

Tata Power Delhi Distribution Limited vs Delhi Electricity Regulatory ... on 18 May, 2026

Judgement in Appeal Nos. 213

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 213 OF 2018

Dated: 18th MAY, 2026
Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:
TATA POWER DELHI DISTRIBUTION LIMITED
Through its authorized signatory
NDPL House, Hudson Lines,
Kingsway Camp,
New Delhi - 110009.

... Appellant(s)

VERSUS

DELHI ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
Viniyamak Bhawan, 'C' Block,
Shivalik, Malviya Nagar,
New Delhi - 110017. Respondents

Counsel on record for the Appellant(s) : Mr. Amit Kapur
Mr. Anupam Varma
Mr. Rahul Kinra
Mr. Aditya Gupta
Mr. Aditya Ajay
Mr. Girdhar Gopal Khattar
Mr. Isnain Muzamil
for App. 1

Counsel on record for the Respondent(s) : Mr. Dhananjay Baijal
for Res. 1

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JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The present Appeal No. 213 of 2018 has been filed by Tata Power Delhi Distribution Limited ("Appellant") under Section 111 of the Electricity Act, 2003 challenging the Tariff Order dated 28.03.2018 passed by Delhi Electricity Regulatory Commission in Petition No.67 of 2017 ("impugned order") whereby the State Commission had trued up the Aggregate Revenue Requirement FY 2016-17 and approved Aggregate Revenue Requirement and Tariff for FY 2018-

19. Description of Parties

2. The Appellant, Tata Power Delhi Distribution Limited, is a joint venture between Tata Power Delhi Company Limited (TPCL) and Delhi Power Company Limited (DPCL) with 51% of shareholding and management control with TPCL and 49% of equity is held by DPC. The Appellant is a distribution licensee in terms of Delhi Electricity Reforms Act, 2000 and Section 14 of Electricity Act, 2003.

3. The Respondent No.1, i.e. Delhi Electricity Regulatory Commission (hereinafter referred to as "DERC/State Commission) is the State Regulatory Commission for Delhi, and exercise jurisdiction as per Section 82 of the Electricity Act 2003.

Factual matrix of the Case:

4. On 02.12.2011, the DERC under Section 62, 64 and 86 of the Act, notified DERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Judgement in Appeal Nos. 213 of 2018 Supply Tariff) Regulations, 2011 ("MYT Regulations, 2011") for determination of Aggregate Revenue Requirement for second control period i.e. FY 2012-13 to FY 14-15. Subsequently, on 31.01.2017, DERC notified the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 ("MYT Regulations, 2017") and by Regulation 139, of MYT Regulations, 2017, applicability of MYT Regulations, 2011 was extended for FY 2016-17.

5. On 31.08.2017, the DERC passed Tariff Order for True up of FY 2014-15, and FY 2015-16, ARR and Distribution Tariff (Wheeling & Retail Supply) for FY 2017-18 for the Appellant. On 04.12.2017, the Appellant filed Petition No. 67 of 2017, before the DERC for approval of "Annual Revenue Requirement (ARR) for the FY 2018-19, Revised ARR for FY 2017-18, True up for FY 2016-17.

6. On 28.03.2018, the DERC passed the Tariff Order in Petition No. 67 of 2017 for the Appellant and the other two Discoms in the NCT of Delhi i.e., BSES Rajdhani Power Limited ("BRPL") and BSES Yamuna Power Limited ("BYPL"), in which DERC trued up the Aggregate Revenue Requirement for FY 2016-17 and approved Aggregate Revenue Requirement and Tariff for FY 2018-19.

7. Aggrieved by the impugned order, the present Appeal was filed by the Appellant on 01.06.2018 in which following 26 issues were raised.

Sl. No.	Description
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Issue 1	Non-allowance of Financing Charges for FY 2016-17
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Issue 2. Non-Consideration of Carrying Cost as a Component of ARR for computing Working Capital Requirement for FY 2018-19 Judgement in Appeal Nos. 213 of 2018 Issue 3. Non-reversal of Efficiency Factor for FY 2015-16 towards O&M Expenses Issue 4. Wrongful computation of RoE/WACC for FY 2016-17 Issue 5. Erroneous consideration of an arbitrary figure of Rs. 264.66 crores as Base Year Employee Expenses Issue 6. Erroneous Consideration of 8% Inflation Factor instead of 8.04% Inflation for A&G Expenses Issue 7. Erroneous Consideration of 8% Inflation Factor instead of 8.04% Inflation Factor for Employee Expenses Issue 8. Non-Implementation of judgment of this Hon'ble Tribunal in Appeal No.171 of 2012 dated 10.02.2015 with respect to computation of 'K' factor Issue 9. Non-Consideration of impact of Increase in Rate of Service Tax for FY 2016-17 Issue 10. Disallowance of Expenditure incurred under the head of Corporate Social Responsibility for FY 2016-17 Issue 11. Own Consumption on Actual Basis Issue 12. Non-allowance of Financing Cost on Power Banking Issue 13. Erroneous adjustment of 8% Deficit Recovery Surcharge against Revenue Deficit/Gap For the Financial Year Issue 14. Disallowance of additional Unscheduled Interchange Charges for FY 2016-17 Issue 15. Merit Order Despatch Disallowance For FY 2013-14 Issue 16. Revision of AT&C Loss for FY 2016-17 based on pending proceedings Issue 17. Erroneous Direction to provide Funding for Liability of the Retired Employees/to be Retired FRSSR employees' responsibility of ETBF2002 in the ARR filing.

Issue 18. Non-Allowance of Expenses incurred towards Other Business Income Issue 19. Power Purchase Cost of Four Solar Own Generating Stations Issue 20. Non-allowance of Water Charges Judgement in Appeal Nos. 213 of 2018 Issue 21. Revision Of Distribution Loss Trajectory for FY 2017-18 to FY 2019-20 Issue 22. Non-Consideration of Impact on Account of Pay Parity for Non-

FRSSR Employees Issue 23. Error in Computation of Carrying Cost in ARR for FY 2018-19 Issue 24. Wrongful Computation of WACC for FY 2018-19 Issue 25. Disallowance of Rs. 1.56 Crores for FY 2016-17 On Account Of Merit Order Despatch Issue 26. Disallowance of Power Purchase Cost from Rithala Combined Cycle Power Plant During the pendency of present Appeal, judgements passed by this Tribunal in other Appeals had a bearing on the issues in the present Appeal and this Tribunal vide its order dated 11.03.2020, partly disposed of the appeal with regard to following issues.

A) Issue No 1, 9 and 16 are already covered in favour of Appellant in Judgement dated 30.09.2019 in Appeal No 246 of 2014.

B) Issue No 12, 13, and 14, are held against the Appellant in Appeal No 246 of 2014. Appellant has filed Civil Appeal and same is pending adjudication before Supreme Court.

C) Issue No 11 and 26: Appellant not pressing the issue.

8. On 20.11.2025, Appellant further submitted a note indicating the status of 26 issues raised in the Appeal, and classified them in Broad three categories:

Category A: Issue Nos 1, 2, 9,12, 13, 14, 15, 19, 25 are already covered by judicial precedents.

Judgement in Appeal Nos. 213 of 2018 Category B: 14 Issue No. 3, 4,5,6,7,8,10,11,16,17,21,22,23,26 are not being pressed by Appellant Category C: Balance Issue No 18, 20 and 24 requiring consideration.

Accordingly, this Tribunal, vide its order dated 20.01.2026, concluded that only three issues remained for consideration in the present Appeal, i.e., Issue Nos. 18, 20 and 24.

9. On 13.02.2026, during the course of proceedings in the appeal, Learned Counsel for the Appellant further submitted that since certain developments had taken place, the Appellant do not wish to press issue No. 24, as the same is included in Appeal No. 249 of 2021. Accordingly, this Tribunal vide its order dated 13.02.2026, directed that Issue No. 24 shall not be considered in the present Appeal and the same shall be considered in Appeal No. 249 of 2021. Therefore, in the present appeal only issue No 18 and Issue No 20 remained for consideration and adjudication.

ANALYSIS AND DELIBERATION

10. Heard learned counsels for the Appellant and learned counsel for the Respondents, perused the Impugned Order, written submissions filed by respective parties, and other documents on record with regard to balance two issues (Issue No 18 & Issue No 20), which are deliberated in following paragraphs.

ISSUE NO 18 : NON ALLOWANCE OF EXPENSES TOWARDS OTHER BUSINESS INCOME
Submissions urged on behalf of Appellant Judgement in Appeal Nos. 213 of 2018

11. It is submitted that the issue pertains to the wrongful disallowance of Rs. 17.43 Crore incurred by the Appellant on account of expenses towards Other Business on the ground that such expenses formed part of the Normative Operating and Maintenance expenses ("O&M expenses") allowed to the Appellant, on the basis of Auditor's report, which was not even furnished to the Appellant; such conduct is contrary to the settled principles of transparency mandated under Section 86(3) of the Electricity Act, 2003 and is also in the teeth of settled law that a quasi-judicial authority cannot pass an order on the basis of material not disclosed to the affected party, as held in "Kothari Filaments v. Commr. of Customs" (2009) 2 SCC 192 and "T. Takano v. SEBI, (2022) 8 SCC 162". Appellant placed reliance on this tribunal's judgements in Dodson- Lindblom Hydro Power Ltd. v. Maharashtra Electricity Regulatory Commission" 2009 SCC OnLine APTEL 134, and Polyplex Corporation Limited v. Uttarakhand Electricity Regulatory Commission" 2011 SCC OnLine APTEL 15 to contend that impugned findings of the DERC are liable to be set aside in light of the settled

position of law as laid down in these judgements

12. It is further submitted that in terms of the "MYT Regulations 2011", O&M expenses allowed in the Aggregate Revenue Requirement ("ARR") are strictly in relation to the distribution business and it does not include any additional expenditure incurred for generating Other Business income. In the Impugned Order, DERC has erroneously treated expenses relating to other business as part of the O&M expenses of the distribution business, which is contrary to Section 51 of the Electricity Act read with the DERC (Treatment of Income from Other Business of Transmission and Distribution Licensee) Regulations, 2005 ("Other Business Regulations").

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13. Appellant further submits that Rs 1.09 Crore, allowed as nominal Other Business expenses within the Normative O&M expenses of the Appellant, has been duly reduced from the total direct expenses. It is also contended that the Other Business is carried out by the Appellant in addition to wheeling and retail supply, in terms of Section 51 of the Electricity Act read with the DERC (Treatment of Income from Other Business of Transmission and Distribution Licensee) Regulations, 2005 ("Other Business Regulations"). The Communication dated 25.05.2007, expressly provides that the costs incurred towards other business is to be allowed separately to the Appellant. Further DERC, vide notification dated 28.11.2005, inter alia, provided under Regulation 5(5) that, as a general principle, the licensee shall retain 20% of the revenues arising from Other Business and pass on the remaining 80% to the regulated business, subject to liberty to seek modification of the sharing formula with due approval of the Commission. In view thereof, it is evident that both the income from Other Business and the expenses incurred to earn such income do not form part of the O&M expenses of the distribution business, and only the net earnings from Other Business are required to be considered for the purpose of ARR. The impugned finding of DERC in disallowing such expenses is erroneous and has the effect of disincentivising the Appellant from undertaking Other Business activities aimed at maximising revenue and passing on the resultant benefits to consumers in the ratio specified by DERC.

Submissions urged on behalf of the State Commission

14. State Commission in the Impugned Order has disallowed exclusion of Rs 17.43 Crore from direct expenses for the Other Business thus crediting higher net other-business income to the ARR, is correct in law and on facts. While Other Business income is to be computed on a net basis, such "netting off" is Judgement in Appeal Nos. 213 of 2018 permissible only in respect of expenses that are properly and incrementally attributable to earning such income and are not already recovered from consumers under the regulated distribution business. Expenditure already compensated through normative O&M, cannot be deducted again as a "direct expense" from Other Business income, as the same would amount to impermissible double recovery and defeat the consumer-benefit objective of the sharing mechanism. State Commission, appointed a C&AG-empaneled auditor to verify TPDDL's books and accounts for FY 2016-17, who, upon examining audited financial statements and supporting vouchers, excluded Rs17.43 Crore from the claimed direct expenses on the ground that the same formed part of normative O&M expenses

already allowed to TPDDL; the said verification was accepted by the State Commission.

15. Without prejudice to the fact that the Appellant, in its grounds of appeal, has not raised any averment regarding to the failure of natural justice or non-provision of the said report, and strictly under specific instructions, it is submitted that the report of the auditor on the regulatory audit of the DISCOM is an internal document of the Commission, used solely for the purpose of enabling it to comply with its obligations under the Electricity Act, 2003, the National Electricity Plan, the National Tariff Policy, the Delhi Electricity Reforms Act, 2000, and other relevant statutory provisions, and is not intended to be used by any other person or for any other purpose; further, the said Audit Report is utilized by the Commission for examination and verification of the data and information contained in the tariff petition of the petitioner for the purpose of deciding the issues involved in tariff determination, though the consideration and decision of such issues are ultimately based on the Respondent Commission's own Judgement in Appeal Nos. 213 of 2018 judgment and prudence, having regard to the applicable tariff regulations, statutory provisions, and the facts of the case.

CONSIDERATION AND OUR VIEWS

16. From the submissions made by State Commission, there seems to be no dispute with regard to considering only net income from the Other Business after accounting for the direct expenses made for the Other Business. The main dispute is with regard to the disallowance of an amount Rs 17.43 Crore from direct Other Business expenses, which has resulted in higher net income from other Business to be deducted from the ARR. The State Commission has justified the said exclusion of Rs 17.43 crore on the basis of auditor's finding which claimed that such direct expenses are already recovered as Normative O&M charges. The State Commission has further submitted that since such an exercise formed part of the prudence check and Audit Report is an internal document of the Commission, consequently not shared with the Appellant, and its purpose was to verify the details submitted by Appellant as part of its Tariff petition.

17. It is beyond cavil that the statutory scheme obligates the State Commission to undertake the truing-up exercise on the basis of actual and duly audited data, and to subject such data to a prudence check. The truing-up exercise is not a mere arithmetical reconciliation, but a substantive regulatory function designed to ensure that the tariff ultimately reflects only those costs which are legitimate, reasonable, and efficiently incurred. The expression "prudence," as rightly emphasized by the Commission, connotes the exercise of skill, foresight, and sound judgment in the management of affairs. A prudence check, therefore, entails a scrutiny by the Commission to satisfy itself that the licensee has acted Judgement in Appeal Nos. 213 of 2018 with due diligence, efficiency, and responsibility in the utilization of resources, and that the expenditure claimed is neither wasteful, avoidable, nor duplicate claims can be allowed.

18. In the present case, the Appellant has claimed total direct Other Business expenses as Rs 39.29 Crore, to be deducted from total income derived from other Business. The disallowance of Rs 17.43 Crore from such expenses has been dealt in Para 3.153 of the Impugned Order, which is reproduced hereunder:

"3.153. The Auditor has analysed the audited financial statement and vouches of expenditure incurred by the Petitioner towards their claim on account direct expenses for other business. The Auditor has excluded Rs.17.43 Crore from direct expenses on account of other business as it was part of normative O&M expenses allowed to the Petitioner. Accordingly, the Auditor has computed the net income from other business to be allowed to the Petitioner as follows: -

Table 50: Income from other business Particulars Petitioner Trued Up Submission
Income from other 52.58 52.58 business Less: Direct 39.29 21.86 Expenses Net
Income 13.29 30.72 80% to be allowed 7.02 24.58 in ARR Reduction on 45.56 28.00
account of NTI

19. From the above, it emerges that the auditors, upon their analysis, treated an amount of Rs17.43 Crore as forming part of normative Operation & Judgement in Appeal Nos. 213 of 2018 Maintenance (O&M) charges and consequently based on such observation, the State Commission disallowed the same. Impugned Order, however, fails to disclose the precise basis on which the State Commission reached at the conclusion that the disallowed direct expenses were already accounted for under Normative O&M charges. It seems that the State Commission has gone ahead with the observation made by the auditor without undertaking any individual analysis or prudence check. It is also evident that no opportunity was afforded to the Appellant to furnish further particulars or explanations with regard to such disallowed sum of Rs 17.43 Crore. The absence of such an opportunity deprived the Appellant of the chance to clarify whether these expenses were indeed distinct in nature and not subsumed within normative O&M charges.

20. Therefore, the reasoning advanced by State Commission that permitting such expenses would result in double counting, once under normative O&M charges and again under direct expenses of Other Business, remains unsubstantiated. No analytical framework or evidentiary material has been cited to demonstrate such overlap. In the absence of clear findings in this regard, the conclusion arrived at is unsupported by cogent reasoning.

21. In this context, it is profitable to refer to Judgements of the Hon'ble Supreme Court in "Kothari Filaments v. Commr. of Customs" (2009) 2 SCC 192 and "T. Takano v. SEBI, (2022) 8 SCC 162", wherein it has been held quasi-judicial authority cannot pass an order on the basis of material not disclosed to the affected party. Relevant Paragraph of the judgment in Kothari Filaments (Supra) is extracted below :

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14. The statutory authorities under the Act exercise quasi-judicial function.

By reason of the impugned order, the properties could be confiscated, redemption fine and personal fine could be imposed in the event an importer was found guilty of violation of the provisions of the Act. In the event a finding as regards violation of the provisions of the Act is arrived at, several steps resulting in civil or evil consequences may be taken. The principles of natural justice, therefore, were

required to be complied with.

15. The Act does not prohibit application of the principles of natural justice. The Commissioner of Customs either could not have passed the order on the basis of the materials which were known only to them, copies whereof were not supplied or inspection thereto had not been given. He, thus, could not have adverted to the report of the overseas enquiries. A person charged with misdeclaration is entitled to know the ground on the basis whereof he would be penalised. He may have an answer to the charges or may not have. But there cannot be any doubt whatsoever that in law he is entitled to a proper hearing which would include supply of the documents. Only on knowing the contents of the documents, he could furnish an effective reply. This aspect of the matter has been considered in *Rajesh Kumar v. CIT* [(2007) 2 SCC 181] wherein this Court held: (SCC p. 199, paras 48-49)"

22. Supreme court in *T. Takano vs. SEBI* (supra) has referred to above paragraphs of *Kothari Filament* (supra) judgement and has reiterated the principle that an aggrieved party possesses a right to disclosure of material relevant to the proceedings initiated against it. In the present case, though the Auditor's report/observation appears to be based on the financial statements and other details provided by the Appellant, however the basis/ details for arriving at the conclusion that disallowed amount of Rs 17.43 Crore is covered in the Normative O&M charges is not disclosed to the Appellant and accordingly we are of the considered view that ratio laid down in the aforesaid judgments squarely applies to the facts of the present case insofar as the requirement of disclosure of relevant material to the affected party is concerned. The failure to disclose the relevant material forming the basis of the disallowance has resulted in denial of an Judgement in Appeal Nos. 213 of 2018 effective opportunity to the Appellant to rebut, explain, or controvert the findings recorded by the Auditor.

23. We have gone through the Judgements of this Tribunal in "*Dodson- Lindblom Hydro Power Ltd. v. Maharashtra Electricity Regulatory Commission*" 2009 SCC OnLine APTEL 134, which dealt with the similar case involving disallowance of some claim by State Commission based on the report of an expert, without disclosing the report to the aggrieved party, in which this Tribunal had remanded the matter to State Commission for fresh consideration after allowing an opportunity to the aggrieved party. Relevant paragraph of the judgment are extracted below:

"11. It is clear from the portion of the impugned order extracted above that the Commission has based its decision entirely on the report of Mr. V.V.R.K. Rao. The Commission has not considered what part of the claim towards R&M expenditure should be allowed as pass through on any individual analysis of its own. It has entirely gone by the report of Mr. V.V.R.K. Rao

15. We thus find that in respect of the R&M expenditures to be allowed to be pass through in tariff, the Commission needs to re visit its decision after allowing the appellant an opportunity to explain its case vis-à-vis the report of Mr. V.V.R.K. Rao."

24. Further, this Tribunal in its judgement in "Polyplex Corporation Limited v. Uttarakhand Electricity Regulatory Commission" 2011 SCC OnLine APTEL 15 has set aside the order of the State Commission which was based on external opinion without any independent consideration at their end as well as no opportunity was provided to the parties to make submissions.

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25. The State Commission, placing reliance on "Kerala State Electricity Board & Anr. v. Principal Sir Syed Institute for Technical Studies & Ors." (2021) 14 SCC 118 submitted that it is not strictly required to furnish detailed reasons in support of its determinations and it is only at the appellate stage that the Respondent Commission may be called upon to provide further justification or explanation for its decisions. We do not find merit in these submissions; the Supreme Court in the referred judgement was dealing with the fixation of higher tariff for a particular category of consumers; it was in that context it was held that tariff determination is a quasi-legislative exercise, and therefore, the issuance of a tariff notification unaccompanied by reasons cannot be faulted as violative of principles of natural justice. The Supreme Court further observed that if an appeal is preferred in relation to a specific tariff determination, the Commission would then be required to justify the fixation of tariff in that case. However, the facts of the present matter, stands on a different footing. In this case, the dispute pertains to the disallowance of costs claimed by the Appellant in the course of the truing-up exercise. In such a situation, it is incumbent upon the State Commission to disclose the basis of such disallowances in the Impugned Order, or at the very least, to afford the Appellant an opportunity to contest the proposed disallowance. The principles of transparency and natural justice require that a regulated entity be made aware of the grounds on which its claims are proposed to be rejected, so that it may effectively respond and place its case before the adjudicating authority.

26. We are of the considered view that the Impugned Order does not disclose the rationale, methodology, or underlying data forming the basis of disallowance, nor does it record any opportunity having been given to the Appellant to contest the same. Moreover, even in the proceedings before this Tribunal, the State Judgement in Appeal Nos. 213 of 2018 Commission has not substantiated its assertion that the disallowed amount is already subsumed within the normative O&M charges. A mere assertion, bereft of supporting analysis or demonstration, cannot suffice to justify disallowance of costs otherwise claimed by the Appellant.

27. Disallowance of costs without disclosure of basis thereof and without affording an opportunity of hearing strikes at the root of procedural fairness and undermines the transparency and credibility of the regulatory process. Such an approach is inconsistent with the settled principles governing quasi-judicial determinations.

28. In view of the foregoing deliberations and judicial pronouncements referred above, we hold that the impugned disallowance cannot be sustained in law and accordingly Impugned Order is set aside on this issue and the matter remanded to the State Commission for fresh consideration. The Commission shall, while re-examining the issue, provide details of the auditor report/findings relating to the disallowance of Rs. 17.43 Crore claimed as direct expenses under "Other Business,"

being already covered as part of Normative O&M expenses and shall thereafter afford the Appellant a reasonable opportunity to explain its case vis- à-vis the said disallowance. A reasoned order shall thereafter be passed in accordance with law.

ISSUE NO. 20: NON-ALLOWANCE OF WATER CHARGES.

Submissions Urged on behalf of Appellant

29. It is submitted that present issue pertains to the wrongful disallowance of the water charges amounting to Rs. 1.60 Crore paid by the Appellant to the Delhi Jal Board ("DJB") in FY 2016-17, on the ground that the same forms part of the Judgement in Appeal Nos. 213 of 2018 Base Year Administrative and General Expenses. In FY 2016-17, the Appellant made a payment of Rs. 1.60 Crores to DJB towards water charges pertaining to connections pending settlement since the Delhi Vidyut Board ("DVB") period, arising due to billing irregularities on the part of DJB. It is submitted that despite repeated meetings and communications, including letter dated 30.06.2011, requesting DJB to issue correct water consumption bills to enable payment, irregularities in billing persisted; thereafter, DJB introduced a Scheme dated 05.09.2016 for waiver of 100% LPSC on accumulated arrears for commercial connections ("Amnesty Scheme"), pursuant to which the Appellant, in order to avoid accrual of LPSC and penal consequences arising from the pendency of disputes, paid the principal arrears amounting to Rs. 1.60 Crore. By availing the Amnesty Scheme, the Appellant effectively avoided substantial LPSC/interest liability which would otherwise have been payable and would have formed part of Base Year O&M Expenses for the subsequent control period.

30. It is further submitted that such expenditure did not form part of the Base Year expenses on the basis of which Administrative and General ("A&G") Expenses were determined by DERC in the Tariff Order dated 13.07.2012 ("2012 Tariff Order") for the second control period (FY 2012-13 to FY 2015-16). As such FY 2016-17 constituted an extended period for which no A&G Expenses were computed under the 2012 Tariff Order, and therefore neither the DERC nor the Appellant could have considered the said amount while determining A&G Expenses for the second control period; moreover, water charges payable to DJB are in the nature of statutory expenses levied under the Delhi Water Board Act, 1998, and thus constitute uncontrollable expenditure, as recognized by this Tribunal in "TPDDL v. DERC" 2015 SCC OnLine APTEL 170 , wherein statutory expenditures such as food allowance and children education allowance for FRSR Judgement in Appeal Nos. 213 of 2018 employees were allowed; furthermore, DERC itself, in its True-Up Order dated 31.07.2019, has allowed analogous claims such as property tax for the period from FY 2002-03 to FY 2017-18 to enable availing the benefit of the Amnesty Scheme dated 26.03.2018 issued by North DMC.

31. In response to this Tribunal query regarding the apportionment of charges/dues of DVB for the period prior to takeover, it is submitted that Rule 8(3) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 (as amended on 26.06.2002) ("Transfer Scheme") inter alia provides those liabilities arising from events prior to the date of transfer shall be borne by the concerned distribution company (such as the Appellant herein) subject to a cap of Rs. 1 Crore per annum, and any amount exceeding the said limit shall be to the account of the Holding Company, i.e., Delhi Power Company Limited, in the event the Commission (i.e., Ld. DERC) does not allow such amount

to be included in the ARR of the Discom; accordingly, since in FY 2016-17 the Appellant paid Rs. 1.60 Crore to DJB towards water charges pertaining to connections pending settlement from the DVB period, the said amount is liable to be allowed in terms of Rule 8(3) of the Transfer Scheme. The Appellant prays for setting aside the findings in the Impugned Order on the issue and remand the issue to State Commission for reconsideration of the additional expenses made by Appellant for FY 2016-17 along with carrying cost.

Submission urged on behalf of State Commission

32. Regarding Appellant's claim of Rs 1.6 Crore water charges as an additional O&M allowance on the ground that the payment arose under an "amnesty scheme" relating to older arrears, it is submitted that under the MYT Regulations Judgement in Appeal Nos. 213 of 2018 2011, O&M expenditure is expressly classified as a "controllable parameter," and O&M basket broadly include employee expenses, repairs and maintenance, administrative and general expenses, and other miscellaneous expenses. Further, as per Regulation 5.4, O&M expenses for the Base Year are to be approved by the Commission after prudence check taking into account audited accounts, past approved O&M, and other relevant inputs, and Regulation 5.5 thereafter determines the permissible O&M for each year of the control period through a formula based on an inflation index and an efficiency factor, thereby establishing a normative construct rather than one based on actual expenditure. Regulation 4.21(b)(i) categorically provides that any surplus or deficit on account of O&M shall be to the account of the distribution licensee and "shall not be trued up in ARR," a position which is further reinforced by the control period discipline whereby the Commission "shall normally not revisit the performance targets during the control period," such that once base-year O&M is approved and thereafter normatively escalated, the regulatory framework deliberately insulates ARR/tariffs from variations in actual O&M expenditure, and it is therefore not permissible to selectively reintroduce an actual-cost pass-through for any individual O&M sub-head; this settled position has also been recognized and upheld by the High Court of Delhi in "Tata Power Delhi Distribution Ltd. v. Delhi Electricity Regulatory Commission" 2016 SCC OnLine Del 4165 (232 DLT 692), wherein it was, noted that annual O&M fixed costs are increased using the prescribed inflation formula and that any surplus or deficit on account of O&M is to the account of the distribution licensee and is neither carried forward nor trued up.

33. It is further contended that if water charges did not form part of the approved Base Year O&M, their introduction at the true-up stage would necessarily alter Judgement in Appeal Nos. 213 of 2018 the base-year building block and thereby re-write the normative O&M computation for the control period, which is impermissible under the Regulations and the settled law governing the scope of true-up; Regulations do not envisage any mechanism for carving out a specific O&M component, such as water charges, and treating the same as a separate pass-through at the true-up stage; further, water charges admittedly fall within "other miscellaneous expenses"

and/or "statutory levies and taxes" forming part of O&M under Regulation 5.3, and therefore, even assuming arguendo that the liability is payable, it remains within the O&M basket which is normative and not subject to true-up;

34. It is submitted that the Supreme Court in "BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission" 2022 SCC OnLine SC 1450 has categorically held that a tariff order is quasi-judicial in nature and is final and binding unless amended or revoked in accordance with Section 64(6) or set aside in appropriate proceedings, and that at the stage of true-up, the Respondent Commission cannot alter the rules or methodology adopted in the initial tariff determination by changing the fundamental principles.

35. It is further contended that the normative O&M mechanism is structurally symmetrical, inasmuch as if the distribution licensee had contested the water charges and obtained a refund (with interest), the O&M framework would not permit the Respondent Commission to correspondingly reduce the ARR on that basis, since any surplus or deficit in O&M is to the account of the licensee and is not subject to true-up, and any contrary approach would result in a one-sided deviation from the normative framework by allowing pass-through only when it imposes a burden on consumers, while disallowing a downward adjustment when a benefit accrues; without prejudice to the foregoing, it is submitted that the water Judgement in Appeal Nos. 213 of 2018 charges sought to be included as O&M by the Appellant do not clearly establish the period to which the liability pertains, and in a normative regime, current consumers cannot be burdened with unspecified or potentially historical liabilities under the guise of "additional" O&M, particularly in view of the settled position of law laid down by the Hon'ble Supreme Court prohibiting retrospective amendment of tariff through the mechanism of true-up for a concluded period.

CONSIDERATION AND OUR VIEW

36. The issue under consideration pertains to Disallowance of Rs 1.6 Crore water charges paid by the Appellant during FY 2016-17 as one-time settlement under Amnesty Scheme of Delhi Jal board and claimed as additional O&M charges. The State Commission referring to the "MYT Regulation 2011" have emphasized that water charges forms part of the O&M charges and as per extant Regulations, O&M charges fall within the category of controllable parameters; the O&M charges under the applicable Regulations is a deliberate normative construct, wherein the base-year O&M is approved and thereafter escalated in accordance with a prescribed formula, with actual variations in O&M not being subject to true-up and any resultant surplus or deficit being to the account of the distribution licensee; and any under recovery or over recovery is on account of licensee and no additional charges can be accorded.

37. It is informed that the MYT Regulations, 2011, were applicable from 01.04.2012 and to cover control period from 01.04.2012 to 31.03.2015, subsequently, DERC extended the applicability of MYT Regulations, 2011 for FY 2016-17 as per Regulation 139 of MYT Regulations, 2017. Under the "MYT Regulations 2011", the Base year has been defined as the financial year Judgement in Appeal Nos. 213 of 2018 immediately preceding the first year of control period, i.e. FY 2011-12. There is no dispute that O&M charges has been classified as Controllable parameters under the said Regulations. As per Regulation 4.5, the State Commission to determine baseline values based on approved values for the past years, latest audited accounts, estimate of the actuals for the relevant year, prudence check and other relevant factors; and State Commission shall set targets for each year of the control period, i.e. the normative value. It is clear from the Regulations that the State

Commission shall normally not revisit the performance targets once determined. Thus, the baseline figures for O&M charges are derived from historical audited costs, cost approved in the past and other relevant data etc, whereas the normative values so arrived at are forward-looking benchmarks that incorporate efficiency factors to ensure cost discipline and predictability in tariff regulation. In essence, the baseline anchors tariffs in actual past expenditure, and the normative value projects a reasonable, efficient trajectory for future years.

38. The Appellant herein has claimed water charges of Rs 1.6 Crore, pending settlement since the Delhi Vidyut Board ("DVB") period (prior to 01.07.2002), arising due to billing irregularities from Delhi Jal Board (DJB). It is the case of the Appellant that, upon availing the Amnesty Scheme, introduced by the DJB, an amount of Rs. 1.6 Crore, representing only the principal amount, was paid as a one-time settlement in FY 2016-17. The only explanation/reasoning provided in the Impugned Order for disallowance of such charges is that water charges are already covered in A&G expenses and same are already allowed in ARR as Normative O&M. The Relevant paragraph from Impugned Order is extracted hereunder:

"3.124 The Commission is of the view that water charges are covered in A&G expenses, as such A&G expenses are already being allowed in ARR Judgement in Appeal Nos. 213 of 2018 as O&M expenses on normative basis. Therefore, the Commission is of the opinion that the same should not be considered in ARR."

39. From the extent Regulations, it is clear that base line value for O&M charges is to be determined based on latest audited accounts, actual approved charges etc., and commission to set targets for each year in the next control period and thus the calculation of base year charges has a direct bearing on the normative value so worked out for each year in the control period under consideration. Since the water charges in question had admittedly not been paid during the relevant period, they could not have been included in audited accounts as actual expenditure incurred, and accordingly not factored in while arriving at the Base Year values. At the same time, it cannot be entirely ruled out that the distribution licensee operating prior to the transfer scheme, by not discharging the statutory water charges owing to the subsisting billing dispute, may have incidentally derived the benefit of normative O&M charges. However, such consequence is inherent in the regulatory framework itself, wherein any under- recovery or over-recovery arising out of normative determination remains to the account of the distribution licensee. Be that as it may, the fact remains that the said unpaid charges were admittedly not taken into consideration while determining the normative O&M Charges for the subsequent Control Period. Further, there is force in the submissions of Appellant that by availing Amnesty Scheme for one time settlement of long pending dues, it avoided the burden of LPSC and thereby mitigated further financial implications which would otherwise have accrued.

40. We agree with the submissions of State Commission that it may not be appropriate to alter the normative values of O&M charges determined for FY 2016-17, however, we are of the view that it may also not be just and proper to Judgement in Appeal Nos. 213 of 2018 deny such charges altogether, when it pertains to period prior to their take over of the functions of distribution licensee and Appellant has made such payment. In our view, the present issue does not involve change in the

methodology at the True up stage, but involves the issue of one time pass through of water charges at the True Up stage for the prior period though paid in the year under consideration and therefore the ratio laid down by the supreme court in "BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission" 2022 SCC OnLine SC 1450 dealing with alteration of tariff methodology at the truing-up stage, would not be applicable to the facts of present case.

41. It is important to take note of the Rule 8(3) of Electricity Reform (Transfer Scheme) Rules, 2001 (as amended on 26.06.2002) with regard to liabilities for claims pending on the date of transfer, the relevant para is extracted below:

"2. Amendment to Rule 8 In the Transfer Scheme Rules the following shall stand inserted as sub rule (3) of Rule 8. "(3) Notwithstanding anything contained in these rules including the schedules, the liabilities arising out of the litigation, suits, claims, etc pending on the date of the transfer and/or arising due to events prior to the date of the transfer shall be borne by the relevant distribution company viz DISCOM 1, DISCOM 2 and DISCOM 3 respectively, subject to a maximum of Rs.1 crore per annum. Any amount above this shall be to the account of the Holding. Company in the event for any reason the commission does not allow the amount to be included in the Revenue Requirement of the DISCOM"

Thus, the liability in respect of claims pertaining to the past period, to the extent of Rs. one Crore per annum, stands affixed on the Current Discom i.e the Appellant herein, if not allowed by the State Commission, and therefore does not seem to be any bar in allowing the same in the Revenue Requirement of the Discom.

Judgement in Appeal Nos. 213 of 2018

42. In view of above deliberations, the disallowance of Water Charges of Rs 1.6 Crore, as observed in Impugned Order is hereby set aside and the issue is remanded to the State Commission, to undertake the prudence check of water charges so paid by the Appellant under Amnesty scheme and in consideration of the Rule 8(3) of Electricity Reform (Transfer Scheme) Rules, 2001 (as amended on 26.06.2002); the Appellant shall provide further details as required by the State Commission within such time as may be stipulated by the Commission.

CONCLUSION In view of above deliberations, the Impugned Order is set aside with regard to the Issue No. 18 and Issue No. 20 and remanded to State Commission for fresh consideration, in following terms:

Issue No. 18: The Commission shall, while re-examining the issue, provide details of the audit report/auditor's finding relating to the disallowance of Rs. 17.43 Crore as direct expenses under "Other Business and how the same is part of normative O&M Expenses," and shall afford the Appellant a reasonable opportunity to explain its case vis-à-vis the said disallowance.

Issue No. 20: The State Commission, to undertake the prudence check of water charges of so paid by the Appellant under Amnesty scheme and in consideration of the Rule 8(3) of Electricity Reform (Transfer Scheme) Rules, 2001 (as amended on 26.06.2002). The Appellant shall provide details as required by the State Commission within the time as required.

The State Commission is also directed to examine the Appellant's claim for carrying cost on the amount so worked out by State Commission, while deciding Judgement in Appeal Nos. 213 of 2018 the claims under the issues remanded for reconsideration, in accordance with the extant Regulations. State Commission to expeditiously pass appropriate orders preferably within a period of three months from the date of receipt of this Order. The subject appeal and associated IAs, if any, are hereby disposed of in the above-mentioned terms.

PRONOUNCED IN THE OPEN COURT ON THIS 18th DAY OF MAY, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

pr/tpd/dk/ag/ak