

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 147 OF 2015

Dated: 20th March, 2018

**Present: HON'BLE MR. N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

Shree Cement Limited

Having its Registered Office at:
Bangur Nagar, Beawar,
District Ajmer, Rajasthan
Through Its General Manager
(Power Business)

..... Appellant

VERSUS

1. Rajasthan Electricity Regulatory Commission

Vidyut Viniyamak Bhawan,
Sahakar Marg,
Near State Motor Garage,
Jaipur
Through its Secretary

2. Jaipur Vidyut Vitran Nigam Limited

Through Chief Engineer (CP&L),
Vidyut Bhawan,
Janpath,
Jaipur

3. Rajasthan DISCOM Power Procurement Centre

(RDPPC) Through its Superintending Engineer,
Jaipur DISCOM, 400 KVGSS Building,
Ground Floor, Heerapura,
Jaipur

..... Respondents

Counsel for the Appellant ... Mr. Kumar Mihir
Counsel for the Respondent(s)... Mr. Raj Kumar Mehta
Ms. Himanshi Andley for R-1

Mr. Bipin Gupta
Mr. Suneel Bansal for R-2 & R-3

J U D G M E N T

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Shree Cement Limited, Jaipur (hereinafter referred to as the "**Appellant**") herein, questioning the legality, validity and propriety of the impugned Order dated 10.04.2015 passed in Petition No. RERC-475/14 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan, presented this Appeal for seeking following reliefs:

- a) Allow the appeal and set aside the impugned order dated 10.04.2015 passed by the State Commission in Petition No. RERC-475 of 2015;
- b) Direct the Respondent Nos. 2 & 3 herein to refund Rs. 5,46,52,734 to the Appellant herein with interest @15% p.a. from the date of recovery till the date of payment;
- c) Allow costs of the Litigation to the Appellant herein; and
- d) Pass any other or further order/s as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the present case.

2. The Appellant has presented this Appeal for considering the following substantive questions of law:

- (i) Whether the State Commission failed to appreciate that a contract already consummated between the parties cannot be retrospectively reopened and revised by one or the parties?
- (ii) Whether the State Commission failed to appreciate that the claim of the Respondents is contrary to the express methodology of the bill adjustment/ accounting given in the Commercial Order dated 17.08.2009 and therefore, the same was liable to be rejected, especially when the Contract itself had been consummated and had expired?
- (iii) Whether the unilateral amendment of the terms and conditions of the agreement between the parties after the expiry thereof is contrary to the established principles of the law of Contract?
- (iv) Whether the State Commission failed to appreciate that the Respondents while issuing the Clarification order dated 06.11.2012 retrospectively infringed the vested rights of the Appellant herein, which is impermissible under the settled provisions of law?
- (v) Whether the State Commission failed to appreciate that the Respondents could not have unilaterally withheld the impugned amount of Rs. 5,46,52,734 from the amount due to the Appellant in another independent and separate Power Supply Contract between the parties?

- (vi) Whether the State Commission erred to simply follow the judgment dated 10.04.2015 passed in the case of M/s DCM Shriram Ltd without considering the disputes regarding the computation of the recoverable amount and without independently considering the submissions made by the Appellant in its Petition?
- (vii) Whether the unilateral deduction made by the Respondent Nos. 2 & 3 is violative of the doctrine of promissory estoppels and is a case abuse of dominant position by the said respondents?
- (viii) Whether the alleged recovery by the Respondent Nos. 2 & 3 is barred by the law of Limitation and is liable to be rejected?
- (ix) Whether the State Commission has erred in relying upon a case law which is not applicable in the facts and circumstances of the case of the Appellant?

BRIEF FACTS OF THE CASE:

3. The Appellant is a Company registered under the Companies Act, 1956 and is engaged in manufacturing of Cement. The Appellant also has its own Captive Power Plants (CPP) at Beawar and Ras in the State of Rajasthan for captive consumption for its cement units at Khushkhera, Suratgarh and Jobner in the State of Rajasthan. The Appellant uses most of the electricity generated at its power plants for its own requirements and sells excess electricity generated to the

Distribution Licensees, Power Exchange and other Open Access Consumers at mutually acceptable terms and conditions.

4. The Rajasthan Electricity Regulatory Commission (Respondent No.1 herein) is the State Electricity Regulatory Commission. Jaipur Vidyut Vitran Nigam Limited (Respondent No.2 herein) is the distribution licensee in the State of Rajasthan and Rajasthan DISCOM Power Procurement Centre (Respondent No.3 herein) is a nodal agency which on behalf of all the Distribution Licensees in the State of Rajasthan, carries out purchase of power.

5. In view of scarce availability of power in the State of Rajasthan, the Respondent No.3 herein acting on behalf of all the three distribution licensees in the State of Rajasthan, including the Respondent No.2 herein, floated a tender being NIB No. RDPPC/TN-3 for purchase of power upto 300 MW Round the Clock (RTC) Powr on short term basis for one year commencing from 01.07.2009 to 30.06.2010 from Captive Power Plants (CPPs)/ Independent Power Producers (IPPs) located in the State of Rajasthan.

6. Accordingly, in terms of the aforesaid tender, the Appellant herein submitted its bid and offered to sell its power at Rs. 7.21/unit.

7. It is the case of the Appellant that he has filed a Petition on 17.10.2014 under Section 86(1)(f) of the Electricity Act, 2003 for

adjudication of dispute with Jaipur Vidyut Vitran Nigam Limited (JVVNL) and Rajasthan Discoms Power Procurement Centre (RDPPC).

8. The aforesaid matter has come up for consideration before the State Regulatory Commission on 10.04.2015 and the Petition No. RERC-475/14 filed by the Appellant was disposed of vide Order dated 10.04.2015 on the ground that the issues raised in the present petition and contentions advanced are similar in the above referred petition, the judgment rendered in the above case squarely applies to this case also. For the reasons, stated therein, the petition filed by the petitioner, has been rejected being dissatisfied of the impugned Order dated 10.04.2015 passed in Petition No RERC-476/14. The Appellant herein felt necessitated to present his appeal.

OUR CONSIDERATION:

9. We have heard learned counsel, Mr. Kumar Mihir, appearing for the Appellant and learned counsel, Raj Kumar Mehta, appearing for the first Respondent and learned counsel, Mr. Bipin Gupta, appearing for the Respondent No. 2 & 3.

10. Learned counsel for the Appellant and learned counsel for the Respondents have not disputed the fact that the petition filed by the Appellant, being Petition No. RERC-475/14, on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan has been disposed of following the Order dated 10.04.2015 passed in Petition

No. RERC-476/14 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan, the petition filed by the Appellant is rejected.

11. In view of non-disputing the fact that the petition filed by the Appellant is disposed of following the Order dated 10.04.2015 passed in Petition No. RERC-476/14 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan, holding that the issues raised in the present petition and contentions advanced are similar in the above referred petition, the judgment rendered in the above case squarely applies to this case also. For the reasons, stated in the Petition No. RERC-476/14, this petition is liable to be rejected and accordingly rejected. This aspect has not been disputed by the learned counsel appearing for both the parties.

12. Having regard to the facts and circumstances of the case, as stated above, we hereby disposed of the instant Appeal, being Appeal No. 147 of 2015 in terms of the Judgment and Order dated 20.03.2018 passed in Appeal No. 129 of 2015 on the file of the Appellant Tribunal for Electricity, New Delhi and for the reasons, as stated therein, the instant Appeal, being Appeal No. 147 of 2015 filed by the Appellant is disposed of with the following directions:

(a) The instant Appeal filed by the Appellant is allowed in part.

The impugned Order dated 10.04.2015 passed in Petition No.

RERC-475/14 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan is hereby set-aside.

- (b) The matter stands remitted back to the first Respondent (Rajasthan Electricity Regulatory Commission) for re-consideration and pass appropriate orders in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 2 & 3 and dispose-off the matter as expeditiously as possible at any rate within the period of six months from the date of appearance of the parties before the first Respondent/State Regulatory Commission.
- (c) The Appellant and Respondents herein are directed to appear before the first Respondent/State Regulatory Commission personally or through their counsel on 23.04.2018 at 11:00 a.m. without notice to collect necessary date of hearing.
- (d) All the contentions of both the parties are left open.

PRONOUNCED IN THE OPEN COURT ON THIS 20TH MARCH, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

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