

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 208 of 2018 &
IA NO. 958 of 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 26th November, 2018

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

M/s. Godawari Power & Ispat Ltd. Appellant(s)
Having its Regd. Office: 428/2, Phase-1, Industrial Area
Siltara, Dist. Raipur,
Chhattisgarh – 493 111

Versus

1. Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh – 492 001.

**2. Chhattisgarh State Power Distribution
Company Ltd.**
Daganiya, Raipur – 492013

..... Respondents

Counsel for the Appellant (s) : Mr. Raunak Jain
Mr. Vishvendra Tomar

Counsel for the Respondent(s) : Mr. Ravi Sharma for R-1

Mr. Apporv Kurup
Mr. A.C. Boxipatro
Mr. Nidhi Mittal for R-2

The Appellant has sought the following reliefs in Appeal No. 208 of 2018 :

- (a) The Appellant herein questioning the legality and validity of the impugned order dated 08/05/2018 passing Petition No. 33 of 2017 on the file of the Chhattisgarh State Electricity Regulatory Commission, Raipur, presented this Appeal;
- (b) He further sought a direction directing the second Respondent to comply and implement the order dated 30th April, 2016 in SMP NO. 56 of 2015 (M) passed in the State Commission in respect of revised methodology of billing of Parallel of Operation Charges (POC) in the case of appellant w.e.f. 1st May, 2016; and
- (c) Pass such order /further orders which this Tribunal may deem fit on the facts and circumstances of the case in the interest of justice and equity.

The Appellant has presented this appeal for considering the following Questions of Law:

- A. Whether under the facts and circumstances of the case, the impugned order passed by the Ld. State Commission dated 08.05.2018 in Petition No. 33 of 2017 (M) is not erroneous, unjustified, contrary to law and unsustainable in so far as the State Commission has failed to return any findings on the specific issues

- and submissions raised, argued and submitted by the Appellant during the course of proceedings of Petition No. 33 of 2017 (M)?
- B. Whether in the fact and circumstances of the case, the impugned order passed by the Ld. State Commission dated 04.05.2018 in Petition No. 38 of 2016 (M) is not erroneous, unjustified, contrary to law and unsustainable in so far as the Petition No. 09 of 2018 filed by Respondent CSPDCL regarding alleged difficulties in implementation of order dated 30.04.2016 and relied upon by the State Commission in the impugned order, has been filed much after the petition filed by the Appellant and not at all related to the Appellant who has fulfilled all the conditions specified in the Order dated 30.04.2016 and is further entitled to be billed as per new POC methodology?
- C. Whether in the facts and circumstances of the case, the impugned order passed by the Ld. State Commission dated 08.05.2018 relying upon the so-called difficulties expressed by Respondent No. 2 for non-implementation of the Order dated 30.04.2016, is arbitrary, contrary to record and legally unsustainable in view of the fact that Respondent No. 2 had earlier duly participated in the proceedings before the State Commission relating to new methodology POC {SMP No. 56 of 2015(M)} and never raised any alleged difficulties in billing of POC as per new methodology?
- D. Whether in the facts and circumstances of the case, the impugned order passed by the Ld. State Commission dated 08.05.2018 has arbitrarily omitted to consider its own previous Order dated 09.12.2011 in Petition No. 35 of 2011 (M) passed in Appellant's case, under which Respondent No. 2 has confirmed the installation of ABT compliant 15 mins time block KVA recording meters in Appellant's case capable of recording exact generation and

consumption in KVA for every 15 min. time block and testing and sealing of meters by CSPDCL?

- E. Whether the Respondent No. 2 CSPDCL can be permitted to take advantage of its own wrongs in non-implementation of the Order dated 30.04.2016 and whether Appellant can be burdened for the lethargy of the Respondent No. 2 for non-compliance of the new POC methodology?
- F. Whether the State Commission in the impugned order dated 08.05.2018 has allowed the Respondent No. 2 to repeatedly change its stand and impose new conditions on the Appellant to deny the benefit of revised POC as per State Commission's order dated 30.04.2016?
- G. Whether the State Commission in the impugned order dated 08.05.2018 has erroneously and totally omitted to consider that the Respondent No. 2 CSPDCL has charged the fee of Rs.32,51,435/- for the period of August 2012 – February 2017 from the Appellant for testing of meter and metering equipment and monthly meter reading as per Order dated 09.12.2011, and therefore, Respondent No. 2 cannot doubt the said numbers and meter readings obtained by Respondent No. 2 itself for purpose of implementing the new POC methodology?
- H. Whether in the facts and circumstances of the case, the impugned order passed by the Ld. State Commission dated 08.05.2018 in Petition No. 33 of 2017 (M) is not erroneous, unjustified, contrary to law and unsustainable in so far as the State Commission has permitted the Respondent No. 2 to engage in unjust enrichment at the cost of the Appellant who is otherwise entitled to pay almost 50-65% lesser POC based on the revised POC methodology?

- I. Whether in the facts and circumstances of the case, the impugned order passed by the Ld. State Commission dated 08.05.2018 in Petition No. 33 of 2017 (M) is not erroneous, unjustified, contrary to law and unsustainable in so far as the State Commission has failed to consider that the so-called alleged difficulties expressed by the Respondent No.2, are firstly not at all related to the Appellant, and further nothing but based on unfound hyper technicalities so as to delay the implementation of the new POC methodology,
- J. Such other and further questions of law that may arise or required to be considered and decided, in the course of proceedings.

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

The learned counsel, Mr. Raunak Jain, appearing for the Appellant has filed a memo dated 26/11/2018, the same was taken on record.

2. Further, the learned counsel appearing for the Appellant at the outset submitted that this Hon'ble Tribunal without expressing any opinion on the merit of the matter be pleased to dispose off the present appeal, by setting aside the impugned order dated 8/5/2018 and remanding the petition No. 33 of 2017 (M) back to the State Commission for fresh consideration on all the claims and issues raised by the Appellant in Petition No. 33 of 2017 of the present appeal. In the mean

time, the appellant undertake to continue to pay the Parallel of Operation Charges (POC) as per the old methodology subject to orders to be passed by the State Regulatory Commission, Raipur in the interest of justice and equity.

3. **Per contra**, the learned counsel appearing for the Respondent Nos. 1 & 2 inter alia contended and submitted that the instant appeal may be disposed off in the light of the Commission's Order since some of the dues are involved for implementation of the order dated 13th April, 2017 and it does not appear proper to initiate penal action under Section 142 of the Act at this stage against the Respondent/Appellant herein. In the event of such application being filed, the first respondent will consider and pass the appropriate order in accordance with law after affording opportunity of hearing to the appellant and the second respondent afresh. They submitted that the instant Appeal may kindly be disposed off.

4. The submission made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No. 1 & 2 as stated supra are placed on record.

5. The statement made in the Memo on behalf of the Appellant in Appeal No. 208 of 2018 dated 26.11. 2018 reads as under :-

“2. The appeal has been filed inter alia on the grounds that the State Commission without deciding the claims and issues raised by the Appellant in its petition, has simply disposed of the said petition after observing that Respondent No. 1 CSPDCL has filed another subsequent P. No. 9 of 2018, in which they have requested to issue suitable guidelines for installation of complete metering system for billing of POC as per order dated 30.04.2016. Therefore, Appellant may prefer his objections in the said petition filed by CSPDCL. In the meantime, the Appellant would be liable to pay the POC as per old methodology.

3. Since the claims of the Appellant have been left undecided without returning any findings, it is humbly prayed that this Hon'ble Tribunal without expressing any opinion on the merits of the matter, be pleased to dispose of the present appeal, by setting aside the impugned order dated 08.05.2018 and remanding the P. No. 33 of 2017 (M) back to the State Commission for fresh adjudication on all the claims and issues raised by the Appellant in P. No. 33 of 2017 (M) and the present appeal, along with P. No. 9 of 2018 filed by CSPDCL. In the meantime, Appellant undertakes to continue to pay the POC as per old methodology subject to orders passed by the State Commission.”

6. Taking into consideration the submissions of the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 1 & 2 and after careful perusal of the impugned Order passed by the State Regulatory Commission, it would suffice for this Tribunal if an appropriate direction is issued to the Respondent No. 1 for considering the matter afresh and safeguarding the interest of the Appellant and the Respondent No. 2. In view of the statement made and in the light of the statement made in the memo dated 26.11.2018, as stated supra, we are of the considered view that the instant Appeal can

be disposed off passing an appropriate Order for reconsideration afresh by the Respondent No. 1 having regard to the facts and circumstances of the case in hand.

7. The impugned order passed by the first Respondent dated 8/5/2018 in Petition No. 33 of 2017 on the file of the Chhattisgarh State Electricity Regulatory Commission, Raipur is hereby set aside and the matter stands remanded back to the first Respondent for consideration afresh and pass the appropriate order in accordance with law after affording reasonable opportunity for hearing to the Appellant and the second Respondent and dispose off the same as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties before the Chhattisgarh State Electricity Regulatory Commission.

The Appellant and the second Respondent – both, are hereby directed to appear before the Respondent No. 1 / Chhattisgarh State Electricity Regulatory Commission, Raipur personally or through their counsel without notice on 19th December, 2018 at 11:00 AM to collect necessary date of hearing.

With these observations, the instant appeal stands disposed off.

IA NO. 958 of 2018
(for Stay)

8. In view of the disposal of Appeal No. 208 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi, the prayer in this application being IA No. 958 of 2018 does not survive for consideration as having become infructuous.

9. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

Js/pk