

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

Appeal No. 83 of 2017

Dated: 26th February , 2020

**Present: Hon`ble Mr. Ravindra Kumar Verma, Technical Member(Electricity)
Hon`ble Mr. Justice R.K. Gauba, Judicial Member**

In the matter of:

**U.P.Ceramics & Potteries Ltd.
Through its Authorised Signatory
Mr. Mrinal Sharma
Bhatiya Morh, G.T. Road,
Ghaziabad - 201009**

....Appellant

Versus

**1. Rajasthan Electricity Regulatory
Commission
Vidhyut Viniyamak Bhawan,
Sahakar Marg, near State Motor
Garage, Jaipur, Rajasthan 302001**

...Respondent No.1

**2. Jodhpur Vidyut Vitran Nigam Ltd.,
Through Chairman-Cum- Managing
Director, Vidhyut Bhawan, Janpath,
Jaipur- 302 001 (Rajasthan).**

...Respondent No.2

**3. The Superintendent Engineer
(RDPPC)
Jodhpur Discom, Ground Floor
400 KV, G.S.S. Control Building,
Heerapura, Jaipur – 302 001
(Rajasthan)**

...Respondent No.3

**4. The Director (Power Trading)
Vidhyut Bhawan, Janpath
Jaipur – 302 001 (Rajasthan)**

...Respondent No.4

Counsel for the Appellant(s) : **Mr.Sanyat Lodha**
Mr. Mr.Sanjana Saddy
Ms.Aditi Sharma

Counsel for the Respondent(s) : **Mr.Raj Kumar Mehta**
Ms.Himanshi Andley
Mr.Abhishek Upadhyay For Res1

Mr.Ajatshatru S. Mina For Res2

Mr.Ajatshatru S. Mina For Res3

Mr.Ajatshatru S. Mina For Res4

JUDGMENT (ORAL)

PER HON'BLE MR. JUSTICE R.K. GAUBA

1. The Appellant before us challenges the order dated 20.09.2016 passed by the Rajasthan Electricity Regulatory Commission, (hereinafter referred to as the "State Commission") passed on Petition No. RERC-596/2016 whereby the claim of the Appellant (power producer) for payment of the charges for supply of electricity to the Respondent State Discom during the months of April to June, 2015 was declined, thereby upholding the contention of the Respondent Discom as to disentitlement of the Appellant to that extent in terms of the Power Purchase Agreement (PPA) dated 20.12.2013 which had been renewed by Supplementary Power Purchase Agreement (Supplementary

PPA) dated 25.06.2015 extending the period of its validity upto 31.03.2016.

2. It appears that while the power producer (the Appellant) had initiated a request for revalidation of the Power Purchase Agreement which had come to an end on 31.03.2015 only by communication dated 16.06.2015, the concerned entities (the power producer and the Discom) had continued with the existing arrangement *vis-a-vis* the joint reading of meter for logging the quantity of supply of electricity injected by the power producer into the grid and drawn by the Discom there against, from month to month, in terms of stipulation in the PPA dated 20.12.2013.

3. The representative of Respondent Discom, for reasons which we cannot fathom, however, addressed a letter dated 23.06.2015 to the Appellant insisting upon an undertaking to be furnished against any claim being raised for charges to be paid for the supply of electricity for the period after expiry of earlier PPA i.e. for the period 01.04.2015 onwards. The Appellant did

comply with the said demand of undertaking by furnishing an affidavit to that effect but qualifying it with the assertion that it was being submitted “*subjected and not diminishing our right to plea this with higher authorities*” (quoted verbatim). The parties entered into Supplementary PPA on 25.06.2015 adopting the terms and conditions of the previous PPA, revalidating it for the period upto 31.03.2016. It is pointed out that in the Supplementary PPA dated 25.06.2015 there is a specific reference to the undertaking to above effect executed by the Appellant (the power producer).

4. As noted by us earlier, the joint meter reading continued from month to month pursuant to continued uninterrupted supply of electricity by the Appellant to the Discom for the period beginning with 01.04.2015. There are irrefutable documents submitted in support of this fact which specifically cover the period in dispute i.e. the months of April to June, 2015.

5. It is after execution of the Supplementary PPA dated 25.06.2015 that in the month of September, 2015 the Appellant

raised invoices insisting on supply of electricity to be paid for in respect of the three months of April to June, 2015. The Respondent Discom declined to do so referring to the undertaking as noted above which had become part of the contract. The dispute brought before the State Commission did not result in any relief coming the way of the Appellant. Hence, the appeal.

6. We have heard the learned counsel on both sides. We have gone through the records. To say the least, we are appalled by the conduct indulged in by the State Discom. We may say at this very stage that State agencies are not expected to reap free benefits. It is inconceivable and, therefore, not expected of the agencies that represent the State as they are also governed by rule of law.

7. Primarily, five reasons have been set out by the Respondent Discom to deny the charges to the Appellant, all of which have been upheld by the State Commission. We record our

disappointment over the unjust dispensation and give our reasons hereinafter.

8. Undoubtedly, the documents show delay on the part of the Appellant in approaching the Discom for revalidation. The earlier PPA had come to an end on 31.03.2015. The request for its revalidation came in the middle of June, 2015. There is no explanation offered for the delay. But then, this is inconsequential because the parties eventually agreed with each other in the wake of even the belated request for the PPA to be revalidated for one more year.

9. The State Commission has upheld the contention that under the Renewable Power Purchase Regulations there was no obligation on the part of the State Discom to purchase. This is not a very sound reasoning. The private player in the business producing electricity through renewable sources of energy has been helping the cause of green energy expected to be promoted by the State Commission, it being a matter of public policy adopted by the State. Technically it may be right to say that there is no obligation to purchase. But the private parties

did enter into a contract for sale and purchase and, in that sense, there is an obligation to pay for the electricity purchased.

10. The State Discom had resisted the claim before the State Commission on the ground that there was no coercion which was one of the grounds taken by the Appellant. There may be no hard core proof available to support the charge of coercion. But, we find the insistence on such undertaking as noted earlier being given to be a condition totally bereft of justification. We read some element of duress into this, the Appellant possibly having acted gullibly.

11. The undertaking given by the Appellant did become part of the Supplementary PPA. But, if this were to be the manner of reading the contract, the qualifying words added by the Appellant also will have to be given their play. The undertaking was not unconditional. The Appellant had reserved his right to approach the competent authorities to claim the requisite relief.

Its legal right even otherwise (in absence of such qualifying words) cannot be taken away.

12. The PPA stood extended upon execution of Supplementary PPA for one more year in continuation and thus the extended period would commence from 01.04.2015.
13. For the above reasons, while also disapproving of conduct of the Respondent Discom in making an attempt to claim freebies at the cost of a private entity, we allow the appeal.
14. The impugned order of the State Commission is set aside. The Respondent Discom is directed to pay the requisite charges against the invoices for the months of April to June, 2015 with late payment surcharge in terms of Clause 8.2(ii) of the PPA, subject to proper scrutiny, within a period of one month hereof.
15. We record our strong disapproval of the manner in which this dispute was handled by the State Commission. We remind the State Commission that it is a statutory body entrusted with the responsibility of adjudication over such disputes and in

discharging such duty it is expected to abide by the principles of justice, equity, fair play and good conscience.

16. The appeal is disposed of in above terms.

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Technical Member

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