

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 294 OF 2016

Dated : 30th May, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

- 1. Sakthi Sugars Limited**
No.72, Mount Road,
Guindy, Chennai – 600 032

 - 2. Tamil Nadu Newsprint and Papers Limited**
No.67, Mount Road,
Guindy, Chennai – 600 032
- ...APPELLANTS**

Versus

- 1. The Tamil Nadu Electricity Board/TANGEDCO**
Represented by its Chairman
No.144, Anna Salai,
Chennai – 600 002

 - 2. Tamil Nadu Electricity Regulatory Commission**
TIDCO Office Building,
No.19-A, Rukmani Lakshmipathy Salai,
Marshalls Road, Egmore,
Chennai – 600 008
- ...RESPONDENTS**

Counsel for the Appellant(s) : Anand K. Ganesan
Rahul Balaji for App. 1
Anand K. Ganesan
Rahul Balaji for App. 2

Counsel for the Respondent(s) : Anusha Nagarajan for Res.1
Sethu Ramalingam for Res.2

JUDGEMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellants are aggrieved by the order dated 29th July, 2016 passed by 2nd Respondent – Tamil Nadu State Electricity Regulatory Commission in P.P.A.P. No. 1 of 2011 whereby the Commission has refused to determine the tariff for an identified and separate category of power generators in the State of Tamil Nadu who have a barter arrangement with Tamil Nadu News Print and Papers Limited (2nd Appellant) and fixing of purchase price for the power supplied to TANGEDCO grid from the 1st Appellant's power plant.

2. The 1st Appellant – M/s. Sakthi Sugars Limited (in short "SSL") owns and operates a 35 MW bagasse based co-generation plant at Sivagangal District in Tamil Nadu which is adjoining their TPD Sugar Mill. The plant was commissioned on 1st February, 2008. SSL entered into an Energy Purchase Agreement with the TANGEDCO in line with 2nd Respondent Commission's order No. 3 of 2009 for supplying surplus power to 1st Respondent's grid.

3. The 2nd Appellant – M/s Tamil Nadu Newsprint and Papers Limited (in short “TNPL”) was promoted by the Government of Tamil Nadu in the year 1979 for manufacture of newsprint and printing/writing paper using bagasse as primary raw material. Since its inception, it has been using bagasse, a sugarcane residue, as main raw material for manufacturing of newsprint, printing and writing paper.

4. The 1st Appellant – SSL entered into a barter agreement with 2nd Appellant – TNPL for supply of bagasse for production of paper at TNPL in exchange of coal for generation of power in its cogeneration plants. After entering into the said barter agreement, the 1st Appellant-SSL approached the 1st Respondent TANGEDCO by way of letter dated 2nd December, 2010 for fixing of tariff. However, TANGEDCO advised the 1st Appellant to approach the Commission for fixing of tariff. Accordingly, the Appellant filed a petition before the 2nd Respondent Commission under Section 62 read with Section 86(1)(b) of the Electricity, Act, 2003 for separate categorization of power plants which are supplying bagasse fibre to TNPL and for fixing of purchase price for power supplied to the 1st Respondent by the 1st Appellant using coal in

place of bagasse in view of the tie-up arrangement with the 2nd Appellant TNPL.

5. Vide interim order dated 2nd March, 2011, the Commission had ordered payment of Rs. 3.01 per unit by TANGEDCO for the power supplied to it by 1st Appellant. However, subsequently, the Commission disposed of the petition vide impugned order dated 2nd March, 2011 holding that the supply of electricity to the 1st Respondent from the 1st Appellant's bagasse based generating plant shall be classified as supply of electricity by a generating company and entire such power supplied during the period in question shall be considered as infirm power. Accordingly, tariff for the power supplied by 1st Appellant from its plant to the 1st Respondent during March, 2011 to August 2014 (6,07,86,690 units) was fixed at 90% of UI rate linked to frequency with floor rate of Rs.2.10/- unit and a ceiling rate of Rs.4.08 per unit.

6. It was argued by the Learned Counsel for the Appellant that the Commission has erred in holding that the power supplied by 1st Appellant to 1st Respondent shall be treated as infirm power. He argued that even if, as held by the Commission in the impugned order, the generic tariff determined by the Commission is not applicable to the

power plant of Appellant No. 1, in that case also, the Commission ought to have determined the tariff for the same by applying the principles underlined in Sections 61 & 62 of the Electricity Act, 2003. According to the Ld. Counsel, the Commission should not even avoided the statutory mandate in this regard. He argued that the direction given by the Commission in the impugned order to the effect that the power supplied by 1st Appellant to 1st Respondent to be treated as infirm power and providing tariff for it accordingly, cannot be sustained.

7. On behalf of the 1st Respondent – TANGEDCO, it is argued that the findings of the impugned order to the extent that the 1st Appellant cannot claim to be entitled to Tariff under Tariff Order No. 3 of 2006 and Tariff Order No. 4 of 2006 do not suffer from any infirmity. At the same time it is candidly conceded that the Commission should have proceeded to determine tariff for the power plant of Appellant No. 1 upon considering the requisite parameters envisaged under Sections 61 & 62 of the Electricity Act, 2003.

8. Learned Counsel for the 2nd Respondent-Commission also submitted that the Commission is willing to consider the matter again for determination of tariff for the power plant of Appellant No. 1.

9. Having regard to the grounds raised by the Appellants in the appeal and taking note of the submissions of Learned Counsels appearing for the parties, we feel it expedient in the interests of justice to remit the matter back to the Commission for fresh hearing to determine appropriate tariff for the power plant of Appellant No. 1.

10. Accordingly, the impugned order of the Commission is hereby set aside. The matter is remanded back to the 2nd Respondent Commission for a fresh hearing for determination of appropriate tariff for the power plant, of Appellant No. 1.

11. The appeal stands disposed of accordingly.

Pronounced in the open court on this 30th day of May, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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