

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.286 OF 2017

Dated: 15.05.2025

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

In the matter of:

Chhattisgarh State Power Distribution Co. Ltd.

4th Floor, Vidyut Sewa Bhavan, Daganiya,
Raipur (C.G.) – 492013.

Represented by its Executive Engineer (RAC-I).

... Appellant

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Irrigation Colony, Shanti Nagar,
Raipur (C.G.) – 492001.

Represented by its Secretary.

2. Jayaswal Neco Industries Limited

F-8, MIDC, Industrial Area,
Hingna Road, Nagpur – 440016.

3. Chhattisgarh Mini Steel Plant Association

Shop No. 408, 4th Floor,
Samta Shopping Arcade, Main Road,
Samta Colony, Raipur, (C.G.) – 492001

Through its Authorized Representative

4. Chhattisgarh Ferro Alloys Producers Association

Urla Industrial Area,
Raipur (C.G.) – 492003

5. Chhattisgarh Steel Re-Rollers Association
1st Floor, Sona Tower, Opp. Deshbandhu Press,
Ramasagarpara, Raipur (C.G.) – 492001.

6. J.K. Laxmi Cement Ltd.
Jaykaypuram, Basantgarh,
Distt. Sirohi, Rajasthan – 307019.

... Respondents

Counsel for the Appellant(s) : R K Mehta
Rashmi Singh

Counsel for the Respondent(s) : Ritesh Khare for Res. 1

Raunak Jain for Res. 2

Anand K. Ganesan
Swapna Seshadri
Ashwin Ramanathan
Damodar Solanki
Utkarsh Singh
Harsha Rao For Res. 3

Pallav Mongia For Res. 4 to 6

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal is directed against the common order dated 31st March, 2017 passed by the first Respondent – Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in four petitions bearing Nos.64/2016(T), 65/2016(T), 66/2016(T) and 67/2016(T) filed by the Appellant (which is one of the Distribution Licensees in the State of

Chhattisgarh) and the other three Distribution Licensees in the State of Chhattisgarh namely Chhattisgarh State Power Transmission Company Ltd., Chhattisgarh State Power Generation Company Ltd. and Chhattisgarh State Load Dispatch Centre respectively.

2. Petition No. 64/2016(T) of the Appellant was for final true up for Financial Year (FY) 2015-16 and determination of tariff for FY 2017-18. The petitions Nos. 65/2016(T) and 66/2016(T) filed by Chhattisgarh State Power Transmission Company Ltd. and Chhattisgarh State Power Generation Company Ltd. respectively were for final true up for FY 2015-16. Petition No.67/2017(T) filed by Chhattisgarh State Load Dispatch Centre was also for final true up for FY 2015-16.

3. Only Chhattisgarh State Power Distribution Company Ltd. i.e. the appellant herein has assailed the said common tariff order dated 31.03.2017 by way of the instant appeal.

4. Initially, only the Commission was arrayed as lone respondent in the appeal. However, it appears that vide application bearing IA No.1858/2019, the appellant had sought amendment in the memo of appeal in order to add additional issues relating to billing of Variable Cost Adjustment Charges (in

short “VCA Charges”). This application acted as a trigger for certain consumers of electricity in the State of Chhattisgarh who moved applications bearing IA Nos.2074/2019, 2180/2019, 2181/2019, 2182/2019 and 180/2020 seeking impleadment/intervention in the appeal on the contention that the amendments sought by the appellant would have the bearing on the dispute pending before the Commission where these consumers are also parties. These applications for impleadment/intervention were allowed by this Tribunal vide order dated 13.02.2020 and accordingly the applicants namely Jayaswal Neco Industries Ltd., Chhattisgarh Mini Steel Plant Association, Chhattisgarh Ferro Alloys Producers Association, Chhattisgarh Steel Re-rollers Association and J.K. Laxmi Cement Ltd. were impleaded as respondent Nos.2 to 6 respectively in the appeal.

5. Thereafter, the IA No.1858/2019 of the appellant seeking amendment to the memo of appeal was also allowed vide order dated 13.02.2022.

6. Thus, following six issues have been raised by the appellant in this appeal for our consideration and adjudication: -

- (a) Negative interest on Working Capital reduced from ARR for FY 2015-16;

- (b) Erroneous calculation of Interest and Finance Charges in the revised ARR for FY 2017-18;
- (c) Subsidy not received from Government considered as revenue for FY 2015-16;
- (d) Return on Equity for FY 2015-16 taken as 15.5% instead of 16%;
- (e) Computation of Interest on Loan considering effect as 'UDAY'; and
- (f) Variable Cost Adjustment Charge

7. Only the Commission and respondent No.3 are contesting the appeal. We have heard learned counsel for the appellant as well as the learned counsels for first and third respondents.

Discussion analysis of these issues: -

Issue No.(a): Negative Interest on Working Capital reduced from ARR for FY 2015-16.

8. The grievance of the appellant is that the Commission in the impugned tariff order has erroneously deducted an amount of Rs.49.38 crores under Interest on Working Capital requirement from ARR of the appellant for the FY 2015-16 by applying 13.5% rate of interest on consumer security deposit

exceeding normative working capital requirement in arriving at the said notional figure. It is submitted that such approach of the Commission is contrary to MYT Regulations, 2012 issued by the Commission itself as well as contrary to the decision of this tribunal dated 09.10.2015 in appeal no.308/2013.

9. We have perused the judgment of this tribunal dated 09.10.2015 in appeal no.308/2013 which was between the same parties i.e. appellant and the Commission. With regards to the determination of working capital in case of retail supply of electricity as per MYT Regulation, 2012, it has been observed in the said judgment as under: -

“12.10 As per 2012 Tariff Regulations in determining the Working Capital in case of retail supply of electricity, the amount held as security deposit from the consumers is to be deducted. The interest paid on security deposit to the consumers is also allowed as part of interest and financial charges under Regulation 23.10. Provision for non-tariff income what is to be subtracted from ARR is similar to 2010 Regulation

12.11 2010 Tariff Regulations provide for non tariff income to be deducted from the ARR. However, the

non-tariff income does not specify notional income on the consumer security deposit.

12.12 The 2012 Tariff Regulations provide for deduction of consumer security deposit from the working capital requirements. However, there is no provision for notional interest on excess consumer security deposit to be treated as non-tariff income.

12.13 Thus, deduction of notional interest from the interest on working capital in FY 2006-07 to 2008-09 (April-December), treating notional interest on consumer security deposit as non-tariff income for FY 2008-09 (Jan-March) and 2009-10 to 2011-12 and notional interest on excess consumer security deposit over and above the working capital requirement as non tariff income is contrary to the applicable Regulations.

12.14 Therefore, this issue is decided in favour of the Appellant.”

10. We note that the applicability period of MYT Regulations, 2012, is from the FY 2012-13 to FY 2015-16. The issue at hand also pertains to the determination of ARR for the appellant for the FY 2015-16. Therefore, the dispute is governed by MYT Regulations, 2012 and the observations of this

Tribunal in the above noted judgment are squarely applicable to the instant case also.

11. Hence, we hold that the deduction of notional interest in FY 2015-16 on working capital is contrary to the applicable MYT Regulations, 2012.

12. The issue is decided in favour of the appellant.

Issue No.(b): Erroneous calculation of Interest and Finance Charges in the revised ARR for FY 2017-18.

13. It is pointed out on behalf of the appellant that the Commission has erroneously computed the amount of Interest and Finance Charges in Table 8.4-1 at page 177 of the impugned order and consequently the total Annual Revenue Requirement (ARR) for FY 2017-18 has been reduced by Rs.65.59 crores. According to the appellant, the Interest and Finance Charges ought to have been computed as Rs.294.96 crores (i.e. Rs.195.75 crores + Rs.99.21 crores) and not as Rs.229.31 crores as done in the impugned order. It is submitted that the Commission has, in line with earlier practice, erroneously considered the excess amount of Consumer Security Deposit over and above normative level of working capital as a source of income, which is against the

fundamental principles of prudence wherein income needs to be considered only after it accrues and is also contrary to MYT Regulations, 2015.

14. On behalf of the commission, it is submitted that there is no error in computation of Interest and Finance Charges. It is stated that in accordance with the MYT Regulations, 2015 (Regulation 5.8), the Commission has retained Interest on Loan and Interest on Security Deposit as determined in the MYT order dated 30th April, 2016. However, Interest on Working Capital had to be re-determined in accordance with Regulation 25 of MYT Regulations, 2015. It is submitted that the Commission has approved Rs.65.59 crores as interest on working capital for FY 2017-18 but the same has remained to be reflected in the Table 8.4-1 at page 177 of the impugned order. Therefore, the total Interest and Finance Charges for the FY 2017-18 work out to be Rs.229.37 crores (Rs.195.75crores +Rs.99.21crores - Rs.65.59 crores).

15. We find that the Commission has neither in the impugned tariff order nor in the reply filed before this Tribunal to the memo of appeal, explained as to how it has arrived at the figure of Rs.65.59 crores as Interest on Working Capital for the FY 2017-18 which has been deducted under the head “Interest and Finance Charges” in the year 2017-18. The Commission though, has

referred to Regulation 25 of MYT Regulations, 2015 in its reply but has failed to mention how the said Regulation has been applied in calculation of the amount of Rs.65.59 crores of Interest on Working Capital.

16. Therefore, the issue is remanded back to the Commission for fresh consideration upon hearing the parties again, which exercise shall be concluded within two months from the date of this judgement positively.

Issue No.(c): Subsidy not received from Government considered as revenue for FY 2015-16.

17. It is fairly submitted by learned counsel for the appellant that during the pendency of the present appeal, the State Government has released an amount of Rs.53.80 crores as subsidy which includes carrying cost on unpaid subsidy of Rs.42.75 crores. Therefore, he did not press this issue.

18. Accordingly, the issue is disposed off as not pressed.

Issue No.(d): Return on Equity for FY 2015-16 taken as 15.5% instead of 16%.

19. It is pointed out on behalf of the appellant that the Commission has erroneously calculated Return on Equity (RoE) at 15.5% in Table 6.10-1 at page 143 of the impugned order despite stating in para 6.10 that the RoE has been computed considering the base rate of 16% on the average equity for the year.

20. In their reply, it is stated by the Commission that Regulation 22.2 of MYT Regulations, 2012 provides that RoE has to be computed at the base rate of maximum 16% meaning thereby that the RoE can be computed at any rate upto 16%. It is stated that the said Regulation does not mandate that RoE should be computed at 16% in all cases. Further, referring to following two paragraphs of the tariff petitions filed by the appellant, it is stated that the appellant itself had prayed for computation of RoE at 15.5%, which has been done and therefore, it should not have any grievance in this regard: -

“Return on Equity

5.46 The Petitioner submits that it has computed Return on Equity as per Section 22 of the MYT Regulations, 2012 as below:

Table 2: Return on Equity (Rs. Crores)

Sr.	1.1.1 Particulars	1.1.2	FY 2015-16
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No.		TO 12.07.2013	Provisional True-up
1	<i>Permissible Equity in Opening GFA</i>	1,022.40	1,593.01
2	<i>Permissible Equity in Closing GFA</i>	1,103.76	1,269.29
3	<i>Average Gross Permissible Equity during the year</i>	1,063.08	1,431.15
4	<i>Rate of Return on Equity</i>	15.50%	15.50%
5	<i>Return on Equity</i>	164.78	221.83

5.47 Thus, the Petitioner request the Hon'ble Commission to approve Return of Equity of Rs. 221.83 Crores as detailed above. The detail breakup of Return on Equity is provided in the Technical Formats F18 respectively."

21. We feel in complete agreement with the contentions of the Commission on both the points raised by it. Perusal of the above quoted two paragraphs of the appellant's tariff petition clearly reveal that the Appellant had claimed RoE @15.5% which has been approved by the Commission in the impugned order thereby leaving no scope for any grievance in this regard for the appellant. Further, a bare reading of Regulation 22.2 of MYT Regulations, 2012 which is quoted herein below, leaves no doubt in one's mind regarding the fact that it

specifies the upper limit of base rate at 16% at which RoE has to be computed and does not mandate that RoE has to be computed at 16% in all cases.

*“22.2 Distribution: Return on Equity shall be computed in rupee terms on the equity base determined in accordance with Regulations 17. **Return on equity shall be computed on pre-tax basis at the base rate of maximum 16% to be grossed up as per Regulation 22.3 of these Regulations.**”*

22. Hence, we do not find any merit in the contentions of the appellant on this issue and thus, affirm the findings of the Commission.

23. The issue is decided against the appellant.

Issue No.(e): Computation of Interest on Loan considering effect of ‘UDAY’.

24. Learned counsel for the Appellant did not press this issue during the course of arguments, and accordingly, the same is disposed off as not pressed.

Issue No.(f): Variable Cost Adjustment Charge

25. This issue has cropped up by way of amendment in the memo of appeal due to following facts and circumstances.

26. Regulation 67.8 of Chhattisgarh State Regulatory Commission (Multi-Year Tariff) Regulation, 2015 (in short “MYT Regulations, 2015”) provide for recovery of “Variable Cost Adjustment Charge” (in short “VCA Charge”) from the consumers on actual sales on bimonthly basis. The same is extracted herein below: -

“67.8. Unless intimated otherwise by the Commission, the CSPDCL shall simultaneously include the amount of “variable cost adjustment charge” to be recovered from the individual consumers on the actual sales of the period for which bills are to be raised in the period shown below:

<i>Period of the year for which VCA is to be determined</i>	<i>CSPDCL to include the variable cost charge in monthly consumers bills to be raised for the bi-monthly period</i>	
<i>First bi-monthly period</i>	<i>April and May</i>	<i>Monthly bills to be raised in August and September on the sales for the</i>

		<i>months July and August respectively</i>
<i>Second bi-monthly period</i>	<i>June and July</i>	<i>Monthly bills to be raised in October and November on the sales for the months September and October respectively</i>
<i>Third bi-monthly period</i>	<i>August and September</i>	<i>Monthly bills to be raised in December and January on the sales for the months November and December respectively</i>
<i>Fourth bi-monthly period</i>	<i>October and November</i>	<i>Monthly bills to be raised in February and March on the sales for the months January and February respectively</i>
<i>Fifth bi-monthly period</i>	<i>December and January</i>	<i>Monthly bills to be raised in April and May on the sales for the months March and April respectively</i>
<i>Sixth bi-monthly period</i>	<i>February and March</i>	<i>Monthly bills to be raised in June and July on the</i>

		<i>sales for the months May and June respectively</i>
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The rate and the amount of the VCA charge shall be shown separately in the consumers' bills."

27. VCA Charge is determined on the basis of Change in Primary Fuel Cost (CHFC) in respect of coal fired stations of the appellant and Change in Cost of Power Purchase (CHPP) in respect of central generating stations.

28. Clause 14.1.1(8) and 14.2.13(10) of the tariff order dated 30th April, 2016 for FY 2016-17 provide that VCA Charge on consumption from 1st April, 2016 as per formula and conditions in the MYT Regulations, 2015 shall be levied in addition to energy charge on all the HT/LT consumers including temporary supply. Clause 23 of the said tariff order is with regards to its applicability and provides: - *"the order will be applicable from 1st April, 2016 and will remain in force till 31st March, 2017 or till the issue of next tariff order whichever is later. The Commission directs the companies to take appropriate steps to implement the tariff order."*

29. It is pointed out on behalf of the appellant that billing of VCA Charge is applied to all HT and LT consumers. The billing to HT consumers is done on centralized basis while the billing to LT consumers is made by field divisions. It

is stated that in pursuance to Regulation 67.8 of MYT Regulations, 2015 as well as tariff order dated 30th April, 2016, letter dated 17th March, 2017 was issued by appellant to all field offices to bill the VCA Charge @51paise for the consumption of December, 2016 and January, 2017 in the bill for March, 2017. Accordingly, the field offices started billing of VCA Charge @51 paise per unit in the bills for consumption for the month of March, 2017.

30. It is further stated that the impugned tariff order dated 31st March, 2017 came to be issued by the Commission thereby directing that VCA Charge for the period December, 2016 to March, 2017 shall not be billed to its retail consumers. However, according to the appellant, it was not possible to immediately stop the billing of VCA Charge on 31.03.2017 as substantial portion of consumers had already been billed by the time copy of the said tariff order was received in the office of the appellant on 17th April, 2017. However, upon receipt of the impugned order, letter dated 22nd April, 2017 was issued by the appellant thereby withdrawing the instructions of billing of bimonthly VCA Charge for the consumption for the month of April, 2017 payable in the bill of May, 2017. Accordingly, no VCA Charge was billed to the consumers in the bills for consumption for the month of April, 2017.

31. The challenge to the directions of the Commission contained in clause 8.5 of the impugned tariff order dated 31st March, 2017 for not billing the VCA Charge for the period December, 2016 to March, 2017 to retail consumers was raised by way of amendment which is vehemently opposed and contested by the third Respondent. Since the appellant had not refunded the VCA Charge already collected in the bills for the month of March, 2017, certain consumers i.e. 2nd to 6th respondents had approached this Tribunal by way of impleadment/intervention applications which were allowed as already noted hereinabove.

32. It is argued on behalf of the Appellant that the impugned directions issued by the Commission in Clause 8.5 of the tariff order dated 31st March, 2017 is without any basis and contrary to the MYT Regulations, 2015 as well as Supply Code. It is submitted that a consumer is liable to be billed on the basis of prevailing tariff order of the Commission and, therefore, bills for the month of March, 2017 had to be in accordance with the tariff order dated 30th March, 2016 which was applicable for the FY 2016-17 i.e. w.e.f. 1st April, 2016 to 31st March, 2017 and not as per the subsequent tariff order dated 31st March, 2017 which has been assailed in this appeal. It is submitted that the impugned tariff order is applicable w.e.f. 1st April, 2017 i.e. for the FY 2017-18

and, therefore, directions issued in clause 8.5 of the said order are not applicable to the bills raised for the month of March, 2017.

33. On behalf of the respondents, it is argued that this issue has been raised by the appellant by way of amendment about two years after the filing of the appeal solely to defeat the proceedings for refund of VCA Charge pursued by them before the Commission. It is argued that as per the settled law distribution licensee cannot charge an amount over and above what is prescribed under the tariff orders issued by the Commission.

34. In clause 8.5 of the impugned tariff order dated 31.3.2017, the Commission has stated that the prevailing VCA of Rs. 0.50/kWh has been merged with the existing tariff, as the prevailing fuel cost has been factored in while projecting the Power Purchase Cost. This fact is not denied on behalf of the appellant at all. Considering such merger, the Commission had felt it appropriate to direct that the VCA Charges for the period of December, 2016 to March, 2017 shall not be billed to the retail consumer. As per Regulation 67.8 of MYT Regulations, 2015, the VCA Charges for the months of December and January i.e. 5th bimonthly period were to be included in the monthly bills to be raised in April and May on the sales for the months of March and April respectively. Therefore, the VCA Charges for the period of December, 2016

had to be included in the monthly electricity bill for the month of March, 2017 to be raised in April, 2017. The impugned tariff order was passed on 31.3.2017. Concededly, the electricity bills for the month of March, 2017 were to be raised in the succeeding month i.e. April, 2017. Even though, the appellant claims that it received the copy of tariff order dated 31.3.2017 on 17.4.2017 but nothing has been produced to substantiate such claim. It is not the case of appellant that it had not gained knowledge of the impugned tariff order on 31.3.2017 itself or immediately thereafter. Even if it may be assumed that the appellant could not have got the knowledge of the entire contents of the impugned tariff order on the date of its issuance i.e. 31.3.2017 yet the factum of issuance of said order can be safely attributed to the appellant. Therefore, it was incumbent upon the appellant to peruse the said order before raising the bills for the month of March, 2017. It appears that the appellant showed tearing hurry in raising the bills for the month of March, 2017 including therein the VCA Charges, in order to avoid the compliance of the directions issued by the Commission in clause 8.5 of the impugned tariff order.

35. It is also evident that the appellant has been intentionally avoiding to refund the VCA Charges so collected from its consumers in the electricity bills for the month of March, 2017, to them despite their claims. The fact that the

appellant had initially not raised the issue with regards to VCA Charges in the memo of appeal indicates that the appellant had accepted the findings of the Commission in this regard in the impugned order. We feel in agreement with the submissions made on behalf of the respondents that the issue with regards to VCA Charges was incorporated in the memo of appeal by way of amendment after a lapse of more than two years from the date of filing of the appeal with the sole motive to defeat the claim of respondents nos.2 to 6 for refund of the VCA Charges levied from them in the electricity bill for the month of March, 2017 in contravention of the directions given by the Commission in clause 8.5 of the impugned order.

36. Hence, we do not find any merit in the contentions of the appellant on this issue.

37. This issue is decided against the appellant.

38. The summary of our findings on the issues raised in this appeal is as under: -

Sl. No.	Issue No. / Issue	Our decision	In favour of
1.	<u>Issue No.(a):</u> Negative Interest on	We hold that the deduction of notional	Appellant

	Working Capital reduced from ARR for FY 2015-16.	interest in FY 2015-16 on working capital is contrary to the applicable MYT Regulations, 2012.	
2.	<u>Issue No.(b):</u> Erroneous calculation of Interest and Finance Charges in the revised ARR for FY 2017-18.	The issue is remanded back to the Commission for fresh consideration upon hearing the parties again, which exercise shall be concluded within two months from the date of this judgement positively.	Remanded
3.	<u>Issue No.(c):</u> Subsidy not received from Government considered as revenue for FY 2015-16.	The issue is disposed off as not pressed.	Not pressed
4.	<u>Issue No.(d):</u> Return on Equity for FY 2015-16 taken as 15.5% instead of	We do not find any merit in the contentions of the appellant on this issue and thus, affirm the	Respondents

	16%.	findings of the Commission.	
5.	<u>Issue No.(e):</u> Computation of Interest on Loan considering effect of 'UDAY'.	The issue is disposed off as not pressed.	Not pressed
6.	<u>Issue No.(f):</u> Variable Cost Adjustment Charge	We do not find any merit in the contentions of the appellant on this issue. The issue is decided against the appellant	Respondents

39. The appeal stands disposed off accordingly.

Pronounced in the open court on this the 15th day of May, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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