

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Review Petition No. 02 of 2010 in Appeal Nos. 171 of
2008, 172 of 2008 & IA Nos. 233/08 and 234/08, Appeal
No. 10 of 2008 and Appeal No. 117 of 2009**

Dated : March 19, 2010

**Present: Hon'ble Mr. Justice M.Karpaga Vinagayam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

M/s VS Lignite Power Private Limited -Petitioner(s)

V/s.
Kadodara Power Pvt. Ltd. & Others -Respondents

Counsel for Petitioner : Mr. Rana S. Biswas, Advocate
Mr. Achintya Dvivedi, Advocate

Counsel for Respondent : -

ORDER

Per Hon'ble Shri H.L. Bajaj, Technical Member.

This petition has been filed by M/s VS Lignite Power Private Limited for review of judgment dated September 22, 2009 rendered by this Tribunal in Appeal Nos. 171 of 2008, 172 of 2008 and Appeal No. 10 of 2008 and Appeal No. 117 of 2009.

The Petitioner is a Special Purpose Vehicle (SPV) with the objective of building, owning and operating group captive power plant for supply of electricity to its end user shareholders through the transmission lines of Rajasthan Rajya Vidut Parasaran Nigam Ltd. or other licensed agencies.

According to the Petitioner, the Impugned Judgment has a significant impact on the interest of the petitioner and therefore he has sought review of the judgment. Admittedly, the Petitioner was not a party in the Appeal under reference and no submissions have been made on the issues decided in the Appeal.

The Applicant simply seeks the recall of findings in paragraph 15 of the Impugned Order reproduced below:-

“ Decision with reasons:
Is a company formed as a special purpose vehicle an
association of person?”

15) The question has arisen because the word ‘association of persons’ is not defined anywhere in the Act or in the Rules. The proviso to Rule 3 (1)(a)(ii) makes two special conditions for cooperative societies and association of persons. If the CGP is held by a person it is sufficient that the person consumes not less than 51% of the aggregate electricity generated in such plant. In case the plant is owned by a registered cooperative society then all the members together have to collectively consume 51% of the aggregate electricity generated. In case the CGP is owned by an association of persons the captive users together shall hold not less than 26% of the ownership of the plant in aggregate and shall consume not less than 51% of the electricity generated in proportion to their shares of the ownership of the plant within a variation not exceeding $\pm 10\%$. A special purpose vehicle is a legal entity owning, operating and maintaining a generating station with no other business or activity to be engaged in by the legal entity. Now if three companies need to set up the power plant primarily for their own use they can come together and form another legal entity which may itself be a company registered under the Companies Act. This company may set up a power plant. In that case the company formed by three different companies would become a special purpose vehicle. If a company which is a special purpose vehicle is one person then all that is necessary is that this company should consume 51% of the generation. However, if it is treated as association of persons apart from a condition of consuming minimum 51% of its generation the three share holders will also have to consume

51% of the generation in proportion to their ownership in the power plant. It is contended on behalf of some of the appellants before us who are special purpose vehicles that they are not an association of persons and accordingly it is only necessary for them to consume 51% of their generation collectively without adhering to the Rule of proportionality of consumption to their share. This does not appear to us to be the correct view. Section 2(8) of the Act, as extracted above, says that a captive generating plant may be set up by any person and includes the power plant set up by any cooperative society or association of persons. Mr. M. G. Ramachandran contends that going by this definition if the special purpose vehicle is not an association of persons it cannot set up a captive generating plant because the definition does not mention any person other than a cooperative society and association of person. There is small flaw in the argument of Mr. M. G. Ramachandran in as much as the definition of captive generating plant is inclusive. In other words, the captive generating plant may be set up by any person including a cooperative society or association of persons. In other words, the person to set up a generating plant may be somebody who does not fulfill the description of either a cooperative society or association of persons. Nonetheless, reading the entire Rule 3 as a whole it does appear to us that a CGP owned by a special purpose vehicle has to be treated as an association of person and liable to consume 51% of his generation in proportion to the ownership of the plant. Every legal entity is the person. Therefore, the special purpose vehicle which has to be a legal entity shall be a person in itself. Any generating company or a captive generating company is also a person. The Rules specially deals with cooperative society. In an association of persons it has to be a 'person' because without being a person it cannot set up a captive generating plant. Therefore it will be wrong to say that since the special purpose vehicle is a 'person' in itself it cannot be covered by a definition of 'association of persons' and has to be covered by the main provision which requires the owner to consume 51% or more of the generation of the plant. In our view the definition is somewhat strange in as much as the term 'person' is said to include an 'association of persons'. One therefore cannot say that a CGP owner can be either a 'person' or an 'association of persons' a special purpose vehicle thus can be a 'person' as well as an 'association of persons'. A cooperative society is an 'association of persons' in the sense that some persons come together to form a cooperative society. However, the moment

an association or society is formed according to the legal provisions it becomes a person in itself. A special provision has been made permitting a cooperative society from consuming 51% collectively. The first proviso 3 (1)(a)(ii) itself suggests that a special privilege has been conferred on a cooperative society. Other persons who are also legal entities formed by several persons coming together have not been given such special privilege. Who can such association of persons be? Of the various legal entities comprehended as persons owning a CGP the special purpose vehicle does seem to fit the description of 'association of persons'. We fail to comprehend who other than a special purpose vehicle can be an 'association of persons'. None of the lawyers arguing before us gave example of 'association of persons' other than a special purpose vehicle. Therefore, we have no hesitation to hold that special purpose vehicle is an association of persons."

We have heard learned counsel for the Applicant, Mr. Viswas and considered his submission.

The careful reading of the judgment of this Tribunal reveals that the various issues raised in this Review Petition have already been dealt with by this Tribunal and the correct conclusions have been arrived at on the basis of the valid reasonings. As there is no apparent error on the face of the record, we are of the view that no ground is made out for Review. Hence we dismiss this Review Petition at the admission stage itself.

(H.L. Bajaj)
Technical Member

(Justice M.Karpaga Vinagayam)
Chairperson