

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 323 OF 2016

Dated: 30.05.2024

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

In the matter of:

**CHHATTISGARH STATE POWER
DISTRIBUTION COMPANY LTD,**

Daganiya, Raipur – 492013

Through its Executive Director (Commercial)

... Appellant

Versus

1. M/S. BALAJI POWER

(A unit of Hira Ferro Alloys Limited)

Registered Office: Plot No. 567-B, 568 & 553-B,

Urla Industrial Complex,

Raipur, Chhattisgarh – 492003

Through its Authorized Signatory

**2. CHHATTISGARH STATE RENEWABLE
ENERGY DEVELOPMENT AGENCY (CREDA)**

2nd Floor, CSERC Building,

Shanti Nagar, Raipur, Chhattisgarh – 492001

Through its Chief Executive Officer

**3. CHHATTISGARH STATE ELECTRICITY
REGULATORY COMMISSION**

Irrigation Colony, Shanti Nagar,

Raipur, Chhattisgarh – 492001

Through its Secretary

... Respondent(s)

Counsel on record for the Appellant(s) : Pradeep Misra

Counsel on record for the Respondent(s) : Raunak Jain for Res. 1

Garima Jain for Res. 2

Sapan Kumar Mishra for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The order dated 20.09.2016 passed by 3rd respondent *Chhattisgarh State Electricity Regulatory Commission* (in short "CSERC"), whereby the Commission has held that the power plant of 1st respondent M/s Balaji Power qualifies as biomass based renewable generating plant for the year 2013-14 and thus entitled to preferential generic tariff determined by the Commission, is under challenge in this appeal.

2. The appellant *Chhattisgarh State Power Distribution Company Limited* (in short "CSPDCL" is responsible for distribution of electricity in licensees' distribution area in the State of Chhattisgarh. The 2nd respondent Chhattisgarh State Renewable Energy Development Agency (in short "CREDA") has been constituted as a society under the Department of Energy, Government of Chhattisgarh and is a nodal agency of the State for promotion of renewable energy.

3. The 1st respondent *M/s Balaji Power* is a biomass power plant having capacity of 8.5MW. It was earlier named as *M/s Shivalik Power and Steel Private Limited* and had entered into a Power Purchase Agreement (PPA) with CSPDCL on 12.05.2006 for supply of entire 8.5MW firm power. The

power plant is located at *Mahasamund* in the State of Chhattisgarh. Subsequently, the power plant was acquired by *M/s Hira Ferro Alloys Limited* in April 2011 and a Supplementary PPA dated 14.10.2011 was executed between it and CSPDCL.

4. The Government of India had issued an order dated 21.07.2003 wherein it was stated that the biomass renewable energy plants will consume the fuel in the ratio of 75:25 i.e. 75% biomass and 25% coal or fossil fuel.

5. The power plant of 1st respondent was registered under the said order dated 21.07.2003 and achieved commercial operation on 23.12.2006.

6. The Government of India issued another order dated 26.12.2006 whereby use of fossil fuel was reduced to 15% on calorific value basis.

7. The 3rd respondent Commission determined the generic tariff for procurement of power from biomass based generating projects in petition no.7/2005 vide order dated 11.11.2005. Some of the developers assailed the said order before this Tribunal by way of appeal No.20/2006 which was partly allowed by this Tribunal vide order dated 07.09.2006 thereby setting aside some portion of the said order of the Commission and remitted the matter back to the Commission for fresh consideration. The said order of this Tribunal was assailed by the Chhattisgarh Electricity Board (predecessor in interest of the appellant herein) before Hon'ble Supreme Court by Civil Appeal No.12/2007 which came to be dismissed vide order dated 15.01.2007.

8. Consequently, after remand, the Commission heard the matter again and passed order dated 15.01.2008 whereby it provided generic tariff separately for power plants commissioned under the order dated 21.07.2003

having fuel mix ratio as 75% biomass and 25% coal and also for the power plants commissioned under the order dated 26.12.2006 having fuel mix ratio of 85% biomass and 15% coal.

9. In the annual fuel consumption report submitted by the 1st respondent for the year 2013-14 to 2nd respondent CREDA the total husk/biomass consumption during the said year was stated to be 59,854 metric ton (MT) having average GCV (Gross Calorific Value) of 3066 and total coal / dolochar consumption as 30,655.400 MT having average GCV of 1591. When the aforesaid values in weight are multiplied by their respective calorific values, the ratio of biomass to fossil fuel consumption by the 1st respondent came to be 79.07%:20.93%.

10. On the basis of the above report of the 1st respondent, the Commission wrote a letter dated 01.12.2014 to the 1st respondent stating therein that the power plant has failed to fulfil the requisite fuel mix ratio for the Financial Year (FY) 2013-14, and therefore, the power supplied by it to CSPDCL shall be treated as supply of power from a normal power plant. The Commission also directed the appellant to withdraw the benefits granted to the appellant in view of its biomass power plant status. Accordingly, the entitlement of 1st respondent for the preferential tariff was annulled by the Commission by way of the said letter.

11. Vide letter dated 20.03.2015, the appellant informed the 1st respondent that its power sale bill for the FY 2013-14 shall be revised and supply from its plant shall be treated as supply of power from a normal thermal power plant and accordingly the amount paid in excess shall be adjusted in forthcoming bills. In response thereto the 1st respondent sent a letter dated 27.03.2015 to the appellant contending that its fuel consumption is as per

the guidelines of the Commission but it did not evoke any further response from the appellant. Thereafter the appellant issued a revised bill dated 21.05.2015 in the name of 1st respondent for the FY 2013-14 at average pooled power purchase cost with a notice for payment of Rs.13,86,91,794/- within 30 days failing which the same was to be adjusted in accordance with clause 42.3 of RE Regulations, 2012.

12. Being aggrieved by the actions of the appellant, as noted hereinabove, the 1st respondent approached the 3rd respondent Commission by way of miscellaneous petition No.45/2015 seeking following reliefs:

- a. Set-aside / amend the letter vide No.1897 dated 01.12.2014 issued by the Commission to the effect of declaring that the petitioner confirms to Fuel Mix ratio requirement and is thus eligible for the benefit of preferential tariff.*
- b. Quash the effect and operation of letter vide No.4291 dated 20.03.2015 issued by the respondent no.2 (CSPDCL).*
- c. Direct the respondent No.2 to not initiate any action with regard to revision of power sale bills for FY 2013-14.”*

13. The Commission disposed of the petition vide the impugned order dated 20.09.2016 holding that the power plant of the 1st respondent qualified as biomass based renewable generating plant in the year 2013-14 and therefore is entitled to preferential generic tariff decided by the Commission.

14. It is argued on behalf of the appellant CSPDCL that fuel mix ratio in a biomass power plant can be considered either on weight or on kilocalorie

basis. It is pointed out that the appellant's plant was commissioned on 23.12.2006 and had been set up under the order dated 21.07.2003 of the Government of India which provided that biomass renewable energy plant will consume the fuel in the ratio of 75:25 i.e. 75% biomass and 25% coal or fossil fuel. It is submitted that the said order dated 21.07.2003 nowhere mentions that the said ratio of biomass and fossil fuel has to be on kilocalorie basis. It is submitted that the Government of India, in subsequent order dated 26.12.2006 introduced the measuring unit as kilocalorie by providing that maximum of up to 15% use of fossil fuel of the total energy consumption in kilocalories for eligibility in this scheme. It is argued that since the appellants plant was commissioned before the issuance of the said order by the Government of India, same is not applicable to it and therefore, the appellant was required to consume the fuel in the ratio of 75:25 on weight basis, which it has failed to maintain and therefore, the Commission has grossly erred in holding the 1st respondent entitled to preferential generic tariff for the year 2013-2014.

15. On behalf of 1st respondent, it is argued that appeal is not maintainable for the reason that the appellant itself had conceded before the Commission that fuel mix compliance has to be in kilocalorie basis and not on weight basis. Even otherwise also, it is argued that the order issued by the Government of India in the year 2003 under which the power plant of 1st respondent was registered and commissioned does not specify whether the 25% permissible fossil fuel is on weight basis or calorific value basis whereas the subsequent order issued in the year 2006 clarifies the position by stating that the ratio has to be maintained as per calorific value basis, and therefore, the 25% permissible fossil fuel mix specified under the 2003 order is also necessarily to be reckoned on the basis of calorific value i.e. kilo

calorie basis for the reason that there cannot be two distinct specifications in this regard – one biomass generator required to maintain fuel with ratio of 75:25 on weight basis whereas the other biomass generator required to maintain fuel mix ratio of 85:15 on kilocalorie basis.

16. Learned counsel for 3rd respondent Commission also supported the impugned order in entirety by adopting the submissions made on behalf of 1st respondent and refuting the submissions made on behalf of the appellant.

17. We have considered the rival submissions made on behalf of the parties by their respective learned counsels and have also gone through the impugned order as well as written submissions filed on behalf of appellant, 1st respondent and the 3rd respondent.

18. At the outset, we find it pertinent to reproduce paragraph no.42 of the impugned order hereunder:-

“42. On examining submissions of petitioner and both respondents it is observed that there is consensus that fuel mix compliance had to be in kcal basis. The respondent CREDA submitted that the petitioner has fulfilled the requirement of yearly fuel mix ratio i.e. 75:25 in terms of Calories (K.Cal.) in the year 2013-14. Whereas according to respondent CSPDCL, petitioner had to fulfill requirement of fuel mix ratio of 85:15 as per the Regulations. This is the first point of dispute raised by CSPDCL.”

(Emphasis supplied)

19. Thus, it is amply clear that all the parties to the dispute including the appellant herein were *ad-idem* before the Commission regarding the fact that

fuel mix compliance in a biomass power plant has to be on kilocalorie basis. The appellant has not challenged the said observation of the Commission contained in the impugned order. It is neither stated anywhere in the written submissions filed on behalf of the appellant nor was it pointed out by appellant's counsel during oral submissions that the appellant had not conceded before the Commission that fuel mix ratio has to be always in kilocalorie basis. Hence, the controversy on this aspect stands settled between the parties by consensus and the same is not open to challenge in this appeal.

20. Now, the only issue which arises for consideration is whether the 1st respondent was required to maintain the fuel mix ratio of 75:25 or 85:15.

21. We may note that clause 4 of the PPA dated 12.05.2006 executed between the appellant and 1st respondent provides that the power purchase rate, other charges and conditions shall be applicable as incorporated in the Commission's order dated 11.11.2005 and amended from time to time. As already noted hereinabove, the order dated 11.11.2005 of the Commission had been assailed before this Tribunal by way of appeal No.20/2006 which was partly allowed vide order dated 07.09.2006 and the case was remitted back to the Commission for fresh consideration. The appeal carried to the Supreme Court again said order dated 07.09.2006 by the appellant herein was dismissed on 15.01.2007. Thereafter, the Commission heard the parties again and passed a fresh order dated 15.01.2008 provided generic tariff separately for the plants commissioned under the order dated 21.07.2003 having fuel mix ration of 75%: 25% and for the plants commissioned under the subsequent order dated 26.12.2006 having fuel mix ratio of 85%:15%. Relevant portion of the order is reproduced hereunder:-

“Computation of Tariff

XXXX

8. Fuel Cost:

a) For biomass plants using 75% biomass and 25% coal as a fuel:

The cost of biomass has been considered as Rs.850 per MT and the landed cost of coal has been considered as Rs. 1200 per MT. By considering 75% of fuel as biomass and the balance 25% fuel as coal, the weighted average cost of fuel comes out to be Rs.937 per MT. For the purpose of determination of tariff the weighted average fuel cost has been considered as Rs.937 per MT for the base year 2005-06.

b) For biomass plants using 85% biomass and 15% coal as a fuel:

The cost of biomass has been considered as Rs.937 per MT and the landed cost of coal has been considered as Rs. 1323 per MT. By considering 85% of fuel as biomass and the balance 15% fuel as coal, the weighted average cost of fuel comes out to be Rs.995 per MT. For the purpose of determination of tariff the weighted average fuel cost has been considered as Rs.995 per MT for base year 2007-08.

22. In the tables A2 and A3 of the annexure attached to the said order, the Commission has specified the energy charges for the fuel mix ratio of 75:25 as well as 85:15 while considering the average GCV of the fuel i.e. coal and rice husk.

23. In the subsequent order dated 28.12.2011 passed by the Commission in petition number 22/2011 determining the energy charges by biomass-based power plant for the FY 2010-11 onwards, the Commission again recognized the two different fuel mixes prevailing under the regimes prescribed by Ministry of New and Renewable Energy (MNRE). It would be apposite to quote Paragraph No.3 of the said order hereunder:-

“3. In the order dated January 15, 2008, the Commission determined the tariff for biomass-based power generating plants / projects on the following lines.

(1) Fixed charges from first year to tenth year of operation.

(2) Energy (Variable) charges.

a. For fuel mix of 75:25, energy charges from financial year 2005-06 to 2014-15.

b. For fuel mix of 85:15, energy charges from financial year 2007-08 to 2014-15.”

24. The said order dated 28.12.2011 clearly prescribes fuel mix ratio of 75:25 for the FY 2005-06 to 2014-15 which covers the appellant's power plant also as it was commissioned on 23.12.2006.

25. We may note here that various orders / guidelines were issued by Ministry of New and Renewable Energy, Government of India, from time to

time specifying the permissible fuel mix ratios to be maintained by the biomass power plants. The guidelines / orders issued in the year 2003 and 2005 permit the fuel mix ratio of 75%:25% whereas the order / guideline issued in the year 2006 permits use of maximum 15% fossil fuel thereby envisaging fuel mix ratio of 85%:15%.

26. Since the power plant of 1st respondent was registered and commissioned under the order / guideline issued in the year 2003 on 21.07.2003 which permitted the fuel mix ratio of 75%:25%, it is covered under the said order and is required to maintain the same fuel ratio.

27. We may also note here that the 3rd respondent Commission has issued Regulations dated 27.07.2012 titled as Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of Generic Tariff and Related Matters for Electricity Generated by Plants based on Renewable Energy Sources) Regulations, 2012.

28. Regulation 41.1 of these Regulations provides that the use of fossil fuel shall be on kilocalorie basis of the total fuel consumption on annual basis as per relevant MNRE guidelines, which is presently 15%. The use of word “relevant” in the said regulation would indicate that the biomass power developers are required to maintain the fuel mix ratio according to the scheme / guidelines / order of the MNRE, Government of India, under which they have been registered and commissioned. At the cost of repetition, we would again note here that the power plant of 1st respondent was registered and commissioned under the order / guideline dated 21.07.2003, and therefore, the fuel mix ratio envisaged under the said order i.e. 75:25 is applicable.

29. It is no longer in dispute that the 1st respondent had duly fulfilled the requirement of yearly fuel mix ratio i.e. 75:25 in terms of kilocalorie in the year 2013-14 also, which is the period of dispute in the instant appeal. The 2nd respondent CREDA, which is a State agency, had provided a report with regards to the fuel mix consumption in the power plant of 1st respondent according to which the plant qualified as renewable energy power plant. It is manifest from the perusal of the impugned order of the commission (Para 39) that during the proceedings of the petition, at the request of the appellant CSPDCL, an enquiry was conducted to ascertain the facts of the report submitted by CREDA and the enquiry officer also concluded that the power plant of 1st respondent fulfilled the requirements of renewable energy based status by using conventional fuel within the prescribed limit of 75:25.

30. Hence, considering the discussion hereinabove, we do not find any error or infirmity in the impugned order of the Commission. The appeal is devoid of any merit and is hereby dismissed.

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

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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