

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 182 OF 2015

Dated: **04.07.2022**

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

In the matter of:

**CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur 492013**

.... **Appellant(s)**

Versus

**1. CHHATTISGARH STATE ELECTRICITY
REGULATORY COMMISSION
Irrigation colony, Shanti Nagar, Raipur 492001**

.... **Respondent**

**2. JINDAL STEEL AND POWER LIMITED
Jindal Centre, 12 Bhikaji Kama Place
New Delhi-110066**

.... **Intervenor**

Counsel for the Appellant (s) : Mr. Apoorv Kurup
Ms. Aparna Arun

Counsel for the Respondent (s) : Ms. Swapna Sheshadri
Ms. Ritu Apurva for R-1

Mr. Sanjay Sen, Sr. Adv.
Ms. Divya Chaturvedi
Mr. Saransh Shaw
Ms. Mandakini Ghosh for R-2

JUDGMENT (Oral)

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

1. The appeal at hand was filed by Chhattisgarh State Power Distribution Co. Ltd. ("CSPDCL"), a distribution licensee operating in the State of Chhattisgarh, bringing a challenge to the order dated 23.05.2015

passed by respondent Chhattisgarh State Electricity Regulatory Commission (the "State Commission") on petition nos. 1/2015(T), 2/2015(T), 3/2015(T) and 5/2015(T), whereby the State Commission has carried out a final true-up for Financial Year (FY) 2013-2014 in terms of earlier tariff order dated 12.07.2013, revised Annual Revenue Requirement (ARR) for FY 2015-2016 and determined the retail supply tariff for FY 2015-2016.

2. It appears that when the impugned order was passed by the State Commission, three appeals involving certain common issues were pending before this Tribunal, they being appeal no.308/2013 titled '*Chhattisgarh State Power Distribution Co. Ltd. v. Chhattisgarh State Electricity Regulatory Commission*' assailing MYT Tariff Order for FY 2013-2014 to FY 2015-2016 and true-up orders of certain previous years ARR and appeal nos. 41/2015 and 67/2015 titled '*Chhattisgarh State Power Distribution Co. Ltd. v. Chhattisgarh State Electricity Regulatory Commission*' directed against the review order and tariff order for FY 2014-2015 with true-up for some previous years. One of the grounds taken in the appeal at hand by the Distribution Licensee was that pending decision on appeal no 308/2013, the matter being sub-judice before this Tribunal, it was improper on the part of the State Commission to take up the final true-up for FY 2013-2014 and revision of the ARR for FY 2015-2016.

3. Be that as it may, the issues on merits raised vis-à-vis the order impugned in the appeal at hand concern the following subjects:

I. Computation of Working Capital for FY 2013-2014.

II. Disallowance of part of JSPL Power Purchase costs for FY 2013-14.

III. Disallowance of delay payment surcharge to CSPGCL & CSPTCL.

IV. Disallowance of share of grains for reduction of distribution loss.

V. *Income on Consumer Security Deposits for FY 2013-14.*

VI. *Deduction of depreciation on account of consumer contributions and fully depreciated assets for FY 2013-14.”*

4. Jindal Steel and Power Limited (“JSPL”), is a captive generator operating from the State of Chhattisgarh with power plant at Raigarh and Dongamahua. The appellant herein had made certain short term power purchase from JSPL over a certain period including during FY 2013-2014 statedly at Rs.2.32 per KWh, in terms of Power Purchase Agreement (PPA) that had been executed between the said parties. The State Commission by the impugned decision has restricted the Power Purchase Cost incurred by the appellant JSPL on account of such arrangement with JSPL to Rs.1.50 per kWh, statedly following its earlier decision by order dated 12.06.2014 in the truing up exercise for FY 2011-2012 and FY 2012-2013, primarily on the ground that it was “of non-firm nature”. As noted above, the disallowance of the balance of the Power Purchase Cost incurred by the appellant on account of the above contractual arrangement with JSPL was raised as one of the grounds to assail the impugned order by the Distribution Licensee.

5. The appeal being against a tariff order, this Tribunal had issued public notice by order dated 14.09.2015. *Inter alia*, in response to the said public notice and statedly upon being awakened to the impact of the impugned decision in above subject, JSPL filed an application (IA-682/2016) in this appeal and upon its consideration by order dated 17.01.2017 it was permitted to appear and file reply, if it so desires. The intervener JSPL has thus participated in the present proceedings raising its own grievance vis-à-vis the disallowance of part of the JSPLs Power Purchase Cost being restricted to Rs.1.50 per kWh.

6. Whilst this appeal was pending, the three appeals which were awaiting hearing and decision at the time of the impugned order came to be disposed of. The appeal no. 308/2013 was decided by judgment dated 09.10.2015, the contentions of the appellant similar to the ones raised here vis-à-vis the above-mentioned subjects having been rejected, except the one pertaining to income on consumer security deposits. The appellant had taken out review petition no. 1/ 2016 which also was repelled by order dated 21.03.2016. The other two appeals i.e. 41/2015 and 67/2015 were similarly decided rejecting the contentions of the appellant relevant for the present purposes by judgment dated 26.05.2016.

7. When the appeal was taken up, on being asked, the learned counsel for the appellant fairly conceded that the judgment dated 09.10.2015 and 26.05.2016 and review order dated 21.03.2016 in the context of appeal nos. 308/2013, 41/2015 and 67/2015 have decided all the issues conclusively, relief having been granted vis-à-vis income on consumer security deposits, the contentions of the appellant respecting other issues having been rejected. The learned counsel for the respondent Commission pointed that the judgment dated 26.05.2016 in appeal nos. 41/2015 and 67/2015 has been assailed by the appellant herein before Hon'ble Supreme Court vide Civil Appeal nos. 10290 and 10291 of 2016 which are pending.

8. Whilst the appellant has conceded fairly through counsel that no issue survives for further consideration by this Tribunal in the present appeal against the impugned order dated 23.05.2015, the contentions having already been subjected to scrutiny by this Tribunal in the previous decision referred to above, the learned senior counsel for JSPL submitted that the decision on the issue of disallowance of part of JSPL, Power Purchase Cost for FY 2013-2014 cannot be treated as having been finally

determined in as much as a writ petition filed by JSPL vide WP(C)1927 of 2016 before Chhattisgarh High Court is still pending.

9. We agree that the decision by this Tribunal on the appeal at hand will be subject to the determination of issues raised by JSPL in the said writ proceedings as and when they are rendered and in accordance with law. Nothing further survives for our consideration as the decision rendered on the relevant issues captured in initial part of the judgment will be governed by the previous decisions of this Tribunal by judgment dated 09.10.2015 in appeal no.309/2013 and 26.05.2016 in appeal nos. 41/2015 and 67/2015, subject, of course, to remedy of appeal before Hon'ble Supreme Court and the writ petition pending before Chhattisgarh High Court as mentioned earlier.

10. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson