

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

**Appeal No. 303 OF 2019**

**Dated: 1<sup>st</sup> July, 2025**

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

**In the matter of:**

**M/s Jayaswal Neco Industries Ltd.**

Through its Authorised Signatory  
Shri Dilip Kumar Mohanty  
Siltara Growth Centre,  
Raipur,  
Chhattisgarh- 493 111.

... Appellant

*Versus*

**1. Chhattisgarh State Electricity Regulatory Commission**

Through its Secretary,  
Irrigation Colony, Shanti Nagar,  
Raipur, Chhattisgarh – 492 001

**2. Chhattisgarh State Power Distribution Company Limited,**

Through its Managing Director,  
Daganiya, Raipur  
Chhattisgarh-492 014.

... Respondent (s)

Counsel for the Appellant(s) : Mr. Raunak Jain  
Mr. Vishvendra Tomar

Counsel for the Respondent(s) : Mr. C.K. Rai  
Mr. Ritesh Khare for Res.1

Mr. Sajan Poovayya, Sr. Adv.

Mr. Akshat Jain for Res.2

**JUDGEMENT**

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. M/s Jayaswal Neco Industries Ltd has filed the present Appeal challenging the Order dated 28.02.2019 (in short "Impugned Order") in Petition No. 05/2019(T) passed by Chhattisgarh State Electricity Regulatory Commission (in short "State Commission or "CSERC"). By the Impugned Order, the State Commission has approved the ARR and determined the retail supply tariff of the Chhattisgarh State Power Distribution Company Limited (in short "CSPDCL").

**Description of parties: -**

2. The Appellant, M/s Jayaswal Neco Industries Ltd., is a company registered under the Companies Act, 1956, and has established a captive generating plant within the meaning of Section 2(8) of the EA 2003 for meeting its power requirements. The Appellant is further connected to the 220 KV Siltara substation of CSPDCL through a 220 KV line for export/import of power with a contract demand of 54000 KVA.

3. Respondent No. 1, the State Commission, is the statutory body set up under provisions of Section 82 (1) of the Act. The State Commission performs statutory duties and functions enumerated under Section 86 of the Act.

4. Respondent No.2 is Chhattisgarh State Power Distribution Company Limited.

**Factual Matrix of the Case:**

5. M/s SNC Lavalin International, reputed consultants, conducted a detailed study across the State of Chhattisgarh on the Loss & Cost of Service (in short "CoS") in the erstwhile Board and submitted its Final Report dated July 2009, giving a break-up of Consumer Category-wise CoS.

6. Vide its Letter dated 17.03.2011, CSPDCL forwarded the Final Report of M/s SNC Lavalin International to the State Commission and categorically stated therein that the Final Report, ***"--- has been finally accepted by CSPDCL after obtaining of required clarification of observations. As the report is found satisfactory and exemplary..."***.

7. In the Tariff Order dated 28.04.2012 for FY 2012-13, the State Commission determined the retail supply tariff of the Respondent CSPDCL. For the determination of cross-subsidy, the State Commission relied on Average CoS instead of Voltage-wise or Consumer Category-wise CoS due to the absence of relevant data.

8. In the Tariff Order dated 12.07.2013 for FY 2013-14, upon objections raised by stakeholders, State Commission directed CSPDCL that ***"----Considering the importance of voltage-wise cost of supply and directions issued by this Tribunal, the Commission directs the Petitioner to submit a detailed report on voltage-wise cost of supply and its impact on the tariff design within twelve months from the date of this Order."***

9. In para 8, the State Commission further directed CSPDCL, "**----to submit a detailed study report on voltage-wise cost of supply and its impact on the tariff design within twelve months from the date of this Order**".

10. In the Tariff Order dated 12.06.2014 for FY 2014-15, State Commission again redirected CSPDCL to submit a detailed report on Voltage-wise CoS and its impact on the tariff design, "along with next tariff petition". CSPDCL further submitted that, "...new study will take at least one and a half/Years' time."

11. In the Tariff Order dated 23.05.2015 for FY 2015-16, in para 10.1.4, the State Commission held that, "**---- CSPDCL is again directed to complete the study and submit the report within a 6 months period.**"

12. In the Tariff Order dated 30.04.2016 for FY 2016-17, the State Commission yet again determined the category-wise tariffs based on Average CoS as the State Commission felt that in the absence of a realistic assessment of the Voltage-wise losses, the determination of Voltage-wise CoS may lead to incorrect conclusions. The State Commission in para 13.2.1 of the said order held that, "----- due to historical reasons, this objective cannot be achieved immediately, and hence, a gradual movement has been initiated in this Order."

13. Further, in para 15.4.1, the State Commission specifically directed the Respondent CSPDCL that "**----- should complete the study regarding voltage-wise cost of supply and study pertaining to voltage-wise wheeling loss at the earliest.**"

14. In the Tariff Order dated 31.03.2017 for FY 2017-18, the State Commission yet again determined the category-wise tariffs based on Average CoS, as the State Commission felt that the actual voltage-wise losses would be available only after the studies carried out by CSPDCL.

15. On 16.11.2017, a petition filed by M/s Chhattisgarh Steel Re-rollers Association, being Petition No. 08 of 2016(M), seeking implementation of the various Tariff Orders for FY 2012-13, 2013-14, 2014-15 & 2015-16 and segregation of Voltage-wise and Consumer Category-wise actual cost of supply, the State Commission directed Respondent CSPDCL **"---- to expedite the process of determination of voltage wise cost of supply and submit proper data during determination of next retail tariff petition."**

16. In the Tariff Order dated 26.03.2018 for FY 2018-19, the State Commission yet again determined the category-wise tariffs based on Average CoS, as the State Commission felt that the actual voltage-wise losses would be available only after the studies carried out by CSPDCL.

17. Respondent CSPDCL filed its Petition on 01.12.2018 for approval of final true-up for FY 2016-17, provisional true-up for FY 2017-18, and determination of retail tariff for FY 2019-20, which was registered as Petition No. 05 of 2019 (T). The State Commission thereafter invited objections and suggestions from the stakeholders.

18. On 26.02.2019, the Appellant filed its objections and suggestions to Petition No. 05 of 2019 (T) filed by Respondent CSPDCL. Appellant objected to the

determination of the tariff based on Average CoS instead of Voltage-wise CoS due to the absence of relevant data. Appellant contended that since it is connected to the 220 KV system of the discom, there are nil distribution losses and the Appellant is compelled to bear losses, i.e., 17.17% instead of 3.22% transmission losses alone for EHV consumers, which adversely affects the tariff payable by the Appellant.

19. Hence, it was prayed that Voltage-wise CoS may be considered for the determination of tariff as well as Voltage-wise power purchase cost while determining the tariff. Again, on 26.02.2019 & 27.02.2019, the State Commission held public hearings on the objections and suggestions filed by the various stakeholders, including the objections filed by the present Appellant.

20. Again, on 28.02.2019, only the tariff schedule for FY 2019-20 was notified by the State Commission on its website.

21. Vide its Letter dated 07.05.2019, the Appellant submitted to the State Commission that till date, the detailed Tariff Order for FY 2019-20 of the 2<sup>nd</sup> Respondent has not been uploaded on the website of the State Commission. It was therefore requested by the Appellant to provide a copy of the detailed Tariff Order for FY 2019-20.

22. The State Commission on 14.05.2019, uploaded on its website the detailed Tariff Order for FY 2019-20 of the 2<sup>nd</sup> Respondent, CSPDCL. On scrutiny, it is evident that the State Commission has followed the same approach while determining the tariff for FY 2019-20, as was followed in the previous tariff orders

for FY 2016-17, 2017-18, and 2018-19. The State Commission has determined the category-wise tariff for FY 2019-20, based on Average CoS, since presently the voltage-wise losses are computed based on assumptions, and the actual losses would only be known after metered data at all distribution systems are properly captured.

23. As advised by the State Commission, Appellant further deposited Rs. 500/- with the State Commission so that a copy of the detailed Tariff Order for FY 2019-20 of CSPDCL could be made available to the Appellant. On payment thereof, a copy of the detailed Tariff Order for FY 2019-20 of CSPDCL has been made available to the Appellant only on 17.05.2019.

### **Appellant's Written Submission**

24. The Appellant submitted a chronological list of dates of events for record and reference, the same is noted hereunder:

<b>DATES</b>	<b>PARTICULARS</b>	<b>REF:</b>
July 2009	The State Commission (CSERC) appointed a consultant, M/s SNC Lavalin International, to conduct a detailed study across the State of Chhattisgarh on the Loss & Cost of Service (" <b>CoS</b> "). The consultant submitted its Final Report dated July 2009 to the CSERC giving break-up of Consumer Category-Wise CoS. It is evident from	@A-2, Pg. 343, Vol. II, Appeal

	the report that the consultant took into account all aspects of the system.	
17.03.2011	Respondent No.2 CSPDCL, vide its Letter dated 17.03.2011 accepted the Final Report submitted by M/s SNC Lavalin International to the CSERC. CSPDCL admitted therein that the Final Report, <b><u>“..has been finally accepted by CSPDCL after obtaining of required clarification of observations. As the report is found satisfactory and exemplary...”</u></b> .	@A-3, Pg. 401, Vol. II, Appeal
28.04.2012 12.07.2013 12.06.2014 23.05.2015 30.04.2016 31.03.2017 26.03.2018	The State Commission passed tariff orders for FYs 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18 and determined the tariff on the basis of Average Cost of Supply (ACoS) method. It is evident from the orders that CSERC gave umpteen number of opportunities to CSPDCL to complete/update the study regarding voltage-wise cost of supply and wheeling losses. However, on account of alleged non-furnishing the relevant data, CSERC continued to determine the tariff on the basis of ACoS method, which is against the settled law.	@A-4 to A-A-9 & A-11, Pgs. 402- 441 & 462, Vol. II, Appeal
16.11.2017	State Commission passed the Order dated 16.11.2017 in Petition No. 08 of 2016(M) filed by Chhattisgarh Steel Re-rollers Association, wherein the implementation of the several	@A-10 Pg. 74, Vol. I, Appeal



	directions of the CSERC in the tariff orders with respect to segregation of Voltage-wise and Consumer Category-wise actual cost of supply, was sought. CSERC disposed of the said petition by directing Respondent No. 2 CSPDCL “... to expedite the process of determination of voltage wise cost of supply and <b><u>submit proper data during determination of next retail tariff petition.</u></b> ”	
01.12.2018 26.02.2018	On 01.12.2018, CSPDCL filed Petition No. 05 of 2019 (T) before the State Commission for approval of final true-up for FY 2016-17, provisional true up for FY 2017-18, and determination of retail tariff for FY 2019-20. Yet again, the tariff proposed was on the basis of ACoS method and in violation to the directions passed by the CSERC. On 26.02.2019, the Appellant <i>inter-alia</i> , filed is objections on the determination of tariff on the basis of Average CoS instead of Voltage-wise CoS due to the alleged absence of relevant data.	@A-12, Pg. 468, Vol. II, Appeal
28.02.2019	CSERC passed the impugned Tariff Order dated 28.02.2019 in Petition No. 05 of 2019 (T). In respect of ACoS and VCoS, the State Commission	@A-1, Pg. 30,

	followed the same approach while determining the tariff for FY 2019-20, as was followed in the previous tariff orders. The State Commission determined the tariff for FY 2019-20 on the basis of Average CoS on the same alleged reason that, presently the voltage-wise losses are computed on the basis of assumptions and the actual losses would only be known after metered data at all distribution systems are properly captured. <i>[Internal pgs. 29-32 &amp; 222-234 of the tariff order]</i>	Vol. I, Appeal
03.07.2019	Hence, the present appeal before this Hon'ble Tribunal.	
05.11.2024	This Tribunal vide Order dated 05.11.2024, in the course of hearing the present appeal, directed the Respondent No. 2 CSPDCL to clearly indicate the time which they will be taking in providing the necessary information for deciding the voltage-wise cost of supply.	

25. The Appellant submitted that it is an Extra High Voltage (“EHT”) consumer of the distribution licensee CSPDCL and is connected to its 220 KV distribution network. There are no distribution losses on the 220 KV network, however, due to the incorrect methodology adopted by the State Commission by determining the tariff on the basis of Average Cost of Supply (“ACoS”) instead of Voltage-wise Cost of Supply (“VCoS”), the Appellant is compelled to bear losses @17.17%. Hence, the Appellant is deeply prejudiced and pays a higher tariff on account of incorrect

loading of the distribution losses.

26. The Appellant argued that during the hearing, this Tribunal vide order dated 20.12.2024, directed CSPDCL to file an affidavit regarding non-consideration and non-implementation of the earlier reports, which are found to be exemplary, and what future action they propose in this regard. CSPDCL, vide affidavit filed on 27.01.2025, *inter-alia*, submitted that: -

- (a) The consultant appointed by the Commission, i.e., M/s SNC Lavalin International, submitted its report in July 2009 to CSPDCL (para 4 of the affidavit);
- (b) There were discrepancies found in the said report, which were pointed out by CSPDCL vide its letter dated 08.02.2010 (para 4 of the affidavit);
- (c) The competent authority of CSPDCL accorded approval to the said report; however, it deducted 15% of the contract cost from the consultant (para 5 of the affidavit);
- (d) Thereafter, the report was submitted to the Commission by CSPDCL under its cover letter dated 17.03.2011 (para 6 of the affidavit);
- (e) While issuing the tariff orders for various years, the Commission directed CSPDCL to conduct the VCoS study and submit the report, but to date, the study has not been conducted (para 7 of the affidavit);
- (f) A Minimum period of one year will be required to get the final report from the consultant (para 9 of the affidavit).

27. During the course of hearing, on 13.02.2025, CSPDCL gave a statement

that, “***the study which had to be carried out earlier cannot be considered at this stage either by them or the Commission on account of merit of the report and sought one years’ time for completing another study so that the issue can be resolved thereafter ----.***”

28. The Appellant vehemently argued that the State Commission is bound to determine the tariff based on segregated voltage-wise cost of supply to different categories of consumers, as this Tribunal has, in several judgements, directed the various State Commissions to implement the VCoS while determining the tariff, reliance was placed on the following judgments:

- (a) ***M/s Siel Limited Vs. The Punjab State Electricity Regulatory Commission & Ors.***, judgment dated 26.05.2006 passed by the Full Bench of this Tribunal in Appeal Nos. 4, 13, 14, 23, 25, 26, 35, 36, 54 & 55 of 2005;
- (b) ***Punjab State Power Corporation Limited Vs. Punjab State Electricity Regulatory Commission & Ors.***, judgment dated 10.02.2015 passed by the Hon’ble Supreme Court in Civil Appeal No. 4510 of 2006;
- (c) ***M/s Tata Steel Limited & Ors. Vs. Orissa Electricity Regulatory Commission & Ors.***, judgment dated 30.05.2011 passed by this Tribunal in Appeal Nos. 102, 103 & 112 of 2010;
- (d) ***Byrnihat Industries Association Vs. Meghalaya State Electricity Regulatory Commission & Anr.***, judgment dated 01.12.2015 passed by the APTEL in Appeal No. 146 of 2014; and

(e) ***Abhijeet Ferrotech Limited Vs. Andhra Pradesh Electricity Regulatory Commission & Anr.***, judgment dated 08.02.2022 passed by this Tribunal in Appeal No. 248 of 2018.

29. The Appellant also submitted that the non-determination and non-implementation of the VCoS for determining the tariff is deeply prejudicing the Appellant, who is unnecessarily burdened with distribution losses, which are otherwise inapplicable. Hence, the impugned Tariff Order dated 28.02.2019, insofar as it relates to the Appellant, is liable to be set aside as it has failed to determine the tariff based on VCoS.

30. The Appellant contended that no cogent reasons were provided for disregarding the earlier Final Report dated July 2009 submitted by M/s SNC Lavalin International.

31. Admittedly, as per para 5 of the affidavit filed by CSPDCL in compliance to the order passed by this Tribunal, it is submitted that the competent authority of CSPDCL accepted the Final Report dated July 2009 submitted by M/s SNC Lavalin International. The report was forwarded to the Commission vide CSPDCL's letter dated 17.03.2011 and is signed by its Executive Director (O&M). The said letter clearly states that the report, ***"----- has been finally accepted by CSPDCL after obtaining of required clarification of observations. As the report is found satisfactory and exemplary..."***).

32. It is also a matter of record that the State Commission passed tariff orders for FYs 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18 and determined

the tariff based on the ACoS method. It is evident from the orders that CSERC gave umpteen opportunities to CSPDCL to complete/update the study regarding VCoS and wheeling losses. However, on account of alleged non-furnishing of the relevant data, CSERC has continued to determine the tariff based on the ACoS method, which is against the settled law.

33. Further, argued that over 13 years have elapsed since the report submitted by M/s SNC Lavalin International was accepted by CSPDCL, and over 5 years have passed since the impugned Tariff Order dated 28.02.2019. However, it is evident from CSPDCL's affidavit that no justification has come forth as to why the said report cannot be considered at this stage either by them or the Commission, or what is preventing CSPDCL from completing/updating the study. As already stated, the letter dated 15.03.2011 was sent by CSPDCL to the State Commission, **"after obtaining of required clarification of observations"**. Hence, all the concerns raised by CSPDCL vide its earlier letter dated 08.02.2010 were ironed out. Now, once again, CSPDCL has offered the same explanation to this Tribunal, i.e., it requires one more year to update/ complete the report. However, the same seems to be a complete eye-wash given the several years that have already elapsed, and not even a whisper of progress or status of the report has been shared by CSPDCL with anybody, including this Tribunal.

34. The Appellant pleaded that the Commission may be directed to account for the major cost elements to reflect the CoS, as per the simple methodology specified by this Tribunal in ***M/s Tata Steel Limited & Ors. Vs. Orissa Electricity Regulatory Commission & Ors.***, case, wherein this Tribunal has given a formulation for the determination of VCoS in the absence of the availability of

detailed data, as it would not be prudent to wait indefinitely. This Tribunal specified a method for the determination of the cost of supply for different consumer categories.

35. It was also held that in the absence of segregated network costs, it would be prudent to work out the voltage-wise cost of supply, taking into account the distribution losses at different voltage levels as a first major step in the right direction. As the power purchase cost is a major component of the tariff, apportioning the power purchase cost at different voltage levels, taking into account the distribution loss at the relevant voltage level and the upstream system, will facilitate the determination of the voltage-wise cost of supply. Thus, a practical method is suggested to reflect the consumer-wise cost of supply.

36. Further, prayed that, if at all this Tribunal is inclined to accept the statement made by CSPDCL and grant more time to complete/ update the study, in the interregnum and till such time the CSERC determines the tariff based on VCoS, this Tribunal may consider directing the CSERC to follow the simple methodology specified by this Tribunal in **Tata Steel's** case. Resultantly, the tariff of the Appellant for FY 2019-20 may be calculated based on the method specified by this Tribunal in **Tata Steel's** case.

37. Further, pleaded that given the aforesaid, this Tribunal may:

- (a) Allow the appeal and set aside the impugned Order dated 26.02.2019 in Petition No. 05 of 2019 (T) passed by the State Commission to the extent indicated above;

(b) Hold and direct the State Commission to determine the voltage-wise and category-wise cost of supply and to implement the same for the future years; and

(c) *Alternatively*, if at all this Tribunal is inclined to accept the statement made by CSPDCL and grant more time to complete/ update the study, in the interregnum and till such time the CSERC determines the tariff based on VCoS, this Tribunal may consider directing the CSERC to follow the simple methodology specified by this Tribunal in **Tata Steel's** case, for determination of tariff in the Appellant's case, including FY 2019-20.

### **Respondent's Written Submission**

38. CSPDCL submitted that they are in the process of engaging a suitable consultant to conduct a detailed study on voltage-wise and category-wise CoS. Since a large area is involved and various factors need to be considered for a proper study, inter alia, has requested an additional year to complete the final report, as mentioned in the Compliance Affidavit dated 07.01.2025. Thus, it is most respectfully prayed that the present appeal may be disposed of by granting one year to CSPDCL to finish the study and submit a report in terms of the compliance affidavit.

39. Also countered the appeal on the issue of maintainability, stating that:



- (i) Appellant is an electricity consumer of Respondent No.2 with contract demand 54 MVA and taking supply on 220 KV thus billed with retail supply tariff notified by Respondent No.1.
- (ii) The Appellant has installed a captive generator in the same premises fully dedicated for his own use which is admitted fact at para 7.1 of appeal.
- (iii) That subject matter of present appeal relates to determination of cross subsidy surcharge which does not apply to the case of Appellant because as per the scheme of Electricity Act, 2003, cross subsidy surcharge is payable only when a consumer avails supply from a person other than Distribution Licensee of that area and/ or a captive generator loses captive status under scrutiny of Rule 3 of Electricity Rules, 2005 on annual basis. It is worth to mention that Appellant qualifies captive status on year-on-year basis and for this reason, cross subsidy surcharge does not affect.
- (iv) That requirement of Section 111 of Electricity Act, 2003 for filing an appeal is that it should be exercised by "Any person aggrieved". That under settled principles of law, a person aggrieved must be a person who suffered legal grievances or legal injuries or one who has been unjustly deprived or denied of something he would have entitled to obtain in usual course.

**40. As the present appeal does not carry specific mention about any legal injury caused to Appellant by the impugned order, hence this reason itself is self-sufficient to dismiss the present appeal.**

41. The Appellant is a consumer who takes electricity from respondent no. 2 while the Appellant in the judgement of Maruti Suzuki case was taking power from a person who is not a distribution licensee and has to make payment towards cross subsidy surcharge. For this purpose, the question of law raised in Maruti Suzuki matter is given below:

*“A. Whether the State Commission is justified in determining and imposing cross-subsidy surcharge without the requisite details being provided by the Respondent No. 2 as directed by the State Commission?*

*B. Whether the State Commission has followed the applicable provisions and principles of law in the determination, quantification and application of cross-subsidy surcharge for the year 2012-13?*

*C. Whether the State Commission is justified in determining and imposing the cross-subsidy surcharge contrary to the provisions of and the formula prescribed in the National Tariff Policy?*

42. From the above it is evident that the subject matter of the decided appeal relates to determination and imposition of cross subsidy surcharge which has no connection or incidence with the present appeal. Moreover, Commission has already issued regulation for calculation cross subsidy. Thus, in the present case the Commission has already exercised their power.

43. It is worth to point-out that the appellant in the present case is aggrieved only because respondent no. 1 has not determined the tariff on the basis of voltage-wise cost of supply.

44. The Appellant has relied upon the judgement passed by this Tribunal in ***M/s. Maruti Suzuki India Ltd. Vs. Haryana Electricity Regulatory Commission and Anr.*** (APL No. 200 of 2011 decided on 04.10.20121), wherein, this Tribunal observed that –

*"72. In the absence of a specific formula for cross-subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross-subsidy surcharge using the tariff policy formula. No reason has been given for not using the tariff formula in the impugned order."*

45. However, in the said judgment, this Tribunal rightly observed that the National Electricity Policy and the Tariff Policy are not binding on the Commission; they can only serve as guiding factors. If the Regulatory Commissions are to function as independent and transparent bodies, they are expected to frame regulations independently under Sections 178 and 181 of the 2003 Act. While they may take guidance from the National Electricity Policy or the Tariff Policy, they are not bound by them.

46. Furthermore, it has been observed that the National Electricity Policy and the Tariff Policy, framed under Section 2 of the Act, cannot override the regulations framed under Section 61, read with Sections 178 and 181 of the said Act. It has also been categorically observed that if there are regulations framed by the Appropriate Commission in the relevant field, the Appropriate Commission is required to follow them. The supremacy of the Regulatory Commissions in this regard has been acknowledged by the Hon'ble Supreme Court in the PTC matter.

47. M/s SNC Lavalin International ("SNCLI"), conducted a study across the State of Chhattisgarh on the Loss & Cost of Service ("CoS") in the erstwhile Board and submitted its Final Report giving break-up of Consumer Category Wise CoS.

48. **R2 vide letter dated 08.02.2010 to SNCLI expressed their dissatisfaction of the data collection by SNCLI. It was stated that SNCLI started the work too late keeping in mind the huge quantum. There was dissatisfaction that SNCLI failed to comply with Terms of Reference Clause 1.3. SNCLI had also failed to accomplish knowledge transfer to R2's employees, as a result the team of CSPDCL was still not in position to take up the work on their own.**

49. R2 mentioned "tariff category wise and voltage class wise clarification of the book of accounts was to be done, but it has not been done at circle level by consultant" and further Respondent Company pointed out that CoS model suggested/given has no provisions to capture impact of geographies, time of supply, different level of service analyses.

50. Further, submitted that report cannot be accepted today as the same was not up to the requirement and therefore was rightly rejected by the State Commission (Respondent no.1). Moreover, its implementation at this stage may not give correct picture due to changes in distribution network and dynamics in consumer mix due to addition of captive generation resulted into change to sales ratio among HT / LT consumers.

51. It is contended that relief to determine consumer tariff on the basis of voltage-wise cost of supply under the grab of present appeal runs contrary to light thrown by Hon'ble Supreme Court at para 109 of order passed in Civil Appeal No.4510 of 2006 that ***“Therefore, for the present, the approach adopted by the Commission in determining the Average Cost of Supply cannot be faulted”*** and ***“Guiding principles of Tariff Policy which requires tariff to be within  $\pm 20\%$  of average cost of supply”***.

52. It can be seen from Annexure-13 placed by Appellant that their participation in original tariff proceedings of impugned order before Respondent No.2 intended to get special retail supply tariff for Steel Industries (HV-4 Tariff category) only. Since Respondent No.2 has determined the retail supply tariff in accordance with guiding principles of tariff policy i.e. the tariff should be within the limits  $\pm 20\%$  of average cost of supply.

53. Tariff orders issued by respondent No. 1 from FY 2012-13 to FY 2017-18 dealing with calculation of voltage-wise cost of supply and computation of cross subsidy surcharge. Every tariff order being independent and separate on its own and ceases to operate from a date when subsequent tariff order is notified. Effectively with the notification of tariff order for FY 2018-19 i.e. from 1<sup>st</sup> April 2018 the aforesaid tariff orders were extinguished. Hence appellant's recourse to use aforesaid tariff orders in building the present appeal is extraneous.

54. Also, contended that Respondent no. 1 has issued tariff order sought to be impugned in the present appeal after completing due regulatory process wherein tariff petition of Respondent no. 2 was placed in public domain for inviting

objections & suggestions from all stake holders, consideration of reply of Respondent no. 2 towards objections & suggestions received in above process, providing opportunity of personal hearing to all objectors and exercising its statutory authority to determine tariff as per the provisions of section 62(3). Respondent no. 1 has effectively taken into consideration the submissions made by the Appellant in the tariff order which is indicated at page no. 30 to 32 under chapter 2. It can be seen that rationality of tariff determination is reasonably detailed under specific chapter-8 "*Tariff principles & design*". The contentions of Appellant that voltage-wise cost of supply may be considered for determination of tariff is against the judicial principles upheld by Hon'ble Supreme Court in Appeal No. 4510 of 2006 at para 109 as "***Therefore, for the present, the approach adopted by the Commission in determining average cost of supply cannot be faulted***" and "***Guiding principles of tariff policy which requires tariff to be  $\pm$  20% of average cost of supply***".

55. It is respectfully submitted that relief relates to determination of cross subsidy surcharge which does not apply to the case of Appellant because as per the scheme of Electricity Act, 2003, cross subsidy surcharge is payable only when a consumer avails supply from a person other than Distribution Licensee of that area and/ or a captive generator loses captive status under scrutiny of Rule 3 of Electricity Rules, 2005 on annual basis. It is worth to mention that Appellant qualifies captive status on year-on-year basis and for this reason, cross subsidy surcharge does not affect.

56. It is admitted fact that prayer submitted in the present appeal is already allowed by Respondent No.1 in order dated 16.11.2017 in Petition No.08 of 2016

and by raising the same question in the present appeal would be against judicial discipline.

57. The Respondent No. 2, further, placed important events taken place date-wise.

Date	Events
<p>July 2009 <b>A2, pg. 343-400</b></p>	<p>M/s SNC Lavalin International ("SNCLI"), conducted a study across the State of Chhattisgarh on the Loss &amp; Cost of Service ("CoS") in the erstwhile Board and submitted its Final Report dated giving break-up of Consumer Category Wise CoS.</p>
<p>08.02.2010 <b>Annexure R-2/1 in Affidavit by R2 dated 10.01.2025</b></p>	<p>R2 <i>vide</i> letter dated 08.02.2010 to SNCLI expressed their dissatisfaction of the data collection by SNCLI. It was stated that SNCLI started the work too late keeping in mind the huge quantum. There was dissatisfaction that SNCLI failed to comply with Terms of Reference Clause 1.3. SNCLI had also failed to accomplish knowledge transfer to R2's employees, as a result the team of CSPDCL was still not in position to take up the work on their own.</p> <p>R2 mentioned "tariff category wise and voltage class wise clarification of the book of accounts was to be done, but it has not been done at circle level by consultant" and further Respondent Company pointed out that CoS model suggested/given has no provisions to capture impact of</p>

	geographies, time of supply, different level of service analyses.
17.03.2011 <b>A3, pg. 401</b>	R2 <i>vide</i> letter dated 17.03.2011 forwarded the Final Report of SNCLI to the State Commission and stated that the Final Report has been accepted by CSPDCL and that the report is found satisfactory. It was so because of lack of viable options.
12.07.2013 <b>A5, pg. 408-415</b>	State Commission, in Tariff Order for FY 2013-14, directed R2 to submit a detailed study report on voltage-wise CoS within 12 months.
12.06.2014 <b>A6, pg. 416-422</b>	State Commission, in Tariff Order for FY 2014-15, again directed the R2 to submit a detailed report on voltage-wise CoS.
23.05.2015 <b>A7, pg. 423-429</b>	State Commission, in Tariff Order for FY 2015-16, directed the R2 to complete the study and submit the report within 6 months.
30.04.2016 <b>A8, pg. 430-435</b>	State Commission, in Tariff Order for FY 2016-17, determined tariff on the basis of average CoS, in the absence of data, and directed the R2 to complete the study at the earliest.  R2 in its reply stated that the existing approach is in line with the principle of tariffs being within +/- 20% of the average CoS, as provided by Clause 8.3 of Tariff Policy notified and amended on Jan 28, 2016. <b>(pg. 432)</b>



31.03.2017 <b>A9, pg. 436-441</b>	State Commission, in Tariff Order for FY 2017-18, determined tariff on the basis of average CoS, in the absence of data.
16.11.2017 <b>A10, pg. 442-461</b>	State Commission, on Petition filed by M/s Chhattisgarh Steel Re-rollers Association Petition No. 08 of 2016(M), directed the R2 to expedite the process of determination of voltage wise CoS and submit proper data during determination of next retail tariff petition.
26.03.2018 <b>A11, pg. 462-467</b>	State Commission, in Tariff Order for FY 2018-19, determined tariff on the basis of average CoS, in the absence of data.
01.12.2018	R2 filed its Petition, being Petition No. 05 of 2019, for approval of final true-up for FR 2016-17, provisional true-up for FR 2017-18, and determination of retail tariff for FY 2019-20. The State Commission thereafter invited objections and suggestions.
26.02.2019 <b>A12, pg. 468-469</b>	The Appellant filed its objection and suggestions to Petition No. 05 of 2019. Appellant raised the objection of determination of tariff on the basis of Average CoS instead of Voltage-wise CoS due to the absence of relevant data. Appellant contended that since it is connected to the 220 KV system of the discom, there are nil distribution losses and the Appellant is compelled to bear losses i.e. 17.17% instead of 3.22% transmission losses alone for EHV consumers, which adversely affects the tariff payable by the Appellant.

26.02.2019 & 27.02.2019	State Commission held public hearing on the objections and suggestions filed by various stakeholders.
28.02.2019 <b>A1, pg. 30-342 Impugned Order</b>	The State Commission passed the impugned order dated 28.02.2019 whereby it has approved the ARR and determined the retail supply tariff of the R2 for FY 2019-20. In respect of Average CoS and Voltage-wise CoS, the State Commission has followed the same approach while determining the tariff for FY 2019-20, as was followed in the previous tariff orders for FY 2016-17, 2017-18 & 2018-19. The State Commission has determined the category-wise tariff for FY 2019-20, on the basis of Average CoS since presently the voltage-wise losses are computed on the basis of assumptions and the actual losses would only be known after metered data at all distribution systems are properly captured.
14.05.2019	The State Commission uploaded on its website the impugned detailed Tariff Order for FY 2019-20 of R2
<b>10.06.2019</b>	<b>Appeal No. 303 of 2019 filed by the Appellants.</b>
25.10.2019	R2 filed its reply
11.03.2020	Appellant filed rejoinder
10.01.2025	R2 filed Affidavit in compliance of order dated 20.12.2024.

58. The Respondent prayed that, in the view of the above, the appeal filed by the Appellant deserved to be dismissed and the Respondent CSPDCL may kindly be granted one year time to conduct the survey and submit report.

**Our observation and Conclusion :-**

59. Let us first deal with the issue of maintainability as challenged by the CSPDCL.

60. The Respondent argued that the Appellant is an electricity consumer of Respondent No.2 with contract demand 54 MVA and taking supply on 220 KV, thus billed with the retail supply tariff notified by Respondent No.1. Further, the Appellant has installed a captive generator for his use and the subject matter of present appeal relates to determination of cross subsidy surcharge which does not apply to the case of Appellant because as per the scheme of Electricity Act, 2003, cross subsidy surcharge is payable only when a consumer avails supply from a person other than Distribution Licensee of that area and/ or a captive generator loses captive status under scrutiny of Rule 3 of Electricity Rules, 2005 on annual basis.

61. We find the above argument unsatisfactory and unjustified, as any consumer of a distribution licensee, inter alia, connected to the distribution or transmission grid, is directly affected by the retail tariff, including the cross-subsidy surcharge, i.e., by the wrongful determination of ACoS or VCoS, and as, all consumers have an option of availing open access under the provisions of the Electricity Act, 2003 (in short "Act") and therefore are affected by the retail supply tariff including the cross-subsidy surcharge.

62. We decline to accept the contentions of the Respondent No. 2 on the issue

of maintainability, any consumer of the State can be aggrieved by the wrongful determination of ACoS or VCoS, inter alia, the cross-subsidy surcharge. Even the captive users connected to the grid are also the affected parties by the tariff orders.

63. On being asked, the CSPDCL agreed that in case of failure of the Appellant falling under the category of CPP, it shall be liable to pay cross subsidy and will be affected by the retail supply tariff.

64. We, therefore, decline to accept the argument of the CSPDCL that the Appellant is not an aggrieved party.

65. The Appeal filed by the Appellant deserves to be allowed on the issue of maintainability.

66. On the issue of merit of the case, we noted that the State Commission has completely failed in ensuring that the Respondent No. 2 comply with its directions for years together, now more than ten years.

**67. Under such circumstances, this Tribunal cannot ignore the issue raised herein, in the light of non-compliance with the orders of the Commission, and failure of the State Commission in ensuring compliance with its orders.**

68. Undisputedly, the first report in the subject matter submitted by the CSPDCL's appointed consultant, M/s SNC Lavalin International, inter alia, the said report was accepted by the competent authority, and was declared as

**“satisfactory and exemplary”**, by the Respondent No. 2.

69. Thereafter, the report was submitted to CSERC on 17.03.2011, and since then, 14 long years have passed.

70. On being asked, it is submitted by CSPDCL that they are in the process of engaging a new consultant and require an additional year.

71. We find the above submission totally misleading, and to continue with the non-compliance of several orders passed by the State Commission to carry out system studies for the State in terms of VCoS and wheeling losses.

72. The Appellant submitted that the State Commission has issued tariff orders for FYs 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18, before the filing of this appeal in 2019, determining the tariff based on the ACoS method. It is also evident from these orders that CSERC has directed CSPDCL to complete/update the study regarding voltage-wise cost of supply and wheeling losses. However, CSERC has continued to determine the tariff based on the ACoS method, against the settled principle laid down by this Tribunal.

73. Reliance is placed on the following judgments wherein it is directed that the State Commission shall determine the tariff based on Voltage-wise CoS and Voltage-wise wheeling losses.

a) Full Bench judgment dated 26.05.2006 of this Tribunal in ***M/s Siel Limited Vs. The Punjab State Electricity Regulatory***

**Commission & Ors.”**, passed in Appeal Nos. 4, 13, 14, 23, 25, 26, 35, 36, 54 & 55 of 2005.

Proposition – Cost of supply as indicated in Section 61(g) is not the average cost of supply but the actual cost of supply.

b) Hon'ble Supreme Court judgment dated 10.02.2015 rendered in **Punjab State Power Corporation Limited Vs. Punjab State Electricity Regulatory Commission & Ors.”**, in Civil Appeal No. 4510 of 2006, wherein it is held that **the actual costs of supply for each category of consumer would be a more accurate basis for determination of the extent of cross-subsidies that are prevailing so as to reduce the same keeping in mind the provisions of the Act and also the requirement of fairness to each category of consumers.**

c) This Tribunal judgment dated 30.05.2011 passed in **M/s Tata Steel Limited & Ors. Vs. Orissa Electricity Regulatory Commission & Ors.**, Appeal Nos. 102, 103 & 112 of 2010, observing and deciding as under:

*“31. We appreciate that the determination of cost of supply to different categories of consumers is a difficult exercise in view of non-availability of metering data and segregation of the network costs. **However, it will not be prudent to wait indefinitely for availability of the entire data and it would be advisable to initiate a simple formulation which could take into account the***

**major cost element to a great extent reflect the cost of supply. There is no need to make distinction between the distribution charges of identical consumers connected at different nodes in the distribution network. It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system. Since the State Commission has expressed difficulties in determining voltage wise cost of supply, we would like to give necessary directions in this regard.**”

- d) This Tribunal judgment dated 01.12.2015 passed in **Byrnihat Industries Association Vs. Meghalaya State Electricity Regulatory Commission & Anr.**” in Appeal No. 146 of 2014.

“14.11 Thus, the State Commission has to notify a roadmap towards reduction of cross subsidy. **Further, the Hon’ble Supreme Court in its Judgement dated 10 February 2015 clearly specifies that the State Commissions has to move away from the principle of average cost of supply towards determination of voltage wise cost of supply.**

14.12 Further, the State Commission has expressed difficulties in determining the voltage-wise cost of supply in view of non-availability of metering data, absence of proper energy audit at

each voltage level, non-completion of accounts and true reflection of voltage-wise assess there in.

***In our opinion, it will not be prudent to wait indefinitely for availability of entire data, and it would be advisable to initiate a simple formulation which could be taken into account the major cost elements. However, we direct the State Commission to initiate study for voltage-wise cost of supply as directed by this Tribunal's Judgements for use in the Tariff Order 2015-16 to determine the cross subsidy by various category of consumers with respect to voltage-wise cost of supply.***

14.13 As seen from the impugned order dated 12.04.2014, the State Commission has to direct the Distribution Licensee to submit the relevant data in a specified time ***and insist the Distribution Licensee to submit their tariff petition as per the voltage-wise cost of supply.***

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14.15 ***However, we direct the State Commission to obtain the necessary data from the Distribution Company for determination of tariff considering voltage-wise category of supply before finalization of tariff order for FY 2015-16."***

e) Judgment dated 08.02.2022, delivered by this Tribunal in ***Abhijeet Ferrotech Limited Vs. Andhra Pradesh Electricity Regulatory Commission & Anr."***, Appeal No. 248 of 2018. It is held as under:



*“25. The issue involved in the present appeal is entirely covered by various other judgments of this Tribunal wherein it has been held that tariff has to be determined voltage-wise. Some of the said judgments of this Tribunal are provided hereinbelow:*

- i. Judgment dated 26.05.2006 in Appeal Nos. 04, 13, 14, 23, 25, 26, 35, 36, 54 and 55 of 2005, titled as Siel Limited v. PSERC &Ors.;*
- ii. Judgment dated 30.05.2011 in Appeal No. 102 of 2010, titled as TATA Steel Ltd. v. OERC &Ors.;*
- iii. Judgment dated 23.09.2013 in Appeal Nos. 52, 67 of 2012, titled as Ferro Alloys Corporation Limited v. OERC & Anr.”*

74. From the above, it is clear that this Tribunal also directed various State Commissions to determine voltage-wise, inter alia, and passed necessary directions to the State Commission to determine voltage-wise tariff methodology in the absence of detailed parameters.

75. The CSPDCL submitted that the Commission has already issued a regulation for the calculation of cross-subsidy. Thus, in the present case, the Commission has already exercised its power; however, we could not find anything that suggests the contrary to the directions passed by this Tribunal or any regulation suggesting the methodology as adopted by the Commission.

76. In fact, the State Commission, while determining the tariff orders, expressed their concern about non-submission of data for voltage-wise determination by the

CSPDCL, which continued to be defied by the CSPDCL.

77. Further, reference to ***M/s. Maruti Suzuki India Ltd. Vs. Haryana Electricity Regulatory Commission and Anr.*** by the CSPDCL stating reliance by the Appellant also deserves to be rejected, as during the hearing, no reliance was placed by the Appellant on any such judgment nor countered by the Respondent, except that it is referred to in the Written Submissions by the Respondent, and thus deserves to be rejected.

78. The CSPDCL also cited the Hon'ble Supreme Court judgment in the PTC matter, stating that if there are regulations framed by the Appropriate Commission in the relevant field, the Appropriate Commission is required to follow them. However, no such Regulation was quoted by the CSPDCL as part of its Written Submissions, which suggests that the State Commission has determined the tariff following such Regulations, ignoring the directions passed by the Hon'ble Supreme Court and by this Tribunal to determine tariff voltage-wise.

79. Respondent also stated that the study conducted by M/s SNC Lavalin International ("SNCLI"), inter alia, submitted the Final Report giving a break-up of Consumer Category Wise CoS.

80. However, CSPDCL, *vide* letter dated 08.02.2010 addressed to SNCLI, expressed their dissatisfaction with the data collection by SNCLI. It was stated that SNCLI started the work too late, keeping in mind the huge quantum. There was dissatisfaction that SNCLI failed to comply with the Terms of Reference Clause 1.3. SNCLI had also failed to accomplish knowledge transfer to its employees; as

a result, the team of CSPDCL was still not in a position to take up the work on their own.

81. However, we are not satisfied with this submission as CSPDCL accepted the said report and declared it “**satisfactory and exemplary**”, as seen from the letter dated 17.03.2011 written by Executive Director (O&M), CSPDCL to Secretary, CSERC regarding “**Sub: - Acceptance of final report submitted by M/s SNC. Lavalin for Study Technical and Commercial loss analysis, Agriculture and BPL consumption pattern and Cost of Service Study etc.**”. The relevant extract of the letter is quoted as under:

“ In connection of above cited subject and reference, it is to intimated that the final report and other detail report submitted by M/s SNC Lavalin has been finally accepted by CSPDCL after obtaining of required clarification of observations. **As the report is found satisfactory and exemplary.** Hence, CSPDCL now started imitate gradually in field as advised in report to obtain better result.”

82. We find the submissions of CSPDCL at this stage declaring the report not satisfactory as serious and perverse; it seems that the expenditure on such a report has gone to waste, a wasteful expenditure paid by the consumers of CSPDCL.

83. The defense of CSPDCL for the rejection of the Report by the State Commission is totally unjustified and arbitrary, as it declares the report was not up to the requirement and therefore was rightly rejected by the State Commission.

Also argued that its implementation at this stage may not give a correct picture due to changes in the distribution network and dynamics in consumer mix due to the addition of captive generation, resulting in a change to the sales ratio among HT / LT consumers.

84. We cannot allow such arguments as the report, once accepted and found to be satisfactory and exemplary, cannot be rejected at this stage by declaring that the report is not up to the requirement, the CoS model suggested/given has no provisions to capture the impact of geographies, time of supply, and different levels of service analyses.

85. We also reject the contention of the CSPDCL that Appellant is taking recourse to use the aforesaid tariff orders in building the present appeal is extraneous, stating that Tariff orders issued by Respondent No. 1 from FY 2012-13 to FY 2017-18 dealing with calculation of voltage-wise cost of supply and computation of cross subsidy surcharge. Also, submitting that every tariff order is independent and separate on its own and ceases to operate from the date when the subsequent tariff order is notified.

86. We agree that each tariff order is independent; however, failure to comply with the directions issued by the Commission and also failing to follow the principle laid down by this Tribunal continuously from one tariff order to another cannot be allowed, as it has been continuing for more than ten years now.

87. We also noted the list of important dates; however, nothing supports the arguments as put forth by the Respondent.

88. We find merit in the contentions of the Appellant as noted as part of its Written Submissions.

89. Undisputedly, as per Section 61(g) of the Electricity Act, 2003, the tariff applicable to a consumer has to reflect the amount of actual cross subsidies built into the said tariff. This Tribunal in judgment dated 08.02.2022 in Appeal No. 248 of 2018 (Abhijeet Ferrotech Limited Vs. Andhra Pradesh Electricity Regulatory Commission & Anr) has held as under:

*“26. Further, as per Section 61(g) of the Electricity Act, 2003, the tariff applicable to a consumer has to reflect the amount of actual cross subsidies in built in the said tariff. The same is for the reason that the Act contemplates progressive reduction in cross subsidies. For the purposes of effecting progressive reduction in cross subsidies, it is necessary that actual cross subsidies can be ascertained from the tariff of a consumer. The same can only happen in the event separate consumer tariff for each voltage levels, is determined by the Commission.*

*27. We are inclined to record here that State Commission has miserably failed in complying with the directions passed by this Tribunal in various Judgements but also failed to implement the provisions of the Tariff Policy,2016 which clearly mandates that:*

*“Clause 8.3(2)*

*a) Separate consumer tariff at each voltage level has to be determined in order to fulfil the mandate of Section 61(g) of the*

*Electricity Act 2003, which is to reflect actual cost of supply;*

*b) Separate consumer tariff at each voltage level is required in order to ascertain the actual cross subsidies in built in a consumer's tariff;*

*c) Without specifying a separate consumer tariff for consumers connected at each voltage level, a progressive reduction in actual cross subsidies is not possible as the said component is not known;*

*d) The retail/ effective tariff or average billing rate at a particular voltage level cannot exceed more than 20% of the actual cost of supply of a distribution licensee at the said voltage level.”*

*28. We, further, reject the submission of the Respondent No. 2 for not determining the tariff voltage wise that the transmission system in the State operates in a ring mode comprising of 400kV, 220kV and 132kV system and as such, it is only the transmission loss for the entire transmission network which can be determined.-----*

*29. In the light of the foregoing paragraphs, **it is clear that this Tribunal has, time and again, been consistently held that the State Commissions have to necessarily determine voltage wise tariff depending upon different category of consumers, and the principle of which has also been upheld by the Hon'ble Supreme Court in Punjab State Power Corpn. Ltd. v. Punjab State Electricity Regulatory Commission, (2015) 7 SCC 387 as stated above.***

90. In the light of the above, the Impugned Order dated 28.02.2019 passed in

Petition No. 05/2019(T) by Chhattisgarh State Electricity Regulatory Commission cannot be sustained.

91. Additionally, CSPDCL has requested an additional year to complete the final report, as also mentioned in the Compliance Affidavit dated 07.01.2025, because a large area is involved and various factors need to be considered for a proper study, we find it appropriate to issue necessary and binding direction to CSPDCL to complete the report within one year from the date of this judgment.

92. We also direct the State Commission to monitor the progress of the completion of the study to be carried out by CSPDCL regularly.

93. The State Commission during the interregnum period shall determine the tariff based on VCoS following the methodology suggested by this Tribunal in ***M/s Tata Steel Limited & Ors. Vs. Orissa Electricity Regulatory Commission & Ors.***, (“Tata Steel”) case, as referred to in the foregoing paragraphs.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 303 of 2019 has merit and is allowed to the extent as concluded herein above.

The Impugned Order dated 28.02.2019 passed in Petition No. 05/2019(T) by the CSERC is set aside to the limited extent as concluded herein.

The Captioned Appeal is disposed of in the above terms.

The State Commission shall determine the tariff based on VCoS based on the methodology suggested by this Tribunal in the Tata Steel case, till the completion of the Study Report by the CSPDCL and accepted by the CSERC.

**PRONOUNCED IN THE OPEN COURT ON THIS 1<sup>st</sup> DAY OF JULY, 2025.**

**(Virender Bhat)**  
**Judicial Member**

**(Sandesh Kumar Sharma)**  
**Technical Member**

*pr/mkj/kks*