

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,
AT NEW DELHI
(APPELLATE JURISDICTION)**

**REVIEW PETITION NO. 2 OF 2016 IN
APPEAL NO. 202 OF 2014**

Dated: 22nd January, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of

**Chhattisgarh State Power Distribution Co. Ltd.
Vidyut Seva Bhavan, Danganiya
Raipur – 492 013.**

**... Appellant/
Review Petitioner**

Versus

**1. Chhattisgarh State Electricity Regulatory
Commission
Irrigation Colony, Shanti Nagar
Raipur – 492 001, Chhattisgarh**

...Respondent No. 1

**2. M/s. Vandana Vidhyut Limited
Vandana Bhawan, 1st Floor
M.H. Road
Raipur – 492 001**

...Respondent No. 2

**Counsel for the Appellant/
Review Petitioner : Ms. Suparna Srivastava**

ORDER

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

The Chhattisgarh State Power Distribution Co. Ltd (hereinafter referred to as “**Appellant**”) has filed Review Petition No. 2 of 2016 in Appeal No. 202 of 2014.

2. M/s. Vandana Vidyut Limited (hereinafter referred to as “**Respondent No. 2**”) has entered into a Power Purchase Agreement (PPA) dated 18.01.2013 which was effective from 03.01.2013. Appeal No. 202 of 2014 was filed by the Appellant in this Tribunal against the Impugned Order dated 04.03.2014 passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”)
3. This Tribunal had dismissed the appeal filed by the Petitioner against the Impugned Order dated 04.03.2014 passed by the Respondent No.1-State Commission allowing additional capitalization of Rs.8.64 crores for the financial year 2010-11 for conversion of the connectivity of Respondent No.2 from 33 KV to 132 KV.
4. Aggrieved by the above judgment dated 17.11.2015 of this Tribunal in earlier Appeal No. 202 of 2014, the Appellant has now filed Review Petition No.2 of 2016 seeking review of the judgment dated 17.11.2015 of this Tribunal for rectification of the following alleged errors which in opinion of the Appellant are apparent on the face of the record:
 - (i) Omission to consider the provisions of the Chhattisgarh State Electricity Grid Code, 2011 which prescribes connectivity conditions and criteria for generators and that specifies that any redundancy in the dedicated transmission line is the responsibility of the generator concerned;

- (ii) omission to consider the documents placed on record and pleadings made to demonstrate that the conversion of connectivity by Respondent No.2 from 33KV to 132KV had been for its own commercial benefits and had no nexus with the power purchase by the Petitioner as a distribution licensee;
 - (iii) omission to consider the provisions of the Power Purchase Agreement dated 18.01.2013 and the pleadings made on record as regards knowledge of the Petitioner of the 132KV connectivity of Respondent No.2 at the time of entering into the said Power Purchase Agreement which clearly showed that the Petitioner had never agreed to bear the cost of conversion of connectivity from 33KV to 132KV.
5. To ascertain whether this Review Petition of the Appellant is admissible for rectification of the errors that are apparent on the face of record as alleged by the Appellant, let us refer to the operating part of the judgment of this Tribunal for which the review has now been sought by the Appellant. The relevant portion commencing from page 17 onwards of the said judgment of this Tribunal is reproduced as follows:-
- “xvi) It is a clear observation that the Appellant was well aware of the connectivity of the power plant of the Respondent no.2 through the 132 KV line connecting the EHV sub station of CSPTCL and the same would be used for evacuation of power from the generating station.**
 - xvii) The Appellant was also aware of the fact that Respondent no.2’s power plant consisted of 8 MW biomass plant only at the**

time of signing the PPA. Further we have also noticed that though the Respondent no.2 had earlier considered the expansion of the power project, the same had not been materialised. At the time of signing of PPA, the 132 KV Dedicated Transmission Line connecting to the sub station as at Silpahari was available and was to be used only for the contracted capacity of 7.2 MW (8 MW less 10% auxiliary power consumption).

- xviii) We have also observed that the Appellant had granted permission to the Respondent no.2 for synchronization and running of the 8 MW biomass based power plant in parallel with the grid of 132 KV line vide their letter dated 18.05.2010 which was much before the execution of the PPA on 18.01.2013.
- xix) The fact that such line was the evacuation line for 8 MW power plant and also that there was no other use of the said line as on the date of execution of PPA and it was fully known to the Appellant when it signed the PPA.
- xx) In our opinion it is now not open to the Appellant to raise issues on consideration of the additional capital cost on account of conversion from 33 KV Dedicated Transmission Line to 132 KV Dedicated Transmission Line at the stage of determination of the tariff. This being a very small power plant and has been set up to promote renewable energy and would not be able to sustain after such an additional cost for conversion is not allowed. We have also noticed if a cost on Dedicated Transmission Line is not fully serviced through the tariff there will be significant drop in the Return on Equity allowed in the tariff of the Respondent no.2 and the project of the Respondent no.2 will not be commercially viable.
- xxi) The PPA was signed between the parties on 18.01.2013 when the evacuation of power from the generating stations of the Respondent no.2 was possible only through 132 KV Dedicated Transmission Line connecting to the Silpahari sub station of CSPTCL, the Transmission Company. The Appellant was aware of the said position as Appellant has approved such connection 3 years prior to the signing of the PPA.
- xxii) In our opinion, the Appellant cannot also deny the knowledge of only 8 MW biomass power plant is available for evacuation and

there is no other generation and no other generating plant in the vicinity as the time of signing the PPA.

- xxiii) The Appellant itself did not raise anything about the extent to which the cost of dedicated transmission capacity should be considered at the time of signing of the PPA, otherwise it was quite open to the Appellant to have objected to the entire cost of the Dedicated Transmission Line being considered while determining the tariff.
- xxiv) Very rightly observed by the State Commission in the Impugned Order dated 04.03.2014, the Appellant ought to have raised the same before signing the PPA and should have specially included the stipulation of not loading the entire cost on account of upgradation of Dedicated Transmission Line at the relevant time.
- xxv) We must also take into account that the generation cost of the Respondent no.2 is also a non-conventional project which requires support and permission as provided in Section 86(1)(e) and Section 61(h) of the Electricity Act, 2003 and also as per the declared policies of the Government. The State Commission has considered the entire capitalization on account of this upgraded Dedicated Transmission Line which in our opinion is a very reasonable view.
- xxvi) There is no doubt in our mind on the issues raised by the Appellant to the extent that if only 7.2 MW of electricity is to be transmitted, it could have been done from the earlier existing system of 33 KV and there was no necessity of this 132 KV Dedicated Transmission Line but at the same time, at the time of the signing of the PPA this 132 KV was existing and this was the only mode for conveying the electricity from this biomass station to the sub station of CSPTCL and there is no other mode of transporting this electricity other than the Dedicated transmission corridor of the Respondent no.2 available.
- xxvii) At a later date if there is an expansion in the existing power plant or some other generator puts up a power plant in the vicinity and transports power through this Dedicated Transmission Line of the Respondent no.2, the State Commission would be open to make prorata adjustment while servicing capital cost on this account since the dedicated line

is of 132 KV which can transmit much larger quantum of power than what is existing at this time.”

6. In view of the various observations as enumerated above in our judgment dated 17.11.2015, their Appeal No. 202 of 2014 was dismissed and the Impugned Order of the State Commission dated 04.03.2014 was upheld.
7. In our opinion, therefore, there are no errors apparent on the face of the record as alleged in the Review Petition. This is more so in light of the fact that their earlier appeal has been dismissed after considering the relevant Regulations in force and supporting documents/evidences.
8. In view of the above, the Review Petition No.2 of 2016 of the Appellant is hereby dismissed.

Pronounced in the open court on this **22nd day of January, 2016.**

(I.J. Kapoor)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Ranjana P. Desai)
Chairperson