

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 364 OF 2024 & IA No. 1274 OF 2024

Dated: 2nd January, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member(Electricity)

In the matter of:

Jharkhand Bijli Vitran Nigam Limited
Through its DGM cum Resident Engineer
Engineering Bhawan, HEC, Appellant(s)
Dhurwa, Ranchi-834 004, Jharkhand

Versus

Jharkhand State Electricity Regulatory
Commission
Through its secretary
1st Floor, Jharkhand State Housing Board (Old Respondent(s)
Head Quarter) Harmu Housing Colony, Ranchi
Jharkhand – 834 002

Counsel on record for the Appellant(s) : Anup Kumar
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Bharath Gangadharan
Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Akash Lamba
Nihal Bhardwaj
Siddharth Nigotia
Shivam Kumar
Mohit Gupta
Manu Tiwari
Kartikay Trivedi
Aashwyn Singh
Harsh Vardhan
Suhael Buttan
Priya Dhankar
Anant Singh
Vineet Kumar
Kunal Veer Chopra

Nikunj Bhatnagar
Vedant Choudhary for App. 1

Counsel on record for the Respondent(s) : Farrukh Rasheed for Res. 1

APL No. 365 OF 2024 & IA No. 1276 OF 2024

In the matter of:

Jharkhand Bijli Vitran Nigam Limited
Through its DGM cum Resident Engineer
Engineering Bhawan, HEC, Appellant(s)
Dhurwa, Ranchi-834 004, Jharkhand

Versus

Jharkhand State Electricity Regulatory
Commission
Through its secretary
1st Floor, Jharkhand State Housing Board (Old Respondent(s)
Head Quarter) Harmu Housing Colony, Ranchi
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Counsel on record for the Appellant(s) : Anup Kumar
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Manu Tiwari
Aashwyn Singh
Harsh Vardhan
Suhael Buttan
Priya Dhankar
Anant Singh
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Vedant Choudhary for App. 1

Counsel on record for the Respondent(s) : Farrukh Rasheed for Res. 1

APL No. 367 OF 2024 & IA No. 1275 OF 2024

In the matter of:

Jharkhand Bijli Vitran Nigam Limited
Through its DGM cum Resident Engineer
Engineering Bhawan, HEC, Appellant(s)
Dhurwa, Ranchi-834 004, Jharkhand

Versus

Jharkhand State Electricity Regulatory
Commission
Through its secretary
1st Floor, Jharkhand State Housing Board (Old Respondent(s)
Head Quarter) Harmu Housing Colony, Ranchi
Jharkhand – 834 002

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Mohit Gupta
Manu Tiwari
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Suhael Buttan
Priya Dhankar
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Vineet Kumar
Nikunj Bhatnagar
Kunal Veer Chopra
Vedant Choudhary for App. 1

Counsel on record for the Respondent(s) : Farrukh Rasheed for Res. 1

ORDER

Heard Mr. Shri Venkatesh, Learned Counsel for the Appellant and Mr, Farrukh Rasheed, Learned Counsel for the first Respondent, and with their consent all the three appeals are being disposed of. It would suffice,

for the disposal of all these three appeals, to note the contents of the order impugned in Appeal No. 364 of 2024.

The order, impugned in Appeal No. 364 of 2024, was passed by the Jharkhand State Electricity Regulatory Commission (“JSERC” for short) on True-up for FY 2020-21, Annual Performance Review for FY 2021-22 and Aggregate Revenue Requirement and Tariff for FY 2022-23 with respect to the Appellant distribution licensee in the State of Jharkhand. In paras 5.122 of the said order, the JSERC observed that, in FY 2019-20, the Appellant had not complied with the directions of the Commission regarding compliance with its Solar Power RP obligations; and they had filed an Appeal before this Tribunal against the previous order of the JSERC dated 27.04.2018 which is pending before this Tribunal.

Thereafter, in para 5.123 of the impugned order, the JSERC noted that it was again imposing penalty of 2 per cent due to various reasons as summarized below:-

“The Commission on several occasion i.e. nearly seven years has directed the Petitioner to submit the Fixed Asset Register. But, the Petitioner on one pretext or other has not submitted the Fixed Asset Register despite lapse of seven years.

- *The Petitioner on several occasions had failed to comply with Renewable Power Purchase Obligation.*
- *The Commission has observed during hearing; the petitioner has not complied with standard of performance.*
- *The Commission on various occasions had directed the Petitioner to submit the discrepancies outlined in the petition. But, the*

Petitioner has not complied with the direction and not submitted the data vis-à-vis the discrepancies pointed out. “

The JSERC, therefore, imposed a penalty of 2% of the Appellant's Annual Revenue Requirement which was quantified as Rs. 105.28 Crores. It is evident, from the table in para 5.24 of the impugned order, that non-compliance by the Appellant, with respect to its solar power renewable purchase obligations for the aforesaid period, was of 765.8 Million Units. It is not even disputed before us by Mr. Sri Venkatesh, Learned Counsel for the Appellant, that this finding of the JSERC suffers from any infirmity. While fairly admitting that the Appellant had failed to comply with its Solar Power RPO, the submission urged on behalf of the Appellant is that the JSERC lacked jurisdiction to impose the penalty of reduction in the ARR by 2%. Reliance is placed in this regard by Mr. Shri Venkatesh, Learned Counsel for the Appellant, on **Maharashtra State Electricity Distribution Company Limited Vs. MERC** (Judgment in Appeal No. 71 of 2007 dated 04.05.2019) wherein this Tribunal, while considering a similar issue whereby penalty of reduction in the ARR was imposed, observed as under:-

“..... We have carefully considered the views expressed by the two sides and examined the facts placed before us. The alleged difficulties in implementing the load shedding protocol, as reproduced in paragraph 4 above, can certainly not be valid excuses for violating the protocol. Yet we are unable to approve of the action taken by the Commission to deal with the violation. The striking feature of this case is that the disallowance of Rs.96 Crores is in the nature of penalty, not on account of inefficiency but on account of an act perceived as disobedience. The purpose of determining the ARR and designing the tariff is to regulate power purchase, supply and distribution in an equitable

*manner so that the consumer is able to get the power at the price reflecting the cost while the distributor is able to recover the cost of supply along with the normal profit. The sole attention of the Commission while doing this exercise is to balance the cost of procurement and the revenue. The Commission has to be alert all the time that no distribution licensee is able to pass on to the consumers any cost unwisely or inefficiently incurred. At the same time the Commission has to see that the distribution licensee can survive in the business by getting the due returns and the cost. The Commission has to be entirely objective, dispassionate and professional in its approach in doing this tedious exercise. **The Electricity Act has sufficient provision for handling the situation of disobedience. As already mentioned above, section 142, gives the Commission, power for punishment in such a situation. The Commission is a creation of the statute. Even if such power given is considered by the Commission to be insufficient the Commission cannot convert its power of tariff fixation given by section 61 and 62 of the Electricity Act 2003 into a proceeding for imposing penalty.** Accordingly we will proceed to examine this case from the view of ARR and tariff fixation, not with a view to analyse what punishment should be inflicted on the appellant on account of disobedience, if at all, to comply with the Commission's order for implementing the second staggering day of load shedding. In the first place, as already mentioned above, the demand-supply gap which had necessitated passing of the load shedding protocol had been largely bridged.....” (emphasis supplied)*

In the light of the law, declared in the aforesaid judgment of this Tribunal, it does appear that the Respondent-Commission has exceeded its jurisdiction in imposing a penalty of reduction of 2% of the ARR of the Appellant for their failure to comply with their Solar Power RP obligations.

We cannot, however, ignore the fact that among the functions, which the State Commission is obligated to discharge under Section 86(1)(e) of the Electricity Act, is to promote generation of electricity from renewable sources of energy, and also to specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of supply of a distribution licensee. Further, Section 61(h) of the Electricity Act requires the Appropriate Commission, while specifying the terms and conditions for determination of tariff, to be guided by the need to promote generation of electricity from renewable sources of energy.

In the exercise of its powers under Section 61, 66 and 86(1)(e) read with Section 181 of the Electricity Act, the JSERC made the JSERC (Renewable Energy Purchase Obligation and its Compliance) Regulations, 2016, and thereafter the JSERC (Renewable Energy Purchase Obligation and its Compliance) Regulations, 2020. Regulation 10 of both the 2016 and 2020 Regulations provides for the effect of default. It would suffice, therefore, to refer to clause 10.1 to 10.7 of the 2020 Regulations which reads as under:-

“10.1 The Obligated Entity(ies) shall submit the details of their compliance of RPO to the State Agency on a quarterly basis. The final accounts shall be submitted by 31st July of the Assessment Year along with the detailed statement of energy procurement from renewable energy sources and RECs purchases (if any), duly certified by the auditors. In case of delay by any Obligated Entity(ies), the State Agency may issue notice to such Obligated Entity(ies) to submit the same at the latest by 31st of August of the Assessment Year.

10.2 After receiving the compliance from the obligated entities as per Clause 10.1 above, the State Agency shall assess the shortfall, if any, in meeting the RPO by the obligated entities in the State for the

relevant Financial Year along with the RPO charge as per Clause 10.4 and submit the Annual Compliance Report by 30th September of the Assessment Year. In case of default by any of the obligated entities, the Commission may suo-moto initiate proceedings against the Obligated Entity(ies) in default under Section 142 of the Act.

10.3 The Commission shall serve the notices to the Obligated Entity(ies) identified as defaulter(s) in the assessment done under Clause 10.2 above by 30th October of the Assessment Year requiring them to create an RPO fund based on the charges determined in the manner mentioned under Clause 10.4.

10.4 The Obligated Entity(ies) in default shall pay, by 30th November of the Assessment Year, the RPO charge determined on the basis of the shortfall in units of renewable energy purchase obligation and the forbearance price decided by the Central Commission to the fund created.

Provided that the fund so created shall be utilised, as may be directed by the Commission, from time to time;

Provided that the details of such fund created and the compliance using the same shall be submitted by the Obligated Entity(ies) which are Licensees in the Tariff Orders of the respective year;

10.5 An obligated entity shall be allowed to comply with the RPO targets through procurement of certificates by 1st quarter of the year following the Assessment Year.

10.6 Where any Obligated Entity(ies) still fail to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates by 1st quarter of the year following the Assessment Year, they shall also be liable for penalty as may be decided by the Commission under section 142 of the Act:

Provided that in case of genuine difficulty in complying with the renewable energy purchase obligation because of non-availability of Certificates, the Obligated Entity can approach the Commission for appropriate relief;

Provided that where the Commission provides relief to the Licensee in terms of Clause 10.6 of these Regulation or the penal action under section 142 of the Act shall not be invoked for that specific year.

10.7 The penalty enforced by the Commission on the Obligated Entity shall not be a pass through in the Aggregate Revenue Requirement in case the Obligated Entity is a Distribution Licensee.”

It is evident from Regulation 10.6, as afore-extracted, that, if any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under Section 142 of the Electricity Act. Besides imposition of penalty under Section 142 of the Electricity Act, Clause 10.4 confers power on the Commission to require the obligated entity(ies) in default to pay the RPO charges as the Commission may determine on the basis of the shortfall in units of renewable energy purchase obligations and the forbearance price decided by the Central Commission to the State agencies which would deposit the amount in a separate fund.

Section 142 of the Electricity Act enables the Commission, if it is satisfied that any person has contravened any of the provisions of the Electricity Act or the rules or regulations made thereunder, or any direction issued by the Commission, to pass an order in writing directing that, without prejudice to any other penalty to which such person may be liable under this Electricity Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a

continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction. The definition of a “person”, in Section 2(49) of the Electricity Act, is an inclusive definition and, consequently, would bring within its ambit not only the Appellant company but also its officers responsible for such lapses, if any.

While the need for the appellant to ensure compliance, with its Solar Power RP obligations, cannot be over-emphasised, the mode and manner in which action should be taken, for the Appellant’s default in fulfilling its solar RP obligations for these three years, is not by way of reduction by 2% of the ARR but in terms of Section 142 of the Electricity Act and Regulation 10 of the RPO regulations as extracted hereinabove.

During the course of hearing of these appeals, we had called for an affidavit to be filed by the Appellant to ascertain whether any steps had been taken by them to ensure compliance with its statutory obligations under the RPO Regulations. The affidavit, as filed, does not even reflect any time frame within which the Appellant would ensure compliance in this regard. While certain efforts being taken by them are indicated in the said affidavit, what is left unsaid is why the Appellant chose not to purchase renewable energy certificates for the shortfall in fulfilment of its RPO obligations, though such purchase of certificates is stipulated in the Regulations itself.

While we find force in the submission, urged on behalf of the Appellant by Mr. Shri Venkatesh, Learned Counsel, that the JSERC had acted beyond its jurisdiction in imposing a penalty of 2% reduction in their ARR for the Appellant’s failure to discharge its solar RPO, we cannot also ignore the fact that the Appellant has been recalcitrant in fulfilling its Solar Power RP obligations which the afore-said Regulations mandated that they comply.

Section 121 of the Electricity Act confers power on this Tribunal to issue appropriate directions to the concerned Commissions for performance of its statutory functions under the Electricity Act. Since the Regulations made under the Electricity Act must also be read as part and parcel of the said Act, the JSERC has the statutory obligation to ensure compliance by the Appellant of the RPO Regulations. While the action of the Respondent Commission in imposing a 2% reduction in the Appellant's ARR is set aside as it is an order passed without jurisdiction, we expect the JSERC to take appropriate action, for non-compliance by the Appellant of its Solar Power RP obligations, in terms of Section 142 of the Electricity Act read with Clause 10 of the RPO Regulations. The JSERC shall take necessary action with utmost expedition and, in any event, within six months from the date of receipt a copy of this order. The Respondent Commission shall submit an action taken report to this Tribunal, latest by 1st July, 2025.

The impugned order, to the extent indicated hereinabove, is set aside, and the matter is remanded to the JSERC to pass an order afresh adding the 2%, deducted by it earlier, to the Annual Revenue Requirement of the Appellant. Since several other contentions are raised in these Appeals, suffice it, while disposing of all these appeals, to grant the Appellant liberty to file appeals afresh with respect to the other contentions which they had raised in the present appeals. All the three appeals are, accordingly, disposed of. All associated IAs, if any, shall also stand disposed of.

(Seema Gupta)
Technical Member (Electricity)
mk/dk

(Justice Ramesh Ranganathan)
Chairperson