

F1
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 104 OF 2008
U.P.POWER CORP.LTD.

Appellant(s)

VERSUS

NATIONAL THERMAL POWER CORP.LTD.& ORS. Respondent(s)

WITH
CIVIL APPEAL NO. 695 OF 2008

O R D E R
CIVIL APPEAL NO. 104 OF 2008

The present appeal is filed by the U. P. Power Corporation Ltd. against an order of the Appellate Tribunal for Electricity dated 31.05.2007, which ultimately upheld a tariff order of the Central Electricity Regulatory Commission (in short, "Commission") dated 23.07.2003. The order of the learned Appellate Tribunal is on several points which have been decided in favour of the respondent-NTPC before us. The main grievance of Mr.Pradeep Mishra, learned counsel appearing for the appellant, is that the Appellate Tribunal has, with a very broad brush, gone beyond the Non-Obstante Clause contained in Clause 2.3 of the CERC Regulations, 2001 and has held that this would mean that the entire Regulations have been over-ridden and that consequently, old tariff orders alone will have to be read in its place.

2

On the other hand, the learned counsel appearing for the NTPC states that the Appellate Tribunal appears to have restricted the Non-Obstante Clause contained in Clause 2.3 only to 'operational norms' and not to other provisions contained in the Regulations.

Since the bone of contention revolves around Clause 2.3, it is set out as follows :-

"2.3 Notwithstanding anything contained in this notification,

(a) The operational norms except those relating to "Target Availability" and "Plant Load Factor", as contained in the existing tariff notifications for individual power stations issued by the Central Government under proviso to Section 43 A(2) of the Electricity (Supply) Act, 1948 in respect of the existing stations of NTPC shall continue to apply for those stations.

(b) The operational norms, except those relating to "Target Availability" and "Plant Load Factor" for the existing and the new stations of NTPC and NLC for which no tariff notification has been issued by the Central Government but

3

Power Purchase Agreements (PPAs)/Bulk Power Supply Agreement (BPSAs) exist on the date of issue of this notification, shall be governed by the respective PPAs/BPSAs signed by the Generating Company with the beneficiaries. "

It will be seen that Clauses (a) and (b) of Clause 2.3 speak of "operational norms" except those relating to "Target Availability" and "Plant Load Factor", which concepts we are not strictly concerned with in this appeal. It is clear that the Non-Obstante Clause contained in Clause 2.3 would

refer only to "operational norms" which are prescribed in Clauses 2.4 and 1.11 of the notification dated 26.03.2001. The effect, therefore, of the Non-Obstante Clause contained in Clause 2.3 is to state that "operational norms" contained in the notification will not apply in respect of the existing stations of the NTPC, which will continue to be governed by tariff notification issued by the Central Government under Section 46 A (2) of the Electricity (Supply) Act, 1948 or agreement between the parties.

We find, therefore, that the learned Appellate Tribunal in stating that Clause 2.3 will render all other provisions of the Regulations including Clauses

4

2.4 and 1.11 thereof as non-operative in the case of conflict, is not a correct statement of the law.

The only other point which requires our consideration is what is contained in the Judgment of the Appellate Tribunal in paragraph 24 thereof. This paragraph reads as follows :-

"24. For Thermal Power Stations which existed as on 01.04.2001, debt-equity was fixed on normative 50:50 by the Central Commission which, inter-alia, meant that for the purpose of determination of tariff the capital cost of the instant plant on the date of commercial operation was necessarily to be traced to the approval of the Central Electricity Authority (i.e. CEA) or Govt. of India. The compilation of approvals submitted by NTPC in respect of the instant station on 23.01.2007 provides the information about the approved capital cost being Rs. 1190.69 crores. The NTPC has claimed servicing of debt-equity capital at 50:50. In view of the aforesaid even if data in respect of subscribed and paid up capital for the instant plant were furnished the same was not much relevant as the basis of Debt-Equity Capital Ratio is to be taken on normative basis of 50:50.

5

Approval of Return on Equity of 16% was also notified by Government of India for Singrauli Thermal Power Station. Therefore, we reject the claim of the Appellant that the fixation of Debt-Equity Ratio on the basis of normative 50:50 and allowing Return on Equity of 16% are not statutorily permissible. "

Mr. Pradeep Mishra, learned counsel appearing for the appellant, has argued before us that the Debt-Equity Ratio fixed on a normative basis of 50:50 by the Central Commission ought not to apply in view of Sh.K.P.Rao Committee's recommendations. We have been informed by the learned counsel appearing on behalf of the respondent-NTPC, that this Committee's recommendations were not accepted by the Government and consequently, not accepted by the Commission also.

We find that the Debt-Equity Ratio, which was fixed on a normative basis of 50:50, had been fixed prior to the coming into force of the 2001 Regulations. Approval of Return on Equity of 16%, which was also notified by the Government of India for the Thermal Power Station "Singrauli" will also

continue to govern the parties.

6

We, therefore, find no error in continuing with the Debt-Equity Ratio on a normative basis of 50:50. The civil appeal is disposed of accordingly. There shall be no order as to costs.

Civil Appeal No. 695 of 2008

The point raised in this appeal is covered against the appellant by the decision of this Court in National Thermal Power Corporation Ltd. Vs. Madhya Pradesh State Electricity Board & Ors. reported in (2011) 15 SCC 580 .

Therefore, this appeal is dismissed with no order as to costs.

.....J.

[KURIAN JOSEPH]

.....J.

[ROHINTON FALI NARIMAN]

New Delhi;

January 28, 2016.

7

ITEM NO.101 COURT NO.12 SECTION XVII
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 104/2008

U.P.POWER CORP.LTD.

Appellant(s)

VERSUS

NATIONAL THERMAL POWER CORP.LD.& ORS.

Respondent(s)

(with appln. (s) for ex-parte stay and office report)

WITH

C.A. No. 695/2008

(With Office Report)

C.A. No. 696/2008

(With Office Report)

Date : 28/01/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Pradeep Misra, Adv.

For Respondent(s) Mr. M. G. Ramachandran, Adv.

Mr. K. V. Mohan, Adv.

Ms. Poorva Saigal, Adv.

Mr. Rahul Singhal, Adv.

Mr. Alok Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

Civil Appeal No. 104 of 2008 is disposed of and Civil Appeal

No. 695 of 2008 is dismissed in terms of the signed order.

Pending interlocutory applications, if any, are disposed of.

Civil Appeal No. 696 of 2008 be listed on 01.02.2016.

(Jayant Kumar Arora)

Sr. P.A. (Renu Diwan)

Court Master

(Signed order is placed on the file)

8