

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal no. 35 of 2013 and
Appeal no. 36 of 2013

Dated: 26th February, 2014

Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member

In the matter of:

Appeal no. 35 of 2013

New Swadeshi Sugar Mills
P.O. Narkatiaganj, Dist. West Champaran
Bihar – 845554
Having it's registered office at
Hargaon, District Sitapur
Uttar Pradesh, PIN – 261101

...Appellant (s)

Versus

- 1. Bihar Electricity Regulatory Commission ...Respondent(s)**
Vidyut Bhawan-II, J.L. Nehru Marg,
Bailly Road, Patna-800 021, Bihar
- 2. Bihar State Electricity Board**
Vidyut Bhawan-II, J.L. Nehru Marg,
Patna - 800 021,

Counsel for the Appellant(s):

Mr. Pankaj Bhagat
Mr. Natwar Rai
Mr. Mahesh Agarwal
Mr. Shishir Agarwal

Counsel for the Respondent(s): Mr. Mohit Kumar Shah,
Ms. Shilpi Shah
Mr. Lakshman Bhakta (Rep.)
Ms. Rituraj chaudhary
Ms. Priya Ranjan
Mr. Nitikesh Kumar

Appeal no. 36 of 2013

Bharat Sugar Mills
P.O. Sidhwalia, Dist. Gopalganj
Bihar, PIN - 841423
Having it's registered office at
Seohara, District Bijnor
Uttar Pradesh, PIN – 246746

...Appellant (s)

Versus

- 1. Bihar Electricity Regulatory Commission ...Respondent(s)**
Vidyut Bhawan-II, J.L. Nehru Marg,
Bailly Road, Patna-800 021, Bihar
- 2. Bihar State Electricity Board**
Vidyut Bhawan-II, J.L. Nehru Marg,
Patna - 800 021,

Counsel for the Appellant(s): Mr. Pankaj Bhagat
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Mr. Shishir Agarwal

Counsel for the Respondent(s): Mr. Mohit Kumar Shah,
Ms. Shilpi Shah
Mr. Lakshman Bhakta (Rep.)
Ms. Rituraj chaudhary
Ms. Priya Ranjan
Mr. Nitikesh Kumar

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

These Appeals have been filed against the order dated 30.11.2012 passed by Bihar Electricity Regulatory Commission in case no. 31 of 2012 regarding determination of tariff for biomass based generators and bagasse based cogeneration plants for FY 2012-13 and beyond.

2. The Appellants are sugar mills having cogeneration power plants from which they are supplying electricity to the distribution licensee.
3. The brief facts of the case are as under:
 - i) The Bihar Electricity Regulatory Commission ('State Commission') passed an order in suo motu proceedings no. 2 of 2008 on 21.5.2009 wherein the State

Commission determined the tariff for bagasse based cogeneration plants.

- ii) Aggrieved by the order dated 21.05.2009, review petitions were preferred by some renewable energy generators. The State Commission disposed of these review petitions by order dated 29.6.2013 by allowing revised norms for some of the parameters. The State Commission also reduced the review period or control period of the tariff from 5 years to 2 years that is upto 31.3.2012 and accordingly fixed the variable cost for the existing and the new bagasse cogeneration plants for 2 financial years that is 2010-11 and 2011-12.
- iii) The State Commission initiated a suo motu proceeding being no. 31 of 2012 for determining the tariff of bagasse based co-generation plants for the control period for FY 2012-13 and beyond.

- iv) The State Commission after a public hearing passed the impugned order dated 30.11.2012 in suo motu proceeding no. 31 of 2012 determining the new norms of tariff for the new control period from FY 2012-13 onwards. The State Commission in the impugned order adopted different criteria for calculation of variable cost for the existing and new bagasse based cogeneration plants.
 - v) Aggrieved by the different criteria for calculation of variable cost and financial norms in respect of existing and new plants, the Appellants have filed these Appeals.
4. The issues raised by the Appellants in these Appeals are -
- i) The State Commission has incorrectly adopted and fixed two different variable costs for the existing and new bagasse cogeneration plants for

the same year and for the similarly and identically situated persons.

- ii) The state Commission has adopted two different rates of fuel cost for existing and new cogeneration plants without assigning any reason.
 - iii) The State Commission should have fixed the tariff for the FY 2012-13 from 1.4.2012 and not from the date of the impugned order.
5. The above issues are already covered by the judgment of the Tribunal dated 3.2.2014 in Appeal no. 33 of 2013 where in the same impugned order dated 30.11.2012 was challenged on similar grounds.
6. In the above judgment dated 3.2.2014, the following questions were framed for consideration by this Tribunal:

- “i) Whether the State Commission has erred in determining different variable cost based on different fuel price for the existing and the new bagasse based power plants for the new control period 2012-17?*
- ii) Whether the State Commission is wrong in not allowing a higher Return on Equity as allowed to the new plants in the impugned order to the existing plants whose tariff was determined by earlier orders dated 21.5.2009 and 29.6.2010?*
- iii) Whether the impugned order should have been made applicable from 1.4.2012?”*

7. The findings of the Tribunal in the above judgment are reproduced as under:

“25. Summary of our findings:

- i) In the order dated 29.6.2010, the variable cost was determined for a period of 2 years i.e. 2010-11 and 2011-12 based on the fuel cost of Rs. 1200/- per MT for FY 2010-11 with escalation of 5% per annum whereas the fixed cost was determined for a period of 13 years for the existing plants and new plants to be commissioned during 2010-11 and 2011-12. The total tariffs i.e. sum of fixed & variable cost was also determined for a period of 2 years i.e. 2010-11 (w.e.f. 29.6.2010) and 2011-12, the variable cost for the plants commissioned upto 2011-12 was to be re-determined keeping in view*

the market price of fuel for the new control period from 2012-13 onwards. In the impugned order dated 30.11.2012, the State Commission has wrongly determined variable cost for the existing plants commissioned upto 2011-12 and new plants commissioned in the new control period based on different fuel price. The State Commission should have determined the variable cost for the existing as well as new plants based on the fuel price of Rs. 1583/MT for FY 2012-13 with escalation of 5% per annum as the fuel price for all the plants whether existing or new has to be the same. Accordingly, the variable cost of the existing plants has to be re-determined considering fuel price of Rs. 1583/MT for FY 2012-13 with escalation of 5% per annum and specific fuel consumption and auxiliary consumption as determined in the review order dated 29.6.2010. As the auxiliary consumption and specific fuel consumption as determined in the order dated 29.6.2010 and the impugned order are the same, the variable cost as applicable to the new plants as determined in the impugned order will also be applicable to the existing plants.

- ii) There is no merit in the contention of the appellant for a higher Return on Equity for the existing plants based on the financial norms decided by the State Commission for the new control period of 2012-17 as the fixed cost of existing plants was decided by the State Commission's order dated 29.6.2010 which was not challenged and has become final.*

iii) We do not find any illegality or infirmity in allowing the application of the impugned order prospectively and not retrospectively.

27. The appeal is allowed in part as indicated above and the impugned order is set aside to that extent only. No order as to costs.”

8. The above findings will also apply to the present Appeals. Accordingly decided.

9. The Appeals are allowed in part as indicated above and the impugned order is set aside to that extent. No order as to costs.

10. Pronounced in the open court on this 26th day of February, 2014.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE
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