

Court No. - 24

Case :- FIRST APPEAL No. - 85 of 2003

Appellant :- U.P.Power Corporation Ltd.

Respondent :- U.P.Electricity Regulatory Commission Lucknow
And Another

Counsel for Appellant :- Amarjeet Singh Rakhra

Hon'ble Saral Srivastava,J.

1. Heard Sri Amarjeet Singh Rakhra, learned counsel for the appellant and Sri Sanjay Singh, learned counsel for respondent No.1.

2. By means of present appeal, the appellant has assailed the order dated 26.02.2003 passed by Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as the 'Commission') in Petition No.6-ARR of 2002 filed by Noida Power Company Ltd.

3. It appears that the dispute arose with regard to charge of tariff between the appellant and respondent No.2, and the respondent No.2 approached the Commission contending *inter-alia* that there was no breach of agreement for annual revenue requirement for the year 2002-2003 and bulk power purchase price.

4. The Commission after receiving the application issued notice to the appellant, and a copy of the application of respondent No.2 was supplied to the appellant to file objection, and also a notice was published in two newspaper, namely Indian Express and Amar Ujala on 27.04.2002 inviting objection from the consumers regarding the ARR and tariff proposal.

5. The Commission recorded that no consumer or other licensee

submitted any objection. Consequently, the Commission proceeded to decide the case and approved the ARR and tariff proposal of respondent No.2.

6. It is contended by learned counsel for the appellant that there was stipulation in the agreement dated 15.11.1993 executed between the appellant and the respondent No.2 that the appellant shall supply electricity to the respondent No.2 on subsidized rate provided the respondent No.2 installs its own power generation system and fulfill all the conditions of licensee within four and half years from the date of agreement. He submits that it is also stipulated in agreement that in case the respondent No.2 failed to set up electricity power station, the appellant would charge double amount of tariff, and thus, it is contended that the Commission while allowing the application of the respondent No.2 failed to notice the relevant clause of agreement dated 15.11.1993 in approving the ARR and tariff submitted by respondent No.2.

7. Be that as it may, perusal of the order of the Commission dated 26.02.2003 reveals that copy of the application submitted by respondent No.2 was supplied to the appellant and the ARR and tariff plan was also published in two newspapers, namely Indian Express and Amar Ujala inviting objections from the consumer and other licensee. However, the record reveals that neither any consumer nor the appellant submitted any objection to the application of respondent No.2.

8. Since, no objection was submitted by the appellant before the Commission against the proposal of the respondent No.2, accordingly, the Commission found substance in the application of the respondent No.2 and approved the ARR and tariff plan.

9. Though, the learned counsel for the appellant has vehemently contended that the Commission failed to notice the relevant clause of agreement which categorically provided that the subsidized rate of tariff shall be charged from the respondents only if the respondent No.2 set up any electricity power generation system and make capital investment, and in case the said condition is not complied with within time frame as stipulated in the agreement, the appellant would charge double rate of tariff. The relevant clause of the agreement is not produced during the course of argument. Even otherwise, the appellant did not file any objection to the application of the respondent No.2 raising the contention raised by the appellant's counsel here. In such view of the fact, the Commission was not expected to record any finding on a plea which was not raised before it.

10. Thus, this Court does not find any illegality committed by Commission in allowing the application for ARR and tariff proposal of respondent no.2. Consequently, the appeal is ***dismissed*** with no order as to costs.

Order Date :- 11.12.2023

R.S. Tiwari