricity is physically possible to be consumed through the line at the premises rather than going on the basis as to how much electricity has been contracted for by the consumer in view of diversity in use of various appliances and machineries. This means, the consumer ought to have the freedom of deciding how much electricity he needs to take from the Distribution Licensee and the tariff needs to be charged only on such contracted demand of the consumers with the licensees in the same way as HT consumers.
70. The perusal of the Impugned Order shows that the State Commission has proceeded to apply the fixed charges on the connected load on the basis that the Distribution Licensees have not installed the requisite meters. This aspect has been disputed by the Appellants.
71. According to the Appellants, most of the LT Industrial Consumers have already installed electronic tri-vector meters capable of recording the maximum demand and the fixed charges on contracted load should be made applicable for such consumers.

72. Let us now examine the findings of the State Commission in the order dated 7.12.2011 in suo-moto proceedings to implement the above order of the Tribunal. It is noticed that the Association of Industrial Consumers had also participated in these proceedings. The State Commission's findings in this order are summarized as under:

(a) The Commission feels that given the ground realities, technical as well as financial constraints in implementing levy of fixed charges on a actual demand basis in case of LT consumers, it may not be possible to introduce levy of fixed charges on actual/contract demand basis right away as desired by the Tribunal in its order.

(b) The revised practice cannot be implemented by merely replacing whole current meters with LT CT meters of all the LT consumers. It requires recording of actual demand, downloading of metering data of all LT consumers, etc. Meter reading/billing of such large consumers on actual demand basis is a huge task which will result in incurring of additional cost besides stretching the skilled manpower. This will result in passing of an extra cost on the consumers.

(c) Distribution Licensees will examine the technical preparedness of recovery of fixed charges on the

basis of contract demand and submit a report to the State Commission.

(d) While introducing the fixed charges for LT consumers in the tariff order, the Commission had kept in view that the actual demand of LT consumer would be less than the connected load and had pegged the fixed charges of LT consumers lower than those fixed for HT consumers i.e. about 75% of the fixed charges applicable to HT consumers.

(e) Keeping in view the directions of this Tribunal, the practical/technical and financial constraints involved in implementing levy of fixed charges on actual demand basis, the fixed charges in case of LT consumers with connected load above 20 kW will be chargeable at 80% of the sanctioned connected load. The proposal for increasing fixed charges for LT consumers as prayed by the distribution licensees cannot be accepted and will be considered at the time of determining the ARR for FY 2012-13.

73. In the Impugned Order, the State Commission has enhanced the fixed charges in respect of the LT consumers with connected load above 20 KW for Rs.75/KW to Rs.150/KW i.e. more than that levied on the HT consumers.

However, the fixed charges have to be levied on 80% of the connected load as per its earlier order dated 7.12.2011.

74. The Order dated 7.12.2011 was passed to give some relief to the LT consumers as an ad-hoc arrangement considering the submissions made by the distribution licensees regarding practical problems in implementation of the Tribunal's judgment for the previous years. However, the Distribution Licensees were directed to examine the technical preparedness to implement the directions of the Tribunal and to submit a report to the State Commission. In the Impugned Order we do not find any discussion regarding the technical preparedness of the Distribution Licensee to implement the direction of the Tribunal for recovery of fixed charges on the basis of contract demand as applicable to HT consumers. We also do not understand the problem of meter reading in actual demand as put forward by the Distribution licensees. When the energy meter reading is being taken by the Distribution licensees why the demand can also not be recorded?.
75. According to the Appellants, most of the LT consumers have requisite metering arrangement for recording of demand. In reply, the only defence of the Respondents 2 & 3 is that the earlier order dated 7.12.2011 was not challenged and hence, it has attained finality. It is true that order dated 7.12.2011 in which the State Commission gave an order relating to tariff for FY 2010-11 which was not

strictly as per the directions of the Tribunal was not challenged. However, this could not be accepted in the present Appeal against the Impugned Tariff Order for the FY 2012-13. In the Impugned Order, the State Commission has enhanced the fixed charges of LT consumers with connected load of over 20 KW substantially and more than that it has decided for the HT consumers without considering the directions of the Tribunal in Appeal No.204 of 2010. If most of the LT consumers of connected load of above 20 KW have been provided with the requisite meters and the meter reading is taken for the energy by the Distribution licensee, then there is no reason as to why the actual demand can also not be recorded for billing of fixed charges on the basis of the contracted demand and actual.

76. Furthermore, the order dated 7.12.2011 passed by the State Commission was applicable only for the year 2010-11. The non challenge to the said order will only mean that the Appellants would not be entitled to the benefits for the said year only. Hence, it cannot be contended that the Appellant having not challenged the earlier order, cannot challenge the present Impugned Order of the State Commission for the subsequent year particularly when the State Commission has not followed the judgment of this Tribunal.

77. We find that the tariff year 2012-13 is already over and at this stage, it will not be possible to revise the method of billing of the demand charges for the LT consumers with connected load of above 20 KW as the demand has not been recorded by the distribution licensee for the FY 2012-13. Therefore, we direct the State Commission to re-examine the issue and evolve mechanism for billing of demand charges for LT consumers based on the contract demand and actual demand as prevailing for the HT consumers for future. In case of any difficulty, the State Commission is at liberty to approach this Tribunal.
78. Accordingly, this issue is decided in favour of the Appellant.
79. The **4th Issue** being the last issue is relating to the changes in tariff design in violation of the principles of natural justice.
80. The submissions of the Appellants on this issue is as follows:

“Admittedly, there was no tariff Petition filed by the Distribution Licensee. The State Commission however has initiated suo-moto proceedings with the tariff determination process. While so, the State Commission made various changes in the tariff design applicable to the consumers. The above was effected by the State Commission without giving any notice or opportunity for hearing to the consumers to place their

representations and comments. Though, the State Commission has got the jurisdiction to proceed with the tariff determination process on suo-moto basis, it ought to have followed the principles of natural justice by providing notice to the consumers as to the changes proposed to be made by the State Commission. Admittedly, the public notice issued in the present case by the State Commission did not mention any proposed changes to the tariff design on the principles on which the tariff was made applicable in the past. Thus, the State Commission by virtue of the Impugned Order deprived the consumers to have the opportunity of hearing on this issue especially when there was no proposal by the Distribution Licensee for the change of the above tariff design”.

81. The reply to this issue by the Respondents is as follows:

“In both the Petitions filed by the Respondent-2 and 3 for Annual Revenue Requirement for the Financial Year 2012-13, they have prayed to approve the considerable tariff hike to allow it to recover the deficit for the Financial Year 2011-12 and 2012-13. Both the Respondents issued public notice inviting suggestions and objections from the consumers and stake holders. The Appellant also participated in the hearing and filed their objections. Even assuming that the

Respondents have failed to submit any specific proposal for the bridge in the revenue gap, the State Commission under Regulation 6(3) of the Tariff Regulations has suo-moto powers to determine the tariff even in the absence of the proposal from the Distribution Licensee. This principle has been upheld by this Tribunal in its decision in 2011 ELR (APTEL) 1527 and 2009 ELR (APTEL) 417.

82. We have carefully considered these submissions.
83. Admittedly, in the present case, the tariff determination process was adopted by the State Commission on suo-moto basis. There is no denial to the fact that the State Commission made various changes in the design. Similarly, the public notice issued by the State Commission in the present case did not specifically mention about the proposed change to the tariff design for HT consumers on the principles on which the tariff was made applicable in the past.
84. In the light of the above factual situation we have to analyze this issue.
85. In the present case, the State Commission has changed the basis for the energy charges on the HT consumers from Kwh to KVAH basis in the Impugned Order. The above changes were made even though there was no specific

proposal with regard to the same made by the Distribution Licensee.

86. According to the Appellant, since there was no opportunity whatsoever given to the consumers to file their submissions in this regard, a great prejudice has been caused to the consumers in as much as the power factor rebate provided earlier has been taken away while not giving any favorable adjustments in the tariff for the change. It is further contended by the Appellants that when the State Commission proceeds on suo-moto basis providing a public notice regarding the issues which the State Commission considers necessary for the change in tariff design it needs to be provided in the public notice so that the consumers and stake holders will have an opportunity to make their comments for deciding such issues. Admittedly, this has not been done.
87. The learned Counsel for the Respondent has cited some authorities to show that even in the absence of the proposal by the Distribution Licensee, the State Commission has got the jurisdiction to design the tariff as per its own wisdom. Those decisions will not apply to the present case in view of the latest judgments rendered by this Tribunal in Appeal No.197 of 2012 in the case of Beta Wind Farms Private Limited and Tamil Nadu State Commission and Appeal

No.199 of 2012 in the case of South India Sugar Mills Association Vs Tamil Nadu State Commission.

88. In these decisions, this Tribunal has specifically held that it is required of the State Commission to issue a consultative paper on the issues proposed to be covered and to provide sufficient opportunity to its stake holders including consumers to make their submissions to provide their view points especially in the suo-moto proceedings.
89. The relevant portion of the observation in the above decision is as follows:

“53. According to the Appellants, they were totally unaware of the new proposals on the issues (a) to (f) as referred to above until they found the same in the impugned order.

54. In view of the above, we feel that the State Commission ought to have circulated the consultative papers on these issues where it was proposing to introduce new method of determination and mode of recovery and revising the charges substantially, which is not in line with earlier Tariff orders.

55. It is true that the existing Regulations do not provide for specific procedure in suo-moto proceedings. In case of an Application filed by a generator or a licensee before the State Commission, the same is put in public domain and on the basis of those proposals contained in the said application the objections and suggestions are offered by the Stake holders and the public. However, in the case of suo-moto proceedings, such procedure is not available.

56. Therefore, the State Commission in the suo-moto proceedings is duty bound to clearly indicate the issues and the proposals through the consultative papers to the stake holders for obtaining their comments. The circulation of consultative paper in the suo-moto proceedings would in fact, facilitate the Stake holders to provide objections and suggestions, after understanding the issues and the proposals.

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.....

58. Therefore, we cannot accept the reply of the Respondent that the consultative paper was not circulated since the Regulations do not provide for such circulation of consultative paper.

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.....

61. Therefore, we are of the view that the Appellants have not been given opportunity on these issues where new method for determination of charges and mode of recovery of charges have been introduced and which have not been dealt with by the State Commission in the earlier tariff orders of 2006 and 2009”.

90. In view of the above ratio laid down by this Tribunal in the above judgment, we are of the view that the State Commission ought not to have effected the changes in the principles of tariff determination without providing proper notice to the consumers and the stake holders and without considering their views and representations.

91. While we agree that the State Commission is empowered to bring change in the tariff from kWh to KVAH billing as introduced in some States and billing on the basis of KVAH, we feel that the State Commission should have followed the principle of natural justice while bringing a change in energy billing from kWh to KVAH and decided the charge after considering the suggestions and objections of the HT consumers.

92. However, at this stage, when the tariff period for the year 2012-13 is already over and meter reading of consumers and billing has been done by the Distribution licensees based on KVAH reading on the basis of the impugned order, setting aside the order in respect of KVAH based tariff will not serve any purpose. We, therefore, direct the State Commission to hear the Appellants and all other concerned and the Distribution licensees on the energy billing of HT consumer on KVAH instead of kWh and then decide whether to continue with KVAH based tariff in future.

93. Accordingly, this issue is decided in favour of the Appellant.

94. Summary of Our Findings

i) Non Compliance of the provisions of the Electricity Act and the directions issued by the State Commission and inefficiencies of the Distribution Licensees: We have

noticed the gradual improvement in reduction of distribution losses, metering, etc, but more efforts are needed particularly by the respondent No.3. We have given some directions in this regard to the Distribution licensees and the State Commission.

- ii) **The Voltage Wise Cost of Supply Not Implemented by the State Commission:** The State Commission has been directed to determine the voltage wise cost of supply for FY 2012-13 to transparently determine the cross subsidy and to use it as a base for future tariff determination as per the principles laid down by this Tribunal.
- iii) **Non Compliance of the Tribunal's Judgment on the issue of fixed charges to the Low Tension (LT) Consumers:** We have given directions to the State Commission on this issue in paragraph 77 of this judgment.
- iv) **Changes in the Tariff Principle in Violation of the Natural Justice:** We have given directions to the State Commission in regard this issue in paragraph 92 of this judgment.

95. In view of above, the Appeal is allowed to the extent indicated above. Accordingly, the State Commission is directed to pass consequential orders. No order as to costs.

96. Pronounced in the Open Court on the **28th day of February,2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 28th Feb, 2014

√REPORTABLE/~~NON-REPORTABLE~~