



Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
Ph.0771-4048788, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



Petition No. 13 of 2018(M)

In the Matter of

“Petition under section 86 (1)(f) of the Electricity Act, 2003, with regard to payment of generic tariff”.

M/s Mahavir Energy & Coal Benefication Limited
"Laxmi Towers" Near Triveni Bhawan,
Vyapar Vihar, Bilaspur - 495001

... Petitioner

V/s

Chhattisgarh State Power Distribution
Company Limited , having its
registered office Danganiya, Raipur

... Respondent

PRESENT : **Narayan Singh, Chairman**
: **Arun Kumar Sharam, Member**

APPEARANCE : Shri Abhinav Kardekar,
Advocate for Petitioner,
: Shri Saurabh Jain, Advocate along
with Shri Arvind Banerjee, EE for
Respondent.

ORDER

(July02, 2018)

The petitioner, M/s Mahavir Energy & Coal Benefication Ltd., a company registered under the Companies Act, 1956 has filed this petition against the Chhattisgarh State Power Distribution Company Limited (CSPDCL), under section 86(1)(f)

of the Electricity Act, 2003, with regard to payment of generic tariff.

2. The petitioner is having a biomass fuel based power plant of 12 MW capacity at Village-Bhengari, P.O. Navapara Tenda, Tehsil-Gharghora, District-Raigarh (C.G.). The petitioner sells electricity to the respondent CSPDCL, in accordance with the Power Purchase Agreement (PPA) executed on 01.07.2011 for 9.8 MW and subsequently on 21.12.2011 for 20.6 MW for a period of 10 years from its 12 MW X2 Nos plants.

3. Petitioner is getting tariff as per the Order dated 15.01.2008, which provided that the same shall be operative for a period of 10 years till 2014-15 and shall be reviewed after 05 years. This Order was reviewed on 28.12.2011 in petition No. 22 of 2011(T) and fixed cost had been altered by giving better tariff to some plants.

4. Petitioner's plant achieved COD in the year 2009 and thus remained alienated from the tariff given to other plants. As per order dated 28.12.2011, the new preferential fixed cost had been provided from 2011 onwards. The determination of tariff for petitioner, who achieved COD in between 2008-09 and 2011-12 remained in abeyance and thus the respondent has kept paying the petitioner as per old tariff as has been provided vide order dated 15.01.2008.

5. It is submitted by the petitioner that he is being discriminated by the respondent in comparison to those who stand at par with petitioner in view of actual operating parameters. The petitioner wrote letters to the respondent but no response is given, hence this petition is filed.

6. The petitioner prayed for following relieves:-

- i. To declare that the petitioner is entitled for the same tariff as applicable for biomass based plants, which achieved COD prior to petitioner;
- ii. To direct the respondent to pay revised fixed cost to the petitioner as per order dated 28.12.2011 vide petition No. 22 of 2011(T) from the year 2011 onwards;
- iii. To direct the respondent to pay cost of the present litigation.

Respondent Submission

Respondent submitted the following facts in the instant petition;

7. Petitioner has sought determination of tariff through declaration that the petitioner is entitled for same tariff as applicable for the plants which achieved COD prior to petitioner. The petitioner has filed this petition under section 86 (1)(f) the Act, 2003 which is on adjudication upon the dispute between the licensees and generating companies. Therefore Non determination of the tariff by the Commission or failure on the part of the petitioner to get the tariff determined for its plant cannot be subjected to adjudication under section 86(1)(f) of the Act 2003.

8. Since the terms and conditions of PPA dated 01.07.2011 substituted by first supplementary agreement dated 22.12.2011, the petitioner has to apply through the petition to the Commission for determination of tariff on project specific basis.

9. The clause 4(a) of the supplementary power purchase agreement dated 21.12.2011 provides that generator shall apply through petition to the Commission for determination of tariff of its integrated power of capacity 2x12 MW and CSPDCL shall pay

power purchase as decided by the Commission for this power plant on individual basis. Therefore petitioner ought to have approached the Commission for tariff determination on project specific basis as agreed in the PPA.

10. It is further submitted that instant petition is liable to be dismissed on the grounds of violation of terms and conditions of the supplementary agreement and suppression of material facts.

11. Respondent in its written submission stated that PPA has been done on 01.07.2011 and supplementary PPA on 21.12.2011, whereas Commission's order dated 28.12.2011 was issued after signing of these PPAs. Even as per the terms and conditions of the PPA, the petitioner ought to have approached the Commission for determination of tariff.

The petitioner by not approaching the Commission has agreed to the applicability of the tariff order dated 15.01.2008. It further added by the respondent that after lapse of more than 6 year period the petitioner states that amendment to order dated 15.01.2008 & 15.04.2010 should also be made applicable in petitioner's case.

Petitioner vide rejoinder dated 27.04.2018 submitted followings;

12. that the petitioner is only biomass power developer who is not getting amended/preferential tariff dated 28.12.2011 by the respondent company, despite the fact that it is on same pedestal as that of other biomass developers. This selective

discrimination by respondent CSPDCL is against rule of fair play and arbitrary.

13. Further petitioner submitted that the Commission, in its recent Order dated 20.11.2017 in Petition No. 23 of 2017 (M) in an identical matter of M/s Indra Powergen Private Limited V/s CSPDCL, has made tariff order dated 28.12.2011 applicable who achieved COD in the year 2009-10.

14. It is submitted that other plants who are receiving preferential tariffs however the petitioner who stands in the same position at par with them is being discriminated by respondent and not being provided the same. Thus, the action of respondent is arbitrary and in contravention of the principles of natural justice and therefore this petition may kindly be allowed.

Commission's analysis and View :

15. Heard the parties in length. Before proceeding in the merits, we would like to quote section 86(1)(b) of the Electricity Act 2003;

"86(1)XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;"

Under this provisions of the Electricity Act 2003, a standard model draft PPA was approved by the Commission for agreements to be entered between biomass generators and

licensee. Generators and licensee needs to sign PPA as per the draft agreement approved by the Commission. Any deviation from the model draft PPA should have been brought to the Commission for approval as per provisions in section 86(1)(b) of the Electricity Act 2003. Respondent licensee is very well aware of this fact and has been approaching the Commission for approval on similar issues in the past but in this case it has not approached the Commission.

16. In the agreement dated 01.07.2011, the para 4 (a) related to tariff was as follows;

"The power purchase rate, other charges and conditions shall be applicable as incorporated in the Commission's aforesaid order dated 11.11.2005 read with order dt. 15.01.2008 and 15.04.2010 and as amended time to time. In addition, reactive energy charges as decided by the Commission time to time shall also be payable by the Company."

This para has been substituted by first supplementary PPA signed on 21.12.2011 between the parties. This substituted para 4 (a) is reproduced below;

"M/s Mahavir Energy & Coal Benefication Ltd. shall apply through petition to Hon'ble CSERC for determination of tariff for its integrated power of the capacity 2 X12 MW. CSPDCL shall pay power purchase cost as decided by CSRC for this power plant individual basis. The infirm power i.e. power injected after synchronization and prior to COD of 2nd unit shall be paid at the rate as approved by Hon'ble Commission."

17. It is to note that first supplementary PPA has been signed on 21.12.2011 between the parties and regarding tariff, they have mutually agreed that generator will file petition before the

Commission for tariff determination for its integrated power of the capacity 2 X 12 MW. Neither of the parties approached the Commission for approval of the supplementary PPA signed on 21.12.2011. Since the power purchase by the licensee is regulated, parties cannot mutually decide the terms and condition of PPA. Therefore clause 4(a) as substituted by the parties in supplementary PPA dated 21.12.2011 is having no legal standing and is null and void.

Moreover petitioner in its written submission dated 11.05.2018 has mentioned that though it was planned to put additional 12 MW, it could not be operationalized due to construction of Railway Corridor in the same land. The respondent has also not denied this fact. Therefore, 2 X12 MW integrated power plant of the petitioner didn't fructify.

18. Those paragraphs in second supplementary PPA dated 04.10.2014 executed between parties, which has been carried out to align the PPA in line with RE tariff Regulations 2012 is approved.

Considering the submissions and counter submissions and arguments made by the parties, we are of opinion that matter in the instant petition is limited to dispute (section 86(1)(f) of the Electricity Act, 2003) related to applicability of appropriate tariff.

19. Generic Tariff for biomass generation plant was determined by the Commission in P. No. 07 of 2005, vide order dated 11.05.2005 and 15.01.2008. The Commission passed order dated 11.11.2005, whereby the Commission decided that the biomass based project shall be entitled to a tariff with a component of fixed charge and variable charge corresponding to

financial year, as per tariff rate determined in the order. The Commission also added that this tariff shall be applicable only to the new biomass based projects, which may commence electricity on or after 01.04.2005 and will be operative for a period of 10 years and shall be reviewed after 5 years. Based on the petition filed by the biomass generating plant, the Commission has issued tariff order dated 28.12.2011, revising tariff for all the biomass based generating plants who achieved COD between FY 2004-05 to 2008-09. In this petition, general tariff for plants achieving COD in 2009-10 and 2010-11 has not been decided.

20. The petitioner's biomass based power plant has achieved COD in the year 2009-10 and as per the terms in the PPA dated 01.07.2011 signed between the parties, power purchase rate has been agreed for tariff as determined vide various Orders in the P No 7 of 2005 and its subsequent amendments. The tariff order, which was issued on 28.12.2011 is amendment to the tariff order issued earlier.

21. The date of commercial operation of the generating plant of the petitioner is 21.11.2009 i.e. FY 2009-10. Therefore the rates approved vide order dated 15.01.2008 is not applicable to the petitioner.

22. The Commission in similar matter in order dated 20.11.2017 in P No 23 of 2017 (M) in case of M/s Indra Powergen Pvt. Ltd. Vs CSPDCL who has achieved in the year 2009-10 has held as follows;

"XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

8. We have reached to the conclusion that the petitioner should be dealt at par with power plants who have achieved COD

during FY 2008-09 from COD of its power plant till the entire period of present agreement.”

Therefore we are of the opinion that in this case also petitioner should be dealt at par with power plants who have achieved COD during FY 2008-09 from COD of its power plant till the entire period of present agreement.

We order accordingly.

**Sd/-
(ARUN KUMAR SHARMA)
MEMBER**

**Sd/-
(NARAYAN SINGH)
CHAIRMAN**