

COURT-II

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

**IA No. 70 of 2016 in DFR No. 152 of 2016 in
Appeal No. 177 of 2015**

Dated: 11th February, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:-

**Jaipur Vidyut Vitran Nigam Ltd. & Ors. ...Appellant(s)
Versus
Barmer Lignite Mining Co. Ltd. Respondent(s)**

Counsel for the Appellant (s) : Mr. P.N. Bhandari

Counsel for the Respondent (s) :

ORDER

(IA No. 70 of 2016 – condonation of delay in filing Review Petition)

The present Application being IA No. 70 of 2016 has been filed to condone the delay of 06 days in filing the Review Petition in Appeal 177 of 2015 by the Jaipur Vidyut Vitran Nigam Ltd. & Ors., wherein judgment has been rendered by this Tribunal on 10.12.2015.

We have heard Mr. P.N. Bhandari, learned counsel appearing on behalf of the Discoms functioning in the State of Rajasthan with respect to

the reasons stated in above said IA for condonation of delay as well as on the grounds for review on merits stated in the Review Petition.

We have noted that this Review Petition runs in 35 pages raising the same grounds really an Appeal in disguise which were already argued and entertained in the main Appeal in the presence of all the parties, cannot be said in true sense a Review Petition in this case. We further notice that the Discoms every time instead of filing Appeals in the Supreme Court filing Review Petitions before this Tribunal. This practice cannot be encouraged further more at any cost. We cannot allow learned counsel to hear for long and long time because this type of tendency of filing Review Petition for the issues which have already been dealt with, argued in the presence of the parties, cannot be entertained again. We think it appropriate to take on record and direct the parties to refrain from filing unnecessary Petitions for review except or otherwise Review Petitions containing apparent errors on the face of record.

We are only concerned just to the facts and circumstances in the Review Petition as mentioned under Section 114 and order 47 of the CPC. This Section has limited the scope for entertaining Review Petitions. The main contention of Mr. P.N. Bhandari, learned counsel for the Review

Petitioner with regard to para 12.12 of the judgment dated 10.12.2015 in Appeal No. 177 of 2015 is as under:-

“12.12 The learned State Commission, in turn, vide impugned order, dated 31.3.2015, ignoring the pleas of the Appellant regarding increase in statutory levies by the Government of India in the Union Budget for FY 2015-16 as well as the categorical stand of the Respondents No. 1 to 3/Discoms, admitting revision for FY 2015-16 on account of change in taxes, etc. simply decided to extend the ad-hoc transfer price allowed for FY 2014-15 to FY 2015-16, pending final determination of transfer price of lignite and tariff for power station without assigning any reason and further without considering the monetary impact of change in law in transfer price of lignite, and in turn in the variable cost component of tariff, which entitlement was not disputed by the Discoms.”

And, further contention of Mr. P.N. Bhandari, learned counsel for the Review Petitioners Petitioner with regard to para 12.19 of the judgment dated 10.12.2015 in Appeal No. 177 of 2015 is noted under:-

“12.19 The Discoms have already stated that they have no objection to allow the impact of such increases to the Appellant. Additionally, Discoms have not filed any reply to the present appeal despite having sufficient opportunity to do so.”

The main submission of Mr. Bhandari is that this Tribunal while passing the judgment under review did not consider the documentary evidences which were available on record. We make it clear that we have passed our said judgment under review on merits after due consideration of all the relevant facts. The Review Petitioners have raised the same

grounds which were already dealt with, argued during the hearings in the main Appeal.

We cannot encourage the tendency to raise every matter in the Review rather than filing Appeal before the Hon'ble Supreme Court. After all, the scope of the Review Petition is narrowed and restricted to apparent errors on the face of record. We had gone deeply into the merits of the case through our judgment under review. If there is any grievance, the Review Petitioners may approach the Hon'ble Supreme Court by filing Civil Appeal for the specific redressal of its grievance.

Whatever was available on record we considered it and on the basis of our findings, passed our judgment under review. We do not find any merits in the Review Petition for our reconsideration which was not pointed out by either party at the time of argument in the main Appeal. After all, this Tribunal hears the first Appeal which is based on facts and relevant laws and hence Tribunal is required to hear all the facts and arguments thereof and then only derive findings and pass judgment based on concrete and substantive reasons.

We do not find any sufficient ground or material on record which warranting our interference for hearing the case again through this Review

Petition so far as our notings in Para 12.12 of our judgment under review are concerned.

We have heard the contention of the Review Petitioners on the merits in the Review Petition. We do not find any specific reason in the Review Petition to issue notice to the other side. We have considered on merit the review petition as well as the reasons for condoning the delay. We find no lawful justification to review our judgment dated 10.12.2015 passed in Appeal No. 177 of 2015.

In view of the above observation, the IA No. 70 of 2016 to condone the delay in filing the Review Petition and the Review Petition in Appeal No. 177 of 2015 is hereby dismissed for lack of merits.

(I.J. Kapoor)
Technical Member
mk/vg

(Justice Surendra Kumar)
Judicial Member