

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 360 of 2018

Dated : 29th August, 2024

Present : Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

1. ACME Solar Holdings Limited
Plot No. 152, Sector – 44,
Gurugram – 122 002
Haryana, India
 2. Devishi Solar Power Private Limited
Plot No. 152, Sector – 44,
Gurugram – 122 002
Haryana, India
 3. Devishi Renewable Energy Private Limited
Plot No. 152, Sector – 44,
Gurugram – 122 002
Haryana, India
 4. Eminent Solar Power Private Limited
Plot No. 152, Sector – 44,
Gurugram – 122 002
Haryana, India
 5. Sunworld Energy Private Limited
Plot No. 152, Sector – 44,
Gurugram – 122 002
Haryana, India
- ...Appellant

Versus

1. The Secretary
Uttarakhand Electricity Regulatory Commission

Vidyut Niyamak Bhawan, Near I.S.B.T.,
P.O. Majra, Dehradun – 248171
Uttarakhand

2. The Secretary
Uttarakhand Power Corporation Limited
Victoria Cross Vijeyta Gabar Singh,
Urja Bhawan, Kanwali Road,
Balliwala Chowk, Dehradun – 248001
Uttarakhand

3. The Secretary
Power Transmission Corporation of Uttarakhand Limited
Vidyut Bhawan, Near ISBT Crossing,
Saharanpur Road,
Majra, Dehradun

...Respondent

Counsel for the Appellant(s) : Aniket Prasoon
Akash Lamba
Shubham Mudgil
Rishabh Bhardwaj
Anandini Thakre
Shweta Vashist
Akanksha Tanvi
Priya Dhankar for App. 1 to 5

Counsel for the Respondent(s) : Buddy A. Ranganadhan
Raunak Jain
Stuti Krishn for Res. 1

Pradeep Misra for Res. 2

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, the Appellant has assailed the order dated 12th July, 2018 passed by 1st Respondent – Uttarakhand Electricity Regulatory Commission (hereinafter referred to as “Commission”) in Petition No. 16 of 2018 filed by the Appellants

under Section 86(1)(f) of the Electricity Act, 2003.

2. Appellant No. 1 is a company incorporated under the Companies Act, 1956 and is one of the largest solar power producers in India. Appellant Nos. 2 to 5 are special purpose vehicles created by Appellant No. 1 for setting up of solar power projects with an installed capacity of 12.5 MW each (total 50 MW) at Khurpiya Farm, Kiccha, US Nagar, Uttarakhand.

3. The 2nd Respondent, Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL") is a company incorporated under the Companies Act, 1956 has been entrusted with the responsibility to cater to the transmission and distribution of electricity in the State of Uttarakhand. The 3rd Respondent - Power Transmission Corporation Limited ("in short PTCL") has been formed to maintain & operate the transmission lines of 132 KV & above along with the associated substations within the State of Uttarakhand.

4. Undisputed facts of the case which have given rise to the instant appeal are as under:-

(i) The Uttarakhand Renewable Energy Development Agency (in short "**UREDA**") issued a Request for Proposal dated 3rd October, 2015 for selection of successful bidders for setting up of

170 MW grid connected solar photovoltaic power projects through tariff based competitive bidding process, in terms of Section 63 of the Electricity Act, 2003. The selection of successful bidders was envisaged under Type-1 of Uttarakhand Solar Power Policy 2013. The Successful bidders had to supply power to UPCL as per the terms and conditions of the Request for Selection (“RFS”) document and the model power purchase agreement (PPA) issued thereunder.

(ii) Appellant No. 1 also submitted its bid on 19th October, 2015 and was declared as one of the successful bidders for development of four projects with a total capacity of 50 MW (i.e. four projects of 12.5 MW each). Accordingly, Appellant No. 1 formed special purpose vehicles Appellant Nos. 2 to 5 namely M/s. Devishi Solar Power Private Limited, M/s Devishi Renewable Energy Private Limited, M/s Eminent Solar Power Private Limited and M/s Sunworld Energy Private Limited for setting up these solar power projects with an installed capacity of 12.5 MW each. Subsequently, Appellant Nos. 2 to 5 executed separate power purchase agreements dated 31st March, 2016 with UPCL for sale of the entire capacity of 50 MW generated from the four Projects.

(iii) Article 2.2 of the PPAs, provided an option to the generating

companies i.e. Appellant Nos. 2 to 5 to construct evacuation infrastructure themselves and if so opted, clause 15.1(b) of the Uttarakhand Electricity Regulatory Commission Regulations, 2013 (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 were to apply. As per the said Regulation 15.1 of these RE Regulations, 2013, in case a solar power generating company opted to construct the evacuation infrastructure from point of connection to the nearest sub-station of transmission/ Distribution Licensee, it shall be entitled to a normative levelised tariff of 12 paise per unit over and above the generation tariff determined at the point of inter-connection.

(iv) The Appellants opted to construct the necessary evacuation infrastructure in terms of the above noted provisions of the PPAs. Accordingly, the Appellant Nos. 2 & 3 are connected to 33 kV/ 11 kV Chinimill sub-station at Gadarpur owned by UPCL by way of 33kV total circuit D/C transmission line whereas Appellant Nos. 4 and 5 are connected to 132 / 33kV Bazpur sub-station owned by PTCUL by way of 33kV D/C. The total cost incurred by the Appellant Nos. 2 to 5 for construction of these transmission lines

is stated to be as under :-

S. No.	Project	Construction Cost of TL and associated works (Rs. in Crore.)
1.	M/s Devishi Renewable Energy (P) Ltd.	1.53
2.	M/s Devishi Solar Power (P) Ltd.	1.56
3.	M/s Eminent Solar Power (P) Ltd.	1.43
4.	M/s Sunworld Energy (P) Ltd.	1.45

(v) In accordance with the Regulation 15(1) of RE Regulations, 2013, the Appellant's approached UPCL to either purchase the evacuation lines constructed by them at depreciated cost indicated in the latest audited accounts of these Companies or else pay the enhanced tariff to them in terms of these Regulations. However, UPCL vide its letter dated 27th November, 2017 intimated Appellant No. 1 that it had decided to pay the additional tariff, @12 paise/unit to the Appellants in accordance with RE Regulations, 2013.

5. It appears that UPCL has made payment of additional levellized tariff @6 paise per unit only to the Appellants over and above the generation tariff determined in the PPAs, to which the Appellants objected vide letter dated 4th January, 2013 which was followed by another letter dated 17th January, 2013. However, the UPCL vide its letter dated 24th January, 2018 informed the

Appellants that it has made all the payments for the transmission lines to them in accordance with the RE Regulations, 2013.

6. It further appears that since the Appellants had chosen to construct only two 33KV double circuit lines to evacuate power from their four power projects (one transmission line for evacuating power from the projects of Appellant Nos. 2 & 3 and the another transmission line for evacuating power from the projects of Appellant Nos. 4 & 5), the UPCL has bifurcated the additional levelised tariff of 12 paise per unit permissible to the Appellants accordingly and is paying the same to the Appellants @6 paise per unit for each generating station.

7. Aggrieved by the said conduct of UPCL, the Appellants approached the 1st Respondent Commission by way of petition No. 16 of 2018 claiming additional levelised tariff of 12 paise per unit for each of the four generating stations on the contention that neither have they constructed common evacuation infrastructure for the projects nor such infrastructure being shared by any of the two projects set up by them and that only poles/ transmission towers are common which hold the transmission lines from their four projects and which was done for optimization of right of way while laying transmission towers.

8. The contentions of the Appellants have not found favour with the Commission and accordingly the Commission dismissed the petition vide the impugned order dated 12th July, 2018 for the following reasons :-

“Since, a single/common evacuation infrastructure has been constructed for two solar projects, the normative levelized tariff of 12 paise/unit for the common infrastructure shall be apportioned equally among the solar generating companies using such common infrastructure. The intent of the Commission by referring to a generating company as specified in the above Regulations was to one project and not to multiple projects as in the instant case. Further, the Regulations also specify the minimum voltage at which a particular capacity of RE generating station needs to be connected. The 12.5 MW generation was sufficient to be evacuated through 33 kV S/c line, however, the Petitioner chose to construct 33 kV Double circuit line to evacuate 25 MW capacity of two separate projects. Hence, allowing a recovery of 12 paise/unit would be allowing undue enrichment to the generators as the normative tariff of 12 paise/unit is for a particular evacuation infrastructure of specified nature which in the instant case is a 33 kV D/C line and not to individual generating stations connected to that evacuation infrastructure. In fact the Petitioner in its Petition has also submitted that the approach was followed to optimize costs and to avoid any unnecessary cluttering and congestion in the transmission infrastructure. Hence, the Petitioner was very well aware of the requirement of the Regulations.”

9. We have heard Learned Counsel for the Appellants as well as Learned Counsel appearing for 1st and 2nd Respondent. Nobody has appeared on behalf of the 3rd Respondent. We have also gone through the impugned order as well the written submissions filed on behalf of the Appellant and 1st Respondent.

10. In order to appreciate the rival contentions of the parties, we feel it necessary to quote Regulation 15(1)(b) of the RE Regulations, 2013 notified by the Commission on 15th April, 2013.

The same is under :-

“15. Financial Principles

(1) Capital Cost

(a) XXX

(b) In case, the generating company opts to construct the evacuation infrastructure from point of inter-connection to the nearest sub-station of transmission or distribution licensee to which the generating station is connected, it shall be allowed a normative levelised tariff of 5 paise/unit over and above the generic tariff determined at the point of inter-connection. However, in case of a solar generating company a normative levelised tariff of 12 paise/unit over and above the generic tariff determined at the point of inter-connection shall be allowed. The said normative tariff for evacuation infrastructure has been arrived at considering the cost of normative line length of 10 kms. (including cost of terminal equipments) for different capacities of generating stations as per normative cost given below :

- i. Upto 3 MW, 11 kV S/C - Rs. 44 lakh*
- ii. Above 3 MW and upto 13 MW, 33 kV S/C - Rs. 85 lakh*
- iii. Above 13 MW and upto 25 MW, 33 kV 2 x S/C- Rs. 170 lakh”
or D/C*

11. Perusal of the said Regulations would reveal that the generator was given an option to construct the evacuation infrastructure on its own at the normative cost specified therein and in case the generator opted for the same, it was entitled additional normative levelised tariff over and above the generating tariff determined in the PPAs which was to be @12 paise per unit in

case of solar power generators. It needs to be emphasized that the term used in this Regulation is “evacuation infrastructure”. As conveyed by the Learned Counsel for the Appellants during the course of arguments, the evacuation infrastructure does not mean only the poles/transmission towers or the transmission lines fixed on the poles/towers but would necessary include *bays, transformers, check meters, main meters, line isolators etc.*

12. In the instant case, it is not in dispute that Appellant Nos. 2 to 5 have constructed only 02 Double Circuit (D/C) transmission lines instead of 04 Single Circuit (S/C) transmission lines i.e. one circuit for each project separately. This necessary implies that there is one transmission line for each of the four projects even though they have joined together to construct two double circuit transmission lines instead of four single circuit transmission lines. It is not disputed on behalf of the respondents that the Appellants have installed the bays, transformers, check meters, main meters, line isolators etc. separately for each of the four solar power projects. What transpires, therefore, is that only poles/transmission towers are common to Appellant Nos. 2 & 3 and Appellant Nos. 4 & 5. All other infrastructural elements including the transmission lines are separate for each of the four projects.

13. Therefore, we are unable to countenance the observations of the Commission that single/common evacuation infrastructure has been erected/constructed by the Appellant for two solar projects and, therefore, normative levelised tariff of 12 paise per unit should be divided equally among the sharing solar generating companies. It will not be correct to say that Appellant Nos. 2 & 3 on one hand and Appellant Nos. 4 & 5 on the other hand have constructed common evacuation infrastructure merely for the reason that they are using common poles/transmission towers upon which they have fixed the separate transmission lines and have also erected all other requisite infrastructure elements separately for each of the four power projects.

14. Reliance upon judgment of Hon'ble Supreme Court in Chandra Kishore Jha vs Mahavir Prasad & Ors 1999 8 Scc 266 , it was argued by Learned Counsel for the 1st Respondent that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. He has submitted that since the Appellants have chosen to construct two 33KV double circuit lines in place of four 33 KV single circuit lines, they are not entitled to additional normative levelised tariff of 12 paise per unit for each power project. We do not find any force in

the arguments of the Learned Counsel. Regulation 15(1) of RE Regulation, 2013, do not specify the exact manner in which evacuation infrastructure was to be constructed by a generating company from point of inter-connection to closest sub-station in order to be entitled to additional normative levelised tariff. We have already noted hereinabove that the Appellants have constructed all evacuation infrastructure elements separately for each of the four power projects except one element i.e. the poles/transmission towers which are being shared jointly by two of these generating companies. In our considered opinion, it is not only unjust but also contrary to the spirit and object of Regulation 15(1) of RE Regulations, 2013 to say that the Appellants have constructed and are sharing common evacuation infrastructure.

15. We may also note that there is no difference in the normative cost of construction of a double circuit 33 KV line and two single circuit 33 KV lines which is evident from clause (b) (iii) of Regulation 15(1) of the above noted Regulations which shows the normative cost of Rs.170 lakhs for either of the two. In view of the same also, it would be against the interest of justice to deprive the Appellant of the normative levelised addition tariff of 12 paise per unit for each of the four generating units.

16. Hence, the impugned order of the Commission cannot be sustained. The same is hereby set aside. The Appeal stands allowed.

17. We hold that Appellant Nos. 2 to 5 are entitled to normative levelised tariff of 12 paise per unit over and above the generation tariff determined in their respective PPAs for each of their generating units and, therefore, direct the UPCL to make payment of the normative levelised tariff to the Appellants accordingly from the date of the respective commercial operation of the power projects. The previous outstanding dues in this regard shall be cleared by UPCL within one month from the date of this order.

Pronounced in the open court on this 29th day of August, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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