

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

**(APPELLATE JURISDICTION)**

**I.A. NO. 320 OF 2015 IN  
APPEAL NO. 177 OF 2012**

**Dated: 31<sup>st</sup> October, 2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of:-**

**BSES RAJDHANI POWER LTD.** )  
Shakti Kiran Building )  
Karkardooma, New Delhi-110092. ) ... **Appellant(s)/  
Applicant(s)**

**AND**

1. **DELHI ELECTRICITY )**  
**REGULATORY COMMISSION )**  
Viniyamak Bhawan, Ç'Block, )  
Shivalik, Malviya Nagar, )  
New Delhi-110 017 ) ... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan  
Mr. Vishal Anand  
Mr. Rahul Kinra  
Mr. Ashutosh Kr. Srivastava

Counsel for the Respondent(s) : Mr. Pradeep Misra  
Mr. Manoj Kumar Sharma  
for **R.1/DERC**

**I.A. NO. 321 OF 2015 IN**  
**APPEAL NO. 178 OF 2012**

**In the matter of:-**

**BSES YAMUNA POWER LTD.** )  
Shakti Kiran Building )  
Karkardooma, New Delhi-110092 ) ... **Appellant(s)/**  
**Applicant(s)**

**AND**

1. **DELHI ELECTRICITY )**  
**REGULATORY COMMISSION )**  
Viniyamak Bhawan, Ç'Block, )  
Shivalik, Malviya Nagar, )  
New Delhi-110 017 ) ... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan  
Mr. Vishal Anand  
Mr. Rahul Kinra  
Mr. Ashutosh Kr. Srivastava

Counsel for the Respondent(s) : Mr. Pradeep Misra  
Mr. Manoj Kumar Sharma  
for **R.1**/DERC

**ORDER**

1. I A No.320 of 2015 and IA No.321 of 2015 have been filed in Appeal No.177 of 2012 and Appeal No.178 of 2012 respectively by the Delhi Electricity Regulatory Commission ("**DERC**"). Both these applications can be disposed of by a common order as admittedly their contents and prayers are similar.

2. We can deal with IA No.320 of 2015. Our reasoning in IA No.320 of 2015 will govern IA No.321 of 2015.

3. The title of IA No.320 of 2015 reads as under:

*“AN APPLICATION ON BEHALF OF DELHI ELECTRICITY REGULATORY COMMISSION, RESPONDENT FOR CLARIFICATION OF JUDGMENT DATED 02.03.2015. READ WITH ORDER DATED 10.02.2015 PASSED IN APPEAL NO.171 OF 2012, ORDER DATED 28.11.2014 PASSED IN APPEAL NO.61 AND 62 OF 2012 AND ORDER DATED 15.05.2015 PASSED IN REVIEW PETITION NO.7 OF 2015 BY THIS HON’BLE TRIBUNAL.”*

4. Before we proceed further we must note that judgment dated 02/03/2015 is passed in Appeals No.177 and 178 of 2012. However, order dated 10/02/2015 is passed in Appeal No.171 of 2012 which is a tariff appeal filed by TPDDL. Order dated 28/11/2014 is passed in Appeal Nos. 61 and 62 of 2012 which are between BSES Rajdhani Power Ltd.(“**BRPL**”) and DERC & BSES Yamuna Power Ltd.(“**BYPL**”) and DERC. Order dated 15/05/2015 is passed in Review Petition No.7 of 2015 in Appeal No.61 of 2012. The said Review Petition is filed by BRPL. It does not arise out of Appeal Nos. 177 and 178 of 2012. No clarification

can be sought of orders which do not arise out of Appeal Nos. 177 and 178 of 2012 in these applications.

5. In paragraph 1 there is a reference to judgment dated 28/11/2014 whereby this Tribunal has disposed of Appeal Nos. 61 and 62 of 2012. It is stated that in this judgment certain issues have been decided in favour of the Appellants therein and directions have been issued to the DERC to implement the same. It is further stated that vide order dated 15/05/2015 which is passed in Review Petition No.7 of 2015 filed by BRPL seeking review of judgment passed in Appeal No.61 of 2012 (**BRPL v. DERC**), this Tribunal further directed the DERC to re-determine employee cost as far as parity between FRSR employees and non-FRSR employees are concerned in respect of recommendations of 6<sup>th</sup> Pay Commission.

6. It is then averred that the DERC is facing certain difficulties in implementation of the said directions and hence the present application for clarification is being filed. Difficulties stated to be faced by the DERC are set out in paragraph 3 as under:

*“3. That there are two types of difficulties being faced by the Respondent Commission in implementing the directions issued by this Hon’ble Tribunal which are as follows:-*

*(A) The cases where this Hon’ble Tribunal has given different directions on the same issue in case of different DISCOMs,*

*(B) Practical difficulties to implement the judgment.”*

7. Paragraph 4 and 5 set out the issues covered by Points A & B above. These issues are as under:

- (i) Truing up of interest rate of loans
- (ii) Change in methodology for computation of AT&C losses
- (iii) Fixation of AT&C loss target for FY 2011-12
- (iv) SVRS Terminal benefit payment
- (v) Disallowance due to wrong valuation of sales in Kwh figures for FY 2009-10.
- (vi) Efficiency Factor for MYT Control Period FY 2012-13 to FY 2014-15 as well as FY 2011-12.
- (vii) Arbitrary computation of efficiency factor
- (viii) Food and Children Education Allowance

- (ix) Reviewing the FRSR and Non-FRSR employee costs for the MYT control period
- (x) Repayment of loan while calculation of WACC.

In the prayer clause clarification is sought about above issues.

8. We have heard Mr. Ranganadhan learned counsel appearing for the Appellant in both the applications and Mr. Misra learned counsel appearing for the DERC. We have perused the written submission filed by the counsel.

9. In our opinion the present applications are totally misconceived. As already noted clarification is sought in respect of orders passed in different appeals. The DERC is seeking clarification of issues which never formed part of Appeal Nos. 177 and 178 of 2012. It would not be possible to grant such prayer.

10. Out of above mentioned ten issues, six issues pertain to Appeal Nos.61 and 62 of 2012. They do not form part of Appeal Nos.177 and 178 of 2012 and hence no clarification in respect of

the same can be sought in these applications. The said issues are as under:

- (i) Change in methodology for computation of AT&C losses
- (ii) Fixation of AT&C loss target for FY 2011-12
- (iii) SVRS Terminal benefit payment
- (iv) Disallowance due to wrong valuation of sales in KwH figures for FY 2009-10.
- (v) Arbitrary computation of Efficiency Factor
- (vi) Repayment of loan while calculation of WACC.

11. One issue pertains to Appeal No.14 of 2012 and Appeal No.171 of 2012 i.e. the tariff appeal of TPDDL and do not form part of Appeal No.177 and 178 of 2012. Following is the said issue:

- (i) Food and Children Education Allowance.

Therefore, no clarification can be sought in the present applications about the above issue. We are informed that this issue arises in EP No.09 of 2016. We must make it clear that on none of the issues we have expressed any opinion on the rival contentions raised in these applications. If this issue arises in

EP No.09 of 2016, needless to say that it will be dealt with in that matter independently and in accordance with law.

12. One issue has been decided by this Tribunal in Review Petition No.7 of 2015 in Appeal N.61 of 2012 filed by the Appellants herein. Following is the said issue:

- (i) Reviewing the FRSR and Non-FRSR employee costs for the MYT control period.

The present application is, in our opinion a review petition in the garb of application for clarification. A petition seeking review of a review order is not maintainable(See **Delhi Administration v. Gurdeep Singh Uban & Ors**<sup>1</sup>, **Indian Council for Enviro-Legal Action v. UOI**<sup>2</sup>). Hence, application allegedly seeking clarification in respect of this issue cannot be entertained.

13. Moreover seven issues out of the ten issues have been challenged by the DERC in the Supreme Court. The status of the said matters is as under:

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<sup>1</sup>(2000) 7 SCC 296

<sup>2</sup>(2011) 8 SCC 161



- (i) Truing up of interest rate of loans(Pending in Civil Appeal 6959-6960 of 2015 filed against Judgement dated 02/03/2015 in Appeal Nos. 177 and 178 of 2012)
- (ii) Change in methodology for computation of AT&C losses(Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012)
- (iii) Fixation of AT&C loss target for FY 2011-12(Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012)
- (iv) SVRS Terminal benefit payment (Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012 and Civil Appeal No.884 of 2010)
  
- (v) Disallowance due to wrong valuation of sales in KwH figures for FY 2009-10. (Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012)
  
- (vi) Arbitrary computation of efficiency factor(Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012)
  
- (vii) Repayment of loan while calculation of WACC(Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012).

14. In the circumstances the present applications being wholly misconceived are dismissed.

15. Pronounced in the open court on this **31<sup>st</sup> day of October,2017.**

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**