

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.161 of 2012

Dated:12th Aug, 2013

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**Saheli Export Private Limited
New No.25, Old No.10,
Madhavan Nair Road,
Mahalingapuram,
Nungambakkam
Chennai-600 034**

...Appellant

Versus

- 1. Joint Electricity Regulatory Commission
2nd Floor, HSIDC Office Complex,
Vanijya Nikunj Complex,
Udyog Vihar Phase-V,
Gurgaon-122 016
Haryana**
- 2. Electricity Department
Government of Puducherry,
Chief Secretariat, Goubert Salai,
Puducherry 605 001**
- 3. Renewable Energy Agency Pondicherry
No.10, Second Main Road,
Elango Nagar, Puducherry 605 011**

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Swagatika Sahoo

Counsel for the Respondent(s): Mr. Meet Malhotra, Sr. Advocate
Mr. Ravi S. S. Chauhan
Mr. Prateek Dahiya for R-1

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. M/s. Saheli Exports Private Limited is the Appellant herein.
2. Challenging the Tariff Order passed by the Joint Commission dated 2.7.2012, determining the tariff for supply of electricity by the Appellant to the Electricity Department, Government of Puducherry from its proposed Solar Power Plant, the Appellant has filed this Appeal.

3. The short facts are as follows:

(a) The Appellant, M/s. Saheli Exports Private Limited is primarily involved in the business of planning, promoting and setting-up small and medium power plants using both Conventional and non-conventional resources of energy. The Appellant is also engaged in the business of establishing, operating and maintaining Solar based Generating Stations in the Country.

(b) The Ministry of New and Renewable Energy (MNRE), Government of India framed the guidelines for the programme known as the “Rooftop PV and Small Solar Power Generation Programme” which is a scheme providing for selection of project proponents from across the country for development of Solar Power Projects to be connected to the Distribution network at Voltage level below 33 KV.

(c) The Renewable Energy Agency, Puducherry, the 3rd Respondent is the competent authority for accreditation and recommending the renewable energy projects in Puducherry. R-3 issued an Invitation for Expression of Interests (EOI) for pre-registration for setting-up of 100 KW to 2 MW Small Solar Power Plants under the “Rooftop PV and Small Solar Generation Programme”.

(d) On the basis of this Invitation, the Appellant on 7.7.2010, submitted its application for pre-registration with the 3rd Respondent for setting-up a 1 MW Solar Power Project at Devamapuram village, Tirunallur Commune, Karaikal, Puducherry.

(e) On being satisfied about the eligibility of the Appellant, the 3rd Respondent issued pre-registration certificate to the Appellant.

- (f) Upon obtaining the pre-registration certificate, the Appellant applied online for Registration of its proposed Power Project with IREDA.
- (g) The Appellant was short listed and enlisted at serial number 84 among all the applicants.
- (h) On 21.7.2010, the Appellant entered into a Memorandum of Understanding (MoU) with the Electricity Department, Government of Puducherry, the R-2 for setting up of the project.
- (i) As per the scheme, only those projects where the Regulatory Commissions had determined the levelised 25 years tariff were to be considered for Registration and subsequently, the PPA was to be signed by the Distribution Licensee with the project developer.
- (j) Aggrieved by this stipulation insisting upon the tariff determination as a pre-requisite for registration, the Appellant challenging the said provision in the Scheme before the Madras High Court.
- (k) Ultimately, the High Court by the order dated 12.04.2011 directed the Appellant to file Tariff Petition before the Joint Commission for determination of tariff for purchase of solar power by the Puducherry State Utility.

(l) Accordingly, the Appellant filed the Tariff Petition before the Joint Commission. However, the Joint Commission, by the order dated 2.1.2012 dismissed the Petition on the ground that unless the Appellant executes the binding PPA with the Distribution Licensee, the tariff would not be determined by the Joint Commission.

(m) Aggrieved by the order dated 2.1.2012 passed by the Joint Commission, the Appellant had filed Appeal before this Tribunal. This Tribunal, by the order dated 29.3.2012, directed the Joint Commission to determine the tariff.

(n) Pursuant to this order, the Joint Commission conducted public hearing on various dates.

(o) Ultimately, by the order dated 2.7.2012, the Joint Commission passed the impugned order in the Tariff Petition filed by the Appellant determining the tariff for the generating station of the Appellant.

(p) Having felt that the method of determination was not proper, the Appellant has filed this Appeal assailing the impugned order on the ground that Joint Commission failed to consider the relevant materials available on the record while determining the tariff for the Solar projects of the Appellant.

4. The Appellant has raised the following issues in this Appeal:
- (a) The Capital Cost of the land considered by the Joint Commission is not as per the market rate of the land which is required to be procured by the Appellant for setting-up of the solar power project.
 - (b) The Capacity Utilisation Factor has been wrongly adopted by the Joint Commission at 19% despite the available parameters in the area and vicinity of the plant of the Appellant for the Capacity Utilisation Factor in the region of 17.5%.
 - (c) The power evacuation charges have not been considered by the Joint Commission.
 - (d) The Tenure for loan re-payment has not been correctly considered by the Joint Commission.
 - (e) The Joint Commission has not considered the increase in Service Tax by 2% at the time of passing of the impugned order.
5. Let us now discuss each of the issues in the light of the submissions made by the learned Counsel for the Appellant as well as learned Senior Counsel for the Joint Commission.
6. According to the Appellant the **cost of the land**, as determined by the Joint Commission in the impugned order is not viable as the Joint Commission has wrongly taken the

cost of the land as Rs. 24 lacs for 5 Acres of land. It is further stated that the Appellant has collected the information under the Right to Information Act on the cost of acquisition of land by Government in the region. As per the information, the cost of land acquired during 2008 itself works out to Rs.20 lacs per Acre and therefore, the cost of the land determined by the Joint Commission is not correct.

7. On the other hand, the learned Senior Counsel for the Joint Commission appearing for the Joint Commission contended that the Appellant did not provide any material to show the details of the high cost of the land either in this petition or during the proceedings pending before the Joint Commission. Therefore, the contention of the Appellant that the cost of the land has not been correctly decided is misconceived.
8. We have carefully considered the submissions of both the parties. On going through the materials available on record and also the impugned order, it is evident that the Appellant did not submit the relevant data regarding the cost of the land as per the market rate along with the Petition. In fact, the Joint Commission asked for those particulars from the Appellant who failed to provide the relevant materials till the end.

9. In the absence of any data provided by the Appellant, the Joint Commission determined the cost of the land notified by the Electricity Department, the Second Respondent and also from the public domain information obtained from the Web search.
10. It is quite strange to notice that the Appellant sought a cost of Rs.1 Crore for 5 acres without adducing any material and without any justification. Therefore, we do not find any merit in the contention urged by the Appellant on this issue. Consequently, this issue is decided as against the Appellant.
11. The **next issue** relates to **Capacity Utilisation Factor**.
12. According to the Appellant, the parameters of Capacity Utilisation Factor of 19% adopted by the Joint Commission was not correct and not based upon the relevant data and was based upon the Central Commission's Regulations, 2012 which only stipulated a Generic Capacity Utilisation Factor for the entire country.
13. On this issue, both the parties have argued at length.
14. It cannot be disputed that the Appellant itself in the Notice for Public hearing had indicted the capacity utilisation factor of 19%. Even during the public hearing, the Joint Commission gave an opportunity to the Appellant to furnish the details of any existing solar plant from where the capacity utilisation factor could be verified. The Appellant

never placed those particulars or information in support of its claim of lower capacity utilisation factor which was to be verified before the Joint Commission. Even at the appellate stage, the Appellant, who has claimed for lower capacity utilisation factor of 17.5%, has never furnished any materials to sustain the said claim. The impugned order would indicate that the Joint Commission having not received any information from the Appellant, considered the Feb, 2011 study by the Central Commission indicating the capacity utilisation factor in various locations. Admittedly, the Chennai was the nearest location. The Central Commission indicated capacity utilisation factor at Chennai as 19.04%.

15. According to the Joint Commission, it calculated the Capacity Utilisation Factor by adopting the All India average established and adopted by the Central Commission and fixed the Capacity Utilisation Factor as 19%. The Joint Commission in its written submission has quoted that the Tamil Nadu Commission also has fixed Capacity Utilisation Factor as 19% which is near to the Karaikal, Puducherry.
16. The Respondent-3 also, during the public hearing said that the Capacity Utilisation Factor of 19% was acceptable. When these materials have been considered by the State Commission for having adopted the Capacity Utilisation Factor as 19%, the Appellant cannot contend that it should

be fixed as 17.5% in the absence of any materials whatsoever produced by the Appellant to justify the Capacity Utilisation Factor. The Central Commission in its Regulation has also specified the Capacity Utilisation Factor as 19%. So, this issue is also decided as against the Appellant.

- 17. The next issue** relates to the **Evacuation Charges**.
- 18.** According to the Appellant, the Joint Commission in the impugned order has wrongly included the power evacuation charges as a part of project cost while capital cost of the project only includes the evacuation facility till interconnection point and it would not include cost of the system from interconnection point to the substation and therefore, any expenditure to be incurred by the Appellant for evacuation of power from the interconnection point to the sub-station of the Utility needs to be separately provided for in the tariff.
- 19.** The finding on this issue in the impugned order is as follows:

“7.22 Power Evacuation & Metering

The Power Evacuation including any Transformer, Transmission line and metering on the Petitioner’s side is included in the Capital Cost and also installation expenditure includes EPC cost towards DC cabling between Solar PV panels & Inverters including junction boxes, AC cabling between inverter & sub station, Earthing arrangements. The transformer cost includes the EPC cost of a step up outdoor type transformer, auxiliary transformers, HV

circuit breaker, Current Transformers, Potential Transformers, Isolators, LAs, protection relay and TOD meter. It also includes electrical accessories like, MCCBs, MCBs, fuses, lugs, glands etc. plant and control room lighting system with supports, fixtures, SCADA system, battery set, earthing system.

Commission's Decision:

The Commission decides that all the above cost are included in the Capital Cost approved and no separate provision are applicable towards Power Evacuation & Metering".

20. The Appellant has contended that the Joint Commission is not justified in determining the tariff of Rs.10.58 Paise per unit when the project is being set-up under a promotional scheme of Central Government. Under this scheme, the State Utilities are offered incentives for purchasing power from the project for the entire duration of 25 years and as such, the determination of tariff for a lesser price was not valid, when other State Commissions across the Country had fixed the tariff ranging from Rs.14.50 to Rs.18.52 per unit for the projects being developed under the various schemes of the Central Government.

21. On going through the impugned order, it is evident that the Joint Commission has considered all these aspects including the object of the Scheme which is promotional in its entirety and gave its conclusion. The tariff fixation is an independent regulatory process. This process is irrespective of the scheme under which the Appellant is

intending to execute the project. Therefore, we do not find any reason to hold that the conclusion arrived at by the Joint Commission is wrong. Therefore, this issue is also decided as against the Appellant.

22. The next issue is tenure of loan repayment.

23. According to the Appellant, the Joint Commission assumed the term for repayment of loan as 12 year instead of general practice of 10 years due to which the financing of the project would be difficult as 12 years loan is only given by very few financiers such as IREDA as against the general norms of 10 years.

24. The finding of the Joint Commission on the above issue is as under:

“7.15 Interest on Loan/Debt:

The Petitioner’s Petition seeks interest rate of 14.5% while the Project Report on Page 71 indicates it to be 13%.

Hon’ble CERC has considered a debt equity ratio of 70 : 30 i.e. 70 percent of the total project cost as Debt component as proposed by the Petitioner in line with Hon’ble CERC, which means Rs.7.00 Crores for this project. The rate of interest decided by the Hon’ble CERC is 12.3 percent for repayment period of 12 years including moratorium. The rate was fixed by Hon’ble CERC on 27th March, 2012. This rate was based on the SOR dated 06th Feb, 2012 on which the Public hearing was held by the Hon’ble CERC.

Most of investors/borrowers are falling under Grade II/III/IV category of IREDA. This means that interest rate even in most competitive lender IREDA for most of the players is in the range of 12.5% to 13.0%. Accordingly, a rate of interest on debt component has been decided as 12.75% for solar PV project considered under this Petition.

A Group Company of the Petitioner has already made a Solar PV Power Plant of similar size operationalized; the Financial Institutions will have a better confidence in the Petitioner's Capability in execution of such projects and will offer attractive rates of Interest for Debt Component.

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Commission's Decision:

Commission accepts 70% debt towards the Project cost (Equity being 30%) and keeping in view the small size company with not a big balance sheet, the interest on the Loan @ 12.75% for a repayment period of 12 years (with moratorium if any) and reduce IDC by cutting down the Construction time as per Present practices of various developers Ref. Annex 19 "Projects Commissioned in less than one year".

- 25.** Thus, the Joint Commission decided the repayment period of 12 years for loan as fixed by the Central Commission. We also find that the Joint Commission has allowed depreciation at the rate of 5.83% per year for the first 12 years and 1.54% per year thereafter up to 25 years. The Joint Commission has therefore, provided a higher rate of depreciation for first 12 years which would facilitate repayment of loan during the first 12 years.

26. We find that the Joint Commission has passed a reasoned order in adopting the repayment period of 12 years for loan as fixed by the Central Commission. Thus, we do not find any infirmity in the order of the Joint Commission. This issue is also decided against the Appellant.

27. The **next issue** is relating to **Service Tax**.

28. According to the Appellant, the Joint Commission did not consider the increase in service tax by 2% at the time of passing of the impugned order and hence should have taken into account the service tax payable by the Appellant to the service providers.

29. We notice from the impugned order that the Appellant proposed various parameters for determination of tariff before the Joint Commission but no component of service tax in the tariff parameters was proposed by the Appellant. The Joint Commission has decided the capital cost and operation and maintenance cost based on the norms adopted by the Central Commission. These are lump sum costs and there is no separate component of service tax. The Appellant is now claiming relief on account of increase in service tax whereas the Appellant itself had not specifically claimed any component of service tax in the Petition before the Joint Commission. The Central Commission's Regulations also do not deal specifically with

the service tax payable by the Generating Company to its service providers. The Appellant has also not given any material to substantiate its claim for increase in service tax.

30. The Joint Commission has passed a reasoned order in determining the capital cost and O&M cost. In view of the above, we are unable to interfere with the impugned order of the Joint Commission.

31. Summary of Our Findings

(a) **The Appellant neither submitted the requisite details in support of its claim for cost of land in its Petition nor provided the particulars in this regard sought by the Joint Commission during the proceedings before it. In the absence of any supporting material from the Appellant, the Joint Commission determined the cost of the land based on the details forwarded by the Electricity Department and also from the information available in the public domain from the Web search. Therefore, we do not find any merit in the contention urged by the Appellant on the issue of cost of land.**

(b) **We do not find any merit in the contention of the Appellant regarding adoption of capacity utilisation factor of 17.5% instead of 19% decided by the Joint**

Commission based on the Central Commission's Regulations, in the absence of any material produced by the Appellant before the Joint Commission or before this Tribunal in support of its contention.

- (c) We do not find any merit in the contention of the Appellant regarding inclusion of the cost of power evacuation infrastructure in the capital cost.**
- (d) There is no infirmity in the order of the Joint Commission regarding repayment period of loan of 12 years in line with the norms adopted by the Central Commission.**
- (e) The Appellant has not been able to substantiate its claim regarding increase in service tax.**

32. In view of the above, the Appeal is dismissed as devoid of any merit. No order as to costs.

33. Pronounced in the Open Court on 12th day of August, 2013.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 12th Aug, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~