

**COURT-II**

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

**ORDER IN APPEAL NO. 264 OF 2015 &  
IA NO. 420 OF 2015 ON THE FILE OF  
THE APPELLATE TRIBUNAL OF ELECTRICITY, NEW DELHI**

**Dated: 11<sup>th</sup> May, 2018**

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

**IN THE MATTER OF:**

**SKS Power Generation (Chhattisgarh) Limited**

501 B, Elegant Business Park,  
Andheri Kurla Road, R  
J.B. Nagar, Andheri (E)  
Mumbai – 400 059

.... **Appellant**

***VERSUS***

- 1. Rajasthan Electricity Regulatory Commission**  
Vidyut Viniyamak Bhawan, Sahakar Marg,  
Near State Motor Garage, Jaipur.
- 2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.**  
Vidyut Bhawan, Janpath,  
Jyoti Nagar,  
Jaipur – 302 005.
- 3. Jaipur Vidyut Vitran Nigam Ltd., Jaipur**  
Vidyut Bhawan, Janpath  
Jaipur – 302 005.
- 4. Ajmer Vidyut Vitran Nigam Ltd.**  
Vidyut Bhawan,  
Panchsheel Nagar,

Makarwali Road,  
Ajmer – 305 004.

5. **Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur**  
New Power House, Industrial Area  
Jodhpur – 342003.
6. **Secretary, Govt. of India,**  
Ministry of Power,  
Shram Shakti Bhawan,  
Rafi Marg,  
New Delhi – 110 001.
7. **Secretary, Govt. of Rajasthan, Deptt. of Energy, Jaipur**  
Energy Department  
Government of Rajasthan  
SSO Building,  
Government Secretariat  
Jaipur – 302 001
8. **M/s PTC India Ltd., New Delhi**  
2<sup>nd</sup> Floor, NBCC Tower,  
15<sup>th</sup> Bhikaji Cama Place,  
New Delhi – 110 066  
(Through its Director)
9. **M/s Maruti Clean Coal & Power Ltd., Raipur**  
Ward No. 42, Building No. 14,  
Civil Lines, Near Income Tax Colony,  
Raipur, Chhattisgarh – 492 001  
(Through its Director)
10. **M/s D. B. Power Ltd., Bhopal**  
Dwaraka Sadan,  
6, Press Complex, Zone-1,  
M. P. Nagar, Bhopal,  
Madhya Pradesh – 462 011  
(Through its Director)
11. **M/s Lanco Power Ltd., Gurgaon**  
Plot No. 4, Software Units Layout

Hitec City, Madhapur, Hyderabad,  
Andhra Pradesh – 500 081  
(Through its Director)

**12. M/s Athena Chhatisgarh Power Ltd., Hyderabad**

1024/1/RT, G-1, B-Block,  
Roxana Towers,  
Green Lands, Begumpet,  
Hyderabad – 500 015  
(Through its Director)

.... **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. 264 of 2015:**

- (a) The Order of the Rajasthan Electricity Regulatory Commission dated 22.07.2015, allowing adoption of tariff, which has been arrived at in deviation and violation of Section 63 of Electricity Act, 2003, the RFP and the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution

Licensees” of 2005 is erroneous, untenable and unsustainable both in law and in facts and be set aside.

- (b) The part of the Order allowing the arbitrary allowance of additional quantum of power should be set aside.
- (c) Set aside the Order dated 22.07.2015 passed by RERC to the extent whereby the total quantity of power has been reduced from 1000 MW to 500 MW;
- (d) Such further or other order or orders as the Hon’ble Appellate Tribunal may deem fit.

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

- (i) Whether the Hon’ble Commission erred in law and in fact in allowing the arbitrary deviation and violation of the RFP and the bidding guidelines of 2005?
- (ii) Whether the Hon’ble Commission erred in allowing additional quantum of power without following due process?
- (iii) Whether as per the provisions of Section 63 of the Act, RERC has the power to modify the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government when the power given to RERC under this Section is merely to adopt or reject the tariff and has no power to modify the tariff in any manner whatsoever.
- (iv) Whether while adopting tariff under Section 63 of the Act the State Electricity Regulatory Commission can look into the questions of malafide and bias against such procedures?
- (v) Whether the Hon’ble Commission can validate the action of govt. authorities, when Bidding guidelines issued by the Govt. of India have been violated such as:

- (a) Dealing with a few selected Bidders without informing all the other qualified Bidders.
  - (b) When the additional quantities are granted arbitrarily by the state Govt. and the Bidder itself not offered quantity at the time of submitting the bid;
  - (c) If Bid Bonds are not accompanied for additional quantities at the time of submission of Bid?
- (vi) When Bidders have submitted Bids based on the RFQ issued by the procurer, and if the procurer has not followed the RFQ guidelines and issued Lols to few selected Bidders for quantities beyond the quantity offered by the bidders at the time of the bid, in such an event, whether procurer can request the Regulatory Commission to ratify the violation of the bidding guidelines if the Bid process is completed?
- (vii) Whether in terms of the bid documents, RRVPN had the freedom to enter into private negotiations or even entertain such requests with the chosen few to the exclusion of the Appellant and other similarly successful bidders?
- (viii) What are the powers vested on the State Electricity Regulatory Commission while determining tariff under Section 63 of the Act?
- (ix) What is the procedure to be followed by the State Electricity Regulatory Commission while adopting tariff under Section 63 of the Act when no such procedure has been provided for by the legislature in the Act?
- (x) Whether the State Electricity Regulatory Commission would have any power as far as the bidding process is concerned if such bidding process does not impinge upon the tariff to be adopted under Section 63 of the Act?
- (xi) Whether State Electricity Regulatory Commission would have any power to grant relief as regards the bidding process in case such

process does not have any bearing as far as the tariff to be adopted is concerned?

**ORDER**

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

The Appellant questioning the correctness of the impugned order dated 22<sup>nd</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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. 264 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. 420 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**