

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CWP-19060-2023
Date of decision: 29.08.2023

M/S GEMCO ENERGY PVT. LTD.

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. V.K. Sachdeva, Advocate and
Mr. Pulkit Sachdeva, Advocate
for the petitioner.

Ms. Sonia Madan, Advocate
for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the impugned order dated 20.07.2023 passed by the Haryana Electricity Regulatory Commission whereby a demand of Rs. 3.12 Crores has been raised against the petitioner-company on account of a differential tariff cost by taking suo moto cognizance of an anonymous complaint dated 13.04.2022 pertaining to the allegation of an old Boiler having been used in the Power Plant Project set up by the petitioner's company in the year 2013.

2. It is undisputed that as per Section 111 of the Electricity Act, 2003, a remedy of appeal is available against any order passed by the appropriate Commission. The arguments of the petitioner have largely been on the following aspects.

- i) That the issue in question had already been examined by the Haryana Electricity Regulatory Commission at a prior stage in the year 2014 and a report of the Chief Inspector of Boilers had been obtained which was in favour of the petitioner and the same was accepted by the appropriate Commission.
- ii) That there was no dispute raised by any person and that in the absence of any dispute having been raised, there was no occasion for adjudication thereof.
- iii) That the initial report even on suo moto petition, by the Chief Inspector of Boilers, was in favour of the petitioner, however, the same was later on retracted.
- (iv) That the evidence in the form of invoices submitted by the petitioner showing procurement of a new Boiler have not been taken into consideration by the Haryana Electricity Regulatory Commission.
- (v) That the material evidence which had been brought on record has been improperly evaluated and assessed.
- (vi) That the appropriate Commission has committed a judicial over reach in ascertaining the tariff by arbitrarily reducing the value of the Boiler from Rs. 9.98 crores to Rs. 2.07 crores approximately.

3. It is undisputable that all these issues are issues of fact and law which can also be agitated before the Appellate Forum. Counsel further contends that in order to protect his rights, he is willing to furnish a Bank Guarantee for the awarded amount with the respondents so as to balance the equities and that recovery, on furnishing of Bank Guarantee be stayed so as to enable the petitioner to approach the Appellate Tribunal for Electricity.

4. Counsel appearing on behalf of respondent No.3-Haryana Power Purchase Centre, however, contends that the apprehension of the petitioner about the respondents effecting recovery from 31.08.2023 is misconceived and that no recovery is take effect till 30.09.2023 as per Article 3.5 of the Power Purchase Agreement executed between the parties. The apprehension is thus misconceived and unsustainable giving no rise for any interim relief. She further contends that all these issues including the issue of an interim relief can be agitated by the petitioner before the Appellate Tribunal for Electricity.

5. After noticing the respective contention of the parties and noticing that an alternative efficacious remedy under Section 111 of the Electricity Act, 2003 is available to the petitioner to file an appeal against the order passed by the Haryana Electricity Regulatory Commission before the Appellate Tribunal for Electricity, the petitioner is relegated to the appropriate Appellate Forum to espouse his grievance. He shall be at liberty to take all pleas raised herein and any other such plea which may be so advised. The plea for any interim relief may also be considered by the Appellate Tribunal. The period during which the petition has remained pending before this Court may be taken into consideration by the Appellate Authority while computing limitation.

The present petition is disposed of as not pressed.

(VINOD S. BHARDWAJ)

JUDGE

AUGUST 29, 2023

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No