

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 202 OF 2015 &
IA NO. 339 OF 2015 ON THE FILE OF
THE APPELLATE TRIBUNAL OF ELECTRICITY, NEW DELHI**

Dated: 11th May, 2018

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member
Hon'ble Mr. S. D. Dubey, Technical Member**

IN THE MATTER OF:

Athena Chhattisgarh Power Ltd.

1024/1 RT, G-1, B-Block,
Roxana Towers,
Green Lands,
Begumpet, Hyderabad-500 015

.... **APPELLANT**

VERSUS

1. Rajasthan Electricity Regulatory Commission

Vidyut Vinyamak Bhawan, Sahakar Marg,
Near State Motor Garage,
Jaipur, Rajasthan – 302001.

2. Rajasthan Raja Vidyut Prasaran Nigam Ltd.

(RRVPNL), (Through its Secretary) Vidyut Bhawan,
Janpath, Jaipur – 302 005
Rajasthan.

3. Jaipur Vidyut Vitran Nigam Ltd.,

Jaipur –Kishangarh Expy, Heerapura,
Ward No. 18, Jaipur-302026, Rajasthan.

4. Ajmer Vidyut Vitran Nigam Ltd.

Vidyut Bhawan, Panchsheel Nagar,

Makarwali Road, Ajmer – 305 004
Rajasthan.

5. **Jodhpur Vidyut Vitran Nigam Ltd.,**
New Power House, Industrial Area
Jodhpur – 342003
Rajasthan.

6. **Secretary, Govt. of India,**
Government of India
Ministry of Power,
Shram Shakti Bhawan,
New Delhi – 110 001.

7. **Secretary, Govt. of Rajasthan,**
Deptt. of Energy, Secretariat
Jaipur, Rajasthan – 302 005.

8. **PTC India Ltd.,**
2nd Floor, NBCC Tower,
15th Bhikaji Cama Place,
New Delhi – 110 066

9. **Maruti Clean Coal & Power Ltd.,**
Ward No. 42, Building No. 14,
Civil Lines, Near Income Tax Colony,
Raipur, Chhattisgarh – 492 001

10. **D. B. Power Ltd.,**
Dwaraka Sadan-6,
Press Complex, Zone-1,
M. P. Nagar, Bhopal - 462 011

11. **Lanco Power Ltd.,**
Having its office at:
397, Udyog Vihar
Phase III, Gurgaon 122 016.

12. **SKS Power Generation (Chhattisgarh) Ltd.,**
501-B, Elegant Business Park, J. B. Nagar
Andheri East, Mumbai – 400 059

.... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Pankaj Singh

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

Mr. Anand K. Ganesan for R-3 to 5

Mr. Ravi Kishore for R-8

Mr. Tanuj Agarwal
Ms. Pratyusha Priyadarshini for R-9

Mr. Hemant Singh
Mr. Nishant Kumar for R-10

Mr. Deepak Khurana
Mr. Abhishek Bansal for R-11

Mr. Atul Shanker Mathur
Mr. Buddy A. Ranganadhan
Mr. Prabal Mehrotra for R-12

(1) The Appellant has sought the following reliefs in Appeal No. 202 of 2015:

- (a) Allow the present Appeal and set aside the Impugned Order dated 22.07.2015 passed by the Respondent No. 1 (RERC) in petition bearing No. 431/13;
- (b) Allow the present Appeal and set aside the LOIs dated 27.9.2013 whereby additional quantum of power has been given by the Respondent No. 2 to Respondent Nos. 8/9, 8/10 and 11 and consequently to set aside PPAs signed for the additional quantum.
- (c) Allow the petition bearing No. 431/13 filed by Respondent No. 2 for adoption of Tariff for 1000 MW in its entirety.
- (d) Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

(2) Presented this Appeal for consideration under the following Question of Law:

- (i) Whether the bid quantum could have been increased by way of negotiation contrary to the provisions of the Guidelines and the RFP?
- (ii) Whether Clauses 3.5.3 and 3.5.4 of the RFP categorically prohibits increase of bid quantum by way of negotiation or is it only negotiation w.r.t. tariff that is prohibited in terms of Clause 3.5.9?
- (iii) Whether the Letter dated 30.09.2013 issued by the Respondent No. 2 seeking further extension of the Bid validity period, in spite of already issuing LOIs on 24.09.2013 and 27.09.2013 is cogent enough material to prove malafide on the part of the Respondent No. 2?
- (iv) Whether the transparency as contemplated in Section 63 of the Electricity Act, 2003 and Article 14 of the Constitution of India required negotiation with all the successful bidders or not?
- (v) Whether the principles of interpretation holding that when the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of consequences, applies in the present case while interpreting Clauses 3.5.2, 3.5.3, 3.5.4, 3.5.6, 3.5.7 and 3.5.9 of the RFT?
- (vi) Whether for public interest, the State and its instrumentality has the freedom to enter into private negotiations in a surreptitious, unfair and non transparent manner with the chosen few at the cost of complete exclusion of other successful bidders?
- (vii) Whether the impugned order is contrary to the law laid down by The Hon'ble Supreme Court in the case of ***West Bengal State Electricity Board vs. Patel Engg. Co. Ltd., (2001) 2 SCC 451?***

- (viii) Whether the RERC failed to appreciate the correct scope and effect the powers conferred on it by Section 63 and Section 86(1)(f) of the Electricity Act, 2003?
- (ix) Whether in a Petition under Section 63 of the Electricity Act, 2003, the Commission is empowered only to adopt or to refuse to adopt the tariff discovered by competitive bidding process?
- (x) Whether powers under Section 86(1) (b) of the Electricity Act, 2003 could be exercised by the Commission in a proceeding under Section 63 of the Act?
- (xi) Whether the impugned order amounts to review of the earlier order dated 23.03.2011 of the RERC, whereby approval was given for procurement of 1000 MW power?
- (xii) If yes, whether any grounds for review of the Order dated 23.03.2011 were made out by the Respondent No. 2 before the RERC or the review was otherwise permissible under law?
- (xiii) Whether the impugned order is contrary to the law laid down by this Hon'ble Tribunal in ***Essar Power Limited v. Uttar Pradesh Electricity Regulatory Commission and Another [Appeal No. 82 of 2011]***?
- (xiv) Whether the impugned order is based on incorrect reading of the provisions of the RFP relating to increase and decrease in quantum of power with approval of the Commission?
- (xv) Whether the Commission has placed undue and wrong reliance on the observations and findings of the EAC?

ORDER

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

The Appellant questioning the correctness of the impugned order dated 22nd July 2015 passed in Petition No. RERC – 431/13 on the file of

the first Respondent (Rajasthan Electricity Regulatory Commission) presented the instant appeal.

We have heard learned counsel for the Appellant and the Respondents for quite some time. During the course of the submission, at the outset, the learned counsel for both the parties submitted that the instant appeal filed by the Appellant may be disposed of in terms of the order dated 25th April 2018 passed in Civil Appeal No(s). 2502-2503 [between SKS Power Generation (Chhattisgarh) Limited versus M/s D. B. power Ltd. & Ors.] on the file of the Supreme Court of India and for the reasons stated therein, the instant appeal may kindly be disposed of on the ground that the prayer sought in the instant appeal does not survive for consideration.

Submissions made by the learned counsel for both the parties, as stated above, are placed on record.

The relevant portion of the Order dated 25th April 2018 on the file of the Supreme Court of India, reads as under:

“We are in agreement with the earlier conclusion of the APTEL. We are of the view that the direction of reduction of capacity from 1000 mw to 500 mw by the State Commission was correctly set aside. Since L-1 to L-5 were represented before this Court, we direct that they shall be entitled to supply of power in terms of the originally offered amount, mentioned above, in accordance with para 3.5 of the Request for Proposal. The power supply will now be reduced to a total of 906 mw. The State Commission may now go into the issue of approval

for adoption of tariff with regard to L-4 and L-5. All Letters of Intent (LOIs) shall stand modified in terms of the above.”

In the light of the submissions of the learned counsel for the Appellant and the Respondents as stated above, and in the light of the judgment of the apex court, as stated supra, and in terms of the Order dated 25-4-2018 passed in Civil Appeal No(s). 2502-2503 and for the reasons stated therein on the file of the Supreme Court of India, the instant appeal being Appeal No. 202 of 2015 filed by the Appellant stands disposed of as it has become infructuous at the risk of the learned counsel appearing for the Appellant.

Parties to bear their own costs.

In view of the instant appeal being disposed of, the application being IA No. 339 of 2015, filed by the Appellant does not survive, hence stands disposed of as it has become infructuous.

(S. D. Dubey)
Technical Member

tpd/vg

(Justice N. K. Patil)
Judicial Member