

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**RP No. 21 OF 2023**

**&**

**RP No. 22 OF 2023**

**Dated: 19.12.2024**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

**In the matter of:**

**RP No. 21 OF 2023**

**NORTH BIHAR POWER DISTRIBUTION COMPANY LIMITED**

*Through its Managing Director,*

Vidyut Bhawan, Bailey Road,

Patna – 800021

... Appellant No.1

***VERSUS***

**1. BIHAR ELECTRICITY REGULATORY COMMISSION**

*Through its Secretary,*

GroundFloor, Vidyut Bhawan- II,

B.S.E.B. Campus,

Patna - 800021

... Respondent No.1

Counsel on record for the Petitioner(s) : Anushree Bardhan  
Srishti Khindaria  
Surbhi Kapoor  
Aneesh Bajaj for App. 1

Counsel on record for the Respondent(s) : Ravi Kishore for Res. 1

**RP No. 22 OF 2023**

**SOUTH BIHAR POWER DISTRIBUTION COMPANY LIMITED**

*Through its Managing Director,*  
Vidyut Bhawan, Bailey Road,  
Patna – 800021

... Appellant No.1

**VERSUS**

**1. BIHAR ELECTRICITY REGULATORY COMMISSION**

*Through its Secretary,*  
Ground Floor, Vidyut Bhawan- II,  
B.S.E.B. Campus,  
Jawahar Lal Nehru Marg (Bailey Road),  
Patna - 800021

... Respondent No.1

Counsel on record for the Petitioner(s) : Anushree Bardhan  
Srishti Khindaria  
Surbhi Kapoor  
Aneesh Bajaj for App. 1

Counsel on record for the Respondent(s) : Ravi Kishore for Res. 1

**ORDER**

**(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)**

1. The present Review Petitions RP 21 of 2023 and RP 22 of 2023 have been filed for rectification, modification of Common Judgement dated 25.10.2018 passed by this Tribunal in Appeal No. 117 of 2017 and Appeal No. 118 of 2017 by South Bihar Power Distribution Co Ltd (hereinafter referred to as the "**SBPDCL**") and North Bihar Power Distribution Co Ltd (hereinafter referred to as the "**NBPDCL**"). In the present review petition, Appellants/ Review Petitioners have limited their challenge to the issue of revenue surplus of Bihar State Electricity Board period till 30.10.2012 being adjusted in the revenue of the Appellants/ Review Petitioners related to Annual Performance review for 2015-16.

2. Earlier challenging the order dated 08.03.2017 passed by Bihar Electricity Regulatory Commission (hereinafter referred to as the "**State Commission/BERC**") in Case Nos.49 of 2015 and 50 of 2015 pursuant to a remand order dated 25.11.2016 passed by this Tribunal in Appeal Nos. 142 of 2016 and 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 Appellants/Review Petitioners- North Bihar Power Distribution Company Limited ("NBPDCCL") have filed an Appeal No. 117 of 2017 and the South Bihar Power Distribution Company Limited ("SBPDCL") has filed Appeal No. 118 of 2017 before this Tribunal. In the said Petitions, the State Commission has disallowed the claims of the Appellants/Review Petitioners with regard to the issue of Recovery of Surplus of past period ( FY 2015-16) and net prior period charges (FY 2014-15) , and aggrieved by the said two disallowances, Appellants approached this Tribunal vide Appeal 117 of 2017 and Appeal 118 of 2017.

3. This Tribunal in its common judgement dated 25.10.2018 in Appeal 117 of 2017 and Appeal 118 of 2017 opined that the State Commission has rightly adjusted the surplus of the past period pertaining to erstwhile BSEB 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.

4. Being aggrieved by the said order dated 25.10.2018 passed by this Tribunal in Appeal Nos. 117 of 2017 and 118 of 2017, the Appellants had

invoked the jurisdiction of the Hon'ble Supreme Court by way of Civil Appeal Nos. 239-240 of 2019. The Supreme Court by its order dated 04.02.2019 disposed of the said Civil Appeals by holding as under:

*"2. In our considered view, the issue raised does not appear to have been comprehensively considered and decided by the learned Appellate Tribunal. The appellants, therefore, will be at liberty to move the learned Appellate Tribunal for rectification, modification, etc. if so advised. The appellants will also be at liberty to approach this Court once again, if required.*

*3. Consequently and in the light of the above the appeals shall stand disposed of."*

5. In view of the order of the Supreme Court, the Applicants/Review Petitioners North Bihar Power Distribution Company Limited ( NBPDCCL) and the South Bihar Power Distribution Company Limited ( SBPDCL) have approached this Tribunal by filing IA No. 277 of 2019 in Appeal No. 117 of 2017 and IA No. 278 of 2019 in Appeal No. 118 of 2017 respectively seeking rectification, modification of the common judgment and order dated 25.10.2018 passed by this Tribunal in Appeal 117 of 2017 and Appeal 118 of 2017.

6. This Tribunal by its order dated 31.08.2023, has treated the IA No. 277 of 2019 in Appeal No. 117 of 2017 and IA No. 278 of 2019 in Appeal No. 118 of 2017 as Review Petitions, which reads thus:

*"The order passed by the Supreme Court in Civil Appeal No. 239 of 2014 dated 04.02.2019 granted the Appellant liberty to move an application before this Tribunal for rectification/modification etc., if so advised.*

*When we asked Mr. M. G. Ramachandran, learned Senior Counsel appearing on behalf of the Appellant, whether the application for rectification is referable to Section 152 CPC, Learned Senior Counsel submits that the application is, in fact, a petition seeking review of the Original Order in terms of Section 114 read with Order 47 Rule 1 CPC.*

*The application filed by the Appellant shall be treated as a Review Petition”*

7. It is important to note that the Review Petitioners, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited were vested with the distribution and retail supply function in terms of statutory Transfer Scheme notified by the Government of Bihar on 30.10.2012 under section 131 of Electricity Act 2003 and now having a license to distribute and supply electricity in the northern and southern area of the state of Bihar respectively; the Appellants/Review Petitioners herein have succeeded to the electricity distribution and retail supply functions of Bihar State Electricity Board ( BESB).

### **Appellant-DISCOM submissions**

8. Mr M.G. Ramachandran, Learned Senior counsel for the Appellant-DISCOMs submitted that the Respondent No1-State Commission has considered the revenue surplus of the BSEB period for the financial years 2006-07 to 2011-12, amounting to Rs. 298 Crore for trueing up of FY 2013-14 and Rs 862.50 Crore for the period from 01.04.2012 to 31.10.2012 of FY 2012-13, which after adjusting a revenue gap of Rs. 61.07 Crore for the period from 01.11.2012 to 31.03.2013, attributable to the operational activities of the Discoms, net revenue surplus for DISCOMs is worked out as Rs. 801.51 Crore in true up of FY 2012-13.

9. Learned senior counsel for the Appellant-DISCOMs submitted that, indisputably, the transfer of assets, functions, and liabilities of the Bihar State Electricity Board-BSEB to the two Discoms were with effect from 01.11.2012, pursuant to the statutory transfer scheme notified by the Government of Bihar on 30.10.2012. The value of assets and liabilities transferred to the two Discoms are, as per 'Schedule C' of the Transfer Scheme 2012, as enumerated in the balance sheet of erstwhile BSEB as on 31.03.2011. The Government of Bihar retained certain assets and liabilities as specified in Schedule E of the Transfer Scheme, wherein liabilities of BSEB to the extent of residual assets and liabilities which are not a part of the schedules, were vested with the government of Bihar and was not passed on to the Discoms or other Bihar Utilities. Additionally, as per the Transfer Scheme, the revenue surplus or deficit of the past period was not given to the Discoms. In view of this, the only issue which arises for consideration is whether the State Commission is right in considering the revenue surplus of BSEB period mentioned above (up to 30.10.2012) i.e. Rs. 298 Crore plus Rs. 862.58 Crore as revenue surplus in the hands of the Discoms to be adjusted as done by the State Commission in the truing up tariff order for FY 2015-16.

10. Learned senior counsel for the Appellant-DISCOMs contended that the Discoms are independent legal entities established for the purpose of taking over the distribution and retail supply of electricity within the State of Bihar. Pursuant to Section 131(1) of the Electricity Act, 2003, the assets, liabilities, and functions of the BSEB were vested in the State Government. The State Government, however, did not decide to transfer all such assets and liabilities to the Discoms; only those assets and liabilities explicitly identified in Schedule C, as on 31.03.2011, along with natural additions up to 31.10.2012, were transferred to the Discoms. The Revenue surplus or gap of BSEB period up to 31.10.2012 was not

transferred to the two Discoms. In spite of the same, the State Commission has considered the revenue surplus of BSEB as available revenue in hands of the two Discoms and adjusted such amount to reduce the Annual Revenue Requirements of the Discoms.

11. Learned senior counsel for the Appellant-DISCOM further submitted that the very purpose of reorganizing the BSEB and vesting the electricity distribution functions in the Discoms, while the Government of Bihar retained specific assets and liabilities under 'Schedule E', was to ensure that the commercial functioning of the Discoms does not get frustrated if the Discoms have to bear the burden of BSEB period.

12. In view of the foregoing reasons, the impugned order of the State Commission, to the extent specified above, is hereby liable to be set aside. State Commission can however consider the passing of consequential effect arising from the above revenue surplus not being treated as a reduction in the revenue requirements of the Discoms by directing the amount to be adjusted in favour of Discoms along with carrying cost over a period in the ensuing tariff years in case there is a need to avoid tariff shock. National Tariff Policy, 2016, permits such recovery to be undertaken over a maximum period of seven years.

### **Respondent Submissions**

13. Mr Ravi Kishore, learned Counsel for the Respondent ("**State Commission / BERC**") submitted that the order under challenge has correctly adjusted the revenue surplus of erstwhile BSEB period from the future ARR of both the DISCOMs for FY 2015-16 and that the figures have been proportionately allocated between the two DISCOMs. The true-up for FY 2012-13 has resulted in a surplus of ₹301.5 Crore, which has been duly addressed in the true-up order for FY 2012-13. Regulation 22(2) of the BERC Terms and Conditions explicitly provides that the

Commission shall undertake a similar exercise based on the final actual figures reflected in the audited accounts.

14. Learned counsel for the Respondent asserted that in accordance with the Commission's order, any surplus or deficit shall be considered and adjusted in the ARR of the ensuing year, and the tariff shall be notified accordingly. The surplus amount shall be passed on to consumers through reduction in tariff. This adjustment process is continuous in nature. Further, while considering the revenue surplus, the Commission has concluded that the receivables from consumers are nothing but the unrealised revenue from consumers which had been based on the tariff rates notified by the Commission for the relevant financial year. As the Petitioners are the successors-in-interest of the erstwhile BSEB, pursuant to the transfer scheme notified by the Government, all assets and liabilities of the erstwhile BSEB should have been transferred to the Petitioners.

15. Referring to Section 131(2) of the Electricity Act, learned counsel for the Respondent contended that the said section uses the term "any" while specifying the interest and property rights etc. The Hon'ble Supreme Court in the catena of judgments has interpreted the word "**any**" to be read as "**all**" as elaborated in judgment "**Jaipur Vidyut Vitran Nigam Limited & Ors. v. MB Power (Madhya Pradesh) Limited**", (2024) 8 SCC 513. In light of the aforementioned interpretation of the term "any," learned counsel for the Respondent asserted that it was incumbent upon the State Government to transfer all assets and liabilities of the erstwhile BSEB to the Petitioners. However, the failure to affect such a transfer has resulted in a situation where the consumer ultimately bears the burden of this illegal omission by the State Government.

16. Learned counsel for the Respondent further asserted that this Tribunal has been empowered under Section 61(d) of the Electricity Act



2003 to safeguard consumer interests, if, in case the surplus of the erstwhile BSEB is not treated as surplus in the hands of the Petitioners, it would result in higher tariffs, adversely impacting consumers interest. This issue assumes greater significance as both entities, BSEB and the present Petitioners are wholly owned and controlled by the Government of Bihar. In view of the above, learned counsel submitted that the review petition be dismissed.

### **Analysis and Deliberation**

17. The Main issue in the Review Petitions is whether Revenue Surplus accrued in previous years i.e. up to 31.10.2012, prior to commencement of operations by the Review Petitioners is to be adjusted from their ARR of subsequent years.

18. Vide notifications dated 30.10.2012, Government of Bihar, in exercise of its power under section 131 and 133 of Electricity Act, 2003, brought into force the Bihar State Electricity Reform Transfer Scheme, 2012. As submitted by the Appellants that though the effective date of transfer as per Transfer Scheme Notification was 01.11.2012, the opening balance sheets attached to the Schedule C of the notifications was based on balance sheet of erstwhile BSEB as on 31.03.2011. Subsequently, M/s PFC Consulting Limited (PFC) was appointed for preparing opening balance sheet of successor companies SBPDCL & NBPDCCL as on 01.11.2012, based on annual accounts of erstwhile BSEB as on 31.10.2012 and revised balance sheet was prepared by PFC for successor companies i.e. SBPDCL & NBPDCCL for the period 01.11.2012 to 31.03.2013.

19. We note from 'Schedule C' of the Bihar State Electricity Reform transfer scheme, 2012, issued by the Government of Bihar, Energy Department vide notification dated 30.10.2012, that the assets and liabilities of SBPDCL and NBPDCCL are based on the balance sheet of BSEB as on 01.04.2011..

20. The distribution function and activities were carried out by the BSEB up to 30.10.2012 and only from 01.11.2012, SBPDCL and NBPDCCL started operating and managing their respective distribution systems. It is noted that, while determining the tariff for the period FY 2012-13, the State commission dealt with two different periods namely 01.04.2012 to 30.10.2012 and 01.11.2012 to 31.03.2013, which was determined referring to BSEB represented by Bihar State Power Holding Company Limited (BSPHCL) for the entire FY 2012-13. In the True up for FY 2012-13, the net revenue surplus (excluding carrying costs) for FY 2012-13 is worked out as Rs 801.51 Crore, which entails a Revenue surplus of Rs 862.58 Crore for BSEB period (01.04.2012 to 30.10.2012) and revenue gap of Rs 61.07 Crore for the Discoms period of operation (Rs 01.11.2012 to 31.03.2013), as per segregated details submitted by the Appellants holding company in tariff petition, and not disputed by Respondent State Commission. The true up order FY 2012-13 also indicates a Revenue surplus of Rs 298 Crore based on True up for FY 2006-07 to FY 2010-11 and FY 2011-12, to be carried forward. The State Commission, in the True up order for FY 13-14 has arrived at a consolidated revenue gap of Rs 307.67 Crore. The Revenue Gap and Revenue surplus determined in the True up order up to FY 2013-14 have been accounted for in the Tariff order for FY 2015-16. The review petitioners are aggrieved by the consideration of Revenue surplus for BSEB period amounting to Rs 298 crore up to FY 2011-12 and Rs 862.58 Crore from 01.04.2012 up to 30.10.2012, along

with carrying cost, in the Tariff order for the year 2014-15, which was subsequently made available for recovery in ARR for FY 2015-16 and was adjusted in Tariff order for FY 2015-16.

21. The adjustment of past surplus is mainly on the basis that such a surplus is available to the distribution companies for the past period and therefore they should be accountable for adjusting this surplus to the consumers in the ensuing years. However, in the present case, the Review Petitioners started the distribution functions and activities in their respective areas as separate legal entities only pursuant to Bihar State Electricity Reform Transfer Scheme, 2012, notified on 30.10.2012.

22. It is a known fact that rationale for Reforms in the power sector under Section 131 of the Electricity Act, 2003, include Re-organization of State Electricity Boards (SEBs) into distinct segments for Generation, Transmission and distribution with an aim to promote profitability and viability of the resulting entity, ensure economic efficiency, encourage competition, and safeguard consumer interests. The re-organization allows for more accurate accounting of the different businesses in the power sector. In this context, it is noted from Schedule E of the Bihar State Reform Transfer scheme that entire assets and liabilities were not transferred to the entities, formed subsequent to re-organisation as stated below :

*All residual assets and liabilities not part of Schedule "A", "B", "C" and "D" shall remain vested with the State Government. However, outstanding State Govt. Loans and interest thereon receivable from board will continue to be shown as recoverable from board in the books of State Govt., pending final adjustment between board and State Govt.*

23. Learned counsel for Respondents contended that receivables from consumers are nothing but the unrealised revenue, which had been based on tariff notified by the commission. However, on a review of the balance sheet, attached to the transfer scheme, no entry with regard to surplus of previous years is discernible. It is also important to note that total assets in the balance sheet, which considering the contention of Respondents that it includes surplus revenue for previous year, is equivalent to the total liabilities transferred to the new entities, thus it is difficult to agree with the contention of the Respondents that surplus of previous years has been included in the transfer of assets and liabilities as same is not evident from the balance sheet. Learned counsel for the Respondent (State Commission) has contended that the Review Petitioners being successor in interest of the erstwhile BSEB, as per the transfer scheme notified by the Government all assets and Liabilities should have been passed on the Review Petitioners, however as noted above only assets and Liabilities as per 'Schedule C' of the Transfer scheme has been transferred to the Review Petitioners and thus in our view, as per transfer scheme issued under section 131 of Electricity Act 2003, the Distribution companies (SBPDCL and NBPDC) cannot be treated as successors in the interest of the Bihar State Electricity Boards in respect of any surplus found in the books of BSEB relating to the period prior to re-organisation.

24. We appreciate the concern of Respondent that non accounting of surplus revenue of previous years would adversely affect the consumer interests. However, in our view, adjustment of Revenue Surplus (not discernible from Balance sheet considered for transfer of Assets and Liabilities) for the period prior to re-organisation (for that matter Revenue Gap also if not specifically included in the transfer scheme) from the Annual Revenue Requirement of subsequent years post reorganisation is

not prudent as same is not in alignment of the scheme of reforms in the power Sector under Section 131 of the Electricity Act 2003.

25. In view of above deliberations, the order of this Tribunal dated 25.10.2018 in APL No.117 of 2017 and APL No.118 of 2017 is modified to the extent as deliberated above and matter is remanded to the State Commission to the limited extent that the Revenue Surplus of previous years i.e prior to re-organisation (01.11.2012) is not to be adjusted from ARR of Review Petitioners for FY 2015-16. However, considering consumer interest, to avoid tariff shock, the State Commission may consider adjustment of such deductions made from ARR of FY 2015-16 in favour of Discoms along with applicable carrying cost spread over certain years in the ensuing tariff orders as permitted under National Tariff Policy 2016. It is but appropriate that the review Petitioners should take up the matter with Government of Bihar for transfer of such Revenue Surplus of the period prior to re-organisation, so determined by the State Commission, to the Discoms, so that, upon receipt of the same it may be informed to the State Commission, who would be in a position to pass on such benefit to the Consumers in the subsequent Tariff orders issued by State Commission. With the above observations, the review petitions stand disposed of.

**Pronounced in open court on this 19<sup>th</sup> Day of December, 2024**

**(Seema Gupta)**  
**Technical Member (Electricity)**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

**Reportable / Non-Reportable**

*ts/ag*