

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 32 OF 2018

Dated: 8th April, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

- 1. PTC India Limited & Anr.**
2nd Floor, NBCC Tower, 15
Bhikaji Cama Place
New Delhi – 110 066

- 2. Lanco Amarkantak Poer Limited**
Lanco House, Plot No.4, Software Units
Layout, HITEC City, Madhapur,
Hyderapad – 500 081, Appellant(s)
Telangana

Versus

- 1. Madhya Pradesh Electricity Regulatory**
Commission
5th Floor, Metro Plaza, Arera Colony
Bittan Market, Bhopal 461 016

- 2. Madhya Pradesh Power Management Co. Ltd.**
Shakti Bhawan, Vidyut Nagar, Rampur Respondent(s)
Jabalpur – 482 008, Madhya Pradesh.

Counsel for the Appellant(s) : Mr. Ravi kishore
Ms. Rajsree Chaudhary for A-1

Mr. Tejasv Anand
Mr. Deepak Khurana for A-2

Counsel for the Respondent(s) : Mr. Parinay Deep Shah
Ms. Surabhi Ritika Singhal for R-1

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. The Appellant has presented the instant Appeal seeking the following reliefs:

a) Allow the present Appeal and set aside the Impugned Order dated 24.08.2017 passed by the Respondent No.1 (MPERC) in Petition No. 19/2017;

Pass such other or further orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The Appellant has presented this Appeal for considering the following Questions of Law:

(I) Whether the State Commission (in the present case MPERC) has jurisdiction for adjudicating issues arising out of Change in Law events under the PPA and the PSA, which have impact on tariff for supply of power to the Respondent No.2?

(II) Whether in view of Article 12 of the PPA and the PSA which stipulates mandatory approval of the Commission for revision of tariff on account of Change in Law, the issues raised in the

Petition before the State Commission could have been decided only by the Commission?

3. In the instant Appeal, PTC India Limited and Anr. in short, the “Appellants”) are questioning the legality and validity of the Impugned Order dated 24.08.2017 passed in Petition No. 19 of 2017 by the Madhya Pradesh Electricity Regulatory Commission, Bhopal.
4. The learned counsel appearing for the Appellant has filed a Memo dated April 8th, 2019. The same is taken on record.
5. The learned counsel Mr. Ravi Kishore and the learned counsel Mr. Deepak Khurana appearing for the Appellants at the outset submitted that in the light of the statement made in the Memo dated April 8th, 2019 the instant Appeal may kindly be disposed of with the direction to the Respondent No.1/Madhya Pradesh Electricity Regulatory Commission, Bhopal to reconsider the matter and pass appropriate order in accordance with law without being influenced with the observations being made in the Impugned Order and all the contentions of both the parties may be left open.

6. **Per contra**, the learned counsel Mr. Prinay Deep Shah appearing for the Respondent No.1/ Madhya Pradesh Electricity Regulatory Commission, Bhopal inter alia contended and submitted that the Memo dated April 8th, 2019 filed by the Appellants may kindly be taken on record and appropriate order may be passed to meet the ends of justice.

7. Submissions of the learned counsel appearing for the Appellants and the learned counsel appearing for the Respondent No.1, as stated supra, are placed on record.

8. The statement made Memo dated April 8th, 2019 reads as follows:-

“The Appellant submits that the present Appeal may be disposed of by remitting the matter back to the Respondent No.1 for fresh decision by the Respondent No.1 State Commission on the issue of jurisdiction as well as merits of the issues and claims raised in petition without being influenced by any finding or observation contained in the Orders dated 21.10.2008 passed by this Tribunal in Appeal no. 71 of 2008 and Order dated 06.08.2009 passed by this Tribunal in Appeal No. 7 of 2009, and after duly considering the events subsequent to the said orders including but not limited to Tripartite Settlement Agreement dated 16.10.2012 executed

between the Appellants and Respondent No.2 herein, PPA dated 11.05.2005 & Implementation Mechanism for the PPA executed on 24.11.2012 between the Appellants herein, PSA dated 30.05.2005 & Implementation mechanism for the PSA executed on 26.11.2012 between the Appellant No.1 and Respondent No.2 herein and the order dated 01.12.2012 passed by the Respondent No.1 State Commission approving the procurement of power including the price of the power sourced from Appellant No.2, as well as the Tripartite Settlement Agreement & Implementation Mechanism for the PPA and the PSA.”

9. In the light of the submissions of the learned counsel appearing for the Appellants and the learned counsel appearing for the Respondent No.1 and in the light of the statement made in the Momo dated April 8th, 2019, as stated supra, the instant Appeal filed by the Appellants stands disposed of with the direction to the Respondent No.1/Madhya Pradesh Electricity Regulatory Commission, Bhopal to reconsider the matter afresh and pass the appropriate order after affording reasonable opportunity of hearing and pass the appropriate order in accordance with law without being influenced with the observations being made in the Impugned Order dated 28.08.2017 passed in Petition No. 19 of 2017.

10. Further, the Respondent No.1/Madhya Pradesh Electricity Regulatory Commission, Bhopal is directed to dispose of the matter as expeditiously as possible at any rate within a period of six months from the date of receipt of copy of this order.

11. All the contentions of both the parties are left open.

12. With these observations, the Appeal being Appeal No. 32 of 2018 stands disposed of.

(Ravindra Kumar Verma)
Technical Member
mk/bn

(Justice N.K. Patil)
Judicial Member