

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 68 OF 2015

Dated:30th Nov, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the Matter of:

**M/S Indus Towers Limited
ESPEE IT PARK, 5(N.P.)
Jawaharlal Nehru Road,
5th Floor, Ekkaduthangal,
Chennai-600 097 (Tamil Nadu)**

...Appellant

Versus

**1) Tamil Nadu Generation and Distribution Corporation Ltd.
No. 144, Anna Salai
Chennai-600 002**

**2) Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai-600 008**

...Respondent(s)

**Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ishan Mukherjee &
Ms. Akshi Seem**

**Counsel for the Respondent(s) : Mr. G.Umapthy
Mr. V.Vallinayagam
Mr. T.Mohan for R-2
Mr. S.Balathandayuthapani,
Director for TNERC**

JUDGMENT

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal is filed under Section 111 of Electricity Act, 2003 against the Impugned order dated 11.12.2014 passed by M/s Tamil Nadu Electricity Regulatory Commission (hereinafter called as State Commission) passed in Petition No. SMT order No. 9 of 2014 whereby the State Commission has on suo-moto basis approved the ARR and determined the retail supply tariff to the Respondent No.-1, Tamil Nadu Generation and Distribution Corporation Limited.
2. The Appellant M/s. Indus Towers is a company incorporated under the provision of the Companies Act, 1956 and presently having its office at ESPEE IT PARK, 5(N.P.), Jawaharlal Nehru Road 5th Floor, Eddaduthangal, Chennai-600 097 (Tamil Nadu).

Indus Towers with a portfolio of more than 110,000 towers is one of the largest telecom tower companies of the world. Indus has a presence in the 16 major telecom circles of India. It has its headquarters at Gurgaon in the National Capital Region of Delhi and offers services to 3 major telecom operators in the wireless space and other wireless service providers such as broadcasters and broadband service providers.

3. Respondent No. 1 is a successor entity of the erstwhile Tamil Nadu Electricity Board. The Respondent No. 1 was formed and vested with the functions of generation, distribution and retail supply of electricity pursuant to the re-organization of the erstwhile Tamil Nadu Electricity Board under Section 131, 132 etc. of the Electricity Act, 2003. Tamil Nadu Generation and Distributions Corporation Ltd (TANGEDCO) was incorporated on 1.12.2009 and started functioning as such with effect from 1.11.2010 onwards.
4. The Respondent No. 2, State Commission, is the Electricity Regulatory Commission for the State of Tamil Nadu exercising power and discharging functions under the provisions of the Electricity Act, 2003 and in particular Sections 61,62,64 and 86 of the Electricity Act, 2003.
5. **Facts of the case:-**
 - 5.1 Consequent to the enactment of the Electricity Regulatory commissions Act 1998 (Central Act 14 of 1998), the Government of Tamil Nadu (GoTN) constituted the Tamil Nadu Electricity Regulatory Commission (TNERC) vide G.O.Ms.No. 58, Energy (A1) Department dated 17.03.1999.
 - 5.2 The Commission issued its first tariff order (Order No. 1 of 2002) under Section 29 of the Electricity Regulatory Commission Act, 1998, on 15.03.2003 based on the petition filed by the Tamil Nadu Electricity Board (TNEB) on 25.09.2002.

- 5.3 The Commission notified the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations 2005 (herein after called Tariff Regulations) on 03.08.2005 under Section 61 read with Section 181 of the Act.
- 5.4 The Commission issued separate order (Order No. 2 of 2006) on Transmission charges, Wheeling charges, Cross Subsidy surcharge and Additional surcharge on 15.05.2006, based on the petition filed by TNEB on 26.09.2005 under Section 42 of the Act.
- 5.5 The Commission notified the TNERC (Terms and Conditions for Determination of Tariff for Intra State Transmission/Distribution of Electricity under MYT Framework) Regulations, 2009 (herein after called MYT Regulations) on 11.02.2009.
- 5.6 Subsequently, TNEB filed an application for determination of tariff with Aggregate Revenue Requirement (ARR) for all functions on 18.01.2010, which was admitted by the Commission after initial scrutiny on 09.02.2010. The Commission issued its second Retail Tariff Order on 31.07.2010 (Order No. 3 of 2010).
- 5.7 Subsequent to the filing of tariff petitions by TANGEDCO for determination of retail supply tariff for the year FY 2012-13, the Commission scrutinised and reviewed the same. After a thorough review the third Order of the Commission on retail supply tariff, wheeling charges and other related charges was passed on 30.03.2012.

- 5.8 Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) filed tariff petition for determination of tariff for Generation and Distribution for the year FY 2013-14, the Commission scrutinised and reviewed the same. Based on this petition and after considering views of the State Advisory Committee and the public, Tamil Nadu Electricity Regulatory Commission passed the fourth Order on 20.06.2013.
- 5.9 Subsequently in the event of the Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) not filing the ARR and Tariff petition for FY 2014-15 before the Commission, the Commission initiated suo-moto proceedings for tariff determination in accordance with section-64 of the Act. After a thorough review of the available information, the fifth Order of the Commission on determination of Retail Tariff for FY 2014-15 was passed.
- 5.10 Aggrieved with that order regarding increase in cross subsidy compared to previous Tariff orders, the Appellant filed this appeal No. 68 of 2015 before this Tribunal for consideration and prayed for the following:
- (a) To hold and direct the State Commission to determine the tariff within the level of 120% of the average cost of supply for the Appellant's category of consumers for this year;
 - (b) Hold and direct the State Commission to determine the voltage wise and category wise cost supply and to implement the same for the future years;

6. We have heard the arguments of Learned Counsel Mr. Anand K. Ganesan for the Appellant and Mr. G Umapathy, Learned Counsel for Respondent No.1. After going through the written submissions, the following issues arise before this Tribunal for consideration:
- a. Whether the State Commission erred in computing the ARR and tariff order based on average cost of supply?**
 - b. Whether the State Commission failed to implement the order of this Tribunal in implementing voltage wise cost of supply?**
 - c. Whether the State Commission committed mistake in computing higher cross subsidy in tariff order for the financial year 2014-15 as compared to the previous tariff order 2013-14 for the appellant category?**
7. Since all the above issues are inter-related, we will take up all the issues together.
8. **The following submissions are made by the Appellant M/s Indus Tower Limited, Chennai.**
- 8.1 That the State Commission has increased the cross subsidies for the appellant category contrary to the provisions of the Electricity Act, 2003, the National Tariff Policy and consistent decisions of the Hon'ble Tribunal.
 - 8.2 That the State Commission has failed to determine the voltage wise cost of supply and tariff in violation of the directions issued

by the this Tribunal and the position in-line settled by the Hon'ble Supreme Court.

- 8.3 That the State Commission rather than reducing the cross subsidy has proceeded to increase the same from 144% to 156 %. Further, the State Commission was already in violation of the mandate under the Electricity Act wherein even in the year 2013, the cross subsidy was much higher than 120% of the average cost of supply.
- 8.4 that it is relevant to mention that the appellant is not even questioning any of the cost and expenses of the Respondent No.-1 and is assuming the same to be correct. Even based on the data furnished by the Respondent No.-1 and is decided by the State Commission, there is substantial increase in the cross subsidy and for reducing the cross subsidy from 144 % as was existing prior to the Impugned order, the State Commission has proceeded to further increase the same to 156 % which is clearly contrary to the provisions of the Electricity Act, 2003.
- 8.5 That the very object of the Electricity Act is to ensure that the consumers are not unnecessarily burdened and the distribution licensing operates in an efficient manner. Cross subsidy is not a manner for finding of the inefficiency in the system and to lower the tariff for some consumers. This is also subsequently provided in the National Tariff Policy and the various decisions of the Hon'ble Tribunal.

- 8.6 That in the circumstances, the Impugned order passed by the State Commission in increasing cross subsidies from 144 % to 156% is clearly contrary to the provisions of the Electricity Act, 2003 and is liable to set aside.
- 8.7 That it is submitted that the State Commission has erred in continuing with determining all cost of supply and tariff on average cost basis and not of voltage wise basis.
- 8.8 That the Hon'ble Tribunal in the judgement dated 28.07.2011 passed in Appeal No. 192 and 206 of 2010 directing the State Commission to determine the voltage wise cost of supply within 6 months from the decision of the Hon'ble Tribunal to ensure that in further tariff orders cross subsidies for different categories of consumers are determined and reduced as per provisions of the Electricity Act and regulations framed thereunder.
- 8.9 That the State Commission in the tariff order dated 26.01.2013 proceeded to determine tariff based on average cost of supply citing the reason that the Respondent No.-1 has not conducted the study and provided sufficient data to the State Commission. Once again the consumers were burdened with higher tariff in the default of the distribution licensee.
- 8.10 That it is also relevant to mention that this Tribunal has repeatedly directed that the mandate under the Electricity Act is to determine tariff based on voltage wise cost of supply. In this regard, the full bench decision of this Tribunal in the case of **SIEL Limited v Punjab State Electricity Regulatory Commission, 2007 APTEL**

931, has also been upheld by the Hon'ble Supreme Court in the case of Punjab State Power Corporation Limited Vs Punjab State Electricity Regulatory Commission in Civil Appeal No.4510 of 2006 dated 10.2.2015. The position under the Electricity Act having been settled, it is not open to the State Commission to not follow the same, particularly citing the reason that the distribution licensee has failed to provide the data and consequently placing the burden on the consumers in the State of Tamil Nadu. The relevant portion of the judgment in the case of SIEL Ltd New Delhi Vs Punjab State Electricity Regulatory Commission and Ors, 2007, APTEL, 931 is as under:

“107. The cross subsidies have to be brought down by degrees without giving shock to the consumers. Though it is desirable that cross subsidies are reduced through every Tariff Order but in a given situation, it may not be possible. As long as cross subsidy is not increased and there is a roadmap for its gradual reduction in consonance with Section 61 (g) of the Act of 2003 and the National Tariff Policy, the determination of Tariff by the Commission on account of existence of cross subsidy in the Tariff cannot be flawed”.

- 8.11 That the State Commission is not only violating the repeated directions issued by the Hon'ble Tribunal, but is also burdening the consumers with increase in tariff on account of default on the part of the Respondent No. 1 in providing sufficient and timely data.

9. Per Contra, the following are the submissions made by the Respondent No.1, Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO):

- 9.1 That the submissions of the Appellant that the cross subsidy has shown an increase from 144% to 156% in the Appellant category and therefore to that extent the appeal has to be allowed by directing the Appellant to maintain at least 144% instead of 156%. The submission of the Appellant is wholly devoid of merits and is liable to be rejected.
- 9.2 That it is to submit that as per the National Tariff Policy issued by the Government as envisaged in the Electricity Act, 2003, the cross subsidy should be progressively reduced to the limit $\pm 20\%$ of average cost of service.
- 9.3 That the tariff in Tamil Nadu was revised in 2012 after a gap of 9 years since 2003. There was no comprehensive tariff revision during this period in tariff order dated 30.03.2012. The cross subsidy level to the Appellant category (LT-V) consumer was 153%. Thereafter, the tariff was revised every year and the cross subsidy comprehensively reduced in line with the tariff policy. In the Tariff order dated 20.06.2013, the cross subsidy to the Appellant category was reduced to 144 % from to 153%. However, there has not been the reduction in cross subsidy contribution as compared to the last year.
- 9.4 That the Commission issued suo-moto tariff order No. 9 of 2014 for the year 2014-15 and revised the tariff without consideration and

accumulated the loss (Regulatory Asset) of the earlier years. The present tariff order left a gap of Rs.222 crores and the tariff of the subsidised category consumers has been revised substantially from 2003 to 2010. The cross subsidy moving towards cost of supply is higher as compared to the tariff increase to the appellant category consumers. Domestic, Hut and Agriculture are the major category of subsidized category in the State.

9.5 It is relevant to place on record the tariff increase to the appellant category (LT Commercial) over a 12 year period which is as under.

Particulars	2003	2010	2012	2013	2015
Average tariff (Rs/Unit)	5.80	6.75	7.64	7.64	8.99
Increase(in%)		16	13	0	18

9.6 that the rate of tariff increase to the Appellant category of consumers are much lower than the subsidised category of agricultural consumers. The submissions of the Appellant that tariff to the sub subsidized consumers should have increased to the level $\pm 20\%$ of average cost of supply, would result in heavy tariff shock to the consumers. While considering the cross subsidy reduction, it is also necessary to consider the quantum of increase and demand capability of the consumers.

9.7 That if it was to be brought to the level of $\pm 20\%$ in a year, then it has to be compensated by the other subsidized category of consumers. This will amount to the tariff shock and over burden to the entire category of consumers and in particular to the poor category of consumers. To achieve the objective of bringing the

subsidy to the level of $\pm 20\%$, the cross subsidy is being progressively reduced year on year.

- 9.8 That the cost of supply has been arrived at without taking into account of regulatory asset to be recovered in the year of tariff revision. For the year 2014-15, the regulatory asset to be recovered is Rs.1033 Crores from Government of Tamil Nadu and Rs. 4528 crores through tariff revision. The cost of supply after inclusion of regulatory asset to be recovered in 2015-16 is Rs.6.47 per unit. The cross subsidy level to this Appellant category after inclusion of regulatory asset would be 138% only.
- 9.9 That the cross subsidy level is being reduced in every tariff order. Since, the present tariff order has been issued on sou-moto basis, the regulatory asset has not been considered for ARR.
- 9.10 That it is practically impossible to bring the cross subsidy to the level of $\pm 20\%$, at one go, in a single tariff order.
- 9.11 That as per National Tariff Policy (NTP), tariff based on the average cost of supply has to be determined. The State Commission Tariff Regulation 2005, provides to determine the cross subsidy based on cost to serve basis.
- 9.12 That the Respondent filed Tariff Petition (TP) and ARR along with "Cost to Serve (CoS)" for the year 2013-14 and the same was admitted by TNERC in TP No.1 of 2013. TNERC while issuing the Tariff Order No.1 of 2013 dated 20.06.2013 has commented in para 5.46 on "Cost to Serve (CoS)" which reads as follows:

“Even though TANGEDCO has attempted to calculate cost to serve, it has been unsuccessful in doing so at various voltage classes. The Commission once again directs TANGEDCO to submit a study report on methodology for computation of voltage wise ‘cost to serve’ (CoS) along with the basis of allocation of different costs and losses to various voltages levels. This shall be examined by the Commission and approved with such modifications as it may deem fit or consider a better alternate computation. The Commission also directs TANGEDCO to submit the action taken report within 90 days of the issuance of this report.”

9.13 That further, TNERC in the summary of directives in the above Tariff Order has directed in Para No.7.1 (r) as follows:

“To submit a study report on computation of voltage wise ‘cost to serve’ (CoS) along with the basis of allocation of different costs and losses to various voltage levels. The Commission also directs TANGEDCO to submit the action taken report within 90 days of the issuance of this report”.

9.14 That the State Commission shall along with the determination of cross subsidy for 2012-13 to 2014-15 for all the consumers categories also design and forward laying roadmap along with its next tariff order.

9.15 That the Respondent No.-2 initiated sou-moto proceedings on 23.09.2014. This Hon’ble Tribunal issued the directions to 2nd Respondent to determine the voltage wise cost of supply and determine the cross subsidy transparently for Financial year 2012-13, 2013-14 and 2014-15. In the Tariff order for 2015-16 as per the directions of the State Commission, the 1st Respondent submitted the report on cost to serve taking into account the cost and service in view of the various categories of consumers.

9.16 That the suo-moto proceedings commenced prior to the directions of the APTEL and TANGEDCO also submitted the report. The State Commission could not determine the voltage wise cost of service in the present tariff order.

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

10.1 We have observed from the Impugned Order that the State Commission has determined the tariff order for FY 2014-15 suo-moto in the absence of detailed Petitions from R-1 TANGEDCO.

10.2 According to Regulation 5 (II) of the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulation-2005, **“ARR shall be filed every year even when no application for determination of tariff is made”**.

10.3 According to this Tribunal judgment dated 11.11.2011 in the matter of OP No.1 of 2011, it has been directed to the State Commission that “in the event of delay in filing of the ARR, truing-up and annual performance review, one month beyond the scheduled date of submissions of the Petitions, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with Clause 8.1 (7) of the tariff Policy.

10.4 It is clear from the above Regulation and APTEL’s judgment that the distribution licensee has to submit the ARR application within the scheduled time and if he fails to submit, the State Commission must initiate suo-moto proceedings one month beyond the scheduled date of submissions.

- 10.5 We have observed that the State Commission has done the above exercise (suo-moto) due to non filing of ARR by the Distribution Licensee, TANGEDCO after much delay and determined and approved the tariff order for FY 2014-15 on 11.12.2014. Instead, the normal tariff order date has to be 1st day of April, 2014.
- 10.6 During the arguments of this Appeal, the learned Counsel for the State Commission submitted that the tariff exercise for the FY 2015-16 has not yet started and the Distribution Licensee has also not filed the ARR application as per the schedule and stated that the tariff order for FY 2014-15 was issued in the month of December, 2014 and hence the subsequent order also will be delayed accordingly.
- 10.7 This Tribunal has given various directions to the State Commission that the tariff order has to be issued regularly within the scheduled time, failing which the consumers are burdened with tariff shock due to increase of power purchase cost, O&M cost, interest on loan etc and thereby the revenue received from tariff will not match with the expenditure and it leads to higher gap between the expenditure and revenue of the licensee. To address this gap, the tariff has to be increased and thereby consumers are burdened.
- 10.8 We have gone through the Dissenting Order of Hon'ble Thiru S Nagalsamy, Member. He has rightly pointed out that the State Commission failed in initiating action against the distribution licensee (TANGEDCO) for procedural lapses and pointed out that the State Commission has determined the tariff without proper data.

10.9 We direct the State Commission to initiate action against the Distribution Licensee to follow the schedule towards filing of ARR Petitions to the Commission with relevant data and see that the tariff is released as per the schedule.

10.10 Let us discuss the issues pertaining to the present Appeal.

10.11 The main contention of the Appellant is that the State Commission in the Impugned Order has increased the cross subsidy level of the Appellant's category from 144% to 156% which is contrary to the National Tariff Policy, Electricity Act and various judgments of this Tribunal. Further, the State Commission did not follow the directions of this Tribunal i.e. voltage wise cost of supply instead of average cost of supply while determining the tariff order for FY 2014-15 and prayed to set-aside the Impugned Order dated 11.12.2014.

10.12 Let us examine the relevant part of the National Tariff Policy and Electricity Act.

(1) In accordance with the National Electricity Policy, consumers below poverty line who consume below a specified level, say 30 units per month, may receive a special support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply. This provision will be re-examined after five years.

2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones,

based on the approach of a gradual reduction in cross subsidy.

Thus, the Tariff Policy provides for progressively and gradual reduction of cross subsidies of the subsidizing consumers without giving tariff shocks to the subsidized consumers.

10.13 Section 61 (g) of the Electricity Act stipulates that the tariff should progressively reflect the cost of supply of electricity and also reduce cross subsidies in the manner specified by the Appropriate Commission. It would be worthwhile to examine the provisions of Section 61 (g) of the Electricity Act, 2003 which is quoted as under:

“Section 61 (g):

that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission”

“Replaced by the tariff progressively reflects the cost of supply of electricity and also reduces the cross subsidies in the manner specified by the Appropriate Commission by an amendment under Electricity (Amendment Act, 2007) w.e.f. 15.6.2007.

10.14 Thus, the intention of the Parliament in amending the above provisions of the Act by removing the provisions for elimination of cross subsidies appears to be that the cross subsidies may be reduced but may not have to be eliminated.

10.15 The tariff should progressively reflect the cost of supply but at the same time, the cross subsidies though may be reduced, may not be eliminated.

10.16 Section 62(3) of the Electricity Act which is quoted below:

“Section 62(3)

(3) 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”

10.17 Thus, the State Commission while determining the tariff should not show any undue preference to a particular category of consumer and hence the cross subsidy of the subsidizing consumers have to be gradually reduced.

10.18 Thus, the National Electricity Policy provides for reducing the cross subsidy progressively and gradually and National Tariff Policy clearly stipulates that for achieving the objective, the tariff progressively reflects the cost of supply of electricity latest by the end of the year 2010-11, the tariff should be within $\pm 20\%$ of the average cost of supply for which the State Commission would notify a road map.

10.19 Further, the Hon’ble Supreme Court in the judgment in Civil Appeal No.4510 of 2006 in the case of Punjab State Power Corporation Limited Vs Punjab State Electricity Regulatory Commission & Ors has held as under:

“...The provisions of the Act and the National Tariff Policy require 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 the 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”.

10.20 Let us examine the Tariff Regulations of the State Commission in this regard. The relevant extract from the 2005 Regulations are reproduced below:

“84. Cost of supply to various categories of consumers

(1) The licensee shall conduct a study to work out voltage level cost to serve each category of consumer and furnish the details to the Commission.

(2) The licensee shall furnish the details along with the tariff application as required in regulation 69(2) and also along with Annual Accounts.

(3) The Commission shall consider and approve the cost to serve with modifications if any required.

(4) The cost to serve a category of consumer and realization of revenue at the tariff from each category of consumer shall form the basis for estimating the cross subsidy.

85. Cross subsidy, reduction and elimination

(1) The difference between the cost to serve and the revenue realized from the consumer category at the approved tariff level is the cross subsidy. The consumer paying more than the cost to serve is subsidizing consumer and the consumer paying less than the cost to serve is the subsidized consumer.

(2) The Commission may endeavour to hold the tariff of the subsidizing categories at the nominal rates until the tariff to subsidized categories approaches the cost to serve such categories.

(3) **1**[The Commission may endeavour to reduce the cross subsidy progressively in accordance with the road map to be notified by the Commission].

(4) In view of the necessity to make electricity affordable for households of very poor category, the domestic consumers including hut dwellers consuming 30 kWh per month may be designated as lifeline categories requiring minimum level of supply. The tariff for such category may be pegged at 50% of the cost to serve the domestic consumers.

(5) However, if the State Government requires grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State Government shall pay the amount to compensate the licensee in advance as may be required by the Commission.

1 *Substituted as per Commission's Notification No. TNERC/TR/5/2-4, dated 18-12-2007 (w.e.f. 06-02-2008), which before substitution stood as under :*

“(3). The Commission may endeavour to reduce and eliminate the cross subsidy progressively and the licensee shall prepare a road map towards this object and get it approved”.

The Regulations stipulate determination of voltage-wise cost to serve each category of consumer which will be the basis for estimating the cross subsidy. The cross subsidy may be reduced progressively in accordance with the road map to be notified by the State Commission.

10.21 Conjoint reading of all the above provisions of the act, the policy and the Regulations, 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 categories of consumer 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) 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 to achieve the objective that the tariff progressively reflects the cost of supply of electricity.

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, total consumption of electricity during specified

period or the time or the geographical location, the nature of supply and the purpose for which electricity is required.

10.22 Thus, 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.

10.23 Further, based on the directions of this Tribunal judgment dated 28.7.2011, the State Commission had estimated voltage wise cost to serve in its tariff order date 31.3.2012 as per the directions issued by this Tribunal but the Tariff Order had not determined based on this data. The Commission has been taking following steps to arrive at voltage wise cost of supply:

(a) In the tariff order dated 20.6.2013, the Commission had notified that the data provided by the Distribution Licensee was not sufficient enough for segregation of net work cost for different voltage losses and hence the State Commission directed the licensee (TANGEDCO) to arrive at voltage wise/category wise cost of supply by undertaking accurate and logical studies.

(b) Since the Distribution Licensee had not submitted the complete information required and had not undertaken the requisite studies, the Commission had resorted to estimate the voltage wise cost to serve based on the data made available using embedded cost approach in allocating the cost.

(c) The result shows that the cost to service pertains to lower voltage classes higher than the cost to service pertains to higher voltage classes. This is primarily due to higher losses both Technical and Commercial, large consumer base and consumer load. Then the Commission found that in the absence of requisite data cost to service may not accurately reflect the actual cost of supply.

(d) Commission observed that the cost to serve study undertaken by TANGEDCO is based on historical data with a number of assumptions with regard to contribution of various consumer categories to the peak and off-peak. Commission had directed TANGEDCO to update the study based on the data for the year FY 13-14 and suitably amended to compute voltage wise category wise cost of supply for all consumer categories and re-submit the findings along with the basis of allocation of different costs and losses to various voltage levels and consumer categories. In compliance with the above direction from the Commission, TANGEDCO has submitted the revised voltage wise cost to serve report in the month November, 2014.

(e) This study report shall be closely examined by the Commission and approved with such modifications as it may deem fit or consider a better alternate computation. The Commission in line with the direction of the Hon'ble Appellate Tribunal in its judgment on Appeal No. 196 & 199 of 2013 dated 27-10-2014, intends to use this study report to determine cross subsidy for 2012-13, 2013-14 and 2014-15 for all consumer categories in its next tariff order. The relevant extract of the judgment is produced below.

“65. However, the State Commission is directed to determine the voltage wise cost of supply as directed and determine the cross subsidy transparently for FY 2012-13 and 2013-14 and 2014-15 in the tariff order for 2015-16.”

(f) As the relevant study report on category wise voltage wise cost to serve from TANGEDCO has only now been submitted and is being scrutinised by the Commission, for the purpose of this Order will base its calculation of cross subsidy on average cost of supply and calculate the cross subsidy as directed by the Hon'ble Appellate Tribunal in its next tariff order.

The Commission would like to highlight here that, it has even in its past Tariff orders endeavoured to ensure that there is minimal additional burden of cross subsidy on the subsidising consumers. This is evident from the tariffs set in the order dated 30.03.2012 and 20.06.2013. The same has been acknowledged by the order dated 30.03.2012 by the

Hon'ble Appellate Tribunal in its judgement on Appeal of 257 of 2012.

(g) Therefore the Commission intends to use the study report submitted by TANGEDCO to determine cross subsidy for 2012-13, 2013-14 and 2014-15 for all consumer categories in its next tariff order.

10.24 After going through the above submissions of the State Commission, we observe that the State Commission expressed difficulties in determination of voltage wise cost of supply due to insufficient data furnished by the distribution licensee. However, the State Commission submitted that the licensee submitted the data required as per the directions of the State Commission during Nov 2014 and the State Commission submitted that the voltage wise/category wise cost of supply will be incorporated while working out the next tariff order.

10.25 Let us examine the cross subsidy trajectory estimated by the Commission in the Impugned Order which is as under:

Table 198: Cross Subsidy Trajectory Estimated by the Commission

Categories	Average Cost of Supply (ACoS) FY 15	ABR as per Existing Tariff	ABR as per proposed tariff	Cross Subsidy Comparison	
				As per Last TO	ABR (PT)/A Cos
HT Category					
HT Industries	5.77	7.09	8.20	141%	142%
Railway Traction	5.77	6.73	7.82	124%	135%
Government Educational	5.77	5.33	7.32	104%	127%

Institution Etc (HT)					
Pvt Educational Institutions etc.,	5.77	6.69	7.74	131%	134%
Commercial and Other HT	5.77	8.65	9.93	164%	172%
Lift Irrigation and co-ops (HT)	5.77	3.50	6.35	67%	110%
Temporary	5.77	10.14	11.74	204%	203%
Total HT	5.77	7.18	8.39	141%	145%
LT Category					
Domestic	5.77	3.43	4.00	66%	69%
Huts	5.77	4.16	4.83	85%	84%
Bulk Supply	5.77	4.05	4.66	77%	81%
Public Lighting & Water Works	5.77	5.50	6.58	105%	114%
Government Educational Institution	5.77	6.05	7.01	115%	121%
Pvt Educational Institutions	5.77	7.26	8.41	141%	146%
Places of Public Worship (LT)	5.77	6.03	6.99	113%	121%
Cottage and Tiny Industries	5.77	3.99	4.64	77%	80%
Power Loom Industries	5.77	5.36	6.19	102%	107%
Industries	5.77	6.15	7.11	118%	123%
Agriculture & Government seed farm	5.77	2.57	2.95	50%	51%
Commercial and Other Appellant Category	5.77	7.79	8.99	144%	156%
Temporary Supply	5.77	12.59	14.40	222%	249%
Total LT	5.77	4.26	4.94	80%	86%
Total LT+HT	5.77	4.93	5.74	93%	99%

From the above table it can be seen that though the percentage of cross subsidy is more than the percentage of cross subsidy of previous year. It is observed that the recovery from LT category as a percentage of the average cost has increased at the same rate as that of HT consumers.

10.26 We have observed that the Commission had taken cognizance of the directions of the Tribunal with respect to notifying a roadmap

for reduction of Cross Subsidy with a view to move towards Tariff reflective of \pm average cost of supply.

10.27 We feel that the Commission is following the directions of this Tribunal to study and scrutinize the data submitted by TANGEDCO to implement voltage wise cost of supply in the next Tariff Order.

10.28 Further, the State Commission is directed to follow the procedure specified in this Tribunal's Judgment in Appeal Nos. 192 and 206 of 2010 while working out the Voltage Wise/Category Wise cost of supply.

10.29 We are satisfied with the submission of the State Commission and we direct the State Commission to implement the same in the next tariff order.

10.30 Let us examine the Tariff increase of subsidized category and subsidizing categories since 2010 Tariff onwards:

“The tariff for agriculture was Rs.250/HP/per month in the year 2010 was increased to Rs.1750/-HP/per annum in the year 2012 and further increased to Rs.2500/HP/per annum in 2013. In the present impugned order, the same was fixed as Rs.2875/-HP/ per annum. Therefore, the effective increase in tariff in respect of Agriculture in the above period of 5 years i.e. from 2010 to 2015 is 1050%. Similarly, for HUT category, the tariff which was Rs.10/service/per month in the year 2010 was increased to Rs.60/service/per month in the year 2012. It was further increased to Rs.125/service/per month in the year 2013. In the present Impugned Order, the

tariff was increased to Rs.145/service/per month. Therefore, the effective increase in respect of Hut category in a period of 5 years i.e. from 2010 order to the present impugned order in 2015 is 1350%. But the increase in tariff in respect of Appellants in the same period of 5 years is only 33%. The Power loom consumers are treated as poor and low income group and the tariff in respect of power loom consumers is maintained at 107% i.e. above Cost of Supply and the tariff has been gradually increased even for the Domestic category of consumers”.

10.31 We have observed that in the Impugned Order, 15% increase is given across the board to all categories of consumers. As the tariff for the Appellants was not revised in the last year, effective rate of increase is only 7.2% on a year on year basis but for the subsidized categories like Agriculture and Hut, last year also, the Tariff was revised to the extent of 43% and 108%. In the Impugned Tariff Order, the increase in Agriculture and Hut was to the extent of 15% and 16% respectively.

10.32 The Appellant's contention is that the cross subsidy of the Appellant category has been increased from 144% to 156%.

10.33 As seen from the above Table, the Cross subsidy for all the category of services has been increased compared to last year. This is mainly because the Commission has tried to adjust accumulated revenue gap as much as possible. The Commission also taken care of the increase within $\pm 20\%$. The increase in gap is mainly due to delay in issue of tariff orders and no tariff revision

was taken place for nearly nine years. Further, in the Impugned Order, the increase for all categories is only 15%. It is also observed that the subsidized categories like agricultural and hut was increased to the extent of 43% and 108% in the previous tariff order also.

10.34 Further, as per the National Tariff Policy, the tariff for the subsidized categories should not be less than 50% of the average cost of supply. In the present tariff, the average cost of supply is stated as Rs.5.77 and the tariff for the LT Huts categories is increased to Rs.4.83 and for agricultural category, it has been increased to Rs.2.95 Paise from the existing tariff of Rs.2.57 Paise.

Thus, the State Commission has increased the tariff for the subsidized categories by more than 50% of the average cost of supply and thereby reduced the cross subsidy burden on the other category of consumers like LT, Commercial and Industrial consumers etc.,

10.35 Finally, this Tribunal is concerned about the non-submission of the Application for ARR and tariff determination by the distribution licensee for the FY 2014-15. We, therefore, direct the State Commission to insist successor companies of the then Tamil Nadu Electricity Board (i.e. Generation and Distribution Company, TRANSCO Company) to regularly file their respective Petitions for Annual Revenue Requirement and tariff every year and in case of their failure to file the Petition in time, the State Commission should initiate the action for determination of tariff and regularly

scrutinize suo-motu according to the Regulation and also initiate action against the distribution licensee.

In view of the above discussions, all the issues are decided against the appellant and the appeal deserves dismissal.

ORDER

The present Appeal, being Appeal No.68 of 2015 is hereby dismissed and the Impugned Order dated 11.12.2014 passed by the Tamil Nadu Electricity Regulatory Commission in Petition No.SMT Order No.9 of 2014, is hereby affirmed. Further, the State Commission is directed to implement the Voltage Wise/Category wise cost of supply in the next tariff order. The State Commission is also directed to implement the National Tariff Policy, Electricity Act, 2003 and directions of this Tribunal, that the cross subsidy of the subsidizing categories has to be reduced every year to bring it down to the level of $\pm 20\%$.

No order to Cost.

10.36 Pronounced in the Open Court on **this 30th day of November, 2015.**

**(T Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

Dated: 30th Nov'2015

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