

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

IA NO. 535 OF 2016 IN APPEAL NO. 25 OF 2014

Dated: 18th October, 2016

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

In the matter of:

M/s. SESA Sterlite Limited **...Appellant(s)**
Sesa Ghor 20 EDC Complex Patto,
Panjim, Goa – 403 001

Versus

- 1. Odisha Electricity Regulatory Commission** **...Respondent No.1**
Bidyut Niyamak Bhavan, Unit –VIII
Bhubaneswar – 751 012
- 2. Grid Corporation of Orissa Limited** **...Respondent No.2**
(GRIDCO Ltd.)
Janpath, Bhubaneswar – 751 022
- 3. State Load Despatch Centre** **...Respondent No.3**
SLDC Building, GRIDCO Colony
P.O. Mancheswar Railway Colony
Bhubaneswar – 751 017

Counsel for the Appellant : Mr. Amit Kapur and
Mr. Akshat Jain

Counsel for the Respondent : Mr. G. Umapathy,
Mr. Rutwik Panda and
Mr. Anshu Malik for R-1

**Mr. Raj Kumar Mehta,
Ms. Himanshi Andley and
Mr. Abhishek Upadhyay for R-2**

ORDER

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. M/s. Sesa Sterlite (hereinafter referred to as “**Appellant**”) has filed IA No. 535 of 2016 in Appeal No. 25 of 2014 seeking clarification in respect of the Judgment delivered on 10.05.2016 by this Tribunal while disposing of Appeal No. 25 of 2014.
2. Before considering the alleged issue seeking clarification in this Application, we have to first examine the issue whether such an application seeking clarification in the form of interpretational issue in respect of Judgment dated 10.05.2016, is maintainable or not?
3. While dismissing the Appeal No. 25 of 2014 and upholding the Impugned Order dated 12.06.2013 passed by the Odisha State Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”), we have opined as under:-

“The State Commission in its Impugned Order dated 12.06.2013 accepted the transmission constraint as alleged by the Appellant and stated that since the transmission planning programme of OPTCL for evacuation of power from upcoming IPPs which is under

process, the Respondent No. 2/OPTCL may approach the Commission for suitable amendment of the Clause in the consolidated PPA, if necessary after finalization of the same. Till then, the present practice of evacuation from the power station of Appellant will continue.

- j) The State Commission in its Impugned Order accepted that due to transmission constraint, the Appellant has not been able to generate at full capacity and to inject the state full quota of power to the State Transmission system and determined the auxiliary power consumption based on the existing transmission capability.*
- k) In light of the above, the transmission constraint from the bus bar of the generating station upto the Budhipadar sub-station of the OPTCL has been accepted by the State Commission in its Impugned Order after going through the relevant data furnished by the parties and the same has been reaffirmed by the Tribunal's order dated 28.03.2014.*
- l) We do not have any doubt that at the time of passing of Impugned Order, the State Commission would have gone into all the requisite details on the transmission capacity and the prevailing constraints in evacuation of power from Unit-II of the generating station.*
- m) We have also observed that the State Commission's earlier order dated 30.03.2010 took into account the OPTCL's confirmation that considering the upstream evacuation condition beyond its Budhipadar Grid, about 250 to 350 MW power maximum can be drawn up from the first unit of the Appellant.*
- n) Since the term of transmission capacity is a dynamic function, one can determine it only in real time situation at a given point of time. In its Impugned Order dated 12.06.2013, the State Commission had ascertained the transmission scenario in real time situation and considered the transmission constraint for this issue. There could have been instances when in few time clocks of 15*

minutes each when there have been relatively higher quantum of evacuation. The transmission line in question might cater to higher load at some instances but the point which we have to see for our consideration is what quantum of power could be transmitted in the sustainable mode on continuous basis. In our opinion, the State Commission is in a better position to ascertain the grid constraints keeping in view the requisite data of the State Load Despatch Centre on this issue in question.

- o) After accepting the State Commission's considered view of 400 MW of power transmission in sustainable mode for the transmission line in question for that specific period, the auxiliary power consumption as well as Station Heat Rate (on technical consideration) as considered by the State Commission in its Impugned Order would stand justified. Hence, we would not like to interfere with the State Commission's finding in this regard in its Impugned Order."*

4. The Appellant had filed IA No. 319 of 2016 in Appeal No. 25 of 2014 seeking some clarifications/rectifications of our Judgment dated 10.05.2016. While dismissing the said IA, we passed the following order:

"IA No.319 of 2016 in Appeal No.25 of 2014 seeking some clarifications/rectifications in our judgment dated 10.05.2016 has been moved. These errors are said to be typographical errors to which we have gone into. Such kind of very minor so called errors cannot be corrected in the judgment of this Appellate Tribunal. These errors are meaningless and insignificant resulting in no uncertainty or ambiguity. We have seen carefully the nature of so called errors. This IA is without substance and liable to be dismissed and accordingly dismissed."

5. The Appellant preferred Review Petition No. 12 of 2016 in Appeal No. 25 of 2014 on the following grounds:
- (a) That delivery point explicitly stated in the PPA has been ignored while dictating the judgment in appeal.
 - (b) Coal cost issue though was framed but not decided in the judgment under review.
 - (c) Claims on station heat rate and auxiliary consumption were framed as issue but not considered in the judgment under review

After having heard the parties at length and perusing our Judgment dated 10.05.2016 on the said points on which the review was being sought, we dismissed the Review Petition. Material portion of our order reads thus:

“.....We have also gone through our judgment under review and find that all the points were considered by us in the said judgment and no new point has been raised in the Review Petition. A clear finding on the delivery point and also on coal cost issue have been given and in these circumstances the Review Petition is not maintainable being without merits and the same is being accordingly dismissed.”

6. On the IA No. 535 of 2016 in question, we have heard at length Mr. Amit Kapur, learned counsel for the Appellant and Mr. Raj Kumar Mehta,

learned counsel for Grid Corporation of Orissa Limited (GRIDCO Ltd.) and considered their written submissions and the arguments put forth by the parties for our consideration.

7. We have examined the present IA on the preliminary issue of maintainability because it goes to the root of the matter.
8. After having once again perused carefully our Judgment dated 10.05.2016 in Appeal No. 25 of 2014, we observe that the said Judgment does not suffer from any error apparent on the face of record, it is clear and unambiguous and speaks for itself and such a prayer with regard to interpretation of Judgment is not maintainable specially, in view of the fact that entertaining this application would result in allowing the Appellant to file a Second Review Petition in the guise of the clarification application which cannot be entertained. The present application is in substance one for review.
9. We have perused the following Judgments of the Hon'ble Supreme Court wherein Review Petition in the guise of the application for clarification or modification is held to be not maintainable:-

- (i) **Delhi Administration Vs. Gurdip Singh**¹;
- (ii) **Zahira Habibulla Sheikh Vs. State of Gujarat**²;
- (iii) **Saurabh Chaudri Vs. Union of India**³

¹ (2000) 7 SCC 296

² (2004) 5 SCC 353 (Para 7)

³ (2004) 5 SCC 618 (Para 34).

10. In **Delhi Administration v. Gurdip Singh Uban**(supra) the Supreme Court has held that the Court should not permit hearing of an application for “clarification”; “modification” or “recall” if the application is in substance one for review. This was followed by the Supreme Court in **Zahira Habibulla Sheikh and Saurabh Chaudri** (supra).
11. In the circumstances it is not possible for us to entertain this application. It is dismissed as not maintainable.
12. Pronounced in the Open Court on this **18th day of October, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE
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