

**Appellate Tribunal for Electricity, New Delhi  
(Appellate Jurisdiction)**

**Appeal No. 146 of 2014**

**Dated: 1 December, 2015**

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER  
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

**In the Matter of:**

Byrnihat Industries Association  
13<sup>th</sup> Mile, Tamulikuchi, Byrnihat,  
Ri Bhoi District, Nongpoh,  
Meghalaya-793 101

**...Appellant(s)**

**Versus**

1. Meghalaya State Electricity Regulatory Commission  
New Administrative Building, 1<sup>st</sup> Floor, Left Wing  
Lower Lachumiere,  
Shillong-793001, Meghalaya
  
2. Meghalaya Power Distribution Company Limited  
Integrated Office Complex,  
Lum Jingshai, Short Round Road,  
Shillong-793 001

**... Respondent(S)**

Counsel for the Appellant(s) : Mr. Anand K Ganesan  
Ms. Swapna Seshadri  
Ms. Mandankii Ghosh

Counsel for the Respondent(s) : Mr. Buddy A Ranganadhan  
Mr. Raunak Jain  
Mr. D V Raghuvam  
Ms. Meghana Aggarwal for R-1  
Ms. Sakie Jaksharia for R-2  
Ms. Shikha Ohri  
Mr. Tushar Nagar  
Mr. Matrugupta Mishra  
Mr. Gushar Nagar for R-3

## **J U D G M E N T**

### **PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

1. The present Appeal has been filed u/s 111 of the Electricity Act, 2003 against order dated 12.4.2014 passed by the Meghalaya Electricity Regulatory Commission (herein after called State Commission) whereby the State Commission has determined the Aggregate Revenue Requirement and Tariff of the Respondent-2, Meghalaya Power Distribution Company Limited (herein after called Distribution Company) for the FY 2014-15.
2. The Byrnihat Industries Association is a Society registered under Meghalaya Societies Registration Act, 1983 having its registered office at Byrnihat, Ri-Bhoi, District Meghalaya. The Appellant was formed by the different industrial units for the welfare, better functioning of its units.
3. The Respondent No. 1 is Meghalaya State Electricity Regulatory Commission and Respondent No. 2 is Meghalaya Power Distribution Company Ltd.,
4. Gist of the facts of the case leading to this Appeal by the Appellant are stated below:
  - 4.1 The Distribution Company filed a Petition for determination of Aggregate Revenue Requirement (ARR) and Tariff for Financial Year 2014-15 on 16.12.2013 purportedly in terms of Meghalaya State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff)

Regulations, 2011 (herein after called as Tariff Regulations, 2011).

4.2 The State Commission issued public notice inviting suggestions/objections from its stake holders on the ARR Petition filed by the Distribution Company.

4.3 The Public hearing was held on 26.2.2014. The Appellant appeared before the Commission and filed additional submissions in the matter on the same day.

4.4 The State Commission passed the Impugned Order on 12.4.2014 without conducting any true-up for the past years and without audited accounts of the past years.

4.5 Aggrieved by the Order dated 12.4.2014, the Appellant filed this Appeal being Appeal No.146 of 2014 and prayed to allow the Appeal and set aside the order dated 12.4.2014 passed by the State Commission, and raised the following issues:

- (a) Fixation of tariff without submissions of audited accounts and without true-up for past years.
- (b) Voltage wise determination of cost of supply and tariff;
- (c) Under estimation of sales to and revenue from HT and EHT category consumers;
- (d) Extremely relaxed fixation of loss level targets

5. We have heard Mr. Anand K Ganesan, Learned Counsel for the Appellant and Mr. Buddy A Ranganadhan, learned Counsel for the State Commission and gone through the

oral as well as written submissions filed by the Learned Counsel for Appellant and Respondents.

6. After going through the Written submissions, the following issues arise for consideration of this Tribunal:
  - (a) **Whether the State Commission erred in approving the ARR and Tariff for the FY 2014-15 without audited accounts and without truing-up of Accounts for the past years i.e. from 2009-10 onwards?**
  - (b) **Whether the State Commission failed to determine the voltage wise cost of supply while determining the tariff?**
  - (c) **Whether the State Commission erred in estimating the sales to and revenue from HT and EHT category of consumers while approving the tariff for FY 2014-15?**
  - (d) **Whether the State Commission erred in considering higher T&D losses while approving the tariff for FY 2014-15?**

7. **Issue 1: Whether the State Commission erred in approving the ARR and tariff for the FY 2014-15 without audited accounts and without truing-up of Accounts for the past years i.e. from 2009-10 onwards?**

The following are the submissions made by the Appellant:

- 7.1 That the State Commission has failed to appreciate that the true picture with respect to the functioning of the Distribution Company will not emerge if the true-up is not carried out on yearly basis.

- 7.2 The State Commission has not carried out any true-up after the year 2008-09 and is citing the excuse of non-availability of audited accounts for the years for not conducting the true-up.
- 7.3 That the State Commission has taken a position that the Distribution Company is unable to finalize its accounts due to notification of transfer scheme and amendments thereto, it has not been able to carry out the true up from the years 2009-10 onwards.
- 7.4 That the State Commission in each and every tariff Order has given directives to the Distribution Company to submit its true-up petition but the Distribution Company failed to submit the data till date for one reason or other.
- 7.5 That the State Commission has not taken a serious view of the matter for non compliance of the directives by the Distribution Company. Further, for the last five years, the Distribution Company has been claiming that due to restructuring and unbundling the accounts have not been finalized and they will be submitted before the State Commission as and when available.
- 7.6 Thus, the Distribution Company has not taken serious view to submit the data.
- 7.7 That the Hon'ble Tribunal has held in various judgements that true-up can be carried out on the basis of the provisional accounts, if the audited accounts are not

available. Therefore, there is no need for the State Commission to wait endless for audited accounts and there should be at least be a provisional true up so that correct and transparent picture of the finances of the Distribution Company emerges.

8. The following are the submissions made by Civil Society Women's organization:

8.1 That the Hon'ble Commission has been determining the tariff merely on the basis of estimations, past tariff and projections made by the licensee. From FY 2009-2010 till 2012-13, no truing up has been done and no necessary adjustments have been made in the ARR/Tariff. The Society has suggested that the State Commission has to consider the audited accounts before determination of the ARR/Tariff of the Distribution Licensee.

9. **Per Contra**, the following are the submissions made by the Respondent No. 1 Meghalaya State Electricity Regulatory Commission:

9.1 That the State Commission in compliance of this Tribunal directives in OP No.1 of 2011 has been passing Tariff Orders regularly within stipulated time frame for Financial Years 2011-12, 2012-13, 2013-14 and FY 201415. However, in the true-up for the previous years starting from FY 2010-11 onwards could not be done because of non submissions of the audited accounts by the Distribution Licensee.

9.2 That it is submitted that as per the law laid down by this Tribunal non submission of audited accounts is not the reason for not determining the tariff.

9.3 That the Appellant has also sought to rely upon the Judgement of this Tribunal dated 21.10.2011 in Appeal No.121 of 2010 in the case of Rama Shankar Awasti Vs UPERC & Ors to contend that the tariff should not be fixed without the availability of the proper audited accounts.

The said submission was consequently considered and rejected by this Tribunal in Judgement dated 28.11.2013 in Appeal No.239 of 2014 and Batch in the case of Amausi Industries Association Vs UPERC. This Tribunal held in the said Judgement that in Rama Shankar Awasthi's case it was held that: "We have not received any directions that tariff determination exercise should not be held in the absence of audited accounts".

9.4 That the delay in preparation of accounts by Meghalaya Power Distribution Company Limited has happened due to re-structuring of the State Electricity Board.

9.5 The licensee also submitted before the Commission that they are in the process of finalizing the accounts and audit of the same is being undertaken.

9.6 That the present status of the audited accounts has only by the MePDCL and status of true-up are as follows:

- (a) The audited of the financials statement of the FY 2009-10 was done on 1.7.2011. The provisional true-up financials of FY 2009-10 was done on 5.8.2010 by the State Commission following the remand order of this Tribunal in a case which went before them.
- (b) Due to order of the Hon'ble Supreme Court passed on 28.8.2012, the tariff during the period from April to Nov, 2009 was affected. The corrections of bills as reported by MePDCL has only been completed in FY 2012-13 and licensee is making consequential adjustments in the accounts for the concerned FY 2009-10 to FY 2012-13.
- (c) That the licensee as on 15.4.2014 has submitted accounts of FY 2010-11 audited by an empanelled statutory auditor to the Commission. However, the Auditor Report of the same by C&AG is awaited.

9.7 That to protect the interest of consumers and utilities the Commission is trying to issue Tariff Orders before the start of each Financial Year.

9.8 That the Commission has given ample opportunity to consumers including industries to state their view by arranging public hearing and meetings.

9.9 That the Commission issued a notice to all four Corporations of Meghalaya for non compliance of MSERC (Terms and Conditions for Determination of Tariff)



Regulations, 2011 and directed them to file the information by 28.2.2014.

9.10 In response to the Notice, the MePDCL sent a letter on 18.3.2014 and informed the following:

- a) Due to restructuring and unbundling of MESEB, the preparation of accounts of FY 2010-11 to FY 2012-13 has been delayed;
- b) At present, the statement of accounts for FY 2010-11 and FY 2011-12 are under statutory audit and very shortly audits will be completed;
- c) The provisional segregated annual accounts post restructuring and unbundling for FY 2012-13 are being finalized and the same shall be submitted before the Commission, the moment the same is available.

## **10. Our consideration and conclusion on this issue:**

10.1 According to the Appellant, the State Commission did not implement the directions of this Tribunal Judgement dated 21.10.2011 in Appeal No. 121 of 2010 and passed the impugned order without getting audited accounts of the Distribution Licensee.

10.2 The counsel of the State Commission strenuously refuted and stated that the Commission trued-up the figures for FY 2008-09 and the Commission could not be able to do the

true-up from 2009-10 onwards due to issue of notifications of transfer scheme and amendments thereto. Further as per the Supreme Court Order dated 28.08.2012, the correction of bills was only completed in the FY 2012-13 and due to these reasons, the truing petition for the years 2009-10, 2010-11, 2011-12 and 2012-13 got delayed.

10.3 Let us examine the relevant Regulation of the State Commission i.e. the MSERC (terms and conditions for determination of tariff) Regulations 2011 regarding review and true-up is as under:

### **15. Review and Truing-Up**

- (1) *The Commission shall undertake a 'Review' of the expenses and revenues approved by the Commission in the Tariff Order. While doing so, the Commission shall consider variations between approvals and revised estimates/pre-actuals of sale of electricity, income and expenditure for the relevant year and permit necessary adjustments / changes in case such variations are for adequate and justifiable reasons. Such an exercise shall be called 'Review'.*
- (2) *After audited accounts of a year are made available, the Commission shall undertake similar exercise as above with reference to the final actual figures as per the audited accounts. This exercise with reference to audited accounts shall be called 'truing-Up'.*
- (3) *The generating company or the licensee, as the case may be, shall make an application before the Commission, for 'truing up' of ARR of the previous year by 30th September of the following year, on the basis of audited statement of accounts*

*and the Audit Report, thereon. The generating company or the licensee shall get their accounts audited within a specified time frame, either by the Comptroller & Auditor General of India or by a Statutory Auditor drawn from the panel of Statutory Auditors approved by the Comptroller & Auditor General of India, from time to time, to enable them to file the application for 'truing up' within the specified date, that is 30th September of the following year.*

*(4) In case the generating company or the licensee as the case may be, fails to make an application for truing-up of the ARR of previous year by 30th September of the following year, the Commission may, undertake suo-moto 'truing up' of the ARR of previous year and direct the generating company or the licensee as the case may be to produce such data as it may direct.*

*(5) The surplus of revenue of any year as a result of review and truing up exercises shall be adjusted in the manner prescribed by these regulations.*

*(6) While approving such expenses/revenues to be adjusted in the future years as arising out of the review and / or truing up exercises, the Commission may allow the carrying costs as determined by the Commission of such expenses/revenues. Carrying costs shall be limited to the interest rate approved for working capital borrowings.*

*(7) For any revision in approvals, the generating company or the licensee would be required to satisfy the Commission that the revision is necessary due to conditions beyond its control.*

10.4 According to Regulation 15(3)& (4) of the Tariff Regulations, 2011, the generating company or licensee has to make an application before the Commission for truing-up of the ARR of the previous years by 30<sup>th</sup> September of the following year. In case if the licensee fails to submit, the Commission

may undertake suo moto truing-up of the ARR of the previous year. Though the Regulation clearly specifies that the Commission can true up suo moto but the Commission fails to complete the true up for the past years.

10.5 During the public hearing, the Appellant has raised the issue regarding the non-submission of audited accounts, unaudited accounts and true-up petition. The Distribution Company i.e. Respondent No. 2 MePDCL submitted that the true-up petition for FY 2010-11 and FY 2011-12 will be submitted as soon as audited statements are available. The Commission's observation on this is quoted below:

***Commission's observation***

*"The Commission could not true up the past years ARR in the absence of Audited Accounts. Though the provisional true up for 2009-10 has been but the final true could not be done as the licensee has made certain adjustments in bills of the consumers in accordance with the Supreme Court order which reflected in subsequent years. Unless the true up exercise is updated with subsequent years, the true up of 2009-10 cannot give effect. In this regard, the Commission has already instructed the licensee to submit the audited records of subsequent years.*

*Therefore, 2009-10 to 2012-13, true-up could not be done. Soon after the accounts are made available by the licensee with a relevant petition truing up exercise will be done and necessary adjustment will be made in the ARR\Tariff on hand".*

10.6 Let us examine various Judgements of this Tribunal :-

This Tribunal's Judgement Order dated 21.10.2011 in Appeal No. 121 of 2010 of Shri Rama Shankar Awasthi vs. Uttar Pradesh Electricity held as under:

*“The audited accounts for the previous year are not only required for the true up but also needed for making realistic estimate of expenditure required for determination of ARR for the ensuing year. The ARR/ Tariff determination for the ensuing year should also consider true up of financials for the previous financial year and Annual Performance Review for the current financial year as available in the half yearly provisional accounts for making a realistic estimate of ARR for the ensuing year. However, if the audited accounts for the previous year are not available for some reasons then at least the audited accounts for the year just prior to the previous year along with the provisional accounts for the previous year may be considered”.*

10.7 The Tribunal's Judgement in respect of D.P. Chirania v. RERC & Ors., held as under:

*“15. In view of the above discussions and considering the nature of the prayers made by the Appellant in the Appeal Memorandum, we direct the State Commission not to accept any future ARR petition or retail tariff revision petition from the Discoms without complete data and audited accounts. We further direct the State Commission to take action against the Discoms for non-compliance of the aforesaid directives of the State Commission considering the provisions of Section 24 of the Electricity Act, 2003 or other relevant provisions of law and regulations as the State Commission deems fit and proper. With these directions, the instant appeal being Appeal No. 16 of 2014 is accordingly disposed-of without any order as to costs.”*

10.8 In the above Judgements, this Tribunal clearly directed the State Commission to take action against the Discoms

for non-submission of audited accounts for the past years but the State Commission simply considered the submission made by the Distribution Company for non-compliance of audited accounts for true-up.

10.9 The State Commission has failed to appreciate that the audited accounts and actual data are the basis on which the future years' projections are made in order to determine the tariff. In absence of the audited accounts and actual data, tariff would only be determined on the estimates provided by the Respondent no. 2, MePDCL.

10.10 In the absence of audited accounts, The State Commission might have taken up the provisional true-up upto 2013-14 and might have arrived provisional revenue gap/surplus. The tariff for FY 2014-15 was issued on 12.04.2014 as per the ARR submitted by the licensee MePDCL. Due to lack of truing-up of the past years, the Commission could not able to compute the actual requirement gap/surplus up to the FY 2013-14. Thereby the consumers are deprived of the benefit, if there is a profit/surplus after computing the true-up and also due

to lack of true-up after of previous years, for no fault of the consumers, the consumers are burdened with carrying cost if any after true up for the gap at one time and thereby there is possibility of tariff shock.

**10.11 We direct the State Commission to carry out the true-up by considering audited figures up to 2013-14 and provisional figures for FY 2014-15 and arrive the gap/surplus before approval of ARR and tariff petition for FY 2015-16. Further, the gap if any arrived in the process of true-up, the State Commission is directed not to levy carrying cost on the gap. The consumers should not be burdened for non-submission of audited accounts of the past years by the distribution licensee.**

10.12 In view of the above, we direct the State Commission to issue necessary directions to the Distribution Company MePDCL to submit the audited accounts up-to-date before determination of ARR and tariff for the year 2015-16.

11. **Issue No. 2: Whether the State Commission failed to determine the voltage wise cost of supply while determining the tariff?**

The Following are the submissions made by the Appellant:

- 11.1 That the State Commission has failed to appreciate with the voltage-wise cost of supply is one of the basic necessities for determination of tariff in a scientific manner. This Tribunal has stated that the Hon'ble Commission has held that the supply is to be determined category-wise and not on average basis. The Commission has erred in not following binding decisions of the Hon'ble Tribunal on the principles to be followed for the tariff determination.
- 11.2 That the State Commission has failed to appreciate that the consumers at large are entitled to the tariff being determined corresponding to the actual cost and expenditure incurred by the Distribution Licensee in supplying electricity to such categories of consumers and at different voltage level.



- 11.3 The State Commission has erred in not even attempting the tariff determination process on voltage-wise cost of supply.
- 11.4 That the State Commission has failed to appreciate that the Electricity Act 2003 only provides for tariff determination based on cost of supply and not based on average cost of supply.
12. The following are the written submissions on behalf of Civil Society Women's organization:
- 12.1 The Hon'ble Commission has erred in determining the tariff on the basis of average cost of supply instead of voltage-wise determination of cost of supply as provided under the Electricity Act 2003. Even though, this Hon'ble Tribunal in a plethora of judgements has clearly held that the cost of supply has to be determined on category-wise basis and not on average basis and quoted the relevant para of the Impugned Order as under:

*“The mandate of the NTP is that tariff should be within plus/minus 20% of the average cost of supply by FY 2014-15. It is not possible for the Commission to lay down the road map for reduction of cross subsidy, mainly because of lack of data regarding cost of supply at various voltage*

*levels. In view of the prevailing situation the Commission has gone on the basis of average cost of supply for working out consumer category-wise cost of supply. However, in this Tariff Order an element of performance target has been indicated by setting target for T&D loss reduction for the FY 2015-16 to FY 2017-18. This better performance by reduction of loss level will result in substantial reduction in average cost of supply.*

*In the absence of audited financials and lack of data regarding cost of supply at various voltage levels, the Hon'ble Commission is determining tariff of the licensee in clear contravention of the principles enshrined in the Electricity Act”.*

13. **Per contra**, the following are the submissions made by the Respondent No. 1, State Electricity Regulatory Commission:
- 13.1 That the MSERC Regulations on Tariff determination specify that in the first phase the Commission shall determine the average cost of supply and fix the Tariff so that it progressively reflects the average cost of supply in accordance with National Tariff Policy.
- 13.2 That the Commission in the second phase will consider moving towards the category-wise cost of supply as a basis of determination of tariff. Keeping in view the practical constraints being presently faced by the Commission such as incomplete metering, absence of proper energy audit at each voltage level, non-completion

of accounts and true reflection of voltage wise assets, the Commission has determined the Tariff category-wise for 2014-15 on the basis of average cost of supply.

13.3 That the Tariff of the Appellant's category is already well within the limit of  $\pm 20\%$  of the Average Cost of Supply which is completely in accordance with the National Tariff Policy. Hence, as far as the Appellant is concerned, it has absolutely no cause of grievance.

13.4 That the Appellant in relying on the various judgements of this Tribunal dated 30.05.2011 in Appeal No. 102 of 2010 and Full Bench Judgement of this Tribunal dated 23.09.2013 in Appeal No. 52 of 2012 does not aid the Appellant.

13.5 That the Appellant has also sought to rely on the Judgement of the Supreme Court in the Punjab State Power Corporation Ltd., vs. PSERC in CA No. 4510 of 2006 dated 10.02.2015. In this Judgement, the Hon'ble Supreme Court *inter alia* has upheld the directions of this Tribunal to gradually move away from the average cost of supply towards category-wise/voltage-wise cost of supply. The Commission's Regulations also mandate the same

thing and the Commission has in the Impugned Order also held the same thing.

14. **Our Considerations and conclusion on this issue:**

14.1 Let us examine the relevant Clauses of the National Tariff Policy and relevant sections of Indian Electricity Act, which are as under:

**National Tariff Policy**

- i) *The voltage-wise cost of supply is one of the basic necessities for determination of tariff.*
- ii) *The National Electricity Policy provides for reducing the cross subsidies progressively and gradually. The gradual reduction is envisaged to avoid tariff shock to the subsidized categories of consumers.*
- (iii) *It also provides for subsidized tariff for consumers below poverty line for minimum level of support. Cross subsidy for such categories of consumers has to be necessarily provided by the subsidizing consumers. The tariff of the subsidized category should not be less than 50% of the average cost of supply.*
- (iv) *The National Tariff Policy clearly stipulates that for achieving the objective that the tariff progressively reflects the cost of supply of electricity, latest by the end of the year 2010-11, the tariffs should be within  $\pm 20\%$  of the average cost of supply, for which the State Commission would notify a road-map.*

**Indian Electricity Act 2003**

As per Indian Electricity Act 2003, the relevant sections are quoted below:

- i) *“As per Section 61(g) of Electricity Act 2003 that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission”.*
- ii) *As per Section 62(3) of Electricity Act 2003 specifies that the Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

14.2 The Electricity Act and the National Tariff Policy clearly specifies that the cross subsidies has to be reduced gradually and the State Commission has to move from average cost of supply towards voltage-wise cost of supply while determining the tariff of the licensees. Further, the Act specifies that there should not be any undue preference to a section of consumers. Accordingly, the State Commission has to compute voltage-wise cost of supply, so that it can be differentiated easily, the burden of a particular section of consumers with respect to cost of supply and accordingly cross subsidy can be estimated and can be reduced accordingly.

14.3 Let us examine the Tariff Regulations 2011 of MSERC regarding the cross subsidy is as under:

**Cross-Subsidy**

- (1) *“Cross-subsidy for a consumer category” in the first phase (as defined in sub regulation 5.2 below) means the difference between the average realization per unit from that category and the combined average cost of supply per unit. In the second phase (as defined in sub-regulation 5.2 below) means the difference between the average realization per unit from that category and the combined per unit cost of supply for that category.*
- (2) *The Commission shall determine the tariff to progressively reflect the cost of supply of electricity and also reduce cross subsidies within a reasonable period. To this purpose, in the first phase the Commission shall determine tariff so that it progressively reflects combined average unit cost of supply in accordance with National Tariff Policy. In the second phase, the Commission shall consider moving towards the category-wise unit cost of supply as a basis for determination of tariff.*

14.4 Let us examine the various Judgements of this Tribunal regarding voltage-wise cost of supply. This Tribunal held in Judgement dated 30.05.2011 in Appeal No. 102 of 2010 is as under:

**Summary of our findings**

*“41.1. After considering the provisions of the Act, the National Electricity Policy, Tariff Policy and the Regulations of the State Commission, we have come to the conclusion that if the cross subsidy calculated on the*

*basis of cost of supply to the consumer category is not increased but reduced gradually, the tariff of consumer categories is within  $\pm 20\%$  of the average cost of supply except the consumers below the poverty line, tariffs of different categories of consumers are differentiated only according to the factors given in Section 62(3) and there is no tariff shock to any category of consumer, no prejudice would have been caused to any category of consumers with regard to the issues of cross subsidy and cost of supply raised in this appeal”.*

*“41.2. We do not agree with the findings of the State Commission that cost to supply a consumer category is the same as average cost of supply for the distribution system as a whole and average cost of supply can be used in calculation of cross subsidy instead of actual cost of supply. This is contrary to Regulation 7 (c)(iii) of the State Commission and findings of this Tribunal in the Judgement reported in 2007(APTEL) 931 SIEL Limited, New Delhi v/s PSERC & Ors”.*

14.5 This Tribunal held as under in Appeal No. 11 of 2011 dated 17 January 2012:

*“20. From the discussion made above, it is apparently clear that the State Commission has not complied with the directions issued by this Tribunal in Remand Order. That apart, the State Commission while passing the impugned order has not taken into consideration the various principles while dealing with the Tariff related issues in terms of Section 61 of the Act 2003. The State Commission being an independent regulatory authority is supposed to be guided by the following factors:*

- i) The principles and methodology specified by the Central Commission for determination of tariff applicable for Generating Companies and Transmission Licensees;*

- ii) *The generation, transmission, distribution of and supply of electricity are conducted on commercial principles;*
  - iii) *The factors which should encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
  - iv) *The safeguarding of consumers' interests and the recovery of the cost of electricity in a reasonable manner;*
  - v) *The tariff should progressively reflect the cost of supply of electricity and also should reduce the cross subsidy within the period to be specified by the State Commission;*
21. *The State Electricity Boards are bound to function on commercial principles. They are supposed to safeguard the interests of the consumers while charging tariff which reflects cost of supply of electricity and reduce the cross subsidy.*
22. *The Electricity Board is bound to remain efficient and competitive while making economical use of resources and optimising through investment. Accordingly, the reasonable costs which are efficiently incurred in competitive environment by making optimum use of the investment by State Electricity Board can only be passed on to the consumers. Thus, the State Commission is supposed to take into consideration all these principles while considering tariff related issues which should aim at passing on only reasonable and efficient cost to the consumers while making optimum use of the investment”.*

14.6 Further, in a batch of ten appeals being Appeal No. 57 of 2008 etc. decided on 11<sup>th</sup> January, 2012, this Tribunal observed as follows: -



*“36. Having heard the learned counsels for the parties, we must first point out what are inherent in the law and what are the ground realities:-”*

- (a) Sections 39, 42, 61(d) & (g) and Section 65 of the Electricity Act, 2003, National Electricity Policy and National Tariff Policy speak of cost of supply, cross-subsidy and subsidy which are co-related to one another.*
- (b) Where gradual reduction of cross-subsidy is what is contemplated in the law absolute elimination was at least inconceivable for the periods in respect of which the appeals are being heard.*
- (c) The West Bengal case referred to by the learned counsel for the appellants is of no avail in view of the statutory provisions and the National Policies. The Act, 2003 clearly permits the Commission to provide for cross-subsidies between different classes and categories of consumers.*
- (d) In Appeal No. 4 of 2005 it has been laid down that the extent of cross-subsidy is commensurate with the extent of consumption.*
- (e) Tariff has to reflect the cost of supply progressively and the 2003 Act does not speak of “average” preceding the words “cost of supply” but the Act does not contemplate the eradication of cross-subsidy with the enforcement of the Act and Tariff as per the National Tariff Policy has to be fixed within +/- 20% of the average cost of supply although cost of supply does not by itself mean average cost of supply”.*

14.7 Let us examine the Hon’ble Supreme Court pronounced Judgement against Civil Appeal No. 4510 of 2006 Punjab State Power Corporation Ltd., (Appellant) vs. Punjab State

Electricity Regulatory Commission (Respondent). The Supreme Court held as under:

*“12. We have considered the perspective adopted by the learned Appellate Tribunal in seeking an answer to the issue of cost of supply/cross subsidies that had arisen for decision by it. The provisions of the Act and the National Tariff Policy requires determination of tariff to reflect efficient cost of supply based upon factors which would encourage competition, promote efficiency, economical use of resources, good performance and optimum investments. Though the practice adopted by many State Commissions and utilities is to consider the average cost of supply it can hardly be doubted that actual costs of supply for each category of consumer would be a more accurate basis for determination of the extent of cross-subsidies that are prevailing so as to reduce the same keeping in mind the provisions of the Act and also the requirement of fairness to each category of consumers. In fact, we will not be wrong in saying that in many a State the departure from average cost of supply to voltage cost has not only commenced but has reached a fairly advanced stage. Moreover, the determination of voltage cost of supply will not run counter to the legislative intent to continue cross subsidies. Such subsidies, consistent with executive policy, can always be reflected in the tariff except that determination of cost of supply on voltage basis would provide a more accurate barometer for identification of the extent of cross subsidies, continuance of which but reduction of the quantum thereof is the avowed legislative policy, at least for the present. Viewed from the aforesaid perspective, we do not find any basic infirmity with the directions issued by the Appellate Tribunal requiring the Commission to gradually move away from the principle of average cost of supply to a determination of voltage cost of supply”.*

14.8 After reading all the above provisions of the Act, the Policy, the Regulations and the various Judgements of this Tribunal, we infer the following:

- i) The cross subsidy for a consumer category is the difference between cost to serve that category of consumers and average tariff realization of that category of consumers. While the cross-subsidies have to be reduced progressively and gradually to avoid tariff shock to the subsidized categories, the cross-subsidies may not be eliminated.
- ii) The tariff for different category of consumers may progressively reflect the cost of electricity to the consumer category but may not be a mirror image of cost to supply to the respective consumer categories.
- iii) The Tariff for consumers below the poverty line will be at least 50% of the average cost of supply.
- iv) The tariffs should be within  $\pm 20\%$  of the average cost of supply by the end of 2010-11.
- v) The cross subsidies may gradually be reduced but should not be increased for a category of subsidizing consumer.

vi) The tariffs can be differentiated according to the consumer's load factor, power factor, voltage.

14.9 Thus, we feel that the cross subsidy cannot be eliminated completely, but if the voltage-wise cost of supply is computed, then it is easy for the Commission to fix the cross-subsidy at the time of determination of tariff.

14.10 Further, the Forum of Regulators in its meeting held on 20.07.2011 regarding "Model Tariff Guidelines" has decided that the Commission would notify revised roadmap within six months with a target that the latest by 2015-16, the tariffs are within  $\pm 20\%$  of the average cost of supply. The Forum of Regulators is the Statutory Body under the Act and its decisions and findings are to be taken as a guiding principle for taking decision.

14.11 Thus, the State Commission has to notify a roadmap towards reduction of cross subsidy. Further, the Hon'ble Supreme Court in its Judgement dated 10 February 2015 clearly specifies that the State Commissions has to move away from the principle of average cost of supply towards determination of voltage wise cost of supply.

14.12 Further, the State Commission has expressed difficulties in determining the voltage-wise cost of supply in view of non-availability of metering data, absence of proper energy audit at each voltage level, non-completion of accounts and true reflection of voltage-wise assess there in.

**In our opinion, it will not be prudent to wait indefinitely for availability of entire data, and it would be advisable to initiate a simple formulation which could be taken into account the major cost elements. However, we direct the State Commission to initiate study for voltage-wise cost of supply as directed by this Tribunal's Judgements for use in the Tariff Order 2015-16 to determine the cross subsidy by various category of consumers with respect to voltage-wise cost of supply.**

14.13 As seen from the impugned order dated 12.04.2014, the State Commission has to direct the Distribution Licensee to submit the relevant data in a specified time and insist

the Distribution Licensee to submit their tariff petition as per the voltage-wise cost of supply.

14.14 The State Commission submitted the level of cross subsidy in 2014-15 in the table below:

**Cross Subsidy in Meghalaya (%) in 2014-15**

		<b>2013-14</b>	<b>2014-15</b>
<b>Sl. No.</b>	<b>Category</b>	<b>Existing Cross Subsidy</b>	<b>Approved Cross Subsidy</b>
1	Domestic	24%	24%
2	Non-Domestic (Commercial)	-18%	-18%
3	Agriculture	52%	45%
4	Public Lighting	-7%	-5%
5	Water Supply	-13%	-12%
6	General Purpose	-14%	-13%
7	Kutir Jyoti	44%	44%
8.	Domestic	-15%	-15%
9.	Water supply	-7%	-5%
10.	General purpose including bulk supply	-9%	-8%
11.	Commercial	-18%	-17%
12.	Industrial	-17%	-15%
13.	Industrial	-10%	-8%

From the above table, the cross subsidies of various category of consumers are found to be reduced with respect to FY 2013-14. Further, the Industrial H.T. and EHT consumers are within the specified level and there is a reduction in cross subsidy compared to previous year.

14.15 **However, we direct the State Commission to obtain the necessary data from the Distribution Company for determination of tariff considering voltage-wise category of supply before finalization of tariff order for FY 2015-16.**

15. **Issue No. 3: Whether the State Commission erred in estimating the sales to and revenue from HT and EHT category of consumers while determining the Tariff for FY 2014-15?**

The following are the submissions made by the Appellant:

15.1 The State Commission has wrongly adopted the figures of 2012-13 i.e. two years prior figure of sales without there being any basis for such assumption.

15.2 The State Commission has contended that there is justification for not increasing the sale to HT and EHT industry for financial year 2014-15 on the basis that the industrial consumers have opted for open access and during the year 2013-14, the growth in large and medium industries has been below expectation.

15.3 The State Commission has failed to appreciate that as per the data submitted by Distribution Company, 46% of total sale of the Distribution Company is to HT & EHT category. So considering the sale figure of 2012-13 as a benchmark for 2014 -15 is absolutely illogical and unjustified.

Keeping view of National average, a growth rate of 10% should be considered during finalization of HT & EHT energy sale benchmark.

15.4 That the reason as to why even these four consumers opted for open access is because the Distribution Company was not in a position to extend load to these consumers. This by no means indicates that there will be no increase in the sale to the HT and EHT category in financial year 2014-15.

16. **Per Contra**, the following are the submissions made by the Respondent No. 1 Meghalaya State Electricity Regulatory Commission.

16.1 That there is no error in estimating the consumption of energy by industries.

16.2 The Commission has considered the actual consumption made by the industries in previous year 2012-13 and actual sale in first six months of 2013-14.

16.3 That the Commission has submitted that the Distribution Company MePDCL also stated that due to open access and other reasons, industrial consumption has gone down and the Distribution Company submitted actual sale from



April 2013 to September 2013 which also shows the declining trend in consumption by HT & EHT category of consumers.

16.4 That the Commission in its tariff order for 2014-15 has considered that the sale of surplus energy or saving in cost of power purchase at the average rate of Rs.3.15 on the basis of the present ARR.

16.5 That the Commission stated that the projection that the Commission had taken at the beginning of the tariff year was completely accurate and the so-called projected increase of sales by 10% postulated by the Appellant was and is completely illusory.

**17. Our consideration and conclusion on this Issue:**

17.1 We have found in the impugned order that the category-wise energy sales over the last five years (FY 2008-2009 to FY 2012-13) based on the actual, which is shown in the Table below:

**Table 6.1: Historical data on category-wise energy sales**

Sl. No.	Category	FY 2008-2009	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	CAGR
1	Domestic	231	232	271	317	334	9.55%
2	Commercial	44	52	62	76	75	13.82%
3	Industrial LT	5	6	7	7	6	3.65%

<b>4</b>	<b>Industrial HT &amp; EHT</b>	<b>524</b>	<b>463</b>	<b>477</b>	<b>513</b>	<b>477</b>	<b>-1.05%</b>
5	Public Lighting	2	1	1	1	1	-2.52%
6	Public Water Works	31	32	34	38	37	6.93%
7	Agriculture	1	1	0.4	0.4	0.3	- 11.17%
8	General Purpose LT	9	12	14	15	14	8.04%
9	HT (Bulk Supply)	65	63	64	70	68	0.37%
10	Crematorium	0.22	0.22	0.77	0.18	0.2	-2.89%
11	MeECL offices & Employees	36	37	37	38	39	0.27%
12	Total Sale	945	898	969	1075	1042	3.13%

According to the above data, the energy sales pertain to HT and EHT category consumers is fluctuating every year. For example, in the FY 2008-2009, the industrial HT and EHT consumption is 524 MU, and the industrial HT and EHT consumption during the FY 2012-13 has come down to 477 MU. The overall Compound Annual Growth Rate (CAGR) for the years 2008-09 to 2012-13 has come down to -1.05%. Further, it is mentioned in the impugned order that the industrial HT and EHT consumption for the four years CAGR for FY 2013 over 2009 is -2.32% and in respect of two years CAGR for FY 2013 over 2011 is 0% and year on year CAGR for the FY 2013 over 2012 is -3.57%. Thus, it shows that the consumption of industrial consumers is declining. The reason may be either some of the consumers are opting for open access and also due to

recession, the industrial production may be declining and thereby the consumption pertains to HT & EHT category of consumers are declining.

- 17.2 Further, as per the analysis of the State Commissions in respect to sales to HT and EHT categories is as under:

**Commission's Analysis**

*“the sales to these two categories HT and EHT together constitute to about 46% of total sales and contribute to about 46% of total sales and contribute substantial revenue to the DISCOM. Though the Petitioner has not explained the reasons for considering Zero growth for projection of sales for FY 2014-15, it is considered that general recession in industry in the Country and new EHT industry opting to obtain power from outside utilizing the open access facility might have contributed to zero growth in these two categories.*

*Hence, the projection of 274MU for HT industry and 203MU for EHT industry in 2012-13 actual is considered by the Commission for FY 2014-15 with 0%.*

***The Commission approves the sales at 274MU to HT industry and 203MU to EHT industry for FY 2014-15***

- 17.3 Thus, the growth in industrial consumption is almost nil. As observed from the table 6.4 of the impugned order, the number of industrial HT consumers during the FY 2013-14 (expected) is 150 with a connected load of 163 MVA. The projected figures with respect to FY 2014-15, the

number of consumers are shown as 158 with a connected load of 167 MVA.

17.4 Similarly, with respect to industrial EHT category of consumers during the FY 2013-14 is shown as 13 and the connected load is 91MVA and the projected figures shown for the FY 2014-15 is also 13 as no. of consumers with connected load of 92 MVA.

17.5 Thus, the above analysis shows that there is not much improvement in the industrial HT and EHT category of consumers and their consumption.

17.6 We feel that the consumption of industrial HT and EHT consumers considered by the State Commission is justifiable and we affirm the State Commission's assessment regarding industrial HT and EHT consumption. Thus, the Appellant's contention on this issue is rejected.

**18. Issue No. 4: Whether the State Commission erred in considering higher T&D losses while approving the tariff for FY 2014-15?**

The following are the submissions made by Appellant.

18.1 That the State Commission has not considered the impact of reduction of commercial losses, as per approved trajectory (1.5% commercial loss reduction translates to

33 MU of additional sales, and amounts to Rs. 18 crore of additional revenue @ ABR base rate of Rs. 5.38 per kWh. Neither Regulation 91 nor the impugned order used any justification for deviation from the trajectory fixed in the order dated 20.01.2012.

- 18.2 That the State Commission failed to appreciate that Distribution Loss is a very serious parameter and has an impact on the power purchase quantum.
- 18.3 That the Distribution Company has stated that the Distribution Company has to complete 100% metering duly utilizing the fund sanctioned under RAPDR projects for reduction of T&D losses.
- 18.4 That the industrial HT consumer consumption is around 46% and the T&D loss is just around 3 percent.
- 18.5 In view of the above, the State the State Commission erred in considering only 1% reduction of T&D loss in the finalisation of proposed tariff.
19. **Per Contra**, the following are the submissions made by the R-1 Meghalaya State Electricity Regulatory Commission.
- 19.1 The Commission has computed a trajectory of reduction of distribution losses and commercial losses for the period 2012-13 to 2015-16. For 2014-15 the Commission has allowed 24% (lesser by 1% of the previous year) as the

distribution losses against 27.34% the loss claimed by the licensee.

19.2 The State Commission as per the Regulation 91 of Tariff Regulations 2011 stated that the Commission have been implemented in letter and spirit and quoted the Regulation 91 of Tariff Regulations 2011 which is as under:

**“91. Distribution Losses**

- (1) The Licensee shall furnish information on Distribution losses for Previous year and Current year and the basis on which such losses have been worked out.
- (2) The licensee shall also propose a loss reduction programme for the ensuring year as well as for the next three years duly indicating details of the measures proposed for achieving the same.
- (3) Based on the information furnished and field studies carried out and the loss reduction program proposed by the licensee, the Commission shall fix suitable targets for reduction of Distribution losses for the period specified by the Commission.
- (4) The licensee shall conduct regular energy audit and submit regular energy audit reports for the previous years to substantiate its estimation of energy losses. In case, the licensee is unable to submit energy audit report for previous years, it shall indicate reasons therefore.
- (5) In the absence of energy audit reports, the Commission may suo-moto determination the loss levels on the basis of information available.”

20. **Our Considerations and conclusion on this issue:**

20.1 The Appellant contested that the State Commission is lenient towards the Distribution Licensee in accepting higher T&D loss and thereby the consumers are burdened with higher tariff.

20.2 The National Tariff Policy on transmission and distribution losses which is reproduced below:

a) *5.8.10: It would have to be clearly recognized that Power Sector will remain unviable until T&D losses are brought down significantly and rapidly. A large number of States have been reporting losses of over 40% in the recent years. By any standards, these are unsustainable and imply a steady decline of power sector operations. Continuation of the present level of losses would not only pose a threat to the power sector operations but also jeopardize the growth prospects of the economy as a whole. No reforms can succeed in the midst of such large pilferages on a continuing basis.*

b) *The State Governments would prepare a Five Year Plan with annual milestones to bring down these losses expeditiously. Community participation, effective enforcement, incentives for entities, staff and consumers, and technological upgradation should form part of campaign efforts for reducing these losses. The Central Government will provide incentive based assistance to States that are able to reduce losses as per agreed programmes.*

20.3 One of the objectives of the National Tariff Policy is to ensure availability of electricity to consumers at reasonable and competitive rates and also to ensure

financial viability of the sector and attract investments. Thus higher T&D loss will lead to higher power purchase cost which will reflect in the ARR of the Distribution Licensee and thereby the consumers are burdened with higher tariff due to higher power purchase cost to be incurred by the Distribution Licensee.

20.4 Let us examine the T&D loss trajectory specified by the State Commission in their Tariff Regulations 2011 which is as under:

**“91 (a) AT&C Losses**

While filing a Tariff Application, the licensee shall provide complete information of the total AT & C Losses during the previous year and that projected for the year for which the application is being made, including the basis on which such losses have been worked out. (Information to be furnished in Format 2 (A) of Distribution Licensee):

Provided that it shall be obligatory on the licensee whose AT&C losses during the previous year are in excess of 30 percent, to project reduction of such losses by a minimum of 3 percent during the year for which a Tariff Application is made. Any shortfall in the projected level of AT&C losses for such year, in this regard, shall be penalized by an amount equivalent to the cost of the quantum of energy to be lost due to inability of the licensee to plan and achieve reduction of AT&C losses by a minimum of 3 percent from the previous year’s level. Such amount shall be calculated at the average-over-all-unit-cost of sale of power, as approved by the Commission for such year.

Provided further that failure of a licensee to reduce the AT&C losses during the previous year by 3 percent would



be penalized on the same basis as stated against clause (a) above. Provided also that in the case of a licensee whose AT&C losses during the previous year were less than 30 percent, it would be obligatory for such licensee to reduce such AT&C losses by a minimum of 1.5 percent only during the year for which a Tariff Application is made. Failure to achieve this level of reduction would be penalized in the same manner as set out in clause (a) above.

Further, provided that the overall penalty, of any, may be limited by relevant Central Guidelines, as may be notified from time to time”.

20.5 According to Regulation 91(a), if the T&D losses are less than 30%, then the licensee has to take steps to reduce 1.5% loss level every year.

20.6 As seen in the impugned order, the T&D loss level approved for the FY 2013-14 is 25% and the State Commission has reduced 1% (instead of 1.5%) on this and considered 24% as T&D losses for the FY 2014-15, as against 27.34% loss percentage submitted by R2, MePDCL.

20.7 Though the Distribution Licensee submitted the loss percentage as 27.34%, the State Commission considered 24% T&D losses to arrive energy balance, thus the consumers are not burdened with the higher T&D losses

of the Distribution Licensee. However, the losses can be further reduced duly implementing the loss reduction methods.

20.8 We order the State Commission to direct the Distribution Licensee to utilize the RAPDRP funds for improvement of the system such as high voltage transmission system for agriculture sector and also to reduce the length of the LT lines by suitably existing 33/11 KV sub-station nearer to load centres to reduce the length of 11 KV lines and erect distribution transformers nearer to load centres, so that the length of LT lines can be reduced and thereby transmission losses will be reduced drastically.

20.9 We feel, as per the submission of the State Commission, the LOAD MIX in the state is good i.e. the share of H.T. consumers is 46% and hence the percentage losses can be reduced to 15% if the commercial losses are controlled.

Commercial losses are attributed to improper meter readings, delay in replacement of stuck-up meters, wrong assessment regarding consumption of unmetered services, theft of energy rampant in rural areas and the functioning/less recording by old electromechanical

meters, etc. If these aspects are attended, then the percentage of commercial losses can be reduced drastically.

We insist that the State Commission has to issue specific directions for reduction of technical and commercial losses.

20.10 Further, we feel that the ATC loss reduction should be incentivised by linking returns in a MYT framework to an achievable trajectory. Greater transparency and nurturing of consumer groups would be efficacious. For government owned utilities improving governance to achieve ATC loss reduction is a more difficult and complex challenge for the SERCs. Prescription of a MYT dispensation with different levels of consumer tariffs in succeeding years linked to different ATC loss levels aimed at covering full costs could generate the requisite political will for effective action to reduce theft as the alternative would be stiffer tariff increases. Third party verification of energy audit results for different areas/localities could be used to impose area/locality specific surcharge for greater ATC loss levels and this in turn could generate local consensus for

effective action for better governance. The SERCs may also encourage suitable local area based incentive and disincentive scheme for the staff of the utilities linked to reduction in losses.

20.11 We finally conclude that the State Commission has to take various steps towards reduction of T&D losses (ATC losses) so that the energy requirement of the Distribution Licensee will be reduced and thereby reduction in power purchase cost of the Distribution Licensee and thereby the genuine consumers are benefitted with lower tariff.

### **ORDER**

21. The impugned order dated 12.04.2014 cannot be set aside at this stage, as already the FY 2014-15 is completed. We suggest that the State Commission, while determining the Tariff Order for FY 2015-16, all the above aspects had to be taken into consideration for determination of ARR and tariff with this observation, the Appeal is disposed of with no costs.

Pronounced in the open Court on this day of 1<sup>st</sup> December  
2015.

**(T. Munikrishnaiah)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

**Dated 1<sup>st</sup> December 2015.**

**REPORTABLE / ~~NON-REPORTABLE~~**