

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

APPEAL NO. 71 OF 2016

Dated: **07.07.2022**

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

In the matter of:

TATA Power Delhi Distribution Limited

NDPL House,
Hudson Lines, Kingsway Camp
Delhi-110 009

.... Appellant(s)

Versus

DELHI ELECTRICITY REGULATORY COMMISSION

ViniyamakBhawan
C-Block, Shivalik, Malviya Nagar
New Delhi-110017

.... Respondent(s)

Counsel for the Appellant (s) : Mr. BasavaPrabhuPatil, Sr. Adv.
Mr. Nitish Gupta
Mr. Utkarsh Singh

Counsel for the Respondent (s) : Mr. DivyanshuRai
Mr. Prabhat Kumarfor R-1

ORDER(Oral)

PER HON'BLE MR. R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a distribution licensee engaged in the business of distribution and retail supply of electricity in North and North West area of National Capital Territory of Delhi. Its business activities relating to the said subject are regulated and controlled by the respondent Delhi Electricity Regulatory Commission (hereinafter referred to as the "State Commission") established under the provisions of the Electricity Act, 2003 read with Delhi Electricity Reforms Act, 2000. The cause of concern agitated through the

appeal at hand directed against the Order dated 07.01.2016 in Petition no. 39 of 2015 passed by the State Commission pertains to the methodology for treatment of de-capitalization of the assets of the distribution licensee. It appears that the Regulations framed by the State Commission till 2017 were silent on the subject, some provision having been made in the Regulations named DERC (Terms & Condition for Determination of Tariff) Regulations, 2017. The dispute which seems to bother the appellant and possibly certain similarly placed other entitles relates to the period anterior thereto.

2. It is pointed out that while dealing with a prayer for requisite relief, the State Commission, by its Tariff Order for Financial Year (FY) 2004-05 passed on 09.06.2004, had noted that it had till the said date "*not prescribed any guideline for treatment of loss on retires/sale of assets*", the subject being new, but held out an assurance that it (the Commission) "*would examine the matter separately after the issue of tariff order*". It is stated that though similar assurances were given by certain subsequent tariff orders as well, no such separate examination on the subject was done nor any order passed till a letter came to be issued on 26.11.2014 "*with the approval of the Commission*" by its Executive Director (Engineering), *inter alia*, specifying the methodology as under:-

"The Commission is in receipts of various capital investment schemes related to replacement/retirement of assets. But the methodology for retirement of assets have not been specified by the Commission. In order to bring the

uniformity, the Commission directs the utilities to follow the following procedure in case of de-capitalization of the asset.

In case of de-capitalization of assets the original cost of such asset as on the date of de-capitalization shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalization takes place, duly taking into consideration the year in which it was capitalized.

The cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.

The useful life of the asset shall be taken as per the depreciation schedule specified by the Commission in the respective tariff Regulations.

This issues with the approval of the Commission.”

3. The appellant questioned the propriety of the above-said communication dated 26.11.2014, styled as practice direction, by filing Petition no. 39 of 2015 raising various contentions arguing that issuance of such order was impermissible and not in accordance with law. The Commission, by its Order dated 07.01.2016, reiterated the decision communicated by letter dated 26.11.2014 observing, *inter alia*, that administrative instructions could be issued if gap existed in the rules since the same are meant for supplementing the rules or legislation.

4. The appeal at hand challenges the view taken by the Commission by Order dated 07.01.2016 and also assails the validity of the letter dated 26.11.2014.

5. The Commission defends the impugned order and communication dated 26.11.2014 contending that the same was issued in exercise of regulatory function and, therefore, the appeal is not maintainable.

6. After some hearing, learned senior counsel for the appellant submitted, on instructions, that he may be permitted to withdraw the present appeal, the appellant reserving all the contentions agitated here, seeking liberty to approach the State Commission by appropriate petition with reference to the previous tariff orders wherein the issue was not finally determined and also, if so advised, the writ court for appropriate judicial scrutiny and necessary relief.

7. We grant the liberty as prayed for and dispose of the appeal as withdrawn.

8. We hope and trust that if the appellant approaches the State Commission by petition(s) in the above nature, the Commission will examine the contentions that are raised with open mind not feeling bound by the view taken earlier and take a decision at an early date, as expeditiously as possible.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson