

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

Appeal No. 106 OF 2013

Dated : 16th December, 2015

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

In the Matter of:

Punjab State Power Corporation Ltd.

The Mall, Patiala – 147 001

Punjab.

... Appellant/petitioner(s)

Versus

Punjab State Electricity Regulatory Commission

SCO No. 220-221, Sector 34-A,

Chandigarh – 160 022

... Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan, Mrs. Swapna Seshadri,
Ms. Akshi Seem, Mr. Ishaan Mukherjee,
and Ms. Mandakini Ghosh

Counsel for the Respondent(s) : Mr. Sakesh Kumar, Ms. Arushi Anthwal, Advs.
Mr. Maninder Singh, Dy. Director and
Mr. C. A. Parveen Singh, Jt. Director(M&F),
PSERC

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The present appeal has been filed under section 111 of the Electricity Act, 2003 by the Punjab State Power Corporation Ltd. (hereinafter referred to as the '**appellant**') against the order dated 10.04.2013, passed by the Punjab State Electricity Regulatory Commission (hereafter called the '**State Commission**') in Petition No. 71 of 2012 in the matter of annual revenue requirement for the FY 2013-14 whereby the State Commission has approved the annual revenue requirement of the appellant for the FY 2013-14. The State Commission has also conducted annual performance review of the appellant for the FY 2012-13. The grievance of the

appellant/petitioner in this appeal is that the State Commission has, by the Impugned Order, not allowed the claims of the appellant on the following issues:

- (i) Fuel cost for the generating stations of the appellant
 - (ii) Subsidy to be contributed by the Government of Punjab
 - (iii) Generation incentive
 - (iv) Carrying cost to be allowed for the revenue gap
 - (v) Employees cost
 - (vi) Transit loss on coal
 - (vii) Return on equity
 - (viii) Quantum of short term power purchases by the appellant
 - (ix) Interest and finance charges
 - (x) Working capital requirements of the appellant
- 2) The relevant facts for deciding this appeal are as under;
- 2.1) That the appellant is a company incorporated under the provisions of the Companies Act, 1956. The appellant is an unbundled entity of the erstwhile Punjab State Electricity Board (hereinafter referred to as '**the board**') and has been vested with the functions of generation and distribution of electricity in the State of Punjab.
 - 2.2) That the respondent is the State Electricity Regulatory Commission in the State of Punjab exercising jurisdiction and discharging functions under Section 61, 62, 86 and other applicable provisions of the Electricity Act, 2003. The tariff for the generation of electricity and also the distribution and retail supply of electricity by the appellant to the consumers in the State of Punjab is determined by the State Commission under various provisions of the Electricity Act, 2003.
 - 2.3) That the State Commission had from time to time passed tariff orders as applicable to the appellant (the erstwhile Punjab Electricity Board). These included the tariff orders dated 08.09.2009 for FY 2009-10, tariff order dated 23.04.2010 for FY 2010-11 and tariff order dated 09.05.2011 for FY 2011-12.

In the above tariff orders the State Commission did not provide the reasonable revenue requirements to the appellant and had disallowed various claims of the appellant. Even the review petitions filed by the appellant against the above tariff orders were also not adequately addressed by the State Commission.

- 2.4) That the appellant feeling aggrieved by the above said tariff orders passed by the State Commission, had filed appeal, being Appeal No. 7 of 2011, relating to FY 2009-10, Appeal No.46 of 2011 relating to FY 2010-11 and Appeal No. 122 of 2011 relating to FY 2011-12. This Appellate Tribunal vide judgment dated 18.10.2012 while partly allowing the appeals filed by the appellant and setting aside the tariff orders of the State Commission, had remanded the matters to the State Commission to pass consequential orders in terms of directions and observations of this Appellate Tribunal. This Appellate Tribunal in its afore said judgment, dated 18.10.2012, clearly held that the State Commission is bound by norms and parameters as laid by the Central Commission as applicable from time to time, in view of the Tariff Regulations of the State Commission adopting the tariff regulations of the Central Commission.
- 2.5) That the State Commission undertook the remand exercise in the light of the judgment dated 18.10.2012 of this Appellate Tribunal and vide order dated 07.01.2013 the State Commission disposed of the remand proceedings and did not allow the claim of the appellant on certain issues including the applicable target availability and incentive on generation, the auxiliary consumption for GNDTP generation station of the appellant, carrying cost on the interest on loan taken for the Special Purpose Vehicles (SPVs) by the appellant.
- 2.6) That aggrieved by order dated 07.01.2013 of the State Commission passed in remand proceedings, the appellant filed a Review Petition, being Petition No.10 of 2013 before the State Commission. The State Commission vide Review Order dated 28.03.2013 reviewed the order dated 07.01.2013 and modified the said order, but did not consider the claims of the appellant as sought for. The

appellant aggrieved by the Review order dated 28.03.2013 filed an appeal before this Appellate Tribunal which is pending adjudication.

- 2.7) That the appellant thereafter filed the aforesaid Impugned Petition, being No. 71 of 2012 before the State Commission and thereafter the State Commission undertook the exercise of approval of Annual Revenue Requirements and determination of retail supply tariff for the appellant for FY 2013-14 and also reviewing financials of the appellant for FY 2012-13. The State Commission vide Impugned Order dated 10.04.2013 has disposed of the petition of the appellant as stated above causing aforesaid grievance to the appellant.
- 3) We have heard Mr. Anand K. Ganesan and Mrs. Swapna Seshadri learned counsel for the appellant and Mr. Sakesh Kumar learned counsel for the respondent. We have also gone through the written submissions and also gone through the material on record, including the Impugned Order passed by the State Commission.
- 4) The following issues arise for our consideration:
- i) Whether the State Commission has correctly calculated the fuel cost to be allowed for the generating stations of the appellant?**
 - ii) Whether the State Commission has correctly calculated the subsidy to be contributed by the Government of Punjab for FY 2012-13?**
 - iii) Whether the State Commission has correctly calculated the Return on Equity (RoE) to be allowed to the appellant in terms of tariff regulations?**
 - iv) Whether the State Commission has correctly calculated the carrying cost to the appellant?**
 - v) Whether the employees cost allowed by the Commission is correct?**
 - vi) Whether the State Commission has correctly allowed the transit loss of coal, generation incentive and transit availability for generation?**
 - vii) Whether the State Commission has correctly calculated and allowed the short term power purchase as claimed by the appellant?**

- viii) **Whether the State Commission has correctly calculated the interest and finance charges to be allowed?**
- ix) **Whether the State Commission has correctly allowed the interest on working capital?**

Our issue-wise consideration:

- 5) **Issue No.(i) relating to fuel cost:** On this issue following contentions have been made by the appellant:
- 5.1) That the State Commission has by the Impugned Order, wrongly calculated variable cost of coal for the Thermal Generating Stations of the appellant by limiting the drop in Gross Calorific Value (GCV) between the receipted coal and the fired coal to 150 Kilo cal. by implementing its previous order dated 08.10.2012 and Review order dated 28.03.2013.
- 5.2) That the appellant had challenged the previous order of the State Commission before this Appellate Tribunal in Appeal No. 98 of 2012 which appeal has been dismissed by this Appellate Tribunal vide judgment dated 02.12.2014. In the said circumstances, this issue is fully covered against the appellant by the judgment dated 02.12.2014 in Appeal No. 98 of 2013 of this Appellate Tribunal.
- 6) **Per contra**, the following submissions are made by the respondent on this issue:
- 6.1) That the State Commission vide its order dated 08.10.2012 (in case of *suo motu* Petition No. 42 of 2012) and dated 27.02.2013 in Petition No. 66 of 2012) had directed the appellant to bring down the drop in GCV between the receipted coal and the bunkered coal/fired coal within 150 Kilo Cal./Kg. The State Commission has dealt with this issue of fuel cost adjustment in paragraph 6.4.2 of the Impugned Order. This issue is fully covered by judgment dated 02.12.2014 in Appeal No. 98 of 2013 passed by this Appellate Tribunal.

7) **Our consideration and conclusion on issue No.(i):**

7.1) Since the admitted position is that the said issue is covered by judgment dated 02.12.2014 in Appeal No.98 of 2013 in *Punjab State Power Corporation Ltd. Vs. Punjab State Electricity Regulatory Commission*, passed by this Appellate Tribunal, we decide this issue No.(i) against the appellant affirming the findings of the State Commission on this issue.

8) **Issue No.(ii) relating to subsidy** : On this issue, contentions of the appellant are as under:

8.1) That the State Commission has committed an error in calculation of subsidy to be contributed by Government of Punjab under Section 65 of the Electricity Act, 2003, while determining tariff, thereby causing loss to the appellant. The principle and provisions of Section 65 are that the tariff is to be determined for all consumers in terms of the applicable regulations. When the State Government requires tariff for a class of consumers to be lower, the subsidy is to be provided in advance and in such contingency the tariff is lowered for such consumers. In the present case, the State Government had undertaken to pay the subsidy for the agricultural pump-set consumers whose tariff is lower and the difference is to be paid by the Government of Punjab.

8.2) That the State Commission has erred in not considering the fuel cost adjustment surcharge which is a part of the tariff levied by the appellant during 2012-13 while calculating the subsidy payable by Government of Punjab for the subsidized consumers in the State of Punjab. The State Commission has failed to appreciate that the calculation of subsidy is based on the tariff that is applicable to the subsidized consumers and the tariff as directed to be paid by the Government of Punjab, the difference being the subsidy to be payable by Government of Punjab. In the circumstances, when the tariff applicable included 4 paise per unit from April, 2012 to August, 2012,

14 paise per unit from September to November, 2012, 16 paise per unit from December 2012 to March 2013 which formed a part of the tariff payable by consumers including the subsidized consumers and agricultural consumers, the same ought to have been included in the subsidy payable by Government of Punjab.

8.3) That the State Commission has failed to appreciate that when the State Government had under taken to pay the subsidy, which is the difference between tariff payable by the subsidized consumers and the tariff as directed to be paid by Government of Punjab, the difference need to be paid by Government of Punjab under Section 65 of the Electricity Act, 2003. In the said circumstance, when the tariff actually payable by the subsidized consumers included the component of fuel cost adjustment surcharge levied by the appellant, the same ought to have been directed to be paid by the Government of Punjab. The total impact on account of the above is Rs.90.14 crores which is required to be paid by the Government of Punjab.

8.4) That the appellant cannot recover the above loss of Rs.90.14 crores from the consumers in terms of tariff order which should be contributed by the Government of Punjab as subsidy in terms of Section 65 of the Electricity Act, 2003.

9) **Per contra**, the following are the contentions which were made by the respondent Commission:

9.1) That the State Commission has been allowing consistent tariff hike to the appellant as detailed below :

Year	Tariff hike (%)	Amount (Rs. Crore)
2013-14	9.06	1782.50
2012-13	12.08	1899.32
2011-12	9.19	1325.75
2010-11	7.58	950.86
2009-10	12.42	1300.08

The Tariff in Punjab is on the higher side compared to other States.

- 9.2) That the appellant/utility has failed to take appropriate action to contain the costs which reflects on the inefficiency of the utility. The cost of inefficiency, non-utilisation of resources and policy of non-implementation of cost reduction programme of the utility cannot be passed on to the consumers of the State.
- 9.3) That the subsidy has to be directly contributed by Government of Punjab. The same issue is further covered by judgment dated 17.12.2014 of this Appellate Tribunal in Appeal No. 142 and 168 of 2013, where this Appellate Tribunal held as under :

“17, Consequently, we do not find any illegality or perversity in the findings recorded on the issue of calculation of cross-subsidy based on combined average cost of supply by the State Commission as the same is based upon the amended Regulation 7 as introduced by the second Amendment of the State Regulations, 2012. Further, we do not find any sufficient reason to deviate from the reasoning given by the State Commission in the impugned order on this issue. However, we have given some directions to the State Commission under paragraph 14 above regarding voltage wise cost of supply. Resultantly, Issue No.(i) is decided against the appellants.”

- 9.4) That the State Commission has rightly observed in the Impugned Order that the Fuel Cost Adjustment (FCA) is also payable by Government of Punjab in addition to subsidy. The appellant is not correct in stating that the State Commission has not considered the FCA surcharge on the consumers' subsidy payable by Government of Punjab. The Commission has clearly stated in paragraph 6.4.2 of the Tariff Order for FY 2013-14 (Impugned Order) that fuel cost adjustment surcharge will be payable by Government of Punjab in addition to balance subsidy of previous years i.e. FY 2012-13 and 2011-2012.

10) **Our consideration and conclusion on issue No.(ii):**

- 10.1) We have cited above the rival contentions of the parties on this issue. We have gone through our judgment dated 17.12.2014 in Appeal Nos. 142 and 168 of 2013 in the matter of *M/s Mawana Sugars Ltd. Vs. Punjab State Electricity*

Regulatory Commission & Another and M/s Bansal Alloys & Metals Pvt. Ltd. & Ors. Vs. Punjab State Electricity Regulatory Commission & Ors., in paragraph 17 of which no illegality was found on the issue of calculation of cross subsidy based on combined average cost of supply by the State Commission as the same was based upon the amended Regulation 7, as introduced by the second amendment of the State Regulation 2012.

10.2) To examine the validity or legality of the Impugned Order on this issue we reproduce the relevant part of the Impugned Order as under:

“6.4.2 Balance subsidy of previous years:

- a) *For the year 2012-13 (Review), the Commission determines total subsidy of Rs.5471.78 crore inclusive of interest on delayed payment of subsidy of Rs.133.58 crore. This amount of interest also includes interest levied on the unpaid amount of subsidy of Rs.273.88 crore for FY 2011-12 for the year 2012-13. Against this, GoP has paid an amount of Rs.5059.39 crore during the year. Thus, the balance subsidy and interest payable by GoP for the year 2012-13 works out to Rs.412.39 crore.*
- b) *For the year 2011-12, an amount of Rs.304.66 crore is also outstanding. This is inclusive of interest of Rs.30.78 crore worked out @ 11.24% being the weighted average rate of interest on the loan portfolio of the utility for Fy 2012-13.*

GoP is advised to make payment of the unpaid subsidy of Rs.304.66 crore for FY 2011-12 and Rs.412.39 crore for FY 2012-13 immediately.

- c) *Further, any change in the Fuel Cost from the level approved by the Commission is to be passed on to the consumers as FCA. Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 stipulate the procedure in Appendix-7, according to which any change in fuel cost would be passed on to the consumers on quarterly basis. The subsidy payable by GoP on account of levy of Fuel Cost Adjustment Surcharge, if any, will be in addition to the amount worked out above.*

6.4.3 *Change in subsidy for FY 2010-11, FY 2011-12 and FY 2012-13, if any, will be re-determined at the time of true up of FY 2010-11, 2011-12 and FY 2012-13 when Audited Annual Accounts for these years are made available by PSPCL along with next ARR.*

6.4.4 *GoP in its Letter No. 11/24/2013-PE2/671 dated 04.04.2013 (Annexure-XI) has conveyed approval for the payment of subsidy during the current year. Keeping this decision of GoP in view, the Commission has incorporated the same in the tariff structure in Table 6.1.*

Besides, the Commission has also determined an amount of Rs.697.02 crore payable by GoP to PSPCL upto FY 2013-14 as discussed in para 4.13.12 of this Tariff Order.”

10.3) It appears from the afore stated part of the Impugned Order that the State Commission has advised the Government of Punjab to make payment of the unpaid subsidy of Rs.304.66 Crores for FY 2011-12 and Rs.412.39 Crores for the FY 2012-13 immediately, further making it clear that in case of any change in fuel cost the same would be passed on to the consumers on quarterly basis and the subsidy payable by Government of Punjab on account of levy of cost adjustment amount, if any, will be in addition to the amount worked out above. **The State Commission in the afore stated part of the Impugned Order clearly states that any change in subsidy for FY 2010-11, FY 2011-12 and for FY 2012-13, if any, will be re-determined at the time of true up of FY 2010-11, 2011-12 and 2012-13 when audited annual accounts for these years are made available by the appellant along with next ARR. Thus the State Commission has already given liberty to the appellant to consider the same at the time of true up of the relevant FYs when audited annual accounts are made available by the appellant along with next ARR.**

10.4) In view of above discussions, we do not find any merit in the contentions of the appellant on this issue because if the appellant utility has failed to take appropriate action to contain the costs which reflects on the inefficiency of the utility and the cost of inefficiency, non-utilization of resources and

policy of non-implementation of cost reduction programme of the utility cannot be passed on to the consumers of the State. Hence, this issue is decided against the appellant.

11) **Issue No.(iii) relating to Return on Equity** : On this issue the contentions of the appellant are as under:

11.1) That the return on equity was to be allowed in terms of the Regulations which had adopted the Central Commission's Regulations. In terms of the above, the return on equity was to be allowed at 15.5% with grossing up of tax rate. This issue has already been decided by this Appellate Tribunal as this Appellate Tribunal vide judgment dated 18.10.2012 in Appeal Nos.7, 46 and 122 of 2011 in the matter of *Punjab State Power Corporation Ltd. Vs. Punjab State Electricity Regulatory Commission* held that the return on equity is to be grossed up by applicable tax rate, subject to actual payment of tax and the same have to be applied in the present case also. This is, however, applicable only for the year 2012-13 because for the next FY namely, 2013-14 the learned State Commission had amended the Tariff Regulations to limit the return on equity at 15.5% without grossing up, allowing tax on actual basis.

12) **Per contra**, the following are the submissions which have been made on behalf of the respondent Commission:

12.1) That the appellant has claimed that the return on equity be grossed up with the tax, whereas the State Commission has only allowed return on equity at 15.5% for 2012-13. The appellant is claiming the return on equity based on previous regulations considering that the gross up of return on equity is allowable as per CERC (Terms and Conditions for determination of tariff) Regulations 2004. The Regulation 32 of the State Commission (Terms and Conditions for determination of tariff) Regulations 2005 provides for tax on income if actually liable to be paid as expense. Such provision is not available in the said CERC Regulations 2004.

12.2) Hence, the question of grossing up the return on equity based on previous regulations does not arise as the grossing up of return on equity and tax on income cannot be allowed simultaneously.

13) Our consideration and conclusion:

13.1) According to the appellant, this Appellate Tribunal vide judgment dated 18.10.2012 in Appeal Nos.7, 46 and 112 of 2011 has clearly held that the State Commission was justified in allowing return on equity at 14% instead of 15.5% as claimed by the appellant and in terms of judgment dated 18.10.2012 the return on equity is to be grossed up by applicable tax rate subject to actual payment of tax and the same proposition ought to be applied in the present case, which situation, is however, applicable for the year 2012-13 because for the subsequent year namely 2013-14, the State Commission had amended the Tariff Regulations to limit the return on equity at 15.5% without grossing up and allowing the tax on actual basis.

13.2) Contrary to the above contention of the appellant the respondent Commission submits that the appellant had claimed that ROE be grossed up with the tax, whereas the Commission has only allowed ROE at 15.5% for FY 2012-13. According to the State Commission the said same issue is covered by judgment dated 18.02.2014 in Appeal No. 27 of 2013 of this Appellate Tribunal in the case of *Punjab State Transmission Corporation Ltd. Vs. Punjab State Electricity Regulatory Commission and Punjab State Power Corporation Ltd.* wherein the same State Commission while approving the ARR of the appellant for the FY 2012-13 and also reviewing the revenue requirement for FY 2011-12 had allowed the return on equity only at the rate of 15.5% without giving effect to the entire provision under Regulation 15 of Tariff Regulations of the Central Commission 2009, applicable in the State of Punjab namely, grossing up of return on equity. This Appellate Tribunal in its judgment dated 18.02.2014 (supra) held as under:

“16. It is evident that the learned State Commission in the subsequent order dated 07.01.2013 passed in Petition No. 57 of 2012 (suo-motu) in compliance of this Tribunal’s judgment

dated 18.10.2012 in Appeal Nos. 7, 46 and 122 of 2011 had allowed return on Equity @ 15.5% in place of 14% approved earlier for FY 2009-10. It is true that the State Commission, in the impugned order has allowed Return on Equity @ 15.5% without any grossing up to the Appellant, which is a transmission utility, for FY 2012-13 for the reason, had the Commission allowed Return on Equity at the grossed up rate, it would have amounted to allowing double benefit to the utility to the detriment of the consumers. Since, the Appellant was not liable to pay any income tax or obligatory tax it was not given the benefit of grossing up rate of the Return on Equity. While claiming the grossing up of Return on Equity by the Appellant, its impliedly intension was that the Appellant would claim tax amount in advance whether the liability of the Appellant is to pay the obligatory taxes arises or not. The State Commission in the impugned order has clearly noted that the petitioner Appellant had not claimed any tax liability for its ARR for the years 2011-12 and 2012-13. The impugned order to allow Return on Equity for FY 2011-12 and 2012-13 @ 15.5% without any grossing up with the tax rate seems to be well considered view.

17. The Regulation 15 of the Central Commission Tariff Regulations, 2009 lays down that the Return on Equity shall be computed on the equity base determined in accordance with Regulation 12 thereof and the Return on Equity shall be computed on pre tax basis at the base rate of 15.5% to be grossed up as per clause 3 of this Regulation 15. Clause 3 of Regulation 15 further states that rate of Return on Equity shall be computed by grossing up the base rate with the normal tax rate for the relevant year applicable to the concerned generating company or to the transmission licensee with a proviso which provided that Return on Equity with respect to actual tax rate applicable to the generating company or transmission licensee, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up separately for each year of the tariff period along with the Tariff Petition filed by the next tariff period. Since the Petitioner Appellant did not claim any tax liability for its ARR for the years 2011-12 and 2012-13 and the Appellant was a loss making entity, the Return on Equity was allowed @ 15.5% without any grossing up by the tax rate. The application of grossed up rate of Return on Equity is not automatic but will be applied only in case the licensee pays tax on its income. The State Commission was bound to follow or comply with all the provisions with conditions prescribed under Regulation 15 of

the Central Commission Tariff Regulations, 2009 and the provision of the same could not be considered in isolation but the cumulative and combined effect of all the provisions of the said regulation 15 was to be considered which has been rightly considered by the learned State Commission.

18. The position as admitted by the learned counsel for the contesting parties is that after passing of the impugned order, the State Commission vide Notification dated 17.09.2012 has incorporated an amendment to the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 by making amendment in Regulation 25 relating to Return on Equity. By the said amendment under Regulation 25 of the State Commission Regulations, 2005, Return on Equity shall be computed @ 15.5% on the paid up equity capital determined in accordance with Regulation 24. Thus, after passing of the impugned order, the important amendment has been made in the State Regulations, 2005 by the learned State Commission and the provision of grossing up has been done away with bringing the whole controversy or dispute, which would have arisen in future, to an end.”

Thus the said issue is fully covered by our aforesaid judgment, the same proposition is applicable in the case in hand on this issue No.(iii).

14) **Issue No.(iv) relating to carrying cost on revenue gap** : On this issue, the appellant has contended as under:

14.1) That the State Commission had for the FY 2012-13, arrived at a revenue gap of Rs.1010.49 crores. This is an admitted fact which ought to have been allowed to the appellant in the year 2012-13 but has not been allowed.

14.2) That the State Commission while recognizing the said revenue gap for 2012-13, has not allowed any carrying cost on the same. The carrying cost on revenue gap is a well accepted regulatory principle and settled by various judgments of this Appellate Tribunal. In fact, the same has been directed to be allowed by this Appellate Tribunal’s judgment dated 18.10.2012 in appeal No. 7, 46 and 122 of 2011 as well as judgment dated 22.04.2015 in Appeal No. 174 of 2013. The said principle is squarely applicable to the present case.

- 14.3) That no reasons have been given by the State Commission in the Impugned Order for not allowing the carrying cost on the said revenue gap.
- 15) **Per contra**, the following points have been argued on behalf of the respondent Commission on this issue :
- 15.1) That the appellant has stated that the carrying cost of revenue gap of Rs.1010.49 Crores for 2012-13 has not been allowed in 2013-14 by the State Commission.
- 15.2) That this is factually not correct that the revenue gap for 2012-13 is Rs.1010.49 crores. This issue has been dealt by the State Commission in paragraph 3.21 of tariff order of FY 2013-14, where it is clearly mentioned that there is a surplus Rs.645.67 Crores for FY 2012-13 and the cumulative gap of Rs,1010.49 crores was determined after deducting surplus amount i.e. Rs.645.67 crores from the gap of Rs. 1656.16 crores for FY 2011-12. The carrying cost of Rs.279.97 crores on revenue gap of Rs.1656.16 crores (Rs.258.51 crores on regulatory asset of Rs.1325.76 crores and Rs.21.48 crores on the gap of Rs.330.40 crores in excess of Regulatory Asset) has already been allowed in Table 4.32: Revenue Requirement for FY 2012-13 in T.O. for FY 2012-13. There is no justification to burden the consumers again in FY 2013-14 on account of carrying cost which has already been passed on to the consumers in FY 2012-13.
- 16) **Our consideration and conclusion on issue No.(iv):**
- 16.1) After going through the rival contentions of the parties and the relevant part of the Impugned Order on this issue relating to carrying cost on revenue gap, we find that the State Commission has correctly calculated the carrying cost amount to be allowed to the appellant. The carrying cost of Rs.279.97 crores on revenue gap of Rs.1656.16 crores (Rs.258.51 crores on regulatory asset of

Rs.1325.76 crores and Rs.21.48 crores on the gap of Rs.330.40 crores in excess of Regulatory Asset) has already been allowed in Table 4.32: Revenue Requirement for FY 2012-13 in T.O. for FY 2012-13. We find that there is no justification to burden the consumers again in FY 2013-14 on account of carrying cost which has already been passed on to the consumers in FY 2012-13.

16.2) This issue is decided against the appellant as we find no illegality or perversity with regard to the findings recorded by the State Commission on this issue.

17) **Issue No.(v) relating to employee cost** : Following contentions are made by the appellant on this issue:

17.1) That the State Commission, by the Impugned Order, has artificially reduced the employees cost without following the decisions and directions of this Appellate Tribunal. This is both for the FY 2012-13 and 2013-14.

17.2) That this Appellate Tribunal had vide judgment dated 18.10.2012 in Appeal No. 7, 46 and 122 of 2011 directed the State Commission to allow the actual employee cost subject to prudence check and not limit the same by applying whole sale price index or by making ad-hoc reductions.

17.3) That this Appellate Tribunal vide judgment dated 11.09.2014 in Appeal No.174 of 2012 in *Punjab State Power Corporation Ltd. vs. Punjab State Electricity Regulatory Commission* once again reiterated its previous decision including holding that limitation of employee cost by applying WPI is not correct and that the State Commission was required to allow the actual subject to prudence check. The State Commission filed Review Petition, being Review Petition No.6 of 2015, against the above judgment dated 11.09.2014 in Appeal No. 174 of 2012 which Review Petition was also dismissed by this Appellate Tribunal vide judgment dated 30.03.2015.

- 17.4) That the State Commission also filed an Appeal, being Civil Appeal No.5427 of 2015 challenging the decision of this Appellate Tribunal before the Hon'ble Supreme Court and the said Civil Appeal has also been dismissed by the Hon'ble Supreme Court vide order dated 13.07.2015.
- 17.5) In the circumstances the employees cost is to be allowed to the appellant in terms of directions of this Appellate Tribunal in Appeal No.7, 46 and 122 of 2011 and Appeal No. 174 of 2012 because the said issue is covered fully in favour of the appellant.
- 18) **Per contra**, the State Commission has submitted as under :
- 18.1) That the issue of employee cost, which the State Commission has been allowing on the basis of WPI is covered by the judgment dated 11.09.2014 in Appeal No. 174 of 2012, passed by this Appellate Tribunal and the said judgment of this Appellate Tribunal has been complied with and new norms are set in the amended regulations.
- 19) **Our consideration and conclusion:**
We have given our thoughtful consideration to the rival contentions made by the parties. The learned counsel for the State Commission has candidly admitted that the State Commission has been allowing employee cost on the basis of WPI and now the said issue is fully covered vide judgment dated 11.09.2014 in Appeal No. 174 of 2012 of this Appellate Tribunal which judgment has already been complied with and new norms are set in the amended regulations. We observe and hold that since this issue is fully covered by our earlier judgment dated 18.10.2012 in Appeal No. 7, 46 and 122 of 2011 and 11.09.2014 in Appeal No. 174 of 2012, this issue No. (v) is accordingly decided in favour of the appellant.
- 20) **Issue No.(vi) relating to transit loss of coal** : On this issue, following contentions have been made by the appellant:

- 20.1) That the appellant purchases coal from Coal India Limited/subsidiaries which is transported from the mines in States such as Orissa, Chhattisgarh, Jharkhand etc. by Indian Railways. There are losses while the coal is transported by Indian Railways and the quantum of coal which is received by the appellant at the plant site is less than the coal which is loaded on Indian Railways. The above is the transit loss on coal.
- 20.2) That the above loss is fully outside the control of the appellant and there is no control by the appellant over the transportation of coal by Indian Railways. The State Commission had, in the previous year 2012-13, allowed the coal transit loss at the capped level of 1.5%. In fact, it was allowed at 2% till the year 2011-12.
- 20.3) That, however, for the year 2013-14, the State Commission has reduced the coal transit loss to 1%, without there being rationale for such reduction and the only reason given by the State Commission is that it was decided in the previous year's tariff order.
- 20.4) That this Appellate Tribunal, vide judgment dated 31.08.2010 in Appeal Nos. 14 and 15 of 2010 in *Induction Furnace Association of North India vs. Punjab State Electricity Board*, had already settled the proposition that the tariff order for each year has to decide the principles applicable for the said year and cannot decide the same in advance in the previous year. In the circumstances, it was incumbent upon the State Commission to determine the appropriate level of losses in the Impugned Order giving reasons for such determination/reduction.
- 20.5) That there is no change in the factual position from the year 2012-13 and 2013-14 because the appellant has no control over the transportation of coal by Indian Railways. In fact, the appellant has acted in proactive manner and appointed a dedicated officer to coordinate with the coal suppliers and

Railways to ensure that any action that is possible to be taken is taken and there is no loss on account of the appellant.

20.6) However, when the factual position remains the same and the coal transit not being in the control of the appellant, the reduction of the transit loss from 1.5% to 1% is not justified.

21) **The State Commission has made the following submissions contrary to the appellant's submissions:**

21.1) That the State Commission considered the whole issue of transit loss of coal in its tariff order for FY 2006-07 and approved the transit loss of 2% for the Indian coal in respect of all the three thermal generating stations during the year 2006-07. The State Commission has been approving the transit loss of 2% for Indian coal in respect of all the three thermal generating stations in its subsequent tariff orders. The State Commission again considered the whole issue of transit loss of coal in its tariff order for 2012-13 and fixed the norm of transit loss of coal for all the generating stations of the appellant at actuals, subject to a maximum of 1.5% for FY 2012-13 and 1% for FY 2013-14 and onwards.

21.2) That the State Commission fixed the transit loss of coal at 1% for all the three thermal generating stations of the appellant in its tariff order for FY 2013-14, against 1.50%, 1.50% and 2% projected by the appellant for GNDTP, GGSSTP and GHTP respectively, in its ARR Petition for FY 2013-14. At the same time it was also ordered that no such loss is permissible in case of PANEM coal as the same is priced at FOR destination basis.

22) **Our consideration and conclusion on issue No.(vi):**

22.1) We have pondered over the rival contentions of the parties and the relevant part of the Impugned Order, including the reasons recorded in the Impugned

Order, for restricting transit loss and we find no merit in the contentions of the appellant on this issue. It is true that the law laid down by this Appellate Tribunal is that the tariff order for each year has to decide the principles applicable for the said year and cannot decide the same in advance in the previous year. But the previous tariff order has not been challenged by the appellant before a higher forum. Hence, it is binding upon all the concerned parties so far as the issue of coal transit issue is concerned. **The State Commission in its tariff order has given the following reasons for restricting the transit loss:**

- i) The actual transit loss of coal in respect of all the three thermal generations of the appellant has considerably come down.
- ii) CERC has fixed a norm of 0.8% for transit loss of coal in case of non pit head thermal generating stations in its Tariff Regulations for the period 2009-14.
- iii) PSPCL has engaged an outside agency for the coal linkage materialization and shortage minimization in respect of the coal for its thermal plants, the expenditure on which is being charged to the fuel cost of the respective generating stations.**

22.2) The State Commission has allowed the transit loss of 2% for the Indian coal in respect of all the three thermal generating stations of the appellant during the year 2006-07 and continued to approve the same transit loss of 2% in its subsequent tariff orders. It was at the stage of tariff order for 2012-13 when the State Commission thought it necessary to reconsider the whole issue of transit loss of coal and then fixed the norm of transit loss of coal of all the generating stations of the appellant at actuals subject to a maximum of 1.5% for 2012-13 and 1% for 2013-14 and onwards. Thus we agree to the findings of the State Commission on this issue as we do not find any sufficient reasons to deviate there from. This issue No. (vii) is decided against the appellant.

- 23) **Issue No.(vii) relating to short term power purchases** : On this issue, it has been argued by the appellant that :
- 23.1) The State Commission has erroneously restricted the short term power purchases to be made by the appellant during the year 2013-14 to the extent of only 280.22 Million Units (MUs) at a cost of Rs.111.16 crores, while the State Commission has adopted the rate of short term power purchase as proposed by the appellant. The State Commission has erred in grossly reducing the quantum of short term power purchases which has been tied up by the appellant in terms of previous order passed by the State Commission. There is no dispute on the tariff, but only on the quantum of purchases required.
- 23.2) The appellant as a prudent utility is required to purchase electricity to meet the demand of the consumers in the State of Punjab. For the purpose, the appellant also estimates the demand in the State and also seeks approval of the State Commission from time to time in advance.
- 23.3) That for 2013-14, in terms of the directions of the State Commission, the appellant had approached in Petition No. 74 of 2012 for purchase of electricity to meet the bridge demand in the State. The State Commission disposed of the said petition, No. 74 of the 2012, by order dated 17.01.2013, wherein the State Commission had approved a quantum of 2578 MUs for short term power purchases during the year 2013-14. The State Commission had further specifically held that the purchases be made in a manner that electricity is not surrendered by the appellant.
- 23.4) That based on the above, the appellant has already contracted electricity for the year 2013-14 based on binding agreements. In the circumstances, when the appellant had already acted upon the order passed by the State Commission and tied up the electricity purchase on short term basis, the State Commission has erred in restricting the short term power purchase quantum at 280.22 MUs.

24) **Per contra**, the State Commission has tried to justify the reasons cited in the Impugned Order on this issue.

25) **Our consideration and conclusion on issue No. (vii):**

25.1) Before coming to our own conclusion on this issue, we reproduce the relevant part of the Impugned Order:

“Power Purchase and Sale from Traders (Short-Term)

PSPCL has projected power purchases of 22180 MU (gross) from Central Generating Stations and other sources, including 2123 MU short-term power purchase through traders.

The Commission has estimated the power available from all Central Generating Stations and other sources including Banking (net) as 20056.78 MU (i.e. aggregate of items (i) to (vii) of Table 4.23). The gross power purchase requirement as worked out under para 4.8.3 is 20337 MU. As such, only 280.22 MU needs to be purchased through traders against 2123 MU proposed by PSPCL at 396.68 paise per unit.

The Commission, therefore, provisionally approves purchase of 280.22 MU of power from traders at the average rate of 396.68 paise/unit, proposed by PSPCL for short term power purchase in the ARR.

The Commission reiterates that PSPCL needs to purchase power in a judicious and economic manner and also resort to Demand Side Management practices, to maintain its commercial viability.

The Commission has analyzed the availability and demand/sales projections of PSPCL during FY 2013-14 and has observed that the availability of power is more than the demand/sale during 8 months of FY 2013-14 (April, May, October, November & December, 2013, January, February & March, 2014) and deficit during 4 months of FY 2013-14 (June, July, August & September, 2013). Keeping in view the long term interests of the State, PSPCL is advised to review its PPAs with the generators/traders for purchase of power from outside the State of Punjab. This exercise needs to be completed within the shortest possible time period so that the loss on account of surrendering of power could be avoided/reduced. A report in this regard shall be submitted to the Commission by

September, 2013. It may be advisable for PSPCL to shift from PPAs with thermal generators/traders to PPAs with hydro generators/traders as hydro power suits the load profile of Punjab and may prove cheaper to thermal power due to consistent rise in fuel prices, in the long run.”

25.2) The main contention of the appellant is that the State Commission has wrongly restricted the short term power purchases by the appellant for 2013-014 to the extent of only 280.22 MUs at the cost of Rs.111.16 crores while the State Commission has adopted the rate of short term power purchases as proposed by the appellant because the appellant had tied up the short term power purchases in terms of the previous order of the State Commission. According to the appellant itself there is no dispute on the tariff but the dispute is only on the quantum of short term power purchases required. The State Commission in the afore quoted Impugned Order has stated that the appellant had projected the power purchases of 221.80 MUs (gross) from the Central generating stations and other resources including 2123 MU short term power purchase through traders. The State Commission has estimated the power availability from all central generating stations and other sources including banking (net) as 20056.78 MUs. The gross power purchase requirement worked out is 20337 MUs and as such only 280.22 MUs needs to be purchased through traders against 2123 MU proposed by the appellant at 396.68 paise per unit. The learned State Commission working on that analogy and figures provisionally approves purchase of 280.22 MU of power from traders at an average rate of 396.68 paise per unit proposed by the appellant for short term power purchase in the ARR. The Commission further justifies its findings stating that the appellant needs to buy power in economical and judicious manner and also resort to take Demand Side Management Practices (DSMP) to maintain its commercial viability. Considering all these things, the State Commission keeping in view the long term interest of the State, advised the appellant to review its PPAs for the generators/traders for purchase of power from outside State of Punjab. Certain directions and suggestions have been given by the State Commission on this issue while recording the reasons thereof. In view of the above discussions we do not find any merit in the

contentions of the appellant on the issue of short term power purchases and we agree to the findings of the State Commission recorded in the Impugned Order. Consequently, this issue No. (vii) is decided against the appellant.

26) **Issue No.(viii) relating to interest and finance charges** : Following contentions are made by the appellant :

26.1) That the State Commission has, in the Impugned Order, erred in not fully allowing the interest and finance charges as claimed by the appellant. The State Commission while allowing interest and finance charges on loans for 2012-13 and 2013-14 has approved Rs.1760.58 crores and Rs.1767.18 crores against the appellant's claim of Rs.2537.24 crores and Rs.2656.86 crores respectively.

26.2) That the learned State Commission has not fully allowed the interest on the terms loans (other than working capital loans) and guarantee fee. The assets and liabilities have been vested in the appellant by virtue of the statutory notification of Government of Punjab under Section 131 of the Electricity Act, 2003 w.e.f. 16.04.2010, by virtue of which the aggregate value of assets transferred to and vested in the appellant was Rs.30912.00 Crores as on 16.04.2010.

26.3) That the State Commission has further failed to appreciate that in terms of the said notification, the term loans and capital liability of Rs.7057.45 crores and Rs.6142.56 crores respectively have been vested with the appellant, which is binding in terms of Section 131(3)(b) of the Electricity Act, 2003 and the appellant is required to service such loans.

26.4) That the very purpose of unbundling, corporatizing the Electricity Board into separate companies is to ensure that licensees operate in a viable manner. This is a basic objective of the Act as also recognized in the statement of Objects and Reasons. This is also the reason that the State Governments have been

given the powers of reorganization of Electricity Boards to ensure that the financials are provided in a strong manner for viable operations.

- 26.5) That no accumulated liabilities have been given to the appellant under transfer scheme, which is going to benefit the consumers. Hence, the State Commission ought to have recognized the financials as per the transfer scheme.
- 26.6) That based on the stronger financials and clean balance sheet provided under the transfer scheme, the appellant has been in a position to negotiate for longer term loans and better rate of interests. Many loans which were having a short term period of 1/3 years were renegotiated for longer term of 5/7/10 years at better terms. These were undertaken in the year 2012-13. The benefit of the same has gone to the consumers. Further all this would not have been possible if the financials of the Electricity Board had continued. The State Commission has also disallowed the guarantee fee of 2% which is for renegotiation for long terms and conditions. The State Commission ought to have allowed the same.
- 26.7) That the accumulated losses have been wiped off under the transfer scheme and hence, the State Commission ought not to have disallowed the interest on the loans as per transfer scheme balance sheet.
- 27) That the respondent Commission as **per contra** contended as under:
- 27.1) That all the charges namely interest on term loans, interest on working capital loans, interest on diversion of funds and guarantee fee have been allowed to the appellant in accordance with PSERC (Terms and Conditions for determination of tariff) Regulations 2005 as amended on September 17, 2012 (hereinafter referred to as '**State Tariff Regulations**'). Regulation 26 provides as under :

“1. For Existing Loan Capital, Interest & finance charges shall be computed on the outstanding Loans, duly taking into account the rate of interest & schedule of repayment as per the Terms and Conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable by the Licensee(s) or the State Bank of India Advance Rate as on April, 1 of the relevant year, wherever is Lower.

2. For new investment, interest & finance charges shall be computed on the Loans, duly taking into account the rate of interest & schedule of repayment as per the Terms and Conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable by the Licensee(s) or the State Bank of India Advance rate as on April, 1 of the relevant year, wherever is Lower.

....

6. The Commission shall allow obligatory taxes on interest, commitment charges, finance charges (including guarantee fee payable to the Govt.) and any exchange rate difference arising from foreign currency borrowings, as finance cost.”

27.2) That the contention of the appellant that the State Commission has erred in not allowing the interest charges for the loan vested in the appellant by way of statutory notification issued by Government of Punjab on 24.12.2012 on the Punjab Power sector Reforms transfer scheme 2012 w.e.f 16.04.2010 is also misconceived and incorrect. **The claim of the appellant for the aggregate value of the assets transferred to and vested in the appellant as on 16.04.2010 has not been considered by the State Commission as the appellant had not supplied audited annual accounts for 2010-11 and 2011-12 based on the aforesaid transfer scheme. The claim of the appellant will be duly considered when the annual audited accounts for 2010-11 and 2011-12 shall be submitted by the appellant while truing up the relevant years accounts in accordance with the provisions of section 131(3)(b) of the Electricity Act, 2003.**

27.3) That the working capital as allowed by the State Commission under the PSERC Tariff Regulation 30(4) reads as under:

“Working capital for a company performing generation, distribution and trading functions shall be the sum of the following:

- i) Fuel cost for two months*
- ii) Operations and Maintenance expenses for one month*
- iii) Receivables for two months*
- iv) Maintenance spares @ 15% of O&M expenses*
Less
Consumer Security Deposit.”

27.4) That the interest on working capital is allowed by the State Commission under Regulation 30(5) of the said Tariff Regulations, which reads as under:

“The rate of interest on working capital shall be equal to the actual rate of interest paid/payable on loans by the licensee(s) or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is lower. The interest on working capital shall be payable on normative basis notwithstanding that the licensee(s) has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on the normative figures”.

27.5) That the State Commission has allowed various costs and expenditure to the appellant to meet its revenue requirements after a prudence check of the ARR petition for 2013-14 filed by the appellant as per the said Tariff Regulations. The State Commission is fully conscious of the fact that the loans were raised by the utility to meet the cash deficit on account of adjustment of subsidy against the Government of Punjab loans of Rs.3022.10 crores and RBI bonds of Rs.981.93 crores. Also, loan of Rs.451.35 crores has been raised by the utility to bridge the gap due to non refund of interest payable by Government of Punjab to the appellant utility. The State Commission has allowed interest on these amounts @ 11.24% being an average rate of interest paid or payable by the appellant to the financial institutions for short term and mid term loans as considered in the review for 2012-13.

27.6) That the State Commission has taken into consideration both long and short term loans at the rate of interest applicable thereof while working out the

weighted average rate of interest at 11.24% per annum for FY 2012-13 (revised estimate) and for the ARR of FY 2013-14.

27.7) That the State Commission has segregated the admissible working capital loan on the normative basis under the provisions of said Regulations from other loans viz. the loans raised by the appellant to meet the cash deficit arising on account of adjustment of subsidy against the Government of Punjab loan of Rs.3022.10 crore, RBI bonds of Rs.981.93 crores and loan of Rs.451.35 crores raised by the appellant to bridge the gap due to non refund of interest payable by Government of Punjab to the appellant. The State Commission has duly allowed admissible interest on these loans.

27.8) That the State Commission has been further conscious of the fact that substantial portions of the working capital loans were raised by the appellant to meet the cash deficit arising out of cash adjustment against Government of Punjab loan of Rs.3022.10 crore and RBI bonds of Rs.981.93 crores. Also, loan of Rs.451.35 crores has been raised by the appellant to bridge the gap due to non-refund of the interest payable by Government of Punjab to the appellant. The State Commission, therefore, considered it appropriate to treat the loans of Rs.4455.38 crores (3022.10 + 981.93 + 451.35) in the nature of regular loans and allowed guarantee charges on these amounts, which worked out to Rs.81.51 crore @ 2%. Regulation 26(6) of the State Tariff Regulations provides for allowing finance charges (including guarantee fee payable to Government of Punjab) on loans other than working capital loans. The Regulation separately provides for allowing interest on working capital loan on normative basis as detailed in Regulation 30 of State tariff Regulations. There is no provision in the State Tariff Regulation for allowing guarantee fee on working capital loan.

28) **Our consideration and conclusion on issue No.(viii) :**

28.1) We have given our thoughtful consideration to the rival contentions of the parties and the relevant regulation of the State Commission, which we have

cited above. We do not find the contention of the appellant meritorious on this issue. The State Commission after due consideration of Regulation 30 of the State Tariff Regulation 2005 as amended on September 17, 2012 has correctly calculated the said charges and the State Commission has not committed any error in disallowing the said charges claimed by the appellant. The State Commission appears to have allowed various costs and expenditure to the appellant to meet its revenue requirement after prudence check of the ARR petition for FY 2013-14 filed by the appellant as per the State Tariff Regulations 2005. Further the State Commission has rightly taken into consideration both long and short term loans and the interest rate applicable thereof while working out the weighted average rate of interest as 11.24% per annum for FY 2012-13 (RE) and for the ARR 2013-14. The State Commission has duly allowed the admissible interest on the said loans.

28.2) Apart from the above, the State Commission has made it clear that the claim of the appellant will be considered when the audited annual accounts for 2010-11 and 2011-12 are submitted by the appellant while truing up the relevant years accounts in accordance with the provisions of Section 131 of the Electricity Act, 2003. Thus in view of the above discussions, the contentions of the appellant on this issue are without merits and are hereby rejected. We agree to the findings of the State Commission recorded in the Impugned Order on this issue as there appears to be no illegality or perversity in the said findings of the State Commission. This issue is accordingly decided against the appellant.

29) **Issue No.(ix) relating to interest on working capital** : On this issue following submissions have been made by the appellant :

29.1) That the State Commission has erred in disallowing substantial portion of the interest on working capital loans actually taken by the appellant. These include the interest on the bridge loan of Rs.982 crores on account of RBI bonds and Rs.451 crores due to non-refund of interest by Government of Punjab. The State Commission has failed to appreciate that the appellant was

required to take such loans to service deficit revenue requirements and meeting its statutory payments. The entire objective of the Electricity Act, 2003 is to allow the utility like the appellant to function upon commercial principles and to meet its costs and expenditure.

29.2) That though the issue of interest on working capital has been rejected by this Appellate Tribunal in judgment dated 11.09.2014 in Appeal No. 174 of 2012 but considering the present factual situation, this Appellate Tribunal may direct a relaxation of Regulations to provide for higher interest on working capital.

29.3) The learned counsel for the State Commission has justified the reasonings recorded by the State Commission on this issue.

30) **Our consideration and conclusion:**

30.1) The legal position as admitted by the learned counsel for the appellant is that this Appellate Tribunal while dealing with interest on working capital vide judgment dated 11.09.2014 in Appeal No. 174 of 2012 in the matter of *Punjab State Power Corporation Ltd. Vs. Punjab State Electricity Regulatory Commission* has already rejected the same contentions of the appellant. The learned counsel for the appellant craves for relaxing the State Tariff Regulations 2005, as amended, to provide for higher interest on working capital. Since the learned counsel for the appellant has not cited cogent and sufficient reasons for relaxing the said Regulations, we do not find it appropriate and proper to relax the said Regulation just to provide for higher interest on working capital to the appellant.

30.2) In view of the above discussion, we do not find any merit in the appellant's contentions on this issue. The State Commission has rightly allowed the interest on working capital as per the Regulation and norms provided thereof. The issue is decided against the appellant.

- 31) Consequently, this appeal is liable to be partly allowed on the issues stated above and to that extent the findings recorded in the Impugned Order are liable to be set aside.

ORDER

The instant appeal, being Appeal No. 106 of 2013, is hereby partly allowed to the extent indicated above by us and the Impugned Order to that extent is hereby set aside. We order the State Commission to pass consequential order in the light of the above observations made in this judgment within three months from today under intimation to this Appellate Tribunal.

No order as to costs.

Pronounced in the open court on this **16th December, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~