

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

(APPELLATE JURISDICTION)

**ORDER IN APPEAL NO. 28 OF 2016
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI**

Dated: 11th January, 2018

Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTER OF

Lanco Power Ltd.

Having its office at:
397, Udyog Vihar, Phase-III,
Gurgaon 122 016

..... Appellant

VERSUS

- 1. Rajasthan Electricity Regulatory Commission**
Vidyut Vinyamak Bhawan, Sahakar Marg,
Near State Motor Garage,
Jaipur 302001, Rajasthan
- 2. Rajasthan Rajya Vidyut Prasaran Nigam Limited**
(RRVPNL), Through its Secretary,
Vidyut Bhawan, Janpath,
Jaipur-302005, Rajasthan
- 3. Jaipur Vidyut Vitran Nigam Ltd.**
Jaipur-Kishangarh Expy, Heerapura, Ward No. 18,
Jaipur-302026, Rajasthan
- 4. Ajmer Vidyut Vitran Nigam Ltd.**
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer-305004, Rajasthan
- 5. Jodhpur Vidyut Vitran Nigam Ltd.**
New Power Hours, Industrial Area,
Jodhpur-342003, Rajasthan

- 6. Secretary, Government of India**
Ministry of Power, Shram Shakti Bhawan,
New Delhi-110 001
- 7. Secretary, Government of Rajasthan**
Deptt. Of Energy, Secretariat,
Jaipur-302001, Rajasthan
- 8. PTC India Ltd.**
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110 066
- 9. Maruti Clean Coal & Power Ltd.**
Ward No. 42, Building No. 14, Civil Lines,
Near Income Tax Colony, Raipur,
Chhattisgarh 492001
- 10. DB Power Ltd.**
Dwarka Sadan-6, Press Complex, Zone-I,
M.P. Nagar,
Bhopal-462011
- 11. SKS Power Generation (Chhattisgarh) Ltd.**
501-B, Elegant Business Park, J.B. Nagar,
Andheri East,
Mumbai – 400059
- 12. Athena Chhattisgarh Power Limited**
1024/1/RT, G-1, B-Block, Roxana Towers,
Green Lands, Begumpet,
Hyderabad 500015

..... Respondents

Counsel for the Appellant	... Mr. Deepak Khurana
Counsel for the Respondent(s)...	Mr. Raj Kumar Mehta Ms. Himanshi Andley Mr. Rajat for R-1 Mr. Puneet Jain Mr. Abhinav Gupta for R-2 Mr. Anand K. Ganesan Ms. Neha Garg Ms. Parichita Chowdhury for R-3 to R-5 & R-7

Mr. Niraj Singh
Mr. Prashant Mathur for R-8

Mr. Sumit Goel
Mr. Akash Jindal
Ms. Pratyusha Priyadarshini for R-9

Mr. S. Ganesh, Sr. Adv.
Mr. Hemant Singh
Mr. Nishant Kumar for R-10

(I) The Appellant has sought the following reliefs in the Appeal No. 28 of 2016:

- (a) Allow the present Appeal and set aside the Impugned Order dated 09.01.2015 passed by the Respondent No. 1 (RERC) in petition bearing no. 431/13;
- (b) Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(II) Presented this Appeal for consideration under following Question of Law:

- (I) Whether the Application filed by the Respondent No. 2 for reduction of quantum of power to be procured deserved to be rejected at the threshold as not maintainable?
- (II) Whether in a Petition under Section 63 of the Electricity Act, 2003, the Commission is empowered only to adopt or to refuse to adopt the tariff discovered by competitive bidding process?
- (III) Whether powers under Section 86(1)(b) could be exercised by the Commission in a proceeding under Section 63 of the Act?
- (IV) Whether the impugned order amounts to review of the earlier order dated 23.03.2011 of the RERC whereby approval was given for procurement of 1000 MW power?

- (V) If yes, whether any grounds for review of the Order dated 23.03.2011 were made out by the Respondent No.2 before the RERC or the review otherwise permissible under law?
- (VI) Whether the impugned order is contrary to the law laid down by this Hon'ble Tribunal in *Essar Power Limited v. Uttar Pradesh Electricity Regulatory Commission and Another, Appeal No. 82 of 2017*.
- (VII) Is it permissible for either the Respondent No.2 to seek or for the Commission to approve reduction in the quantum of power after issuing the LoIs to the successful bidders, executing the long term PPAs and filing the Petition for adoption of tariff before the Regulatory Commission?
- (VIII) What is effect of the Competitive Bidding Guidelines framed by the Ministry of Power, on RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations, 2004?

ORDER

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

We have heard the learned counsel appearing for the Appellant and learned counsel appearing for the Respondents.

2. The learned counsel, Mr. Deepak Khurana, appearing for the Appellant submitted that, the instant Appeal, being Appeal No. 28 of 2016, filed by the Appellant may be disposed of on the ground that the order impugned dated 9.1.2015 passed in Petition No. RERC-431/13 by the Rajasthan Electricity Regulatory Commission, Rajasthan merges with the final order dated 22.07.2015 passed in Petition No. RERC-431/13 by the first Respondent.

3. Further, he fairly submitted that, in the instant Appeal, the Appellant herein has questioned the legality and validity of the said order in Appeal No. 191 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi. Therefore, the instant Appeal, being Appeal No. 28 of 2016, may be disposed of, reserving liberty to the Appellant to redress his grievances in Appeal No. 191 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi and all the contentions of the Appellant may be left open.

4. The learned counsel appearing for the Respondents, inter-alia, contended and submitted that, the submissions made by the learned counsel appearing for the Appellant may be placed on record and the instant Appeal No. 28 of 2016 may be disposed of.

5. The submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondents, as stated above, are placed on record.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondents, as stated above, it is not in dispute that the order impugned dated 9.1.2015 passed in Petition No. RERC-431/13 by the Rajasthan Electricity Regulatory Commission, Rajasthan, as rightly pointed out by the learned counsel appearing for the Appellant, the impugned order, in question, merges with the final order dated 22.07.2015 passed in Petition No. RERC-431/13 by the Rajasthan Electricity Regulatory Commission, Rajasthan. Further, the learned counsel appearing for the Appellant herein, has submitted that the questioning of the legality and validity of the impugned order dated 22.07.2015 in Appeal No. 191 of 2015 pending adjudication before this Appellate Tribunal is not in dispute.

7. Taking into consideration the facts and circumstances of the case, as stated above, the instant Appeal No. 28 of 2016 on the file of the Appellate Tribunal for Electricity, New Delhi filed by the Appellant stands disposed of,

reserving liberty to the Appellant to redress his grievances in Appeal No. 191 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi. All the contentions and grounds urged by the Appellant and the Respondents in the instant Appeal are left open.

(S.D. Dubey)
Technical Member

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(Justice N.K. Patil)
Judicial Member