

Court-II
Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 289 of 2015

Dated : 24th February, 2016

Present:- Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member

In the matter of:

M/s Raj West Power Ltd. Appellant(s)
Versus
Jaipur Vidyut Vitran Nigam Ltd. & Ors. Respondent(s)

Counsel for the Appellant (s) : Ms. Poorva Saigal and Ms.Anushree Bardhan

Counsel for the Respondent (s) : Mr. Raj Kumar Mehta
Mr. Abhishek Upadhyay &
Ms. Himanshi Andley for RERC/R-5
Mr. P. N. Bhandari for DISCOMs

ORDER

Mr. P. N. Bhandari, learned counsel for respondent Nos. 1 to 3, DISCOMs has today filed reply. Let the same be taken on record. Mr. R.K.Mehta, learned counsel appearing for respondent No.5, State Commission, states that the Commission does not propose to file counter Affidavit/reply but relies upon its impugned judgment. Mr.P.N.Bhandari has argued at length on the nature and relief prayed for in the Impugned Petition, being Petition No.523 of 2015, which Petition was filed by the appellant/petitioner seeking relief for payment on account of increase in clean energy cess on Lignite which is covered under 'change in law', clause of the PPA signed with the DISCOMs. Mr.P.N.Bhandari while taking us through various parts of the Impugned Order dated 07.10.2015, has submitted that DISCOMs are not against granting the amount of increase in clean energy cess on Lignite to the appellant/petitioner, provided the counter claim of the DISCOMs/Respondent Nos.1, 2 & 3 is considered. On our query, about the counter claim made by the DISCOMs before the State Commission, Mr. P.N.Bhandari, submits that in

Paragraph 5 of the Impugned Order a counter claim was made. After going through Paragraph 5 of the Impugned Order, we have queried Mr.P.N.Bhandari that this Paragraph 5 deals with the submissions of the DISCOMs on the Petition without there being any counter claim in writing or any application in the shape of counter claim with some prayers. Mr. P.N.Bhandari says that the same was not mentioned in the impugned order by the State Commission but the Commission has preferred to mention the counter claim of the DISCOMs in the shape of suggestion of the DISCOMs which are mentioned in Paragraph 5 of the Impugned Order. Thus Mr.P.N.Bhandari, appearing for the DISCOMSs, submits that the Petition filed by the appellant/petitioner before the State Commission is based on *bona fide* and genuine claim and the same should have been allowed by the State Commission along with the so called counter claim. We have completely understood the controversy in the appeal.

A tendency in this Appellate Tribunal is to file counter or rejoinders in all the matter, a similar request is being made by the appellant/petitioner, seeking time to file rejoinder for which the appellant is permitted four weeks time.

Post the matter for hearing on **29th April, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

sh/kt