

COURT-II

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER ON

APPEAL NO. 167 OF 2015 & IA NO. 271 OF 2015 & IA No. 401 of 2018

ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

Dated: 13th April, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of

M/s Response Renewable Energy Ltd.

13, Subol Dutt Building

Brabourne Road, Kolkata-700001

.... **Appellant(s)**

Versus

1. **Bihar Electricity Regulatory Commission**

Vidyut Bhawan-II, Jawahar Lal Nehru Marg,

Patna-800021

.... **Respondent No.1**

2. **Bihar State Power Holding Company Ltd.**

Vidyut Bhawan-I, Jawahar Lal Nehru Marg,

Patna-800021

..... **Respondent No.2**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Mr. Pulkit Agarwal

Counsel for the Respondent(s) : Mr. R. B. Sharma for R-2

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

The Appellant has sought the following reliefs in Appeal No. 167 of 2015:

- (a) Allow the appeal and set aside the order dated 06.05.2015 passed by the State Commission to the extent challenged in the present appeal; and
- (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

The Appellant has presented in this Appeal for consideration under the following Question of Law:

- (a) Whether the State Commission is right in rejecting the extension of the control period of the Order dated 29.05.2012 for the Appellant's solar power project beyond 31.03.2015 and upto 30.06.2015 after the State Government had extended the time for completing the project till 30.06.2015?
- (b) Whether the State Commission failed to appreciate that the delay in completion of the power project of the Appellant was not attributable to the Appellant and was beyond the control of the Appellant and in fact were clearly attributable to Respondent No.2 and its subsidiary or on account of force majeure?
- (c) Whether the State Commission failed to consider the scope of obligation of the Respondents No. 2 and South Bihar Power Distribution Company Limited regarding the grid interfacing and

evacuation arrangement while considering the relief sought by the Appellant for extension of the control period?

- (d) Whether the State Commission erred in holding that the delay in erection of transmission and evacuation arrangement would not prevent the erection of the power plant without considering that inaction on part of the Respondents No. 2 and South Bihar Power Distribution Company Limited to even acknowledge their obligations to provide such arrangement despite repeated requests on part of the Appellant created the uncertainty in the minds of the Appellant and others dealing with the Appellant including the lenders?
- (e) Whether the State Commission is right in proceeding on the premise that the mobilization of funds is the responsibility of the Appellant and holding that the delay in doing so cannot be said to be beyond the control of the Appellant?
- (f) Whether the State Commission is right in holding that the Appellant could have taken advantage of reduced market prices of plant and equipment and therefore should not be entitled to extension of the control period beyond 31.03.2015?
- (g) Whether the State Commission erred in holding that the Appellant had not submitted sufficient information and documents in the matter?

ORDER

IA No. 401 of 2018
(Appl. for withdrawal of Appeal)

It is respectfully submitted in the prayer:

- (a) *Permit the Appellant/Applicant to withdraw the Appeal No. 167 of 2015 titled as “M/s Response Renewable Energy Ltd. Vs. Bihar Electricity Regulatory Commission and Another” against the Order dated 06.05.2015 passed by the Bihar Electricity Regulatory Commission in Petition No. 8 of 2015;*
- (b) *Pass any such further order or orders as this Hon’ble Tribunal may deem just and proper in the circumstances of the case.*

2. The learned counsel appearing for the Appellant submitted that in the light of statement made and the reasons stated in the application seeking permission to withdraw the appeal under Section 120(1) of the Electricity Act 2003 read with Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fees and Records of Proceedings) Rules, 2007, may kindly be placed on record and the instant application filed by the Appellant may kindly be allowed and hence appeal filed by the learned counsel for the appellant is dismissed as withdrawn in the interest of justice and equity.

3. Submissions made by the learned counsel appearing for the Appellant, as stated above, are placed on record.

4. In the light of the submissions made by learned counsel appearing for the Appellant and the reasons stated in the application dated 22.03.2018, the prayer sought in the application is accepted and the instant IA, being IA No. 401 of 2018 filed by the Appellant is allowed, permitting the Appellant to withdraw the Appeal No. 167 of 2015 titled as "***M/s Response Renewable Energy Limited Vs. Bihar Electricity Regulatory Commission & Anr.***" Against the order dated 06.05.2015 filed by the Bihar Electricity Regulatory Commission in Petition No. 8 of 2015, dismissed as withdrawn at the risk of the learned counsel appearing for the Appellant.

5. With these observations, the instant Appeal No. 167 of 2015 (***M/s. Response Renewable Energy Limited Vs. Bihar Electricity Regulatory Commission & Anr.***) filed by the Appellant, dismissed as withdrawn at the risk of the learned counsel appearing for the Appellant.

6. Order accordingly.

IA NO. 271 OF 2015
(Appl. For Stay)

In view of the appeal filed by the Appellant, dismissed as withdrawn. The relief sought in the instant application does not survive for consideration. Hence, instant application filed by the Appellant, stands disposed of as having become infructuous.

2. Order accordingly.

(S.D. Dubey)
Technical Member
kt/vg

(Justice N.K. Patil)
Judicial Member