

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT-II

APPEAL NO. 73 OF 2022
AND
APPEAL NO. 392 OF 2022

Dated: 17.10.2022

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

APPEAL NO. 73 OF 2022

In the matter of:

BAITARANI POWER PROJECT PRIVATE LIMITED
35, Nandagiri Hills, Jubilee Hills,
Hyderabad – 500 038, Telangana

.... Appellant (s)

VERSUS

1 ODISHA ELECTRICITY REGULATORY COMMISSION
Through its Secretary
Bidyut Niyamak Bhawan,
Plot No. 4, Chunokoli, Sailashree Vihar
Bhubaneswar – 751021, Odisha

2 GRIDCO LTD.
Through its Managing Director
Janpath, Bhubaneswar – 751022, Odisha

3 DEPARTMENT OF ENERGY
GOVERNMENT OF ODISHA
Through the Engineer-in-Chief (Electricity) cum-
Principal Chief Electrical Inspector
2nd Floor, Kharavel Bhawan
Gopabandhu Marg, Keshari Nagar
Bhubaneswar – 751 001, Odisha

Respondents

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

Counsel for the Respondent (s) : Mr. Rutwik Panda
Ms. Nikhar Berry
Ms. Anshu Malik for R-1/OERC

Mr. R.K. Mehta
Ms. Himanshi Andley for R-2

Mr. Shashank Bajpai
Mr. Utsav Saxena for R-3

APPEAL NO. 392 OF 2022

In the matter of:

GRIDCO LTD.
Through its Managing Director
Janpath, Bhubaneswar – 751022, Odisha

.... Appellant (s)

VERSUS

1 ODISHA ELECTRICITY REGULATORY COMMISSION
Through its Secretary
Bidyut Niyamak Bhawan,
Plot No. 4, Chunokoli, Sailashree Vihar
Bhubaneswar – 751021, Odisha

2 BAITARANI POWER PROJECT PRIVATE LIMITED
Through its Managing Director
35, Nandagiri Hills, Jubilee Hills,
Hyderabad – 500 038, Telangana

3 THE PRINCIPAL SECRETARY TO GOVERNMENT
Department of Energy,
Government of Odisha
Bhubaneswar – 751 001, Odisha

4. THROUGH THE ENGINEER-IN-CHIEF (ELECTRICITY)
CUM-PRINCIPAL CHIEF ELECTRICAL INSPECTOR
Department of Energy, Government of Odisha
Unit No. 5, Power House,
Square, Vidyut Marg,
Bhubaneswar – 751 001, Odisha

Respondents

Counsel for the Appellant (s) : Mr. R.K. Mehta
Ms. Himanshi Andley

Counsel for the Respondent (s) : Mr. Rutwik Panda
Ms. Anshu Malik
Ms. Nikhar Berry for R-1/OERC

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Amal Nair for R-2

Mr. Shashank Bajpai
Mr. Utsav Saxena for R-3

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

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

1. The respondent, *Odisha Electricity Regulatory Commission* ("State Commission") has passed the impugned Order on 15.01.2022 on application (Case no. 88 of 2020) of the appellant in the first captioned matter, a Small Hydro Project (SHP) for project specific tariff of 24 MW SHP based on clause 10 of Order dated 16.02.2019 of the State Commission in Case no. 46 of 2018 for finalization of tariff of RE sources for the third control period 2018-19 to 2020-21. Both the generators (M/s. Baitarani Power Project Private Limited) as also the procurer (GRIDCO Ltd.) are in appeal feeling aggrieved against the said decision.

2. As per the observations in para 26 of the impugned order, the levelized tariff for a period of 35 years has been computed as Rs. 5.99/kWh and for 40 years at Rs. 6/kWh. It appears that the procurer had objected to any determination beyond the generic tariff determined by the *Central Electricity Regulatory Commission* ("CERC") at Rs. 5.71 per unit. This objection was accepted by the State Commission by observations in para 27 and on that basis the tariff has been determined at Rs. 5.71/per KWH, it being made effective from 01.02.2022 for energy supplied to GRIDCO, there being nothing in the impugned Order to indicate as to on what basis such effective date (01.02.2022) has been picked up, this being the cause of grievance of the generator.

3. As observed above, both parties have serious reservations about the correctness and the propriety of the impugned Order. They agree that since contentions on the basis of which the present appeals have been filed though raised have not been properly considered by the State Commission, it would be appropriate, to also have the benefit of the views of the Commission, to remit the matter for a fresh decision.

4. The learned counsel for the generator (M/s. Baitarani) argued that the tariff order has to be made effective from the date of commissioning (COD). She, however, submitted that as a provisional measure the tariff rate of Rs. 5.71/ kWh as has been determined by the Commission may be treated as a provisional order and made effective from the date of COD (29.08.2020). The learned counsel for GRIDCO agreed that such interim arrangement may be put in position as is being requested till the Commission determines afresh the tariff under the remit. We order accordingly.

5. We note here that during the course of exercise for tariff determination, the Commission had statedly appointed a consultant whose report was before the Commission at the time of the impugned Order being passed. It is the grievance of the generator that some of the aspects on which the consultant had made recommendations having either been glossed over or totally ignored without any proper justification. Though the learned counsel for the State Commission has his own answer to these contentions, we reserve any comment on this aspect at this stage. We would only say that

while revisiting the question of tariff, the Commission will consider such report, assisted by the learned counsel for both sides, and take appropriate view thereupon, and if there is any recommendation not to be accepted, the Commission will give proper reasons for dissociation from such views.

6. For the above reasons, the impugned order is set aside and the matter is remitted to the Commission for fresh adjudication. The provisional tariff as is being put in position in terms of above shall be subject to adjustment after the Commission has rendered its final decision afresh.

7. We hope and trust that the Commission will undertake the exercise pursuant to remit expeditiously and take the fresh decision at an early date, preferably within a period of four months from today.

8. The appeals are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 17TH DAY OF OCTOBER, 2022.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson