

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO.213 OF 2020

Dated: 14.07.2022

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

In the matter of:

TATA POWER DELHI DISTRIBUTION LTD

[Through its Authorised Representative]

Having its Registered office at NDPL
House, Hudson Lines, Kingsway
Camp, New Delhi 110009

..... Appellant(s)

VERSUS

**DELHI ELECTRICITY REGULATORY
COMMISSION**

[Through its Secretary]

Having its Registered office at Viniyamak
Bhawan, Basant Kaur Marg, Block C,
Shivalik Colony, Malviya Nagar,
New Delhi 110016

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Sajan Poovayya, Sr. Adv.
Ms. Raksha Agarwal
Mr. Abhishek Kakkar
Ms. Alviya Ahmed
Ms. Pragya Agarwal
Mr. S. Venkatesh
Mr. Abhishek Nangia
Mr. Ashutosh Kumar Srivastava
Mr. Rishabh Sehgal

Counsel for the Respondent(s) : Mr. Dhananjay Baijal for R-1

J U D G M E N T (Oral)

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

1. The appeal at hand challenges the order dated 27.12.2019 passed by the respondent, Delhi Electricity Regulatory Commission (herein referred to as "the Commission") on Petition No.26/2019 styled as one seeking reliefs in the context of financial exigencies faced by the appellant – Tata Power Delhi Distribution Limited (distribution licensee) - with respect to three gas based stations of National Thermal Power Corporation (NTPC) at Anta, Auraiya and Dadri in the state of Uttar Pradesh. The appellant is aggrieved contending that it has been unjustly denied the Late Payment Surcharge (LPSC) which had been levied by NTPC on the bills raised in respect of power supplied from the abovementioned three gas based power stations for the Financial Year (FY) 2014-15 to FY 2017-2018, the Commission having failed to appreciate and consider the submissions of the appellant vis-à-vis disallowance of rebate by NTPC on early payment of energy bills for the power supply and procurement from the NTPC stations, the same having resulted in under-recovery, questions as to propriety also having been raised with regard to the observations in the impugned order that the appellant ought to have negotiated with NTPC on payment of LPSC.

2. Briefly put, the controversy at hand, has its origin in supplementary PPA that was entered into by the appellant with NTPC on 22.03.2012 whereby the term of procurement from the three gas based stations of the NTPC and from certain others was increased beyond their respective expiry dates in terms of Clause 13.1(A) of the Power Purchase Agreement (PPA) dated 08.05.2008, to the end of useful life of the respective stations as per the tariff orders/regulations framed by CERC or allocations by the Govt. of India. The appellant had continued to draw electricity from the

three stations in question in terms of the supplementary PPA dated 22.03.2012 and made payments there against on the basis of periodical invoices in terms of the original PPA till 12.06.2015 when the Commission by its order disapproved the execution of the supplementary PPA on 22.03.2012 observing that approval of the Commission had not been taken thereupon and consequentially disallowing the power purchase adjustment cost towards three gas based stations in question.

3. The order dated 12.06.2015 was challenged by the appellant by Appeal no.186 of 2015 but the view taken by the Commission was upheld and the appeal dismissed by judgment dated 01.06.2016. The dispute was taken to Hon'ble Supreme Court vide Civil Appeal no. 7362 of 2016 against the decision of this Tribunal by judgment dated 01.06.2016. It may be added here that the Commission passed the tariff order for FY 2015-16 on 29.09.2015 whereby it, *inter alia*, allowed the cost of procurement of power limited to monthly average rate of exchange of northern region. While the Civil Appeal no. 7362 of 2016 was pending before the Hon'ble Supreme Court, similar issues qua similar disallowance of power purchase cost from the three gas based stations of NTPC by other two distribution licensees operating in Delhi viz. BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited (BYPL) were re-agitated before the State Commission by Review Petition nos. 44 & 45 of 2017 in the context of tariff order dated 29.09.2015. The review petitions were accepted by the Commission by its order dated 22.03.2018 allowing power procurement by BRPL and BYPL from the three questioned gas based stations of NTPC for the period FY 2017-18 onwards.

4. On the basis of dispensation in favor of BRPL and BYPL by order dated 22.03.2018 of the Commission, the appellant herein approached it by a petition no.25 of 2018 praying for power purchase cost and associated

cost vis-à-vis the three gas based stations from FY 2017-18 onwards. The petition came to be allowed by order dated 29.06.2018. It may be added that by its tariff order passed on 28.03.2018 on Petition no. 67 of 2017, the Commission following the view taken by it in the case of BRPL and BYPL by order dated 22.03.2018 allowed procurement of power by the appellant herein from the three gas based stations of NTPC based on demand-supply scenario from 2017-18 onwards.

5. Citing the above as subsequent developments, the appellant moved an application (IA No.62763 of 2018) before Hon'ble Supreme Court in Civil Appeal no. 7362 of 2016, reference having been made in the application to the subsequent orders dated 22.03.2018 and 28.03.2018. The prayer for permission to withdraw the Civil Appeal challenging the order dated 01.06.2016 of this Tribunal in Appeal no.186 of 2015 was granted by the Hon'ble Supreme Court with liberty given to the appellant to pursue the matter before the Commission. The proceedings in the Civil Appeal thus came to be closed by order dated 21.05.2018 of the Hon'ble Supreme Court.

6. Having taken the above-said liberty, the appellant filed petition no.34 of 2018 before the Commission seeking allowance of actual cost incurred towards procurement of power from the three gas based stations from FY 2012-13 till FY 2016-17 and its associated cost. It was granted and the reliefs allowed by Commission by order dated 04.07.2018.

7. Since the appellant had suffered on account of denial of rebate and levy of LPSC, it tried to negotiate with NTPC, but no relief having come its way from such efforts, it approached the Commission by Petition no. 26 of 2019 seeking the following reliefs:-

“(a) *Admit the present Petition;*

- (b) *Allow pass through of amounts to the Petitioner on account of denial of Rebate and levy of Late Payment Surcharge by the NTPC in the future Aggregate Revenue Requirement of the Petitioner;*
- (c) *Pass such other orders and/or directions as may be deemed fit and necessary in the interests of justice.”*

8. The said petition has been disallowed by the Commission by its order dated 27.12.2019, the key observations having been recorded as under:-

“25. Vide order dated 29.06.2018, this Commission allowed the power purchase cost and procurement from Anta, Auraiya and Dadri gas based stations for future period i.e. from FY 2017-18, and subsequently vide Order dated 04.07.2018, this Commission allowed the cost of power purchase from FY 2012-13 till FY 2016-17 for power procured from these stations.

26. It is to be understood that this Commission has allowed power procurement from the aforesaid three stations as special case keeping in view the future requirement of the DISCOMs and the other factor i.e. bundled PPA for all stations of NTPC, otherwise the decision of the Commission not allowing power purchase from these stations was also upheld by the Hon’ble Appellate Tribunal.

27. The Petitioner have submitted that NTPC used to first adjust the shortfall of payment related to Anta, Auraiya and Dadri gas stations; and thereafter, the LPSC on the shortfall and Rebate on the balance payment was calculated. Non-payment of bills related to power from these stations may attract LPSC, however, the terms and conditions of PPA are bilateral in nature and can be negotiated between the parties, especially when the power purchase was disallowed by the Regulator. As already stated that power procurement from Anta, Auraiya and Dadri stations has been allowed as a special case and therefore, any consequential relief such as LPSC etc. shall not be admissible. In such a situation, the Petitioner may negotiate with NTPC, the matter of LSC in respect of Anta, Auraiya and Dadri gas stations.

29. Regarding normative Rebate after 29.09.2015 till 31.08.2017, it is understood that in respect of power scheduled from Anta, Auraiya and Dadri gas stations, for non-payment of bills, no Rebate would have been available to the DISCOM. Accordingly, the normative Rebate in respect of these stations was not considered while calculating normative Rebate on the entire power purchase cost. The NTPC for calculating rebate after adjusting methodology of the paid amount firstly towards the pending dues of Anta, Auraiya and Dadri, and on remaining amount after adjusting Anta, Auraiya & Dadri shortfall, calculated the Rebate, ought to have

been contested by the Petitioner with NTPC. As already clarified no normative Rebate in respect of these stations was considered by this Commission, and therefore, no relief can be granted to the Petitioner in this regard.”

9. The prime thrust of arguments of the learned senior counsel for the appellant is that payments could not be made fully during the relevant period on account of inhibition created due to disapproval of the supplementary PPA by the Commission by its order dated 12.06.2015 as later upheld by this Tribunal in appeal by order dated 01.06.2016. It is submitted that since the procurement of power from the three gas based stations beyond the period envisaged in the original PPA has been approved by subsequent orders of the Commission, it is unjust and unfair to burden the appellant with the cost incurred by it on account of denial of rebate and levy of LPSC due to contrary view taken by the Commission in the previous dispensation.

10. After some hearing, the learned counsel submitted that since the submissions in favour of the prayer made in the petition which has been disposed of by the impugned order have not been properly projected or comprehended, he may be given a liberty to approach the Commission by a review petition, the appellant reserving the contentions to be re-agitated by fresh appeal should it not succeed in review.

11. Learned counsel for the Commission submitted he does not have anything to say on the prayer for liberty as is being sought.

12. We grant liberty to the appellant to approach the Commission by a review petition hoping and trusting that the Commission will bear in mind the entire chronology of events wherein by subsequent dispensation it has

moved away from its view that the extension of the period of procurement by supplementary PPA was inappropriate.

13. The appellant will be obliged to approach the Commission in terms of the liberty granted within a period of 30 days from today.

14. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson