

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

Appeal no. 202 of 2014

Dated: 17th November, 2015

**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. ... Appellant (s)
Vidyut Seva Bhavan, Danganiya
Raipur – 492 013**

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(s): Ms. Suparna Srivastava
Mr. Nishtha Sikroria
Ms. Anushka Arora
Mr. A. Bhatnagar and
Mr. Arvind Banerjee (Rep.)**

**Counsel for the Respondent(s): Mr. C.K. Rai
Mr. Paramhans for R-1

Mr. M.G. Ramachandran and
Mr. Raunak Jain for R-2**

JUDGMENT

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

The present Appeal is filed by Ms. Chhattisgarh State Power Distribution Co. Ltd. under section 111 of the Electricity Act, 2003 against the Impugned Order dated 04.03.2014 passed by the Chhattisgarh State Electricity Regulatory Commission – Respondent no.1 (**“State Commission”**) in Petition no. 10 of 2013 (T) whereby, the State Commission has allowed additional capitalization of Rs. 8.64 crores for the FY 2010-11 for conversion of the connectivity of M/s. Vandana Vidhyut Ltd. – Respondent no.2 from 32 KV to 132 KV.

2. (a) The factual aspects of the present Appeal no. 202 of 2014 are as follows:-

- i) The Respondent no.2, Vandana Vidhyut Ltd and the Appellant Chhattisgarh State Power Distribution Co. Ltd. (**“CSPDCL”**) entered into a Power Purchase Agreement (**“PPA”**) dated 18.01.2013. (effective from 03.01.2013).

- ii) As per the PPA the Respondent no.2 is obligated to generate and sell power from its 8 MW biomass fuel based power plant in District Bilaspur, Chhattisgarh to the Appellant and the quantum of power supply agreed to was 7.2 MW (installed capacity of 8 MW - 10% auxiliary consumption) as mentioned in the clause 2 of the PPA.
- iii) The tariff agreed to be paid by the Appellant to the Respondent no.2 was two part tariff. One part Variable charges at the prevailing rate approved by the State Commission and amended from time to time and second part Fixed charges as approved by the State Commission for the power plant as indicated in clause 4(a) of the PPA.
- iv) The delivery point/point of injection of the power was to be at the nearest EHV/HV sub station of the Appellant/Transmission Company as indicated in the clause 5 of the PPA.
- v) In terms of the above provisions of the PPA, the State Commission was to determine the Projects Specific Tariff (**“PST”**) for 8 MW power plant of the Respondent no.2. The point of injection/delivery point is being the sub station of CSPDCL/CSPTCL. The Project Specific Generation tariff

included the servicing of the Dedicated Transmission Line up to the point of injection/delivery point. Vide Impugned Order dated 04.03.2014, the State Commission determined the Project Specific Tariff and decided on the two part tariff including the servicing of capital cost of the Dedicated Transmission Line under Fixed charges/Fuel Cost.

- vi) The effective date of order as indicated in the Impugned Order is April 01, 2013.
- vii) As per para 15.4 of the Impugned Order, the Energy charges for the FY 2012-13 shall be Rs. 3.33/KWh effective from the date of power supply as per agreement and for the FY 2013-14 it shall be Rs. 3.57/KWh which would take effect from 1st April, 2013 and the Fixed cost for the FY 2012-13 shall be Rs. 1.49/KWh effective from the date of power supply as per the agreement and for the FY 2013-14, it shall be Rs. 1.52/KWh effective from April 01, 2013.
- viii) The Fixed charges determined by the State Commission in the Impugned Order are for the FYs 2012-13 to FY 2016-17 as indicated in para 13 of the Impugned Order detailing the tariff elements of Depreciation, Interest on Loan, Return on

Equity, Interest on Working Capital, Operation and Maintenance expenses and the Aggregate Revenue Requirement of the Respondent no.2. These tariff charges include servicing of the capital cost of the power plant and the Dedicated Transmission Line up to the injection point of EHV sub station of CSTPCL (Transmission Company) at Silpahari sub station.

3. The Appellant is the successor of the erstwhile Chhattisgarh State Electricity Board which have been constituted under section 5 of the Electricity (Supply) Act, 1948 read with Section 58 of the Madhya Pradesh Recognition Act, 2000 ("MPRA") to act as the Electricity Board for the State of Chhattisgarh. By virtue of the Chhattisgarh State Electricity Board Transfer Scheme Rules, 2008 and 2010 notified by the State Government under Section 131 of the Electricity Act, 2003 which has unbundled the Electricity Board for the different companies with effect from 01.01.2009 and as such the Appellant is functioning as the Distribution Licensee in the State of Chhattisgarh performing of functions and duties pertaining to distribution of electricity in the State.

4. The matter in issue relates to the tariff determined by the State Commission in the Impugned Order for generation and sale of electricity by the Respondent no.2 to the Appellant and the quantum of power supply agreed to was 7.2 MW.
 - i) The tariff agreed to be paid by the Appellant to the Respondent no.2 was agreed to in the PPA as two part tariff, one part variable charges at the prevailing rate approved by the State Commission and amended from time to time and the second part Fixed charges as approved by the State Commission for the power plant. The tariff was to be determined by the State Commission in terms of section 62 and 64 of the Electricity Act, 2003.
 - ii) As mentioned above, the delivery point/point of injection of power as agreed to in the PPA was to be at the nearest EHV/HV sub station of the Appellants/Transmission Company. This is identifiable to be the existing sub station of the Chhattisgarh State Transmission Company limited at Silpahari sub station which is the sub station connected by Dedicated Transmission Line of

Respondent no.2 as at the time of signing of PPA, filing of the petition before the State Commission as well as the passing of the Impugned Order. The tariff to be determined by the State Commission under Section 62 of the Electricity Act, 2003 was to be for generation and supply of electricity including for servicing capital cost of the Dedicated Transmission Line till the delivery point or interconnection point of the sub station of the Transmission Company.

- iii) The issue of dispute involved in the matter is in regard to the extent to which the servicing of capital cost and other costs of the Dedicated Transmission Line should be included in the tariff payable by the Appellant. By the Impugned Order dated 04.03.2014, the State Commission has considered the entire capital cost and other costs of the Dedicated Transmission Line of 132 KV to be serviced while determining the tariff payable by the Appellant for supply of 7.2 MW after adjusting 10% for auxiliary power of the 8 MW biomass generating station. The reasoning given in the Impugned Order of the State Commission for such a decision is as under:-

“6.3 The Commission in the interim order has admitted capital cost incurred for enhancement of capacity and additional capitalization upto year 2003-04, which come out to 26.13 crore. As per the first proviso to clause 35.2 of the RE Tariff Regulations 2012, the existing biomass plants having power purchase agreement (PPA) with State DISCOM for which the Commission have determined preferential tariff, opts for the project specific tariff, capital cost will be considered as specified in the relevant orders and capital subsidy or any other subsidy will be adjusted in the capital cost. The case of petitioner is entirely different. This is first tariff exercise for the company. The petitioner's tariff being unregulated earlier, the Commission has not approved any capital cost for the petitioner before. As such no approval was taken by the company for additional capitalization also. When the project specific tariff of any company is determined under Section 62 of the Act, all capital investments are required to be approved by the Commission. From the events discussed above it is unambiguous that for enhancement of capacity of the project, the company had informed the competent authorities and subsequently it entered into PPA with State utility. So the capital cost incurred for enhancement of capacity needs to be admitted. Regarding cost incurred towards 132 KV lines and its associated works, it is to be noted that it has been commissioned during the unregulated period of the power plant under frequent shutdown from distribution company and after due approval/permission from the State Govt. and licensee. The petitioner had no options to get rid of the frequent shutdown. Petitioner has submitted relevant documents to support this. This will definitely lead to improvement in PLF, reduction in line losses, stability in power supply. The Acts also mandates for suitable connectivity to renewable plants being clean in nature. In view of the above, the Commission has admitted capital cost incurred for enhancement of capacity in the year 2002-03 and as a exceptional case, the additional capitalization of Rs. 8.64 crore in the year 2010-11 for 132 KV lines and deducted the cost incurred towards 33 KV lines, which comes out to Rs. 32.90 crore.”

5. The Appellant is aggrieved by the above decision of the State Commission wherein they have allowed the cost incurred towards conversion to 132 KV lines and its associated works for capitalization and as a result the Appellant is paying higher tariff due to additional capitalization of Rs. 8.64 crores for conversion of 33 KV line to 132 KV line and this being the Dedicated Transmission Line of the Respondent no.2.

6. We have heard Ms. Suparna Srivastava, Learned Counsel for the Appellant, Mr. M.G. Ramachandran, Learned Counsel for the Respondent no.2 and Mr. C.K. Rai, Learned Counsel for the Respondent no.1 at length and considered the submissions made by them. Our observations are as follows:-
 - i) The various biomass producers are operating in the State of Chhattisgarh.
 - ii) Respondent no.1, the State Commission had undertaken an exercise of determining the tariff for purchase of power by the Distribution Licensees from the various biomass power producers operating in the State.

- iii) Generic tariff orders determining Fixed and Variable cost on normative basis were passed wherein the norms prescribed by the Central Electricity Regulatory Commission (**“Central Commission”**) were also taken into account. In addition, the State Commission framed Regulations prescribing the terms and conditions in determination of generation tariff and related matters for electricity generated by the plants based on renewable energy sources including biomass. The first such Regulations were framed in 2008. However, they were applicable to only those biomass generating plant which have been set up after the passing of the State Commission’s Regulations. As such they were not to be applicable to the power plant of the Respondent no.2.
- iv) Thereafter, further Regulations were notified by the State Commission in 2012 repealing the Regulations of 2008 and they were made applicable for the renewable energy power projects having long term PPA of 20 years with the Distribution Licensees set up in the State of Chhattisgarh after 01.04.2012. It is submitted by the Appellant that Respondent no.2’s plant had neither been commissioned after 01.04.2012 in the State

nor did it qualify as an existing renewable energy project having long term PPA of 20 years with the Distribution Licensees and as such, the State Commission's 2012 Regulations were also not applicable to the biomass based power project of the Respondent no.2.

- v) This is in the context that on 02.09.2000, the Respondent no.2 initially entered into a Power Purchase Agreement ("**PPA**") with erstwhile Madhya Pradesh Electricity Board ("**MPEB**") for sale of power generated to MPEB for a period of 10 years at the rate of Rs. 2.25 per KWH without any escalation as per the policy of the State of Chhattisgarh at that time. On reorganisation of the State of Madhya Pradesh, the said PPA was transferred to the erstwhile Chhattisgarh State Electricity Board which was the successor of the MPEB in the area in which the power plant of Respondent no.2 was situated. When the installed capacity of the power plant of Respondent no.2 was enhanced from 6 MW to 8 MW, the Supplementary Agreement dated 24.04.2003 was entered into between Electricity Board and the Respondent no.2 on the same terms and conditions on which the original PPA has been entered into. Consequently, agreement for purchase

of power generated from the power plant of Respondent no.2 expired on 08.10.2011 and accordingly, a fresh PPA was required to be executed between the Appellant (as the successor of the erstwhile Electricity Board) and Respondent no.2 for further purchase of power and as such a fresh PPA was signed between the Appellant and the Respondent no.2 on 18.01.2013, as per the terms and conditions which have been broadly discussed as above.

- vi) Though the Regulations of the Respondent no.1 i.e. State Commission were not applicable to the power plant of the Respondent no.2, the variable (Energy charges) determined by the State Commission under its tariff order dated 28.12.2011 were still determined by the State Commission under its tariff order dated 28.12.2011.
- vii) The State Commission vide their tariff order dated 28.12.2011 had revised and determined tariff for the power purchase by Distribution Licensee in Chhattisgarh from biomass power generating plants situated in the State for the FY 2011-12 and subsequent years. While determining (energy) variable charges, the State Commission had decided as under:-

“In such context, the Commission decides that the energy charges (variable cost) determined by the CERC for year 2011-12 for other States in Petition No. 256/2010 (suo-motu) dated November 09, 2010 which is Rs. 2.46 per kWh shall be made applicable for the year 2011-12. The energy charge for subsequent years will be as specified by the Central Commission for that financial year. The Central Commission is likely to notify a new RE Tariff Regulations, which may remain in force for the next control period starting from April 01, 2012. Accordingly the CERC may determine the generic tariff and the energy charges every year of the control period as per the norms specified in the new RE Tariff Regulations. Provided that if the energy charge for year 2012-13 or any subsequent years is not specified before the start of financial year by Central Commission, the provisional energy charge for supply of power by biomass power plants to distribution licensee shall be escalated to 5% on previous financial year’s tariff. Upon issuance of final order (energy charge) by the Central Commission for respective years, the relevant energy charges specified by the Central Commission shall be adopted and shall be applicable from 1st April for that year. The energy charge, which is Rs. 2.46 per unit for the year 2011-12, shall be effective from April 01, 2011. The State Commission in a suo-motu or in any petition filed by any parties, may issue an Order for adoption of tariff (energy charge) specified by the Central Commission for that financial year or for fixing energy charges for the FY in case the CERC doesn’t at all determine energy charges for that FY.”

- viii) Further, in terms of the interim order dated 10.07.2013 passed by the State Commission in the matter of approval of tariff in respect of Respondent no.2 and approval of long term PPA between the Appellant and Respondent no. 2 dated 18.01.2013, it has decided as under:

“Before signing PPA, the CSPDCL did not examine on reasonability of additional capital investments made by petitioner, tenure of PPA, treatment of revenue earned before Jan 2001 etc. at its end nor it came to the Commission for approval. When CSPDCL entered into PPA on Jan 2013, the connectivity of the power plant of petitioner is at 132 KV voltage level. The petitioner is claiming this cost and despite the fact that connectivity arrangement is known, rival contention is raised by CSPDCL on investments made on it. As discussed above, standard daft PPA is applicable to those projects only which had commenced COD after April 2005 and whose tariff is generic in nature. This case is peculiar.”

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“The energy charges for the year 2012-13 shall be Rs. 3.33/kwh effective from date of power supply as per agreement and for the year 2013-14 it shall be Rs. 3.57/kwh with effective from April 01, 2013. The fixed cost for the year 2012-13 shall be Rs. 1.12/kwh effective from date of power supply as per agreement and for the year 2013-14 it shall be Rs. 1.16/kwh with effective from April 01, 2013. This tariff shall be provisional tariff and shall subject to decision for approval of long-term PPA between petitioner and CSPDCL.”

- ix) Subsequently vide State Commission’s order dated 19.02.2014, the said PPA has been approved after some modifications which were required to be incorporated by way of Supplementary Agreement between Appellant and Respondents.

- x) The Appellant has challenged the decision of the State Commission for not considering the fact that the capacity of 7.2 MW to be supplied under the PPA could have been done by installation of 11

KV line or 33 KV at a much lower cost. According to the Appellant, 132 KV which has been converted by the Respondent no.2 is for other purposes such as Respondent no.2 was planning on expanding its generating capacity much more than 8 MW at the existing biomass power station and was in need of the higher capacity Dedicated Transmission Line so as to facilitate conveyance of electricity which would not have been possible with the existing 11 KV/33 KV Dedicated Transmission Line.

- xi) As per the Appellant, if the Respondent no.2 was not able to establish as additional generation capacity at the existing biomass power station, the Respondent no.2 cannot load the cost of servicing as the additional capital cost on account of this upgradation of the Dedicated Transmission Line of the Respondent no.2 thereby affecting the Appellant on account of additional tariff.

- xii) The Appellant further stated that it has never agreed to the servicing of such additional cost on account of the upgradation in Dedicated Transmission Network of the Respondent no.2 and had

contemplated accordingly during the proceedings before the State Commission.

- xiii) The Appellant further alleged that it is wrong on the part of the State Commission to have decided for servicing of the entire capital cost on this account.

- xiv) On behalf of Respondent no.2, it was submitted that at the time of negotiation and execution of PPA dated 18.01.2013, the Respondent no.2 had established/commissioned and put into operation the 132 Dedicated Transmission Line from the point of generation to the sub station of CSPTCL, Silpahari and the above was fully known to the Appellant when it signed the PPA.

- xv) After perusing the PPA dated 18.01.2013, we have observed the following selling features.

“This POWER PURCHASE AGREEMENT (PPA) will remain in force for a period of 20(twenty) years from the effective date. The effective date of PPA shall be 00.00 hrs of 03.01.2013.

2. *M/s. Vandana Vidhut Limited will supply 7.2 MW (8 MW less 10% auxiliary consumption) firm power to CSPDCL on round the clock basis.*

3. *The Company shall furnish to the Licensee and the State Transmission Utility (STU) for State Load Despatch Centre (SLDC), as the case may be, a month-wise supply schedule 15 days in advance along with other requisite information. Supply of power will be governed by the pre-decided schedule as will be prescribed by the SLDC on day-to-day or monthly basis, as may be mutually agreed between both the parties.*

4(a) *The CSPDCL shall make the payment in two parts one part variable charge at the prevailing rate approved by CSERC & amended time to time. Second part, fixed charge shall be payable only after approval of CSERC for concerned plant. The Company shall be liable for getting approval of rate of fixed charge of their 8 MW Biomass fuel based power plant from the CSERC.*

4(b) *The other terms & conditions (except tariff) shall be applicable as incorporated in the Commission's order dated 11.11.2005 read with order dated 15.01.2008, 15.04.2010, 28.12.11 and 28.05.12 and amended time to time.*

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5. *The point of injection will be the nearest EHV/HV sub-station of the CSPDCL/CSPTCL."*

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 form 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 32 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.

ORDER

We fully agree and approve the findings recorded by the State Commission in the Impugned Order dated 04.03.2014. The issue is consequently decided against the Appellant and the present Appeal merits dismissal.

No order as to costs.

7. Pronounced in the Open Court on this **17th day of November, 2015.**

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

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