

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

(APPELLATE JURISDICTION)

APPEAL NO. 36 OF 2020

Dated: **29.07.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

RDM CARE (INDIA) PVT. LTD.

2/12, West Patel Nagar,
New Delhi-110008

... Appellant(s)

VERSUS

**1. MADHYA PRADESH ELECTRICITY REGULATORY
COMMISSION**

Through its Secretary
5th Floor, Metro Plaza,
E-5, Arera colony, Bittan Market,
Bhopal – 462016

2. M.P. POWER MANAGEMENT COMPANY LTD.

Through its Chairman and Managing Director
Shakti Bhawan, Vidyut Nagar,
Jabalpur – 482 008

... Respondents

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

Counsel for the Respondent(s) : Mr. Shri Venkatesh
Mr. V.M. Kannan
Ms. Isnain Muzamil for R-1

Mr. Nitin Gaur
Ms. Anuradha Mishra for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant has established, operates and maintains 1.2 MW biogas-based power project in the State of Madhya Pradesh, described as unique, one of its own kind, using cow dung and a mix to the extent of 10% of fruit and vegetable waste as the fuel. It had approached the State Commission by Petition (no. 7 of 2014) seeking project specific tariff determination. The State Commission declined to proceed on those lines and decided that it shall determine the tariff by generic order for all such projects. The Commission, thereafter, issued an approach paper, being no. SMP 27/2014, for fixation of norms for determination of tariff for procurement of power from biogas-based power projects. The appellant participated in the proceedings taken out in its wake which culminated in tariff order being issued on 05.02.2015 it having been applied to all the new and existing biogas based projects. The appellant was aggrieved on denial of certain reliefs and brought unsuccessfully a challenge by review petition which was disposed of on 30.04.2015. By appeal no. 327 of 2017 against the Order dated 05.02.2015, certain issues were raised before this Tribunal, two of which survive *viz. capital cost and ratio of fuel mix*. The appeal (no. 327 of 2017) was disposed of by this Tribunal by judgment dated 18.04.2018 remanding the matter

back to the Commission for fresh consideration on the said two issues. The Commission, thereafter, heard the parties and passed the Order dated 05.02.2019, the appellant, being again aggrieved, having filed the appeal at hand.

2. On the question of capital cost, the views of the Commission, as articulated in Tariff Order dated 05.02.2015, read thus:

“Capital Cost:

Commission's views

As brought out earlier, the project cost varies on account of various factors including location of the project, rating of the units, total capacity, technology, designed capacity utilization factor etc. and therefore, a reasonable project cost needs to be considered on a uniform basis for tariff determination.

6.4 The Commission observed that diverse views were expressed by various stakeholders including licensees. However, item wise cost data has not been submitted by any of the project developers/licensees to substantiate their proposed capital cost. Keeping in view the various data available with the Commission, the Commission is of the view that it would be reasonable to adopt a capital cost of Rs. 9.25 Crores per MW net of subsidy and including cost associated with power evacuation system from the project site to nearest sub-station of distribution/transmission licensee.”

3. This Tribunal by judgment dated 18.04.2018 in Appeal no. 327 of 2017 held thus:

“Capital Cost:

Our Findings:

9.3 We have gone through the detailed submissions of the Appellant and the Respondents and find that the cost analysis has been done by the State Commission only on the basis of DPR cost of the project submitted to MNRE for consideration of subsidy/CFA.

MNRE while conveying its sanction for a subsidy of Rs. 3.6 crores did not render any observation on the project cost. Accordingly, it has been presumed that DPR cost is the final cost and also bears the approval of MNRE. The Appellant has indicated that it has incurred an expenditure of Rs. 15.88 crores on the project and taking into account the subsidy granted by MNRE, the net capital cost works out to Rs. 12.28 crores. It is an admitted fact that the project costs estimated in the DPR are based on the broad parameters of planning, engineering, procurement, execution, etc. but the final completed costs are generally found to be, by and large, different from the DPR costs. Similar is the case for the instant bio-gas plant. Even in the conventional projects like thermal, hydro and gas based projects, the completed cost is generally found to be more than the DPR stage cost. Keeping this aspect in view, we opine that the State Commission could have

applied its prudence check over the total expenditures incurred on the project by the Appellant and arrived at per MW cost accordingly for tariff computations. We also find that the generic tariff granted to the Appellant at Rs. 3.4 per unit is considered to be quite low as compared to the similar projects in other parts of the country and also the generic tariff for biogas plant provided by CERC in its tariff order dated 31.03.2015 for the FY 2015-16. As such, the cost/tariff fixation of the plant by the State Commission needs to be reviewed in the interest of justice and equity.

9.15 In view of our findings and analysis brought out at supra, out of the four issues, the decision of the State Commission on issues 'B' and 'D' are just and proper. The issues 'A' and 'C' would however, need to be examined

afresh taking into account our above findings. Hence, the Appeal is partly allowed to the extent of issues relating to the 'project cost' and 'fuel mix'. On other two issues viz. 'fuel cost' and 'manure cost', we do not feel any necessity interfere in the findings of the State Commission."

4. The Commission, by the Order dated 05.02.2019, which is now impugned, has held thus:

"Capital Cost:

"17. With regard to the capital cost of the project, the Commission has noted that the CERC in its Regulations, 2009 issued on 17.09.2009 has not specified norms for determination of Biogas based power projects with cow manure as a key feedstock. However, for the first time, the CERC issued on 06.92.2012 norms for such projects in its Regulations, 2012 after considering comments from various stakeholders and the capital subsidy from MNRE. As such, these norms were applicable for the projects commissioned on 06.02.2012 or thereafter. The Capital cost as considered by the Central Commission for FY 2012-13 to 2018-19 is given below:

...

18. The plant of the respondent no.1 was commissioned on 25.08.2011. Considering the indexation formula as specified by CERC in its Regulations, 2012, the net Capital Cost for the FY 2011-12 shall even be less than Rs. 7.75 Crs. /MW for determination of tariff. However, the Commission in the impugned order had considered the net capital cost at Rs. 8.5 Crore/MW for the projects commissioned before 05.02.2015. Also, this Commission had considered the Capital Cost (inclusive of power evacuation cost minus subsidy) at Rs. 9.25 Cr/MW in the Tariff order for procurement of power from biogas based new power projects issued on 05.02.2015 as against Rs. 885.064 Lakh/MW considered by the Central Commission for FY 2015-16.