

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)
APPEAL NO. 248 OF 2018

Dated: 18th February, 2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

The Director,
Abhijeet Ferrotech Limited,
Plot No. 50 & 51, APSEZ, Atchuthapuram,
Vishakhapatnam – 531 011 Appellant

Vs.

1. The Secretary,
Andhra Pradesh Electricity Regulatory Commission,
4th Floor, Singareni Bhavan, Red Hills,
Hyderabad – 500 004.

2. The Managing Director,
Eastern Power Distribution Company Ltd., Andhra Pradesh,
P & T Colony, Seethammadhra,
Visakhapatnam – 530 013. Respondent(s)

Counsel for the Appellant(s) : Mr.Sajan Poovayya, Sr. Adv.
 Mr.Hemant Singh
 Mr.Mridul Chakravarty
 Ms.Supriya Rastogi Agarwal
 Mr. Lakshyajit Singh Bagdwal
 Mr. Harshit Singh
 Mr. Sharan Balakrishnan

Counsel for the Respondent(s) :

Mr. Sridhar Potaraju
Mr. Mukunda Rao Angara
Ms. Shiwani Tushir
Mr. Aayush
Mr. Yashvir
Ms. Anikita Sharma for R-1

Mr. Nishant Sharma For R-2

JUDGMENT

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

1. The present Appeal has been filed by the Appellant - M/s Abhijeet Ferrotech Limited ("Appellant") challenging the Tariff Order dated 27.03.2018 ("Impugned Order") passed by the Andhra Pradesh Electricity Regulatory Commission (in short "APERC" or "Respondent Commission" or "State Commission") wherein it determined the Annual Revenue Requirement (ARR) and Tariff for the two Distribution Licensees of the Andhra Pradesh for the FY 2018-19.

2. Being aggrieved by the decision of the Respondent Commission of determining common Tariff for consumer categories of 132 KV and above, the Appellant filed the present Appeal.

Description of the Parties

3. The Appellant - Abhijeet Ferrotech Limited is engaged in the business of manufacturing ferro alloys, which is a vital constituent for

steel making industries, and accordingly has set up a ferro alloys unit at Special Economic Zone (SEZ), Vishakhapatnam (Andhra Pradesh). It is stated that the electricity requirement of the Appellant is fulfilled by Andhra Pradesh Eastern Power Distribution Company Limited (APEDCL), Respondent No.2, herein, at 220 kV voltage level against the power demand of 90 MVA.

4. Respondent No.1- Andhra Pradesh Electricity Regulatory Commission, which is exercising its powers and discharging functions as a sector regulator under the provisions of the Electricity Act, 2003 and by virtue of power vested in it under the Act of 2003, and as per the provisions of APERC (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation, 2005 has passed the present Impugned Order.

5. Respondent No.2 - Andhra Pradesh Eastern Power Distribution Company Limited (APEDCL) is the Distribution Licensee supplying power in the State of Andhra Pradesh in the specified area as per its Licence. The other Distribution Licensee is Southern Power Distribution Company (APSDCL).

Factual Matrix

6. The issue is short and narrow, only one issue emerges out of the Appeal, whether the Respondent Commission has erroneously ignored the provision of the Tariff Policy and various judgement passed by the Hon'ble Supreme of India and by this Tribunal.

7. Respondent No. 2 (APEDCL) and the Southern Power Distribution Company Limited (APSDCL) filed two separate petitions, being OP No.60 and 61 of 2017, respectively, before the State Commission for determination of ARR and Tariff for FY 2018-19. The Impugned Order is the common order passed against these two Petitions filed by the two distribution companies of Andhra Pradesh.

8. The facts of the case are noted in brief.

9. The Appellant is an extra high tension (voltage) i.e, EHT category consumer within the distribution licenced area of Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL, and as such, is filing the present appeal with respect to the Impugned Order passed qua Petition in OP No.60 of 2017. Hence, Southern Power Distribution Company of Andhra Pradesh Limited (APSDCL) is not being made a party to the present appeal.

10. On 09.01.2018, the Appellant vide its letter addressed to the Secretary of the Respondent Commission filed the objection/suggestion in respect of the ARR Petition of the Respondent No.2, requesting for fixing separate tariffs for EHT consumers drawing power at 132 KV, 220 KV and 400 KV. The copy of the above said letter was also shared with the Respondent no. 2, the Principal Secretary (Energy) and the Principal Secretary (Industries), Government of Andhra Pradesh.

11. On 03.02.2018, Respondent No.2 came out with its reply vide its letter in response to the letter dated 09.01.2018 submitted by the Appellant. The Respondent No.2 affirmed its rationality for the same tariff category as that of the consumers at 132 kV voltage level, on the

pretext that the transmission system in the State of Andhra Pradesh operates in a right mode comprising 400 kV, 220 kV and 132 kV system and as such, it is only the transmission loss for the entire transmission network which can be determined.

12. The Appellant again presented its case in detail during the public hearing held on 05.02.2018 at Vishakhapatnam, in respect of the retail supply Tariff Order and the ARR Petition for FY 2018-19 filed by the Respondent no.2, however, the Respondent Commission reiterated its stand in the matter.

13. Thereafter, the Respondent Commission has passed the present Impugned order against the Original Petition No.60 of 2017 filed by Respondent No.2.

14. Being aggrieved, the Appellant filed the present Appeal.

Our Findings and Analysis

15. The Appellant, a consumer at 220KV, has submitted that the power losses in the transmission system depend upon the voltage, higher the voltage, lower is the loss of power. The cost of Supply at different voltages of 132 KV, 220 KV and 400 KV within the EHT range of consumers is different and the reduction in cost of Supply deserves to be passed on to high voltage consumers in the form of lower tariff. A common retail tariff is being made applicable to the Appellant despite the fact that the power loss at 220 KV is lower as compare to 132 KV. Therefore, the Appellant sought a separate tariff category for consumers connected at 220 kV voltage levels.

16. We are inclined to accept the contention of the Appellant.
17. While providing references of the practice adopted by various other State Electricity Regulatory Commissions approving voltage wise tariffs for EHT consumers and encouraging the usage of high voltage level to minimize power losses, the Appellant also laid emphasis upon various pronouncements of this Tribunal with respect to voltage wise cost of Supply and as such reiterated its demand for creation of a separate tariff category for itself. In addition, the Appellant placed before list of Discoms which adopted voltage wise tariff category for EHT consumers.
18. On the contrary, the Respondents submitted that the transmission system in the State of Andhra Pradesh operates in a ring mode comprising 400 kV, 220 kV and 132 kV system and as such, it is only the transmission loss for the entire transmission network which can be determined. Further added that the power flows in EHT system as per laws of physics and the losses for entire EHT system can only be determined. The Respondent No. 2, therefore, declined to propose separate tariff for consumers, including the Appellant itself, connected at 220 kV voltage level, citing its inability to determine the transmission loss at a specific voltage level.
19. The above submission of the Respondents is bound to be rejected as many Distribution Licensees operating in ring mode in the Country has already adopted voltage wise categorisation of retail tariff. The Appellant has placed before us list of such Distribution Companies.

20. We decline to accept the contention of the Respondents that under ring mode operation at the level of 132 KV and above, the voltage wise transmission losses cannot be ascertained as at each and every terminal end of a transmission line energy meters / ABT (Availability Based Tariff) Meters are installed as per the Regulations notified by Central Electricity Authority under the provisions of the Electricity Act, 2003. On the contrary, with the advancement of technology, precise measurements can be made for the determination of transmission tariff including the directional flow of electricity.

21. In the light of the above, we enquired from the Ld Advocate appearing for the Respondent Commission whether accurate determination can be done or not. However, no clear reply was received.

22. The Appellant brought our attention on the Judgement passed by the Hon'ble Supreme Court in **Punjab State Power Corpn. Ltd. v. Punjab State Electricity Regulatory Commission**, (2015) 7 SCC 387 wherein it was held that:

"13. The Appellate Tribunal on an interpretation of Sections 61(g) and 62(3) particularly in the absence of any prefix to the expression "cost of supply" in Section 61(g) took the view that it is more reasonable to advance towards a regime of voltage cost of supply which would provide a more actual/realistic basis for dealing with the issue of cross-subsidies. However, as the progress to a regime of voltage cost of supply by reduction/elimination of cross-subsidies is to be gradual, the learned Appellate Tribunal held that no fault can be found with the determination of the average cost of supply made by the Commission for the financial years in question. However, keeping in view what the Tribunal understood to be the ultimate object of the Act it had directed that the relevant data with regard to voltage cost should be laid before the

Commission and for the future the Commission would gradually proceed to determine the voltage cost of supply.

14. We have considered the perspective adopted by the learned Appellate Tribunal in seeking an answer to the issue of cost of supply/cross-subsidies that had arisen for decision by it. The provisions of the Act and the National Tariff Policy requires determination of tariff to reflect efficient cost of supply based upon factors which would encourage competition, promote efficiency, economical use of resources, good performance and optimum investments. ***Though the practice adopted by many State Commissions and utilities is to consider the average cost of supply it can hardly be doubted that 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.*** In fact, we will not be wrong in saying that in many a State the departure from average cost of supply to voltage cost has not only commenced but has reached a fairly advanced stage. ***Moreover, the determination of voltage cost of supply will not run counter to the legislative intent to continue cross-subsidies. Such subsidies, consistent with the executive policy, can always be reflected in the tariff except that determination of cost of supply on voltage basis would provide a more accurate barometer for identification of the extent of cross-subsidies, continuance of which but reduction of the quantum thereof is the avowed legislative policy, at least for the present.*** Viewed from the aforesaid perspective, we do not find any basic infirmity with the directions issued by the Appellate Tribunal requiring the Commission to gradually move away from the principle of average cost of supply to a determination of voltage cost of supply.”

23. By plain reading of the above judgment, it is clear that State Commission ought to determine voltage wise tariff, which is in confirmation with the provisions of the Electricity Act, 2003.

24. This Tribunal vide its Judgement dated 31.05.2013 in Appeal No.179 of 2012 -**Kerala High Tension and Extra High-Tension Industrial Electricity Consumer's Associations v. KSER &Anr.** has issued the following directions:

"49. The State Commission in the impugned order has decided not to consider voltage wise cost of supply to determine cross subsidy relying on its own Regulations and recommendations of the Forum of Regulators. We find that the State Commission's Regulations provide for determination of cross subsidy with respect of average cost of supply which is contrary to the interpretation of cost of supply and cross subsidy under Section 61(g) of the Act given by this Tribunal. The State Commission is also wrong in relying upon the recommendations of the Forum of Regulators which is only a recommendatory body as against the dictum held by this Tribunal which is binding on the State Commission. In view of this Tribunal's interpretation of Section 61(g) of the Act for cost of supply, we have to ignore the Regulations of the State Commission and have to hold that the State Commission has to determine the cross subsidy with respect to cost of supply for the particular category of consumer. Accordingly, as mentioned earlier, we have given directions to the State Commission for determination of voltage wise cost of supply within six months from the date of this judgment for future for bringing transparency in determination of cross subsidy. However, as the State Commission has decided a higher percentage increase in tariffs of subsidized consumers as compared to subsidizing categories with a view to reduce the cross subsidies and have kept the tariffs of the consumer categories of the Appellant's members within ± 20% of the average cost of supply, we do not incline to interfere with the tariff decided by the State Commission for the Appellants.

50. Learned counsel for the Appellant has given a comparison of change in cross subsidy for Domestic and HT/EHT Industrial categories with respect to voltage wise cost of supply as computed by them to show that cross subsidy for HT Industrial categories has been increased against the dictum of the Tribunal. The Appellant has computed cost of supply at EHT, HT and LT levels

by their own assumptions of transmission losses, and losses in HT and LT system of the Electricity Board. The cost of supply at EHT and has been considered as cost of power purchase from sources other than Board's own generation, total energy procured from outside sources and that supplied by Board's own power plants and assumed transmission loss of 3%. This is wrong. Firstly, no such voltage-wise cost of supply has been decided by the State Commission in the impugned order. Secondly, the computation of the Appellant is incorrect. The total cost of energy supply does not include the cost of generation of Board's own power stations while the total energy considered includes the energy supplied by the Board's own generation. Thirdly, the method of cost of supply at EHT is not in consonance with the ratio laid down by this Tribunal in Tata Steel judgment in Appeal no. 102 of 2010 and batch, wherein the Tribunal rejected the contention of the Appellants, the EHT consumers, that the distribution losses in respect of EHT consumers would be nil for computing cost of supply. The Tribunal held that the difference between the distribution losses allowed in the ARR and the technical losses as computed by the studies should also be apportioned to consumers at EHT for computing the cost of supply. The Tribunal also decided that as segregated network costs are not available, all other costs of distribution system could be poled equitably at all voltage levels including EHT.

80. Summary of our findings:

i) We find that in the present case, the State Commission has determined the tariff of the Appellant's category of HT and EHT Industrial consumers within ± 20% of the average cost of supply as per the Tariff Policy, the dictum laid down by this Tribunal and as sought by the Appellant in their objections filed before the State Commission. However, we give directions to the State Commission to determine the voltage-wise cost of supply for the various categories of consumers within six months of passing of this order and take that into account in determining the cross subsidy and tariffs in future as per the dictum laid down by this Tribunal."

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.*;

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. In fact, as per Central Electricity Authority Regulations, ABT meters are to be installed at the interface points of 132 kV, 220kV and 400kV and also at places where EHT network gets connected to the distribution system of the distribution licensees making power loss easily accessible for the Distribution Licensee. Many Distribution Companies in the Country(list of 22 of such company have been provided by the Appellant) have fixed voltage wise tariffs for HT consumers though such Licensees may also be similarly placed.

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.

ORDER

30. In light of the above, we are of the considered view that the issues raised in the Appeal have merits and hence the Appeal is allowed. The Impugned Order dated 27.03.2018 in Original Petition No. 60 of 2017 passed by Andhra Pradesh Electricity Regulatory Commission is hereby set aside to the extent of our observation.

31. We remit the matter, involving the issue of determination of Tariff voltage wise, to the State Commission for a fresh decision for determining separate retail supply tariff, voltage wise, for all HT consumers, including for those connected at voltage level of 220 kV.

32. Needless to add that the State Commission shall also proceed to examine as to how the differential in the applicable tariff for the period in question is to be determined and recovered, and issue all necessary directions in such regard as well.

33. The issue having persisted for long, we would expect the State Commission to pass the fresh order in terms of above directions expeditiously, not later than three months from the date of this judgment.

The Commission shall also ensure that the order it passes pursuant to our directions is scrupulously complied with expeditiously and in a time-bound manner and for this purpose shall have recourse to all enabling powers available to it under the law.

The appeal is disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERENCING ON THIS 18th DAY OF FEBRUARY, 2022.**

(Sandesh Kumar Sharma)
Technical Member

Pr

(Justice R.K. Gauba)
Officiating Chairperson