

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 115 OF 2021

Dated: 27.09.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

RAJASTHAN STATE MINES & MINERALS LTD.,
Through its Manager (Electrical-Project) Shri Vilas Tavera
4, Meera Marg,
Udaipur-313004
(Rajasthan)

Appellant(s)

Versus

1. **JODHPUR VIDYUT VITRAN NIGAM LIMITED (JVVNL)**
Through its Managing Director
New Power House, Industrial Area,
Jodhpur-342003
(Rajasthan)
2. **RAJASTHAN URJA VIKAS NIGAM LTD.**
Through its Managing Director.
Vidhyut Bhawan, Janpath,
Jyothi Nagar,
Jaipur-302005
(Rajasthan)
3. **RAJASTHAN RENEWABLE ENERGY CORPORATION LTD.,**
Through its Managing Director.
E-166, Yudhister Marg, C-Scheme,
Ashok Nagar,
Jaipur-302001
(Rajasthan)
4. **RAJASTHAN ELECTRICITY REGULATORY COMMISSION**
Through its Secretary.
"Vidyut Vinyamak Bhawan",
Near State Motor Garage,
Sahakar Marg,
Jaipur-302005
(Rajasthan)

Respondent(s)

Counsel for the Appellant(s) : Mr. P.N. Bhandari
Mr. Paramhans Sahani

Counsel for the Respondent(s) : Ms. Poorva Saigal
Mr. Shubham Arya
Ms. Richa Singh
Ms. Shikha Sood
Mr. Ravi Nair for R1 & 2

J U D G E M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant herein along with certain others, all renewable energy generators, had approached the Rajasthan Electricity Regulatory Commission (for short, "RERC") by Petitions – no. 1460 of 2019 in the case of the appellant, each raising a dispute for adjudication under Section 86(1)(f) of Electricity Act, 2003, the prime prayer being for extension of the term of the respective Power Purchase Agreements (PPAs) which had been signed with the respondent distribution licensees operating in the State of Rajasthan, under Renewable Energy Certificate (REC) mechanism. Indisputably, the term of the PPA executed by the appellant with the distribution licensees was initially for the period of fifteen months which was extended up to 31.03.2019. In the context of the said prayer, a dispute was also raised as to the capping of the power projects' cost of electricity component to average of pooled cost. The said petitions including that of the appellant herein were disposed of by a common Order dated 22.03.2019 which is assailed by the appeal at hand.

2. The prayer clauses pressed before us in the appeal read as under:

“21. Relief Sought:

...

- (i) May kindly allow the present appeal and set aside the impugned order dated 22.3.2019 in Petition No. 1460/2019, passed by the Id. Commission.*
- (ii) May kindly declare that the Appellant’s PPA in question is valid & operational, as per the Regulations for the next 25 years from the date of execution of PPA.*
- (iii) May kindly declare that no Regulations can have retrospective effect.*
- (iv) May kindly declare the retrospective amendment in the Appellant’s PPA is bad in law.*
- (v) May kindly direct for immediate release of the due amount, which is quite huge and (which has been pending for the last 18 months) and continue payments as per the terms & conditions of PPA.*
- (vi) May kindly direct the respondent Jodhpur Discom to continue procuring electricity generated by the Appellant as per the PPA & continue joint meter reading as has continued until now.*
- (vii) May kindly impose heavy costs upon the Respondent Jodhpur Discom as it has created unprecedented disruption & financial crisis for the Appellant.*
- (viii) May kindly direct respondent Jodhpur Discom to compensate the Appellant for the loss of interest due to non-payment of the due amount.*
- (ix) Any other relief, which the Hon’ble Tribunal deems proper in the interest of justice and fairness.”*

3. It is mentioned in the averment in the appeal itself that prior to filing of the appeal at hand, the appellant had joined certain others in approaching the High Court of Rajasthan invoking its writ jurisdiction, the writ petitions led by Civil Writ no. 17430/2019 being pending before a Division Bench of the High Court. The prayer clauses in the said writ petition read as under:

“Prayer

...

- (a) *May kindly quash and declare ultra vires the amendment dated 5.3.2019 (Annexure-1) in so far as it is made applicable with retrospective effect and in so far as it reduces the tariff as laid down in the petitioner’s PPA dated 18.12.2014.*
- (b) *The Petition may kindly be allowed and stay the order dated 17.9.2018 (Refusing to extend the PPA) till the disposal of this petition and finally quash it, after hearing the concerned parties.*
- (c) *May kindly extend the PIPA for the normal life of petitioner’s generating plant i.e. 25 years from the date of commissioning, as envisaged by Tariff Regulations.*
- (d) *Heavy cost may kindly be allowed to the Petitioner for undue harassment.*
- (e) *Any other relief in favour of the petitioner, which the Hon’ble Court deems fit and proper in the interest of justice and fair play.”*

4. Clearly, there is an overlap. The prayer respecting period of validity of the PPA is parallely pressed before the Writ Court which was approached earlier. Nonetheless, the learned counsel presses the appeal only on the issue of validity.

5. The contention pressed before us by the appeal at hand is that in view of the provisions contained in Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 (for short, “2014 Regulations”), the period of PPA cannot be less than twenty five years. Reliance is placed on Regulation 2(a)(22) and Regulation 6 of the said Regulations, 2014. Reference is also made to ruling of the Supreme Court in *PTC India Limited v. Central Electricity Regulatory Commission* (2010) 4

SCC 603 to contend that since the PPA is not in sync with the aforementioned interpretation of the Regulations, it has to be read as aligned with the Regulation and, therefore, the period of PPA has to be construed as twenty-five years.

6. We do not find any substance in the above submissions. The 2014 Regulations, as have been referred to, only talk of the useful life of a generating station to be twenty five years, same being the prescription for the tariff period *vis-a-vis* wind energy plants. There is nothing in the said Regulations from which it could be inferred that the same must mandatorily be the period for which PPA is to be executed. The PPA was signed by the appellant with open eyes as to the validity period, and its terms bind it as much as the other side.

7. In the above facts and circumstances, we are not inclined to interfere. The appeal is dismissed.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson