

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

**EXECUTION PETITION NO. 09 OF 2016**

**IN**

**APPEAL NO. 171 of 2012**

**Dated: 28<sup>th</sup> February, 2020**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

Tata Power Delhi Distribution Ltd  
Having its Registered office at NDPL  
House, Hudson Lines, Kingsway Camp,  
New Delhi 110009

... Decree Holder /Petitioner

*Versus*

Delhi Electricity Regulatory Commission  
Through its Secretary,  
Viniyamak Bhawan, 'C' Block, Shivalik,  
Malviya Nagar,  
New Delhi – 110017

... Judgment Debtor / Respondent

Counsel for the Appellant(s) : Mr. Amit Kapur  
Mr. Anupam Varma  
Mr. Rahul Kinra  
For Decree Holder /Petitioner

Counsel for the Respondent(s) : Mr. Pradeep Misra  
Mr. Manoj Kumar Sharma  
For Judgment Debtor/Respondent

**J U D G M E N T**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The present Execution Petition is filed by Tata Power Delhi Distribution

Limited (**“TPDDL/Petitioner”**) for execution of the Judgment dated 10.02.2015 passed by this Tribunal in Appeal No. 171 of 2012. The said Appeal was filed by the Petitioner challenging the tariff order dated 13.07.2012 passed by the Delhi Electricity Regulatory Commission (**“Delhi Commission/Respondent”**) in Petition No. 05 of 2012 whereby, the true up of expenses of the Petitioner for FY 2010-11 and ARR for the Control Period FY 2012-13 to FY 2014-15 were determined. By the said judgment this Tribunal has *inter-alia* decided as under:-

- (a) **Issue No. 1:** Non- Allowance of Food Allowance for FRSR Structure Employees in spite of their binding service conditions, for FY 2010-11, as under:

*“3.7 We find that the food allowance has been increased four folds w.e.f. 1.4.2010 from the base year 2006- 07 as a result of DTL following the recommendations of the Sixth Pay Commission. The Appellant is bound to enhance the food allowances as per the provisions of the Reforms Act, the statutory transfer scheme and the Tripartite Agreement. The expenditure incurred by the Appellant is uncontrollable in nature being part of the recommendations of Sixth Pay Commission which are bound to be paid to FR/SR employees by the Appellant. The normal escalation of 4.66% p.a. over the base year expenses of FY 2006-07 will not be adequate to cover the enhancement of the food allowance for FR/SR employees from Rs. 125 to Rs. 500/- per employee per person. The Appellant paid Rs. 0.38 crores during 2006-07. Taking into account the escalation of 4.66%, the amount allowed in ARR for FY 2010-11 was Rs. 0.47 crores. Thus, the Appellant had to pay Rs. 0.91 crores over and above that allowed in the ARR. Even if the excess amount allowed during the FY 2007-08 to FY 2009-10 is taken into account due to escalation of 4.66% p.a. over the base year, the excess amount paid by the Appellant during FY 2010-11 would work out to be Rs. 0.8 crores. The Appellant has stated that the actual amount of Rs. 1.38 crores paid to the FR/SR employees during FY 2010-11 has only been claimed. Therefore, the impact of retirement of the employees has already been taken into account. Therefore, the Appellant is entitled to the claim of Rs. 0.8 crores on account of*

***enhancement of food allowance for FR/SR employees. The enhancement of food allowance on the recommendations of the Sixth Pay Commission Report as adopted by DTL is binding on the Appellant as per the Statutory Transfer Scheme. As such, it is an uncontrollable expenditure. Accordingly, the State Commission shall allow the additional expenditure of Rs.0.8 crores on this account with carrying cost.”***

***[Emphasis Supplied]***

- (b) **Issue No. 2:** Non-Allowance of Children Education Allowance for FRSR Structure Employees for FY 2010-11 in spite of their binding conditions, as under:

***“4.4 In the impugned order, the State Commission has not allowed the impact of increase of Children Education Allowance as the State Commission had already considered the increase in Children Education Allowance while revising employees’ expenses of the Appellant in its tariff order dated 26.8.2011. This is not correct. Therefore, on the same analogy as made for allowance of increase due to food allowance under paragraph 3.7 the increase in expenditure of the Appellant due to increase in Children Education Allowance from Rs. 40/- p.m. per child to Rs. 1,000/- p.m. per child has to be allowed with carrying cost. Accordingly, directed.”***

***[Emphasis Supplied]***

2. The Appellant is aggrieved by the non-implementation of the decisions/directions of this Tribunal as cited above.
  
3. **The learned counsel for the Appellant, Shri Amit Kapur has filed following submissions for our consideration:**
  - 3.1 In terms of the judgment dated 10.02.2015 passed by this Tribunal, the Delhi Commission was bound to allow the expenditure incurred by the Petitioner on Food and Children Education Allowance in the

subsequent Tariff Order, unless the Delhi Commission exercised its right to appeal against the said Judgment. However the Delhi Commission did not file any appeal against the said finding of the Tribunal thereby accepting/conceding to the issue declared against the Delhi Commission. Thus, it was incumbent upon the Ld. Delhi Commission to suo-moto proceed to give effect to the judgment of the Tribunal.

3.2 The Petitioner has issued various communications to the Delhi Commission to implement the Judgment dated 10.02.2015 passed by this Tribunal in Appeal No. 171 of 2012. However, Delhi Commission has, till date, not implemented the said judgment of this Tribunal despite several letters issued by the Petitioner to Delhi Commission.

3.3 Moreover, Delhi Commission while passing Tariff Order dated 29.09.2015 in the Petition No. 12 of 2015 filed by the Petitioner, seeking approval for Aggregate Revenue Requirement (**“ARR”**) for FY 2015-16, Revised ARR for FY 2014-15 and True-Up of FY 2013-14 and Final True-Up for the period FY 2008-2013 has disallowed the said expenditure incurred by the Petitioner on Food and Children Education Allowance keeping in view that a clarification Application pending before this Tribunal. Relevant extracts of the Tariff order dated 29.09.2015 are as under:

***“DIRECTION OF HON’BLE APTEL IN VARIOUS JUDGMENTS***

***Non allowance of food and children education allowance for FRSR structure employees in spite of their binding service conditions***

***Petitioner’s Submission***

***3.4 The Petitioner had submitted that in view of the judgment of Hon’ble APTEL in Appeal No. 171 of 2012, the Commission may allow the incremental food and children education allowance to the FRSR employees as paid by the Petitioner during FY 2010-11 and FY 2011-12. The impact sought is as follows:***

*“Table 3.1: Food and Children Education Allowance**(Rs. Crore.)*

<i>Particulars</i>	<i>FY 2010-11</i>	<i>FY 2011-12</i>
<i>Children Education Allowance</i>	<i>2.25</i>	<i>2.80</i>
<i>Food Allowance</i>	<i>0.91</i>	<i>0.95</i>

*Commission’s Analysis*

*3.5 In Tariff Order dated 26.08.2011, while approving employee cost for the Control Period, the actual impact of wage revision on employee cost of FY 2005-06 and FY 2006-07 as submitted by the Petitioner was considered and the revised employee cost for the two years was determined.*

*3.6 Following the revision of the base employee cost on account of the sixth pay commission impact for each year from FY 2007-08 to FY 2010-11, the Commission, in its MYT Order, had increased the net trued up employee cost, accruing to DVB employees, of the base year (FY 2006-07) by 10%, and had then escalated the total base employee expenses of DVB (increased) and non-DVB employees by the annual escalation factor to arrive at the approved employee cost for each year from FY 2007-08 to FY 2010-11. Hence, the Commission had allowed arrears on account of revision of base year (FY 2006-07) salary for FY 2007-08 to FY 2010-11.*

*3.7 The Commission had also observed that while the increase in salaries due to wage revision was with retrospective effect from January 1, 2006, the implementation of wage revision recommendations also led to introduction/removal/increase of certain allowances such as HRA, TPA, CCA, LTC Encashment and Children Education Allowance with effect from FY 2008-09. The impact on employee cost on account of these “New Allowances” had been added separately from FY 2008-09 onwards. As these allowances were started/discontinued in FY 2008-09 and were not applicable for the entire year of FY 2008-09, the Commission has considered the impact on employee cost on account of these allowances in FY 2009-10 as base year, when these allowances were applicable for full year and escalated the total allowances paid in FY 2009-10 by the escalation factor to arrive at the figure for FY 2010-11.*

*3.8 The effect of the costs for food and children education allowance so claimed by TPDDL was considered in the August 26, 2011 Tariff Order as referred above. The TPDDL had filed as Appeal 14 of 2012 against the tariff order and the issue did not form part of the Appeal No.14 of 2012. The judgment in Appeal 14 of 2012 has been given on 28.11.2013.*

*3.9 In Appeal No. 14 of 2012, Hon’ble APTEL has adjudged the similar matter relating to increase in employee cost due to increase in FRSR salaries/ benefits as follows:-*

*“171. Issue No.20 relates to Increase in Expenses for FRSR Employees in addition to Sixth Pay Commission Impact.*

*177. Perusal of Regulation 13.4 would indicate that the Delhi Commission may relax the provisions of the MYT Regulations in the Public Interest. The Appellant has not demonstrated as to how allowance in increase in employees cost would be in public interest. On the other hand it will increase the ARR and the retail tariff. Again, perusal of Regulation 13.6 would indicate that the Delhi Commission can deviate from the procedure*

*prescribed in the Regulations under special circumstances. Employees' costs are one of the components under normative R&M expenditure and deviation from the norms cannot be said to be deviation under special circumstances. Thus, the contention of the Appellant on both counts is misplaced.*

*178. As already noted above under issue no. 7 and 19 that Employees expenses, one of the component of R&M\* expenses, are controllable under the Regulations and accordingly allowed on normative basis." (\*misprinted as R&M instead of O&M)*

**3.10** *The Commission has allowed the employee expenses for the MYT Control Period on a normative basis wherein the impact of the Sixth Pay Commission was considered. Further, the FRSR employees have been declining year to year while the cost is allowed to the DISCOMs along with inflation factor considered in the O&M expenditure. In judgment of Appeal No. 14 of 2012, Para 178, employee expenses have been upheld as controllable. By implementation of the judgment of Hon'ble APTEL in Appeal 171 of 2012, the consumers shall be negatively impacted, once by increase in normative cost of such employees due to annual indexation and on the other hand actual increase in the cost due to uncontrollable parameter of sixth pay commission impact.*

**3.11** *In view of the above, a clarificatory application has been filed with Hon'ble Tribunal seeking clarity on directions to the Commission on allowing additional Food and Children Education Allowance to the FRSR employees. Therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said application."*

3.4 The Appellant has challenged the said finding of Delhi Commission and the same is pending adjudication before this Hon'ble Tribunal in Appeal No. 301 of 2015.

3.5 In the meantime on 20.07.2016, this Tribunal passed a judgment in Appeal No. 271 of 2013 relating to Distribution Tariff order for the year 2013, wherein the Petitioner had *inter-alia* challenged the aforesaid issues regarding disallowances of Food and Education Allowance. This Tribunal was pleased to allow the said issues in favour of the Petitioner as under:

**"5.1) Issue Nos. 1, 3, 4, 5, 11 & 13** *have been decided against the appellant vide judgment dated 28.11.2013 in Appeal No.14 of 2012 (reported at 2014 ELR 267) passed by this Appellate Tribunal, against which Civil Appeal No.4343 of 2014 by the same appellant, namely, TPDDL had already been filed before the Hon'ble Supreme Court where it is pending. Issue Nos. 3 & 4 have subsequently been decided in favour of the appellant vide judgment dated 10.02.2015 in Appeal No.171 of 2012, in the case of Tata Power Delhi Distribution Ltd. Vs. DERC passed by this Appellate Tribunal, reported at 2015 ELR (APTEL) 889. This Appellate Tribunal while deciding Appeal No.171 of 2012 (supra) directed that food and children education allowances of TPDDL to be provided as a result of 6th Pay Commission impact during FY 2008-09 and FY 2010-11."*

3.6 However, despite two judgments in favour of the Petitioner, Delhi Commission has till date not given effect to the judgments of this Tribunal. It is therefore humbly prayed that this Tribunal may direct Delhi Commission to allow the impact of expenditure incurred by Petitioner towards Food and Education allowance of FRSSR Employees along with the carrying cost.

3.7 The Delhi Commission has been disallowing the said expenditure since FY 2010-11. The total impact (in Rs Cr) of the expenditure incurred including carrying cost by the Petitioner towards Food and Education allowance is tabulated below:

*(Rs. in Crores)*

Particulars	FY 2010-11	FY 2011-12	FY-2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total
Children Education Allowance	2.25	2.80					5.05
Food Allowance	0.91	0.95					1.86
Carrying cost for the year	0.16	0.63	0.91	1.02	1.15	1.30	5.19
<b>Total</b>							12.10

3.8 The Delhi Commission has challenged the Order dated 10.02.2015 passed by this Tribunal in Appeal No. 171 of 2015 before the Hon'ble Supreme Court in Civil Appeal No. 4879 of 2015. However, the Delhi Commission has not challenged the Issue No. 3 and 4 decided by this

Tribunal in Appeal No. 171 of 2012, which is evident from the copy of the Memorandum of Civil Appeal No. 4879 of 2015 filed by the Delhi Commission. The Civil Appeal was last listed before the Hon'ble Supreme Court on 08.08.2016.

3.9 It is further submitted that the Appellant had also challenged certain findings of the said Judgment in Appeal 171 before the Hon'ble Supreme Court which is titled Civil Appeal No. 6169 of 2015. Both these Civil Appeals are pending adjudication before the Hon'ble Supreme Court for pleadings completion, without any directions passed on stay of the judgment passed by this Tribunal. Therefore, the issues raised in the present Executive Petition are not part of both the said Appeals pending in the Hon'ble Supreme Court and thus, there is no bar upon the Commission to not give effect to the issues which the Petitioner is entitled in law to seek as a matter of right.

3.10 In light of the foregoing, Tata Power Delhi Distribution Limited/the Petitioner, prays for execution of the Decree/Judgment, the particulars whereof are stated in the column hereunder:-

1.	Number of Appeal	Appeal No. 171 of 2012
2.	Name of Parties	<p>a) Tata Power Delhi Distribution Limited Having its Registered office at NDPL House, Hudson Lines, Kingsway Camp, New Delhi 110009 ...Decree Holder/ Petitioner</p> <p>b) Delhi Electricity Regulatory Commission Through its Secretary, Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110 017 ... Judgment Debtor/Respondent</p>



3.	Date of Decree/Judgment/ Order of which execution is sought.	Judgment/Order dated 10.02.2015 passed in Appeal No. 171 of 2012
4.	Whether Appeal was filed against the Decree/ Judgment/Order under Execution.	<p>(a) The Respondent/Judgment Debtor has filed an appeal against the judgment dated 10.02.2015 passed this Hon'ble Tribunal being Civil Appeal No. 4879 of 2015. However, the Ld. Delhi Commission has not challenged the Issue No. 3 and 4 decided by this Hon'ble Tribunal in Judgment dated 10.02.2015 passed Appeal No. 171 of 2012</p> <p>(b) The Petitioner has also challenged certain findings of the said Judgment in Appeal 171 before the Hon'ble Supreme Court which is titled CA No. 6169 of 2015. However, the Petitioner has not challenged Issue No 3 and Issue No.4 decided by this Hon'ble Tribunal</p>
5.	Whether any Application was made previous to this and if so their dates and results.	<b>NO</b>
6.	Amount of Petition along with interest as per decree or any other relief granted by the decree.	<p>(a) Rs. 3.27 Cr.(Three Crores and twenty seven lakhs only) alongwith carrying cost towards Food Allowance</p> <p>(b) Rs. 8.83 Cr.(Eight crores and eighty three lakhs) alongwith carrying cost towards Education Allowance</p>
7.	Amount of costs if allowed by the Tribunal.	<b>NO</b>
8.	In what manner Tribunal's assistance is sought.	<p>This Hon'ble Tribunal may be pleased to direct the Judgment Debtor to comply with the Judgment/Decree dated 10.02.2015 passed in Appeal No. 171 of 2012, wherein the Hon'ble Tribunal allowed following issues:</p> <p>(a) <b>Issue No. 1:</b> Non- Allowance of Food Allowance for FRSR Structure Employees in spite of their binding</p>

		<p>service conditions, for FY 2010-11, as under:</p> <p><i>“3.7 We find that the food allowance has been increased four folds w.e.f. 1.4.2010 from the base year 2006- 07 as a result of DTL following the recommendations of the Sixth Pay Commission. The Appellant is bound to enhance the food allowances as per the provisions of the Reforms Act, the statutory transfer scheme and the Tripartite Agreement. The expenditure incurred by the Appellant is uncontrollable in nature being part of the recommendations of Sixth Pay Commission which are bound to be paid to FR/SR employees by the Appellant. The normal escalation of 4.66% p.a. over the base year expenses of FY 2006-07 will not be adequate to cover the enhancement of the food allowance for FR/SR employees from Rs. 125 to Rs. 500/- per employee per person. The Appellant paid Rs. 0.38 crores during 2006-07. Taking into account the escalation of 4.66%, the amount allowed in ARR for FY 2010-11 was Rs. 0.47 crores. Thus, the Appellant had to pay Rs. 0.91 crores over and above that allowed in the ARR. Even if the excess amount allowed during the FY 2007-08 to FY 2009-10 is taken into account due to escalation of 4.66% p.a. over the base year, the excess amount paid by the Appellant during FY 2010-11 would work out to be Rs. 0.8 crores. The Appellant has stated that the actual amount of Rs. 1.38 crores paid to the FR/SR employees during FY 2010-11 has only been claimed. Therefore, the impact of retirement of the employees has already been taken into account. Therefore, the Appellant is entitled to the claim of Rs.</i></p>
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		<p><i>0.8 crores on account of enhancement of food allowance for FR/SR employees. The enhancement of food allowance on the recommendations of the Sixth Pay Commission Report as adopted by DTL is binding on the Appellant as per the Statutory Transfer Scheme. As such, it is an uncontrollable expenditure. Accordingly, the State Commission shall allow the additional expenditure of Rs.0.8 crores on this account with carrying cost.”</i>  <b>[Emphasis Supplied]</b></p> <p>(b) <b>Issue No. 2:</b> Non-Allowance of Children Allowance for FR/SR Structure Employees for FY 2010-11 in spite of their binding conditions, as under:</p> <p><i>“4.4 In the impugned order, the State Commission has not allowed the impact of increase of Children Education Allowance as the State Commission had already considered the increase in Children Education Allowance while revising employees’ expenses of the Appellant in its tariff order dated 26.8.2011. This is not correct. Therefore, on the same analogy as made for allowance of increase due to food allowance under paragraph 3.7 the increase in expenditure of the Appellant due to increase in Children Education Allowance from Rs. 40/- p.m. per child to Rs. 1,000/- p.m. per child has to be allowed with carrying cost. Accordingly, directed.”</i>  <b>[Emphasis Supplied]</b></p>
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3.11 The Petitioner humbly prays that this Tribunal may be pleased to:-

- (a) *Direct Ld. Delhi Electricity Regulatory Commission to give effect to the Judgment dated 10.02.2015 passed in Appeal No. 171 of 2012 forthwith by allowing:*
  - (i) *Rs. 3.27 Cr. along with carrying cost towards Food Allowance*
  - (ii) *Rs. 8.83 Cr along with carrying cost towards Children Education Allowance*
- (b) *Pass such further orders as this Hon'ble Tribunal may deem just and necessary in the facts and circumstances of the case.*

3.12 In view of the aforesaid submissions, it is prayed before this Tribunal to direct the Commission to give effect to the Judgment dated 10.02.2015 passed in Appeal No. 171 of 2012 forthwith by allowing the claim of the Petitioner towards Food and Children Education Allowance alongwith carrying costs.

**4. Learned Counsel for the Respondent State Commission, Shri Pradeep Misra has filed following submissions for our considerations:**

4.1 The Appellant has filed Appeal No. 171 of 2012 against the tariff order dated 13.07.2012 regarding true up of expenses for the year 2010-11 and ARR for control period 2012-13 to 2014-15.

4.2 The said Appeal was decided by this Tribunal vide judgment and order dated 10.02.2015 and the present Execution Petition has been

preferred in respect of two issues i.e. (1) Food Allowance for FRSR Structure Employees for FY 2010-11 and (2) Children Education Allowance for FRSR Structure Employees for FY 2010-11 decided in favour of Appellant.

4.3 The replying Respondent is bound to implement the directions given by this Tribunal, however, the replying Respondent can place the difficulties arising in implementing the same before this Tribunal in the interest of consumers of Delhi as under:

4.4 That the preamble of Electricity Act, 2003 is as follows:

*“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”*

4.5. The 61(d) of the Electricity Act, 2003 provides as under:

*“Section 61. (Tariff regulations):*

*The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;”*

4.6 Thus, the aim and object of the Act is that the rate of electricity should be cheapest at the hands of end consumer and the Regulatory Commissions have been constituted and conferred various duties including safeguarding the interest of the consumers. In the light of the said provisions the present reply / submission is being filed.

4.7 The replying Respondent has framed DERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007 vide notification dated 30.05.2007 which were applicable till 31.03.2011. However, by the order of the Commission the same were further extended for one year i.e. 31.03.2012 after hearing all the stakeholders. As per Regulations, the Employee Expenses are part of O&M Expenses which are controllable.

4.8 That the effect of Sixth Pay Commission was considered by the replying Respondent in the tariff order dated 26.08.2011 which reads as follows:

*“3.121 Further, the Commission has also observed that while the increase in salaries due to wage revision was with retrospective effect from January 1, 2006, the implementation of wage revision recommendations also led to introduction/removal/increase of certain allowances such as HRA, TPA, CCA, LTC Encashment and Children Education Allowance with effect from FY 2008-09. The impact on employee cost on account of these „New Allowances“ has been added separately from FY 2008-09 onwards. As these allowances were started / discontinued in FY 2008-09 and were not applicable for the entire year of FY 2008-09, the Commission has considered the impact on employee cost on account of these allowances in FY 2009-10 as base year, when these allowances were applicable for full year and escalated the total allowances paid in FY 2009-10 by the escalation factor to arrive at the figure for FY 2010-11. The total impact of new allowances is shown below:*

*Table 59: Additional Amount allowed on Wage Revision (Rs. Cr.).*

<i>Particulars</i>	<i>FY 2007-08</i>	<i>FY 2008-09</i>	<i>FY 2009-10</i>	<i>FY 2010-11</i>
<i>Amount allowed due to New Allowances.</i>	<i>0</i>	<i>6.88</i>	<i>12.11</i>	<i>12.67</i>

*3.122 Hence, the total Arrears allowed by the Commission for FY 2007-08 to FY 2010-11 including the additional allowances paid by the Petitioner in FY 2008-09 and FY 2009-10 is shown in the table below:*

Table 60: Total Arrears approved for FY 2007-08 to FY 2010-11 (Rs Cr)

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Arrears on account of Revision of Base year Salary (From Table 58)	21.13	22.12	23.15	24.23
Amount allowed due to New Allowances	0	6.88	12.11	24.23
Total Arrears Approved	21.13	29.00	35.26	36.90

3.123 The Commission while approving the employee cost in the MYT Order had expected the arrears on account of revision of employee costs to be paid in FY 2008-09 and had considered the payment of arrears in the total employee cost approved for FY 2008-09. Similarly, the increase in salaries had been considered for each year, but the impact of such increase had only been taken from FY 2008-09 onwards. However, the arrears on account of wage revision were only partly paid by the Petitioner in FY 2008-09 (Rs 17.90 Cr was paid as interim relief in FY 2008-09). The majority of the arrears were paid in FY 2009-10 and the revision in salaries was affected only from October, 2009. Accordingly, while the increase in salaries has been considered for each year, the payment of arrears has been considered partly in FY 2008-09 (Rs 17.90 Cr) and remaining in FY 2009-10 (all arrears excluding Rs 17.90 Cr paid in FY 2008-09). Further, the impact of increase in salaries has only been taken from FY 2010-11 onwards.

Table 61: Approved Arrears Pay Out for FY 2007-08-FY 2009-10 &amp; salary hike in FY 2010-11(Rs Cr)

Particulars	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Additional amount approved now on account of wage revision (From Table 56)	3.87	20.19				
Arrears approved on account of Revision of Base Year Salary			21.13	22.12	23.15	24.23
Amount approved due to New Allowances			0	6.88	12.11	12.67
Total Arrears approved	3.87	20.19	21.13	29.00	35.26	36.90
Accumulated Arrears Pay Out approved			-	17.90	91.55	-
Approved Increase in Salary						36.90

Table 62: Revised Employee Expenses (Rs Cr)

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Employee Cost Allowed – MYT Order (A)	136.18	166.47	156.07	162.55
Employee Cost (excluding 6 <sup>th</sup> Pay Commission) – Revised on account of revision of Inflation Factor (B)	136.84	143.22	149.89	156.88
Arrears (C)	-	17.90	91.55	-
Increase in Salaries in FY 2010-11 (D)	-	-	-	36.90
Employee Cost Revised (E=B+C+D)	136.84	161.12	241.45	193.78
Difference from MYT Order (E-A)	0.67	-5.35	85.38	31.23

4.9 Thus, impact of 6<sup>th</sup> Pay Commission's recommendations have been duly considered by the Commission while finalizing revised employee cost for FY 2010-11.

4.10 Against the said tariff order Appellant has filed Appeal No. 14 of 2012. It was contended that the FRSR Employees Expenses are uncontrollable and the same has to be passed through in ARR and even if they are controllable the Commission should have exercised the power to relax and ought to have allowed those expenses. However, the said contention was rejected on the ground that O&M Expenses are controllable.

4.11 Against the said judgment passed by this Tribunal the Appellant has preferred Civil Appeal No. 4343 of 2014 before Hon'ble Supreme Court wherein the said issue has been agitated as Issue No. C in the said Appeal which is pending consideration before the Apex Court. The



Issue No. C reads as - *Non-allowance of FRSR structure employees' salary on actual basis in addition to the Sixth Pay Commission Impact.*

- 4.12 The replying Respondent has given the same treatment to other two licensees i.e. BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd.
- 4.13 The Appellant has again raised the issue regarding Children Education Allowance and Food Allowance in Appeal No. 171 of 2012 against the tariff order 13.07.2012 for true up of FY 2010-11 and ARR for control period 2012-13 to 2014-15.
- 4.14 As there are there are different judgments one holding that O&M expenses which includes Employee Expenses is controllable as held in judgment dated 28.11.2013 in Appeal No. 14 of 2012 and judgment dated 10.02.2015 in Appeal No. 171 of 2012, the replying Respondent moved I.A. No. 320 of 2015 in Appeal No. 171 of 2012 and 321 of 2015 in Appeal No. 178 of 2012 pointing out the difficulties in reconciling the two judgments of this Tribunal.
- 4.15 The Appellant again raised a similar issue in Appeal No. 271 of 2013 filed against the tariff order dated 31.07.2013 for true up of expenditure for FY 2011-12 and determination of distribution tariff for 2013-14. This Tribunal decided the said Appeal vide judgment dated 20.07.2016 wherein it has been held that the issue Nos. 3 and 4 relating to Children

Education Allowance and Food allowance have been decided in Appeal No. 14 of 2012 against the Appellant and Appeal is pending before Hon'ble Supreme Court, however subsequently the same has been decided in favour of Appellant in Appeal No. 271 of 2013.

4.16 Thus, in the tariff order dated 29.09.2015 which came after the decision of this Tribunal in Appeal No. 171 of 2012 the replying Respondent has observed that this issue is pending before Hon'ble Supreme Court as well as this Tribunal and whatever will be the direction the Commission is duty bound to implement the same.

4.17 It is further submitted that the Commission has no personal stakes in the matter and is bringing the difficulties before this Court, however, whatever directions will be issued by this Tribunal will be implemented by the replying Respondent.

**5. We have heard learned counsel appearing for the Petitioner/Decree-Holder and learned counsel for the Respondents at considerable length of time and we have carefully gone through their written submissions/arguments and also taken note of the relevant material available on records during the proceedings. On the basis of the pleadings and submissions available, the following principal issue arises in the instant EP for our consideration:-**

*“Whether the State Commission was justified in non-implementation of this Tribunal’s Judgment relating to Food and Children Education Allowances for FRSR Structure Employees for FY 2010-11”.*

## 6. Our Considerations and Findings:

6.1 The learned counsel for the Petitioner / Decree-Holder submitted that in terms of the Judgment dated 10.02.2015 passed by this Tribunal, the State Commission was bound to allow the expenses incurred by the Petitioner on Food and Children Education Allowances in the subsequent tariff orders. However, the State Commission did not allow the above-mentioned allowances despite categorical directions of this Tribunal and also on account of the fact that the same was not challenged in the Superior Court and there was no stay of the operation of the tariff orders as such. The learned counsel was quick to submit that the petitioner has issued several communications to the State Commission to implement the Judgment dated 10.02.2015 passed by this Tribunal in Appeal No. 171 of 2012. However, the State Commission has, till date, not implemented the same. The State Commission while passing the tariff order dated 29.09.2015 in the Petition No. 12 of 2015 filed by the Petitioner seeking approval of ARR for FY 2015-16, Revised ARR for FY 2013-14 and True-up of FY 2014-15 and final True-up for the period FY 2008-2013 has dis-allowed the said expenditure incurred by the Petitioner on Food and Children Education Allowance considering that the clarification application is pending before this Tribunal. The relevant portion of the tariff order dated 29.09.2015 reads thus:-

*“3.10 The Commission has allowed the employee expenses for the MYT Control Period on a normative basis wherein the impact of the Sixth Pay Commission was considered. Further, the FRSR employees have been declining year to year while the cost is allowed to the DISCOMs along with inflation factor considered in the O&M expenditure. In judgment of Appeal No. 14 of 2012, Para 178, employee expenses have been upheld as controllable. By implementation of the judgment of Hon’ble APTEL in Appeal 171 of 2012, the*

*consumers shall be negatively impacted, once by increase in normative cost of such employees due to annual indexation and on the other hand actual increase in the cost due to uncontrollable parameter of sixth pay commission impact.*

*3.11 In view of the above, a clarificatory application has been filed with Hon'ble Tribunal seeking clarity on directions to the Commission on allowing additional Food and Children Education Allowance to the FRSR employees. Therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said application."*

- 6.2. The learned counsel for the Petitioner further submitted that in the intervening period on 20.07.2016, this Tribunal passed a Judgment in A. No. 271 of 2013 relating to Distribution Tariff Order for the year 2013, wherein the Petitioner had *inter alia* challenged the aforesaid issues regarding dis-allowance of Food and Children Education Allowances. Vide the aforesaid judgment, this Tribunal again held that Food and Children Education Allowances are to be provided as a result of sixth Pay Commission impact during FY 2008-09 and FY 2010-11. The learned counsel vehemently submitted that despite two judgments of this Tribunal in favour of the Petitioner, the DERC has not till date given effect to the directions of this Tribunal. It would, thus, appear that the Delhi Commission has been dis-allowing the said expenditure since FY 2010-11 resulting into total impact alongwith carrying cost to the tune of Rs. 12.10 crores. Furthermore, the State Commission had challenged the Judgment dated 10.02.2015 of this Tribunal before the Hon'ble Supreme Court in Civil Appeal No. 4879 of 2015. However, it has not challenged these issues before the Apex Court as evident from the Memorandum of the said Civil Appeal filed by the Commission. The said Civil Appeal filed by the State Commission and another Appeal filed by this Petitioner are pending before the Hon'ble Supreme Court for adjudication. It is, therefore, crystal clear that the issues raised in the present Petition for which execution is being sought, are not part of both the said Appeals pending adjudication in the Hon'ble Supreme

Court and thus there is no bar upon the Commission not to give effect to the issues which the Petitioner/Decree-Holder is entitled in law to seek as a matter of right.

6.3 The Petitioner seeking Execution has made the following prayers :-

- (a) Direct Ld. Delhi Electricity Regulatory Commission to give effect to the Judgment dated 10.02.2015 passed in Appeal No. 171 of 2012 forthwith by allowing:
  - (i) *Rs. 3.27 Cr. along with carrying cost towards Food Allowance.*
  - (ii) *Rs. 8.83 Cr along with carrying cost towards Children Education Allowance.*
- (b) *Pass such further orders as this Hon'ble Tribunal may deem just and necessary in the facts and circumstances of the case.*

6.4 **Per Contra**, the learned counsel for the Respondent State Commission contended that the replying Respondent is bound to implement the directions given by this Tribunal. However, there have been difficulties in implementing the same exclusively in the interest of consumers of Delhi. The learned counsel for the Respondent Commission drew our attention to the Preamble of the Electricity Act, 2003 and other Sections such as Section 61, particularly, its sub-Section (d), to highlight that the aim and object of the Act is that the rate of electricity should be the cheapest at the hands of the end-consumers and the Regulatory Commission has been constituted for safeguarding the interest of the consumers.

6.5 The learned counsel further submitted that as per the Regulations, the employee expenses are part of the O&M Expenses which are controllable in nature. Accordingly, the effect of the sixth Pay

Commission was considered by the Commission in its Tariff Order dated 26.08.2011. Thus, the impact of sixth Pay Commission on Food and Children Education Allowances have been duly considered by the Commission while analysing the revised employee cost for FY 2010-11. However, against the said Tariff Order, the Appellant had filed A. No. 14 of 2012, in which it was contended that the FRSR Structure Employee expenses are un-controllable and same has to be passed through in the ARR and even if they are controllable, the Commission should have exercised the power to relax and ought to have allowed those expenses. The learned counsel further submitted that against the said Judgment of this Tribunal, the Appellant has preferred Civil Appeal No. 4343 of 2014 before the Hon'ble Supreme Court. The said issue has been agitated as Issue No. 'C' (Non-allowance of FRSR Structure employees' salary on actual basis in addition to the Sixth Pay Commission Impact). This is pending consideration before the Apex Court.

6.6 The learned counsel for the Respondent Commission contended that the Commission has given the same treatment to other distribution licensees, i.e., BSES RPL and BSES YPL. Further, the learned counsel pointed out that there are different Judgments of this Tribunal, one holding that O&M Expenses which includes Employee Expenses is controllable and the other holding the same otherwise. Advancing his arguments further, the learned counsel for the Respondent Commission highlighted that the Tariff Order dated 29.09.2015 came after the decision of this Tribunal in A. No. 171 of 2012 and it is observed that the issue is pending before the Hon'ble Supreme Court as well as this Tribunal and whatsoever will be the direction, the State Commission is duty-bound to implement the same. Summing up his submissions, the learned counsel for the Commission submitted that the Commission has

no personal stake in the matter and has brought out the difficulties in the implementation of the matter before this Tribunal. However, whatever directions are issued by the Tribunal, the same would be implemented by the replying Respondent, i.e., the State Commission.

**Our Findings :**

- 6.7 We have considered the rival submissions of the learned counsel for the Petitioner/Decree-Holder and the learned counsel for the Judgment-Debtor / Respondent and also taken note of the quoted Judgments of this Tribunal and also the relevant Appeals and various Orders of the State Commission. The main dispute pertains to the non-implementation of findings of this Tribunal regarding Food and Children Education Allowances for FY 2010-11. While the Petitioner seeking execution contends that despite categorical directions of this Tribunal to allow the Food and Children Education Allowances, the replying Respondent has expressed one or the other difficulties in implementing the same primarily due to consumers' interest and pendency of the Civil Appeal filed by it before the Apex Court. The Petitioner submits that due to non-allowance of Food and Children Education Allowances, a sum of Rs. 12.10 crores has accumulated during FY 2010-11 to FY 2015-16 including carrying cost of Rs. 5.19 crores.
- 6.8 The learned Counsel for the Petitioner indicated that the Civil Appeal was last listed before the Hon'ble Supreme Court on 08.08.2016. However, no stay has been granted in the matter. As such, there is no bar upon the Commission not to give effect to the implementation of the Tribunal's directions in regard to Food and Children Education Allowances which the Petitioner is entitled in law to claim as a matter of

right. On the other hand, the learned counsel for the Respondent Commission maintained that the matter is sub-judice and interest of the consumers is involved. He contended that as per the provisions of the Electricity Act, 2003, the rate of electricity should be the cheapest to the end-consumers and the regulatory Commission has been constituted and conferred with various duties including safeguarding interest of the consumers.

6.9 After critical analysis of the contentions of the parties, it is relevant to note that once certain directions have been issued by this Tribunal, through its Judgments and the same is not stayed upon by the Superior Court, the same is binding on the concerned Commission to implement the same despite the fact that the matter may be pending adjudication before the Apex Court. It is true that the State Commission is required to safeguard the consumer interest in the State but at the same time, it has to strike the judicious balance between all stakeholders including generators, distribution licensees etc. Being such an old case and passing of so many subsequent Orders, the Judgment of this Tribunal has not found logical conclusion at the hands of the State Commission. Keeping the facts and circumstances of the case in view, we opine that the State Commission is not justified in non-implementation of the rulings of this Tribunal given in its Judgment dated 10.02.2015. Needless to say that the said Food and Children Education Allowances pertain to FY 2010-11.

6.10 In view of the above, the Execution Petition deserves to be allowed and the Respondent Commission is required to implement the directions of this Tribunal in its Judgment dated 10.02.2015 and also Judgment dated 20.07.2016.



**ORDER**

For the foregoing reasons as stated supra, we are of the considered view that the E.P. No. 09 of 2016 in A. No. 171 of 2012 has merits and hence it is allowed. Accordingly, the DERC is hereby directed to pass the appropriate Order as per the findings and directions contained in the Judgments of this Tribunal dated 10.02.2015 and 20.07.2016 as expeditiously as possible but not later than three months from the date of receipt of a copy of this Judgment/Order.

No order as to costs.

Pronounced in the Open Court on this **28<sup>th</sup> day of February, 2020.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice Manjula Chellur)**  
**Chairperson**

**REPORTABLE / ~~NON-REPORTABLE~~**

Bn