

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

APPEAL NO. 24 OF 2018

Dated: 26th February, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Haryana Power Purchase Centre ...Appellant(s)
Shakti Bhawan, Sector – 6
Panchkula, Haryana

Vs.

Haryana Electricity Regulatory Commission ... Respondent(s)
Bays No. 33-36, Sector -4
Panchkula, Haryana – 134 112

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan
Ms. Neha Garg

Counsel for the Respondent(s) : Mr. Sakesh Kumar
Ms. Gitanjali N. Sharma for R-1

ORDER

The Appellant has presented the instant Appeal seeking the following reliefs:

- (a) Allow the appeal and set aside the order dated 18/10/2017 passed by the State Commission to the extent challenged in the present appeal.

- (b) Hold and declare that the Appellant is entitled to the full cost of power purchase of Rs. 749.12 Crores for the purchase of renewable non-solar energy from HPSEB through the trader for the year 2016-17 with carrying cost; and
- (c) Pass such other Order(s) and this Tribunal may deem just and proper.

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Haryana Power Purchase Centre, Panchkula (in short, the "Appellant") is questioning the legality and validity of the Impugned Order dated 18.10.2017 passed in case no. HERC/PRO-37 of 2016 on the file of the Haryana Electricity Regulatory Commission, Panchkula, the Respondent herein, has filed the instant appeal, being No. 24 of 2018, under Section 111 of the Electricity Act, 2003 for considering the following questions of law:
 - A. Whether the State Commission is justified in disallowing the purchase of renewable non-solar power while the same was being procured to meet the RPO target for FY 2016-17.
 - B. Whether the State Commission erred in directing the Appellant to buy RECs instead of physical power even though the State of Haryana is in deficit of power in peak times?

- C. Whether the State Commission is justified in ignoring the actual power purchases for the year 2016-17 and the variable cost of purchase while disallowing the purchase from renewable sources?
- D. Whether the State Commission is justified in holding that renewable power is not required as the State is surplus is power
2. We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the State Commission.
 3. The learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant during the course of his submissions has filed a memo dated 26.2.2019 on behalf of the Appellant for disposal of the instant Appeal. The same is taken on record.
 4. The learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant at the outset submitted that in the light of the statement made in the memo dated 26.2.2019 in paragraph 1 to 4 may be taken on record and the instant appeal filed by the Appellant may be disposed of with the direction to the Respondent State Commission to consider the matter afresh and pass the appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant without being influenced with the observations made in the Impugned Order and dispose of the matter expeditiously in the interest of justice and equity.

5. **Per contra**, the learned counsel, Mr. Sakesh Kumar, appearing for the Respondent State Commission *inter alia* contended that the State Commission may be directed to consider the matter afresh in accordance with law without being influenced with the observations made in the Impugned Order and without taking into consideration the statement made in the memo and accordingly the appropriate order may be passed to meet the ends of justice.
6. Submissions of the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the State Commission, as stated supra, are placed on record.
7. The statement made in the memo dated 26.2.2019 reads as follows:-
 - “1. *The present appeal is against the Order dated 18/10/2017 Passed by the Haryana Electricity Regulatory Commission (hereinafter called the State Commission) wherein the State Commission disallowed the cost of procurement of short-term Non-solar Renewable Energy under Renewable Purchase Obligation (RPO) for FY 2016-17 from the Himachal Pradesh State Electricity Board (HPSEB) through a trader.*
 2. *The State Commission has arrived at the above decision on the basis that the Appellant was imprudent in purchase of such*

Renewable power at a higher cost rather than purchase of Renewable Energy Certificates (RECs), particularly when the state has surplus power.

3. *The Appellant submits that there are errors in the impugned order, including the following:*
 - a) *The impugned order holding that RECs should be procured instead of renewable energy is contrary to the order dated 20.11.2013 of the State Commission itself which held that renewable power should be procured rather than RECs. The Appellant has procured renewable power in preference to RECs in compliance with the above order.*
 - b) *The State Commission had in the order dated 18.06.2015 held that hydro power from Himachal Pradesh should be procured, which has been procured in the present case.*
 - c) *The State Commission had held in the order dated 18.06.2015 and 01.08.2016 that the Appellant ought to procure renewable energy and merely because the non-availability of renewable energy at lower prices under a bidding process would not be an excuse for non-procurement of renewable energy.*

- d) *The impugned order holding that the State of Haryana was in surplus of power is factually incorrect. There has been substantial deficit of power, particularly for the period from June to October, 2016 when more than 70% of the power was scheduled and procured by the Appellant from Himachal Pradesh.*
- e) *The figure of Rs. 2.40/- per unit as variable cost from the thermal sources considered by the State Commission is factually incorrect and is only an estimate and the beginning of the year. The Appellant has in fact procured electricity at variable cost ranging from Rs. 3.124 per unit to Rs. 3.80/- per unit during the year 2016-17, from sources through PPAs.*
4. *Considering the above errors in terms of the submissions of the Appellant, the appeal may be disposed of by the Tribunal without expressing any opinion on the merits of the claim of the Appellant, by remanding the matter to the State Commission for fresh decision on the petition of the Appellant. The State Commission shall pass a fresh order in accordance with law after considering all the submissions of the Appellant and other stake-holders.”*

8. In the light of the statement made in the memo dated 26.2.2019 and submissions made by the learned counsel appearing for the Appellant and the Respondent State Commission, as stated supra, the instant appeal filed by the Appellant stands disposed of with the direction to the State Commission to reconsider the matter afresh and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the interested party without being influenced by any observations made in the Impugned Order dated 18.10.2017 passed in Case no. HERC/PRO-37 of 2016 on the file of the Haryana Electricity Regulatory Commission, Panchkula in accordance with law and dispose of the matter as expeditiously as possible at any rate within a period of six months from the date of receipt of copy of this order. All the contentions of the parties are left open.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member
mk/bn

(Justice N. K. Patil)
Judicial Member