

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 339 of 2016

Dated : 3rd December, 2024

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

In the matter of:

APPEAL No. 339 OF 2016

Chhattisgarh State Power Distribution Co. Ltd.
Daganiya, Raipur – 492 014
Chhattisgarh

... Appellant

Versus

1. **M/s Seeta Energen Pvt. Ltd. (Formerly Real Power Pvt. Ltd.)**
Shop No. 5003-5007, 5th Floor,
Currency Tower, VIP Chowk, Telibandha,
Raipur, (C.G.), 492001 ... Respondent No. 1
2. **Chhattisgarh Electricity Regulatory Commission**
Irrigation Colony, Shanti Nagar
Raipur, Chhattisgarh, India – 492001 ... Respondent No.

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

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

Ritesh Khare
Sakesh Kumar for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Order dated 18th October, 2016 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 Sita Energen Pvt. Ltd. (formerly known as Real Power Pvt. Ltd.) is a biomass based power plant at Village – Rambode, Block-Patharia, District- Mungeli with an installed capacity of 7.5 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 3rd February, 2007 with 1st Respondent for purchase of 6.5 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. At that time, the 1st Respondent was operating in the name and style of M/s NRI Power and Steel Pvt. Ltd. The PPA was amended vide agreement dated 26th July, 2010 to incorporate the change of name of the 1st Respondent from NRI Power and Steel Private Limited to M/s Real Power Pvt. Ltd. The PPA was further amended vide agreement dated 29.11.2012 in order to extend the term of agreement to 20 years from the commencement of the commercial operation of the power plant. It may be noted here that during the proceedings of this appeal, an application bearing IA No. 374 of 2024 was filed seeking change of name of 1st Respondent to M/s Seeta Energen Pvt. Ltd. which was allowed vide order dated 8th April, 2024.

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.5.59 per unit for renewable energy power plants.

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 June, 2014 vide letter dated 17th May, 2014

declaring the schedule supply to be 30 lakh units. Vide subsequent letter dated 30th May, 2014, the 1st Respondent sought revision of its supply schedule from 30 lakh units to 20 lakh units. Thereafter, the 1st Respondent sent schedule for the month of July, 2014 to the Appellant vide letter dated 20th June, 2014 declaring the scheduled supply to be 35 lakh units. However, vide subsequent letter dated 30th June, 2014, the 1st Respondent sought revision of its supply schedule from 35 lakh units to 30 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 July, 2014. It supplied 24,07,200 units to the Appellant during the said month.

8. Subsequently, when Respondent No. 1 raised commercial invoice for 2407200 units supplied during the month of July, 2014 to the Appellant and sent it to the Appellant vide letter dated 5th August, 2014, the Appellant, vide letter dated 30th August, 2014 asked 1st Respondent to show cause/justification along with the supporting documents for the revision of scheduled energy from 35 lakh to 30 lakh units for the month of July, 2014. The required justification was furnished by the 1st Respondent to the Appellant vide letter dated 2nd September, 2014. It appears that the Appellant was not satisfied with

the justification/reasons furnished by the Respondent No. 1 for rescheduling of the power and it processed the power purchase bill for the month of July, 2014 according to the initial schedule of 35 lakh units. Since the actual power supplied by 1st Respondent to the Appellant during the said month was less than 70% of the scheduled electricity of 35 lakh units, it was considered as non firm power in terms of RE Tariff Regulations, 2012 dated 27th July, 2012 and was paid accordingly at the lesser rate.

9. Feeling aggrieved by the said conduct of the Appellant, the 1st Respondent approached the Commission by way of Petition No. 26 of 2016 seeking following relief :-

- “(a) To direct the Respondent to make the payment of Rs. 32,01,576/- (24,07,200 units x Rs. 1.33) towards fixed cost for power exported in the month of July, 2014 and interest accrued thereon till the date of payment.*
- (b) To direct the Respondent to make the payment towards the filling fees of the instant petition, legal charges incurred towards the instant petition and all other incidental charges incurred by the Petitioner in contesting its claim.”*

10. The Petition was allowed by the Commission vide impugned order dated 15th October, 2016 directing the Appellant to revise the power purchase bills for the month of July, 2014 considering the revised schedule submitted by 1st Respondent vide letter dated 30th June, 2014.

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 July, 2014 was received by the Appellant's concerned office at Raipur only on 1st July, 2014 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 Bilaspur office of the Appellant on 30th June, 2014 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 3rd February, 2007 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. Admittedly, the schedule for the month of July, 2014 was sent by Respondent No. 1 to the Appellant on 20th June, 2014 for 35 lakh units and this letter was addressed to SP(O&M) Bilaspur. A copy of the said letter was also forwarded to CE (Commercial) Raipur. Thereafter, the 1st Respondent addressed letter dated 30th June, 2014 to SP Bilaspur stating that due to unavoidable reasons they are revising the earlier given schedule and they will be supplying only 30 lakh units instead of 35 lakh units in the month of July, 2014. It is not in dispute that this letter was received in the Bilaspur office of the Appellant on 30th June, 2004. The Raipur office of the Appellant is stated to have received copy of the said letter of revised schedule on 1st July, 2014.

15. Intriguingly, the Appellant did not send any response either to the letter dated 20th June, 2014 of the 1st Respondent whereby initial schedule of 35 lakh unit was communicated or to the subsequent letter dated 30th June, 2014 whereby revised schedule of 30 lakh unit was communicated by Respondent No. 1. In case, the revision of 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. It is true that the revised schedule communicated vide

letter dated 30th June, 2014 was not as per Clause 3 of the PPA i.e. 15 days in advance but so was the initial schedule also which was communicated vide letter dated 20th June, 2014. In such a situation, the Appellant should have rejected both the schedules. The Appellant cannot be permitted to chose and accept the initial schedule, which also was not in consonance with the terms of the PPA, to disadvantage of the power generator. Since the supply schedule communicated by the first respondent to the Appellant vide both the letters dated 20/06/2014 & 30/06/2014 was not within the time frame stipulated under the PPA (i.e. 15 days in advance), the Appellant should have rejected both the schedules and considered the schedule of the respondent accepted for the immediately preceding month i.e. June, 2014 which was 20 lakh units. On this aspect, we find it profitable to refer to the observation 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)

16. The said judgement has also been passed in appeal involving the Appellant herein and the observations made therein, as noted herein above, are squarely relevant for the instant appeal also. Nothing has been brought to our notice on behalf of the Appellant to suggest that non-receipt or late receipt of advance monthly generation schedule for the power plant of 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 6.5 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.

17. Moreover, it does not appear that the Appellant had rejected the revised schedule submitted by 1st Respondent vide letter dated 30th June, 2014 on the ground that it was submitted belatedly and not within the time frame as stipulated under the PPA. There is no communication in this regard sent by the Appellant to the 1st Respondent. On the contrary, the Appellant vide letter dated 30th August, 2014 which was in response to the said communication dated 30th June, 2014, asked the 1st Respondent to justify revision of schedule with supporting documents. No where in this letter has it been stated by the Appellant that the revised schedule submitted vide communication dated 30th May, 2024 is not acceptable as it was received in the Raipur office of the Appellant on 1st July, 2014 i.e. after the commencement of supply.

18. The contentions of the Appellant that the letter dated 30th June, 2014 of the 1st Respondent containing the revised schedule of power was received in the Raipur office on 1st July, 2014 is itself also doubtful. Concededly, the Bilaspur office of the Appellant received the said communication on 30th June, 2014 itself. Why did not the Bilaspur office forwarded the said communication to Raipur office immediately on 30th June, 2014 itself is not discernable. In case, Raipur office of the

Appellant was the concerned office to deal with revision of schedule of power, the Bilaspur office should have forwarded the communication dated 30th June, 2014 of 1st Respondent to Raipur office immediately on that very date. Manifestly, the Bilaspur office of the Appellant slept over the communication for one complete day and forwarded the same to the Raipur office the next day i.e. 1st July, 2014. 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 for the month of July, 2014.

19. 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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