

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO.275 OF 2021

Dated: 17.11.2022

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

In the matter of:

**HARYANA POWER GENERATION
CORPORATION LTD.**

*Through: Chief Engineer/
Planning-cum Regulatory*

Urja Bhawan, C-7, Sector – 6,
Panchkula,
Haryana – 134109

... Appellant(s)

VERSUS

**1. HARYANA ELECTRICITY REGULATORY
COMMISSION**

Through its Secretary

Sector 4, Panchkula
Haryana - 134112

2. HARYANA POWER PURCHASE CENTRE

Through: Chief Engineer

Shakti Bhawan, Sector – 6,
Panchkula
Haryana - 134109

... Respondent(s)

Counsel for the Appellant (s) : Mr.Tabrez Malawat
Mr. Sayad Hamza
Mr. Sourajit Sarkar

Counsel for the Respondent (s) : Mr. Samir Malik
Ms. Nikita Choukse for R-2

J U D G M E N T (Oral)

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

1. The appellant had approached the *Haryana Electricity Regulatory Commission* (“the State Commission”) by petition (no. HERC/PRO-3/2021) seeking intervention under Section 86(1)(c)(e)&(f) read with Section 42 of Electricity Act, 2003, and Regulations 64 & 65 of Conduct of Business Regulations, 2019 for directions to the procurers represented by second respondent – *Haryana Power Purchase Centre* to pay to the appellant (“generator”), the cost of generation loss in 1X10 MW solar power project plant due to frequent tripping of 33kv evacuation lines owned by *Uttar Haryana Bijli Vitran Nigam Ltd.* (whose cause is represented by second respondent herein). The said petition was dismissed by order dated 08.07.2021 which is under challenge by the appeal at hand.

2. We note that when the matter had come up before the State Commission on 07.07.2021, a request was made for it to be adjourned *sine die* since the appellant wanted to first have some resolution of the dispute issued before a Coordination Committee of the Managing Directors of the power utilities operating in the State in terms of a decision of the Additional Chief Secretary (Power) of the Govt. of Haryana. This request was rejected by the Commission and the prayers examined but relief declined.

3. We find some merit in the grievance expressed before us that having declined the prayer for adjournment of the matter *sine die*, the Commission ought to have afforded a proper hearing to the appellant before taking a decision on the dispute brought before it for adjudication. Be that as it may, we have also examined the reasons which have been set out in the impugned order to decline the relief. What stands out from the said discourse, appearing essentially in Para 5 of the impugned order, is that the Commission has not examined the contention of the appellant with particular reference to Article 10.1 of the *Power Purchase Agreement* (“PPA”) binding the parties, the said provision reading thus:

“10.1 The Buyer is the sole operator of the Transmission Facilities and Buyer assumes all responsibilities, liabilities and risk of loss with respect to the Transmission Facilities”.

4. In the above facts and circumstances, upon being asked, the learned counsel for the respondent Commission fairly conceded that it would be appropriate that the matter is remitted to the State Commission for fresh consideration, also in light of the above quoted clause of the PPA.

5. We adopt this course, and in this view, we refrain from making any comments either way on the contentions of the parties before us.

6. The impugned order is set aside and the matter is remitted to the State Commission for fresh consideration and decision in accordance with law.

Needless to add, the State Commission will not feel bound or be influenced by the views expressed by the order earlier passed.

7. The appeal is disposed of in above terms.

Pronounced in open court on this 17th Day of November, 2022

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson