

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 148 of 2023

Dated : 15th July, 2025

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

In the matter of:

M/s. Korba Power Limited

Through its Authorized Representative
Mr. Tanmay Vyas (Associate General Manager)
Having its office at,
Flat No. 5A, 5th floor, D. No. 6-3-626/1/601,
Parameshwara, Apartment, Anand Nagar,
Khairatabad, Hyderabad – 500 004, Telangana

Also at Corporate office:

KP Epitome, 4th Floor,
Energy Regulatory and Commercial Group (ERCG)
Adani Power Ltd
Near DAV International School,
Makarba, Ahmedabad – 380 051, Gujarat
Email: anil.sh@adani.com

...Appellant

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Irrigation Colony, Shanti Nagar
Raipur (CG.)
Pin – 492001
Through its Secretary
Tel: 91-771-4073555
Email: cserc.sec.cg@nic.in

2. **M/s Chhattisgarh State Power Trading Company Limited**
Vidyut Sewa Bhawan, Dangania
Raipur, Chhattisgarh
Pin – 492013
Through its Chief Engineer
Tel: 0771 – 2574125
Email: mdtradeco@cspc.co.in;
webadmin@cseb.gov.in
3. **M/s Chhattisgarh State Power Distribution Company Limited**
Vidyut Sewa Bhawan, Dangania
Raipur, Chhattisgarh
Pin – 492013
Through its Chief Engineer
Tel: 0771 – 1912; 1800 – 233 - 4687
Email: eitc@cspc.co.in;
companysecretary@cspc.co.in;
customercare1912@cspc.co.in
- ...Respondents

Counsel for the Appellant(s) : Deepak Khurana
Vineet Tayal
Abhishek Bansal
Nishtha Wadhwa
Bhaskar for App. 1

Counsel for the Respondent(s) : Ritesh Khare for Res. 1
Akshat Shrivastava for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant – M/s Korba Power Limited previously known as (M/s Lanco Amarkantak Power Limited) is aggrieved by the order dated

8th August, 2022 passed by 1st Respondent – Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “the Commission”) thereby determining tariff for the Appellant’s thermal power project having the capacity of 600 MW in District Korba Chhattisgarh for the Financial Year 2011-12 i.e. for the period from 22nd June, 2011 to 31st March, 2012 and Financial Year 2012-13 i.e. for the period from 1st April, 2012 to 1st October, 2013 for the power generated from Unit-II of the said power project. The Appellant is assailing the said tariff order of the Commission to the extent it has granted carrying cost to the Appellant only w.e.f. 3rd October, 2019 for the power supplied by appellant to 2nd Respondent during the Financial Year 2011-12 and also to the extent that carrying cost w.e.f. 3rd October, 2019 has been granted in line with the computation done by the Commission while passing the tariff orders for the state power companies.

2. The Appellant is a generating company within the meaning the said term in Section 2(23) of Electricity Act, 2003 and is operating the 600 MW coal based thermal power project in District Korba comprising two units of 300 MW each. The instant appeal pertains to Unit-II of the plant.

3. The Respondent No. 2 – Chhattisgarh State Power Training Company Limited is a deemed trading licensee and is authorized

representative of Government of Chhattisgarh to execute Power Purchase Agreement (PPA) with the independent power producers as well as to sell the power so contracted on behalf of the Government. The 3rd Respondent Chhattisgarh State Power Distribution Company Ltd. is a Distribution Licensee in the State of Chhattisgarh.

4. In pursuance to a tripartite memorandum of understanding dated 17th September, 2008 and Implementation Agreement dated 1st August, 2009 executed between the Appellant, Government of Chhattisgarh and the 3rd Respondent, Power Purchase Agreement dated 12th January, 2011 was entered into between the Appellant and the 2nd Respondent for supply of 35% power from Unit-II of the Appellant's aforesaid power plant at a tariff to be approved by the Commission.

5. On the basis of the said Implementation Agreement and the PPA, this Tribunal vide order dated 23rd March, 2011 passed in Appeal No. 15 of 2011 had directed the Appellant to supply 35% power to 2nd Respondent and the balance 65% power to Haryana Discoms through PTC. It would be pertinent to state here that the said order of this Tribunal was made absolute vide final order dated 4th November, 2011 passed in the said appeal and was even continued by the Hon'ble Supreme Court vide interim order dated 16th December, 2011 passed in Civil Appeal No.

10239 of 2011. Accordingly, pursuant to the aforesaid order dated 23rd March, 2011 of this Tribunal, the Appellant commenced supply of power to 2nd Respondent from 22nd June, 2011 and continued the supply till 1st October, 2012 when the 2nd Respondent itself stopped scheduling of power from Unit-II of the Appellant's power project.

6. It appears that the 2nd Respondent had decided to release payments to the Appellant at a flat rate of Rs.2.85 per kwh or actual tariff rate whichever was lower. The tariff rate was not acceptable to the Appellant and accordingly it filed petition No. 48 of 2012 before the Commission seeking adjudication of the dispute between it and 2nd Respondent under Section 86(1)(f) of the Electricity Act, 2003. However, the petition came to be rejected by the Commission vide order dated 30th December, 2014 holding that the disputes in relation to tariff could not be resolved without determination of tariff.

7. Accordingly, the Appellant approached the Commission again by way of Petition No. 18 of 2018 under Section 86(1)(a) read with Section 62 and 64(5) of the Electricity Act, 2003 seeking determination of tariff for power already supplied by it to 2nd Respondent from 22nd June, 2011 to 1st October, 2012. The Appellant had also sought carrying cost on the monthly differential amount being the difference between tariff to be

approved and a provisional flat rate at which payments were made by 2nd Respondent to be computed from the date the tariff became due. This petition has been disposed off by the Commission vide impugned order dated 8th August, 2022 thereby determining tariff for the power already supplied by Appellant to 2nd Respondent and also allowing carrying cost only from 3rd October, 2019 at the rate as approved by the Commission in the relevant tariff orders passed in petitions filed by state power companies.

8. We have heard Learned Counsel for the Appellant and the Learned Counsels for Respondents. We have also perused the written submissions filed by the Learned Counsels.

9. Before analyzing the respective submissions made on behalf of the parties, we find it apposite to extract hereunder the relevant portion of impugned order :-

“31. Payment of carrying cost

It is noted that the petitioner's company came up with the dispute before the Commission related to rate of tariff for supply of power by the petitioner to the respondent in petition no. 48 of 2012. The order in this petition was passed on 30 Dec 2014. This petition was dismissed as the tariff was not determined by the Commission.

Subsequent to this the petitioner filed this instant petition for determination of tariff on 19 Jan 2018. However, there was a data gap and the complete data was submitted by petitioner on 03/10/2019. Therefore, petitioner is allowed to recover carrying cost, if any, from 03/10/2019 at the rate as approved by the Commission in the relevant tariff orders passed in petitions filed by State Power Companies and shall be computed in line with the computations done by the Commission while passing the tariff orders for State Power Companies. However, due to delay in filing tariff petition by the petitioner, holding cost, if any, shall be payable from the date it became due at the rate as approved by the Commission in the relevant tariff orders passed in petitions filed by State Power Companies.”

10. The Commission has, thus, disallowed carrying cost to the Appellant prior to 03.10.2019 on the ground of delay in filing the petition for determination of tariff as well as non-supply of complete data along with the petition.

11. It patently appears from the perusal of impugned order that the Commission has not asked the Appellant to explain the delay in filing the tariff petition and has come to conclusion that the petition suffers from

delay, without hearing the parties. Such approach of the Commission is not acceptable. Interestingly, the Commission has noted in paragraph 13 of the impugned order, the objection of the respondent that the petition is barred by limitation. However, it overruled the objection on the ground that bar of limitation does not apply to the Tariff Petition filed under Section 86(1)(a) read with Section 62 of the Electricity Act, 2003 in view of the judgement of the Hon'ble Supreme Court in Andhra Pradesh Power Co-ordination Committee & ors. vs. Lanco Kondapalli Power Ltd. (2016) 3 SCC 468.

12. Despite the same, there is no discussion in the entire impugned order on the reasons for delay in filing the petition by the Appellant. No query appears to have been put to the Appellant on this aspect. Thus, it is clear case where the Appellant has been condemned unheard in violation of basic principle of natural justice "Audi alterum partem" i.e. nobody should be condemned unheard.

13. Further, before denying carrying cost to the Appellant for the period prior to 03.10.2019, the Commission ought to have given a finding that the delay in filing the petition was intentional or solely attributable to the Appellant. The impugned order does not bear any such finding simply for the reason that the Commission did not dwell upon the reasons for

delay in filing the petition. Mere delay in filing the Tariff Petition would not disentitle the Appellant from Carrying cost. It is where the Commission finds the delay intentional, contumacious, inordinate and unexplained that carrying cost from the period of delay would be denied.

14. Now, let us analyze whether the delay on the part of Appellant in filing the tariff petition was such as would disentitle it from carrying cost for the period of delay.

15. We may note that the Appellant had initially approached the Commission by way of petition No. 48/2012 under Section 86(1)(f) of the Electricity Act, 2003 raising a dispute with regards the rate at which the 2nd Respondent was paying tariff to it. The petition came to be dismissed by the Commission vide order dated 30.12.2014 holding that such dispute cannot be resolved without determination of tariff and with observation that “either of the parties had to approach the appropriate Commission for determination of tariff”.

16. It is contended on behalf of the Appellant, which has remained undisputed on behalf of the respondents, that it persisted with the Respondent No. 2 by way of letters dated 01.05.2015, 24.09.2015, 02.06.2016 and 04.04.2017 to get tariff determined by the Commission but no response was received from the Respondents.

17. Ultimately, the Appellant filed the tariff petition No. 18 of 2018 (which has been disposed off vide the impugned order dated 08.08.2022) on 19.01.2018.

18. It appears that in the meanwhile, the Appellant had approached the Haryana Electricity Regulatory Commission (in short “HERC”) for determination of tariff for the 65% of power supplied by Appellant to Haryana Discoms from the same Unit-II of same Korba Thermal Power Plant, which was disposed off by the Commission vide order dated 23.01.2015 determining tariff from the period from 07.05.2011 to March, 2013. The Haryana Commission had assessed the capital cost of Unit-II of the power plant as Rs.1235.58 crores. Feeling dissatisfied, the Appellant impugned the said order of HERC before this Tribunal by way of Appeal No. 117 of 2015.

19. Here it would be pertinent to note that Appellant had supplied 35% of the power from the same Unit-II of the power plant to Respondent No. 2 during the period in question, the capital cost of which was under consideration before this Tribunal in the aforesaid Appeal No. 117 of 2015.

20. The said Appeal No. 117 of 2015 was disposed off by this Tribunal vide order dated 21.03.2018 thereby holding that the capital cost of Unit-

II of the Appellant's power plant assessed by Commission as Rs.1235.28 crores for tariff computation appears to be reasonable and justified.

21. Therefore, even if the Appellant would have filed the tariff petition in the year 2015 (i.e. soon after the dismissal of petition No. 48 of 2012 vide order dated 30.12.2014), the Commission would have deferred its disposal till the decision of this Tribunal in Appeal No. 117 of 2015 regarding the capital cost of the Unit-II of Appellant's power plant which had been determined by HERC and assailed by Appellant before this Tribunal. The Commission would not have been in a position to determine tariff as the determination of capital cost, which is one of the parameters to be considered for determining tariff for a power plant, was sub-judice before this Tribunal in said Appeal No. 117 of 2015. This is evident from the perusal of impugned order itself wherein the Commission has considered the capital cost of the Appellant's power plant (Unit-II) as assessed by HERC and approved by this Tribunal in Appeal No. 117 of 2015. The relevant portion of the impugned order in this regard is extracted herein below :-

“15.1 Capital Cost and Additional Capitalization

Petitioner's Submission

Petitioner has requested the Commission to determine the tariff considering the Capital Cost of ₹ 1235.28 crore as on COD as it reach its finality vide in the Appeal no. 117 of 2015 filed before the Hon'ble APTEL, which has also been approved by the Hon'ble HERC in its order dated 23.01.2015 after a detailed exercise and prudence check on the capital cost against the actual audited capital cost of ₹ 1356.11 crore as on COD for Unit-2.

Respondent's Submission

Respondent submitted that as per clause 14 of the MYT Tariff Regulations, 2010, the capital cost shall be admitted by the Commission after prudence check. However, in the instant case the petitioner has itself computed the capital cost of Unit-2 of its power plant as ₹ 1356.11 cr without providing any adequate data for such calculation, therefore, request of the petitioner regarding considering of ₹ 1356.11 cr should not be considered. Hence, petitioner requested to determine the aforesaid capital cost as MYT Tariff Regulation, 2010.

Commission's View

The petitioner has sold its 65% power to Haryana through PTC. The HERC vide its order dated 23.01.2015 decided the capital cost of project as on COD was ₹ 1235.28 crore. The petitioner challenged

the same before Hon'ble APTEL vide appeal no 117 of 2015. Hon'ble APTEL did not find any infirmity while deciding the capital cost of project, the relevant extract of the order is reproduced below:

“44.4 While taking note of the views indicated in the impugned order of the State Commission, we find that the State Commission has gone through the voluminous data and details submitted by Lanco, Haryana Utilities and the Consultant (E&Y) carefully and has applied prudence check over the same and arrived at the conclusion in the right spirit. The net capital cost of Unit-2 as ₹ 1235.28 crores adopted by the State Commission for tariff computations appears to be quite reasonable and also, comparable with the net capital cost for Unit-1 of LAPL of ₹ 1236.40 crores determined by the Madhya Pradesh Electricity Regulatory Commission in its order dated 27.04.2011. The worked out cost index as ₹ 4.12 crores/MW for 300 MW unit size is considered quite reasonable & attractive in the time frame of 2010-11. Hence, we conclude this issue that the State Commission has applied prudence check on the cost and other associated aspects of the project satisfactorily and undisputable.”

To ascertain the above, Commission has asked petitioner to submit the data related to capital cost of Unit – 2, which was submitted to

HERC. Petitioner submitted the same on 03/03/2022. On prudence check, the details submitted by the petitioner is found in line with capital cost approved by HERC and subsequent upheld by Hon'ble APTEL. Accordingly, Commission has considered the capital Cost of ₹ 1235.28 crore for unit-2 as on COD for computation of tariff."

22. Hence, we are in agreement with the submissions on behalf of the Appellant that there was no unreasonable or unexplained or contumacious delay in filing the tariff petitions so as to disentitle the Appellant from Carrying Cost.

23. Further, the conduct of the 2nd Respondent demonstrates that it also was responsible for delay as it did not cooperate with the Appellant in getting the tariff determined by the Commission despite Appellants several letters in this regard.

24. In so far as data gap i.e. non filing of complete data along with the petition by Appellant, is concerned, we may say that when a petitioner approaches the Commission with a petition for determination of tariff, it files all those documents/data along with petition which, in its opinion, are relevant for the said purpose. It is for the Commission to seek more details/data from a party before it in case it finds some deficiency in the data/documents filed along with the petition. In this case, the

Commission sought some additional information from the Appellant vide letter dated 07.09.2019 (even though the petition had been registered on 23.02.2018 as noted in paragraph no. 9 of the impugned order itself), which was promptly submitted by the appellant on 31.10.2019. Therefore, Appellant can't be held responsible for late submission of additional data as sought by the Commission. The Commission has taken more than 1-1/2 year in vetting the information/data submitted by the Appellant along with petition. In these circumstances, we do not find it justified to deprive the appellant from carrying cost during the said period of time.

25. We may note that payment of "interest" cannot be equated to payment of penalty or fine. "Interest" is normal accretion to money when invested lawfully by the person in whose hands it is. When a person is deprived of the use his money to which he is lawfully entitled, he would have a legitimate claim for interest upon such amount of money for the period during which he was deprived of its use. In other words, any person who has enriched himself by use of the money belonging to some other person, is legally duty bound to compensate the latter by payment of interest on the said money, from the use of which he had been deprived. Payment of interest is a necessary corollary to the return on

money retained by a person unjustly or unlawfully. This has been explained by the Supreme Court succinctly in Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545 by way of the following illustrations: -

“For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. With these observations the impugned judgment is modified and the appeal is disposed of accordingly.”

26. In the instant case, since power was supplied by the Appellant to 2nd Respondent from 22.06.2011 till 01.10.2012, the 2nd Respondent should have made full payment in lieu of the same in the months of October or November, 2012 in terms of the provisions of the PPA in this

regard. Thus, the Appellant was deprived of use of the said amount to which he was lawfully entitled and has a legitimate claim for interest upon such amount for the period during which it has been deprived of its use.

27. In this context, we also find the following observations of the Hon'ble Supreme Court in a recent judgment dated 18.02.2025 in Dr. Purnima Advani and Anr. v. Government of NCT and Anr. Civil Appeal No.2643 of 2025, very material: -

“25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term “restitution” is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. *In Hari Chand v. State of U.P., 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.*

27. *In the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs.54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of*

payment. The appellants relied upon the judgment in the case of South Eastern Coal Field Ltd. v. State of M.P., (2003) 8 SCC 648.

This Court explained the principles of restitution in the case of O.N.G.C. Ltd. (supra) as under:-

“Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. v. Burn Standard Co. Ltd. JT 2006 (11) SC 376.”

28. Thus, where there is an order for restitution by way of return or restoration/payment of some specific money or thing to its rightful owner, the direction to pay interest must follow. It is noteworthy that in the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76 (referred by the Supreme Court in the above noted judgment), the application for payment of interest was filed for the first time before the Supreme Court during the pendency of the appeal, which was entertained and allowed by the Supreme Court.

29. In the case at hand, power was supplied by appellant to 2nd respondent in the year 2011-12 for which only part payment was made by 2nd respondent. The differential amount would be payable to the appellant after long wait of about 13 years during which period it was deprived of the use of such money to which it was lawfully entitled whereas the 2nd respondent has been using it as per its commercial wisdom. Hence, the 2nd respondent is liable to pay the differential amount to the appellant along with carrying cost for the entire period i.e. from the date when it became actually due in favour of the appellant till actual payment by 2nd respondent.

30. Now coming the aspect with regards to rate of carrying cost. The Commission has limited it to the rate as approved by it in the tariff orders passed in petitions filed by the State Power Companies. Intriguingly, the Commission, in its earlier order dated 01.01.2020 in petition no. 41/2017 in respect of the supply of 5% power from the same unit-2 of appellant's power plant during financial years 2016-17 & 2017-18, has allowed carrying cost/holding cost @ 12.80% and 12.60% respectively to the appellant.

31. The Commission has not provided any reason at all for going contrary to its own previous order regarding the same unit-2 of same power plant. Inconsistency shown by the Commission on this aspect is not discernible and can not be approved. Accordingly, in this case also the carrying cost/holding cost ought to have been allowed at the rate at which same were allowed in the order dt. 01.01.2020 in petition no. 41/2017. We see no reason at all in making a departure therefrom.

Conclusion

32. In view of the above discussion, the impugned order of the commission can not be sustained. The same is hereby set-aside to the extent assailed in this appeal. The appeal stands allowed.

33. The appellant is held entitled to carrying cost @ 12.8% from the date when the tariff payable by the 2nd respondent had become due as per the provision of PPA till the date of actual payment by the 2nd respondent.

Pronounced in the open court on this 15th day of July, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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