

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 256 OF 2018

Dated : 3rd December, 2024

Present : Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL)
Danganiya, Raipur
Chhattisgarh – 492014 ... Appellant

Versus

1. **M/s Shanti GD Ispat & Power Pvt. Ltd.**
Through its Authorised Signatory, Sh. Anup Agrawal
504, Rajiv Gandhi Complex, Kutchery Chowk
Raipur, Chhattisgarh - 492001

2. **Chhattisgarh State Electricity Regulatory Commission (CSERC)**
Through the Secretary,
Irrigation Colony, Shanti Nagar,
Raipur – 492001, Chhattisgarh ... Respondents

Counsel for the Appellant(s) : Apoorv Kurup for App.

Counsel for the Respondent(s) : Raunak Jain
Vishvendra Tomar for Res. 1

Sakesh Kumar
Ritesh Khare
Gitanjali N Sharma for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Order dated 8th May, 2018 passed by Respondent No. 2 – Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “Commission”) has been impugned in this appeal.
2. The Appellant Chhattisgarh State Power Distribution Company Ltd. (in short “CSPDCL”) is one of the successor companies of the erstwhile Chhattisgarh Electricity Board and is responsible for distribution of electricity within its licensed distribution area in the State as well as for procurement of surplus power from various sources.
3. Respondent No. 1 M/s Shanti GD Ispat & Power Pvt. Ltd. is a biomass based power plant at Village – Mouhda, Tahsil – Champa, District- Janjgir with an installed capacity of 15 MW.
4. There is no dispute between the parties with regards to the facts of the case which lie within a narrow compass and are narrated herein below.
5. The Appellant entered into a Power Purchase Agreement (PPA) dated 26th June, 2010 with 1st Respondent for purchase of 13.5 MW firm power @ and as per the conditions mentioned in the order

dated 11th November, 2005 passed by the Commission in Petition No. 07 of 2005 read with orders dated 15/01/2008 & 15/04/2010. The PPA was amended vide agreement dated 26.04.2013 in order to extend the term of agreement from 10 years to 20 years from the commencement of the commercial operation of the power plant.

6. The 2nd Respondent- Commission passed order dated 21st October, 2014 in suo-moto Petition No. 34 of 2014 whereby it fixed the tariff @Rs.4.26 per unit if power supplied is less than 70% of load factor and Rs.6.12 per unit if power supplied is more than 70% of the load factor.

7. By virtue of Clause 3 of the PPA dated 3rd February, 2007 executed between the parties, the Respondent No. 1 was required to intimate 15 days in advance the supply schedule of the month to the Distribution Licensee i.e. the Appellant. The 1st Respondent sent schedule for the month of August, 2015 to the Appellant vide letter dated 10th July, 2015 declaring the scheduled supply to be 70 lakh units. However, vide subsequent letter dated 29th July, 2015, the 1st Respondent sought revision of its supply schedule from 70 lakh units to 20 lakh units. It appears that no response was received by

Respondent No. 1 from the Appellant to the said request for re-schedule of power for the month of August, 2015 and accordingly, it continued to supply power to the Appellant for the entire month.

8. Since the said letter dated 29th July, 2015 was sent by the 1st Respondent to the Appellant just two days prior to the beginning of the month of August, 2015 and thus, was in contravention of Clause 3 of the PPA which mandates a clear 15 days time period for furnishing month-wise power supply schedule, the Appellant treated the power supply by 1st Respondent during the month of August, 2015 as infirm power, it being less than 70% of scheduled electricity of 70 lakh units as communicated vide letter dated 10th July, 2015 by the 1st Respondent and accordingly cleared the invoices of the 1st Respondent at reduced tariff.

9. Feeling aggrieved by the said conduct of the Appellant, the 1st Respondent approached the Commission by way of Petition No. 35 of 2017 seeking following relief :-

- “(a) To direct the respondent to make payment of Rs. 40,94,381/- illegally withheld from the power sale bills of the petitioner for the month of August 2015 towards fixed cost, with interest at rates specified under the PPA for late payment till date of actual release of the fixed cost;*
- (b) To grant costs of the instant litigation on actual basis in favour of the Petitioner, including legal expenses.”*

10. The Petition was allowed by the Commission vide impugned order dated 8th May, 2018 directing the Appellant to accept the revised schedule submitted by the 1st Respondent for the month of August, 2015 with further direction to 1st Respondent to revise the power purchase bill for the said month.

11. The Appellant is now before us in this appeal against the said order of the Commission.

12. We have heard Learned Counsels appearing for the parties and have perused the impugned order as well as entire record.

13. The two main grounds upon which the Appellant is assailing the impugned order of the Commission are :-

(a) The Commission has overlooked the fact that the revised schedule of Respondent No. 1 for the month of August, 2015 was received by the Appellant's concerned office at Raipur only on 3rd August, 2015 i.e. after the commencement of supply period and, therefore, should not have been accepted by the Appellant. It is stated that the 1st Respondent had sent the intimation regarding revision of

schedule wrongly to the Janjgir-Champa office of the Appellant on 29th June, 2015 whereas the concerned office, as mentioned in the PPA also, was at Raipur.

(b) The Commission has failed to consider the explicit text of Clause 3 of the PPA dated 26th June, 2010 which required the Respondent to furnish to the Appellant “a month-wise supply schedule 15 days in advance” and therefore the Appellant has rightly refused to accept the revised schedule.

14. Vide letter dated 10th July, 2015, the 1st Respondent submitted schedule of power for supply of 70 lakh units of power for the month of August, 2015. However, vide subsequent letter dated 29th July, 2015, the 1st Respondent revised the schedule of energy for the said month from 70 lakh units to 20 lakh units due to some major problem in the turbine of the power generator. This letter was addressed to the Appellant at its Janjgir-Champa office and was received in the said office on 31st July, 2015. Intriguingly, the Appellant did not send any response to the said communication dated 29th July, 2015 of the 1st Respondent seeking revision in the schedule of power supply. In case, the revision of the schedule was not as per the terms and conditions

of the PPA and not acceptable to the Appellant, it was not only expected but also required of the Appellant to communicate the non-acceptance to the 1st Respondent immediately. On the contrary, the Appellant continued to receive supply of power from the 1st Respondent during the said month of August, 2015 also without any demur.

15. The contention of the Appellant that the letter dated 29th July, 2015 of the 1st Respondent containing the revised schedule of power was received in the Raipur office on 3rd August, 2015 i.e. after the commencement of power supply for the said month, appears to be doubtful on the face of it. Concededly, the Janjgir-Champa office of the Appellant received the said communication on 31st July, 2015. Why was not it forwarded to the Raipur office immediately on 31st July, 2015 itself is not discernable. In case, Raipur office of the Appellant was the concerned office to deal with revision of schedule of power, the Janjgir-Champa office should have forwarded the communication dated 29th July, 2015 of the 1st Respondent to the Raipur office immediately on that very day. Manifestly, the Janjgir-Champa office of the Appellant has slept over the communication for three complete days and has

forwarded the same to Raipur office on 3rd August, 2015. Therefore, it does not lie in the mouth of the Appellant to say that the revised schedule of power was received from the 1st Respondent belatedly i.e. after the commencement of power supply in the month of August, 2015.

16. Having said so, we find it very pertinent to refer to the reasons given by the 1st Respondent for revision of power supply schedule from 70 lakh units to 20 lakh units for the month of August, 2015. Even though the reasons in detail have not been stated in letter dated 29.07.2015 yet we find the same in the subsequent letter dated 29.10.2015 of the 1st Respondent. These are extracted herein below:-

- “1. Turbine was running at barring gear after tripping and rubbing noise between stationary and rubbing parts was observed.*
- 2. Steam leakages were observed from the HP Gland area.*

It was therefore decided to check the steam path internals by carrying out open inspection of turbine

As per the inputs from M/s Shanti GD, the turbine was running normally till 21.07.2015 at 20:47 hrs, thereafter there was an electrical jerk from the grid indicated by the supervisory panel and turbine tripped. The electrical panel indicator also showed high inlet pressure. After removing the turbine the following observations were noted.

Due to rubbing and hitting of stationary and moving parts :

- a) Rotor trueness found not within acceptable levels after checking*
- b) Rotor HP-gland fins and labyrinth damaged.*
- c) Front and Rear top and bottom gland holder found damaged.*

Based on the above observations Triveni Turbines Ltd. Recommendation M/s SGDIPL to send the rotor and matching parts along with rotor bearings and all damaged parts to its Bangalore works for detailed inspection, repair and high speed balancing to its factory at Bangalore.”

17. The Commission has noted in the impugned order that the 1st Respondent had along with letter dated 29th October, 2015 submitted that the report of engineers of M/s Triveni Turbine Ltd. which affirmed these defects in the turbine of the power generator. It has also been noted by the Commission that the turbine rotor was sent to Bangalore through M/s. VRL Logistics Ltd. in August, 2015 itself for repairs. There is no dispute on behalf of the Appellant with regards to these defects/mal-functioning observed in the turbine rotor.

18. According to the Commission, on account of these defects/damages in the turbine rotor, Force Majeure condition in the PPA is applicable and, therefore, the 1st Respondent could not be penalized for reducing the power supply schedule from 70 lakh units to 20 lakh units in the month of August, 2015.

19. Clause 13 of the PPA is the Force Majeure clause and is extracted hereinbelow :-

“This agreement is subject to force majeure such as rebellion, mutiny, civil unrest, riot, strike, lockout, fire explosion, flood, cyclone, lightening,

earthquake, war or other forces, accident or Act of God or other similar causes beyond control. This also includes the planned shut down or the maintenance of the system of both the parties as may be mutually agreed. Neither party shall be entitled to any claim compensation for damages in the event of forced majeure and tripping of feeder on account of load regulatory measures including under frequency operation.”

20. It is argued on behalf of the Appellant that the Commission has erred in applying Force Majeure clause for the reason that the clause speaks of only planned shut down for the maintenance of the system in circumstances where it is “mutually agreed”. It is submitted that the 1st Respondent never informed the Appellant about such maintenance issues in the power plant in the month of July, 2015 and actually raised this concern very belatedly i.e. in the letter dated 29th October, 2015.

21. In the letter dated 29th July, 2015, the 1st Respondent has very clearly stated that due to major condition of turbine, it will be exporting only 20 lakh units in the month of August, 2015. As we have already noted herein above also, no response, much less any objection or dispute, was received from the Appellant to this communication by the 1st Respondent. In the absence of any such objection/dispute from the side of the Appellant, it can safely be inferred that the Appellant

accepted the damaged condition of the turbine resulting into planned partial shut down or maintenance of the power plant of the 1st Respondent. Thus, the appellant cannot be heard to say now that the shut down/maintenance of the power plant was not mutually agreed as required under Clause 13 of the PPA. In these circumstances, we concur with the observation of the Commission that the Force Majeure condition contained in clause 13 of the PPA applies to the instant case due to which the 1st Respondent cannot be penalized for belated rescheduling of the power supply.

22. Even otherwise also, nothing has been brought to our notice on behalf of the Appellant to suggest that non receipt or late receipt of monthly generation schedule from the power plant of the 1st Respondent had any significant impact on the advance planning of the Appellant. We note that the total capacity of the power plant of 1st Respondent is 15 MW and even if it operates at its full capacity the power supplied by it to the Appellant would be insignificant as compared to the total energy purchased and supplied by the Appellant in its licensed area. In this regard, we find it profitable to refer to the following observations of this Tribunal in judgement dated 20th March,

2014 passed in Appeal No. 9 of 2014 titled as Balaji Power Vs.

Chhattisgarh State Electricity Board :-

*“13. Normally for scheduling of generation, the availability for different time blocks of a day is to be intimated by the generating company to the distribution company one day in advance. The distribution company depending on the anticipated load demand in different time blocks of the day and the merit order of the various generating stations from which it sources power, gives a generating schedule for the next day to the various generating stations. **The advance monthly energy generating programme, as sought in the present case by the distribution licensee, is for broad planning for meeting the energy requirement for the month. We do not feel that non-receipt of advance monthly generation schedule for the Appellant’s power plant as contended by the Respondent No. 1 would have any significant impact on the advance planning of the Respondent No. 1 as the energy injection by the power plant even at its full capacity (8.5 MW) is insignificant compared to the total energy consumption of the licensed area of the Respondent No. 1 which extends the entire State of Chhattisgarh. Even if it is assumed for argument sake that it would have any impact on the planning, the distribution licensee on non-receipt of the schedule should have contacted the Appellant for obtaining the schedule instead of assuming supply at 100% load factor at full capacity. Making an unrealistic assumption of 100% schedule which was also not in the proximity of the schedules given in the previous months would have equally adverse impact on the monthly planning of the distribution licensee. 14. In the circumstances of the case, it would be prudent to assume the generation schedule for the month of August, 2011 as allegedly submitted by the Appellant by letter, dated 13.7.2011, for the purpose of tariff.”***

(Emphasis supplied)

23. The said judgement has also been passed in an appeal involving the Appellant herein and the observations made thereunder, as noted hereinabove, are squarely relevant for the instant appeal also.

24. Hence, in view of the above discussion, the challenge to the impugned order of the Commission fails. We do not find any ground to interfere with the impugned order. The appeal is devoid of any merit and hereby dismissed.

Pronounced in the open court on this 3rd day of December, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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