

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

Appeal No. 63 of 2014

Dated : 28th September, 2015

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER**

In the Matter of:

Punjab State Power Corporation Limited

The Mall, Patiala – 147 001
Punjab.

... Appellant(s)

Versus

1. Enterprise Business Solutions Pvt. Ltd.

49, Green Park,
Jalandhar,
Punjab – 144001.

...Respondent/Petitioner

2. State of Punjab

Through Principal Secretary,
Department of Science & Technology, Environment &
Non-Conventional Energy,
Civil Secretariat,
Chandigarh – 160 001.

3. Punjab Energy Development Agency

Through its Director
Plot No. 1 & 2, Sector 33-D,
Chandigarh – 160 020.

4. Punjab State Electricity Regulatory Commission

SCO No. 220-221, Sector-34-A,
Chandigarh – 160022.

... Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ishaan Mukherjee, Ms. Akhsi
Seenu and Ms. Mandakini Ghosh

Counsel for the Respondent(s) : Ms. Suparna Srivastava and
Ms. Nistha Sikoria for Resp.No.1
Mr. Matrugupta Misra, Ms. Meghna
Aggarwal Mr. Hemant Singh
Ms. Shikha Ohri and Mr. Tushar
Nagar for R.No.4, PSERC
Mr. Sunil Chaudhary Representative
for R.No.3 & 4

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

This is an appeal under Section 111 of the Electricity Act, 2003 filed by the Punjab State Power Corporation Limited (hereinafter called the **PSPCL**), a distribution licensee, against the order dated 20.12.2013 passed by the Punjab State Electricity Regulatory Commission (hereinafter called the **State Commission**) in Petition No. 59 of 2012 whereby the State Commission has approved the purchase of electricity by the appellant from 1.5 MW Solar Photovoltaic based power plant of respondent No.1 by adopting the weighted average of the tariff discovered in the bidding process conducted by the appellant. Thus the State Commission has, in the Impugned Order, held that the weighted average of the highest tariff and lowest tariff, Rs.8.247 Per Unit shall be applicable. Further, the State Commission has also granted interest @ 11.24%, on the difference in the tariff and Rs.5.67 Per Unit paid as provisional tariff of Rs.8.247 Per Unit determined as final tariff.

- 2) The main grievance of the appellant against the impugned order is that the State Commission has wrongly held the weighted average of the highest tariff and the lowest tariff, namely Rs.8.247 Per Unit to be applicable for the purchase of electricity by the appellant, the distribution licensee, from the 1.5 MW Solar Photovoltaic based power plant of respondent No.1 because the approach of the State Commission

is quite wrong and unreasonable as the State Commission should not have adopted the weighted average of the tariff discovered in the bidding process conducted by the appellant in which the respondent even did not participate and the State Commission should have adopted the lowest tariff discovered in the bidding process conducted by the appellant considering the fact that respondent No.2 did not participate in that bidding process. Another grievance of the appellant against the Impugned Order is that the State Commission has wrongly allowed interest @ 11.24% on the difference between provisional tariff and final tariff even though there was no prayer for allowing the interest by the respondent petitioner in the said Petition.

- 3) The relevant facts for deciding on this appeal are as under:
 - a) That the appellant is a distribution licensee. The respondent No.1, Enterprise Business Solutions Pvt. Ltd. has established a 1.5 MW Solar generating station in the State of Punjab.
 - b) That the generating station was initially planned to be established under the Rooftop PV & Small Solar Power Generation Programme (**RGSSGP**) scheme of Government of India. Under the said scheme, the distribution licensee, namely, the appellant herein, was required to pay the tariff of Rs.5.67 Per unit to the respondent No.1 with the balance tariff to be paid by the Government of India. The scheme was beneficial to the consumers at large in view of the tariff being only Rs.5.67 Per Unit to the distribution licensee and consumers and the balance tariff to be paid by the Government of India.

- c) That for the purpose, a Memorandum of Understanding (**MoU**) dated 09.07.2010 was entered into by the Indian Renewable Energy Development Agency (**IREDA**), a Government of India agency. Further, the appellant entered into a Power Purchase Agreement (**PPA**) dated 18.08.2010 with the Respondent No.1, a Solar Photovoltaic based power generator.
- d) That the PPA was subject to the plant being eligible under RGSSGP scheme. However, there was delay of 30 days in commissioning of the plant by respondent No.1 and therefore, the respondent No.1 became ineligible to supply electricity and get the tariff under the aforesaid RGSSGP scheme of Government of India.
- e) That, however, the respondent No.1 still proceeded with the commissioning of the generating station, without any PPA or agreement and the plant was claimed to be commissioned on 03.04.2012.
- f) That the respondent No.1 then desired to supply electricity at APPC tariff, which was not beneficial to the consumers and same would not go to fulfil Renewable Purchase Obligation (**RPO**).
- g) That the respondent No.1 filed a Petition, being Petition No.59 of 2012 before the State Commission seeking directions for execution of a fresh PPA with the appellant. The State Commission, as an interim measure, directed connectivity to be given to the generating station of respondent No.1 and that the tariff for supply would be as determined by the State Commission. In the mean time, the respondent No.3, Punjab Energy Development Agency (**PEDA**) proceeded to initiate the competitive bidding process for purchase of electricity from a generator to be established in

the State of Punjab. This became a reference point for the tariff to be determined for the appellant.

- h) That in the circumstances, the State Commission vide interim order dated 23.11.2012 held that the tariff applicable for respondent No.1, would be as discovered in the competitive bidding process. In the meantime, the interim tariff of Rs.5.67 Per Unit shall be paid by the appellant to the respondent No.1.
- i) That in the light of the above, a fresh PPA dated 09.01.2003 was entered into between the appellant (distribution licensee) and respondent No.1 solar generator. The above interim order dated 23.11.2012 of the State Commission was fully accepted by the appellant as well as the respondent No.1.
- j) That the competitive bidding process was started by the appellant, distribution licensee, which was completed in the month of June, 2013. The lowest tariff discovered in the competitive bidding process was Rs.7.20 Per Unit for category 1 (1 to 4 MW), the highest tariff discovered was Rs.8.70 Per Unit.
- k) That pursuant to the above, appellant submitted before the State Commission that the lowest tariff discovered in the competitive bidding was Rs.7.20 Per Unit which should be made applicable to the appellant. The State Commission, has in the Impugned Order, held that weighted average of highest tariff and lowest tariff, Rs.8.247 Per Unit shall be applicable. The State Commission has also in the Impugned Order granted interest @ 11.24 on the difference, as stated above, between provisional tariff and final tariff determined by the Commission. There

was no prayer made by the respondent No.1 for interest in the Petition filed by respondent No.1, the Impugned Order is under challenge in the instant appeal before us.

- 4) We have heard Mr. Anand K. Ganesan and Ms. Swapan Seshadri learned counsels for the Appellant. We have also heard Ms. Suparna Srivastava learned counsel for respondent No.1 and Mr. Matrugupta Misra, learned counsel for PSERC, Respondent No.4. We have also gone through the written submissions filed on behalf of both the parties and perused the impugned order including the material available on record.
- 5) The following questions arise for our consideration:
 - a) Whether the State Commission is justified in allowing weighted average of the highest tariff and the lowest tariff discovered in the competitive bidding process initiated by the appellant?
 - b) Whether the State Commission is justified in allowing interest on the difference between provisional tariff and final tariff even in the absence of any prayer for allowing the interest by respondent No.1/petitioner in the said Impugned Petition?
- 6) Since both these issues are interlinked, we are taking up and deciding them simultaneously. The following contentions have been made on behalf of the appellant on the said issues:
 - a) That the respondent No.1 cannot claim a higher tariff than the lowest tariff discovered in the competitive bidding process.

- b) That the respondent No.1 was in default in not commissioning the generating station under the RGSSGP scheme declared by the Government of India. If the respondent No.1 had commissioned a generating station as per the scheme of Government of India, the appellant would have had to pay only Rs.5.67 Per Unit to the respondent No.1 with the balance to be paid by the Government of India.
- c) That there was no vested right in the respondent No.1 to supply electricity to the appellant, since the PPA was not effective. It is only because of the interim order of the State Commission, that the supply was made on Rs.5.67 Per Unit.
- d) That the respondent No.1 was aware of the competitive bidding process which was envisaged to be undertaken. The respondent No.1 could have participated in the competitive bidding process, but he chose not to participate therein. He decided to accept the tariff discovered in the competitive bidding process.
- e) That in case the respondent No.1 had participated in the competitive bidding process, the price quoted would have been evaluated. However, the respondent No.1 having chosen not to participate, cannot claim any benefit which is not given to a person who participated in the bidding process. If the respondent No.1 is given a higher tariff of Rs.7.20 Per Unit, it would result in a situation wherein some of the project developers, who participated in the bidding process, would be situated in a worse position than the respondent No.1 who did not participate in the bidding process, but is getting a tariff of Rs.8.247 Per Unit. Even otherwise the entire sanctity of the bidding process is vitiated.

- f) That the Hon'ble Supreme Court in ***West Bengal State Electricity Board Vs. Patel Engineering Company reported at (2001) 2 SCC 451*** had observed that the competitive bidding process cannot be relaxed, waived or deviated from in favour of one bidder, otherwise it would result in arbitrariness, impair transparency and provide room for manipulation in picking and choosing contractors.
- g) That in the present case respondent No.1 did not participate in the bidding process, hence, he cannot take any benefit not available to the bidders who quoted less than the tariff awarded to him.
- h) That Hon'ble Delhi High Court in case of ***Punjab Riceland Pvt. Ltd. Vs. Food Corporation of India reported at 2002 (61) DRJ, page 655*** held that a person not participating in a tender process cannot be placed in an advantageous position as compared to those participating in the bidding process.
- i) That the State Commission had itself in the subsequent year proceeded on the basis that the generating stations, which are delayed, have to be paid the lowest tariff discovered in the bidding process conducted for the subsequent year. This has been held in State Commission's order dated 12.06.2015 in Petition No. 16 of 2015 in the case of Bhanuenergy Industrial Development Limited.
- j) That in the circumstances of this case, further increasing the tariff from Rs.7.20 to Rs.8.247 Per Unit results in much higher burden on the consumers at large.

- k) That the State Commission has illegally directed interest @ 11.24% to be paid to respondent No.1 on the difference in the provisional tariff and the final tariff made available by the State Commission, even in the absence of any prayer for interest by respondent No.1 in the Petition.
- l) That the well settled principle is that a court cannot grant any relief which has not even been sought for by the parties as held in *Bharat Amratlal Kothari Vs. DosukhanSamadkhan Sindhi* reported at (2010) 1 SCC 234.
- m) That the issue of carrying cost / interest was never raised, never claimed, not a subject matter of pleadings and hence there was no opportunity to the appellant to make its submissions in this regard.
- n) That even on the merits no interest can be granted on the difference between provisional and final tariff as held by the Hon'ble Supreme Court in the case of *National Thermal Power Corporation Limited Vs. Madhya Pradesh State Electricity Board* reported at (2011) 15 SCC 580.
- 7) **Per contra**, following are the submissions made on behalf of the respondent No.1, a solar photovoltaic power generator:
 - a) That the respondent No.1 filed a Petition, being Petition No. 59 of 2012, before the State Commission seeking approval for signing of a PPA with the appellant for sale of power from its 1.5 MW solar photovoltaic based power plant set up in the State of Punjab.
 - b) That the State Commission vide, Impugned Order dated 20.12.2013, has allowed tariff to respondent No.1 based on weighted average of the tariffs

for the projects under Category-1 (1–4 MW) which works out to Rs.8.247 Per Unit and has also allowed respondent No.1 to claim carrying cost @ 11.24% on the arrears of tariff payable by the appellant.

- c) That Section 86(e) of the Electricity Act 2003 provides for promotion of power generation from renewable energy (RE) sources. Towards this end, the State Commissions are required to, *inter alia*, provide suitable measures for connectivity with the grid and also specify a minimum percentage of the total consumption of electricity in the area of the distribution licensee (what is known as the Renewable Purchase Obligation or RPO) while undertaking tariff formulations and specifying the terms and conditions of tariff determination, the Commissions are enjoined to be guided by principles provided under Section 61 of the Electricity Act, 2003, which promote generation of electricity from renewable energy sources, Section 61(h) of the Act.
- d) That the National Electricity Policy and Tariff Policy framed under Section 3 of Electricity Act, 2003 are also guiding factors for discharging tariff related functions by Regulatory Commissions.
- e) That in this manner, power generators from RE sources are to be given sufficient impetus by providing promotional measures so as to make them gradually competitive. The distribution utilities have been assigned significant role for the same by providing the power generators based on RE sources connectivity with the grid and also purchase minimum prescribed percentage of their consumption from the RE sources.
- f) That under the RGSSGP scheme, the project of the respondent No.1 was selected and the project was to be designed for completion before

31.03.2013. Thereafter a local distribution utility of the area, of the power plant, was to sign a PPA with the power generator at a tariff determined by the State Commission. Base rate, which would be applicable, was Rs.5.50 Per kwh for FY 2010-11 and the same shall be escalable by 3% every year.

- g) That as per tariff order dated 07.07.2010 (order No.26 of 2010) of the State Commission, the levelised tariff for the solar PV project commissioned during 2010-11 and 2011-12 will be Rs.17.91 Per kwh. In the case of solar thermal projects it will be Rs.15.31 Per kwh for projects coming up in 2010-11, 2011-12 and 2012-13. In both cases, the tariff period will be twenty five years.
- h) That the respondent No.1 was short listed by IREDA under the said scheme for setting up 1.5 MW solar PV power plant in Sahedra-Sahiba and Balachur, Punjab on 09.07.2010. The respondent No.1 executed a MoU with the appellant for selling entire electricity generated to the appellant.
- i) That on 18.08.2010, respondent No.1 executed a PPA with the appellant. According to the PPA the generating company shall commission the generating facility and synchronize with the appellant within 12 months from the date of issue of registration certificate by IREDA. In this manner, the appellant agreed to purchase power generated from the solar generation plant of respondent No.1 with the tariff at Rs.17.91 Per kwh, out of which GBI of Rs.12.24 Per kwh was payable to respondent No.1 by IREDA and Rs.5.67 Per kwh was receivable by it from the appellant.

- j) That the commissioning of the project of respondent No.1 was delayed for one month due to various external factors not attributable to respondent No.1. The plant of respondent No.1 was ready to inject power into the appellant's grid on and from 30.04.2012. Since the commissioning was delayed by one month, the generating plant of the appellant was de-registered from the scheme and connectivity of the plant of respondent No.1 with appellant's grid was denied. Then respondent No.1 represented, vide letter dated 25.07.2012, to Ministry of New and Renewable Energy (MNRE) informing that installation of its power plant had been completed and the plant was ready for injecting power into the grid. The appellant did not provide connectivity to the solar PV plant of respondent No.1, he sought clarification from IREDA if connectivity could be given under any other scheme (as if existence of a scheme was required for granting connectivity) and IREDA asked the appellant vide letter dated 30.08.2012 to sign a fresh PPA and provide necessary connectivity at mutually agreed rates..
- k) That it was under the aforesaid circumstances, that on 24.08.2012, the Registration Certificate issued to respondent No.1 by IREDA for setting up its project under the aforesaid scheme was withdrawn. The respondent No.1 then approached respondent No.3 (PEDA) indicating its willingness to sign a PPA under Average Pooled Power Purchase Cost (**APPC**) route and requested for connectivity. PEDA informed that no such scheme was available despite the fact that provision for the same had been made under the Regulations of the Central Commission as also the respondent No.4 Commission. Respondent No.1 again approached respondent No.3 and was advised to seek connectivity under the Central Commission's levelised tariff scheme. However, when the appellant was

approached by him, it refused to grant connectivity and sign PPA citing ambiguity in the scheme.

- l) That the result of the aforesaid attitude of the appellant was that despite the project being ready for injecting power into the grid from 30.04.2012, no generation could at all take place for six months and the plant continued to remain idle and in isolated mode, thereby causing huge generation loss and financial injury to respondent No.1.

- m) That the learned State Commission vide interim order dated 23.11.2012 granted provisional tariff to the appellant and by this interim order provisional tariff was fixed. The relevant part of which is produced below:

“The counsel for the petitioner has agreed in writing to sell electricity @ Rs.5.67/kwh for the time being and later on at the price discovered through reverse bidding and approved by the Commission. This price is agreeable to the petitioner subject to the payment of arrears payable from the date of supply. However the petitioner is apprehensive that in case the process of reverse bidding takes an undue time the project would be in a loss. The counsel for the petitioner has requested the Commission to direct PEDDA to ensure completion of the process within two months from the date of passing of this Order in view of the statement made by PEDDA that the process would be completed by January 30, 2013.

After hearing the parties, the Commission noted that the parties could not reach mutually agreed tariff for supply of power from the power project. In view of the above and to facilitate

injection of Solar Power into the State Grid Commission directs PSPCL to give immediate connectivity to the Generating Company (Petitioner) after getting the requisite formalities completed and start receiving supply from the project at an interim rate of Rs.5.67/kwh subject to the payment of arrears of power supplied to PSPCL at the rates discovered through reverse bidding process to be executed by PEDDA and as approved by the Commission. Accordingly PSPCL and the petitioner are directed to sign the fresh PPA. PEDDA is also directed to make efforts to complete the reverse bidding process by 31.1.2013 and the rate so discovered through reverse bidding and subsequently approved by the Commission shall be applicable retrospectively from the date of injection of power by the petitioner in the PSPCL system.”

- n) That once the solar project of respondent No.1 was de-registered, the tariff under the aforesaid scheme could not be applied. Under the applicable tariff order, the tariff determined for solar PV projects was Rs.12.94 Per kwh. However, since the project was lying idle, respondent No.1 had no option but to agree for selling power to the appellant @ Rs.5.67 Per kwh for the time being and later on at the price discovered through reverse bidding even when capital cost and other parameters of respondent No.1's project taken in FY 2011-12 were much higher. The project had been envisaged for Rs.17.91 Per kwh but ultimately respondent No.1 had to agree for lower tariff for a month's delay in the commissioning under the said scheme and for the appellant's unjustified actions.
- o) That after passing of the interim order, the respondent No.1 and the appellant entered into PPA on 09.01.2013 with retrospective

applicability. The project was synchronized with the grid on 07.12.2013, seven months after it was ready to inject power. In the meantime, reverse bidding process undertaken by the appellant had completed in July, 2013. The discovered tariff in such bidding was highest at Rs.8.70 Per kwh and lowest at Rs.7.20 Per kwh. The appellant requested the Commission for lowest tariff to be fixed for respondent No.1. The learned State Commission, vide Impugned Order dated 20.12.2013, approved the tariff of Rs.8.247 Per kwh for purchase of power by the appellant from the solar power plant of respondent No.1.

- p) That regarding carrying cost, this Appellate Tribunal vide judgment dated 27.04.20112 in Appeal No. 72 of 2010 in the matter of *Maharashtra State Power Generation Co. Ltd. Vs. Maharashtra Electricity Regulatory Commission & Ors.* had observed that in case the final tariff had been lower than the provisional tariff, the consumers would have been entitled to refund of carrying cost. On the same analogy, if the final tariff is higher than the provisional tariff, the power generator is entitled to carrying cost.
- q) That as per Regulation 30 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for determination of tariff), Regulations 2005 as amended, the Commission may allow the carrying cost. The carrying cost shall be limited to the interest rate approved for working capital borrowings. That in passing the impugned order the State Commission has considered the following factors while determining the tariff for the solar project of respondent No.1:
- (i) Financial viability of the generating stations is an important consideration to enable them to continue to supply power to the

consumers and fixation of appropriate tariff is a necessary concomitant for ensuring financial viability of generation project, more particularly when such projects are based on renewable energy for which the Electricity Act 2003 has mandated preferential tariff. After de-registration from the RPSSGP scheme and commissioning its project thereafter, respondent No.1 is entitled to the tariff as determined by the State Commission for solar projects commissioned in that year. However, considering the earlier order dated 23.11.2012 of the State Commission, the respondent No.1 is entitled to at least the highest discovered tariff of Rs.8.70 Per kwh in the reverse bidding process.

- ii) That the project initially allocated by IREDA under RPSSGP scheme became ready for synchronization on 30.04.2012 and after its de-registration, IREDA had requested the appellant to sign a fresh PPA at mutually agreed rate.
- iii) That the respondent No.1 although was serious in setting up of the project but for the delay of one month in commissioning, it would have been entitled to the tariff of Rs.17.91 Per kwh as per IREDA's registration.
- iv) That the respondent No.1 has agreed to supply power to the appellant at the rates to be discovered through the competitive bidding process, in which process it could not possibly have participated since its petition before the State Commission had already been filed prior to the initiation of the said bidding process.

r) That Impugned Order is just and reasonable as the tariff determined by the impugned order is less than the tariff applicable for projects commissioned in 2012-13. The award of carrying cost is also in accordance with State Commission's Regulations and the order of this Appellate Tribunal, considering the facts and circumstances that the solar plant of respondent No.1 had been lying idle for more than six months and was not granted connectivity despite a specific provision made in that behalf under Section 86(1)(e) of the Electricity Act, 2003.

8) **Our consideration and conclusion:**

a) We have cited detailed facts of the matter in hand and also submissions and counter submissions made by rival parties on the said issues in the upper part of the judgment hence, we do not think it necessary to reiterate the same here again. The material and other evidence available on record make it evidently clear that the respondent No.1/petitioner is a 1.5 MW Solar Photovoltaic based power plant which was originally short listed under the afore said RGSSGP scheme of the Government of India. The said Solar Photovoltaic station was initially planned to be established under the said scheme of the Government of India. Under the said scheme, the distribution licensee, the appellant herein, was required to pay the tariff of Rs.5.67 Per Unit to the Solar generator with the balance to be paid by the Government of India. Unfortunately, the solar generator, respondent No.1 herein, could not commission the said solar plant within the stipulated period and the commissioning could be done only with a delay of 30 days. Consequently, the respondent No.1 became ineligible to supply electricity and get the tariff according to the aforesaid scheme of the Government of India.

- b) However, the respondent No.1 still proceeded with the commissioning of the generating station without any PPA or agreement and the said plant could be commissioned only on 03.04.2012. The respondent No.1 then desired to supply electricity at Average Pooled Power Purchase Cost (**APPC**), a tariff which was not beneficial to the consumers. Then respondent No.1 filed the Impugned Petition before the State Commission seeking directions for execution of a fresh PPA with the appellant, a DISCOM. The State Commission, as an interim measure directed connectivity to the plant of respondent No.1 and further directed that the tariff for supply would be as determined by the State Commission. In the meantime, respondent No.3 (PEDA) proceeded to initiate the competitive bidding process for purchase of electricity from a generator to be established in the State of Punjab.
- C) In the aforesaid circumstances, the State Commission in the said Impugned Petition, being Petition No. 59 of 2012, vide Interim Order dated 23.11.2012 held that the tariff applicable for Solar Photovoltaic plant of respondent No.1 would be as discovered in the competitive bidding process and in the meantime, the interim tariff of Rs.5.67 Per Unit shall be paid by the appellant, DISCOM, to respondent No.1's Solar power generator. Accordingly, a fresh PPA dated 09.01.2013 was entered between the appellant and the respondent No.1. The above interim order dated 23.11.2012 of the State Commission was fully accepted by the appellant and the respondent No.1.
- d) We may mention here that since the said Impugned Petition had already been filed by the respondent No.1 before the State Commission, he could not have participated in the competitive bidding process and he decided

to accept the tariff discovered in the competitive bidding process as per the PPA.

- e) We may note here that under the aforesaid scheme of Government of India, the respondent No.1 was short listed by IREDA for setting up 1.5 MW Solar Photovoltaic plant in Punjab on 09.07.2010 and the respondent No.1 executed a Memorandum of Understanding (MoU) with the appellant for selling entire electricity generated from the plant to the appellant. Accordingly, on 18.08.2010, the respondent No.1 executed a PPA with the appellant. According to that PPA, the respondent No.1 was to commission a generation facility and synchronize with the appellant within 12 months from the date of issue of Registration Certificate by IREDA. In this manner, the appellant agreed to purchase power generated from the said Solar plant of respondent No.1 with the tariff @ Rs.17.91 Per kwh (out of which GBI of Rs.12.24 Per kwh was payable by IREDA + Rs.5.67 Per kwh was payable by the appellant). As noted earlier, commissioning of the said project of respondent No.1 was delayed by one month. The plant became ready to inject power in the appellant's grid on and from 30.04.2012. Thus there was a delay of one month in the commissioning of the plant. Hence, the said plant was de-registered from the said scheme and the connectivity of the plant with the appellant's grid was denied. We may further note that respondent No.1 wrote a letter dated 25.07.2012 to Ministry of New and Renewable Energy informing that installation of its power plant had been completed and was ready for injecting power into the grid. The appellant did not provide connectivity to the said plant and sought clarification from IREDA if connectivity could be given under any other scheme. Then IREDA asked the appellant vide letter dated 30.08.2012 to sign fresh PPA and provide connectivity at mutually agreed rate. The record further

establishes that it was the appellant, distribution licensee, who made the respondent No.1 to run from pillar to post to get connectivity for its aforesaid 1.5 MW Solar Photovoltaic plant since April, 2012. When the appellant did not provide connectivity to the said plant then ultimately IREDA, respondent No.3, asked the appellant vide letter dated 30.08.2012 to sign a fresh PPA and to provide connectivity at mutually agreed rates. Due to the aforesaid attitude of the appellant, despite the project being ready for injecting power into the grid from 30.04.2012, no generation from the said Solar Photovoltaic plant could at all take place for 06 months and the plant continued to remain idle and in isolated mode causing huge loss and financial injury to respondent No.1.

- f) We may further note that after passing of the Interim Order of the State Commission, respondent No.1 and appellant entered into PPA on 09.01.2013. The project was synchronized with the grid on 07.12.2013, several months after the plant was ready to inject power. In the meantime, reverse bidding process was under taken by the appellant and was completed in July, 2013. The discovered tariff in such bidding was highest at Rs.8.70 Per kwh and lowest at Rs.7.20 Per kwh. The learned Commission in the Impugned Order has determined the tariff for the 1.5 MW Solar Photovoltaic plant of respondent No.1 and held that the weighted average of highest and lowest tariff viz. @ Rs.8.247 Per Unit shall be applicable. After considering the aforesaid facts and circumstances and the irresponsible and callous attitude of the appellant, a distribution licensee itself, the State Commission, by citing sufficient and cogent reasons in the Impugned Order also allowed interest on the differential amount between provisional tariff and final tariff considering the plight and extremely poor economic condition of the

respondent No.1 even in the absence of prayer for interest by respondent No.1 in the petition.

- g) The learned State Commission, while passing the Impugned Order in favour of respondent No.1 appears to have considered the fact that the financial viability of the generating station is an important factor to enable it to continue power supply to the consumers and fixation of appropriate tariff is a necessary concomitant, more particularly when such project is based on renewable energy for which a provision has been made in Section 86(1)(e) of Electricity Act, 2003 and the said provision mandates a preferential tariff for renewable energy projects for the purpose of promoting and securing them.
- h) We have considered all the aforesaid relevant facts and we find that respondent No.1 although was serious in setting up the aforesaid power plant but for the delay of one month in commissioning, it had been deprived of tariff of Rs.17.91 Per kwh as per the scheme of Government of India. The respondent No.1 has preferred not to challenge provisions of the said scheme and to explain the reasons for not setting up the project within the time frame of 12 months. Respondent No.1 preferred to approach the appellant, a DISCOM, for getting connectivity under some other scheme after commissioning of the plant. The DISCOM made respondent No.1 to run from pillar to post to get the connectivity and ultimately after several months respondent No.1 could get connectivity at the interference of the respondent No.3, PEDDA. Considering all these facts, the State Commission has decided the tariff as applicable to the respondent No.1's plant to be weighted average of the highest and the lowest tariff just to compensate the respondent No.1 at least to some extent for its financial viability, giving paramount consideration to the

fact that renewable energy based power generating companies like Solar Photovoltaic plant of respondent No. 1 should be promoted. In this view of the matter, we do not find any infirmity or illegality with the Impugned Order dated 20.12.2013 passed by the State Commission so far as it determines the tariff as weighted average of the highest tariff and the lowest tariff for 1.5 MW Solar Photovoltaic based power plant of respondent No.1. All the contentions raised by the appellant in this regard are meritless and are hereby rejected.

- i) The second part of the Impugned Order, so far as it relates to the grant of interest on the difference between the provisional tariff and the final tariff, the Impugned Order of the State Commission suffers from illegality and is vitiated because the Hon'ble Supreme Court in the case of National Thermal Power Company Limited Vs. Madhya Pradesh State Electricity Board reported at (2011) 15 SCC 580 held that no interest can be granted on the difference between provisional and final tariff.
- j) In view of the above discussions, Issue No. (a) is decided against the appellant and Issue No. (b) is decided in favour of the appellant. Consequently, we think it proper to uphold the tariff determined by the State Commission by the Impugned Order dated 20.12.2013 but to disallow the interest on the said difference between provisional and final tariff. The appeal is liable to be partly allowed.

O R D E R

Consequently, this Appeal No.63 of 2014 is hereby partly allowed in the light of the above observations made by us. We uphold the tariff determined by the State Commission in the Impugned Order dated 20.12.2013 for 1.5 MW Solar Photovoltaic based power plant of

respondent No.1/petitioner. The respondent No.1 shall not be entitled to any interest on the difference in the provisional tariff and the final tariff.

There is no order as to costs.

Pronounced in the open court on this **28th day of September, 2015.**

(I. J. Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~