

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 142 OF 2018
ON THE FILE OF THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI

Dated: 25th March, 2019

Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

IN THE MATTER OF

M/s Inland Power Ltd.

Through Director – Finance & Corporate Affairs
3A, Auckland Place,
Suite No. 5A, 5th Floor,
Kolkata – 700 017

..... Appellant(s)

VERSUS

1. Jharkhand State Electricity Regulatory Commission

Through its Secretary
2nd Floor, Rajendra Jawan Bhawan-cum-Sainik
Bazar, Main Road, Ranchi – 834 001

2. Jharkhand Urja Vikas Nigam Limited

Through its Chairman & Managing Director
Engineers' Building
Dhurwa, Ranchi – 834 004

3. Jharkhand Bijli Vitran Nigam Limited

Through its Chairman & Managing Director
Engineers' Building,
Dhurwa, Ranchi – 834 004

Counsel for the Appellant ... Mr. Anand K. Ganesan

Counsel for the Respondent(s)... Mr. C.K. Rai for R-1

The Appellant has sought the following reliefs in the instant Appeal:

- a) Allow the appeal and set aside the Order dated 16.05.2017 passed by the State Commission in Petition No. 06 & 11 of 2016 to the extent challenged in the present appeal;
- b) Pass such other Order(s) and this Tribunal may deem just and proper.

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

- A. Whether the State Commission is justified in dismissing the Review Petition merely because of a small delay of 25 days in filing the Review Petition without even going into the merits of the case?
- B. Whether the State Commission erred in not approving the actual interest and finance charges incurred by the Appellant in FY 2014-15?
- C. Whether the State Commission erred in not considering the actual fuel oil consumption and weighted average landed price of secondary fuel for FY 2014-15?

J U D G M E N T

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

BRIEF FACTS OF THE CASE:

1. M/s Inland Power Ltd, Kolkata (in short, '**Appellant**'), assailing the validity, legality and propriety of the Impugned Order dated 16.05.2017 in Petition No. 06 & 11 of 2016 by the Jharkhand State Electricity Regulatory Commission, Ranchi (in short, "**1st Respondent/State Commission**"), whereby the 1st Respondent/State Commission has undertaken True-up of

Annual Revenue Requirement (ARR) for FY 2014-15 and Annual Performance Review (APR) for FY 2015-16 and ARR and Tariff Determination for the period FY 2016-17 to FY 2020-21 for the Appellant and being aggrieved by the impugned Order, the Appellant has presented this Appeal, being Appeal No. 142 of 2018, under Section 111 of the Electricity Act, 2013.

2. It is the case of the Appellant that, the 1st Respondent/State Commission has made certain errors and discrepancies while truing up the financials for FY 2014-15 and there is an error in the computation of the amounts and the figures adopted by the 1st Respondent/State Commission. The 1st Respondent/State Commission has also erred in not approving the interest and finance charges, particularly the interest rate of the loans for FY 2014-15 in terms of the audited accounts as required by the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010 (in short, “**Tariff Regulations, 2010**”) and the 1st Respondent/State Commission has failed to appreciate that the interest charges are to be trued up based on the audited accounts and prudence check. The 1st Respondent/State Commission has also erred in approving the weighted average landed price of secondary fuel as Rs. 52,868 per kilo litre as against the actual price of Rs. 56,464 per kilo litre, despite the Appellant having submitted the bills to that effect and also not considering the relevant provisions of the Tariff Regulation, 2010, at the time of true up the actual cost is taken for the oil, as against the cost

for the preceding three years taken initially. The Appellant, not being satisfied with the impugned order passed by the 1st Respondent/State Commission, felt necessitated to question the correctness of the impugned order passed by the 1st Respondent/State Commission and presented this appeal.

3. The principal submission of the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant is that, firstly, the Appellant has filed all the details with relevant material and certified accounts with the Auditors Report, which has neither been looked into nor considered nor taken a note of the relevant material made available by the Appellant and, secondly, the 1st Respondent/State Commission has committed grave error by not considering the relevant regulations in respect of debt equity ratio and interest and financing charges as per Regulations 7.13 & 7.14 and Regulations 7.19 & 7.23 respectively. To substantiate his submissions, the counsel for the Appellant was quick to point out and taken us through the 1st Respondent's/State Commission's views and analysis at page no. 54 of the impugned Order at serial nos 6.69 and 6.70 and Table No. 23 in respect of interest on loan approved by the 1st Respondent/ State Commission and serial no 6.71 and Table No. 24 in respect of Details of secondary fuel oil submitted by the Appellant and also taken us through the State Commission's analysis at serial no. 6.74, Table No. 25 in respect of Cost of secondary fuel as approved by the State Commission. Therefore, the counsel for the Appellant submitted

that, an arithmetical errors in the impugned order in respect of interests on loan and cost of secondary fuel and the reasons given for denial of the relief sought by the Appellant in the impugned Order are not sustainable in law and the matter requires reconsideration afresh by the 1st Respondent/State Commission strictly in accordance with relevant regulations of the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010 and also taking into consideration the case made out by the Appellant in their petition and decided the same in accordance with law.

4. ***Per-contra***, the learned counsel, Mr. C.K. Rai, appearing for the 1st Respondent/State Commission, inter-alia, vehemently contended and, to substantiate the reasoning given by the 1st Respondent/State Commission regarding interest on loan and cost of secondary fuel, was quick to point out and taken us through the reasoning given at page nos. 54 & 56 of the impugned Order and to that effect, he filed a detailed reply by assigning reasons specifically referring to Table Nos. 23, 24 & 25 which are on the basis of the material available on records. Therefore, 1st Respondent/State Commission has passed the impugned Order after analyzing all the relevant material available on record and reasoning given for the denial of reliefs sought by the Appellant strictly in accordance with law. Hence, interference by this Tribunal does not call for on the ground that the Appellant has not made out any case to interfere in the impugned order passed by the 1st Respondent/State Commission.

5. Further, the counsel for the 1st Respondent/State Commission in his rejoinder submission, submitted that, in the MYT format F8 submitted by the Appellant before the 1st Respondent/State Commission as part of reply to 2nd discrepancy note, the Appellant had provided details of the loan portfolio and the various rates of interests of the Banks. As a part of prudence check, the 1st Respondent/State Commission vide letter JSERC/Case(Tariff) No. 06 and 11 of 2016/595 dated 21.12.2017 and JSERC/Case(Tariff) No. 06 and 11 of 2016/704 dated 08.02.2017 directed the Appellant to submit Bank documents in support of the rate of interest of each Bank as mentioned in Form F8. The Appellant had submitted the required details and based on the submissions of those details provided by the Appellant in MYT formats and after due verification of those documents, the 1st Respondent/State Commission approved the weighted average rate of interest at 12.39%.

6. We have heard the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant and the learned counsel, Mr. C.K. Rai, appearing for the 1st Respondent/State Commission.

Other respondents, though served, are unrepresented.

7. After careful consideration of the submissions of the learned counsel for the Appellant and the 1st Respondent/State Commission and after perusal of the rejoinder filed by the counsel for the Appellant and the reply filed by the counsel for the 1st Respondent/State Commission and after

careful perusal of the impugned order passed by the 1st Respondent/State Commission, the only issue that arises for our consideration:

Whether the impugned order passed by the 1st Respondent/State Commission in so far it relates to the interest on loan and the cost of secondary fuel is sustainable in law?

8. It is manifest on the countenance of the impugned order, as also rightly pointed out by the learned counsel for the Appellant, the reasoning given in serial nos. 6.69 and 6.70 in Table No. 23 interest on loan approved by the Commission, it is significant to note here itself that at serial no. 6.70, the 1st Respondent/State Commission has specifically observed and opined that the rate of interest has been considered as the weighted average rate of interest as per submission made by the Petitioner/Appellant and the details have been given in the Table No. 23 at item no.5 – Rate of Interest.

It is the case of the Appellant that the rate of interest they claimed was 14.38% but without assigning any reason or analysis and without any prudence check, the 1st Respondent/State Commission has approved it in its true up as 12.39%. It is manifest on the face of the reference made in Table No. 23 – Rate of interest, there is an error in the impugned Order. We find that it substantiates the submissions made by the learned counsel for the Appellant. Also it emerges from the impugned order that there is neither any reason nor discussion nor findings, in short, a cryptic order

has been passed by the 1st Respondent/State Commission, which cannot be sustainable by any stretch of imagination, and thus, is liable to be vitiated without going any further into merits or demerits of the case.

9. Regarding cost of secondary fuel, it is the specific case of the Appellant that the details of secondary fuel oil are given in Table No.24. The Appellant mentioned that the high consumption is due to problems faced by the plant during stabilization period. Table 24 – Details of secondary fuel oil submitted by the Appellant wherein they have referred to particulars, unit and FY 2014-15. At point no 3, they mentioned specific oil consumption – 1.20 ml/kWh for FY 2014-15. The 1st Respondent/State Commission's analysis in para 6.74 is that they worked out the weighted average landed price of secondary fuel after due prudence check of Appellant's submission and approved the cost of secondary fuel, the details of which are given in the table No. 25 – cost of secondary fuel as approved by the Commission i.e. Normative specific fuel oil consumption submitted by the Appellant is 1.20 ml/kWh and approved by the 1st Respondent/State Commission is 1.00 ml/kWh and also for the weighted average landed price of secondary fuel, the Appellant has submitted Rs.56,464.67/kL. The said statement was duly certified by the Auditor and approved by the 1st Respondent/State Commission in true up as Rs. 52,868/kL which is contrary to the relevant material available on record without assigning any reason or discussion, as rightly pointed out by the counsel for the Appellant. It is manifest on the face of the reasoning

assigned in page no. 56 of the impugned Order which cannot be sustainable nor do we find any justification to accept the reasoning assign by the 1st Respondent/State Commission. It is purely an arithmetic error which may not be intentional or deliberate on the part of the 1st Respondent/State Commission because at the time of critical analysis of the material available on record, the same might have been left out. This is purely an arithmetical error which ought to have been rectified but, it is significant to note that inadvertently it has not been considered properly nor do we find any prudence check in the 1st Respondent/State Commission's views and analysis. Therefore, we are of the considered view that these two reasons given by the 1st Respondent/State Commission in respect of the interest on loan and cost of secondary fuel are contrary to the relevant Regulations applicable to the facts and circumstances of the case in hand. Taking these facts into consideration, the impugned Order dated 16.05.2017 passed by the 1st Respondent/State Commission is liable to be set aside so far it relates to the reliefs sought in the instant appeal only.

ORDER

For the forgoing reasons, as stated supra, the instant Appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi is allowed in part.

The impugned Order dated 16.05.2017 passed in Petition No. 06 & 11 of 2016 on the file of the Jharkhand State Electricity Regulatory

Commission, Ranchi, in so far it relates to the relief sought in the instant appeal, is hereby set aside.

The matter stands remitted back to the 1st Respondent/State Commission for re-consideration afresh to pass an appropriate order in accordance with law after affording reasonable opportunity to the Appellant and the Respondent Nos. 2 and 3 and other interested parties and dispose of the matter as expeditiously as possible, at any rate, within a period of six months from the date of the appearance of the parties before it.

The Appellant and the Respondent Nos. 2 and 3 herein are directed to appear before the 1st Respondent/State Commission personally or through their counsel without notice on 22.04.2019.

All the contentions of both the parties are left open in so far it relates to the reliefs sought in the instant appeal.

With these observations, the instant appeal, being Appeal No. 142 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi, stands disposed of.

(Ravindra Kumar Verma)
Technical Member

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(Justice N.K. Patil)
Judicial Member