

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 61 of 2017

Dated : 4th October, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF :

M/s Mahabir Jute Mills Ltd.
Registered Office & Works at Sahjanwa
Distt – Gorakhpur - 273209

.... **APPELLANT**

Versus

1. **Uttar Pradesh Electricity Regulatory Commission**
Through its Chairman,
Vibhuti Khand
Kisan Mandi Bhawan, Gomti Nagar
Lucknow – 226010
Uttar Pradesh.
2. **Uttar Pradesh Power Corporation Limited**
Through its Chairman,
Shakti Bhawan, Extension 14, Ashok Marg,
Lucknow – 226 001
Uttar Pradesh.
3. The Managing Director
Purvanchal Vidyut Vitran Nigam Ltd.,
DLW, Varanasi
Uttar Pradesh.
4. Executive Engineer, EDD II,
Purvanchal Vidyut Vitran Nigam Limited
Mohadipur, Gorakhpur,
Uttar Pradesh

.... **RESPONDENTS**

Counsel for the Appellant(s) : Ms. Pyoli Swatija

Counsel for the Respondent(s) : Mr. C. K. Rai
Mr. Sachin Dubey for R-1

Mr. Rajiv Srivastava
Ms. Gargi Srivastava
Ms. Harshita Sinha
Ms. Garima Srivastava for R-2 to 4

J U D G M E N T

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. This Appeal is directed against the Order passed by Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as “**Commission**” or “**State Commission**”) on 21.10.2016. In brief, the facts that led to filing of the Appeal are as under:

2. 2nd Respondent - Uttar Pradesh Power Corporation Limited (hereinafter referred to as “**UPPCL**”) and 3rd Respondent - Purvanchal Vidyut Vitran Nigam Ltd. (hereinafter referred to as “**PuVVNL**”) are the Government undertakings emerged on account of reorganization of the Electricity Board in terms of U.P. Act, 1999. Admittedly, 2nd Respondent is in-charge of electricity trading/bulk purchase and bulk supplies. 3rd

Respondent is the distribution company having license in terms of the Electricity Act, 2003.

3. Respondent – State Commission has framed various Regulations regulating the functions of licensees and others in the State of Uttar Pradesh including with regard to tariff conditions, determination of Revenue Requirements etc. The relevant Regulations are:

- (i) Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulation, 2004. (“**UPERC Regulations of 2004**”)
- (ii) Uttar Pradesh Electricity Supply Code, 2005.

4. In this Appeal, we are concerned with Clause 139 (1) of UPERC (Conduct of Business) Regulations 2004.

5. According to the Appellant, the Regulatory Surcharge was at 2.84% for the period between 06.06.2014 to 15.10.2014 and at 5.22% between 01.04.2015 to 27.06.2015. The surcharge was charged without compliance to Clause 139 of the Regulation 2004. Further, the Appellant contends that the two orders of the Commission dated 06.06.2014 and 22.04.2015 were not published by PuVVNL as required in the above Clause of the Regulation. However, in the impugned order, quite contradictory to previous orders including *suo moto* order dated

13.08.2015, by which the Respondent – Commission has made the following Order:

“All orders concerning Tariff/Regulatory Surcharge etc. must be put on the website of the licensee/UPPCL and must follow Clause – 139 of UPERC Regulation 2004.”

6. Since these two previous orders of the Respondent – Commission while imposing 2.84% and later 5.22% Regulatory Surcharge, were not published, and since no one had any opportunity of representing, therefore, it amounts to violation of principles of natural justice is the stand of the Appellant. The reason for contending so is that the consumers have to bear the financial brunt without being put to notice of the same. According to the Appellant, this is quite contradictory to the objectives and provisions of the Electricity Act, 2003 apart from being contrary to the above said Regulation of 2004.

7. The Appellant further contends that for the Financial Year 2013-14, by Tariff Order dated 31.05.2013, Regulatory Surcharge (“**RS**”) was imposed at 3.71% by UPERC and it was duly published and notified by UPPCL and the same came into effect from 10.06.2013. However, this surcharge was not levied by DISCOM on the ground that there was no order from UPERC. When UPPCL on behalf of DISCOM approached the

Respondent – Commission for extension of the said order dated 06.06.2014 in Petition No. 945 of 2014 for approval of Regulatory Surcharge of 2.84% from the date of its order till declaration of the Tariff Order for Financial Year 2014-15, the said order ought to have been published. However, it was brought into force with effect from 06.06.2014.

8. According to the Appellant, though the Respondent – Commission had clearly admitted the applicability of Clause 139 of the Regulation 2004 so far as Regulatory Surcharge with regard to publication and notification, the same was not followed. The tariff in terms of order dated 01.10.2014, Regulatory Surcharge should have come into force with effect from 16.10.2014. In the absence of non-compliance of Clause 139, Respondents – DISCOMs ought not to have recovered the Regulatory Surcharge is the contention of the Appellant.

9. Similarly, according to the Appellant, the Tariff Order pertaining to the Financial Year 2015-16, Regulatory Surcharge at 7.12% was approved by the Commission; the same was duly notified and published by UPPCL and the same has come into force with effect from 28.06.2015. Therefore, for the period between 01.04.2015 to 27.06.2015, collection of Regulatory Surcharge at 5.22% is unauthorized apart from being illegal. In spite of

several representations, no refund whatsoever, came to be made. On the other hand, according to the Appellant, the Director, Commercial of UPPCL replied that publication of the order dated 06.06.2014 was not required since it was an interim order of the Commission.

10. Petition No. 1125 of 2016 came to be filed by the Appellant on 18.07.2016 before the Respondent – Commission.

11. According to the Appellant, Commission was not justified in holding that Clause 139 of Regulation 2004 is not applicable to extension of Regulatory Surcharge; and non-compliance of Clause 139 of Regulation 2004 does not come in the way of imposing Regulatory Surcharge as mentioned above. Further, the impugned order pertaining to clarification No.01 to Tariff Order is contradictory to the previous orders of the Commission and going against its *suo moto* order dated 13.08.2015 as stated above.

12. With the above averments, the Appellant sought for the following reliefs:

- i) Allow the appeal and set aside the order dated 21.10.2016 passed by the Uttar Pradesh Electricity

Regulatory Commission to the extent challenged in the present appeal;

- ii) Pass appropriate directions to the Respondents for refund/adjustment of the amount of Regulatory Surcharge so charged illegally from the Appellant in violation of Clause 139 of the UPERC (Conduct of Business) Regulation 2004 @ 2.84% for the period 06.06.2014 to 15.10.2014 and @ 5.22% for the period of 01.04.2015 to 27.06.2015 along with interest @ 18% p.a. from the date of realization to the date of the refund.
- iii) Pass such other Order(s) and this Tribunal may deem just and proper.

13. As against this, 2nd to 4th Respondents have filed their reply. They contend that the Respondent – Commission was justified in opining that since the orders dated 06.06.2014 and 22.04.2015 were not tariff orders, therefore no question of contravening of Clause 139 of Regulations 2004 arises. The impugned order of the Commission is within the four corners of law and the above mentioned two order were, in fact, not tariff orders, but were only follow up orders. Therefore, they contend that requirement of publication and notifying the said orders would not arise. Further, the

contentions of the Appellant are misconceived, since there was no Tariff Orders but were follow up orders. The impugned order is passed on sound and judicious exercise of mind by the Respondent – Commission. There is no violation of any provision of UPERC Regulations of 2004.

14. They further contend that increase or decrease of Regulatory Surcharge is not an exercise in determination of tariff for the purpose of attracting Regulation 139. The order dated 06.06.2014 approving Regulatory Surcharge at 2.84% was absolutely clear with regard to the fact that the aforesaid Regulatory Surcharge was applicable till declaration of tariff for the Financial Year 2014-15. The Regulatory Surcharge, not being a component of determination of tariff, is separate and distinct from tariff. Therefore, requirement of notification and publication indicated at Regulation 139 (1) of Regulation 2004 are not attracted. Hence, there was no illegality in making the order dated 06.06.2014 effective without publication.

15. The 2nd to 4th Respondents also brought on record the fact that the Regulatory Surcharge vide orders dated 06.06.2014 and 22.04.2015 were applicable only in the case of consumers falling under the category of LMV-1 and LMV-5. The Appellant was coming under the HV-2 category. Therefore, the Appellant was not affected by the orders dated 06.06.2014

and 22.04.2015; and had no cause of action to file the Petition before the UPERC which led to passing of the impugned order. Pertaining to hearing held on 03.06.2014, there was public notice published in the *Hindustan Times* (English) and *Dainik Jagran* (Hindi) dated 30.05.2014 calling for objections if any, from stakeholders with regard to proposed Regulatory Surcharge.

16. They further contend that in the impugned order, the State Commission opined that the Regulatory Surcharge is the legitimate and authorized charge to be recovered from consumers for the past expenses of distribution licensee which could not be recovered in the previous orders as the approved tariff was not sufficient to recover the cost incurred. Therefore, the order fixing the Regulatory Surcharge would not make the Regulatory Surcharge as a component of tariff. There is no causing of any prejudice to the right of the Appellant. The Appellant in the present Appeal, has approached the Respondent – Commission without any cause of action arising in its favour. Therefore, the Appellant has no locus standi to maintain this Appeal is the stand of the 2nd to 4th Respondents.

17. In response to the above reply of the Respondents, the Appellant has filed Rejoinder, once again reiterating the grounds raised in the Appeal Memo.

18. According to the Appellant, the orders determining, amending and clarifying of the Regulatory Surcharge, fall under Regulations 138 and 139 of Regulation, 2004. Therefore, there is a mandate to be notified and published of the same. Further, Respondents were not justified in saying that the order dated 13.08.2015 was only clarifying what is contained in Regulation 138 and 139; but there is no proper explanation about the observations of the Respondent – Commission in the order dated 13.08.2015 wherein the Commission opined that the tariff/Regulatory Surcharge must be put on the website of licensee and must follow Clause 139 of Regulation 2004. Therefore, now it is not open to Respondents to contend that the Regulatory Surcharge is separate and distinct.

19. The Appellant further challenges the opinion of the Respondent – Commission that levy of Regulatory Surcharge in question was never meant for consumers other than LMV-1 and LMV-5 categories, but it is applicable to all categories without any exception. Therefore, the Appellant being consumer of HV-2 category is affected by the said UPERC order dated 06.06.2014. Further, UPERC in its order dated 22.04.2015 regarding levy of reduced Regulatory Surcharge-1 and Regulatory Surcharge-2 with effect from 01.04.2015 was only applicable to categories of LMV-1 and LMV-5; but later on through its order dated 17.06.2015

clarified that a lowered Regulatory Surcharge was only for the consumers of LMV-1 and LMV-5 categories and the rest of the consumers, the Regulatory Surcharge-1 and Regulatory Surcharge-2 will continue to be the same as was applicable for the Financial Year 2014-15. Therefore, the order dated 22.04.2015 in respect of Regulatory Surcharge-1 and Regulatory Surcharge-2 with effect from 01.04.2015 came to be enforced unlawfully on the Appellant.

20. The questions of law that would arise for our consideration in this matter are as under:

- (i) Whether the orders dated 06.06.2014 and 22.04.2015 are in violation of Regulation 139 of Regulation 2004 since they were not published?**
- (ii) Whether levying of the Regulatory Surcharge, as stated above, by the two orders is against principles of natural justice, since consumers were not given opportunity of being heard?**

21. Both the Appellant and Respondents put forth arguments reiterating their submissions already made through their pleadings.

22. The Appellant sought the following reliefs in the Petition No. 1125 of 2016 filed before the Respondent Commission:

- “(1) That opposite parties be directed to refund/ adjust the amount of Regulatory Surcharge so charged illegally from the petitioner in violation of Clause 139 of UPERC (Conduct of Business) Regulation 2004 for the period 6 June 2014 to 15 Oct 2014. @2.84% & 5.22% for the period of 1st April 2015 to 27 June 2015 along with interest @ 18% p.a. from the date of realization to the date of refund.*
- (2) Any other relief which the Hon’ble Commission deems fit in the circumstance of the case be also granted.”*

23. The main contention of the Appellant is that the two Regulatory Surcharge orders dated 06.06.2014 and 22.04.2015 are not enforceable, since they were not notified and published in terms of Clause 139 of UPERC Regulation 2004.

24. According to the Respondent – Commission, there was no need of either notifying or publishing the above said orders since they were not tariff orders. Further, after passing the tariff order for the previous years in order to carry out truing up of total revenue requirement for the previous year/years beyond the revenue gap/regulatory asset, the Regulatory Surcharge is imposed on consumers. Therefore, it is legitimate and authorised charge to be recovered from the consumers for past expenses

of the distribution licensees which could not be recovered in previous years as approved tariff was deficit to recover the cost incurred.

25. The Commission further contends that according to Regulation, 2006, UPERC has stipulated that Regulatory Assets should be created to deal with the aforementioned conditions or prevent tariff shocks, and that the Regulatory Asset may be amortized within a period of three years.

26. The Commission rely upon the judgment of this Tribunal in OP No. 1 of 2011 at Para 65 to contend that it was clearly emphasized by this Tribunal as how timely recovery of Regulatory Asset would help the entire sector. The Commission further contends that the Tariff Order dated 19.10.2012 for the Financial Year 2012-13 emphasized the fact that revenue gap is growing day by day resulting into higher interest cost which has cascading effect on the consumers, since delay in recovery of revenue gap burdens the consumers with carrying cost. Therefore, the Commission contends that in the Tariff Order dated 31.05.2013, it had approved Regulatory Surcharge at 3.71% to be applicable in the case of DVVNL, MVVNL, PVVNL and PuVVNL. Further, the said Regulatory Surcharge will be enforced till 31.03.2014 unless amended or extended by the Commission through an order.

27. The Commission further contends that by order dated 06.06.2014, the rate of Regulatory Surcharge was, in fact, reduced from 3.71% to 2.84%; therefore, it was a continuation of its earlier provision in the Tariff Order dated 31.05.2013. Further, the Commission has liberty to review the situation and pass orders which would minimise the revenue gap. Therefore, till it was amended or withdrawn, question of notifying and publishing the same would not arise, since it was not a new Tariff Order.

28. Pertaining to the order dated 22.04.2015 allowing the Regulatory Surcharge at 5.22%, the Commission contends that in the Tariff Order dated 01.10.2014, it had mentioned that the Regulatory Surcharge for the subsequent year shall be linked with the actual performance of licensees in the Financial Year 2014-15 and the Regulatory Surcharge for the subsequent year 2015-16 shall be reduced by 10% over the applicable Regulatory Surcharge for the previous year 2014-15. It also made a provision in the Order dated 01.10.2014 that at the end of the Financial Year 2015-16, the State Commission shall review the applicability of Regulatory Surcharge for future years beyond the Financial Year 2015-16 on actual performance of the licensee in the past year. Therefore, the Tariff Order for the Financial Year 2014-15 clearly mentioned that RS-2 was to continue beyond the year 2014-15, though the rate may change in

the subsequent years depending upon the performance of licensee. Therefore, the Tariff Order dated 22.04.2015 is nothing but a follow up of its directions in the order dated 01.10.2014.

29. The Commission, for the submissions made above, contends that the two orders dated 06.06.2014 and 22.04.2015, therefore, were not required to be published or notified. The Appellant cannot refuse to pay the Regulatory Surcharge which is being paid by all other consumers of the State. With these arguments, the Respondent – Commission sought for dismissal of the Appeal.

30. 2nd to 4th Respondents more or less reiterated their contentions already raised in the reply filed by them contending that there was neither violation of principles of natural justice nor violation of Clause 139 of Regulation 2004. Therefore, none of the prayers sought by the Appellant could be granted.

31. They further contend that the Appellant being in the category of HV-2 consumers, was not affected by the orders of the Commission dated 06.06.2014 and 22.04.2015. A bare reading of Clause 139 of Regulation 2004 makes it clear whether the two orders in question were required to

be published or not. Since the orders were not tariff orders, the answering Respondents contend that, there was no need for publication of the same. Unless it was a general description of the tariff amendment and its effect on the categories of the consumers, there was no requirement to publish the same. The Appellant was not in the category of the affected consumers; therefore, no cause of action arose in its favour. Since the orders in question were only follow up of earlier orders of the Commission, questions of notification and publication of the same in terms of Regulation 139 would not arise.

32. Even otherwise, the answering Respondents contend that, on 03.06.2014, the Appellant had participated in the office of the State Commission in pursuance of the public notice issued in two newspapers (one in English, another in Hindi) on 30.05.2014 wherein proposal for change in Regulatory Surcharge was indicated and called for objections. With these arguments, 2nd to 4th Respondents sought for dismissal of the Appeal.

33. On considering the pleadings and arguments, we proceed to analyse the controversy to arrive at the conclusion on merits in this Appeal.

Clause 139 of Regulation 2004 read as under:

“(1) The licensee or the generating company shall publish the tariff or tariffs approved by the Commission in at least two daily newspapers (one English and one Hindi) having circulation in the area of supply as provided in subsection (7) of Section 24 of the UP Reforms Act. The publication shall, besides other things as the Commission may require, include a general description of the tariff amendment and its effect on the clauses of the consumer.

(2) The tariffs so published under (1) above shall become the notified tariffs applicable in the area of supply and shall come into force after seven days from the last date of such publication of the tariffs, and shall be in force until any amendment to the tariff is approved by the Commission and published. The Commission shall, within seven days of making the order, send a copy of the order to the State Government, the Authority, the concerned licensees and to the person concerned.”

34. The point that would arise for our consideration is:

“Whether the impugned order passed by the Respondent-Commission is contrary to the provisions of Clause 139 of UPERC Regulations of 2004 as well as violation of principles of natural justice”?

35. The contention of the Appellant is mainly on the ground of violation of Regulation 139 of Regulations of 2004 and so also violation of principles of natural justice. Two petitioners i.e., the Appellant herein and one M/s Taj Paper Private Limited approached the Respondent-Commission asking for refund of the Regulatory Surcharge for the period between 06.06.2014 to 15.10.2014 at 2.84% and for period between 01.04.2015 to 27.06.2015 at 5.22 % along with interest at 18% from the date of payment till the date of refund.

36. The Respondent-Commission heard the above Petition on 21.09.2016 and passed the impugned order. The impugned order shows that the Appellants as well as the Respondents were heard at length i.e, the opportunity of being heard before the Commission. The Respondent-Commission has in detail referred to the pleadings and arguments addressed by the parties. On analysing the facts vis-a-vis the law applicable, the Commission opined that the claim of the Appellant/Petitioner was not justified.

37. It is not in dispute that the Respondent - Commission is required to perform its duties in terms of Electricity Act of 2003 and also various Regulations made by it which are applicable in the State of U.P. It is also not in dispute that the main function of the Commission is to determine

and approve annual revenue requirement by disposing of tariff petitions of the licensee, who could be distribution licensee or transmission licensee. While performing the functions entrusted to the Respondent-Commission it has to follow obviously the UPERC Regulations of 2004 etc. It is also not in dispute that there could be *suo moto* proceeding by the Commission as Regulatory Authority in the State of UP. In terms of UPERC Regulations of 2004, especially, while considering tariff petitions, Chapter 6 which deals with the tariff in the said Regulations has to be considered by the Commission to determine ARR/Tariff of licensees in the State of UP for each financial year. One cannot deny the fact that the State Commission has to consider the actual parameters, expenses and revenue within the four corners of regulatory norms while discharging its functions in the process of considering truing up of total revenue required for the previous year/years and then adopt a mechanism how the revenue gap has to be filled up. While doing so, the Regulatory Asset is determined.

38. This revenue gap/regulatory asset has to be recovered by distribution licensee through regulatory surcharge from its consumers. Therefore, the Respondents are justified in submitting that the regulatory surcharge is the legitimate and authorised revenue gap/regulatory asset, which could be recovered from the consumers for past expenses of distribution licensee, which the distribution licensee was unable to recover

in the previous years, since the approved tariff was not capable of such recovery. In other words, the tariff approved was not enough to recover the actual costs incurred by the distribution licensee.

39. U.P. Electricity Regulatory Commission (Terms for determination of distribution tariff) Regulations of 2006 (“**UPERC Regulations of 2006**”) refers to creation of regulatory asset whenever force majeure condition occurs or to prevent major tariff shocks. Therefore, it provides that Regulatory Asset could be amortised within a maximum period of three years. The said Regulation pertaining to Regulatory Asset is at Regulation 6.12, which reads as under:

“6.12 Regulatory Asset:

1. *Creation of Regulatory Asset only for the purposes of avoiding tariff increase shall not be allowed and it shall only be created to take care of natural causes or force majeure conditions or major tariff shocks. The commission shall have the discretion of providing regulatory Asset.*
2. *The use of the facility of Regulatory Asset shall not be repetitive.*
3. *Depending on the amount of regulatory Asset accepted by the Commission, the commission shall stipulate the amortization and financing of such assets. Regulatory Asset shall be recovered within a period not exceeding three years immediately following the year in which it is created”.*

40. According to the Respondents, the tariff order for FY 2012-13 came to be passed on 19.10.2012. The full Bench Judgment of this Tribunal, referred to above, emphasised on the fact that the revenue gap is increased year after year, which results into higher cost of service to the consumers. Therefore, they opine that the delay in recovery of revenue gap burdens the consumers with carrying cost. The relevant para of the order of the Respondent-Commission is reproduced in the impugned order, which reads as under:

“9.3 Regulatory Surcharge

9.3.1 The Commission believes that the revenue gaps / regulatory assets of the Discoms are getting accumulated year after year, resulting into cash flow deficit. The problem is compounded because of the Petitioner not submitting true-up petitions in time due to which Commission is not able to reduce the gap through tariffs. As can be seen in the past that the heavy burden of Regulatory gaps/ regulatory assets year after year coupled with heavy borrowings to finance the same along with interest, the revenue gap is burgeoning with every passing year resulting into higher interest cost, which in turn cascades into higher cost of service to the consumers. Therefore, any delay in recovery of revenue gap burdens the consumers for carrying cost, therefore, speedy recovery of the same is essential...”

41. With the above facts and circumstances, the Respondent Commission proceeded to consider the petitions filed by the Appellant with

reference to Regulatory Surcharge by Order dated 06.06.2014 (RS-1) and Regulatory Surcharge (RS-2) by order dated 22.04.2015.

42. It is seen from the records that RS -1 came up for consideration while passing tariff order dated 31.05.2013. This order was with regard to true up petition of the distribution licensee for the FYs 2000-01 to 2007-08. In this tariff order, for the purpose of reducing the revenue gap, the State Commission opined that regulatory surcharge at 3.71% would be applicable to all areas of DVVNL, MVVNL, PVVNL and PuVVNL, which would come into force after seven days from the date of publication of regulatory surcharge and shall be in force till 31.03.2014 unless the said regulatory surcharge was amended or extended by the Commission through an order.

43. It is seen from the pleadings and the impugned order, the regulatory surcharge at 3.71% came to be reduced on 06.06.2014 to 2.84%. In the order dated 31.05.2013, the State Commission made it clear that the applicability of approved regulatory surcharge could be extended or amended by the Commission through an order. Primarily, the imposition of surcharge was not withdrawn. However the regulatory surcharge was actually reduced from 3.71% to 2.84%. Therefore, it was not an extension of regulatory surcharge at 3.71% but it was an extension of imposing

regulatory surcharge at 2.84%. It was also not withdrawn. The State Commission as a regulatory authority is empowered to review the situation and issue necessary direction pertaining to regulatory surcharge i.e., reduction or increase in the percentage of regulatory surcharge depending upon the situation as to whether the regulatory asset still remains the same or decreased or increased. This Order dated 06.06.2014 was not a new tariff order, on the other hand, in the order dated 31.05.2013, the State Commission had stated that the regulatory surcharge would remain at 3.71% unless it was amended or extended by the Commission through another order. Therefore, this cannot be termed as new tariff order in terms of Regulations of 2004.

44. Regulatory Asset-2 pertains to truing up petition for 2008-09 to 2011-12 for the FY 2014-15 and tariff order dated 01.10.2014 at that point of time. The Respondent-Commission imposed regulatory surcharge at 2.38%. It is not in dispute that in this order it was clearly mentioned that regulatory surcharge for subsequent year shall be linked with the performance of licensee in the FY 2014-15, which means the regulatory surcharge for FY 2015-16 is linked with the performance of licensees for previous year 2014-15. In terms of the said order dated 01.10.2014 it was indicated that in case distribution licensee fails to achieve the target of consumer addition and the target of distribution losses for the FY 2014-15,

the regulatory surcharge could be reduced by 10% of existing regulatory asset. It is also within the regulatory frame work that the Commission while reviewing the applicability of future regulatory surcharge for the future years beyond FY 2015-16, the actual performance of the licensee in the past year is of utmost relevance. Therefore, the tariff order for FY 2014-15 imposed the rate at 2.38% and the same could continue beyond FY 2014-15 depending upon the performance of licensee though the rate could be reduced. Such reduction in the rate or continuation of the said rate or increase of the said rate would depend upon the capability of the distribution licensee in bridging the revenue gap to the best possibility. Therefore, the Respondent Commission contends that there was in fact no fresh tariff order on 22.04.2015 and the said order in reality was the follow the previous directions given in the tariff order dated 01.10.2014.

45. The purpose of creating regulatory surcharge is to bridge the revenue gap/loss which arises on account of past liabilities. This past liability has to be recovered as revenue / regulatory surcharge. Depending upon the situation and to avoid tariff shock, the recovery of regulatory assets is normally spread over, that is made in more than one year in terms of the above mentioned Regulations i.e., Regulation 6.12 of 2006 Regulations, which is very much within the provisions of the Regulations. It is seen in both the regulatory surcharge cases, referred to above, they

were not new tariff orders but in terms of tariff orders for the concerned financial years. The regulatory surcharge was decreased in the first case and increased in the second case and is totally based on factual situations.

46. So far as the violation of principles of natural justice, it is seen from pleadings which is not denied by the Appellant that on 03.06.2014, the Appellant did participate in the proceedings at the office of the State Commission in pursuance of paper notice published in two news papers one in English and another in Hindi on 30.05.2014 since proposal for change in regulatory surcharge was indicated. Therefore, the question of violation of principles of natural justice would not arise.

47. The contention of the Appellant that RS-1 and RS-2 vide orders dated 06.06.2014 and 22.04.2015 are applicable only for the category of consumers falling under LMV-1 and LMV-5 clearly goes to show that the Appellant being a consumer falling under HV-2 category he is not affected by order dated 06.06.2014 and order dated 22.04.2015. Therefore, we are of the opinion that the Appellant has no *locus standi* to challenge the impugned order on that count also.

48. In the light of above discussion and reasoning, we are of the opinion that the stand of the Appellant does not warrant any interference with the impugned order and therefore the appeal deserves to be dismissed. Accordingly, the appeal is dismissed. The pending IAs if any shall stand disposed of. No order as to costs.

49. Pronounced in the Open Court on this 4th day of October, 2019.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

✓
REPORTABLE / NON-REPORTABLE

Tpd/ts