

**Before the Appellate Tribunal for Electricity**  
**Appellate Jurisdiction**  
**Appeal No.67 of 2006**

**Present : Hon'ble Mr. Justice E. Padmanabhan, Judicial Member**  
**Hon'ble Mr. H.L. Bajaj, Technical Member**

Sri Avantika Power Projects Pvt. Ltd.

... Appellant

Versus

1. Orissa Electricity Regulatory Commission.

2. Grid Corporation of Orissa Ltd.

3. Southern Electricity Supply Co. of Orissa Ltd.

... Respondents

For the Appellant

: Mr. K. Gopal Choudhary, Advocate

For the Respondent

: Mr. M.G.Ramachandran and Ms Taruna  
Singh Baghel, Advocates for OERC

Mr. R.K. Mehta, Sr. Advocate for Grid  
Coron. Of Orissa Ltd.

Mr. S.S. Mishra, Advocate for SOUTHCO

**Dated 29th August, 2006**

**judgment**

Heard Mr. K. Gopal Choudhary, learned counsel appearing for the appellant, Mr. M.G. Ramachandran, learned counsel appearing for respondent No. 1 Mr. R.K. Mehta, Advocate appearing for the 2<sup>nd</sup> respondent and Mr. S.S. Mishra, Advocate appearing for the 3<sup>rd</sup> respondent.

2. This appeal lies in a very narrow campus.

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3. By the impugned order dated March 1,2006 the first respondent Commission passed an order, which reads thus:

“ Mr. Tanmay Das, CFO is present for the petitioner. Heard on the question of admission. We are inclined not to admit the case at this moment because the petitioner has not yet entered into PPA with GRIDCO/SOUTHCO. However, the petitioner is at liberty to renew its prayer after entering into PPA with GRIDCO/SOUTHCO.”

4. Challenging the above order the present appeal has been preferred.

5. Concedingly the first respondent Commission has passed and issued directions on April 23, 2005 as well as in case No. 151 of 2004 , M/s Greenpeace India Society V/s Energy Secretary, Govt. of Orissa, Bhubaneswar. In the said order the first respondent issued the following directions which is relevant to the present appeal.

“ Taking into consideration the facts and provisions of the Act, the Commission decides that for the FY 2006-07, 200 MU of power will be purchased by GRIDCO/distribution Licensee/State Trading Co. depending upon the then prevalent situation. The unit cost of the renewable energy should not exceed the highest generation cost of thermal stations of the eastern region. Having arrived at decision, the Commission would like to state that the tariff of the renewable sources of energy is to be determined by the Commission in accordance with the provisions of Section 62(1)(a) of the Electricity Act, 2003 where the cost of generation will be determined by the Commission.

The petition is disposed off with orders as above.”

6. Once again by an order dated August 20,2005 made in case No. 14 of 2005, the first respondent Commission made the following observations and issued directions:-

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- “(a) The Commission in its order dated April 23, 2005 in case No. 151/04 had allowed procurement of power up to 200 MU by GRIDCO/DISCOs/State Trading Company during the FY 2006-07. In exercise of the power conferred under Section 86(1)(a) and (b) the Commission further directs that procurement of power from non-conventional and renewable energy such as, small hydro, wind, biomass, co-generation of electricity from waste heat products etc. would be allowed by the supply licensees for use of consumers within the state up to 3% of the total purchase during the FY 2007-08 to go up at the rate of 0.5% per annum for each subsequent year to reach a level of 5% by the year 2011-12.
- (b) The project cost fixed by the State Technical Committee after due diligence will be taken as the ceiling cost for determination of tariff.
- (c) The tariff for procurement of the power from this sources will be determined by the Commission under Section 62 (1) (a) so long as this power is being supplied to the state consumers through distribution companies.
- (d) As envisaged in the National Electricity Policy to encourage competition for reduction in cost of energy purchase of power by DISTCOs shall be through competitive bidding process within the same sources of generation where the price determined by the Commission under Section 62(1) shall be treated as the ceiling price.”

7. In the light of the said directions the appellant approached the third respondent to purchase power from the appellant's project, which it has set up pursuant to PPA entered into by the appellant with the Orissa Government. It is the appellant's request that the third respondent should purchase the power generated by the appellant in terms of the said two directions of the Commission. However, the Commission without ordering notice to the respondent merely directed the appellant to approach the GRIDCO/SOUTHCO/State Government, enter into PPA and thereafter approach the Commission. This direction, it is being contended, is obviously without application of mind with respect to reliefs sought for and without reference to the directions issued by the first respondent Commission.

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8. Per contra Mr. M.G. Ramachandran, learned counsel appearing for the first respondent Commission contended that the impugned order is not a final direction and it is well open to the appellant to go before the Commission once again. Mr. M.G. Ramachandran, learned counsel also made it clear that if the appellant approaches the Commission with appropriate modification in its application, the Commission may have to issue notice to DISCOMS as well as utilities and pass appropriate orders to implement its earlier directions to purchase power from NCE/renewable sources of energy generators. The stand taken by Mr. M.G. Ramachandran, learned counsel for the Commission is fair.

9. Mr. R.K. Mehta, learned counsel appearing for the second respondent refers to the PPA entered between the state of Orissa and appellant and all the parties including respondents No. 2, 3 and other utilities should be heard and appropriate directions could be issued by the Commission in the light of the earlier two directions as well as the PPA stipulations.

10. Without expressing any opinion, in the interest of justice and as the Commission has not exercised the jurisdiction vested in it, we set aside the impugned order and remand the matter back to the Commission. There is no proof that the Commission has enforced its directions and Commission has taken steps in this respect to compel utilities to purchase power from NCE developers or from renewable energy generators. The statutory provision of 2003 Act in this regard is clear and we need not express ourselves any in the light of what was represented before us in the open court.

11. In the circumstance we set aside the impugned order in this appeal and remit the matter back to the first respondent Regulatory Commission, who shall take up the matter de novo issue notice to the utility and in terms of Section 86(1)(e) and all other relevant provisions, pass appropriate orders

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or directions to purchase power from NCE developers as well as renewable sources and see that those developers are encouraged, which is the mandate of the Electricity Act, 2003 and pass appropriate orders after hearing to all parties concerned. It is open to the appellant to make additional representations, if any, if it chooses so before the Commission. The Commission, we hope will give appropriate priority in hearing and pass orders at its earliest date of convenience.

Pronounced in the open court on August 29, 2006.

**( Mr. H.L. Bajaj )**  
**Technical Member**

**( Mr. Justice E. Padmanabhan )**  
**Judicial Member**

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