

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Prasenjit Biswas**

FMA 501 of 2025

**Eastern Coalfields Limited
Vs.
DPSC Limited & Ors.**

For the Appellant	: Mr. Tilak Kumar Bose, Ld. Sr. Advocate Ms. Akanhsha Mukherjee, Advocate Mr. Nilankan Banerjee, Advocate
For the Writ Petitioners/ Respondent Nos.1 & 2	: Mr. Anirban Ray, Ld. Sr. Advocate Mr. Kaushik Chowdhury, Advocate Mr. Bratin Kumar Dey, Advocate Ms. Shreya Saria, Advocate Ms. Anjana Banerjee, Advocate Mr. Subhankar Banerjee, Advocate
Hearing & Judgment on	: August 7, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against a judgment and order dated January 27, 2025 passed in WPA 2134 (W) of 2012.
2. Appeal is at the behest of the Eastern Coalfields Limited.
3. Learned Senior Advocate appearing for the appellant submits that, appellant entered into a Memorandum of Understanding with the writ petitioners/respondent no.1 for supply of coal for a period of six

- months in respect of a thermal power plant. He submits that, the respondent no.1 controls two units of thermal power plants. Only one unit is involved in the present case, namely, Chinakuri thermal power plant.
4. Learned Senior Advocate appearing for the appellant submits that, the Memorandum of Understanding does not contain any agreement as to any rate for supply of electricity by the respondent no.1 to the appellant. Therefore, the respondent no.1 could not charge for electric supply at rates not determined by the Electricity Regulatory Commission.
 5. Learned Senior Advocate appearing for the appellant submits that, the appellant approached the Dispute Redressal Grievance Cell and thereafter the Ombudsman with regard to the disputes relating to rates for electricity supply. In between, there was one round of writ petition. Ultimately, the Ombudsman was required to decide the disputes between the parties.
 6. Learned Senior Advocate appearing for the appellant draws the attention of the Court to the order of the Ombudsman. He submits that, the order of the Ombudsman contains adequate reasons. He draws the attention of the Court to the impugned judgment and order. He submits that, the learned Single Judge proceeded on the basis that, there was a preexisting commercial agreement between the respondent no.1 and the appellant with regard to electricity supply. He submits

- that, the Memorandum of Understanding cannot be construed to mean a preexisting commercial agreement for supply of electricity by the respondent no.1 to the appellant.
7. Learned Senior Advocate appearing for the appellant submits that, payment of electricity charged by the respondent no.1 for a given period of time cannot be construed to be an admission of liability as to the rate of electricity charged by the respondent no.1. He submits that, the rates charged were not fixed by the Electricity Regulatory Commission.
 8. Respondent no.1 is represented.
 9. In response to the query of the Court, as to which commercial document between the respondent no.1 and the appellant fixed the rate of electricity that the respondent no.1 would be supplying to the appellant is specified, learned Advocate for the respondent no.1 answers in the negative.
 10. On March 31, 1993 a lease agreement was executed between the appellants and the respondent No. 1 for a period of 20 years in respect of the Chinakuri Mining Complex for generation of electricity. A Memorandum of Understanding on October 4, 2010 was executed between the appellant and the respondent No. 1 for supply of coal for the Chinakuri Mining Complex.
 11. Apparently, there were disputes and differences between the appellant and the respondent No. 1 as to whether, the Chinakuri Thermal Power

- Plant would be treated as a captive power plant and, therefore, a fuel supply agreement was required to be executed or not. Apparently, in order to overcome such impasse the Memorandum of Understanding dated October 4, 2010 was executed.
12. Respondent No.1 supplied electricity to the Appellant from Chinakuri Power Plant. The respondent No. 1 was charged in accordance with the tariff fixed by the Electricity Regulating Commission from time to time excepting for the period October 2010 to March 2011.
 13. Disputes between the appellant and the respondent No. 1 relates to supply of electricity by the respondent No. 1 for the period from October, 2010 to March, 2011. For this period, the respondent No. 1 enhanced the charges by Rs. 1.61 per unit for the electrical energy supplied.
 14. This dispute between the parties, was initially referred by the appellant to the Grievance Redressal Officer. Appellant also filed a complaint before the Ombudsman and obtained an order of ex parte injunction restraining the respondent No. 1 from his connecting electricity supply.
 15. Being aggrieved by the order ex parte order of injunction passed by the Ombudsman, the respondent No. 1 filed a writ petition being WP 6754 (W) of 2011. Such writ petition was disposed of on April 25, 2011 with a direction upon Ombudsman to hear and dispose of the matter. An appeal was preferred by the respondent No. 1 against the order dated April 25, 2011 being AST no. 185 of 2011. Such appeal was disposed

of by an order dated May 18, 2011. The Division Bench directed the Grievance Redressal Officer to pass a reasoned order after affording a reasonable opportunity to hearing to the parties.

16. Grievance Redressal Officer passed an order dated August 18, 2011 directing the appellant to pay the tariff as levied by the respondent No. 1 at the rate of Rs. 1.61 paise per unit. Appellant approached the Ombudsman against the order of the Grievance Redressal Officer. The Ombudsman passed an order dated December 13, 2011 setting aside the order of the Grievance Redressal Officer dated August 11, 2011. The respondent No. 1 had thereafter approached the High Court by way of a writ petition resulting in the impugned judgment and order.
17. Before the learned Single Judge, the issue raised was that, whether by the reason of the Memorandum of Understanding which is a commercial transaction, the electricity supplied by the respondent No. 1 falls within the scope and ambit of the Electricity Act, 2003 and the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2007 or stands outside it. Learned Single Judge noted various provisions of the Act of 2003 as also the Regulations of 2007 to arrive at a finding that, there was commercial relationship between the appellant and the respondent No. 1 and that, such relationship comes within the purview of the exception to Clause 1.1 (iv) of the Regulation of 2007.

18. At the hearing before the learned Single Judge, it was admitted position of the rival parties that, the Act of 2003 governed the determination of tariff for electricity supply. It was, however, contended on behalf of the respondent No. 1 that by virtue of Clause 1.1 (iv) of the Regulation of 2007, the respondent No. 1 was entitled to levy such tariff as was just and proper and that, the tariff for the supply between the respondent No. 1 and the appellant was exempt from the purview of the tariff determination by the Electricity Regulatory Commission under the Act of 2003.
19. It is trite law, Electricity Regulatory Commission, acting within the scope and ambit of the Act of 2013 is vested with the jurisdiction to determine the tariff for electric supply. In the factual matrix of the present case, we are concerned with the exceptions craved out from the general proposition noted in the preceding sentence, so far as tariff for supply of electricity between a electric generation company and a consumer is concerned. Relevant in this context is Regulation 1.1 of the Regulation 2007 which is as follows:

“1.1 Short title, commencement and interpretation

These regulations may be called the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2007.

- i. They extend to the whole of West Bengal.*
- ii. They shall come into force on the date of their publication in the Official Gazette.*

- iii. *They shall apply to determination of tariff by the Commission in accordance with Section 62 of the Act;*
- iv. *They shall not apply to the following types of cases for the purpose of determination of tariff, but shall apply to such cases for the purpose of determination of wheeling and/or transmission charges:*
 - a. Use of electricity from captive generating plants for own consumption.*
 - b. In such cases where there is direct commercial relationship through supply by a generating station to a consumer;*
 - c. In such cases where there is direct commercial relationship through supply by an electricity trader to a consumer.*
 - d. In such cases where there is direct commercial relationship through supply by a distribution licensee to a consumer of another distribution licensee.*
 - e. In such cases where there is direct commercial relationship through supply by an electricity trader to a distribution licensee.*
 - f. In such cases where the supply is by a person exempted under 8th proviso to section 14 of the Act”*

20. Clause 1.1 of the Regulation of 2007 specifies the types of cases to which, such regulations will not apply for the purpose of determination of tariff. Clause 1.1 (iv)(b) and (e) specifies that, where there is a direct commercial relationship through a supply by a generating station to a consumer and where there is a direct commercial relationship through supply by an electricity trader to distribution Licensee the Regulation of 2007 will not apply.

21. Commercial Relationship is not defined under the Regulation of 2007 or the Act of 2003. Our attention was not drawn to any provision of the Act of 2003 or the Regulation of 2007 which defines the commercial relationship envisaged under clause 1.1 of the Regulations of 2007.
22. In normal parlance, commercial relationship will bring within its ambit any relationship commercial in nature between the two parties as defined under the Act of 2003 and the Regulation of 2007. However, such a wide interpretation of the commercial relationship will militate against the Act of 2003 and the Regulation of 2007.
23. Commercial relationship in the context of the Act of 2002 and more particularly under the Regulations of 2007 should be confined to a relationship of vendor and purchaser of electricity between two categories of persons enumerated in Clauses 1.1 (iv) (b) (e) of the Regulations of 2007, specifying the tariff for the electricity supply. In other words, there needs to be not only a commercial relationship between the generator station or the electricity trader to consumer or a distribution licensee as the case may be, but also the relationship must be direct. This relationship must relate to generation and supply of electricity and the relationship must specify the terms and conditions including the tariff at which, the supply is to be effected.
24. Apparently, the appellant and the respondent no.1 entered into a Memorandum of Understanding with regard to supply of coal. That supply of coal for the particular period of time envisaged in the

- Memorandum of Understanding does not specify any rates of electricity that the respondent no.1 will be supplying to the appellant.
25. There is a deed of lease also between the appellant and the respondent no.1. Again, despite our repeated requests to draw our attention to any clause in the deed of lease which specify the rate at which electricity would be supplied by the respondent no.1 to the appellant. Our attention was not drawn to any portion of such deed of lease.
26. There does not exist any commercial document between the appellant and the respondent no.1 specifying the rate at which, electricity would be supplied by the respondent no.1 to the appellant.
27. Consumption of electricity by the appellant will attract rates fixed under the tariffs in terms of the provisions of the Act of 2003. No other rates are permissible to be charged by the respondent no.1.
28. In such circumstances, we set aside the impugned judgment and order of the learned Single Judge.
29. Learned Single Judge proceeded to direct rates of electricity to be charged at which are not permissible under the Act of 2003.
30. **FMA 501 of 2025** is, therefore, **disposed of** without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Prasenjit Biswas, J.)