

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal No.117 of 2017, Appeal No.118 of 2017
Appeal No.120 of 2017 & Appeal No.121 of 2017

Dated: 25th October, 2018

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member

Appeal No.117 of 2017

In the matter of :-

**North Bihar Power Distribution
Company Limited
VidyutBhawan, Bailey Road, Patna
Patna-800021**

...Appellant(s)

Versus

**Bihar Electricity Regulatory Commission
Ground Floor, Vidyut Bhawan-II
B.S.E.B. Campus,
Jawahar Lal Nehru Marg (Bailey Road),
Patna - 800021**

...Respondent(s)

Counsel for the Appellant(s) :

**Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Mr. Shubham Arya**

Counsel for the Respondent(s) :

**Mr. Buddy A. Ranganathan
Mr. Raunak Jain
Mr. Vishvander Tomar
Ms. Stuti Kishan for R-1**

Appeal No.118 of 2017

In the matter of :-

**South Bihar Power Distribution
Company Limited
Throughits Managing Director,**

Vidyut Bhawan, Bailey Road,
Patna-800021

... Appellant(s)

Versus

Bihar Electricity Regulatory Commission
Ground Floor, VidyutBhawan-II
B.S.E.B. Campus,
Jawahar Lal Nehru Marg (Bailey Road),
Patna - 800021

...Respondent(s)

Counsel for the Appellant(s) :

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Mr. Shubham Arya

Counsel for the Respondent(s) :

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Mr. Raunak Jain
Mr. Vishvander Tomar
Ms. Stuti Kishan for R-1

Appeal No.120 of 2017

In the matter of :-

Bihar Industries Association
Sinha Library Road,
Patna-800001

... Appellant(s)

Versus

1. Bihar Electricity Regulatory Commission,
Ground Floor, Vidyut Bhawan-II,
Jawahar Lal Nehru Marg,
Patna-800021.

...Respondent No.1

2. South Bihar Power Distribution
Company Limited,
Vidyut Bhawan, Jawahar Lal
Nehru Marg, Patna-800021.

...Respondent No.2

Counsel for the Appellant(s) :

Mr. Sanjay Sen, Sr. Adv.
Mr. Suraj Samdarshi

Counsel for the Respondent(s) :

Mr. Buddy A. Ranganathan

Mr. Raunak Jain
Mr. Vishvander Tomar
Ms. Stuti Kishan for R-1

Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan

Appeal No.121 of 2017

Bihar Industries Association
Sinha Library Road,
Patna-800001

...Appellant(s)

Versus

1. **Bihar Electricity Regulatory Commission,**
Through its Secretary
Ground Floor, Vidyut Bhawan-II,
Jawahar Lal Nehru Marg,
Patna-800021.

...Respondent No.1

2. **North Bihar Power Distribution**
Company Limited,
Through its Managing Director
Vidyut Bhawan, Jawahar
Lal Nehru Marg, Patna-800021.

...Respondents No.2

Counsel for the Appellant(s) :

Mr. Sanjay Sen, Sr. Adv.
Mr. Suraj Samdarshi

Counsel for the Respondent(s) :

Mr. Buddy A. Ranganathan
Mr. Raunak Jain
Mr. Vishvander Tomar
Ms. Stuti Kishan for R-1

Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan

JUDGMENT

PER HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

1. The Appeal No. 117 of 2017 has been filed by North Bihar Power Distribution Company Limited (hereinafter referred to as the “**NBPDCL**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) against the order dated 8.3.2017 passed by Bihar Electricity Regulatory Commission (hereinafter referred to as the “State Commission”) in Case No.49 of 2015 pursuant to a remand order dated 25.11.2016 passed by this Tribunal in Appeal No. 142 of 2016 with regard to True-up of financials for FY 2014-15, Annual Performance Review (APR) for FY 2015-16, Annual Revenue Requirement (ARR) for second control period FY 2016-17 to FY 2018-19 and tariff for retail sale of electricity for the FY 2016-17. The State Commission has disallowed the claims of the Appellant herein with regard to the issue of recovery of Gap/Surplus of past period and net prior period charges and the Appellant is aggrieved of the said two disallowances.
 - a) The Appellant, North Bihar Power Distribution Company Limited, is a distribution licensee under the provision of Electricity Act 2003 having a license to distribute and supply electricity in the northern area of the State of Bihar.
 - b). The Respondent No. 1 is the Bihar Electricity Regulatory Commission exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.

2. The Appeal No. 118 of 2017 has been filed by South Bihar Power Distribution Company Limited (hereinafter referred to as the “**SBPDCL**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) against the order dated 8.3.2017 passed by Bihar Electricity Regulatory Commission (hereinafter referred to as the “State Commission”) in Case No. 50 of 2015 pursuant to a remand order dated 25.11.2016 passed by this Tribunal in Appeal No. 141 of 2016 with regard to True-up of financials for FY 2014-15, Annual Performance Review (APR) for FY 2015-16, Annual Revenue Requirement (ARR) for second control period FY 2016-17 to FY 2018-19 and tariff for retail sale of electricity for the FY 2016-17. The State Commission has disallowed the claims of the Appellant herein with regard to the issue of recovery of Gap/Surplus of past period and net prior period charges and the Appellant is aggrieved of the said two disallowances.
 - a) The Appellant, South Bihar Power Distribution Company Limited, is a distribution licensee under the provision of Electricity Act 2003 having a license to distribute and supply electricity in the Southern area of the State of Bihar.
 - b) The Respondent No. 1 is the Bihar Electricity Regulatory Commission exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
3. The Appeal No. 120 of 2017 has been filed by Bihar Industries Association (hereinafter referred to as the “**BIA**”) under Section

111 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) against the order dated 8.3.2017 passed by Bihar Electricity Regulatory Commission (hereinafter referred to as the “State Commission”) in Case No. 50 of 2015 whereby the State Commission re-determined the Annual Performance Review (APR) for the FY 2015-16, Annual Revenue Requirement (ARR) and Business Plan for the FY 2016-17 to 2018-19 pursuant to a remand order dated 25.11.2016 passed by this Tribunal in Appeal No. 141 of 2016

- a) The Appellant, Bihar Industries Association, is an Association of Industrial Units situated within the State of Bihar.
 - b) The Respondent No. 1 is the Bihar Electricity Regulatory Commission exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
 - c) The Respondent No.2, South Bihar Power Distribution Company Limited, is a distribution licensee under the provision of Electricity Act 2003 having a license to distribute and supply electricity in the Southern area of the State of Bihar.
4. The Appeal No. 121 of 2017 has been filed by Bihar Industries Association (hereinafter referred to as the “**BIA**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) against the order dated 8.3.2017 passed by Bihar Electricity Regulatory Commission (hereinafter referred to as the “State Commission”) in Case No. 49 of 2015 whereby the State Commission has tried-up the Annual Revenue Requirement

(ARR) for FY 2014-15, Annual Performance Review (APR) for the FY 2015-16, Annual Revenue Requirement (ARR) and Business Plan for the FY 2016-17 to 2018-19, pursuant to the order dated 25.11.2016 passed by this Tribunal in Appeal No. 142 of 2016.

- a) The Appellant, Bihar Industries Association, is an Association of Industrial Units situated within the State of Bihar.
- b) The Respondent No. 1 is the Bihar Electricity Regulatory Commission exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
- c) The Respondent No.2, North Bihar Power Distribution Company Limited, is a distribution licensee under the provision of Electricity Act 2003 having a license to distribute and supply electricity in the Northern area of the State of Bihar.

5. All the above Appeals arise from the Order dated 8.3.2017 passed by the Bihar Electricity Regulatory Commission in Case No.49 of 2015 and Case No. 50 of 2015 pursuant to a remand order dated 25.11.2016 passed by this Tribunal in Appeal No. 141 of 2016 and Appeal No. 142 of 2016 with regard to -

Truing up for FY 2014-15 is concerned against;

- (a) Power Purchase Cost.
- (b) Depreciation.
- (c) Return on Equity.
- (d) Net Prior Period Credit/Charges.

Annual Performance Review for the FY 2015-16

- (a) Energy Sales.
- (b) Depreciation.
- (c) Recovery of Gap/Surplus of past Period.

Annual Revenue Requirements for FY 2016-17 to FY 2018-19

- (a) Energy Sales.
- (b) Employee Cost and Administration & General (A&) Expenses.
- (c) Distribution Loss Trajectory.

Cross Appeals being Appeal No. 117 of 2018, Appeal No. 118 of 2018, Appeal No. 120 of 2017 and Appeal No. 121 of 2017 have been filed for our consideration. The Impugned Order is common to all the four Appeals and the cross issues raised are the same. Hence, all the four Appeals have been heard together and are being decided by this common Judgment.

6. Facts of the case in Appeal No. 117 of 2017 and Appeal No. 118 of 2017 in nutshell are as follows:-

- A.** The Appellant is a successor of Bihar State Electricity Board (hereinafter referred to as “BSEB” or “Board”) which was an integrated entity and was engaged in electricity generation, transmission, distribution and related activities in the State of Bihar. The Appellant has succeeded to the electricity distribution and retail supply functions of BSEB in the northern area of the

State upon reorganisation of the BSEB under section 131 etc. of the Electricity Act, 2003.

- B.** On or about 18.12.2015 the Appellant filed its petition before the State Commission being case No 49 of 2015 for True-up of financials for FY 2014-15, Annual Performance Review (APR) for FY 2015-16, Annual Revenue Requirement (ARR) for second control period FY 2016-17 to FY 2018-19. The Appellant placed on record the relevant details and documents and furnished the particulars sought for by the State Commission from time to time in the said proceedings.
- C.** The State Commission passed the order dated 21.03.2016 in the above petition. In the order dated 21.3.2016 the State Commission disallowed various claims of the Appellant in the truing up of financials for FY 2014-15, Annual Performance Review (APR) for FY 2015-16, Annual Revenue Requirement (ARR) for second control period FY 2016-17 to FY 2018-19.
- D.** Aggrieved by the order dated 21.3.2016 the Appellant filed an appeal being no. 142 of 2016 in this Tribunal.
- E.** On 25.11.2016 this Tribunal decided the Appeal No. 142 of 2016 whereby it remanded the above Case No. 49/2015 to the State Commission on a number of issues and directed the state commission to pass appropriate order within 4 months from the date of the judgement.

- F.** Pursuant to the above, the State Commission called upon the Appellant herein and the other interveners to submit their replies and submissions in the Case no. 49 of 2015 and the matter was heard on 21.12.2016, 22.12.2016, 23.1.2017 and 14.2.2017.
- G.** On 8.3.2017 the State Commission passed the impugned order in Case No. 49/2015 on the issues remanded by this Tribunal. The State Commission has duly considered and allowed the following aspects in the remand proceedings:-
- (a) Power purchase cost (FY 2014-15)
 - (b) Depreciation (FY 2014-15)
 - (c) Return on equity (FY2014-15)
 - (d) Energy Sales (FY 2015-16 to FY 2018-19)[to be considered at the time of truing up]
 - (e) Employee Cost and A&G expenditure (FY 2016-17 to 2018-19)[to be considered at the time of truing up]
 - (f) Distribution loss trajectory (FY 2017-18 and FY2018-19)
- H.** The State Commission has however disallowed on the issues of Net prior period Charges (FY 2014-15) and Recovery of Surplus (FY 2015-16) holding as under:-

“D-6 Commission’s analysis and Order on Issue No. 4: Net Prior Period Charges

The Commission had approved net prior period income at (-) Rs.2.60 crore in truing up for FY 2014-15 in Tariff Order dated 21.03.2016. The Commission had allowed all the prior period revenue and expenses claimed in truing up for FY

2014-15 except the item of negative prior period sale of power.

As stated earlier, Commission had addressed the Petitioner to furnish year-wise break-up of prior period income and expenses claimed for further analysis. The Petitioner did not furnish such details. The Commission once again addressed the petitioner to furnish details of correction of consumers bill for Rs.58.53 Crore giving year-wise break-up of the amount involved. In reply, the petitioner had submitted in digital form division-wise details of correction amount with date of correction. However, these details served no purpose to the Commission as it did not contain year-wise break-up of the corrected amount involved.”

Therefore, the Commission disallowed negative prior period sale of power Rs.58.53 Crore in the absence of year-wise break-up details as the same represent correction of consumer bills accumulated over the past years and has no bearing on the cash flows of the company for 2014-15. In Compliance of Hon’ble APTEL’s order, the Commission re-opened the case and during hearing on 22.12.2016 directed the petitioner to submit details of negative prior period sale of power showing year-wise break-up indicating the period for which the amount relates to, else the details relating to the pre and post transfer schemes.

The petitioner has reiterated its earlier reply stating that prior period expenses claimed by NBPDCCL has not formed part of the financials of the NBPDCCL during relevant period and no benefit has been taken by NBPDCCL either by accounting the income or expenditure on accrual basis or otherwise. It has also stated that the auditors of the company would not have referred to prior period financials, if the same would have been accounted for in the earlier financial years on accrual basis.”

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“The Commission again directed the Petitioner vide letter dated 11.01.2017 to submit the data showing year-wise breakup of the details of the amounts claimed but the petitioner has failed to submit the same.

It is pertinent to mention that the withdrawal of prior period sale of power in both Discoms have been increasing year on year as is evident from the table below:

Table 23 : Withdrawal of Prior Period Sale of Power

Name of the Discom	FY 2014-15	FY 2015-16	Remarks
NBPDCL	58.53	304.28	Prior period sale of power
SBPDCL	167.16	16.30	Prior period sale of power
SBPDCL	--	266.73	Prior period DPS
Total	225.69	587.31	

*It appears that the Petitioner is reluctant to furnish the data as required by the Commission. Unless the said data is received from the Petitioner and claims are validated, the Commission is constrained to disallow the claims. Hon'ble **APTEL in its order dated 23.11.2015 in Appeal No.128 of 2014 had also observed the similar view.***

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Order of the Commission on Issue No. 4 Net Prior Period Charges

In view of the above, the Commission is not inclined to accept the contention of the petitioner. Hence the claims of negative prior period sale of power are rejected.

F-5 Surplus of the past period pertaining to the erstwhile BSEB

The Government of Bihar has notified the transfer scheme with effect from 1st November, 2012 and all the assets and liabilities relating to the existing and ongoing business of the BSEB was vested to the Govt. of Bihar in terms of section 131 of the Electricity Act,2003 and subsequently the Govt. of Bihar re-vested the assets & liabilities on functional basis with new entities i.e. Generation business vested with

BSPGCL, Transmission business with BSPTCL and Distribution business with the Discoms on territorial operations basis. Thus, the Discoms have been re-vested with the assets and liabilities of existing and ongoing distribution business.

The ARR and tariffs of the distribution business notified through Tariff orders year on year are on the basis of estimates submitted by the Discoms/BSEB and are subject to true up as per actual revenue and expenditure based on audited accounts and prudence check. Any gap/surplus obtained on account of true-up is carried forward to the ensuing year along with applicable carrying/holding cost and merged with the ensuing year ARR for its recovery/adjustment through the tariff notified for the ensuing year.

Thus, the tariffs notified by the Commission year on year are for recovery of ARR that includes all the cost parameters such as cost of Power Purchase (including transmission charges), O&M cost (Employee cost, Administration & General expenses and Repairs & Maintenance expenses), interest and finance charges, interest on working capital, Depreciation, Return on equity and all legitimate expenses incurred/to be incurred by the Discom including gap/ surplus as a result of true-up.

If the truing up results in surplus, it is inferred that higher ARR than actual was considered and higher tariff rates were notified and received. If the truing up results in gap, it can be inferred that less ARR than actual was considered and less tariff rates were notified for billing the consumers for their consumption.

As per the regulations cited above, the surplus or gap shall be considered and adjusted in the ensuing year ARR and accordingly notify the tariffs. The surplus shall be passed on to the consumers through reduction in tariffs and gap shall be recovered from the consumers through increase in tariffs. This is a continuous and ongoing process. The consumer's consumption billing is based on the tariffs notified by the Commission year on year and if any excess ARR is considered in earlier year, shall be passed on to the consumers and if any less ARR is considered in earlier year,

shall be recovered from the consumers. This can be implemented through the ensuing year tariffs only.

Even, Hon'ble APTEL in its order dated 25.11.2016 has noted that "the State Commission in its impugned order has to adjust the past period surplus on the basis that the surplus was due to excess monies recovered from the consumers in the past and such surplus revenue should go back to consumers"

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"Hence, the contention of the Discoms (NBPDCL and SBPDCL) that trued up surplus relating to BSEB period is not available to Discoms is not correct.

Further, the Commission opines that such surplus created as a result of truing-up belongs to consumers and the consumers can not be deprived of the benefit of such surplus.

Hence, the Commission finds no merit in the contention of the Petitioner on this issue."

- I. Aggrieved by the Order passed by the State Commission dated 8.3.2017 on the specific aspects mentioned herein above, the Appellants have filed present appeals before this Tribunal.

7. QUESTIONS OF LAW:

- (a) Whether in the facts and circumstances of the case, the State Commission has rightly considered the aspect of Net Prior Period Credit Charges to be accounted for in the financial year 2014-15 and whether the disallowance of the same by the State Commission is justified in law?

- (b) Whether in the facts and circumstances of the case, the State Commission is right in considering the amount being termed as `surplus' in the hands of the Bihar State Electricity Board prior to its re-organisation as available for adjusting the Annual Revenue Requirements of the Appellants herein?

8. Facts of the case in Appeal No. 121 of 2017 and Appeal No. 120 of 2017 in nutshell are as follows:-

- A. The Appellant, Bihar Industries Association (herein after referred as the 'Appellant') is Association of Industrial Units situated within the State of Bihar, having its registered office at Sinha Library Road, Patna-800001, Bihar. The consumers of the Association are connected with two DISCOMs, namely the South Bihar Power Distribution Company Limited and the North Bihar Power Distribution Company Limited and since the present appeal has been filed against the order dated 8.3.2017 in Case No. 50 of 2015, which pertains to the South Bihar Power Distribution Company Limited (hereinafter referred to as the 'SBPDCL'), therefore, the facts and figures referred hereinafter would be of SBPDCL.
- B. The SBPDCL had filed Multi Year Tariff (MYT) Petition on 18.12.2015 for truing up for FY 2014-15 Annual Performance Review (APR) for the year 2015-16 and the Annual Revenue Requirement (ARR) for the second control period FY 2016-17 to 2018-19 under Section 62 of the Electricity Act, 2003 read with BERC (Terms & Conditions of Determination of Tariff) Regulations, 2007 and BERC (Multi Year Distribution Tariff) Regulations, 2015.

- C. The aforesaid case was registered as Case No. 50 of 2015 wherein public hearing was held and final order was passed on 21.3.2016 by the State Commission. The SBPDCL preferred an appeal before this Appellate Tribunal vide Appeal No. 141 of 2016 against the order dated 21.3.2016 passed by the State Commission, wherein certain claims of the DISCOM were disallowed. The respondent SBPDCL had grievance so far as truing up for FY 2014-15 is concerned against;
- (a) Power Purchase Cost.
 - (b) Depreciation.
 - (c) Return on Equity.
 - (d) Net Prior Period Credit/Charges.
- D. Similarly, against the Annual Performance Review for the FY 2015-16 the respondent SBPDCL was aggrieved on account of the orders under the head;
- (a) Energy Sales.
 - (b) Depreciation.
 - (c) Recovery of Gap/Surplus of past Period.
- E. Lastly with regard to Annual Revenue Requirements for FY 2016-17 to FY 2018-19 the respondent SBPDCL was aggrieved on account of;
- (a) Energy Sales.
 - (b) Employee Cost and Administration & General (A&G) Expenses.
 - (c) Distribution Loss Trajectory.
- F. Upon appeal before this Tribunal the parties were heard including the appellant and broadly vide order dated 25.11.2016 this Tribunal was satisfied that on account of submission of documents belatedly the matter required

reconsideration. Some of the issues referred above were remanded back to the State Commission with a specific observation and few of the issues were remanded only for reconsideration by the State Commission without any finding or observation. As such, the Tribunal asked the State Commission to reconsider the loss trajectory only on the ground that since the matter was remanded for other reason, therefore, the State Commission should also look into it but with a word of caution that such relook should have been only to the extent that numbers do not become unachievable, but not on account of inefficiencies of the licensee, if the State Commission observes so.

G. Issues Involved:

The State Commission on remand issued notice and altogether eight different heads were carved out for the purposes of hearing on limited remand by this Tribunal. The eight issues which were taken up by the State Commission are as under:

- (i) Power Purchase Cost.
- (ii) Depreciation and Gross Value of Assets.
- (iii) Return on Equity (RoE).
- (iv) Net Prior Period Charges.
- (v) Energy Sales.
- (vi) Recovery of Gap/Surplus of Past Period.
- (vii) Employee Cost and A&G Expenditure.
- (viii) Distribution Losses Trajectory.

H. Power Purchase Cost:

The State Commission with regard to Power Purchase Cost for FY 2014-15 had approved the Power Purchase Cost of

Rs.4664.87 Crores including transmission charges for purchase of 1117.70 Million Units (MU) for FY 2014-15, in truing up, against claim of Rs.4707.48 Crores. The respondent SBPDCL claimed that while considering the true up of power purchase cost for FY 2014-15 the State Commission did not consider the entire cost of purchase from various sources as incurred by the SBPDCL, although it had filed the entire bills raised by the generating companies/suppliers of electricity. Thus, it was claimed that the State Commission arbitrarily without any analysis and particulars given, has disallowed the Power Purchase Cost to the extent of Rs.8.49 Crores only on the ground that the State Commission arrived at the said figure by prudence check. The Tribunal directed to re-examine to the extent to which the Power Purchase Cost is to be allowed on the quantum of power purchase allowed with reference to all the bills from the generators and other sources of power procurement. It was further directed that if the State Commission finds any specific quantum of power purchase claim, not supported by such bills, may seek specific document from the licensee in this regard.

- I. The State Commission on the issue of power purchase cost, considered all the documents and allowed Rs.3.99 Crores being the differential amount of power purchase cost from Farakka-I, II & III. The State Commission also allowed the additional sum amounting Rs.2.28 Crores for power purchase on account of Dadri-I & II as per the revised bill submitted by the SBPDCL. The State Commission also allowed Adani open access charges for which bills were earlier not produced by the SBPDCL and thus, allowed the

additional power purchase cost from Adani Power to the extent of Rs.10.71 Crores. A total sum of Rs.16.98 Crores has been allowed by the State Commission and the same has been distributed equally between the two DISCOMs. Thus, the claim of the SBPDCL that Rs.8.45 Crores was incorrectly disallowed by the State Commission in the original Tariff Order, has been allowed completely. However, the learned State Commission failed to consider the fact that due to consideration of additional power purchase bills, the cost as well as the quantum of power purchase units would also change which has a bearing on transmission and distribution loss.

J. **Depreciation:**

With regard to the second issue of Depreciation for FY 2014-15 the State Commission had computed the weighted average rate of depreciation based on the audited annual accounts for the FY 2014-15 at the rate of 4.63% and had computed the depreciation on Gross Fixed Assets (GFA) by excluding the value of the amount to the extent of Rs.1517.37 Crores. The State Commission had approved closing grants at Rs.2450.80 Crores in the true up order for the FY 2013-14. The State Commission calculated the depreciation on gross fixed assets to arrive at a figure of Rs.124.17 Crores, whereas depreciation on assets created out of grants came to be Rs.151.78 Crores. Since the proportionate depreciation on assets created through grants was higher than the depreciation on the assets, therefore, the State Commission did not allow any depreciation. The SBPDCL submitted before this Tribunal that weighted average rate has correctly been applied and the

State Commission ought to have considered that capitalization owing to grant, equity and loan on pro-rata basis should not have considered the grant in disproportionate manner while making capitalization schedule. This Tribunal observed that allowance of depreciation is dependent on the gross value of fixed assets which has to be considered by the State Commission in the relevant financial year. In view of three sources of funding of assets, namely debt, equity and grants upon acceptance of the respondent SBPDCL that grant part is not to be serviced at all through tariff, this Tribunal directed the State Commission to re-examine, keeping in view the relevant details submitted by the appellant, subject to its prudent check.

- K. The State Commission taking into consideration the figures submitted, observed that the Bihar State Power (Holding) Company Limited informed the Secretary, Department of Energy that the funds received from the State Government under Backward Region Grant Fund (Special Plan) (BRGF) has been taken into accounts of the respective utility as equity investment and the same may be authenticated. Based on such letter the State Commission came to the conclusion that funding of BRGF Scheme should be treated as an equity from the Government of Bihar. The State Commission based on details of funding as scheme-wise capitalization, considered addition to grants at Rs.29.65 Crores during the FY 2014-15 and thus, approved depreciation of Rs.9.97 Crores for the FY 2014-15 against 'nil' in the original Tariff Order dated 21.3.2016.

L. **Return on Equity (RoE):**

With regard to the issue of Return on Equity (RoE) which the State Commission has earlier examined in its Tariff Order dated 21.3.2016, it was specifically mentioned that grants were higher than the investment capitalized in the FY 2014-15, hence no equity addition was considered for the FY 2014-15. Thus, return on equity to the extent of Rs.69.16 Crores, as was approved for the FY 2014-15 in the Tariff Order dated 16.3.2015, was also approved in truing up for the FY 2014-15. The SBPDCL claimed before this Tribunal that in addition to the equity shares there is also an amount of Rs.2620.30 Crores duly contributed by the Government of Bihar towards equity capital pending allotment by the Government of Bihar and the same is accounted for as pending allotment. It was also submitted by the SBPDCL that the Government of Bihar has confirmed that the above mentioned amount of Rs.2620.33 Crores is being converted into paid-up capital and therefore, the aforesaid amount should have been considered towards equity and taking into account the aggregate of the above two sums i.e. Rs.2620.33 Crores and Rs.494.00 Crores (opening equity approved for FY 2014-15 in Tariff Order dated 16.3.2015), altogether Rs.3114.33 Crores ought to have been considered for determining the equity component, considering 30% of the same and the balance as normative loan, but to the extent of gross fixed assets value. The Tribunal observed as under:-

“The matter for consideration is only whether the amount contributed by the State Government towards equity capital should be considered equity or not. To be fair to the appellant, the State Commission is

directed to re-examine whether contribution of the State Government towards equity capital should be considered as equity or not and accordingly pass an appropriate order.”

M. The State Commission considered scheme-wise capex and capitalization along with source of funding of capitalization and arrived at a conclusion that in view of regulation providing debt:equity ratio at 70:30, on the net capital base i.e. GFA less capital subsidy/grants and asset revaluation. The equity addition year on year has been considered at 30% of the net addition in capital base, after reducing the capital grant for the purpose of RoE and considered BRGF under equity to arrive at a figure of Rs.41.42 Crores i.e. 30% of Rs.138.08 Crores, which the figure arrived at by the State Commission regarding capitalization as per the audited accounts for the FY 2014-15 and thus, allowed addition to equity to the extent of Rs.41.42 Crores and return on equity has been worked out at Rs.72.06 Crores against Rs.69.16 Crores approved earlier vide order dated 21.3.2016.

N. **Prior Period Expenses:**

With regard to net prior period expenses, the respondent SBPDCL had claimed prior period income at Rs.276.76 Crores and expenses at Rs.363.68 Crores. Thus, net prior period charges were worked out at Rs.87.00 Crores. The State Commission allowed prior period income to the extent of Rs.276.76 Crores but with regard to the expenses, allowed only a sum of Rs.177.38 Crores to arrive at a net prior period income of Rs.99.38 Crores for the FY 2014-15, in truing up. The respondent SBPDCL submitted before this Tribunal that

the claim comprises of several thousand entries which were given to the State Commission in an electronic format during the tariff proceedings, but the State Commission did not provide any justification for disallowance of the claim for net prior period expenses. The sale of power amounting Rs.167.16 Crores which was realized subsequently treating consumer's wrong bill correction relating to past period, had no bearing on expenses. The aforesaid amount already stands allowed since the shortage was covered under transmission and distribution loss and further, late payment surcharge for power supply was disallowed in terms of Regulation 85(ii)(5) of the Regulations, 2007. It was submitted before this Tribunal that no valid reason was provided for disallowance by the State Commission, despite furnishing of relevant data. This Tribunal directed the State Commission to look into the issue based on the details claimed by the SBPDCL and audited accounts.

- O. The State Commission observed that correction in sale of power (in units) will impact distribution losses of relevant years which the SBPDCL had submitted in its truing up petition and based on which the State Commission had approved the distribution losses in those relevant years to the extent of approved trajectory and disallowed the power purchase and associated cost over and above the approved distribution losses. Thus, any correction/decrease in consumer sale in previous years would result into corresponding increase in distribution losses of the relevant year and therefore, rejected the claim of the SBPDCL. But consequently the issues arising out of funding of capitalization

was considered and the State Commission approved the interest on loan at Rs.32.39 Crores in revised true up of FY 2014-15, whereas vide order dated 21.3.2016 the State Commission had approved interest on loan only to the extent of Rs.28.84 Crores. Similarly the State Commission also approved additional interest on working capital of Rs.0.63 Crore for the FY 2014-15.

P. **Energy Sales:**

With regard to sale of energy i.e. Issue No. 5, the State Commission had approved energy sales for the FY 2015-16 at 1521.71 M.U. against the projection of 2226.82 M.U. for KJY, DS-I and DS-II category of consumers, as projected in the APR. The aforesaid reduction was on the ground that the SBPDCL had assumed an average consumption of 6.09 units per consumer per day for DS-II Category consumers, but as per actual of FY 2014-15 the average consumption per consumer per day was only 4.16 units. However, for DS-I consumers the SBPDCL had considered an average consumption of 1.52 units per consumer per day, but as per actual of FY 2014-15 average consumption per consumer per day was about 1.45 units. Accordingly, the State Commission considered 1.54 units per consumer per day for DS-I Category consumers and accordingly the figures were revised. The SBPDCL submitted before this Tribunal that disallowance of 996.32 M.U. for DS-I and DS-II Category will have an implication on average billing rate/realization rate and there will be gap of Rs.54.45 Crores, which will have adverse effect on the financial position of the utility. This Tribunal observed that the SBPDCL intends to achieve “24x7 power for all” and

are required to release connection in the defined timelines and therefore, considering the progress of the licensee in the ensuing period the State Commission can consider projections and number of consumers afresh for the FY 2017-18 onwards.

Q. The State Commission, considering the data available and the figures of the SBPDCL itself, observed that total energy sales for DS-I and DS-II Category approved by the State Commission in the review of FY 2015-16 is only 2406.86 M.U. i.e. 102.06 M.U. less. Therefore, the contention of the SBPDCL before this Tribunal was not correct. However, while truing up for FY 2015-16, in the next Tariff Order the State Commission agreed to consider the actual as per audited annual accounts of FY 2015-16. The State Commission also agreed that based on actual progress of consumer addition in Kutir Jyoti and DS-I in the FY 2016-17, the projection for ensuing FY 2017-18 would be considered.

R. **Recovery of Gap/(Surplus) of the Past Period:**

Regarding the sixth issue i.e. recovery of gap/(surplus) of past period the respondent SBPDCL submitted before this Tribunal that the State Commission in its impugned order has determined notional revenue surplus of the previous years of Rs.642.92 Crores upto FY 2013-14, as per the Tariff Order dated 16.3.2015. The contention of the respondent SBPDCL had been that the said period pertains to erstwhile Bihar State Electricity Board (BSEB) which remained with the State Government and the SBPDCL did not get any surplus amount in the opening balance sheet notified by the State Government from the transfer scheme. Upon such submission

the Tribunal observed that the State Commission has to adjust the past period surplus on the basis of excess money recovered from the consumers in past and such surplus revenue should go back to the consumers. The State Commission has also noted in para F-3 of the impugned order that in the order dated 14.7.2013 in Case No. 18 of 2015 dealing with review petition of SBPDCL, it was stated:

“The true up order of Commission for FY 2013 and the Tariff Order for FY 2015-16, stands reviewed to the extent and as per observations made in para 5.3.7 and 5.3.9 of the order. The issue of carrying/holding cost on the deficit/surplus in the true up order for FY 2013-14 as discussed in para 5.3.6 above shall be considered at the time of true up of ARR for FY 2015-16.”

Accordingly, this Tribunal observed that disallowance of carrying cost over the deficit and surplus of the past period pertaining to erstwhile BSEB deserves to be reviewed by the State Commission.

- S. Based on the aforesaid submission of the respondent SBPDCL as also the direction of this Tribunal the State Commission considered the transfer scheme which came into effect from 1st of November, 2012 and the successor entities i.e. DISCOM had submitted audited account for the FY 2012-13 for the period 1.11.2012 to 31.3.2013. True up of FY 2012-13 resulted in a surplus of Rs.801.51 Crores which was discussed in detail as per Table-4.48 of the true up order for FY 2012-13. The State Commission considered Regulation 22(2) of the BEREC (Terms & Conditions for Determination of Tariff) Regulations, 2007, as also Regulation 14 of the BEREC

(Multi Year Distribution Tariff) Regulations, 2015, which provides that the revenue gap of the next year shall be adjusted as a result of review and truing up exercise and it is to be considered while determining the ARR of ensuing year(s). The State Commission categorically observed that adjustment of revenue gap of Rs.307.67 Crores of FY 2013-14 was made against the total revenue surplus of Rs.1215.33 Crores which was available at the end of FY 2012-13, leaving behind a balance revenue surplus of Rs.907.66 Crores for adjustment against future ARR of the DISCOMs along with carrying cost, which has been worked out at Table-33 of the impugned order. The State Commission clearly observed that the respondent SBPDCL had not raised any dispute with regard to correctness of surplus, as a result of truing up of past years before. However, it had raised the issue of quantum of carrying/holding cost, only, in its review petition filed against the Tariff Order for FY 2015-16 in Case No. 19 of 2015. In view of the fact that the liabilities were transferred and vested to the DISCOMs in terms of Section 131(2) of the Act, the State Commission found that the financial account as on the cutoff date includes receivables from the consumers also. The receivables from the consumers are nothing but unrealized revenue from the consumers which had been raised on the tariff rates notified by the State Commission for the relevant financial year. Thus, the receivables from the consumers, incorporated in company's financial account, include the consumer dues for the relevant period, which also includes the surplus that has been billed at higher tariff notified based on higher ARR and thus, the State Commission

rejected the contention of the SBPDCL that true up surplus relates to BSEB and is not available to the DISCOM. However, with regard to carrying cost the State Commission has held that true up of FY 2015-16 is still left and the same shall be examined at the time of true up for FY 2015-16. The order of review petition in Case No. 19 of 2015 dated 14.7.2015 also clarifies that the issue of carrying cost/holding cost on the depreciation/surplus arising out of true up FY 2013-14 will be considered at the time of true up accounts for the FY 2015-16. The said finding of the State Commission is based upon the decision of this Tribunal in Appeal No. 160 of 2012 (Reliance Infrastructure Ltd. Vs. Merc and others).

T. Employee Cost:

Regarding employee cost and A&G expenditure for financial year 2016-17 to FY 2018-19, the State Commission in consonance with Regulation 22.1 of BERC (Multi Year Distribution Tariff) Regulations, 2015 had observed that a separate trajectory of norms for each component of operation and maintenance expenses, but the Commission could not specify the norms for O&M expenses for MYT control period. The State Commission could not specify such norm since the Regulation provides that the norms shall be based on last three years' audited accounts, whereas the SBPDCL had only two full years (12 months' period) i.e. FY 2013-14 and FY 2014-15 and therefore, the State Commission had approved employee cost based on the approved true up figure of FY 2014-15 with an inflationary index at 5.25%. The details has been provided in Table-37 of the order dated 8.3.2017. The SBPDCL submitted before this Tribunal that the cost was

based on actual expenditure as per audited annual accounts of FY 2014-15 with escalation at 8.11% and therefore, for the purposes of calculating the employee cost for FY 2016-17, 2017-18 and 2018-19, the State Commission ought to have calculated the employee cost arrived at for FY 2015-16. The Tribunal observed that since the State Commission has taken employee cost as per audited account for FY 2014-15 to estimate the employee cost for 2016-17 to 2018-19 with an inflammatory indexation at 4.65%. In view of the fact that A&G expenses for FY 2015-16 are now available as stated by the SBPDCL, the State Commission may look into the employee cost and A&G expenses for FY 2015-16 and subsequently treat A&G expenses of FY 2015-16 a base year for estimating the same for FY 2016-17 onwards.

- U. The State Commission after analyzing the figures and submission made by the SBPDCL came to the conclusion that the employee cost claimed in the MYT tariff petition by the SBPDCL is based on projections/estimates and are subject to variations with reference to actual. The petition being based on actual revenue and expenditure as per audited accounts of FY 2015-16 and the APR and ARR are based on revised estimate of FY 2016-17 and 2017-18, the earlier estimates submitted for FY 2015-16 to FY 2018-19 are therefore subject to revision and as such, the effect of employee expenses will be considered while truing up FY 2015-16, APR for FY 2016-17 and ARR for 2017-18 in the Tariff Order to be notified for FY 2017-18. Similarly, with regard to A&G expenses the State Commission observed that till the norms of A&G expenses is

satisfied as per Regulation 22.3 the actual historical cost will be considered for determination of A&G expenses, the reason assigned being the same that the audited accounts of the SBPDCL has not completed a cycle of three years which is necessary for framing Regulations under Regulation 22(1) of the BERC (Multi Year Distribution Tariff) Regulations, 2015. Accordingly, no separate order was passed on the issue of employee cost and A&G expenses.

V. **Distribution Loss:**

With regard to distribution loss trajectory in the multi-year tariff the SBPDCL had proposed loss trajectory for control period of FY 2016-17 to FY 2018-19 as under:

Financial Year	Distribution Loss
2016-17	39.07%
2017-18	36.07%
2018-19	33.07%

The State Commission in its order dated 21.3.2016 has referred that the discussion with regard to distribution loss have already been made in earlier tariff orders and fixed loss trajectory for control period FY 2013-14 to FY 2015-16 for both the DISCOMs in the Tariff Order dated 15.3.2013, as under:

Financial Year	Distribution Loss
2013-14	23.00%
2014-15	21.40%
2015-16	20.00%

Considering the entire aspect of the matter, as also Ujwal DISCOM Assurance Yojna (UDAY) and the commitment of the State Government, the State Commission had approved distribution loss for both the DISCOMs as under:

Financial Year	Distribution Loss
2016-17	19.25%
2017-18	18.25%
2018-19	17.00%
2019-20	15.00%

The SBPDCL submitted before this Tribunal that the State Commission has not duly considered the distribution loss trajectory as committed under the UDAY Scheme, which is as under:

Year	State Commission's approved Distribution Loss Trajectory	Distribution Loss Trajectory as per UDAY Scheme
2016-17	19.25%	34%
2017-18	18.25%	30%
2018-19	17.00%	22%
2019-20	15.00%	15%

W. The Tribunal after considering the issue, observed in its order dated 25.11.2016 as under:

“We do not wish to interfere with the impugned findings of this State Commission in its order since State Commission is in a better position to ascertain the efficiency of the appellant. However, since matter is being remanded to the State Commission for various issues as brought out above, we would like to state only that the State Commission should have to relook and decide only to the extent that such nos. should not become unachievable, but not on account of inefficiencies of the appellant, if the State Commission observes so.”

The State Commission had filed an affidavit before this Tribunal on earlier occasion, had categorically stated that the SBPDCL has never been able to improve its operational efficiency matching with the distribution loss trajectory and the State Commission has been disallowing the additional power purchase cost due to excess T&D loss. However, such disallowed power purchase cost is being borne by the Government of Bihar. The Commission in clear words had submitted before this Tribunal that while approving the distribution loss trajectory for second control period the Commission had taken into consideration the commitment of the State Government to reduce AT&C loss to 15% by FY 2019-20 and had approved distribution loss trajectory for both the DISCOMs starting from last approved level of distribution loss at 20% for FY 2015-16. From Table-47 as contained in the order dated 8.3.2017, it is manifest that the T&D loss proposed by the BSEB in the year 2006-07 was 42.61% and the distribution loss proposed by the SBPDCL for FY 2015-16 is 48.52%. Table-47 clearly reveals inefficiency on the part of the DISCOM, still the State Commission has revised the T&D loss trajectory for FY 2017-18 at 30% against earlier approval of 18.25% and for FY

2018-19 at 22% against earlier approval of 17%. The reason behind such revision is that if the same is not aligned to UDAY trajectory the State Government assistance would not be available to the DISCOMs, which is factually incorrect since in the past also the State Government had provided assistance which were already considered by the State Commission. Thus, it tantamounts to a 'U' turn in the stand which was taken by the State Commission and had crystallized through the years.

9. QUESTIONS OF LAW:

The following questions of law arise in the present appeals:

- (a) Whether the State Commission is justified in allowing power purchase cost without a prudent check?
- (b) Whether in the fact and circumstances of the case the State Commission is justified to allow depreciation on the asset created from the funds of the public money, provided by the State/Central Government as grants, particularly wherein the amount is not to be repaid by the DISCOM?
- (c) Whether in the facts and circumstances of the case the State Commission is justified in granting return on equity on the asset created from the funds of public money provided by the State/Central Government as grant, which needs not to be paid by the DISCOM?
- (d) Whether the State Commission is justified in granting return on equity against accounting principle that return cannot be claimed on the public money?
- (e) Whether the State Commission is justified in allowing such return on equity only on the basis of the letter issued by the State Government to the DISCOM that the money which

has been received through grant has to be treated by the DISCOM as equity?

- (f) Whether the State Commission is justified in revising the distribution loss from 18.25% to 30% for FY 2017-18 and 17% to 22% for FY 2018-19?
- (g) Whether the State Commission is justified in revising, particularly in view of the order passed by this Tribunal in Appeal No. 126 of 2008 and Appeal No. 128 of 2008?
- (h) Whether the State Commission is justified in not granting benefits of surplus of Rs.526.44 Crores arrived in truing up for FY 2013-14 along with carrying cost and onward net gap/surplus of FY 2015-16 having not been determined accordingly?
- (i) Whether the State Commission is justified in reviewing its earlier decision which was not in issue, as UDAY Scheme was already considered in the earlier tariff orders and the State Commission did not deviate from the trajectory approved by it, earlier?

10. The learned counsel Mr. Buddy A. Ranganadhan, appearing for the Respondent no. 1/State Commission submitted the following written submissions:-

(a) Power Purchase Cost

This Tribunal in Appeal No. 142 of 2016, on the issue of Power Purchase Cost in respect of Rangit and Teesta power projects of NHPC Ltd., has noted the submissions of Bihar Industries Association (“BIA”) and held as under:-

“14

“True up for FY 2014-15

Power Purchase Cost

(ii) *We have observed that the generating companies such as NTPC, NHPC Ltd. are central sector entities whose tariff has been determined by the Central Commission and such tariff is taken by State Commission as provided in rule 8 of the Electricity Rules, 2005. There is no fresh determination by the State Commission.*

“*(vi) We have observed that there is otherwise no dispute in regard to the above aspect of power purchase cost from generating stations of NHPC Ltd. The Appellant in Appeal No. 142 of 2016 has filed reconciliation statements and states that the Appellant has given effect to the above receipt from NHPC in the next financial year. The Appellant’s grievance is limited to the accounting treatment given to the receipts in the FY 2014-15.*”

“*(viii) In respect of this Issue, we direct the State Commission to re-examine to the extent to which the power purchase cost is to be allowed on the quantum of power purchase allowed with reference to all the bills from the generators and other sources of power procurement and if the State Commission finds any specific quantum of power purchase claim is not supported by such bills may seek specific documents from the Appellant in this regard. The State Commission should also treat the power purchase rate of NBPDCCL for FY 2014-15 as per audited accounts as there is eventually no adverse impact on the consumers.,*

In the Impugned Order dated 08.03.2017, the State Commission has noted the above findings of the Tribunal and has reconsidered

only the issue of disallowed power purchase cost of Rangit and Teests HPS”

“Order of the Commission on Issue No. 1

In the light of the above discussions, the Commission approves additional power purchase cost of Rs.30.33 crore (8.49 + 21.84) for FY 2014-15 in revised truing up.”

The State Commission has elaborately discussed the issue in the Impugned Order dated 08.03.2017. It is clear that there is no change in quantum of energy (MUs) as approved by the State Commission on remand from this Tribunal. There is also no adverse effect to the consumers as found by this Tribunal since the State Commission has not permitted in an overall manner any extra expenditure. The State Commission has, in accordance with the directions of this Tribunal, reworked the financials of FY 2014-15 to account for the receipts from NHPC Ltd. The purchase bills which were mainly cost adjustment bills and not presented by Respondent No.2 during passing of earlier tariff order dated 21.03.2016, have been admitted by the State Commission, without any change in quantum of energy. The State Commission has also stated that it will ensure that the income against sale of regulated power by NHPC in 2014-15 booked under prior period income in the audited amount of FY 2015-16 by Respondent No. 2 is considered after prudence check in truing up of FY 2015-16.

The State Commission has allowed the power purchase cost based on prudence check. The State Commission has balanced the interests of the consumers and the Respondent No. 2 and there is no need for interference in the power purchase cost.

(II) Depreciation and Gross Value of Assets

This Tribunal in Appeal No. 142 of 2016, on the issue of Depreciation and Gross Value of Assets, has noted the submissions of Bihar Industries Association (“BIA”) and held as under:-

“14.....

.....

“True up for FY 2014-15

.....

Depreciation and Gross Value of Assets.

.....

.....

(iii) *Depreciation is the tariff element which enables the utility to repay the debt borrowed for funding the assets. The depreciation is calculated on the gross value of the assets (excluding land) and is allowed up to 90% of the value.*

.....

.....

“(iv) *In our opinion, the depreciation is an important segment and needs to be re-examined by the State Commission keeping in view the relevant details submitted by the Appellant subject to its prudent check. The Appellant is entitled to raise the issue of rate of depreciation also before the State Commission while the depreciation amount is being re-examined by the State Commission.*”

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.....

“Based on the funding of capitalisation approved above, the Commission has revised the computation of depreciation for FY 2014-15 as given below:

Table 13: Depreciation approved for FY 2014-15 (Rs. Crore)

.....

.....

The Commission, accordingly, approves revised depreciation as 'Nil' for FY 2014-15 in truing up as given in the Table 13 above."

The State Commission has considered the capitalisation of assets funded through BRGF grant as Equity contribution from the State Government in accordance with the correspondence with the State Government as detailed in the order and the Final Accounts of the licensee. The funding of capitalisation has bearing on Depreciation, Return on Equity and interest on loans. Accordingly, the State Commission has revised the depreciation, return on equity, interest on loans and consequential effect of revision on the working capital requirement and interest on working capital.

The State Commission has allowed depreciation on the assets put to use at the applicable rates specified by the Central Commission in terms of BERC Tariff Regulations. The State Commission has correctly treated BRGF funding as equity in the order dated 08.03.2017. Accordingly there is no interference required in the findings of the State Commission on the said issue.

Having noted the submissions of Appellant BIA and also of Respondent No.2 discom, this Tribunal arrived at following findings:-

"16.....

Return on Equity

(i) *The State Commission in its Impugned Order has stated that in the past years, the State Commission has considered equity*

capital only to the extent of Rs. 385 crores and continued the same even for the subsequent years including the period considered in the Impugned Order.

(ii) The State Commission observed that if the equity capital as claimed by the Appellant is accepted, it shall be much in excess of the gross fixed assets.

(iii) The matter for consideration is only whether the amount contributed by the State Government towards equity capital should be considered equity or not. To be fair to the Appellant, the State Commission is directed to re-examine whether the contribution of the State Government towards equity capital should be considered as equity or not and accordingly pass an appropriate order.”

In the Impugned Order dated 08.03.2017, the State Commission has noted the above findings of the Tribunal and has reconsidered only whether the amount contributed by the State Government towards equity capital should be considered equity or not, as under:-

“Order of the Commission on Issue No. 3 : RoE

Accordingly, in view of the above, the Commission has computed revised return on equity for FY 2014-15 as detailed in the Table 18 below:

Table 18: Return on Equity approved for FY 2014-15 (Rs. Crore)

The Commission, accordingly, approves Return on Equity at Rs.54.69 Crore in true up for FY 2014-15.”

The State Commission has revised the depreciation, return on equity, interest on loans and consequential effect of revision on the working capital requirement and interest on working capital. Further, that the State Commission has allowed return on equity on the capital base apportioned in the debt (70%) equity (30%) ratio and return has been allowed on the equity as specified in the BERC

Tariff Regulations. Since the BRGF funding of capital assets is considered as equity based on the State Government orders, the assets capitalised in respect of BRGF schemes also qualify for the RoE. Accordingly, RoE has been allowed by the State Commission which needs no further interference.

(iv) Net Prior Period Charges

The issue of Net Prior Period Charges, Respondent Discoms have challenged the order dated 08.03.2017 before this Tribunal in Appeal No. 117 of 2017 and Appeal No. 118 of 2017. The State Commission re-affirms its submissions made in the reply to aforesaid Appeals and seeks leave to refer and rely on the same during course of hearing of the present appeal. Submissions made by the State Commission in those appeals are equally applicable in the present appeal and are not repeated herein for sake of brevity.

Without prejudice to the above, it is submitted that the disallowance of net prior period expenses/income of the discoms, has been held in favour of consumers. The effect of such disallowance is that the consumers would benefit and the burden of disallowed expenses wouldn't be passed on the consumers. The Appellant BIA cannot possibly have any grievance against such disallowance by the State Commission. Therefore the said issue has been raised by the Appellant without showing any cause of action and is liable to be rejected. It is also a matter of record that the Appellant BIA had contended before this Tribunal in Appeal No. 142 of 2016 as under:-

***"14.....
Net Prior Period Expenses***

(i) *The State Commission has purely provided on the details given by the Appellant to the State Commission. The State Commission has clearly recorded that the Appellant did not produce the yearwise break up of the expenses. Therefore, the State Commission has correctly computed the prior period expenses.*

Therefore the Appellant/BIA had supported the State Commission's order on the issue of net prior period expenses. Now, vide the Impugned Order dated 08.03.2017, State Commission has once again disallowed the net prior period expenses for which the detailed break-up was not provided by Respondent Discoms and yet the Appellant has again chosen to challenge the same. Thus, there can be no grievance by the Appellant, having supported the findings of the State Commission on this issue earlier. There are also no grounds mentioned by the Appellant in the appeal-paperbook pertaining to this issue.

(v) Energy Sales

Having noted the submissions of Appellant BIA and also of Respondent No.2 discom, this Tribunal arrived at following findings:-

“Energy Sales

(i) *The Appellant has stated that it has been implementing schemes initiated by the Central and the State Government for providing “24x7 power for all” pursuant to a joint initiative of Central and State Government and joint agreement is signed by both the Central and State Government of Bihar. Under the above, it is the obligation of the Appellant to meet the commitment made by the State Government to Government of India. The Appellant further contended that the above would result in the considerable increase in consumer number and average consumption and it is required*

to release the connections to DS-I category which is domestic rural supply.

.....
.....

(iii) We have noted the submissions of the Appellant that during 2014-15, the “24x7 power for all” plan was not formulated and the supply hours were much lower and the substantial reduction on the sales estimated by the Appellant has increased the average billing rate which will have an adverse effect on the financial position of the utility.

(iv) We have noted the submissions made by the Appellant that they have awarded the contracts for electrification of the unelectrified consumers for FY 2016. The contracts shall be completed in the FY 2017 enabling release of connections to such consumers as envisaged in the “24x7 power for all” programme or contracts and they are committed to release connections in the defined timelines.

(v) Our observation on this issue is limited to the point that the progress on the part of the Appellant in implementing these schemes in the remaining part of the current financial year could be kept under close watch and if considerable progress is achieved by the Appellant in the ensuing period, the State Commission can reconsider the projections and consumers mix etc. afresh for FY 2017-18 onwards.

In the Impugned Order dated 08.03.2017, the State Commission has noted the above findings of this Tribunal and has observed as under:-

“E-6 Commission’s analysis and Order on Issue No. 5: Energy Sales

.....
.....

“The Table above shows that the total energy sales for DS-I and DS-II categories approved by the Commission in ‘Review’ for FY 2015- 16 is 2829.68 MU whereas actual achieved is only 2397.61 MU i.e 432.07 MU less sales achieved and hence NBPDC

contention before Hon'ble APTEL is not true. However, while truing up for FY 2015-16 in the next tariff order, the Commission will consider actual as per audited annual accounts of FY 2015-16."

This Tribunal had upheld the determination of Energy Sales by State Commission vide its order dated 25.11.2016. This Tribunal however directed that the progress on the part of Respondent Discoms in implementing the schemes in remaining part of the current financial year could be kept under close watch and if considerable progress is achieved by Discoms in the ensuing period, State Commission can reconsider the projections and consumers mix etc. afresh for FY 2017-18 onwards."

The State Commission has approved energy sales of 1153.93 MU against the projection of 2141.67 MU for DS-II category for FY 2015-16 in APR but not for KJY, DS-I and DS-II category of consumers. Similarly, the State Commission has considered 1.63 Units per day for DS-I category consumers but not 1.54 units per consumer per day as incorrectly stated by Appellant BIA in the appeal. However, it is further resubmitted that while truing up for FY 2015-16, the State Commission has considered the energy sales for KJY, DS-I and DS-II categories of consumers as per actual as reported in the audited accounts of FY 2015-16.

In the APR for FY 2015-16, the State Commission has approved energy sales of 2829.68 MU for DS-I and DS-II category of consumers against which the actual achieved are only 2397.61 MU. While truing up for FY 2015-16 the actual energy sales of 2397.61 MU are approved. Hence there is no issue or discrepancy in the determination of the State Commission on energy sales.

(vi) Recovery of Gap/Surplus of past period

The issue of Recovery of Gap/Surplus of past period, Respondent Discoms have challenged the order dated 08.03.2017 before this Tribunal in Appeal No. 117 of 2017 and Appeal No. 118 of 2017. The State Commission re-affirms its submissions made in the reply to aforesaid Appeals and seeks leave to refer and rely on the same during course of hearing of the present appeal. Submissions made by the State Commission in those appeals are equally applicable in the present appeal and are not repeated herein for sake of brevity.

Without prejudice to the above, it is submitted that issue of disallowance of Recovery of Gap/Surplus of past period has been held in favour of consumers. The effect of such disallowance is that the consumers would benefit and burden of disallowed expenses would not be passed on to consumers. Thus, there can be no grievance at all by the Appellant/BIA when the said issue has been decided in the favour of the consumers.

(vii) Employees Cost and A&G Expenditure

This Tribunal in Appeal No. 142 of 2016, on the issue of Employees Cost and A&G Expenditure has noted the submissions of the Appellant BIA and held as under:-

“16.....

Employee Cost and A&G Expenditures

.....
.....

(iii) *In light of the fact that the details of both these employees cost and A&G expenses for FY 2015-16 are now available as stated by the Appellant, the State Commission may look into the employee cost and A&G expenses for the FY 2015-16 and subsequently employee cost and A&G expenses for FY 2015-16 should be considered a base year for estimating the same for the FY 2016-17 onwards. Since the matter is being remanded to the State Commission, the Appellant is given the liberty to raise the above aspect in the remand proceedings with satisfactory details for consideration in regard to Employees Cost and A&G expenses.*

The findings of the State Commission in the Impugned Order with regard to the said issue are as under:-

“G. Issue No. 7 : Employee Cost and A&G Expenditure (FY 2016-17 to 2018-19)

.....

*“The Petitioner has filed tariff petition for true up of FY 2015-16, Annual performance review (APR) for FY 2016-17 and Aggregate Revenue Requirement (ARR) and determination of tariffs for FY 2017-18 in December, 2016. The petition is based on the actual revenue and expenditure as per audited accounts for FY 2015-16 and the APR and ARR are based on the revised estimates for FY 2016-17 and FY 2017-18. The earlier estimates submitted for FY 2015-16 to FY 2018-19 are therefore subject to revision and as such the effect of **employee expenses will be considered while truing up for FY 2015-16, APR for FY 2016-17 and ARR for FY 2017-18 in the Tariff Order to be notified for FY 2017-18.**”*

.....
.....

No grounds have been raised by Appellant/BIA in the appeal to show as to how it is prejudiced by the determination on this issue. In the absence of any specific grounds, the State Commission is

unable to trace any prejudice or infirmity with the Employees Cost and A&G Expenditure determined for Respondent Discoms. Accordingly, the alleged issue raised by the Appellant is liable to be rejected.

(viii) Distribution Losses Trajectory

This Tribunal in Appeal No. 142 of 2016, on the issue of Distribution Losses Trajectory has noted the submissions of the Appellant BIA and held as under:-

“16.....

Distribution Losses Trajectory

(iii) We have also noted that the reasoning of the State Commission to the effect that a non-achievement of loss level as per the trajectory already decided by the State Commission is on account of the inefficiencies of the Appellant and the consumers should not be burdened for such inefficiencies.

(iv) We do not wish to interfere with the impugned findings of this State Commission in its Order since the State Commission is in a better position to ascertain the efficiency of the Appellant. However, since the matter is being remanded to the State Commission for various issues as brought out above, we would like to state only that the State Commission should have to relook and decide only to the extent that such numbers should not become unachievable but not on account of the inefficiencies of the Appellant, if the State Commission observes so.

In the Impugned Order dated 08.03.2017, the State Commission has noted the above findings of this Tribunal and has observed as under:-

“H. Issue No. 8 : Distribution Loss Trajectory

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“From the above, it can be seen that although the Commission has been approving moderate loss reduction trajectory year on year in the tariff orders since by 2006-07, neither the erstwhile BSEB nor the present Distribution Licensee has been able to achieve the distribution losses target despite huge capitalization during the period.”

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*“The distribution loss is a controllable parameter and it is the responsibility of the Distribution Licensee to take appropriate effective steps to bring down the distribution loss to the approved levels. In this connection, **the Commission had given a number of directives to improve the performance of distribution licensees, which if implemented in true spirit, should have brought down the Distribution loss level considerably.**”*

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“The Commission observes that since the Distribution companies are not able to achieve loss reduction targets set by the Commission due to various reasons and the gap between the actual and approved distribution losses has increased to unachievable level. After the signing of MoU under UDAY, SBPDCL/NBPDCL is committed to bring down distribution loss to the level as specified in the UDAY Scheme. It has been submitted by the petitioner that the State Govt. as per the signed MoU under UDAY may provide assistance under Operational Funding Requirement (OFR). The Commission opines that if the distribution loss trajectory is not aligned to UDAY trajectory, the State Govt. assistance, if any, would not be available to Discoms to meet the differential losses between trajectory set by the Commission and the Distribution loss trajectory given in UDAY. It may incur additional financial losses which may jeopardize the financial turnover of the Discoms as enunciated in the UDAY scheme. It will ultimately adversely affect the quality of service to the consumers also.

Under the circumstances, the Commission thinks it appropriate to revise the distribution loss trajectory for FY 2017-18 & FY 2018-19 in line with that of UDAY and approves the revises T&D Loss of NBPDCL as under:”

The State Commission has reviewed the year after year distribution loss trajectory as approved by it vis-à-vis actual achievement. Although State Commission has been approving moderate loss reduction trajectory year after year in the tariff orders since FY 2006-07, neither the erstwhile BSEB nor the Respondent No.2 DISCOMS have been able to achieve the distribution loss target despite huge capitalization during the period.

The distribution loss is a controllable parameter and it is the responsibility of the Distribution Licensee to take appropriate effective steps to bring down the distribution loss to the approved levels. The State Commission has noted that Respondent No.2 could not achieve the target of reduction of distribution loss year after year. By controlling the commercial losses by duly providing meters to all connections, regularizing all the unauthorized connections to avoid theft of energy, periodically recording meter readings correctly, replacing defective meters promptly, fixing accountability on the officials for their failure to achieve the loss reduction target, etc., the overall distribution losses could have been reduced drastically. The State Government has been compensating the cost of additional power purchase due to non-achievement of approved distribution loss by the distribution companies. In the event of non-availability of Government assistance, the Discoms would have no alternative but to improve its operation efficiencies.

Respondent No.2 had submitted that the Discom, Government of Bihar and the Government of India have signed a tri-partite MOU under UDAY on 22.02.2016 wherein apart from others, improvement in operational efficiency of Respondent No.2 has been mandated with specific AT&C Losses.

The State Commission has observed that since the Distribution companies are not able to achieve loss reduction targets set by the State Commission due to various reasons, the gap between the actual and approved distribution losses has increased to unachievable levels. After signing of the MOU under UDAY, Respondent No.2 has committed to bring down distribution losses to the level as specified in the UDAY Scheme. Respondent No.2 has further submitted that the State Commission is of the view that if the distribution loss trajectory is not aligned to UDAY trajectory, the State Government assistance, if any, would not be available to Discoms to meet the differential losses between trajectory set by the State Commission and the Distribution Loss trajectory given in UDAY. It may incur additional financial losses, which may jeopardize the financial turnover of the Discoms as enunciated in the UDAY scheme. It will ultimately adversely affect the quality of service to the consumers also.

Under the circumstances, the State Commission has considered it appropriate to revise the distribution loss trajectory for FY 2017-18 & FY 2018-19 in line with that of UDAY and approved the revised T&D Loss of Respondent Discoms:-

This Tribunal in Appeal No. 142 of 2016 had directed the State Commission to “relook and decide only to the extent that such numbers should not become unachievable but not on account of the inefficiencies of the Appellant, if the State Commission observes so”.

11. We have heard learned counsel appearing for the Appellants and learned counsel appearing for the Respondents at considerable length of time and we have gone through the written submissions carefully and also taken into consideration the relevant material on records available in file. On the basis of the pleadings and submissions available, the following main issues emerged in the instant appeals for our consideration:

Appeal No. 117 of 2017 and Appeal No. 118 of 2017

- i) Whether the State Commission has rightly considered the issue of Net Prior Period Charge?
- ii) Whether the State Commission is right in considering the recovery of surplus of past period pertaining to erstwhile BSEB period?

Appeal No. 120 of 2017 and Appeal No. 121 of 2017

- i) Whether the State Commission has rightly considered various aspects listed as under while truing up ARR of the North Bihar and South Bihar Power Distribution Company Limited?
 - a) Power Purchase Cost
 - b) Depreciation
 - c) Return on Equity

- d) Energy Sales
- e) Distribution Loss Trajectory

Our findings and analysis

Appeal No. 117 of 2017 and Appeal No. 118 of 2017

Issue No.1.

11.1 The State Commission had allowed all the prior period revenue and expenses claimed by the Appellant in truing up for the FY 2014-15 except the item of negative prior period sale of power. The State Commission asked the Petitioner to furnish yearwise break up of prior period income and expenses for further analysis. However, the Petitioner could not furnish such details despite reminder from the State Commission. Against the aforesaid requirement of the State Commission the Petitioner submitted in digital form division-wise details of correction amount with date of correction. But, these details according to the State Commission, served no purpose as it did not contain the requisite yearwise break up of the corrected amount involved. In view of this fact, the State Commission disallowed negative prior period sale of power. Further in compliance of this Tribunal order the State Commission reopened the case and during the hearing on 22.12.2016 directed the Petitioner to submit details of negative prior period sale of power showing yearwise break up and indicating the period for which the amount relates to. In response, the Petitioner reiterated its earlier reply and did not submit the requisite details desired by the State Commission. Accordingly, the State Commission vide Impugned Order dated 08.03.2017 once again disallowed the net

prior period expenses for which the detailed yearwise break up was not provided by the Petitioner (now Applicant).

11.2 Learned counsel for the Appellant for the Discoms Mr. M.G. Ramachandran, contended that divisionwise details for the prior period expenses in respect of relevant years was submitted to the State Commission in a digital form. He further submitted that the yearwise break up of prior period sale of power as desired by the State Commission will not be possible to furnish as this would entail capturing numerous/thousands of transactions. The Appellant is however willing to subject its documents to be inspected by an authorised person designated by the State Commission for such inspection as the State Commission may direct to undertake any prudence check. The learned counsel further contended that the details furnished by the Appellant ought to have been considered by the State Commission as an adequate supporting document but the State Commission has taken a stand otherwise.

11.3 The learned counsel for the State Commission Mr. Buddy A. Ranganadhan indicated that the Appellant through its reply has expressed its inability to furnish yearwise break up of negative prior period sale of power on the ground that it would entail capturing of thousands of transactions for which the State Commission was not satisfied. He further submitted that correction in sale of power (in units) will impact the distribution losses of the relevant years and therefore the Discoms were directed to submit the figures of corrected units corresponding to the amount claimed against the prior period sale of power but no such data could be

submitted by the Appellants. The learned counsel for the State Commission further mentioned that the withdrawal of prior period sale of power in both the Discoms have been increasing year on year. For want of data as required by the State Commission from the Discoms, the State Commission has disallowed the reference claims and cited the judgment of this Tribunal dated 23.11.2015 in Appeal No. 128 of 2014 wherein similarly view has been taken.

11.4 We have analysed the contentions of both the parties and note that the Appellants have failed to reply to the exact queries made by the State Commission and skipped the relevant reply stating that it would entail thousands of transactions. It is relevant to point out that the data asked for by the State Commission is a statutory requirement to apply prudent check for which the Appellants have miserably failed to comply with. We further opine that compilation of data and details required by the State Commission may be difficult to some extent but not impossible to accomplish. Due to failure of the Appellants to furnish the requisite data, the State Commission had no option but to disallow the said claim. Accordingly, we do not observe any infirmity or ambiguity in the Impugned Order of the State Commission.

Issue No. 2.

11.5 The learned counsel for the Appellant Mr. M.G. Ramachandran submitted that the surplus computed by the State Commission mainly belong to BSEB period and as per the Section 131(1) of Electricity Act, 2003 such surplus shall vest in the State Government and distribution utilities do not have any association

with the same. There was no cash available or passed on to the Distribution Licensees in their opening books of accounts.

11.6 **Per Contra**, it is the contention of the Respondent State Commission that the assets and liabilities were transferred and re-vested in the Discoms in terms of Section 131 (2) of the Electricity Act, 2003 and it is also observed that the financial accounts as on the cut off date include receivables from the consumers also. Thus the receivables from consumers are nothing but the unrealized revenue from the consumers which had been based on the tariff rates notified by the State Commission for the relevant financial years. The learned counsel further contended that the State Commission has true up surplus reflected in accounts of the Discoms which ultimately belongs to consumers and consumers cannot be deprived of benefit of such surplus. The counsel further submitted that this Tribunal in its order dated 25.11.2016 has also noted that the State Commission in its Impugned Order has to adjust the past period surplus on the basis that the surplus was due to excess recoveries from the consumers in the past and such surplus revenue should go back to the consumers.

11.7 After careful evaluation of the submissions of both the parties, we opine that the State Commission has rightly adjusted the surplus of the past period while making true up of ARR in line with its Regulations and there is no force in the contentions of the Appellants that Discoms have nothing to do with the surplus of erstwhile BSEB period.

Appeal No. 120 of 2017 and Appeal No. 121 of 2017

Issue No. i (a) Power Purchase Cost:

11.8 This Tribunal in its remand directed the State Commission to re-examine to the extent to which the power purchase cost is to be admissible on the quantum of power purchase allowed with reference to all the bills from the generators and other sources of power procurement. It was further directed by this Tribunal that if the State Commission finds any quantum of power purchase claim not supported by such bills may seek specific document from the licensee in this regard. After remanding to State Commission, the State Commission re-examined the whole issue of power purchase cost and after applying prudent check on the claims of both Discoms allowed the reasonable amount pertaining to power purchase cost.

11.9 **Per Contra**, the learned counsel for the Bihar Industries Association, Mr. Suraj Samadarshi contended that the State Commission had allowed all the power purchase cost to both the Discoms without applying proper check. More precisely, the learned counsel pointed out that the power could have been purchased from the alternate source of supply such as power exchange etc. offering reasonable lower tariff.

11.10 We have gone through the findings of the State Commission on this issue and note that sufficient analysis has been carried out by the State Commission before passing the Impugned Order. The learned counsel for the BIA besides making a general

statement and mention of purchase of power from alternate source of supply (presumably at cheaper rates) could not produce or submit any document in support of his contentions. We thus hold that there is no ambiguity in the Impugned Order as far as this issue is concerned.

Issue No. i (b) - Depreciation

- 11.11 While remanding the matter back to the State Commission this Tribunal observed that allowance of depreciation is dependent on the gross value of fixed assets which has to be considered in the relevant financial year. The State Commission taking into consideration the documents submitted by the Bihar State Power Holding Company concluded that the funds received from the State Government under Backward Region Grant Fund (BRGF) (Special Plan) has been taken into accounts of the respective utility as equity investment. Accordingly, the State Commission based on the funding details, approved requisite depreciation for FY 2014-15.
- 11.12 The learned counsel for the BIA submitted that grant coming from Government of India or Government of Bihar should not be treated as equity as such grants are provided for the ultimate benefit of the public/consumers and not for the earnings of the State Utilities. Accordingly, there should not be any depreciation of such amounts causing burden on the consumers.
- 11.13 We have noted from the submissions that the Government of Bihar has clarified that funding under BRGF scheme should be treated as paid up equity and accordingly, the State Commission

has considered the same for computation of depreciation etc. as per its Regulations. We therefore do not observe any infirmity in the Impugned Order on this issue.

Issue No. i (c) Return on Equity

11.14 After hearing all the parties this Tribunal has earlier observed as under:-

“The matter for consideration is only whether the amount contributed by the State Government towards equity capital should be considered equity or not. To be fair to the appellant, the State Commission is directed to re-examine whether contribution of the State Government towards equity capital should be considered as equity or not and accordingly pass an appropriate order.”

11.15 Accordingly, the State Commission considered schemewise capex and capitalisation along with source of funding as provided by the petitioner. In view of BERC regulation, 2007 debt:equity ratio of 70:30 on the net capital base i.e. GFA less capital subsidy/grants and asset revaluation has been considered for arriving at equity/ROE. The State Commission as per the audited account for the FY 2014-15 allowed an addition to the equity and corresponding return on equity. The learned counsel for BIA could not substantiate his arguments for non-consideration of ROE with relevant document/record.

11.16 Thus, we opine that the State Commission has rightly considered the paid up capital and debt:equity ratio of 70:30 for computation of ROE and any intervention from this Tribunal is not called for.

Issue No. i (d) - Energy Sales:

11.17 The State Commission had approved energy sales for the FY 2015-16 pertaining KJY, DS-I and DS-II category of consumers as projected in the ARR. This Tribunal had observed that Discoms intend to achieve “24x7 power for all” and are required to release connections in the defined timelines. In pursuance of this decision, the State Commission considering the data available for both the Discoms approved the energy sales in its review of FY 2015-16. The State Commission also agreed that based on the actual progress of consumer addition in KJY, DS-I and DS-II category in the FY 2016-17 the projection for ensuing FY 2017-18 could be considered. The learned counsel for BIA was in general agreement with the findings of the State Commission and as such we hold the findings on this issue of the State Commission is just and right.

Issue No. i (e) - Distribution Loss Trajectory

11.18 The State Commission in its order dated 21.03.2016 had fixed distribution loss trajectory for the control period FY 2013-14 to FY 2015-16 for both the Discoms. However, with the commitment of the State Government under UDAY scheme, the State Commission reduced loss trajectory as agreed to between Government of India and Government of Bihar. This Tribunal after considering the issue observed in its order dated 25.11.2016 as under:

“We do not wish to interfere with the impugned findings of the State Commission in its order since State Commission is in a better position to ascertain the efficiency of the appellant. However, since matter is being remanded to the State Commission for various issues as brought out above, we would

like to state only that the State Commission should have to relook and decide only to the extent that such nos. should not become unachievable, but not on account of inefficiencies of the appellant, if the State Commission observes so.”

11.19 The State Commission had earlier contended before this Tribunal that the Discoms have never been able to meet their operational efficiency matching with the distribution loss trajectory and the State Commission has been disallowing the additional power purchase cost due to excess loss. However, such disallowed power purchase cost is being borne by the Government of Bihar. The State Commission has indicated that the distribution loss is needed to be aligned to the agreed trajectory failing which the State Government assistance would not be available to the Discoms.

11.20 The learned counsel for the BIA contended that the excess T&D loss reflects the inefficiency on the part of the Discoms and more stringent norms should be prescribed and implemented by the State Commission.

11.21 In fact, the T&D loss is a matter of great concern not only in Bihar but also in other parts of the country and keeping this in view, the Government of India has introduced UDAY scheme in consultation with all the State Governments. The definite statewise loss trajectory has been evolved so as to reduce the distribution losses to a certain percentage as stipulated in the UDAY scheme. It is relevant to note that the State Commission has allowed its loss trajectory up to 2019-20 in line with the same. Thus, we do not observe any laxity on the part of the State

Commission as far as specifying the loss trajectory and its review is concerned.

Summary of our findings:

11.22 In the light of our findings and analysis brought out hereinabove, we firmly opine that the issues raised in the instant Appeal No. 117 of 2017, Appeal No. 118 of 2017, Appeal No. 120 of 2017 and Appeal No. 121 of 2017 filed by the Appellants lack merits and the Appeals are liable for dismissal.

11.23 Further, we do not find any error or a legal infirmity in the Impugned Order. Therefore, the Impugned Order dated 08.03.2017 passed by the Bihar Electricity Regulatory Commission deserves to be upheld.

ORDER

For the forgoing reasons, as stated above, we are of the considered view that the issues raised in the present appeals are devoid of merits.

Hence the instant Appeals filed by the Appellants are dismissed. The impugned order passed by Bihar Electricity Regulatory Commission dated 08.03.2017 is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **25th day of October, 2018.**

(S. D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

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REPORTABLE/NON-REPORTABLE

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