

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.358 OF 2017

Dated: 07.03.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Meghalaya Power Distribution Corporation Ltd.

Incorporated under the Companies Act, 1956

Having its Registered Office At -

LumJingshai, Short Round Road

Shillong – 793 001, Meghalaya

... Appellant

Versus

1. The Secretary

Meghalaya State Electricity Regulatory Commission

Having its Office at – 1st Floor, (Front Block, Left Wing

New Administrative Building, Lower Lachumiere

Shillong – 793 001, East Khasi Hills District, Meghalaya

2. The Secretary

Byrnihat Industries Association

13th Mile, Tamulikuchi, Byrnihat,

Rio-Bhoi District, Nongpoh,

Meghalaya – 793 101

... Respondent(s)

Counsel for the Appellant(s) : Sakie Jakharia

Counsel for the Respondent(s) : Buddy A. Ranganadhan, Sr. Adv.
Shri Venkatesh
Shryeshth Ramesh Sharma

Ashutosh Kumar Srivastava
Bharath Gangadharan
Akash Lamba
Nihal Bhardwaj
Siddharth Nigotia
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Harsh Vardhan
Suhael Buttan
Priya Dhankar
Anant Singh
Vineet Kumar
Nikunj Bhatnagar
Kunal Veer Chopra
Vedant Choudhary for Res. 1

Parinay Deep Shah
Ritika Singhal
Mandakini Ghosh
Saransh Shaw for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant, Meghalaya Power Distribution Corporation Limited (in short MePDCL) has filed this appeal against the tariff order dated 31.03.2016 passed by 1st respondent Meghalaya State Electricity Regulatory Commission (hereinafter referred to as “the Commission” or MSERC”) in a petition filed by the appellant for adjustment of true-up of ARR for Financial Year (FY) 2011-12, true-up of ARR for FY 2012-13 & 2013-14, provisional

true-up of ARR for FY 2014-15 and revision of Retail Tariff and Open Access Charges for FY 2016-17 for Distribution Business, and also the order dated 30.03.2017 whereby the Commission has dismissed the review petition filed by the appellant seeking review of said tariff order dated 31.03.2016.

2. Before advertng the facts and circumstances in which the instant appeal has been filed, we may note that in exercise of powers conferred under Sections 131 and 133 of the Electricity Act, 2003, the State Government of Meghalaya notified "The Meghalaya Power Sector Reforms Transfer Scheme 2010" on 31.03.2013 leading to restructuring and unbundling of erstwhile Meghalaya State Electricity Board (MeSEB) into four entities namely (i) Meghalaya Energy Corporation Limited (MeECL), the holding company; (ii) Meghalaya Power Distribution Corporation Limited (MePDCL), the distribution utility; (iii) Meghalaya Power Generation Corporation Limited (MePGCL), the generation utility; and (iv) Meghalaya Power Transmission Corporation Limited (MePTCL), the transmission utility. However, the holding company MeECL carried out the functions of distribution, generation and transmission utilities from 01.04.2010 to 31.03.2012. Thereafter, vide notification dated 31.03.2012, the State Government notified amendment to

the Power Sector Reforms Transfer Scheme leading to effective unbundling of MeECL into MeECL (holding company), MePDCL (distribution utility), MePGCL (generation utility) and MePTCL (transmission utility) from 01.04.2012 onwards.

3. The 1st respondent Commission is an independent statutory body constituted under the provisions of Electricity Act, 2003 and is vested with the authority as well as power to regulate the power sector in the State including determination of tariff for electricity consumers.

4. Now, we shall note the important dates and events which are relevant for our consideration in this appeal.

DATE	EVENTS
31.03.2010	By notification viz. "The Meghalaya Power Reforms Transfer Scheme, 2010" dated 31.03.2010, erstwhile Meghalaya State Electricity Board ("MeSEB") was unbundled into four successor entities.
10.02.2011	Meghalaya State Electricity Regulatory Commission (MSERC) vide notification dated 10.02.2011 issued a regulation named Meghalaya State Electricity Regulatory Commission (Terms

	and Conditions for determination of Tariff) Regulations, 2011 (“Tariff Regulations, 2011”).
01.04.2013	With effect from 01.04.2013, MePDCL, MePGCL and MEPTCL started functioning separately and the Statement of Account for each were segregated.
23.12.2013	The Government of Meghalaya issued notification thereby notifying the revised and final statement of Assets and Liabilities to be vested on MeECL / the holding company with effect from 1.04.2010. As per the transfer scheme dated 23.12.2013 assets of value Rs. 767.54 Cr stood transferred to MeECL as on 1.04.2010. Thereafter, the audited balance sheet for the period 2010-11 was finalized and the equity base as on 31.03.2011 after giving effect to subsequent equity additions stood at Rs. 903.53 Cr.
15.09.2014	MSERC (Multi Year Tariff) Regulations 2014 (“Tariff Regulation 2014”) was issued effective from 1.04.2015.

22.12.2014	MePDCL filed Petition under Multi-Year Tariff framework for the FY 2015-16 to FY 2017-18 in accordance with the MSERC MYT Regulations, 2014.
09.03.2015	MePDCL filed the true up petition of FY 2011-12 alongwith Statement of Account for 2011-12 under Tariff Regulations, 2011.
31.03.2015	MSERC approved the ARR for MYT period of FY 2015-16 to FY 2017-18, determined Retail Tariff for FY 2015-16 and also carried out True-up for FY 2011-12 by a common order.
29.04.2015	Government of Meghalaya notified the 4th Amendment to Transfer Scheme dated 31.03.2010 wherein the opening balances of all the four entities namely, MePDCL, MePGCL, MePTCL and MeECL as on 1.04.2012 were notified.
29.05.2015	Aggrieved by the Tariff Order dated 31.03.2015 of MSERC, MePDCL filed a Review Petition.
10.08.2015	The Ld. MSERC passed the order dated 11.08.2015 in the Review Petition of MePDCL seeking review of the Tariff order dated 31.03.2015 for True up for Financial Year 2011-12 and Distribution tariff for FY 2015-16.

In the said Order dated 10.08.2015 Ld. MSERC partly allowed some of the claims of MePDCL, while rejecting the claims in relation to True-Up of FY 2011-12 for

- i) Power purchase cost
- ii) Prior period charges
- iii) Return on Equity.

In the Review Order dated 11.08.2015 Ld. MSERC revised its computation on AT & C loss and reduced the penalty to Rs. 29.64 Crores from Rs. 35.97 Crores imposed earlier by Tariff Order dated 31.03.2015.

However, Ld. MSERC granted liberty to MePDCL to seek suitable corrections by filing additional documents for re-examination/suitable correction of its finding in the said order including audit of power purchase amount, C&AG report etc.

[Orders dated 11.08.2015 and 31.03.2015 are under challenge in Appeal no. 46 of 2016 before this Tribunal]

26.10.2015	<p>Appellant being aggrieved by the aforementioned orders dated 31.03.2015 (Tariff Order) and 11.08.2015 (Review Order) filed Appeal no. 46 of 2016 before this Tribunal on following issues:</p> <p>For FY 2011-12</p> <p><i>Power Purchase Cost</i></p> <p><i>Prior Period Charges</i></p> <p><i>Penalty for Non-Achieving AT&C Loss Reduction Target</i></p> <p><i>Return on equity</i></p> <p>For FY 2015-16 to 17-18.</p> <p><i>Interest on Loan.</i></p>
6.01.2016	<p>MePDCL filed Petition for revised True-Up of FY 2011-12 and True up of FY 2012-13 alongwith audited Statement of Accounts for FY 2012-13.</p> <p>For True-up of FY 2011-12, on the basis of directions issued Ld. MSERC in the order dated 10.08.2015, following issues were raised with additional documents:</p>

	<ul style="list-style-type: none"> i) Power purchase cost ii) Prior period charges iii) AT & C loss.
5.02.2016	MePDCL filed Petition for True up of Distribution Business (segregated business) for FY 2013-14, Provisional True up of Distribution Business for 2014-15 and Revision of Tariff and Open Access Charges for FY 2016-17.
8.02.2016	C&AG Audit Report for FY 2011-12 was filed by MePDCL alongwith Statutory Auditor's report for FY 2013-14.
9.02.2016	Statutory Auditor's report for FY 2012-13 was filed by MePDCL.
31.03.2016	A common order was passed (<i>Impugned Tariff Order</i>) for Retail Tariff and Open Access Charges for FY 2016-17 for Distribution Business of MePDCL alongwith Adjustment of True up of ARR for FY 2011-12, True up of ARR for FY 2012-13, True up for ARR for FY 2013-14, Provisional True up of

	ARR for FY 2014-15 wherein MePDCL's claims in relation to True-up for FY 2011-12 were rejected.
30.05.2016	<p>Aggrieved by the Order dated 31.03.2016, MePDCL filed Petition for Review of Tariff Order dated 31.03.2016 for Adjustment of True up of Aggregate Revenue Requirement (ARR) for FY 2011-12, True up of ARR for FY 2012-13, True up of Distribution Business for FY 2013-14, Provisional True up of Distribution Business for 2014-15 and Revision of Tariff and Open Access Charges for FY 2016-17. The following issues, amongst others, were raised therein:</p> <p>For True up FY 2011-12:</p> <ul style="list-style-type: none"> i) Power Purchase Cost <p>For True-Up of FY 2012-13, FY 2013-14 and 2014-15 (provisional):</p> <ul style="list-style-type: none"> i) Return on Equity.

30.03.2017	<p>MSERC passed the Order on the petition filed by MePDCL seeking review of the order 31.03.2016 for FY 2011-12, FY 2012-13, FY 2013-14 and provisional True up for FY 2014-15 and revision of Tariff and Open Access Charges for FY 2016-17 of the Tariff Order:</p> <ul style="list-style-type: none"> i) rejecting the claim of MePDCL on Power Purchase Cost for FY 2011-12; and ii) rejecting the claim of MePDCL on Return on Equity for FY 2012-13, FY 2013-14 and 2014-15 (provisional) however, revised Return on Equity adopting a different methodology.
2.08.2017	<p>Present Appeal no. 358 of 2017 filed challenging Impugned Tariff Order dated 31.03.2016 and Impugned Review Order dated 30.03.2017 on the following issues:</p> <p>For True-Up of FY 2011-12:</p> <ul style="list-style-type: none"> i) Power purchase cost ii) Prior period charges iii) AT & C loss.

	For True-Up of FY 2012-13, FY 2013-14 and 2014-15 (provisional): iv) Return on Equity.
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5. The issues raised by the appellants in this appeal are noted hereinbelow: -

A. For Financial Year 2011-12

1. Power Purchase Cost
2. Prior Period Charges
3. Penalty for non-achieving AT&C Loss Reduction Target

B. For Financial Year 2012-13 to 2014-15 (provisional):

1. Return on Equity

6. The grounds urged by the appellant in support of these issues are as under: -

- (a) The Commission has erroneously computed and disallowed the claim of Return on Equity (“ROE”) in True-up for FY 2012-13. In this regard, the appellant prays that impugned orders dated 30.03.2017 and

31.03.2016 be set aside and the claim of ROE of Rs.239.28 crore on an equity of Rs.1573.80 crore be allowed.

(b) The Commission has erroneously computed and disallowed the claim of ROE while trueing up FY 2013-14. Accordingly, the appellant has prayed that the impugned orders dated 30.03.2017 and 31.03.2016 be set aside and the claim of ROE of Rs.109.40 crores on an equity of Rs.781.40 crore should be allowed.

(c) The Commission has also erroneously computed the ROE for provisional true up of 2014-15. And, that the claim of ROE of Rs.111.13 crores on an equity of Rs.793.75 crore should be allowed.

(d) The Commission has wrongfully disallowed the claim of Power Purchase Cost for FY 2011-12.

(e) The Commission has wrongfully disallowed the claim of Prior Period Charges for true-up of FY 2011-12.

(f) The Commission's finding on the AT&C losses is based on incorrect calculation of collection efficiency.

7. We have heard learned counsel for the appellant as well as learned counsel for the respondent Commission. We have also perused the impugned orders as well as the written submissions filed by the learned counsels.

8. At the outset, it was pointed out by learned counsel for the respondent Commission that the instant appeal is barred in view of Order XLVII Rule 7(1) of the Code of Civil Procedure, 1908 (in short CPC) in so far as it assails the findings of the Commission on some of the issues in the order dated 11.08.2015 whereby the appellant's review petition was dismissed. In this regard following sequence of events needs to be noted: -

- (i) On 31.03.2016 the impugned tariff order was passed by the Commission;
- (ii) On 30.05.2016, the appellant preferred the review petition against said order, *inter alia*, on the following issues: -
 - (a) Power Purchase Cost
 - (b) Prior Period Charges
 - (c) Return on Equity
 - (d) Aggregate Technical and Commercial (AT&C) Losses

- (iii) Upon considering the submissions of the appellant and documents placed on record by it, the Commission rejected the review petition vide order dated 30.03.2017.

9. It is the submission of the learned counsel for the Commission that once the issues with regards to Power Purchase Cost, Prior Period Charges, Return on Equity and AT&C Losses had been taken up by the appellant in the review petition which was dismissed vide order dated 30.03.2017, it is not open for the appellant to agitate those issues in the instant appeal. It is pointed out by the learned counsel that where a review petition is dismissed, there is no merger of the review order with the initial main order and therefore appeal is not maintainable Against review order. Various judgments of the Hon'ble Supreme Court as well as this Tribunal were cited by the learned counsel to buttress his submissions.

10. Rule 7(1) of Order XLVII CPC is extracted hereinbelow: -

“7. Order of rejection not appealable. Objections to order granting application. -

(i) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be

objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.”

[Emphasis Supplied]

11. It is manifest from the bare perusal of this legal provision that no appeal lies against the order of a court / tribunal rejecting the application for review. Therefore, we find ourselves in agreement with the submissions of the learned counsel for the respondent Commission that the order dated 30.03.2017 passed by the Commission on the review petition of the appellant, thereby dismissing the same, could not have been assailed in this appeal in view of the clear and specific bar contained in Order XLVII Rule 7(1) CPC. In such a scenario, the appeal lies against the original order and not against the order on the Review Petition. (See Rahimal Bathu vs. Ashiyal Beevi 2023 SCC OnLine SC 1226) We have, thus, no hesitation in rejecting the appeal in so far as it assails the order dated 30.03.2017 of the Commission and we will confine ourselves to the legality or otherwise of the impugned tariff order dated 31.03.2016 only on the issues agitated by the appellant.

12. We shall now take up the issues raised by the appellant in this appeal.

A. For Financial Year 2011-12

Issue No.1- Power Purchase Cost:

13. In the true-up petition, the appellant had claimed Power Purchase Cost of Rs.431.20 crores for 1684.49MW of power for the FY 2011-12. But the Commission approved only Rs.389.38 crores under this head in the impugned tariff order. Thus, an amount of Rs.41.82 crores stand disallowed. The reasoning given by the Commission for doing so is found in Paragraph No.4.2 at Page 29 of the tariff order, which is extracted hereinbelow: -

“Commission Analysis

The Commission in its order dated 11.08.2015 required the licensee MePDCL to place the C&AG Certificate, report of independent auditor on power purchase and abstract of station wise power purchase bills showing bill amount and penalty amount separately. In the said order the Commission had allowed Rs.389.89 Crore as a power purchase amount for FY 2011-12. The information as provided by auditor on power purchase only reflects the power purchase amount but does not show the quantity of

power purchase. On enquiry, MePDCL supplied the information on power purchase amount in 2011-12 vide its letter dated 04.02.2016. The amount of purchase or available energy is almost matching with the numbers approved by the Commission. MePDCL has shown 1170.52 MU as against allowed value of 1135.51 MU. Major variation of power purchase is from NEEPCO. The Commission has already passed an order on 31.03.2015 and allowed Rs.389.38 Crore for power purchase as against the claims of Rs.431.2 Crore by disallowing about Rs. 41 Crore payable to NEEPCO. This amount is considered as late payment surcharge on account of non-payment of dues of MeECL to NEEPCO. The C&AG report dated 19.06.2015 issued under Section 619 (4) vide B2C, shows that Rs. 41.78 Crore represent surcharge in the power purchase amount for FY 2011-12. In its review order dated 11.08.2015, the Commission has not changed the amount of power purchase as expenditures from NEEPCO amounting Rs.48.27 was not tallying with the information made available to the Commission and

*allowed Rs.389.38 Crore. Therefore, considering C & AG report also the power purchase cost as claimed for Rs. 431.20 Cr (-) shall be reduced by late payment charges of Rs.41.78 Crore which will be around Rs.389.42 Crore. Therefore, there is no need to change the power purchase amount. **The Commission approved Rs. 389.38 Crore towards Power Purchase in the revised True up.***

[Emphasis Supplied]

14. It is therefore, manifest that the Commission has based its findings on this issue on its previous orders dated 31.03.2015 (main order) and 11.08.2015 (review order) passed in the petition dated 22.12.2014 for true up of expenses / revenue for FY 2011-12, determination of ARR for FYs 2015-16, 2016-17 and 2017-18 as well as for determination of retail tariff for FY 2015-16, which has been assailed in connected separate appeal bearing No.46/2016. In the judgment passed today itself in that appeal we have discussed in detail the rival contentions of the parties on the issue under consideration and have rejected the contentions of the appellant. The relevant portion of the said order is extracted hereinbelow: -

“18. We find that by asking the appellant to submit relevant information / documents in support of its claim for Power Purchase Cost, the Commission was conducting a prudence check of the claims of the appellant which it is bound to do in terms of the tariff regulations. We also find that the Commission was justified in rejecting a portion of the appellant’s claim regarding Power Purchase Cost for want of proper data along with audited statement of accounts.

19. Therefore, we do not find any infirmity in the impugned findings of the Commission on this issue contained in the impugned tariff order dated 31.03.2015.”

15. Hence, no error or infirmity can be found in the findings of the Commission on the issue under consideration in the order dated 31.03.2016 which has been assailed in this appeal.

Issue No.2- Prior Period Charges:

16. In the petition filed before the Commission, the appellant had sought prior period expenses to the tune of Rs.2.80 crores for FY 2011-12 as per the

accounting standard 5 (AS 5) issued by the Institute of Chartered Accountant of India. However, the Commission has not allowed these charges to the appellant in the impugned tariff order.

17. Findings of the commission on this issue are extracted hereinbelow: -

“4.3 Prior Period Charges

Petitioner’s submission

MePDCL submitted the details of prior period charges with chartered accountant certificate and claimed Rs.2.80 Crore as against NIL charges approved by the Commission in its Order dated 11.08.2015.

Commission’s analysis

MePDCL have furnished the details of expenses with Auditor’s Certificate having verified the documents (Annexure-D). The details include Rs. 2.71 Crore power purchase cost as prior period expense, which are being allowed in every True up order as actual. The period to which the power purchase expense relates to was not stated with reference to Invoice numbers and date. The Commission

has not considered the expenditure in the True up for FY 2011-12 under Prior Period Charges as the prior period income is also of the same order. Accordingly, Commission does not allow any change in the prior period expenses and approved as NIL.”

18. We may note that the contentions of the parties on this issue have been heard and considered in detail by this Tribunal in the judgment passed today itself in connected appeal No.46/2016 and have remanded the case back to the Commission for a fresh decision on this issue. The relevant observation of this tribunal in the judgment passed in appeal No.46/2016 is quoted hereinbelow: -

“27. We may note that Prior Period Charges are the income or expenditure which arises in the current period as a result of any error or omission in preparation of financial statement for any previous period. The appellant, in its petition before the Commission, has provided the details of the prior period expenses for FY 2011-12 along with the reasons for claiming the same. However, the Commission has neither considered these details as well as reasons in support

thereof nor has specified as to why the same are not being considered.

28. Hence, we set aside the findings of the Commission on this issue and remand the issue back to the Commission for fresh consideration upon taking into account all the details / data / reasons furnished by the appellant in support of its claim.”

19. The fresh findings of the Commission on this issue upon reconsideration, as directed by this Tribunal in appeal No.46/2016, would have a direct bearing on the said issue in this appeal also.

20. Therefore, we set aside the findings of the Commission on this issue in the impugned order dated 31.03.2016 and remand the issue back to the Commission for fresh consideration upon taking into account all the details / data / reasons furnished by the appellant in support of its claim.

Issue No.3- Calculation of Collection Efficiency:

21. The appellant had claimed collection efficiency of 88.23% and AT&C loss as 35.31%. Further, appellant claimed net deposit of Rs.63.84 crores

and stated that the penalty levied upon it should have been only Rs.10.42 crores instead of Rs.29.64.

22. It is the case of the appellant that in pursuance to the order dated 11.08.2015 passed by the Commission in petition dated 29.05.2015 for review of the true up order for FY 2011-12 and also review of the Tariff Order for FY 2015-16, it had submitted auditors certificate indicating revenue collection and revenue billed for FY 2011-12 which has not been considered by the Commission while passing the order impugned in this appeal. According to the appellant: -

- a) the revenue realized ought to have been considered to be Rs 344.55 Cr instead of Rs 318.31 Cr.;
- b) the collection efficiency ought to have been determined to be 88.23% instead of 81.51%;
- c) the AT&C loss ought to have been determined to be 35.31 % instead of 40.23 %; and
- d) the penalty should have been Rs 10.42 Cr instead of Rs 29.64 Cr.

23. The findings of the Commission on this issue and the contentions of the appellant in assailing the same have already been considered in detail by us in the judgment passed today itself in connected appeal No.46/2016 and the same have been found sans any error or infirmity. Nothing new which has not been argued by the parties or considered by us in appeal No.46/2016, has been brought to our notice during the hearing on this appeal. Therefore, we affirm the findings of the Commission on the issue under consideration in this appeal also.

B. For Financial Year 2012-13 to 2014-15 (provisional):

Issue No.1- Return on Equity:

24. The appellant had claimed Return on Equity (RoE) of Rs.109.40 crores on equity of Rs.776.40 crores but the Commission has approved the RoE of Rs.9.43 cores only on equity of Rs.202 crores for the FY 2013-14.

25. On this issue also we have heard the contentions of the parties in detail in appeal No.46/2016. The relevant portion of the judgment passed by us in the said appeal is quoted hereinbelow: -

“38. Learned counsel for the appellant submitted that in the order dated 20.01.2012 for tariff determination for the FY 2011-12, the Commission had approved RoE of Rs.28.28 crores on an equity base of Rs.202 crores @ 14%, the same forming the basis of opening balance as on 01.04.2011. She further submitted that in the year 2010 by way of notification dated 31.03.2010, erstwhile Meghalaya State Electricity Board (MeSEB) was unbundled into four successor entities and thereafter vide notification dated 23.12.2013, Government of Meghalaya notified the revised and final statement of assets and liabilities to be vested in MeECL, the holding company with effect from 01.04.2010. She pointed out that as per the transfer scheme dated 23.09.2013, assets in the value of Rs.767.54 crores stood transferred to MeECL as on 01.04.2010 and therefore, the audited balance sheet for the period 2010-11 was finalized taking the equity base as on 31.03.2011 to Rs.903.53 crores after giving effect to subsequent equity additions.

39. She further argued that on the basis of the transfer scheme indicating the transfer of assets and liabilities to the successor companies and subsequent equity additions, the equity base for the period 2011-12 stood at Rs.908 crores which is also reflected in the audited accounts of the appellant for the FY 2011-12. She argued that the Commission has rejected the claim of appellant for a revised RoE in the impugned tariff order on the incorrect basis that no valid data has been furnished for considering the equity base as Rs.908.18 cores.

40. According to learned counsel, the Commission has failed to take into account the equity amount appearing in the equity balance sheet of the appellant or even as per the transfer scheme notification issued by the Government of Meghalaya for the purpose of calculating the RoE as envisaged by Regulation 101 of Tariff Regulations, 2011 and thus, the methodology adopted by the Commission in determining RoE is not only invalid but in deviation to its own regulations.

41. *Learned counsel for the respondent Commission referred to Regulations 100 and 101 of the Tariff Regulations 2011 and submitted that the Commission was right in rejecting the appellants claim for RoE on equity base of Rs.908.18 crores as no valid data was furnished by the appellant in this regard.*

42. *In rejoinder, the learned counsel for the appellant submitted that Regulation 100 provides that for determination of tariff, debt-equity ratio of 70:30 will be applied for all new investments and therefore the said Regulation has no application for investments prior to the period 2010-11.*

43. *We have considered the rival submissions of the learned counsels on this issue.*

44. *Since both the learned counsels have referred to regulations 100 and 101 of 2011 Tariff Regulations, we find it apposite to quote the same hereunder: -*

“100. Debt-equity Ratio

(1) For the purpose of determination of tariff, the debt-equity ratio of 70:30 will be applied for all new investments during the financial year. Where equity employed is more than 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance shall be treated as loan. Where actual equity employed is less than 30%, the actual equity shall be considered. Provided that the Commission may, in appropriate case, consider equity higher than 30% for the purpose of determination of tariff, where the distribution licensee is able to establish to the satisfaction of the Commission that deployment of equity more than 30% is in the interest of general public.

(2) The debt and equity amounts in accordance with clause (1) above shall be used for calculating interest on loan, return on equity, advance against depreciation and foreign rate variation.

101. Return on Equity

(1) Return on equity shall be computed on the equity base determined in accordance with Regulation 100, at a fixed rate of 14 percent, per annum. Provided that equity invested in a foreign currency may be allowed a return upto the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing. The difference in actual exchange rate and the provisional exchange rate considered while determining the ARR shall be taken into consideration at the time of 'Truing up'.

(2) The equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet was not audited.

(3) The premium received while issuing share capital shall be treated as a part of equity provided the same is utilized for meeting capital expenditure.

(4) Internal resources created out of free reserves and utilized for meeting the capital expenditure shall also be treated as a part of equity.”

45. It is manifest that Regulation 100 talks about new investments during financial year for which the tariff is to be determined and provides that debt-equity ratio for all such new investments shall be considered in the ratio of 70:30. Hence, this Regulation is not applicable to the appellant for the reason that there had been no new investment made by the appellant during the FY 2011-12.

46. The case of the appellant before the Commission was that on account of the transfer scheme whereby the assets and liabilities of the erstwhile MeSEB were transferred to the successor companies including the appellant herein coupled

with the subsequent equity additions, the equity base of the appellant for the period 2011-12 stood at Rs.908 cores which is also reflected in the audited accounts of the appellant for the said FY. Such a situation is clearly covered by Sub-Regulation (2) of Regulation 101 which provides that the equity amount appearing in the audited balance sheet or as per transfer scheme notification will be taken into account for the purpose of calculating the RoE for the first year of operation. Therefore, the Commission was bound to take into account the equity addition to the equity base of the appellant for FY 2011-12 in pursuance to the notification dated 23.12.2013 of the Government of Meghalaya vide which certain assets and liabilities of erstwhile MeSEB came to be vested in the appellant with effect from 01.04.2010. That having not been done by the Commission, the rejection of appellant's claim for RoE on equity base of Rs.908.18 crores cannot be sustained.

47. Hence, we set aside the findings of the Commission in the impugned order on this issue and remand the issue back

to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile MeSEB in the appellant in pursuance to the transfer scheme formulated by the Government of Meghalaya.”

26. In view of the above quoted findings given by us in appeal No.46/2016, we set aside the findings of the Commission in the order dated 31.03.2016 also, which has been impugned in this appeal and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile MeSEB in the appellant in pursuance to the transfer scheme formulated by the government of Meghalaya.

27. We summarize our findings on the issues raised by the appellant as under: -

Sl. No.	Issue No. / Issue	Our decision	In favour of
A.	For FY 2011-12		
1.	Issue No.1-	We do not find any infirmity in the impugned findings of the	Respondent

	<u>Power Purchase Cost</u>	Commission on this issue contained in the impugned tariff order dated 31.03.2016.	
2.	<u>Issue No.2-</u> <u>Prior Period Charges</u>	We set aside the findings of the Commission on this issue and remand the issue back to the Commission for fresh consideration upon taking into account all the details / data / reasons furnished by the appellant in support of its claim.	Appellant / Remanded
3.	<u>Issue No.3-</u> <u>Calculation of Collection Efficiency</u>	The findings of the Commission on this issue and the contentions of the appellant in assailing the same have already been considered in detail by us in appeal No.46/2016 and the same have been found sans any error or infirmity. Nothing new which has not been argued by the parties or	Respondent

		considered by us in appeal No.46/2016, has been brought to our notice during the hearing on this appeal. Therefore, we affirm the findings of the Commission on the issue under consideration in this appeal also.	
B.	<u>For True-up of FY 2012-13 to 2014-15 (Provisional)</u>		
4.	<u>Issue No.1-</u> <u>Return on Equity</u>	We set aside the findings of the Commission in the impugned order on this issue and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile MeSEB in the appellant in pursuance to the transfer scheme formulated by the Govt. of Meghalaya.	Appellant / Remanded

28. The appeal stands disposed off accordingly.

Pronounced in open court on this the 07th day of March, 2025

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / NON-REPORTABLE

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