

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)
APPEAL NO.83 OF 2022**

Dated: 06.10.2022

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

In the matter of:

UTTAR HARYANA BIJLI VITRAN NIGAM (UHBVN)

Vidyut Sadan,

Plot No. C-16, Sector-6

Panchkula

Haryana-134 112

Appellant(s)

Versus

1. **HARYANA ELECTRICITY REGULATORY COMMISSION**

Through its Secretary

Bays 33-36, Sector-4,

Panchkula-134112, Haryana

2. **M/S CHANDERPUR RENEWAL POWER CO. PVT. LTD & ANR.**

Through its GM

Sohna, Hema Majra Road, Mulana,

Ambala-133003 Haryana

3. **HARYANA VIDYUT PRASARAN NIGAM LINTIED (HVPNL)**

Through its Managing Director

Shakti Bhawan, Sector-6,

Panchkula-134109, Haryana

Respondent(s)

Counsel for the Appellant(s) : Mr. Samir Malik
Ms. Nikita Choukse
Mr. Tanishq Sirohi

Counsel for the Respondent(s) : Mr. Nalin Kohli
Mr. Aastik Dhingra for R-1

Mr. A. Hussain
Mr. Kamil Khan for R-2

Mr. Aditya Singh 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 second respondent i.e. *M/s Chanderpur Renewal Power Co. Pvt. Ltd.* had statedly setup a 1 MW Biomass based Captive Power Plant (CPP) at District Ambala (Haryana), as a Research & Development (R&D) Project of the Government of India with active support from certain agencies including *Haryana Renewable Energy Development Agency (HAREDA)*, *Ministry of New and Renewable Energy (MNRE)* and *Indian Renewable Energy Development Agency (IREDA)*, supplementing the power requirements of its industrial units, they being its embedded consumers. On its Petition (Case no. HERC/PRO-41 of 2019), resisted by the appellant – *Uttar Haryana Bijli Vitran Nigam (UHBVN)* and third respondent i.e. *Haryana Vidyut Prasaran Nigam Limited (HVPNL)*, the first respondent – *Haryana Electricity Regulatory Commission* (herein after referred to variously as, 'HERC' or 'State Commission' or 'Commission'), by its Order dated 11.03.2020, has issued direction to the appellant to refund the distribution wheeling charges deducted from the bills of the second respondent (generator) from January, 2019 onwards within the period specified (15 days) or in default, to suffer additional liability to pay interest @ 12% p.a. The said direction has been issued by the State Commission in exercise of powers vested in it by virtue of Clauses 55 & 59 of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and

open access for intra-State transmission and distribution system) Regulations, 2012 (for short, 'OA Regulations'). Feeling aggrieved, the order is challenged by the appeal at hand under Section 111 of Electricity Act, 2003.

2. *The Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017* ('RE Regulations') notified on 24.07.2018, by Regulation 60, specifically exempts captive solar power projects from levy of transmission and wheeling charges. The captive generating power plants are entitled to exemption from additional surcharge and cross subsidy surcharge as per Regulations 21 & 22 of OA Regulations. Indisputably, in terms of the Long-Term Open Access (LTOA) agreement executed between the parties, the generator is obliged to pay transmission and distribution wheeling charges.

3. The generator had argued before the State Commission that the basic purpose of it having set up the project was to demonstrate the process of gassification of biomass and to popularize the technology for the common benefit of rural masses and for in the interest of overall national environment but due to the exorbitant levy of charges, it had been facing perpetual loss and had been forced to shut-down its plant for certain period, this being also detrimental to the larger public interest. It, thus, pressed for relief against

the burden of distribution wheeling charges, invoking the regulatory powers of the Commission in terms of Regulations 55 & 59 of OA Regulations which read thus:

“55. Saving of inherent powers of the commission. - Nothing contained in these regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of the matter or in public interest or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these regulations.

...

59. Power of relaxation. - The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these regulations.”

4. The Commission has accepted the contentions of the generator by the impugned order and observed, *inter alia*, as under:

“...

The Commission observes that polythene and burning of paddy straw is the menace for the environment. The project of the Petitioner was set up as a demonstration project to demonstrate the generation of electricity by using all bio-degradable products viz. Municipal Solid Waste, Wheat/Paddy Straw and even Polythene, thereby addressing the environmental issues arising from their burning/non-disposal, which is otherwise creating health hazard in the State and NCR. This will demonstrate the method of using the waste material, which is becoming a big nuisance for the country as a whole, and generate power for economic development of the country. The Commission is of the considered opinion that it is the duty of the society to ensure the survival of power plant set up by the Petitioner, so that others are also encouraged to set up more and more such type of projects. Hence the project deserves support from all quarters so that this venture survives. The Commission notes with concern that the power plant of the Petitioner is shut down since January, 2019, causing loss not only to the Petitioner but also detrimental to the larger public interest. Accordingly, the Commission answers the issue framed in affirmative i.e. the power plant of the Petitioner is unique warranting the grant of some sort of special dispensations, in public interest.

...

The Commission observes that Regulation clause no. 55 of HERC OA Regulations, empowers the Commission to adopt a procedure which is at variance with any of the provisions of these Regulations, in special circumstances. Further, Regulation clause no. 59 of HERC OA Regulations, empower the Commission to relax any of the provisions of these Regulations in public interest. Accordingly, the Commission answers the issue framed in affirmative i.e. the Commission is empowered under Regulation clause nos. 55 & 59 of HERC OA Regulations to relax the provisions of these Regulations, in public interest and for reasons to be recorded in writing.

...

Nevertheless, as observed in the preceding paras, the power plant of the Petitioner is unique using all bio-degradable products viz. Municipal Solid Waste, Wheat/Paddy Straw and even Polythene as fuel, warranting the grant of special dispensation in public interest, which has already been shut down due to financial unviability caused by levy of distribution wheeling charges w.e.f. January, 2019. Accordingly, in exercise of the powers vested under Regulation Clause nos. 55 & 59 of HERC OA Regulations, the Commission exempt the Petitioner from the levy of distribution wheeling charges, in larger public interest, subject to the condition that 75% of the fuel used by it shall be wheat/paddy straw, polythene or municipal solid waste. The Respondent No. 1 i.e. UHBVNL is directed to refund the distribution wheeling charges already deducted from the bills of the Petitioner, since January, 2019 within 15 days from the date of receipt of this Order, failing which they shall be liable to pay interest @ 12% p.a.

...”

5. The appellant argues that the approach of the State Commission is bad in law for the reasons ‘*the power to relax*’ cannot be exercised so as to amend the regulation or substitute with a new regulation, it being not unfettered but qualified by certain requirements including that it must be exercised ‘*in exceptional cases*’ and not ‘*arbitrarily*’ but for reasons and with circumspection consistent with principles of justice, equity and good conscience and not so as to amend the Regulations. It is the contention of the appellant that the only relief available in OA Regulations is in the nature

of exemption from payment of additional surcharge and cross-subsidy surcharge, the relief from payment of transmission or wheeling charges being a subject governed by RE Regulations which can be availed by solar PV power plants but not the other RE power plants including biomass based power plants.

6. We do not find any substance in the appeal. The approach of the State Commission cannot be construed as substitution of extant regulations with new regulation. It is not a scenario where the State Commission has arbitrarily availed of its power to relax. The reasons, particularly of public interest, are set out in the impugned order. In these circumstances we are not inclined to interfere with the exercise of directions vested in the Commission by the Regulations.

7. For the foregoing reasons, the appeal is dismissed. However, the appellant will be entitled to enlarged time of fifteen (15) days from today for compliance with directions in the impugned order.

PRONOUNCED IN THE OPEN COURT ON THIS 06TH DAY OF
OCTOBER, 2022

(Sandesh Kumar Sharma)
Technical Member

pr/mkj

(Justice R.K. Gauba)
Officiating Chairperson