

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 176 OF 2018 &**  
**IA NO. 731 OF 2018 ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

**Dated:** 7<sup>th</sup> 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 Sahasradhara Energy Private Ltd.**

New No. 25, Old No. 10, Sir Madhavan Nair Road,  
Mahalingapuram, Nungambakkam,  
Chennai- 600034

..... Appellant

***VERSUS***

**1. Uttar Pradesh Electricity Regulatory Commission**

Through its Secretary  
2<sup>nd</sup> Floor, Kisan Mandi Bhawan,  
Vibhuti Khand, Gomti Nagar,  
Lucknow-226001

**2. Uttar Pradesh Power Corporation Ltd.**

Through its Chairman and Managing Director  
Shakti Bhawan, 14 - Ashok Marg  
Lucknow-226001

**3. Uttar Pradesh New & Renewable Energy  
Development Agency**

Through its Chairman and Managing Director  
Vibhuti Khand, Gomti Nagar,  
Lucknow-226001

..... Respondents

Counsel for the Appellant (s) : Ms. Swapna Seshadri  
Mr. Anand K. Ganesan  
Ms. Parichita Chowdhury

Counsel for the Respondent(s) : Mr. C.K. Rai  
Mr. Sachin Dubey for R-1  
  
Mr. Rajiv Srivastava  
Ms. Garima Srivastava  
Ms. Gargi Srivastava for R-2

**The Appellant has sought the following reliefs in Appeal No. 176 of 2018:**

- (i) Allow the appeal and set aside the order dated 12/02/2018 passed by the State Commission to the extent challenged in the present appeal;
- (ii) Hold and direct that the Appellant ought to be entitled to the tariff of Rs. 7.02/- per unit for the Power project of the Appellant;
- (iii) In the alternative, hold and direct that the State Commission ought to apply a project specific Tariff to the Appellant; and
- (iv) Pass such other Order[s] and this Hon'ble Tribunal may deem just and proper

**ORDER**

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

1. In the instant Appeal, being No. 176 of 2018, M/s Sahasradhara Energy Private Ltd., Chennai (in short, the "**Appellant**") is questioning the legality and validity of the impugned Order dated 12.02.2018 of the Uttar Pradesh Electricity Regulatory Commission, Lucknow (in short, the "**first Respondent**") passed in Petition No. 1110/2016.

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

- A. Whether the State Commission has erred in not approving the tariff rates as discovered in the competitive bidding process?
- B. Whether the State Commission erred in lowering down the tariff of the Appellant from Rs. 7.02/unit to Rs. 5.07/unit thereby causing grave prejudice to the Appellant?

- C. Whether the State Commission can go into the process of determination of capital cost and thereafter reducing the tariff instead of adopting the tariff discovered through competitive bidding under Section 63 of the Electricity Act, 2003?
- D. Whether the State Commission has correctly evaluated the tariff in the present case?
- E. Whether the State Commission had made applicable a correct tariff for the Appellant?
- F. Whether the State Commission has acted in consonance with Section 86[1][e] and other provisions of the Electricity Act and the object to promote renewable energy, in particular solar energy?

3. The learned counsel, Ms. Swapna Seshadri, appearing for the Appellant contended that, the first Respondent/State Commission has adopted the tariff of Rs. 5.07/unit for the Appellant's project and other, who are in fact not similarly situated bidders and have reduced it from the tariff of Rs. 7.02/unit which was arrived at pursuant to a negotiation between the Appellant and the second Respondent as per Order dated 22.02.2017 passed by the first Respondent/State Commission wherein it neither rejected nor approved the competitive bidding process and the tariff discovered therein and that the Respondent Nos. 2 and 3 herein should reconsider and negotiate the tariff. Even after the Appellant negotiated and brought down the tariff from 8.37/unit to Rs. 7.02/unit and the project of the Appellant is about to get commissioned, the first Respondent/State

Commission has reduced the tariff to Rs. 5.07/unit to the grave prejudice of the Appellant and on account of this, the Appellant was helpless and facing such financial difficulty that it has been constrained to enter into a supplementary PPA with the second Respondent/UPPCL on 13.03.2018 because the Appellant is continuing to pay the additional Interest during Construction (IDC) since January, 2017. On account of this compulsion, the Appellant entered into the supplementary PPA.

4. Further, the counsel for the Appellant submitted that, the first Respondent/State Commission has erred in lowering the tariff profusely from Rs. 7.02/unit to Rs. 5.07/unit without considering the costs incurred by the Appellant and placing the Appellant at a similar footing with other developers even though the Appellant has admittedly almost completed its project and is likely to be commissioned within Financial Year 2017-18 like the previous set of nine bidders who have been allowed the tariff of Rs. 7.02/unit. This aspect of the matter has neither been looked into nor considered nor appreciated by the first Respondent/State Commission. Therefore, the Appellant is constrained to redress its grievances before this Tribunal by questioning the correctness of the impugned Order dated 12.02.2018 passed in Petition No. 1110/2016 by the first Respondent/State Commission in so far it relates to the Appellant and presented this appeal.

5. It is the bone contention of the Appellant, at the outset, that the supplementary PPA has been executed by the Appellant under compulsion

which is evident from the communication dated 07.03.2018 written by the Appellant to the second Respondent/UPPCL. On account of this helplessness and facing huge financial burden, the Appellant got constrained to enter into the supplementary PPA with the second Respondent/UPPCL and, further, this aspect of the matter was specifically pointed out in its detailed written submission before the first Respondent/State Commission that it has neither been looked into nor considered whereas the cases of the similarly situated nine other bidders have been considered and fixed the tariff @ Rs.7.02/unit taking into consideration the cost of the project incurred by the said nine bidders whereas it is the specific case of the Appellant before the first Respondent/State Commission that they have incurred an amount of Rs. 37.36 crores as on 04.01.2018 i.e. Rs. 6.23 crore/MW contrary to Rs. 4.65 crore considered by the first Respondent/State Commission while adopting the tariff of Rs. 5.07/unit in the impugned Order.

6. Further, she vehemently submitted that, the Appellant has already established the project and has sunk huge investments into the same and also specifically pointed out the Committee has recommended the name of the Appellant also for consideration which has neither been looked into nor considered by the first Respondent/State Commission and passed the impugned Order contrary to the case made out by the Appellant. Therefore, she submitted that, the Order impugned may be set aside and one more

opportunity may kindly be provided to the Appellant to make out its case before the first Respondent/State Commission and the matter may kindly be remitted back to the first Respondent/State Commission for reconsideration afresh in accordance with law. All the contentions of the parties may kindly be left open.

7. **Per-contra**, the learned counsel, Mr. C.K. Rai, appearing for the first Respondent/State Commission, submitted that, this matter has been heard on 26.02.2019 and 06.03.2019. After hearing the learned counsel for both the parties, this Tribunal felt that the matter requires reconsideration afresh and keeping this fact into consideration, this Tribunal has directed the counsel for the first Respondent/State Commission to take necessary instructions from the first Respondent/State Commission and make his submissions.

8. Accordingly, the counsel for the first Respondent/State Commission, on instruction from the first Respondent/State Commission, fairly submitted that, on direction of this Tribunal, the matter will be reconsidered afresh by the first Respondent/State Commission having regard to the facts and circumstances of the case in hand and in accordance with law after affording reasonable opportunity of hearing to the Appellant and the interested parties. Further, he submitted that, all the contentions of both the parties may be left open.

9. The learned counsel, Ms. Garima Srivastava, appearing for the second Respondent/UPPCL submitted that, the first Respondent/ State Commission, after taking all the relevant facts into consideration and after considering the case made out by the Appellant and the second Respondent/UPPCL, have passed just and proper Order which is impugned herein. The Appellant has failed to make out any case on merits for interference by this Tribunal in the impugned Order passed by the first Respondent/State Commission. Therefore, she submitted that, interference by this Tribunal does not call for.

10. Submissions of the learned counsel for the Appellant and the Respondent Nos. 1 and 2, as stated supra, are placed on record.

11. We have heard the learned counsel, Ms. Swapna Seshadri, appearing for the Appellant, the learned counsel, Mr. C.K. Rai, appearing for the first Respondent and the learned counsel, Ms. Garima Srivastava, appearing for the second Respondent (Uttar Pradesh Power Corporation Ltd.) for quite some time.

12. Third respondent (Uttar Pradesh New & Renewable Energy Development Agency), though served, is unrepresented.

13. In the light of the submissions of the learned counsel for the Appellant and the Respondent Nos. 1 and 2 and having regard to the peculiar facts and circumstances of the case in hand, as stated supra, it would be fit and

proper for this Tribunal to pass an appropriate order to meet the ends of justice on the ground that the case made out by the counsel for the Appellant has not been considered properly by the first Respondent/State Commission. Therefore, we are of the considered view that the matter requires reconsideration afresh and can be decided after affording reasonable opportunity of hearing to the Appellant and the interested parties.

14. Taking into consideration the facts and circumstances of the case, as stated supra, the instant Appeal, being No. 176 of 2018, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi, is hereby allowed in part in so far as the Appellant is concerned only.

15. The impugned Order dated 12.02.2018 of the Uttar Pradesh Electricity Regulatory Commission, Lucknow is hereby set aside in so far it relates to the Petition No. 1110/2016.

The matter stands remitted back to the first Respondent/State Commission, in so far it relates to the Petition No. 1110/2016, for reconsideration afresh with the direction to pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the interested parties and dispose of the same as expeditiously as possible, at any rate, within a period of three months from the date of the appearance of the parties before it.



16. The Appellant, Respondents and interested parties are directed to appear before the first Respondent/Sate Commission without notice on 04.04.2019.

17. All the contentions of the Appellant and the Respondents are left open.

18. With these observations, the instant appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

**IA NO. 731 of 2018**

In view of the Appeal No. 176 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 731 of 2018 do not survive for consideration and, hence, the instant IA stands disposed of as having become infructuous.

Parties to bear their own costs.

Order accordingly.

**(Ravindra Kumar Verma)**  
**Technical Member**

*vt/ss*

**(Justice N.K. Patil)**  
**Judicial Member**