

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

APPEAL NO.95 OF 2024 & IA No. 2630 OF 2023

Dated: 05.07.2024

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.

Through its Chief Engineer Power Purchase,
Prakashgad, Plot No.G-9,
Anant Kanekar Marg,
Bandra (East),
Mumbai-400051.

... Appellant(s)

VERSUS

1. MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai-400005.

...Respondent No.1

2. STATE TRANSMISSION UTILITY (STU),

Through its Chief Engineer
4th Floor, 'A' Wing, Prakashganga,
Plot No. 19, E-Block, BKC,
Bandra (East), Mumbai-400051

...Respondent No.2

3. THA TATA POWER COMPANY LIMITED – DISTRIBUTION

Through its Director,
24, Homi Mody Street,
Fort, Mumbai-400001

...Respondent No.3

4. **ADANI ELECTRICITY MUMBAI LIMITED - DISTRIBUTION**
Through its Director,
CTS 407/A (New),
408 Old Village,
Eksar Devidas Lane,
Off SVP Road, Borivali West,
Mumbai – 400103
...Respondent No.4
5. **THE BRIHANMUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING,**
Through its General Manager
BEST Bhavan, BEST Marg,
Fort, Mumbai – 400 001
...Respondent No.5
6. **M/S GIGAPLEX ESTATE PRIVATE LIMITED**
Through its Director,
Plot No. C-30, Block 'G'
Opp. SIDBI,
Bandra Kurla Complex,
Bandra (E), Mumbai-400051
...Respondent No.6
7. **MINDSPACE BUSINESS PARKS PRIVATE LIMITED**
Through its Director
(formerly known as M/s Serene Properties Pvt. Ltd.)
Plot No. C-30, Block 'G',
Opp. SIDBI,
Bandra Kurla Complex,
Bandra (E), Mumbai-400051
...Respondent No.7
8. **EON KHARADI INFRASTRUCTURE PRIVATE LIMITED (EON SEZ PHASE I)**
Through its Director,
M/s Eon Kharadi Infrastructure Pvt. Ltd., Tech Park One,
Tower E, S.No. 191/A/2A/1/2,
Next to Don Bosco School,
Off. Airport Road, Yerwada,
Pune – 411006.
...Respondent No.8
9. **EON KHARADI INFRASTRUCTURE PRIVATE LIMITED (EON SEZ PHASE II)**

Through its Director,
M/s Eon Kharadi Infrastructure Pvt. Ltd., Tech Park One,
Tower E, S.No. 191/A/2A/1/2,
Next to Don Bosco School,
Off. Airport Road, Yerwada,
Pune – 411006. ...Respondent No.9

10. KRC INFRASTRUCTURE AND PROJECTS PRIVATE LIMITED
Through its Director,
Plot No. C-30, Block 'G',
Opposite SIDBI,
Bandra Kurla Complex,
Bandra (E), Mumbai-400051 ...Respondent No.10

11. NIDAR UTILITIES PANVEL LLP (NUPLLP)
Through its Director,
Nidar Utilities Panvel Limited Liability Partnership,
12th Floor, Knowledge park bld,
Hiranandani Business Park,
Powai, Mumbai – 400076. ...Respondent No.11

12. MAHARASHTRA AIRPORT DEVELOPMENT COMPANY LTD. (MEDC)
Through its General Manager,
8th Floor, World Trade Center,
Cuff Parade,
Mumbai-400005 ...Respondent No.12

13. CENTRAL RAILWAY, MUMBAI (CR)
The Chief Electrical Distribution Engineer,
Office of Principle Chief Electrical Engineer,
Indian Railway,
Chief Electrical Office Building,
2nd Floor, Parcel Office Building,
Mumbai CST – 400001 ...Respondent No.13

Counsel on record for the Appellant(s) : Udit Gupta
Anup Jain
Vyom Chaturvedi

Prachi Gupta
Divya Hirawat
Kalyanis Jha
Nishtha Goel for App. 1

Counsel on record for the Respondent(s) : Pratiti Rungta for Res. 1

Yogesh Subhash Kolte for
Res. 2

Gaurav Dudeja
Dhruval Singh
Ashutosh Ranjan for Res. 4

Tavinder Pal Sidhu
A. P. Singh
Neetika Sharma
Akanksha Das
Shrinkhla Tiwari
Akshada for Res. 5

JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER (ELECTRICITY)

1. The present Appeal is preferred by Maharashtra State Electricity Distribution Company Ltd (**"MSEDCL/ Appellant"**) against the review order dated 07.11.2023 in Review Petition No. 95 of 2023 and impugned Order dated 31.03.2023 in Case No. 239 of 2022 by Maharashtra Electricity Regulatory Commission (**"MERC/State Commission"**). Appellant has contended that by the said orders, the State Commission has declined to

exclude demand of Partial Open Access (POA) consumers, in terms of the provisions of MERC MYT Regulations, 2019 while computing the Base TCR, which is average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD) of MSEDCL. Further, theMERC also declined the prayer of MSEDCL to retain the amount of transmission charges paid by POA Consumers (instead of remitting the same to STU as per impugned Order).

2. The facts that are apropos to the issues involved in the instant appeal are stated here-in-below:On 01.08.2019, the Commission notified the MYT Regulations, 2019 and these Regulations are applicable for the 4th MYT Control Period i.e. from FY 2020-2021 to FY 2024-2025. The methodology and principles for the determination of Intra-State Transmission System Tariff (“**InSTS**”) has been specified under Regulations 64, 65 and 66 of the MYT Regulations, 2019. Prior to the 4th MYT Control Period i.e. up to the 3rd MYT Control Period ending in FY 2019-2020, the Commission had Suo-motu vide its orders had determined the InSTS Tariff. However, Regulation 64.5 of the MYT Regulations, 2019 requires STU to file a Petition for determination of InSTS Tariff for the 4th MYT Control Period.

3. In compliance with Regulation 64.5 of the MYT Regulations, 2019, Respondent No.2, Maharashtra State Electricity Transmission Company Limited ('**MSETCL**'), being State Transmission Utility ('**STU**') had filed a Petition in Case No 327 of 2019 for determining the InSTS Tariff for 4th Control Period for FY 2020-21 to FY 2024-2025, which was disposed of by the Commission vide its Order dated 30.03.2020. Further, the Regulation 64.5 also requires STU to file a Petition for Mid-Term Review for true-up of share of InSTS Tariff for FY 2020-2021 and FY 2021-2022 and modification of the InSTS tariff for fourth and fifth year of MYT control period i.e., FY 2023-2024 and 2024-2025. Therefore, Respondent No.2-the State Transmission Utility (STU) had filed a Petition before the Commission on 30.11.2022 in Case No. 239 of 2022 seeking Truing-up of Intra-State Transmission System Tariff for FY 2020-21 and FY 2021-22 and determination of revised InSTS Tariff for FY 2023-2024 and FY 2024-2025.

4. After receiving written suggestion/objections from various stakeholders, and e-Public Hearing on 09.02.2023, State Commission passed the order dated 31.03.2023 in Case No. 239 of 2022 directing Distribution Licensees that it shall not retain the transmission charges collected from POA consumers and shall arrange to remit the same to STU. The State

Commission also did not consider the request of the Appellant/MSEDCL regarding computation of Base TCR by excluding the demand of POA consumers from MSEDCL's CPD and NCPD demand. Aggrieved with the findings of the Commission, the Appellant MSEDCL filed a Review Case No. 95 of 2023 before the Commission seeking review of the MTR Order dated 31.03.2023 passed in Case No. 239 of 2022 for Truing-up of InSTS for FY 2020-2021 and FY 2021-2022, Provisional Truing-up of FY 2022-2023 and determination of revised InSTS Tariff for FY 2023-2024 and FY 2024-2025. Prayers in the Review Case are as follows:

- a) *“To allow the Review of the MTR Order dated 31st March 2023 in Case No. 239 of 2022 passed by Hon’ble Commission;*
- b) *To compute Base TCR and average of CPD and NCPD of MSEDCL only after excluding the demand of partial open access consumers in line with the provisions of MERC MYT Regulations, 2019;*
- c) *To allow MSEDCL to retain the amount of transmission charges paid by partial open access consumers, in case the Base TCR and average of CPD and NCPD of MSEDCL is computed without excluding the demand of partial open access consumers; ...”*

5. The State Commission by its Order dated 07.11.2023 in Review Case No. 95 of 2023 dismissed the Petition observing :

- a) According to Regulation 2.1 (87) of the MYT Regulations, 2019, Distribution Licensees and LTOA are the TSUs and POA consumers are not TSUs but they also need to pay the transmission charges and accordingly demand of POA consumers' needs to be included in the demand of Distribution Licensees as they are connected to the network of Distribution Licensee.
- b) As per the provisions of the State Grid Code 2020 (Scheduling and Despatch Code), Distribution Licensee needs to include the demand of POA consumers in its forecasted day ahead schedule.
- c) The inclusion of the demand of the POA consumers as well as remittance of the Transmission Charges of POA consumers to STU is as per the provisions of the Regulations.
- d) TTSC of InSTS is the result of capital investment made by all the Transmission Licensees to meet the demand of TSUs as a pool. As per principles of pooled ARR, such TTSC is shared by all the consumers of Maharashtra, irrespective of calculating the benefits to the consumers of particular TSU.

e) The transmission charges collected by Distribution Licensees from the POA consumers as a nodal agency for granting OA under DOA Regulations 2016 shall have to be remitted to STU and so deduced from TTSC at the time of determining transmission tariff as per MYT Regulations 2019, which in turn benefits consumers of all the Distribution Licensees in the Maharashtra as well as LTOA users. If transmission charges collected from POA consumers are not paid/remitted to STU and instead is kept with the Distribution Licensees, it will benefit the consumers of that Distribution Licensee only.

f) Treatment for POA consumers' demand and transmission charges is based on the same principle in the MYT Order as well as in the impugned Order. Hence, contention of MSEDCL that due to inclusion of demand of POA consumers increase its TTSC share is not factually correct and there is no error on the face of record.

6. Being aggrieved with the observations and directions given in the Order dated 07.11.2023 in Review Case No. 95 of 2023 and Order dated 31.03.2023 in Case No. 239 of 2023 by the Commission, the Appellant has preferred the instant appeal.

7. Learned Counsel for the Appellant submitted that the issue involved in this appeal is only as regards the methodology for computation of the Base Transmission Capacity Rights (TCR) of the utilities in Maharashtra. Through the impugned order in this appeal i.e., Order dated 31.03.2023, the Commission has erroneously rejected the objections of the Appellant by holding that the demand of Partial Open Access Users are to be included while computing the Base Transmission Capacity Rights; and by Order dated 07.11.2023, the Commission has wrongly dismissed the Review Petition filed by the Appellant holding that there is no error apparent on the face of it. The State Commission has also held that inclusion of demand of Partial Open Access users while calculating the base TCR is as per the provisions of the Regulations, while as per Regulation 64.2 of the MYT Regulations, allotted capacity for partial open access users is to be excluded for calculating base Transmission Capacity Rights.

8. Learned counsel for the Appellant submitted that in the impugned order dated 31.03.2023, the Commission has justified its decision by simply stating that it has adhered to the methodology as was followed in the MYT Order dated 30.03.2020, and that any deviation from this established methodology is not permissible at this stage. The learned counsel for the

Appellant further submitted that the said MYT Order dated 30.03.2020 does not record any decision or finding for including the Partial Open Access Consumers in the computation of the capacity rights of MSEDCL. Even assuming such a decision was made by the Commission, the same is contrary to the Regulations, and it would be incumbent upon the State Commission to rectify the same during the truing-up process.

9. Learned counsel for the Appellant submitted that the Regulations are very clear and unequivocally mandate the exclusion of Partial Open Access Consumer demand while calculating the Base Transmission Capacity Rights of Long-Term users. Further, these Regulations are legally binding on all parties, including the State Commission. The determination in the review order that inclusion of Partial Open Access Consumer demand while calculating the Base Capacity Rights of Long-Term users is permissible in terms of the Regulations constitutes a palpable error of law.

10. The learned counsel for the Appellant further contended that the rationale underlying the methodology of excluding Partial Open Access user demand is clear. The Transmission Charges remitted by Partial Open Access users for their allocated capacity are forwarded in their entirety to the Transmission Company Separately. Consequently, the demand of such

Partial Open Access users cannot be included in the demand of MSEDCL, as otherwise it would lead to double counting. Revenue from the Partial Open Access users reduces the overall tariff of the transmission licensee and why the capacity of MSEDCL is increased by including the Partial Open Access users, thereby increasing the share payable by MSEDCL. In view of above deliberations, the Appellant has prayed for the following reliefs in the appeal:

- (a) *Allow the present appeal and set aside the Review Order dated 07.11.2023 in Case No. 95 of 2023 as well as the Impugned Order dated 31.03.2023 in Case No. 239 of 2022 passed by the Ld. Maharashtra Electricity Regulatory Commission to the limited extent challenged in the present appeal; and/or*
- (b) *Allow MSEDCL to retain the transmission charges collected from the POA consumers, in order to avoid double payment of transmission charges on account of partial open access users; and/or*

11. Per contra, Learned counsel for the Respondent No. 1 submitted that the State Commission, in impugned order dated 31.03.2023 and review order dated 07.11.2023, has stated that the methodology used for determining the Base TCR under the MYT order and in the MTR petition process is consistent. It is further submitted that no revisions in the

methodology or principles are planned during the control period as part of the MTR process. Any review or revision in the principles for determining the Base TCR or transmission tariff can be addressed in the next control period and relied upon the judgment of the Hon'ble Supreme Court in **“BSES Rajdhani Power Ltd v. DERC”(2023 4 SCC 788)**. Since the Appellant did not challenge the MYT order dated 30.03.2020, they cannot now seek a change in the methodology at the truing-up stage.

12. It is further submitted by learned counsel for Respondent No.1 that the Base TCR is computed on the basis of the average demand of CPD and NCPD as submitted by TSUs. Moreover, these CPD and NCPD figures include the demand of POA consumers also. Consequently, the Base TCR percentage calculated encompasses the demand of POA consumers as well. The following table depicts the said proposition:

TSUs	TCR in (MW) incl. POA	TCR Share of utility (%)
MSEDCL	20,236.83	86.449%
TPCL-D	742.92	3.174%
AEML-D	1,346.74	5.753%

BEST	698.50	2.984%
Indian Railways	357.75	1.528%
Mindspace	6.81	0.029%
Gigaplex Properties	3.58	0.015%
KRC Infrastructure	2.60	0.011%
Nidar Utilities	2.30	0.010%
MADC	11.06	0.047%
EON Phase-1	-	0.000%
EON Phase-2	-	0.000%
JNPT	-	0.000%
LaxmipatiBalaji	-	0.000%
Total	23,409.08	100.00%

Note: The TCR% is taken for True-up for FY 2021-22 (Actual), as approved by the Commission of MTR Order dt. 31.03.2022.

13. Learned Counsel for Respondent No 1 submitted following example to further clarify the issue:

In case the **Total Transmission Service Cost (TTSC) is Rs. 1,00,000 Crore**, then STU has to recover the said amount from all TSUs and POA consumers. Furthermore, POA Consumers paid Rs. 500 Crore to MSEDCL, as MSEDCL is nodal agency on behalf of STU. (Other TSU also have POA consumers).

1) Case 1: If MSEDCL Retains Rs. 500 Crore with it :

TSUs	TCR (%)	TTSC charges paid to STU by TSUs	MSEDCL Retained POA Charges and POA charges are not socialised	Net Impact on TSUs
MSEDCL	86.449%	86,448.62	500	85,948.62
TPCL-D	3.174%	3,173.65	0	3,173.65
AEML-D	5.753%	5,753.05	0	5,753.05
BEST	2.984%	2,983.86	0	2,983.86
Indian Railways	1.528%	1,528.25	0	1,528.25
Mindspace	0.029%	29.09	0	29.09
Gigaplex Properties	0.015%	15.29	0	15.29
KRC Infrastructure	0.011%	11.10	0	11.10

TSUs	TCR (%)	TTSC charges paid to STU by TSUs	MSEDCL Retained POA Charges and POA charges are not socialised	Net Impact on TSUs
Nidar Utilities	0.010%	9.82	0	9.82
MADC	0.047%	47.26	0	47.26
EON Phase-1	0.000%	-	0	-
EON Phase-2	0.000%	-	0	-
JNPT	0.000%	-	0	-
LaxmipatiBalaji	0.000%	-	0	-
Total	100.00%	1,00,000.00	500	99,500.00

In this case, **STU has only one income sources to recover Rs 1,00,000 Crore** for TTSC:

- i) Recover Rs. 1,00,000 Crore from TTSC charges
- ii) Recover Rs. 0 Crore from POA consumers (MSEDCL has not remitted to STU). It will benefit MSEDCL only.

From the above table, it is clear that MSEDCL has paid Rs. 86,448,62 to STU for TTSC charges and retained Rs. 500 by MSEDCL (income from POA). Thus, the net impact on MSEDCL is Rs. 85,948.62. Further, no benefit to other TSUs as POA Charges are not socialized in this case.

Case 2: In case MSEDCL Remits Rs. 500 Crore to STU. (STU has to deduct this Rs. 500 Crore from TTSC as an income from POA. The

network is built by all Distribution Licensees). Though Rs. 500 Crore has been collected by MSEDCL, but it is an income from OA. Hence it needs to be shared with all Distribution Licensees)

TSUs	TCR (%)	Total TTSC charges paid to STU by TSUs if MSEDCL not remitted the POA charges to STU(Sharing of Rs. 95000Cr)	% MSEDCL remits POA Charges and POA charges are socialised(Sharing of Rs. 500 Cr)	Final TTSC charges paid to STU by TSUs (Net Impact)
MSEDCL	86.449%	86,448.62	432.24	86,016.38
TPCL-D	3.174%	3,173.65	15.87	3,157.79
AEML-D	5.753%	5,753.05	28.77	5,724.29
BEST	2.984%	2,983.86	14.92	2,968.94
Indian Railways	1.528%	1,528.25	7.64	1,520.61
Mindspace	0.029%	29.09	0.15	28.94
Gigaplex Properties	0.015%	15.29	0.08	15.22
KRC Infrastructure	0.011%	11.10	0.06	11.04
Nidar Utilities	0.010%	9.82	0.05	9.77
MADC	0.047%	47.26	0.24	47.02
EON Phase-1	0.000%	-	-	-

TSUs	TCR (%)	Total TTSC charges paid to STU by TSUs if MSEDCL not remitted the POA charges to STU(Sharing of Rs. 95000Cr)	% MSEDCL remits POA Charges and POA charges are socialised(Sharing of Rs. 500 Cr)	Final TTSC charges paid to STU by TSUs (Net Impact)
EON Phase-2	0.000%	-	-	-
JNPT	0.000%	-	-	-
LaxmipatiBalaji	0.000%	-	-	-
Total	100.00%	1,00,000.00	500.00	99,500.00

If POA charges are kept by MSEDCL then it has to Pay Rs. 85,948.62 to STU .

If POA Charges are remitted by MSEDCL to STU then it has to Pay Rs. 86,016.38 to STU. Hence there is difference of Rs. 67.76 Crore.

In this case,STU has two income sources to recover Rs. 1,00,000 Crore for TTSC:

- i) Recover Rs. 99,500 Crore from TTSC charges
- ii) Recover Rs. 500 Crore from POA consumers (MSEDCL has remitted POA charges to STU).

It is contended that from the above table, it is evident that MSEDCL has remitted Rs. 500 Crore to STU. Consequently, STU now needs to recover only Rs. 99,500 Crore from all TSUs. This indicates that transmission charges collected from POA consumers are being distributed among all

TSUs, including MSEDCL, based on their percentage share of the Base TCR. As a result, the net impact on MSEDCL amounts to Rs. 86,016.38 Crore. Out of the Rs. 500 Crore remitted, Rs. 432.24 Crore are being refunded to MSEDCL. Additionally, other TSUs benefit as POA charges are socialized in this scenario.

14. Learned Counsel for Respondent No. 1 submitted that issue of double counting as contended by Appellant is not supported by the facts. Furthermore, this impact arises solely due to the socialization of POA charges among all TSUs, as these TSUs have also contributed to the STU infrastructure. Since the same facts have clearly been mentioned in the MYT order; MTR and Review order, the Commission cannot be found fault in passing the impugned order.

Discussion and Analysis

15. We have heard learned counsels on both sides and the main issue that emerges for consideration is whether the methodology adopted for calculation of base TCR in impugned order dated 31.03.2023 and its review order dated 07.11.2023 is in accordance with the prevailing regulations or not as well as whether Base TCR can be reviewed during true up exercise, if original order found to be not in accordance with Regulations. It is understood that in line with MYT Regulations 2019, the Appellant has filed petition for determination of InSTS tariff for the 4th Control Period for FY 2020-21 to FY 2024-25, which was disposed of by State commission vide order dated 30.03.2020; petition for Mid-term review for true up of share of InSTS tariff for FY 2020-21 & FY 2021-22 and modification of InSTS tariff

for FY 2023-24 and FY 2024-25 was filed by the Appellant, which was disposed of by the State commission vide order dated 31.03.2023, in which request of the Appellant for retaining the transmission charges from POA and/or exclusion of demand of POA consumers from MSEDCL's CPD and NCPD was not accepted. By the Review order dated 07.11.2023, the State commission dismissed the review petition as it did not find any error apparent in the order under review and held that inclusion of demand of POA consumers as well as remittance of the transmission charges of POA consumers to STU is as per the provisions of the Regulations.

16. Let us examine the pertinent provisions set forth in the MYT Regulations 2019, as reproduced below:

Regulation 64.2 of the MYT Regulations, 2019, provides as under :

“64.2 The Commission shall approve Yearly ‘Base Transmission Capacity Rights’ as average of Coincident Peak Demand and Non-Coincident Peak Demand for TSUs as projected for 12 monthly period of each year (t) of the Control Period, representing the ‘Capacity Utilisation’ of Intra-State transmission system and accordingly determine yearly ‘Base Transmission Tariff’, in.....

*Provided further that the **Allotted Capacity for long-term Open Access Users excluding partial Open Access Users shall be considered in lieu of the average monthly CPD and NCPD for calculating the Base Transmission Capacity Rights:....**”*

17. From a reading of the afore-mentioned provision, it is evident that for calculating yearly Base Transmission Capacity Rights (TCR), average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand of

TSUs is to be considered as projected for 12 monthly periods of each year of control period and as per the proviso, the allotted capacity for long term Open Access users is to be considered excluding partial Open Access users. It is not in dispute that the monthly/yearly transmission charges of STU is to be shared by all the consumers of Maharashtra including POA consumers and accordingly recovered from them in entirety. As stated in the impugned order dated 07.11.2023, the monthly Transmission charges determined by STU is based on the average CPD and NCPD which includes POA demand data. In our view, as per Regulation 64.2 for calculating Base TCR, average of 12 monthly CPD and NCPD is considered and in line with its proviso the demand of POA is to be reduced while working out Allotted Capacity for long-term Open Access Users, in lieu of the average monthly CPD and NCPD. Thus, in our view, inclusion of Demand of POA, in the demand of Appellant for calculation of its Base TCR cannot be said to be in line with the regulation as stated by State commission in the impugned orders.

18. In the case studies submitted by Respondent No 1, the share of Appellant is considered as 86.449 % considering its total demand including that of POA customers. In case 1, if it retains say Rs 500 Crore (as received from POA consumers) then its balance share gets reduced to 85.948 % while no change in others share. While in case 2, (after remitting charges received from POA customers to STU and demand of Appellant calculated as per impugned order), % share of Appellant is reduced to 86.016 instead of 86.449 alongwith proportionate reduction in % share of other open access consumer/ Distribution Licensees based on their share in overall kitty. However, in doing so, the Appellant gets reduction of Rs. 432.24

Crone and rest is shared by other open Access consumer/ Distribution licensees as the charges received from POA are socialized amongst consumers of all distribution licensee instead by consumers of only one Distribution Licensee as stated in impugned order. We do not find such socialization of POA charges among customers of all Distribution licensees to be in accordance with the provisions of Regulations, as Regulations clearly spell out that for working out the share of each Distribution Licensee/ open Access Consumer, POA demand is to be excluded for working out the base TCR. It is also a fact that by adopting methodology as stated in impugned order, no benefit has accrued to the STU, since charges received from POA customers has not been retained by STU as additional income but has led to reduction of transmission charges for all the distribution Licensees/ open Access Consumers. However, in doing so, while share of transmission charges of the Appellant has been increased due to addition of POA demand, the benefit of reduction in charges is shared by all the distribution licensees. In the quoted case no 2, though the impact seems to be quite less, but in a situation when POA consumers demand is high compared to its other customers, the impact in transmission charges of that distribution licensee can be substantial.

19. Respondent No 1, has also contended that same methodology of inclusion of POA consumer demand while calculating base TCR was adopted in MYT order dated 30.03.2020 and placed reliance on the Supreme Court Judgment in "**BSES Rajdhani Power Ltd v. DERC**" (2023) **4 SCC 788** stating that any review and revision in the principles for determination of base TCR and/or determination of transmission tariff can be taken up in the next control period. It is a fact that the Appellant has not

challenged the MYT order dated 30.03.2020, however, it could not be demonstrated that the issue of inclusion of POA demand in the overall demand of Appellant while working out base TCR, to be in line with the regulations, has been dealt with in the MYT order dated 30.03.2020. Infact, it is evident from the impugned order dated 31.03.2023, that the Appellant has raised the issue that their % share of average of CPD and NCPD while true up for FY 2020-21 and FY 2021-22 has increased from what was approved by the Commission in MYT order for these years, which seems to be on account of inclusion of POA consumers demand. Though it has been stated in the impugned order that monthly transmission charges determined by STU is based on average CPD and NCDP which includes POA demand data, no deliberations have been made to prove whether inclusion of POA consumer demand while working out base TCR of individual Distribution Licensee including Appellant is as per prevailing regulations or not except noting that STU has calculated sharing percentage based on average CPD and NCDP as per MYT Regulations 2019. In our view, as per prevailing regulations, for calculation of Base TCR, average of CPD and NCDP for 12 months of the yearly control period is to be considered excluding demand of POA. Thus, in our view, the State Commission has erred in including POA demand in the demand of Appellant while calculating base TCR.

20. Reliance placed by Respondent No. 1 on the Supreme Court Judgement in "**BSSES Rajdhani Power Ltd v. DERC**" (2023) 4 SCC 788 is not relevant to the present case as the said judgement has only held that "it is not permissible to amend tariff order during true up exercise. On the pretext of prudence check and trueing up, DERC could not have amended

the tariff order” and has not dealt with the issue that even if original order is not in accordance with the Regulations, it cannot be amended during true up exercise.

21. Another important issue which we would like to address pertains to the treatment of charges collected from POA consumers by the Appellant and the methodology of calculating its share in total transmission charges. We are in agreement with the view of the State commission that as per the present practice, charges collected by the Appellant from POA consumers should be remitted to the STU. However, in line with the MYT Regulations 2019, Base TCR as average of Coincident Peak Demand and Non-Coincident Peak Demand for TSUs as projected for 12 monthly period of each year (t) of the Control Period, excluding demand of POA should be considered. While doing so, in case POA charges remitted to STU are reduced from overall transmission charges and only balance are to be collected from all the Distribution Licensees and LTOA customers, then STU will not be able to recover their monthly transmission charges in entirety. Therefore charges collected from POA customers remitted to STU to be retained by STU, and not to be used for socializing consumer of all Distribution Licensees and LTOA customers. The Distribution Licensees and LTOA customers to pay their share of transmission charges, with Base TCR calculated as per prevailing Regulations.

22. In view of the aforesaid observations and findings, we, feel it appropriate to set aside the Impugned Order to the extent of calculation of Base TCR for the Appellant and remand the matter to Respondent No.1,

MERC directing it to Calculate the base TCR afresh for Control period under consideration in the light of the observations recorded in the foregoing paragraphs.

23. The appeal is accordingly allowed to the extent indicated above. There shall be no order as to costs. All the pending IAs, if any, shall stand disposed of.

Pronounced in open court on this 5th Day of July, 2024

(Seema Gupta)
Technical Member(Electricity)

(Justice Ramesh Ranganathan)
Chairperson

ts/ag

Reportable / ~~Non-Reportable~~