

SUPREME COURT OF INDIA

DLF Power Limited

Vs.

Central Coalfields Ltd.

C.A.No.3109 of 2006

(Dr. Arijit Pasayat and Lokeshwer S.Panta JJ)

01.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. These two Civil Appeals are inter related and are, therefore, disposed of by this common order. Civil Appeal No. 3561 of 2006 has been filed by Central Coalfields Limited (in short the `CCL') under Section 125 of the *Electricity Act, 2003* (in short the `Act') impugning the judgment and order dated 11th May, 2006 passed by the Appellate Tribunal for Electricity, New Delhi (in short the `Appellate Tribunal') in Appeal No.166 of 2005. The other appeal i.e. Civil Appeal No. 3109 of 2006 has been filed by DLF Power Limited (in short the `DLF') challenging part of the judgment dated 11.5.2006 passed by the Appellate Tribunal. By order dated 11.7.2007 this court directed the Cost Accounts Wing of M/s. Ernst & Young to determine the actual capital cost based on the formula in the "Power Purchase Agreement" dated 8.2.1993 between CCL and DLF. This Court further directed that the copy of the report of the Cost Accounts Wing be given to the parties and to the Jharkhand State Electricity Regulatory Commission (in short the `State Commission'). It was further directed that the State Commission on receipt of the report shall determine the tariff as per the terms of the "Power Purchase Agreement" between the parties for the two power plants.

2. CCL's case is that the Cost Accounts Wing of M/s. Ernst & Young only on the basis of the documents supplied by DLF have carried out the exercise of determining the actual capital cost of the two power plants without even asking for any comments or any inputs from CCL while working out the actual capital cost. Grievance is that the report was based solely on the basis of the documents supplied by DLF, copies of which were also not made available to CCL. M/s. Ernst & Young have determined the capital cost of the two power plants at Giddi at Rs.72.34 crores and for Rajrappa determined the actual capital cost of Rs.67.45 crores. On receipt of the report from the Cost Accounts Wing of M/s. Ernst & Young, State Commission determined the tariff cost. The Commission consisted of two members; one was the Chairman and the other was the Member (Technical).

Both of them separately determined the tariff for the subsequent year after the first year based on the actual capitalization cost supplied by the Cost Accountants. It is submitted that the two determinations are at great variance from each other.

3. It is submitted that the international norms for actual capitalization cost for power has not been kept in view. It is pointed out that the actual capitalization cost arrived at is apparently highly excessive, purportedly based on the inflated figures supplied by DLF without supplying copies to CCL.

4. Learned counsel for the appellant CCL submitted that the basis of tariff fixation is erroneous and in any event a statutory forum is available to question correctness of the report, which can be availed.

5. On the other hand learned counsel for the DLF submitted that M/s Ernst & Young are internationally reputed financial consultants. There is no substance in the objections raised by CCL.

6. We are inclined to accept the submissions of learned counsel for the CCL that the complex process of evaluation is involved in fixing the tariff and it would be in the interest of parties challenge, if any, to the report is made before the prescribed authority. That being so, we dispose of the appeals with the direction that in case CCL files appeal within four weeks from today the same shall be considered by the Appellate Tribunal in accordance with law. The Appellate Tribunal is requested to dispose of the appeal on merits within a period of two months from the date of filing. All questions are left open to be decided without the question of limitation relating the filing of appeal. It is stated that CCL is paying Rs.2.07 of KWH for both Rajrappa and Giddi for the second year after commissioning in July, 2000 for Rajrappa and in April, 2001 for Giddi. CCL shall continue to make the payment. We make it clear that by providing interim protection we have not expressed any opinion on the merits of the case.