

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

RP No. 10 of 2013 in
Appeal no. 66 of 2012

Dated: 2nd January, 2014

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

Chhattisgarh State Power Distribution Co. Ltd.,

Vidyut Seva Bhavan,

Danganiya, Raipur-492013, Chhattisgarh

Represented by its Additional Chief Engineer

... **Petitioner/
Appellant**

Versus

1. **Chhattisgarh Biomass Energy Developers Association,**
C-33, 3rd Floor, Ashoka Millennium,
Ring Road No. 1,
Rajendranagar Chowk,
Raipur-492 001
Chhattisgarh

2. **Sudha Agro Oil & Chemical Industries Limited,**
C-33, 3rd Floor, Ashoka Millennium,
Ring Road No. 1,
Rajendranagar Chowk,
Raipur-492 001
Chhattisgarh

3. **Neeraj Power (P) Limited,**
C-33, 3rd Floor, Ashoka Millennium,
Ring Road No. 1, Rajendranagar Chowk,
Raipur-492 001
Chhattisgarh
 4. **Shivalik Power & Steel (P) Limited,**
C-33, 3rd Floor, Ashoka Millennium,
Ring Road No. 1, Rajendranagar Chowk,
Raipur-492 001
Chhattisgarh
 5. **Chhattisgarh State Electricity Regulatory Commission,**
Through its Secretary,
Irrigation Colony, Shanti Nagar,
Raipur-492 001.
 6. **Jindal Steel & Power Ltd.,**
P.B. No. 16, Kbarsia Road,
Raipur-496 110, Chhattisgarh
 7. **Bhilai Steel Plant, Bhilai,**
AGM (TEED), Bhilai Steel Plant,
Bhillai-490001
- ...Respondent(s)**

Counsel for the Appellant(s) : Ms. Suparna Srivastava,
Mr. Arun Bhatnagar
Ms. Shivani Rana

Counsel for the Respondent(s) : Ms. Shikha Ohri for R-1
Ms. Swapna Seshdri for R-5
Ms. Surbhi Sharma
Mr. Anand K. Ganesan
Mr. Matrugupta Mishra

ORDER

The present Review Petition has been filed by the Chhattisgarh State Power Distribution Company Ltd. in Appeal no. 66 of 2012 wherein judgment has been rendered by this Tribunal on 29.4.2013 in the matter of determination of tariff for purchase of electricity by the distribution licensees in Chhattisgarh from biomass based generating plants for FY 2010-11 and subsequent years.

2. According to the Petitioner/Appellant, they had raised an additional ground as regards fixation of limit upto which normal tariff was payable to the biomass power producers, which had been done by the State Commission by adopting different parameters i.e. with reference to schedule and with reference to Plant Load

Factor of the plant. However, during the hearing in the above Appeal, while detailed submissions were made by the Appellant as regards other grounds raised in the Appeal, this ground was not argued, allegedly on the premise that the pleadings itself for this ground were enough to explain the difficulty being faced on account of this ground. No finding on the ground raised in the Additional Affidavit has been rendered by the Tribunal in the judgment dated 29.4.2013 in the above Appeal. As such, an error apparent on the face of the record has crept in the said judgment dated 29.4.2013. Hence, the Petitioner/Appellant has filed the present Review Petition for review of the said judgment dated 29.4.2013.

3. We have heard Ms. Suparna Srivastava, Learned Counsel for the Petitioner and Ms. Shikha Ohri,

Learned Counsel for the Biomass Plant Developers and Ms. Swapna Seshadri, Learned Counsel for the State Commission.

4. According to Ms. Suparna Srivastava Learned Counsel for the Petitioner/Appellant, vide order dated 6.7.2012 this Tribunal during the proceedings in Appeal 66 of 2012 had granted permission to the Petitioner/Appellant for filing additional Affidavit. The Additional Affidavit dated 10.7.2012 was filed by the Petitioner/Appellant raising additional ground in the Appeal with regard to scheduling of power by biomass plant and tariff to be paid for the same during deviations. However, during the course of hearing detailed submissions were made as referred to the various issues raised by the parties, but owing to lengthy argument

advanced on a number of issues, the ground raised in the Additional Affidavit was inadvertently not orally urged though the pleadings substantiating the injury to the Petitioner/Appellant had been placed on record. Considering that written submissions filed in a matter are generally the submissions as per arguments advanced and since the additional ground had inadvertently been omitted to be argued, submissions in respect thereof did not appear in the written submissions of the Petitioner/Appellant. As no finding was given by the Tribunal on the additional ground, an error has crept in, in the judgment dated 29.4.2013 which is required to be corrected. She also filed detailed written submissions with practical example indicating the difficulty experienced due to implementation of the order of the State

Commission showing that the biomass developers despite very low schedule were able to recover full fixed charges in the monthly bills.

5. According to Learned Counsel for the State Commission, the issue raised in the Appeal was never argued and did not form part of the written submissions filed by the distribution licensee and, therefore, there was no question of this being considered in the review. The issue as seen from the written submissions by the Review Petitioner now seems to be under declaration of the capacity by the biomass plants on regular basis and still claiming the fixed charges and the course open to the Review Petitioner/Appellant is to file a petition before the State Commission bringing out the detailed facts regarding practical difficulties arising

- in the implementation of the order of the State Commission and seeking appropriate orders.
6. According to the Learned Counsel for the Chhattisgarh Biomass Energy Developers Association, the Petitioner failed to seek permission of the Tribunal to either amend its Memorandum of Appeal in Appeal no. 66 of 2012 or to argue the issue during the detailed hearing and, therefore, the present review is devoid of any merits. Further, the issue has been decided by the State Commission squarely in accordance with the directions issued by this Tribunal in Appeal no. 20 of 2006.
 7. We have carefully considered the submissions made by the Review Petitioner and the

Respondents. We find that on the prayer of the Learned Counsel for the Review Petitioner/Appellant, this Tribunal by order dated 6.7.2012 had allowed filing of additional affidavit. Accordingly, the additional affidavit seeking leave to raise additional ground was filed by the Review Petitioner/Appellant on 10.7.2012 during the proceedings in the main Appeal. However, the Review Petitioner/Appellant neither sought approval of this Tribunal to amend the Memorandum of Appeal nor argued the matter on merits before this Tribunal. The written submissions also did not mention the issue which has now been raised in this Review Petition. Thus, non-consideration of this issue could not be construed as an apparent error on the face of the record. The State Commission in the impugned

order has also not gone into the issue regarding difficulty being faced by the distribution licensee in monthly billing as a result of implementation of finding of the State Commission in the impugned order.

8. We, however, do not agree with the contention of the Respondents that the issue raised by the Review Petitioner regarding difficulty in implementation of the impugned order of the State Commission has been decided in the judgment rendered by this Tribunal in Appeal no. 20 of 2006.

9. In view of the submissions made by the Learned Counsel for the State Commission, we grant liberty to raise the issue regarding difficulty caused to the Review Petitioner/Appellant in implementation of

the order of the State Commission regarding monthly billing at normal tariff for supply of energy above 70% of the scheduled energy before the State Commission by filing a separate petition and the State Commission shall consider the same on merits.

10. In view of above, the Review Petition is disposed of with the directions as given in the above paragraph.

11. **Pronounced in the open court on this 2nd day of
January, 2014.**

(Rakesh Nath)
Technical Member

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(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

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