

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,  
NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 36 OF 2020**

Dated: **29.07.2022**

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

In the matter of:

**RDM CARE (INDIA) PVT. LTD.**

2/12, West Patel Nagar,  
New Delhi-110008

... Appellant(s)

**VERSUS**

**1. MADHYA PRADESH ELECTRICITY REGULATORY  
COMMISSION**

Through its Secretary  
5<sup>th</sup> Floor, Metro Plaza,  
E-5, Arera colony, Bittan Market,  
Bhopal – 462016

**2. M.P. POWER MANAGEMENT COMPANY LTD.**

Through its Chairman and Managing Director  
Shakti Bhawan, Vidyut Nagar,  
Jabalpur – 482 008

... Respondents

Counsel for the Appellant(s) : Ms. Swapna Seshadri  
Mr. Anand K. Ganesan

Counsel for the Respondent(s) : Mr. Shri Venkatesh  
Mr. V.M. Kannan  
Ms. Isnain Muzamil for R-1

Mr. Nitin Gaur  
Ms. Anuradha Mishra 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 has established, operates and maintains 1.2 MW biogas-based power project in the State of Madhya Pradesh, described as unique, one of its own kind, using cow dung and a mix to the extent of 10% of fruit and vegetable waste as the fuel. It had approached the State Commission by Petition (no. 7 of 2014) seeking project specific tariff determination. The State Commission declined to proceed on those lines and decided that it shall determine the tariff by generic order for all such projects. The Commission, thereafter, issued an approach paper, being no. SMP 27/2014, for fixation of norms for determination of tariff for procurement of power from biogas-based power projects. The appellant participated in the proceedings taken out in its wake which culminated in tariff order being issued on 05.02.2015 it having been applied to all the new and existing biogas based projects. The appellant was aggrieved on denial of certain reliefs and brought unsuccessfully a challenge by review petition which was disposed of on 30.04.2015. By appeal no. 327 of 2017 against the Order dated 05.02.2015, certain issues were raised before this Tribunal, two of which survive *viz. capital cost and ratio of fuel mix*. The appeal (no. 327 of 2017) was disposed of by this Tribunal by judgment dated 18.04.2018 remanding the matter

back to the Commission for fresh consideration on the said two issues. The Commission, thereafter, heard the parties and passed the Order dated 05.02.2019, the appellant, being again aggrieved, having filed the appeal at hand.

**2.** On the question of capital cost, the views of the Commission, as articulated in Tariff Order dated 05.02.2015, read thus:

*“Capital Cost:*

*Commission’s views*

*As brought out earlier, the project cost varies on account of various factors including location of the project, rating of the units, total capacity, technology, designed capacity utilization factor etc. and therefore, a reasonable project cost needs to be considered on a uniform basis for tariff determination.*

*6.4 The Commission observed that diverse views were expressed by various stakeholders including licensees. However, item wise cost data has not been submitted by any of the project developers/licensees to substantiate their proposed capital cost. Keeping in view the various data available with the Commission, the Commission is of the view that it would be reasonable to adopt a capital cost of Rs. 9.25 Crores per MW net of subsidy and including cost associated with power evacuation system from the project site to nearest sub-station of distribution/transmission licensee.”*

**3.** This Tribunal by judgment dated 18.04.2018 in Appeal no. 327 of 2017 held thus:

*“Capital Cost:*

*Our Findings:*

*9.3 We have gone through the detailed submissions of the Appellant and the Respondents and find that the cost analysis has been done by the State Commission only on the basis of DPR cost of the project submitted to MNRE for consideration of subsidy/CFA.*

*MNRE while conveying its sanction for a subsidy of Rs. 3.6 crores did not render any observation on the project cost. Accordingly, it has been presumed that DPR cost is the final cost and also bears the approval of MNRE. The Appellant has indicated that it has incurred an expenditure of Rs. 15.88 crores on the project and taking into account the subsidy granted by MNRE, the net capital cost works out to Rs. 12.28 crores. It is an admitted fact that the project costs estimated in the DPR are based on the broad parameters of planning, engineering, procurement, execution, etc. but the final completed costs are generally found to be, by and large, different from the DPR costs. Similar is the case for the instant bio-gas plant. Even in the conventional projects like thermal, hydro and gas based projects, the completed cost is generally found to be more than the DPR stage cost. Keeping this aspect in view, we opine that the State Commission could have*

*applied its prudence check over the total expenditures incurred on the project by the Appellant and arrived at per MW cost accordingly for tariff computations. We also find that the generic tariff granted to the Appellant at Rs. 3.4 per unit is considered to be quite low as compared to the similar projects in other parts of the country and also the generic tariff for biogas plant provided by CERC in its tariff order dated 31.03.2015 for the FY 2015-16. As such, the cost/tariff fixation of the plant by the State Commission needs to be reviewed in the interest of justice and equity.*

*9.15 In view of our findings and analysis brought out at supra, out of the four issues, the decision of the State Commission on issues 'B' and 'D' are just and proper. The issues 'A' and 'C' would however, need to be examined*

*afresh taking into account our above findings. Hence, the Appeal is partly allowed to the extent of issues relating to the 'project cost' and 'fuel mix'. On other two issues viz. 'fuel cost' and 'manure cost', we do not feel any necessity interfere in the findings of the State Commission."*

4. The Commission, by the Order dated 05.02.2019, which is now impugned, has held thus:

*"Capital Cost:*

*"17. With regard to the capital cost of the project, the Commission has noted that the CERC in its Regulations, 2009 issued on 17.09.2009 has not specified norms for determination of Biogas based power projects with cow manure as a key feedstock. However, for the first time, the CERC issued on 06.92.2012 norms for such projects in its Regulations, 2012 after considering comments from various stakeholders and the capital subsidy from MNRE. As such, these norms were applicable for the projects commissioned on 06.02.2012 or thereafter. The Capital cost as considered by the Central Commission for FY 2012-13 to 2018-19 is given below:*

*...*

*18. The plant of the respondent no.1 was commissioned on 25.08.2011. Considering the indexation formula as specified by CERC in its Regulations, 2012, the net Capital Cost for the FY 2011-12 shall even be less than Rs. 7.75 Crs. /MW for determination of tariff. However, the Commission in the impugned order had considered the net capital cost at Rs. 8.5 Crore/MW for the projects commissioned before 05.02.2015. Also, this Commission had considered the Capital Cost (inclusive of power evacuation cost minus subsidy) at Rs. 9.25 Cr/MW in the Tariff order for procurement of power from biogas based new power projects issued on 05.02.2015 as against Rs. 885.064 Lakh/MW considered by the Central Commission for FY 2015-16.*

19. *In the impugned tariff order dated 05.02.2015, the Commission had considered the capital cost for the existing power plant based on the Detailed Project Report submitted by the respondent no.1 and considered by the MNRE for grant of subsidy. Considering the same and after adding expenditure towards infrastructure, the Commission had determined the generic tariff. Normally, almost all the State Commissions are determining generic tariff for the projects based on Renewable Sources of energy and project specific tariff for the projects based on conventional sources of energy. Therefore, actual expenditure incurred in the projects based on conventional sources of energy subject to prudence check is considered for a specific project and in such cases the tariffs for various projects are different in a particular State even for the same conventional source of energy. This is not the case with generic tariff for the projects based on Renewable Sources of Energy, wherein the tariff is same for a particular source of energy viz. Wind, Solar etc. Further, in its written submission dated 31.12.2018, the respondent no.1 specifically mentioned that "Our approach is for generic tariff determination", which clearly indicates that the respondent no.1 does not want for a project specific tariff. Project specific tariff needs thorough prudent check and various cost data.*

26. *In view of the above facts and circumstances and limitation of the remand case, the issue of revision of capital cost was considered and no new ground was found to revise the Capital Cost in the impugned tariff order dated 05.02.2015. The matter of 'Fuel Mix' is decided in para 23 of this order. Hence, SMP No. 27/2014 stands disposed of."*

**5.** Something similar has prayed out on the second issue of fuel mix.

In the original order dated 05.02.2015, the Commission has recorded its views on the subject as under:

*“Fuel Mix:*

*Commission’s views*

*6.24 The Commission has considered the suggestions from the stakeholders. The Commission also considered the fact that there is no necessity of mixing the vegetables & fruits waste with the Cow Dung to use as a fuel for such types of projects. These projects can very well perform by using only Cow Dung as a fuel.*

*The Commission has, therefore, decided that it would be appropriate to consider the cost of fuel at Rs. 175 per MT for the purpose of determination of tariff. Also, an escalation in fuel price at the rate of 5 % per annum on base price for all the projects may be allowed.”*

**6.** This Tribunal, by judgment dated 18.04.2018, remanding the matter for reconsideration, observed as under:

*“Fuel Mix:*

*Our Findings:*

*9.10 We have gone through the contentions of the Appellant as well as*

*the Respondents and noted that the State Commission has concluded in the Impugned Order that there is no necessity of mixing the fruits and vegetables waste with the cow dung to use as a fuel for such types of projects. These projects can be very well performed by using only cow dung as a fuel. The same views have been reiterated by the State Commission in its Review Order dated 30.04.2015. The reference waste to energy plant is a single/unique plant in the State of Madhya Pradesh where the technology has been brought from Holland and said to have been technically designed to run on 90:10 fuel mix basis. It is further stated by the Appellant that 10% fruits and vegetables waste is required to be mixed with the cow dung because it leads to formation of methane which is essential for running of the plant. While the findings of the*

*Commission in the Impugned Order could be considered as prima facie, the actual facts in this regard can be ascertained only through the Original Equipment Manufacturer (OEM) or by conducting a scientific study.*

*Thus, it ought to have been ascertained by the State Commission based on the above before arriving at a final conclusion which could also be referred for the future biogas plants in the State. It is, therefore, just and appropriate that the matter of the fuel mix is got examined on its technical applicability so as to arrive at a reasonably justified conclusion.*

*9.15 In view of our findings and analysis brought out at supra, out of the four issues, the decision of the State Commission on issues 'B' and 'D' are just and proper. The issues 'A' and 'C' would however, need to be examined afresh taking into account our above findings. Hence, the Appeal is partly allowed to the extent of issues relating to the 'project cost' and 'fuel mix'. On other two issues viz. 'fuel cost' and 'manure cost', we do not feel any necessity to interfere in the findings of the State Commission.*

7. The Commission, by its fresh Order dated 05.02.2019, has recorded thus:

*"Fuel Mix:*

*21. With regard to fuel mix the Commission has noted that as per MNRE Programme Guidelines on Energy from Urban, Industrial and Agricultural Wastes / Residues, the mixing of other wastes of renewable nature, including rice husk, bagasse, sewage, cow dung, other biomass and industrial effluents (excluding distillery effluents) is permissible up to the extent of 10 %; and the said mixing is allowed in " Projects based on any bio waste from Urban waste (cattle dung. Vegetable & fruits market, Slaughter*



house, Poultry waste etc.), Agricultural Waste (paddy straw, agro processing industries residues/ effluents, green grass etc.), Industrial wastes/Effluents (Agro processing industry, Paper & Pulp Industry, Milk processing, Sugar Industry etc.) (excluding bagasse)." Hence, in the power projects based on cattle dung, mixing of cow dung with any of the other urban waste as indicated above can be done and on which it can very well run Moreover, in a submission of the respondent no 1 dated 04.06.2018, it has been stated that for the plant installed by the respondent no. 1 the methane content prescribed is 45% to 65% as per Original Equipment Manufacturer (OEM) specifications and if only cow dung is used it would be difficult to achieve 45% methane content for all the time, which would result in achieving less than 80% of PLF However, since the Commission has issued a generic tariff order and the respondent no. 1 itself has stated during the course of the hearings and also in its written submissions for determination of the generic tariff, the contentions of the respondent no. 1 with regard to the OEM specifications for fuel mix is relevant for project specific tariff only.

23. In this situation, the Commission is of the opinion that since the cost of fuel is fixed, the operator of the plant is at his liberty to use the fuel mix based on the availability of fuel or for the efficiency of the plant. Therefore, the cow dung may be mixed with any other improving waste (including vegetable waste) as per the requirement and economics of cost.

26. In view of the above facts and circumstances and limitation of the remand case, the issue of revision of capital cost was considered and no new ground was found to revise the Capital Cost in the impugned tariff order dated 05.02.2015. The matter of 'Fuel Mix' is decided in para 23 of this order. Hence, SMP No. 27/2014 stands disposed of."

**8.** Having perused the material on record and the series of orders passed on the subject by the Commission and this Tribunal, we find the fundamental error committed by the Commission in treating the order of remand by judgment dated 18.04.2018 as an order for review. In the process, certain crucial observations recorded by this Tribunal in judgment dated 18.04.2018 seem to have escaped the notice of the Commission resulting in the scrutiny undertaken in the remand proceedings limited and palpably erroneous.

**9.** In the above facts and circumstances, we had asked on 28.07.2022 the learned counsel for the Commission to take instructions as to whether the Commission is inclined to revisit these two issues. The learned counsel, upon instructions, submits at the hearing today that the Commission is ready to revisit the matter. It appears the second respondent M.P. Power Management Company Limited is opposed to the contentions being urged by the appellant and also seeks to be heard. The learned counsel for the appellant, on questions in such regard being raised, clarified that though all necessary material for prudence check on the first issue had already been submitted; the appellant is ready and inclined to cooperate by sharing such further material as may be required by the Commission for necessary scrutiny.

**10.** In above facts and circumstances, while reserving the right of all stakeholders, including the second respondent herein to be heard, we set aside the impugned decision dated 05.02.2019 and remit the two issues mentioned above for fresh decision by the Commission. Needless to add the issues have plagued the relationship of the parties too long and there has to be a sense of urgency and, therefore, we would direct the Commission to render its fresh decision at the earliest, preferably within three months of the date of this judgment.

**11.** Ordered accordingly.

**12.** The appeal is disposed of in above terms.

**(Sandesh Kumar Sharma)**  
Technical Member

*vt/mkj*

**(Justice R.K. Gauba)**  
Officiating Chairperson