

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

Appeal no. 71 of 2013

Dated: 30th October, 2014

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

In the matter of:

**Madhya Pradesh Audyogik Kendra
Vikas Nigam (I) Limited
Free Press House, First Floor
3/54, Press Complex
Agra-Mumbai Road, Indore – 452 018** **...Appellant(s)**

Versus

**Madhya Pradesh Electricity Regulatory
Commission
4th and 5th Floor, Metro Plaza
E-5, Area Colony
Bittan Market, Bhopal - 462016** **...Respondent(s)**

Counsel for the Appellant(s): **Mr. M.G. Ramachandran
Ms. Swagatika Sahoo
Ms. Anushree
Ms. Poorva Saigal
Mr. Avinash Menon**

**Counsel for the Respondent(s): Mr. C.K. Rai
Mr. Arindam Dey
Mr. Mahipal
Mr. Gaurav Agarwal
Mr. Abhishek Sharma
Mr. M.R. Shamshand for Caveator**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Madhya Pradesh Audyogic Kendra Vikas Nigam Ltd. against the order dated 20.09.2012 passed by Madhya Pradesh Electricity Regulatory Commission ("State Commission") passed in Petition No. 16 of 2012 whereby the State Commission has approved the Aggregate Revenue Requirements of the Appellant for the FY 2012-13 with effect from 01.10.2012 and also true-up of the financials for the FY 2010-11 and 2011-12.

2. The Appellant is the developer of a Special Economic Zone (“SEZ”) in the State of Madhya Pradesh. The Respondent is the State Commission.

3. The brief facts of the case are as under:
 - 3.1 The Appellant as the developer of SEZ is developing Industrial Township at three locations, namely, Pithampur, Kheda and Meghanagar in the State of Madhya Pradesh. The development activities of the Appellant includes developing roads, bridges, providing water supply, sewage treatment and sanitation, electricity supply, land acquisition for industrial development, etc.

 - 3.2 By virtue of notification dated 04.03.2011 under Section 49 of the Special Economic Zone Act, 2005, hereinafter referred

to as SEZ Act, the Appellant is a deemed licensee in terms of the Electricity Act, 2003. The distribution and retail supply activities of the Appellant have to be regulated by the State Commission under the Electricity Act, 2003.

3.3 The Appellant has been supplying electricity to the consumers in the SEZ area in terms of the Electricity Supply Agreement entered into with the consumers. The tariff levied by the Appellant was at par with the industrial tariff applicable for the other distribution licensees in the State which have a uniform Retail Supply Tariff. The electricity tariff levied by the Appellant was also after adjusting the charges for all other infrastructure activities and services and the total charges levied by the Appellant was for the consolidated services, including electricity, provided to the consumers in the SEZ area.

3.4 The Appellant on 30.01.2012 filed a Petition no. 16 of 2012 before the State Commission for approval of the ARR and determination of tariff for FY 2012-13. The Appellant also filed audited financial details for the period FY 2003-04 to FY 2009-10 and provisional financial accounts for FY 2010-11 before the State Commission. The Appellant notionally divided its accounts for the electricity division.

3.5 By the impugned order dated 20.09.2012, the State Commission disposed of the tariff Petition filed by the Appellant. The State Commission tried up the revenue requirement of the Appellant for FY 2010-11 and 2011-12 based on the provisional accounts of the Appellant and approved the revenue requirement and determined the Retail Supply Tariff for FY 2012-13. The State Commission found a surplus in the hands of the Appellant for the previous

year 2010-11 and 2011-12 and for the period from 01.04.2012 to 30.09.2012 and has directed the Appellant to adjust the surplus for past period by way of refund to the consumers.

3.6 The Appellant filed a Review Petition against the above order raising the very issues which have been raised in this Appeal. The Review Petition was dismissed by the State Commission by order dated 21.12.2012.

3.7 Aggrieved by the impugned order dated 20.09.2012, the Appellant has filed this Appeal.

4. The Appellant has made the following submissions:

4.1 Prior to passing of the impugned order, the Appellant did not have any differentiation for its activities in the SEZ area and was providing the infrastructure facilities such as developed plots and provision of area without charging for land cost, common area facilities, sanitation, water supply, roads, security, sewage treatment and electricity supply etc., in an integrated manner. The costs and expenses and the financials of the Appellant was adjusted for the whole entity and not based on individual services. Thus, the State Commission erred in assuming a surplus for the past period by disintegrating and differentiating the electricity supply activity only and directing the adjustment to be given to the consumers for the same.

4.2 The impugned order being the first tariff order passed by the State Commission, the State Commission ought to have

applied the tariff determination process with prospective effect and not applied it for the retrospective period from 2010 onwards.

4.3 The notification dated 04.03.2010 of the Government of India under Section 49 of the SEZ Act brought about the scope and extent of the powers of the State Commission as deemed licensee in SEZ area. Thus, the State Commission erred in dealing with the prior period to such notification and assuming jurisdiction of the SEZ area of the Appellant with effect from 2010, when the jurisdiction can be exercised only with prospective effect.

4.4 In any event, in the facts and circumstances of the case, the State Commission ought to have exercised the powers to

relax and its inherent power not to go into the past period but ought to have decided the tariff for the future period only.

4.5 The Appellant is subject to the audit of CAG of India. Thus, the bonafide of the financials of the Appellant are not in doubt. There was no representation of any excess charging or complaints from the consumers for the preceding three years when the electricity was availed at the agreed rates which was not in excess of the prevailing distribution tariff in the State of Madhya Pradesh. The consumers have voluntarily taken the services from the Appellant at the various charges. The electricity charges were designated equivalent to the uniform charges prevalent in the State as determined by the State Commission as per the policy of the State Government. The above was adopted to allocate the total charges for various services in the same manner and

aggregate all charges for the units did not provide any such surplus income to be appropriated by the Appellant as surplus revenue and profit.

4.6 Charging of uniform tariff was consistent with Section 62(1)(d) and also because of multifarious services provided by SEZ, unlike a conventional distribution licensee having only one activity.

4.7 The Appellant having a distribution system operating at 33 and 11 KV, the loss level of less than 4% is extremely low and the State Commission erred in holding that there is further scope of reduction in loss level. The State Commission ought to have allowed incentive to the Appellant for low loss level achievement.

4.8 There was no occasion for the Appellant to maintain separate accounts and income tax for power division alone in the circumstances that the Appellant was functioning as an integrated entity providing all the facilities and services in an integrated manner. The State Commission has wrongly disallowed the income tax claimed by the Appellant.

4.9 The reason for denying the cost of land premium and lease rent charges was that the cost of land is recovered by the Appellant for providing the infrastructure facilities as a whole including electricity and having decided so, the State Commission was wrong in splitting the electricity activity separately and assuming a surplus in favour of the Appellant.

4.10 The State Commission was wrong to hold that the MYT regime has to be implemented in respect of the Appellant's distribution function.

5. On the above issues we have heard the M G Ramachandran, Learned Counsel for the Appellant and Mr. C.K. Rai, Learned Counsel for the State Commission. They have also filed written submissions. Shri Rai has made submissions in support of the findings of the State Commission which we shall be dealing with in the subsequent paragraphs.

6. On the basis of the contentions urged by the parties, the following questions would arise for our consideration:

- i) Whether the State Commission is correct in adjusting the ARR and tariff of the Appellant for the FY 2010-11, 2011-12 and 01.04.2012 to 30.09.2012 and providing retrospective adjustment in the tariff and directing for the refund to be made to the consumers of SEZ area of the Appellant.**
- ii) Whether the State Commission is justified in not providing any incentive on low distribution loss level achieved by the Appellant?**
- iii) Whether the State Commission was justified in not allowing the income tax as claimed by the Appellant in the ARR?**
- iv) Whether the State Commission has erred in not allowing land premium and lease rent charges on the land on**

which electric lines and equipments have been laid down by the Appellant for distribution of electricity?

v) Whether the Multi Year Tariff regime can be implemented in the facts of the present case?

7. Let us take up the first issue regarding refund for the surplus for the past period to the consumers.

8. According to the Appellant, the State Commission ought to have decided the ARR and tariff prospectively without going into the accounts for the period prior to 01.10.2012 and truing-up the same in respect of distribution of electricity.

9. According to Learned Counsel for the State Commission, the Appellant had initially filed a Petition no. 58 of 2010 for determination of ARR and Retail Supply Tariff for 2010-11 in

August, 2010. The Petition was found grossly deficient and the Appellant was advised to submit a revised Petition in accordance with the Regulations. The Appellant was persuaded on numerous occasions to remove the deficiencies and to file revised ARR and Retail Supply Tariff Petition for FY 2010-11. Only after a show cause notice was issued under Sections 142 of the Electricity Act, 2003 by the State Commission for non-compliance of directions of the State Commission, the Appellant filed a Petition on 31.01.2012 for ARR and Retail Supply Tariff for FY 2010-11, 2011-12 and 2012-13. There were several deficiencies in the Petition and the Petition was not filed as per the stipulations made in the Regulations. The revised Petition was filed only on 03.07.2012 wherein it was found that certain data/information included in the Petition were required to be validated. The Petition was finally admitted on 27.07.2012

after the Appellant furnished the desired information. The Learned Counsel has filed copies of the correspondence and minutes of meeting between the Commission's staff and the Appellant's representatives in this regard.

10. Let us examine the provisions under the SEZ Act, Rules and Notifications relating to supply of electricity in the SEZ area.
11. The Special Economic Zone Rules 2006 provide that before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavour to allow *interalia*, generation, transmission and distribution of power within a SEZ by the SEZ units and Developer.
12. The guidelines dated 27.02.2009 issued by the Ministry of Commerce and Industry, Government of India provide that

the tariff of electricity for any sales within SEZ shall be determined within the provisions of the Electricity Act/Rules made thereunder. Further, all provisions of the Electricity Act 2003 and Electricity Rules, 2005 will be applicable for power distribution.

13. The Notification dated 03.03.2010 issued by the Central Government in exercise of the powers conferred by the SEZ Act 2005 provides that in Clause (b) of Section 14 of the Electricity Act 2003 the following shall be inserted namely:-

“Provided that the Developer of a Special Economic Zone notified under Section (1) of Section 4 of Special Economic Zone Act, 2005, shall be deemed to be a licensee for the purpose of this Clause, with effect from the date of notification of such Special Economic Zone.”

14. Thus, with the above Notification dated 03.03.2010, the SEZ Developer was notified as a deemed licensee for distribution of electricity in SEZ area with effect from the date of notification of the SEZ. However, all the provisions of the Electricity Act, 2003 and the Electricity Rules, 2005 have to be applicable to such deemed licensee under the Electricity Act, 2003. Accordingly, the ARR and retail supply tariff of such deemed distribution licensee has to be determined by the State Commission.

15. Thus, prior to the notification dated 03.03.2010, the SEZ developer was required to take a licence for distribution of electricity. This requirement was removed by the aforesaid notification by making the SEZ developer as the deemed licensee for distribution of electricity within the SEZ area.

16. We do not agree with the contentions of the Appellant that the jurisdiction of the State Commission was not established prior to 04.03.2011. We find that the Appellant has wrongly indicated the date of the above Notification of granting status of deemed licensee to the SEZ Developer as 04.03.2011 instead of 03.03.2010. Therefore, the Appellant as developer of the SEZ area acquired the status of a deemed licensee in terms of the Government of India Notification dated 03.03.2010. Thus, the State Commission had the jurisdiction to determine the retail supply tariff for the Appellant's area of electricity supply for FY 2010-11 onwards to be charged by the Appellant as a deemed distribution licensee from its consumers as per the provisions of the Electricity Act, 2003. In any case, before the notification dated 03.03.2010, the Appellant could have distributed electricity only after

obtaining a licence and prior to 03.03.2010 also, the Appellant's ARR and retail supply tariff had to be determined by the State Commission. This is also amply made clear in the guidelines dated 27.02.2009 issued by the Ministry of Commerce. The Notification dated 03.03.2010 only granted the status of a deemed licensee to the Appellant as SEZ developer. However, the Appellant's electricity supply business was under the jurisdiction of the State Commission prior to 03.03.2010 and remained so even after 03.03.2010. Further, the Appellant itself filed petition before the State Commission for determination of ARR and retail supply tariff for FYs 2010-11, 2011-12 and 2012-13 under the Tariff Regulations of 2009.

17. We find from the correspondence between the State Commission and the Appellant since 15.09.2010, that the

Appellant had first filed a petition for the FY 2010-11 but there were various deficiencies in the petition. In spite of various reminders sent to the Appellant to file the revised petition with the requisite documents, there was considerable delay in filing of the petition for approval of the ARR and determination of Retail Supply Tariff. The State Commission has referred to earlier petitions filed by the Appellant in the impugned order as under:

- “5. In light of the developments indicated in the foregoing paragraphs, the Commission observed that although the petitioner had earlier filed petitions on various ARR/ tariff related issues, the compliance on further directions given by the Commission during the hearings was not forthcoming. The present petition no. 16/2012 has been filed for determination of ARR for FY 2010-11 to 2012-13. Since the earlier petitions were related to some of the issues of ARR, the Commission decided that all these petitions be merged under the petition no. 16/2012 for further consideration.*
- 6. The Commission observed that there has not been any statutory audit of Annual Accounts of the Petitioner. The petitioner has indicated in the petition that the Annual*

Accounts for the period up to 31st March 2010 had been audited for the Company as a whole and the portion of the Accounts for the power business had been carved out from these audited accounts. For the year 2010-11, the petitioner has submitted the Accounts statements for the power business only as derived and audited by its Chartered Accountants. For FY 2011-12 the actual details are yet to be finalised and only the estimation has been provided. For FY 2012-13 the petitioner has made projections on the basis of the load growth and past data / information. The Commission noted that the petition has been filed for the period from FY 2010-11 to FY 2012-13 for which no audited figures are available; hence the Commission has decided to provisionally true-up the ARR for FY 2010-11 and 2011-12. The Commission feels it expedient to provisionally true up the ARR of FY 2010-11 and 2011-12 so that the existing consumers are not required to wait further to get the adjustment of income surplus to ARR being now determined. The final true ups would be done on submission of annual accounts for power business of the Company duly audited by the statutory auditors and any further adjustments based on such accounts would be suitably considered."

18. We find that the Appellant has not been diligent and has not acted in time to file the complete application as per the Regulations for the approval of ARR and determination of Retail Supply Tariff since the commencement of a

distribution of electricity in the SEZ area. The Appellant cannot take the advantage of its own wrong by pleading that the State Commission should not true-up the financials of the Appellant prior to 30.09.2012 and pass on the surplus fund as a result of the provisional true-up to the consumers. It is also seen that the Government of India's notification issued under Section 49 of the Special Economic Zone Act, 2005 which provided the deemed distribution licensee status of the SEZ area to the Appellant under Section 14 of the Electricity Act 2003 was notified on 03.11.2010 and not 04.11.2011 as stated by the Appellant. Therefore, from 03.03.2010 the Appellant has to be treated as deemed licensee for distribution of electricity in the SEZ area and all provisions of the Electricity Act, 2003 and Electricity Rules, 2005 will be applicable to the Appellant.

19. We have also examined the guidelines dated 21.03.2012 issued by the Government of India, Ministry of Commerce and Industry. The relevant portion of the guidelines are as under:

“In supersession of this Ministry’s letter of even number dated 27th February, 2009 laying down guidelines for power generation, transmission and distribution in Special Economic Zone, the following guidelines are hereby prescribed:

.....

4. *Distribution of Power*

3.1 *While a generating station may be established, operated and maintained without obtaining a license under Electricity Act, 2003 subject to compliance of the technical standards as specified in the said Act and conforming to the definition of the generating company under the provisions of the said Act, distribution of power is a licensed activity except as otherwise specified in Section 14 (read with Section 13) of the Electricity Act, 2003.*

3.2 *In terms of S.O. 528(E) dated 3rd March 2010, the Developer of a Special Economic zone notified under Sec 4(1) of the SEZ Act, 2005 shall be deemed to be licensee for the purpose of clause (b) of Sec 14 of the*

Electricity Act, 2003 i.e. to distribute electricity as a distribution licensee.”

“6. Applicability of Electricity Act, 2003 and Electricity Rules made thereunder

All the provisions of the Electricity Act, 2003 and Electricity Rules, 2005, as amended from time to time by the Ministry of Power along with various power resolutions issued by Ministry of Power will be applicable to generation, transmission and distribution of power whether stand alone or captive power.”

In terms of the above guidelines all provisions of the Electricity Act will be applicable to distribution of power in the SEZ area where the developer is the deemed licensee.

20. We find that the State Commission has compared the expenses for the electricity distribution function of the Appellant for FY 2010-11, 2011-12 with the respective revenue from sale of power and found surplus in the hands of the Appellant. The State Commission has correctly

directed the Appellant to refund the excess amount to the consumers. We also find that the State Commission has approved the ARR and determined the Retail Supply Tariff according to its Tariff Regulations, 2009.

21. Learned Counsel for the Appellant has argued that there was no representation of any excess charging or complaints from the consumers for the preceding three years when the electricity was availed at the agreed rates and which was not in excess of the prevailing retail supply tariff in the State of Madhya Pradesh. The electricity charges were designated equivalent to the uniform charges prevalent in the State as determined by the State Commission and as per the policy of the State Government. The above was adopted to allocate the total charges for various services in the same manner and aggregate of all charges from the units did not provide

any such surplus income to be apportioned by the Appellant as surplus revenue or profit. Further, charging of the uniform tariff was consistent with Section 62(1)(d) of the Electricity Act, 2003 and also because of multifarious services provided by the SEZ, unlike conventional distribution licensee having only one activity.

22. We do find any merit in the above contention of the Learned Counsel for the Appellant. The uniform retail supply tariff determined by the State Commission was in respect of the State owned distribution licensees after approving their ARR as per the Tariff Regulations. The Appellant cannot claim the same tariff as its size of network, consumer mix and load are different from the other three State owned distribution licensees. The tariff applicable to the three State owned distribution companies was determined by the State

Commission considering their expenses and revenues and applying the Tariff Regulations and the same retail supply tariff cannot be made applicable to the Appellant. The Retail Supply Tariff of the Appellant has to be determined by the State Commission considering the expenses and the expected revenue from the consumers in the SEZ area as per the Tariff Regulations.

23. We understand that the State Commission had allowed recovery of electricity charges under the tariff scheduled HV 3.1 applicable to industrial consumers of the State owned distribution companies, as an interim measure. It is submitted by the Learned Counsel for the State Commission that this was done in view of the fact that the Appellant did not submit any petition for determination of ARR/tariff and requested extension of time repeatedly. We feel that the

Appellant cannot claim adoption of the interim tariff as final tariff without considering the actual expenses and revenue collection for the period prior to 30.09.2012. Agreement with the consumers or no objection by the consumers cannot be a reason for non-determination of the tariff by the State Commission according to its Regulations. .

24. The Appellant has referred to the order of the State Commission dated 18.05.2011 regarding re-allocation of generation capacities to the three State owned distribution companies with the objective of maintaining uniform retail supply tariff in the State. We find that this order is applicable only to the three State owned distribution companies and not to the Appellant and its SEZ area.

25. We find that the State Commission while carrying out the true-up for the past period has considered the prudent expenses of the Appellant relating to electricity distribution and supply and revenue received based on the interim tariff allowed by the State Commission. The State Commission could not have considered any charges other than the electricity distribution and supply for determination of ARR and revenue income. The charges that may have been levied by the Appellant for services other than the distribution and supply of electricity are beyond the jurisdiction of the State Commission.
26. Section 62(1)(d) provides for determination of tariff in accordance with the provisions of the Act for retail sale of electricity. It also has a proviso that in a case of distribution of electricity in the same area by two or more distribution

licensees, the Appropriate Commission may fix only maximum ceiling of tariff for retail supply of electricity in order to promote competition amongst the distribution licensees. This is not applicable to the present case as the State Commission had not fixed a ceiling tariff for the SEZ area. Thus, we do not find any merit in the contention of the Appellant regarding application of 62(1)(d) for claiming tariff at par with other distribution licensees.

27. In view of above the first issue is decided as against the Appellant.

28. The second issue is regarding incentive on distribution loss level achieved by the Appellant.

29. According to the Appellant, the State Commission has erred in holding that there is further scope of reduction in loss

level. It is further argued by the Appellant that the additional profit earned on account of achievement of lower loss level should be shared between the Appellant and the consumers.

30. According to Learned Counsel for the State Commission, the SEZ area of the Appellant is very small having about 55 consumers, most of which are connected at 33 KV level. As per the tariff petition, about 98% of the total load is at 33 KV level. Since the Appellant receives supply at 33 KV and further supply almost all the power at the same level, the losses ought to be very low. In the absence of any loss trajectory for FY 2010-11 to 2012-13, the State Commission has admitted the loss level of 3.99% as filed by the Appellant. As the loss trajectory for the control period was not fixed there is no question of granting incentive for the loss level actually achieved.

31. We find that the State Commission considered the energy balance for FY 2010-11 and 2011-12 as filed by the Appellant and found it reasonable and therefore admitted the same. Thus, loss level of 5.74% for FY 2010-11 and 3.99% for 2011-12 and 2012-13 were approved by the State Commission as per the submissions of the Appellant. As per the 2009 Tariff Regulations, if a licensee is able to achieve a reduction in losses as compared to specified trajectory, then the gains made shall be allowed to be retained by the licensee. In the present case, since the loss trajectory was not specified by the State Commission there is no question of granting incentive to the Appellant. We feel that the Appellant itself is responsible for non-fixation of the loss trajectory as the Appellant failed in filing the tariff petition in time to enable the State Commission to fix distribution loss trajectory.

32. We are also in agreement with the contention of the State Commission that low loss levels achieved by the Appellant is due to receipt of all the power at 33 KV where bulk of power is supplied and very less number of consumers who are confined in a small area.
- .
33. Learned Counsel for the Appellant has argued that the State Commission erred in holding that there is further scope for reduction in the loss level as the loss level is already very low.
34. We find that there is no determination of loss level trajectory for the next control period in the impugned order. The State Commission has only indicated that it would fix the loss trajectory for the next control period appropriately. In the Review order dated 21.12.2012, the State Commission has

only made an observation about SEZ Pithampur where the losses earlier were less than 3.99% but have gradually increased. Hence, we do not feel that any intervention warranted on this issue.

35. The third issue is regarding income tax.

36. According to the Appellant, the State Commission has erred in not allowing the actual income tax as pass through.

37. Shri C.K. Rai, Learned Counsel for the State Commission has submitted that the State Commission has allowed income tax as per the Regulations. The State Commission has also directed the Appellant to file the amount of income tax which the Appellant has actually paid for electricity distribution business.

38. We find that the Appellant had claimed income tax for FY 2010-11 as per the balance sheet but for FY 2011-12 and 2012-13 no supporting details were furnished. The State Commission felt that the amount claimed by the Appellant was very high when compared to the profit earned from the power business. In the absence of the requisite information, the State Commission has admitted the income tax based on admitted cost of return on equity at applicable income tax rates. The State Commission has, however, submitted that the claim of the Appellant for income tax shall be duly considered at the time of true-up based on the duly audited financial statements of its power business.

39. We are in total agreement with the findings of the State Commission. Accordingly this issue is also decided against the Appellant.

40. The fourth issue is regarding land premium and lease rent charges on the land on which electric lines and equipments have been laid down in the SEZ area of the Appellant.

41. According to the Appellant, the land premium and land lease charges ought to have been allowed.

42. According to Learned Counsel for the State Commission, the Appellant had not raised any claim for land premium and lease rent charges in the tariff petition. This issue was only raised in the Review petition stating that these charges were not claimed earlier due to oversight. The State Commission has disallowed the same as there was no actual payment

made on account of land premium or land lease rent and the expenses were notional in nature.

43. We find that the State Commission in the Review order has held as under:

“Land Premium and Lease rent charges: The petitioner submitted that some portion of the land of SEZ is being used for the purpose of power business viz. the land for sub-station, lines and related offices etc. The petitioner submitted that they have worked out notional land premium and lease rent charges for such portion of the land which may be allowed as expenses in their ARR. The petitioner submitted that these charges were not claimed earlier due to oversight. On a query of the Commission, the petitioner submitted that no rent on this land is being paid to the SEZ and it is worked out only on notional basis. In support, the petitioner claimed that they have an SEZ regulation annexed as RP-4 to the petition wherein such rates have been worked out. On a review of this annexure, it was observed that the SEZ is charging users for infrastructure services like electricity, water works, sewages etc. on per sq. km basis for the area of the land allotted to the user by the developer. More over, the said annexure RP-4 appeared to be a resolution of the Board of Directors of MPAKVN, Indore for recovery of charges from industries/users who set up their plants in the SEZ area, instead of a regulation. Obviously the contents of this annexure indicate that the charges towards

infrastructural development of the SEZ area are being recovered from the users. The Commission considered the matter and observed that in the instant case since no actual payments are being made to the SEZ on account of land premium or lease rent such notional expense cannot be charged to the consumers. The claim made by the petitioner in this regard is not sustainable.”

44. We are in agreement with the State Commission that since no actual payment is being made and the claim is on notional basis the same cannot be allowed in the ARR.

45. The fifth issue is regarding MYT regime.

46. According to the Appellant, MYT regime is not applicable to them.

47. Learned Counsel for the State Commission has submitted as under:

It is submitted that the State Commission has issued the Multi Year Tariff Regulations for determination of ARR and distribution and retail supply tariff for the distribution licensee. The control period of these regulations is from 01.04.2010 to 31.03.2013 i.e. for FY 2010-11, 2011-12 and 2012-13. The State Commission has specified the norms for the performance of the distribution companies in the State of Madhya Pradesh, however, since the SEZ had not submitted to the jurisdiction of the Commission prior to notification of the regulation in December 2009 no norms were specified by the Commission for SEZ area. Therefore, State Commission prima facie accepted the O&M and loss level as filed by the Appellant and further determined the other items of ARR such as interest and finance charges, return of equity, depreciation etc. as per the procedure specified in the regulation subject to final true up on submission of audited financial statement by the Appellant. It is therefore submitted that Multi Year Tariff regime as per Multi Year Tariff Regulations is applicable upon the Appellant for the control period from 01.04.2010 to 31.03.2013.

48. We are in agreement with the State Commission and find no merit in the contention of the Appellant. We find no reason to exclude the Appellant from the application of MYT Regulations.

49. Summary of our findings:

i) Adjusting ARR and Tariff of the Appellant for the period from 01.04.2010 to 30.09.2012:

The State Commission has correctly adjusted ARR and tariff of the Appellant for the FY 2010-11, 2011-12 and the period from 01.04.2012 to 30.09.2012 and providing retrospective adjustment and directing refund to be given to the consumers of SEZ area of the Appellant.

The Appellant itself is responsible for delay in filing of the Petition for fixation of tariff.

ii) Incentive of distribution loss level achieved by the Appellant:

As per the 2009 Tariff Regulations, if a licensee is able to achieve a reduction in losses as compared to specific trajectory, then the gains made shall be allowed to be retained by the licensee. In the present case since the

loss trajectory was not specified by the State Commission there is no question of granting incentive to the Appellant. The Appellant itself is responsible for delay in filing of the Petition for fixation of tariff.

iii) Income tax:

In the absence of the requisite information, the State Commission has admitted the income tax based on admitted cost of Return of Equity at applicable income tax rates. The State Commission has decided that the claim of the Appellant for income tax shall be considered at the time of true up based on the duly audited financial statements of its power business. We are in agreement with the findings of the State Commission.

iv) Land premium and lease rent charges:

We are in agreement with the State Commission that since no actual payment is being made towards land charges and the claim is on notional basis, the same cannot be allowed in the ARR.

v) MYT regime:

We do not find any merit in the contention of the Appellant that MYT regime is not applicable to them.

50. In view of our above findings, the Appeal is dismissed as devoid of merits. No order as to costs.

51. Pronounced in the open court on this **30th day of October, 2014.**

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE

(Justice M. Karpaga Vinayagam)
Chairperson

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