

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

**(APPELLATE JURISDICTION)**

**APPEAL NO. 129 OF 2015**

**Dated: 20<sup>th</sup> March, 2018**

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

**IN THE MATTER OF**

**DCM Shriram Ltd.**

Shriram Nagar, Kota – 324 004

Rajasthan

.... Appellant(s)

***VERSUS***

- 1. Jaipur Vidyut Vitran Nigam Limited**  
Vidyut Bhawan, Janpath,  
Jaipur – 302 005  
(Rajasthan)
- 2. Ajmer Vidyut Vitran Nigam Limited**  
Vidyut Bhawan, Panchsheel Nagar  
Makarwali Road,  
Ajmer -305004  
(Rajasthan)
- 3. Jodhpur Vidyut Vitran Nigam Limited**  
New Power House, Industrial Estate,  
Jodhpur-342 003  
(Rajasthan)
- 4. Rajasthan Discoms Power Procurement Centre**  
Shed No 5/5, Vidyut Bhawan,  
Vidyut Nagar, Jaipur – 302005  
(Rajasthan)

**5. Rajasthan Electricity Regulatory Commission**

Vidyut Viniyamak Bhawan,  
Near State Motor Garage,  
Sahkar Marg, Jaipur-302 005  
(Rajasthan)

.... Respondents

Counsel for the Appellant (s) : Mr. M. G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Poorva Saigal  
Ms. Anushree Bardhan  
Mr. A. K. Dubey  
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Bipin Gupta for R-1 to R-4  
  
Mr. Raj Kumar Mehta  
Ms. Himanshi Andley  
Mr. Rajat for R-5

(I) The Appellant herein assailing the correctness of the impugned Order dated 10.04.2015 passed in Petition no. RERC-476/14 on the file of the Rajasthan Electricity Regulatory Commission presented this Appeal seeking following reliefs :

- (a) Allow the appeal and set aside the order dated 10.04.2015 passed by the State Commission to the extent challenged in the present appeal;
- (b) Allow the appeal and set aside the demand notice dated 17.05.2013 issued by respondents; and
- (c) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

(II) In the instant Appeal, the following questions of law have been framed for consideration:-

- A. Whether in the facts and circumstances of the case, the State Commission is right in deciding that the Letter of Intent provided

only for adjustment of energy charges and not for the fixed charges and other charges?

- B. Whether in the facts and circumstances of the case, the State Commission erred in not giving effect to the Order dated 17.08.2009 by stating that it is only an administrative order?
- C. Whether in the facts and circumstances of the case, the State Commission is right in holding that the Appellant had no vested right in the amount already received for its sale of energy from its captive power plant?
- D. Whether in the facts and circumstances of the case, the State Commission is right in holding that there would be unjust enrichment in the absence of adjustment as decided by the State Commission?
- E. Whether in the facts and circumstances of the case, the Discoms are estopped from claiming the change in the methodology of adjustment of the energy consumed by the sister concern of the Appellant after having agreed to in the order dated 17.08.2009 and having implemented the same throughout the term of the agreement?
- F. Whether in the facts and circumstances of the case, the State Commission failed to consider that there was a waiver and acquiescence by conduct by the Discoms?

- G. Whether in the facts and circumstances of the case, the State Commission is right in upholding that the actions of the Discoms as only a correction of an error and recovery of amount wrongly paid to the Appellant?

## **J U D G M E N T**

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

#### **BRIEF FACTS:**

1. Brief facts of the case are as follows:
  - (a) The Appellant herein is a Public Limited Company corporate under the provisions of the Companies Act, 1956 and is engaged in manufacture, inter alia, of Urea, Caustic Soda, Plastic and Cement. The Appellant has a Captive Power Plant (CPP) with total installed capacity of 125.3 MW at Kota, Rajasthan, comprising of five separate captive power units, namely 1x40 MW, 1x30 MW, 1x35 MW, 1x10 MW and 1x10.3 MW.
  - (b) The Respondents No. 1 to 3 are distribution licensee under the Electricity Act, 2003 in the State of Rajasthan. Respondent No. 4, Rajasthan Discoms Power Procurement Centre is a interested/entrusted agency for procurement of power on behalf of the Discoms in the State of Rajasthan.

- (c) The Respondent No. 5, Rajasthan Electricity Regulatory Commission (herein referred to as the State Commission) under the Regulatory/Electricity Act, 2003 for the State of Rajasthan.
- (d) The Appellant has filed Petition on 17.10.2014 under Section 18(1)(f) of the Electricity Act, 2003 for adjudication of the dispute with Discoms, contending that in the year 2009, the State of Rajasthan was facing acute power shortage. Be that as it may, the Respondent No. 4 on behalf of Respondents No. 1 to 3 invited bids for purchase of power on short term basis (one year) commencing from 01.07.2009 to 30.06.2010 from captive as well as independent power plants located in Rajasthan. The bidders were directed to quote the uniform fixed price. It was further stated that CPPS without open access for wheeling of power to their other units / sister concerns at different locations could not adjust / account for the consumption of such other units / sister concern from the power injected by the CPP and such consumption to other units / sister concern shall be regarded as power drawn against normal HT connections from the Discoms. In the month of June, 2009, the bid amount was amended to provide that CPPs who are willing to sell power to Discoms, the energy drawn from the Discoms by other units / sister concerns as HT consumer of the Discoms shall be adjusted / granted from

the energy supplied irrespective of whether there existed an open access agreement or not and balance energy shall be considered as a sale to the Discoms. On 15.06.2009, the Appellant submitted the bid for supply of 30 MWs of minimum quantum Round The Clock (RTC) power for the above period at Rs. 7.15 / KWh from its CPP at Kota, Rajasthan. The Appellant submitted the details of its sister concern, M/s Swatantra Bharat Mills at Tonk, Rajasthan with a contract demand of 2 MVA with Respondent No. 1, as a unit taking power from the Discoms in addition to 20 MVA contract demand of the Appellant Unit at Kota premises. The power was supplied based on the premise that the entire HT bill raised by the Respondent No. 1 on Appellant and its sister concern, M/s Swatantra Bharat would be adjusted. A copy of the bid submitted by the Appellant is marked as Annexure 'B'.

- (e) Pursuant to the submission of the bid, there were discussions held with the representatives of the bidders (power plants) and the Respondent No. 4. The tariff for supply of electricity by the CPPs to the Discoms was negotiated and agreed at Rs. 6.50 per KWh as against Rs. 7.15 per KWh bid by the Appellant. It is the case of the Appellant that at no point during the round of discussion, did any of the Respondents suggest that only the

energy charges would be refunded and the consuming units would still be liable to pay the fixed charges and other charges.

- (f) On 30.06.2009, the Respondent No. 4 herein issued a Letter of Intent (hereinafter called in short as 'LOI') to the Appellant for supply of RTC power on firm basis up to 30 MW at Rs. 6.50 per KWh from 01.07.2009 to 30.06.2010. Further, the Appellant could sell power to the Discoms on "day ahead basis" to pay at 90% of Rs. 6.50 per KWh. A copy of the LOI dated 30.06.2009 is marked as Annexure 'C'.
- (g) The Appellant accepted the LOI and concluded contract came into existence. Accordingly, the Appellant herein commenced supply of power to Discoms as per the LOI from 01.07.2009.
- (h) Further, the case of the Appellant that the tariff payable to the Appellant was Rs. 6.50 per KWh for its supply of power at a tariff payable to the Appellant and its sister concern to the Respondent No. 1 for drawal of power as HT consumer was around Rs. 4.80 per kWh (inclusive of all charges). Therefore, it was beneficial to the Appellant and its concerns to consume power as an HT consumer of the Respondent No. 1 and supply full quantum of power to Discoms without any adjustment.

Further, at the request of the Discoms, the Appellant and many other CPPs had agreed to forgo the profit and agreed to treat the consumption of power by its other units or its sister concerns for adjustment on the quantum of energy basis. At the relevant point and for more than three years thereafter, the Discoms did not raise any issue on the understanding of the contractual obligation or on the issue of adjustment, the fixed charges and other charges and only adjusting the energy charges.

- (i) For the month of July, 2009, the Appellant raised weekly invoice for the supply of power from its CPP to Discoms. The Appellant then issued a revised bill wherein the adjustment was made for the entire bill payable by the Appellant and its sister concerns to the Discoms inclusive of fixed and other charges was adjusted.
  
- (j) Based on the LOI and in light of the mutual discussions with all the successful bidders, including the Appellant, on 17.8.2009 the Respondent No. 1 issued a Procedure for adjustment of energy sold by CPPs to Discoms on 17.08.2009. The Order / procedure, inter alia, provided the formula for amount payable to the CPP by the Discoms as under :

“Say the energy exported by CPP is 100 units and the power drawn by CPP’s industrial units is 20 units for which a bill of



Rs. 90 has been raised. The bill for sale to Discoms would be thus drawn as such :

Rs. (100-20) x Rs. 6.6 Sale from CPP i.e. Rs. 520 = A

Bill raised to industrial unit / sister concern say = B

Total (A) + (B) payable by Nigam to CPP

(Bill for Industrial unit paid as raised by HT Billing Section)

The above instructions are issued for compliance by all concerned.”

A copy of the Order/Procedure dated 17.08.2009 is attached hereto and marked as Annexure ‘D.’

- (k) In pursuance of the above LOI, mutually agreed terms and conditions and the Order/Procedure dated 17.08.2009, Appellant supplied electricity to the Discoms and was paid the amount as per the tariff indicated in the LOI after adjusting the entire bill raised by the Discoms on the sister units.
- (l) The terms of the agreement entered between the parties was a period of one year starting from 01.07.2009 and which ended on 30.06.2010.
- (m) On 06.11.2012, after a lapse of nearly two and a half years from the expiry of the agreement, the Respondent No. 1 issued a Clarification for the Procedure for adjustment of energy sold by various CPPs to the Discoms. For the first time, the Respondents

stated that the adjustment of fixed charges and other charges for the sister units were not to be made. The Respondent No. 1 under the guise of clarification, sought to retrospectively revise the methodology unilaterally and contrary to the agreement between the parties. The Respondent No. 1 stated that the adjustment for sister units were only for effective per unit rate of LOI tariff i.e. the energy charges. A copy of the Order dated 06.22.3023 is marked as Annexure 'E'.

- (n) Based on the above order dated 06.11.2012, the Respondent No. 1 on 20.02.2013 raised a demand for prima facie amount of Rs. .2,74,49,724. A copy of the demand notice dated 20.02.2013 is attached hereto and marked as Annexure 'F'. The Appellant vide letter dated 27.02.2013 denied the demand raised by the Respondent No. 1. A copy of the letter dated 27.02.2013 is marked as Annexure 'G'.
- (o) The Respondent No. 1 then raised another demand through letter dated 17.05.2013 for recovery of a revised amount of Rs. 3,70,90,381. A copy of the demand notice dated 17.05.2013 is marked as Annexure 'H'.
- (p) Accordingly, the Appellant herein replied to the demand notice vide its letter dated 01.06.2013 reiterating that the demand was

illegal. A copy of the letter dated 01.06.2013 is marked as Annexure 'I'

(q) Questioning the correctness of the demand notice dated 17.05.2013, the Appellant has filed a Writ Petition before the Hon'ble High Court of Rajasthan. The said matter had come up for consideration before the Hon'ble High Court of Rajasthan on 01.09.2014. After hearing the Writ Petition filed by the Appellant, the same was disposed off with the liberty to the Appellant to redress his grievance as envisaged under the relevant provisions of Electricity Act, 2003. A copy of the order dated 01.09.2014 is marked as Annexure 'J'.

(r) After receipt of the said Order's copy, the Appellant in the month of October, 2014 has filed a Petition being Petition No. 476 of 2014 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan. A copy of Petition No. 476 of 2014 is marked as Annexure 'K' and that of the reply filed by the Discoms marked as Annexure 'L' respectively.

(s) The State Commission, after hearing both the parties, passed the impugned Order dated 10.04.2015 rejecting the Petition filed by the Appellant. The State Commission has held that as per the LOI, only energy charges billed are to be adjusted and the

Discoms had wrongly refunded the fixed and meter charges which is now being sought to be corrected. It is held that the actions of the Respondents to recover the amount is in accordance with the law.

- (t) Not being satisfied with the impugned Order passed by the State Commission, as stated above, the Appellant herein has presented this Appeal.

**WRITTEN SUBMISSIONS MADE BY LEARNED COUNSEL  
APPEARING FOR THE RESPONDENT**

2. After service of notice, the Respondent Nos. 1 to 4 represented through the Counsel has filed his reply statement contending that—

- (i) the present dispute is not covered before the State Commission on the ground that whatever is sought to be recovered is the amount which has wrongly been paid to the appellant on account of refund of fixed charges, transformer rent and metering equipment rent etc., on account of the appellant and its sister concerns having HT connection from the answering Respondents and such a dispute is not maintainable before the Hon'ble Commission. Therefore, he submitted that the Petition filed by the Appellant may be rejected.

- (ii) The impugned Circular / Order dated 17.08.2009 is only an illustration where it is shown as to how the bill is raised to the industrial units/sister concern and how the adjustment could not have been made in respect of the units utilized by the industrial concern and not the entire bill raised as it is incumbent on the HT consumer to pay the fixed charges, transformer rent and metering equipment rent under the HT agreement on the basis of the tariff determined by the State Commission.
- (iii) It is further the case of the Respondent Nos. 1 to 4 that when it came to the knowledge of the Discoms that wrong payments were made to the Appellant on account of refund of fixed charges, transformer rent and metering equipment rent, a clarification was issued on 06.11.2012 and it was decided to review all the payments made earlier and adjustment could be made only in respect of the energy unitized and not in respect of the fixed charges, transformer rent, metering equipment rent and therefore the said are liable to be paid by a consumer having a different contract with the Respondent. Also, it is an obligation of the consumer to pay charges according to the tariff determined by the State Commission under the retail tariff order.

- (iv) The Respondent, in the LOI issued to the petitioner, stated that it was only a requirement to give details of all HT connections of its industrial units as well as its sister concerns whereas HT connections could be governed by their own agreement.
- (v) It is further the case of the Respondent Nos. 1 to 4 that from both the impugned circular/order it is clear that the earlier circular / order also provided for raising of bills by the Discoms as usual, which indicates that the consumer of Discoms and a CPP has to pay the charges under its obligation of connection which he had taken from the respondents. There is no change in the rules, regulations or law but rather it is a matter of applying correct application and adjustment which is being done strictly in accordance with the relevant rules and regulations and it was also the requirement of Supply Code Regulations.
- (vi) Further, the reliance placed by the Appellant on judgments is not applicable to the facts and circumstances of the present case.
- (vii) It is the case of the Respondent that it is only correction of the adjustments as per retail tariff order and HT consumer of a CPP is supposed to pay fixed charges, transformer rent, metering equipment charges as decided by the Commission, even if he does not consume any electricity from the Discoms. Under the

adjustments, the refund of the said amounts were inadvertently given by the Discoms and such claim and demand for inadvertent payment made to the consumer and such recovery is totally permissible as the consumer was under an obligation to make payment of fixed charges, transformer rent, metering equipment charges and therefore the demand which has been raised by the Respondents is strictly in accordance with the relevant provisions of the rules and regulations and is justified. Therefore, the petition filed by the Appellant is baseless and is liable to be rejected.

**COMMISSION'S VIEW AND DECISION :**

3. The State Commission, after considering the ground taken by the Appellant in its Petition and stand taken by the Respondent Nos. 1 to 4 in their reply and after considering other relevant material on record, and after perusal of the relevant rules and regulations and clause-5 of the LOI, dealt with energy accounting and declined to consider the prayer sought by the Appellant in the Petition and after assigning following reasons has rejected the Petition filed by the Appellant holding that we have carefully considered the rival submissions and case made by the respondents holding that the order dated 17.08.2009 and the revised order of adjustment dated 06.11.2012 are only billing procedure order. They do not have any statutory character. They are only contact (LOI) performance orders. Therefore, what will govern the relation is the terms of LOI

and not the earlier procedural order. We have perused clause 5 of LOI which deals with adjustment of bills. As per this clause, only the energy billed and paid for self shall have to be adjusted. The procedural order dated 17.08.2009 is not in accordance with the term of the LOI, the same cannot be relied upon to retain an unjust benefit extended to the Appellant.

4. It is the case of the Respondent that while settling the bills, instead of giving credit only for the energy charges billed and paid, demand and meter charges were also refunded. On noticing this, the impugned order dated 06.11.2012 has been issued and the wrongly allowed amount is being ordered to be recovered back. It is submitted by the Respondents that the impugned action is nothing but the error corrected and that has been rectified.

5. The State Commission has opined that in this action of the Respondents, they do not find any illegality and apparently what is being done is only correction of the error committed. Nobody can claim a vested right in a wrong action taken. If they allow the Appellant to retain the amount wrongly refunded, it will amount to perpetuating the error. Further it will be an unjust enrichment on the part of the Appellant. This will be inequitable. The contention that the first procedural order was as a result of an agreement has no basis and that cannot be accepted.

6. The State Commission has placed reliance on the case of Birla Cement Works (SB[Civil] Writ Petition No. 16789 of 2013 & Others). Similar question



came for consideration before the Hon'ble High Court of Rajasthan. Rejecting the similar arguments made in the present case, the ratio of the law laid down by the High Court of Rajasthan in the Birla Cement Works case is aptly applicable to the present case in hand.

7. Further, it observed that the Single Judge Bench Order has been affirmed by the Division Bench in a DB Special Appeal No. 599 of 2014.

8. Following the decision of the High Court of Rajasthan, Order passed by the Learned Single/Division Bench of the State High Court has held that the recovery initiated with the Respondent cannot be termed as illegal and no exception can be taken on the same.

9. Further, they have considered the contentions of the Learned Counsel for the Appellant that the action of the Respondent is hit by the principle of promissory estoppel and are of the view that in a concluded contract there is no question of promissory estoppel. What should govern is the contract and its terms. Any discussions that have taken place before concluding the contract will no longer be relevant unless the contract is not clear. It is also observed that in the present case it has not been pointed out what was the promise held out to the Appellant. Wrong settling of bill cannot amount to a promise. Even otherwise, as held by them, there was an erroneous action on the part of the Respondents while settling the bills and that cannot stop the Respondents from correcting the error.

10. Further, the State Commission considered the submission of the Learned Counsel appearing for the Appellant that no authority can modify the Order retrospectively. They opined that there is no such retrospective amendment of any statute or statutory order in the present case. As stated supra, the two orders dated 17.08.2009 and 6.11.2012 are neither statutory orders nor have the force of the law. They were only administrative orders for implementing the contract.

11. Further, it is held that the judgment relied by the Learned counsel appearing for Appellant in support of the submission is not applicable to the facts and circumstances of the present case and for the foregoing reasons, the Petition filed by the Appellant is rejected.

**WRITTEN SUBMISSIONS MADE BY LEARNED COUNSEL  
APPEARING FOR THE APPELLANT**

12. The principal submission of the learned counsel, Shri M. G. Ramachandran, appearing for the Appellant is that the rights and obligations of the Appellant and the Discoms are contractual in nature and arose out of the LOI dated 30.06.2009 read with the methodology settled between the parties through the discussion and incorporated in the Communication dated 17.8.2009 issued by the Discoms.

13. The State Commission in the impugned Order has correctly construed the Communication dated 17.08.2009 as ‘Contract (Letter of Intent) Performance Orders’ and not statutory orders. In other words, the Communication dated 17.08.2009 should be construed as an agreement reached between the parties in

regard to the methodology and terms for implementation of the Letter of Intent dated 30.06.2009.

14. The communication dated 17.08.2009 forwarded by the Discoms was in pursuance to the mutual discussions held between the Discoms and the CPPs such as the Appellant herein. The fact that there were mutual discussions with all the successful bidders including the Appellant based on the LOI was specifically pleaded both before the State Commission in the petition and in the present appeal. In the reply filed by the Discoms both before the State Commission and before this Hon'ble Tribunal to the Memorandum of Appeal, the specific plea taken by the Appellant has not been denied. In response to para 5 of the petition, there is no denial that there was no discussion between the parties leading to the issue of the Communication dated 17.8.2009. Similarly, in the reply filed by the Discoms to the memorandum of Appeal in respect of para 7-L, there is no denial of the mutual discussion having taken place between the parties leading to the issue of the Communication dated 17.08.2009.

15. For a contract to come into existence, it is sufficient that there is a clear evidence of an agreement reached between the parties. It is not necessary that formal document is signed by both parties. The mutual discussions and settlement reached (as pleaded by the Appellant and not specifically denied by the Respondent), followed by the Communication dated 17.8.2009 of the Respondent Discoms addressed to the interested parties by uploading on website

and acted upon constitutes a valid contract. To substantiate the submissions, he placed reliance on the full Bench decision of the Hon'ble High Court of Mumbai in the case of Jyotsna K Valia v. T. S. Parekh & Co. 2007 SCC Online (Bombay) 413 as held in relevant Para 16.

16. Further he is quick to point out that the Communication dated 17.08.2009 has to be read along with the LOI dated 30.06.2009 constituting the agreement entered into between the parties for supply of electricity by the Appellant to the Discoms and also for adjustment of the consumption of electricity at the Appellant's facilities / sister concerns in a manner provided in the said document. Therefore, he submitted that the State Commission was wrong in ignoring the Communication dated 17.08.2009 which represents mutual discussion and the terms agreed to and going only by the Letter of Intent dated 30.6.2009. In this regard, the relevant provisions of Sections 62 and 63 of the Indian Contract Act, 1872 and the decision of the Hon'ble High Court of Delhi in Nalini Singh Associates v. M/s Prime Time – IP Media Services Ltd OMP No. 351 of 2003 dated 10.9.2008 (Para 17 onwards) are relevant. It is always open to the parties to mutually decide and implement the manner in which a contract shall be implemented and also to clarify and specify the intention of the parties by a subsequent agreement.

17. In any event, the LOI dated 30.06.2009 (Clause 5) has been misconstrued by the Discoms and the State Commission. The LOI in Clause 5 talks about the

term 'Energy' in terms of the quantum of energy and not in terms of the energy charges. Nowhere in the LOI and including in Clause 5 is there a remote reference to the 'Energy Charges'. The energy or the electricity used in Clause 5 is in terms of the quantum to be sold or adjusted or drawn or accounted for. In the circumstances, the adjustment being on energy term i.e. on terms of the quantum of electricity, it is inappropriate to construe that such quantum of electricity has to be adjusted only as energy charges and there will be a continued liability to pay the fixed charges and other charges.

18. Therefore, the construction that the adjustment should be only for energy charges and not for the fixed charges and other charges was never intended by the parties. Neither the LOI nor the Communication dated 17.8.2009 remotely provides for any such partial adjustment. The parties had clearly understood that the intention is to adjust the entire HT rate for the quantum of energy consumed by the CPPs at other places / sister concerns. If otherwise, there was no purpose in the Communication dated 17.08.2009 issued after the mutual discussion to recognize the entire HT rate.

19. The stand of the Discoms that fixed charges are payable irrespective of the circumstances of the present case in regard to scarcity is devoid of any merit. The State Commission has not considered this aspect at all. The Discoms has not filed any appeal against the Order of the State Commission. The State Commission has proceeded on a simplicitor basis that the rights and obligations

are to be construed only based on the LOI and wrongly interpreted the term 'Energy' used in the LOI as energy charges.

20. The claim of the Discoms that the Appellant ought to have challenged the Order dated 06.11.2012 of the Discoms is again without any merit. The Communication dated 06.11.2012 is an internal direction to the officers of Discoms. It is not a decision communicated to the CPPs. It is also not a decision arrived at by any mutual discussion. It was a unilateral communication and an afterthought. The Appellant could challenge only the Demand Notice issued to the Appellant and not the internal communication. In this regard, to substantiate his submission, the Appellant placed reliance on the decision in case of *Ritesh Tewari and Another v. State of Uttar Pradesh and Ors (2010) 10 SCC 677* and specifically pointed out paragraphs 11 & 12 of the said judgment.

21. In regard to the submission of the Discoms on the Petition filed by the Appellant being not maintainable as it did not challenge the communication dated 6.11.2012, the claim cannot be raised in the present appeal. The State Commission has not considered the same. The State Commission has proceeded on the basis that these Communications are not statutory Orders. The matter is within the sphere of the Contract Law. It is to be considered on the basis of agreement entered into between the parties. This is particularly so as there are no Regulations, Rules or provisions in the Act governing the issue in the present case. Therefore, the State Commission has also wrongly proceeded on the basis

that the payment of the amount made by the Discoms after adjusting the entire HT Tariff for self consumption by the Appellant / sister concerns is due to a mistake. Firstly, there is no statutory orders as held by the State Commission which determines the price adjustment to be undertaken between the Appellant and the Discoms. There is no tariff determined by the State Commission. The price adjustment is a matter of contract between the parties. The matter is related to the interpretation of the contractual terms. There cannot be any question of the Appellant having been paid any amount in violation of any tariff determined by the State Commission or any Rules, Regulations or statutory orders notified for the purpose. The Appellant and the Discoms had implemented the contractual term. If the Discoms had wrongly implemented the contractual term, the remedy is to ask for the relief under the contract. The Discoms cannot proceed on the basis of restitution of an amount wrongly paid under a statutory rule or direction etc. Therefore, the reliance placed by the Learned Counsel appearing for the Respondent No.s 1 to 4 in the case of J K Cement Works v. Rajasthan Electricity Regulatory Commission and Another S. B. Civil Writ Petition No. 16789 of 2013 is not applicable to the facts and circumstances of the case.

22. If on the interpretation of the contractual provision, the amount has to be adjusted based on the entire HT Tariff, the same cannot be denied on grounds of equity, fair play, unjust enrichment etc.

23. Further, he vehemently submitted that by entering into a contract through the LOI and by settling the terms and conditions for adjustment by mutual discussion communicated vide Communication dated 17.08.2009, the parties have settled the contractual terms. The agreement reached between the parties including the methodology provided in the Communication dated 17.08.2009 are binding on both the parties. Such an agreement can be void only on grounds of fraud, mis-representation, coercion, undue influence or mutual mistake as per Sections 16 to 21 of the Indian Contract Act, 1872. There are well recognized principles for declaring a contract as void. In other words, the only way the Discoms could have avoided the agreement reached between the parties in regard to adjustment for self-consumption of the Appellant / sister concerns is to get the terms contained in the Communication dated 17.08.2009, in particular, Clauses 5, 6 and illustration as void on account of the well recognized principles of lack of capacity to contract, mis-representation, fraud, mutual mistake, undue influence, mistake etc.

24. There is no averment on the part of the Discoms that there was any such mistake in entering into the contract by issue of the Communication dated 17.8.2009. In any event, even based on a mistake the Discoms did not approach any Authority for declaration of the Communication dated 17.08.2009 as void. In the absence of any such step taken by the Discoms the contract between the parties need to be enforced as such.



25. Therefore, the claim of the Discoms that there was a mistake is in regard to the payment of the amount on the basis that the Communication dated 17.08.2009 had wrongly stated that the entire HT Tariff will be adjusted. The Discoms are not stating as to when they discovered the mistake. The Discoms have not made any plea as to why the payments were made consistently providing for the adjustment of the entire HT Tariff after the Communication dated 17.08.2009 and during the entire period of agreement. They have also not stated as to why the Discoms remained silent for a considerable period after the closure of the agreement on 30.06.2010.

26. Therefore, the counsel appearing for the Appellant submitted that the claim made by the Discoms is clearly an afterthought and an attempt to recover the money from the Appellant which is not due is clear from the following :-

- (a) The basis for recovery is internal communication dated 06.11.2012;
- (b) A perusal of the said communication shows that the meeting of the Directional Committee was held on 24.01.2012 i.e. about 10 ½ months before the issue of the communication;
- (c) The agenda note for the meeting seems to have been circulated earlier to 24.01.2012;
- (d) After the communication dated 06.11.2012, a letter is written for the first time to the Appellant on 20.02.2013;

- (e) The letter dated 17.05.2013 is the letter by which the firm amount has been claimed by the Discoms.

27. It is the specific case of the Appellant that the State Commission has ignored the Order dated 17.08.2009 on the basis that it was an administrative order. The conduct of the Discoms in issuing the Order dated 17.8.2009 and further adjusting the entire bill amount for the entire term of the contract clearly show the intention of the parties as to Clause 5 of the LOI. Such intention not being contrary to the specific words of the LOI ought to have been accepted. In any event, such a course is an admission of the real scope of the LOI issued and its interpretation, particularly when such admission is contemporaneous to the LOI.

28. The Respondents Discoms had made representations to the Appellant and other captive power producers to induce them to sell the power from their CPPs to the Discoms during the acute power shortage being faced in the State of Rajasthan at the relevant time. The Discoms and the power producers had mutually agreed that the entire bill amount raised by the Discoms to the consuming units, including the Appellant's units would be adjusted. This was the basis on which bids were submitted by the Appellant. This is also fortified by the subsequent conduct mentioned hereinabove.

29. The learned Counsel appearing for the Appellant further contended that at the request of the Respondents, the Appellant agreed to forgo the profit and

consume the power from its CPPs instead of drawing the power under the Contract Demand as HT consumer and any excess power from the power plant would be sold to the Respondent Discoms at the tariff of Rs. 6.50 per unit. In case the Appellant was to continue to pay the fixed charges, transformer rent and metering equipment rent etc despite being supplied power from its own CPP, the Appellant would not have agreed to such an arrangement and would have sold the entire power to the Discoms.

30. The actions of the Respondent Discoms subsequent to the LOI constitute estoppel, waiver and acquiescence. The Discoms had made the position clear vide the Order dated 17.08.2009 with full knowledge of all circumstances and further acquiesced to the adjustment methodology for the entire term of the contract. The Discoms cannot, at a belated state, be entitled to adjustment contrary to their representation. This is contrary to Sections 62 and 63 of the Indian Contract Act, 1872.

31. Therefore, the State Commission erred in holding that there was no promissory estoppel by the Discoms. The Discoms had by their words, 'through Order dated 17.08.2009' as well as by their conduct represented the CPPs, including the Appellant, the methodology to be adopted for adjustment of the entire bill raised by the Discoms on the consuming units of the Appellant. The Appellant had acted based on the above once the parties have executed the contract on such basis, it is not open to the Discoms to claim that the adjustment

as per the LOI was only for energy charges and not for the entire bill amount at belated stage is not maintainable.

32. The learned counsel appearing for Appellant submitted that allowing any party to a contract to change the accepted methodology and interpretation unilaterally and retrospectively after a delay of two and half years from the conclusion of the contract would result in grave uncertainty and would set a dangerous precedent on one of the parties being allowed to revisit the contract on the basis of a contrary interpretation and seeking refund or recovery much after the conclusion of the performance of the contract. This aspect of the matter has not been considered by the State Commission. Therefore, the impugned Order passed by the State Commission is liable to be set aside.

33. The learned counsel appearing for the Appellant submitted that the claim of the Respondent Discoms is barred by limitation.

34. The Respondent Discoms have sought to recover the money after having duly given the adjustment at the relevant time. The Respondents raised the invoice for the recovery of amounts for the first time on 20.02.2013 as an after thought and the final bill was raised only on 17.05.2013. The LOI was dated 30.6.2009 and the period in question was 01.07.2009 to 30.06.2010. During this period, based on mutual discussions and the Procedural Order dated 17.08.2009, the Appellant had raised invoices for supply of power after adjustment of the entire HT Bill and the Respondent Discoms had accepted the same. The

Respondent Discoms sought to revise the methodology more than three years after the commencement of the contract. As per the Limitation Act, the period of limitation for recovery of money is three years and therefore the Respondents are not entitled to any recovery of amounts beyond three years.

35. To substantiate his submission regarding limitation, he placed reliance on the judgment of the Supreme Court in case of *A.P. Power Committee & Ors v. M/s Lanco Kondapalli Power Ltd & Ors* (2016) 3 SCC 468 wherein it was held that the Limitation Act, 1963 applies to the adjudicatory power of the Regulatory Commissions under Section 86(1)(f) of the Electricity Act, 2003 (as held in para 30 of the said judgment).

36. Therefore, the claim for the period prior to February, 2010, if not 17.5.2010 is in any event clearly barred by time. In any event, the Respondents are barred by laches and unreasonable delay from claiming any refund or recovery. After having slept over their rights, the Discoms are not entitled to seek recovery at this belated stage. The Respondents have not provided any justification for such laches. Therefore, the claim of the Respondent is likely to be dismissed on the ground of delay and laches. This aspect of the matter had not been looked into nor considered, nor assigned any valid or cogent reasons in the impugned Order passed by the State Commission. Therefore, he submitted that the impugned Order passed by the State Commission is liable to be set aside in the interest of justice and equity.

**SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE RESPONDENT NOS. 1 TO 4**

37. *Per-contra*, the learned counsel, Shri Bipin Gupta, appearing for the Respondent Nos. 1 to 4, Discoms, vehemently submitted that the present dispute was not maintainable before this State Commission for the reason that whatever is sought to be recovered is the amount which was wrongly being paid to the Appellant on account of refund of fixed charges, transformer rent, metering equipment rent etc on account of the Appellant and its sister concerns, having HT connection from the answering respondents and such a dispute is not maintainable before the State Commission. Therefore, the Appeal is liable to be rejected at threshold on this ground alone.

38. Further, the learned counsel appearing for the Respondents submitted that the issue before this Hon'ble Tribunal is whether the terms of LOI dated 30.06.2009 provided any refund of entire HT Bill which includes fixed charges, transformer rent, metering equipment rent etc or the LOI provided for adjustment of energy and thus only energy charges to be refunded back. Further, whether the refund of entire HT Bills including fixed charges, transformer rent, metering equipment rent on the basis of defective illustration contrary to the LOI as well as main body of the order dated 17.8.2009 which was correctly clarified vide order dated 06.11.2012 by clarifying the defective illustration and thereafter raising demand was legal or not. Further, whether the claim of appellant to claim adjustment of Rs.4.80/KWh as claimed on the basis

of defective illustration instead of Rs.4.01/KWh as provided in the LOI or in the order dated 17.08.2009, the State Commission considering the LOI and the Procedural Order dated 17.8.2009 and considering the clarification dated 06.11.2012 have come to a conclusion that the demand was legal and the appellant's claim here for adjustment of Rs. 4.80/KWh instead of Rs. 4.01/KWh is wrong demand of the appellant. This aspect of the matter has been rightly considered by the State Commission and it has rejected the Petition filed by the Appellant as strictly in accordance with the relevant regulations. Therefore, interference by this Court is uncalled for.

39. That the Appellant on very well coming to know about the order dated 06.11.2012 on the basis of which the demand dated 20.02.2013 was issued protested against the demand through his letter dated 27.02.2013. The letter dated 27.2.2013 would indicate that the appellant admits that the supply of power had been made by them as per condition contained LOI dated 30.06.2009. Thus, the appellant cannot say that they have made the supplies on the basis of subsequent order dated 17.08.2009 merely taking the benefit of the defective illustration. The law on the illustration is well settled that illustration cannot either curtail or extend the scope of statute.

40. To substantiate his submission, he placed reliance on the judgment of the Supreme Court reported in 2016(6) SCC page 83 in case of Commissioner of Commercial Taxes v/s. Bajaj Auto (as held in Para 18 of the said Judgment).

The ratio of the law laid down by the Hon'ble Apex Court is aptly applicable the facts and circumstances of the case in hand. Therefore, he submitted that the impugned Order passed by the State Commission is sustainable in law.

41. Thus, the Appellant cannot claim to keep the wrong credit given to him on the basis of defective illustration when once the LOI is seen which do not in any manner permit the entire bill to be refunded back but only provides the adjustment of energy by the sister concern and thus sister concern's HT Bill upto the extent of energy adjusted by energy charges was required to be refunded back and not the entire HT Bill.

42. The Appellant was never aggrieved by the revised order dated 06.11.2012 and only protested against the demand by filing a writ petition before the Hon'ble Rajasthan High Court Jaipur Bench, Jaipur. The impugned order therein was only the demand notice dated 17.05.2013 and only protested against the demand by filing a writ petition before the Hon'ble Rajasthan High Court Jaipur Bench, Jaipur. The impugned order therein was only the demand notice dated 17.05.2013 and not the order dated 06.11.2012. This writ petition was disposed of by the Hon'ble High Court on the basis of clause 12 of the LOI. Thus, by the Hon'ble High court, liberty has been provided to the Appellant to redress his grievance before the State Commission.

43. And accordingly, the Appellant has filed a Petition before the RERC questioning the order dated 06.11.2012. Thus, it is clear that there was no



prayer of Appellant even to get declaration that the order dated 17.08.2009 was the correct procedure and did not question the order dated 06.11.2012. What was challenged was only the demand notice dated 17.05.2013. The State Commission has rightly considered the matter before them and decided in accordance with the relevant rules and regulations and rightly justified in rejecting the prayer sought by the Appellant. Therefore, interference by this Court does not call for.

44. That the Appellant, on the basis defective illustration contrary to the LOI as well as the Order dated 17.08.2009 merely on the basis defective illustration cannot claim adjustment of Rs. 4.80 per unit instead of Rs. 4.01 per unit as provided under Order dated 17.08.2009 also. The submission of the Appellant that the actions of the Respondent Discoms subsequent to the LOI constitute estoppel, waiver and acquisition is fallacious and is liable to be rejected merely on the basis of the provisions of Section 72 of the Indian Contract Act, 1872 as for payment of any money under mistake cannot be constituted estoppel, waiver and acquisition and if it is treated as estoppel, waiver and acquisition then Section 72 would become redundant.

45. Further, he submitted that for the money paid under mistake under Section 72 there is no limitation prescribed and limitation start from the date when the mistake is discovered. As held by Hon'ble High Court of Rajasthan in case of J.K. Cement, when the mistake was realized and placed before the Directional

Committee and who had clarified the illustration. If the date is taken to be as 24.01.2012 as the date of realization of mistake and correctional order issued by the Directional Committee, the demand notice dated 17.05.2013 is well within three years of limitation. Therefore, the ground taken by the Appellant on limitation is misconceived and is liable to be rejected.

46. Further, the reliance placed by the learned counsel appearing for Appellant in case of Jeevanbala Sikhdar and Maruthy Enterprises have got no relevance nor applicable to the present case. And judgment of the Hon'ble Apex Court on Section 72 in case of Chandi Prasad Uniyal is applicable to the present case. That in judgment of Mahesh Chand Agrawal, on which reliance has been placed by the Appellant is not applicable to the facts and circumstances of the case. Whereas the judgment in case of J.K. Cement has been considered by the Hon'ble High Court of Rajasthan and relied upon by the Commission is applicable to the facts and circumstances of the case in hand and has rightly justified applying the ratio of J.K. Cement case passed by the State Commission is sustainable in law. Therefore, the Appellant has failed to make out any case, and the State Commission has not committed any error or irregularity in the impugned Order. Hence, interference by this Court does not call for and the Appeal filed by the Appellant is liable to be dismissed.

47. The learned counsel appearing for Respondent Nos. 1 to 4 vehemently submitted that the reliance placed by the Counsel on several judgments as

referred in the written submission is not applicable to the facts and circumstances of the present case. Therefore, he submitted that on this ground also , the Appeal filed by the Appellant is liable to be dismissed.

**SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR RESPONDENT NO. 5**

48. Shri Raj Kumar Mehta, learned counsel appearing for the fifth Respondent submitted that, the impugned order passed by the fifth Respondent is strictly in consonance with the relevant provisions of Procedures, rules and regulations and no injustice as such has been caused to the Appellant. The State Commission, after considering the oral and documentary evidence and other material on records, has assigned valid reasons vide para 11 & 12 of the Judgment and also placed the reliance on the Birla Cement Works case. The similar case came up for consideration before the Hon'ble High Court of Rajasthan. The Hon'ble High Court of Rajasthan has rejected the similar nature of case and particularly applicable to the facts and circumstances of the instant case that has been considered and referred in Para 14 of the Order by the State Commission. All grounds urged by the Appellants have been looked into and considered and pass an appropriate order, upholding the demand bill issued by the Respondent Nos. 1 to 4 and Petition filed by the Appellant had been rejected. Therefore, interference by this Court does not call for.

49. Further, the learned counsel appearing for the Respondent No. 5 was quick to point out and has taken through the LOI for supply of the Round the

Clock (RTC) power for the period commencing from 01.07.2009 to 30.06.2010 on firm basis, as per the relevant Clause-5 Energy Accounting Billing and payment has been rightly considered and placed reliance on the same and passed impugned Order, not placing the reliance on the official orders. That aspect has been considered and assigned valid reasons in para 11 of the Order passed by the State Commission. He was quick to point out and vehemently submitted that the impugned order is nothing but correcting the error that has been committed by mistake. The same has been rectified, therefore, there is no error or illegality as such in the impugned Order passed by the State Commission nor the Appellant has made out any case to interfere in the well considered Order passed by the State Commission. Therefore, interference by this Court does not call for. Hence, the Appeal filed by the Appellant may be dismissed as being devoid of merits.

50. We have heard the learned counsel appearing for the Appellants, Shri M. G. Ramachandran and the learned counsel appearing for the Respondent Nos. 1 to 4, Shri Bipin Gupta and the learned counsel appearing for Respondent No.5, Shri Raj Kumar Mehta at considerable length of time and we have gone through the written submission and rejoinders filed by the learned counsel appearing for the Appellants carefully and after going through the entire material available on records, we are of the considered view that the matter requires to be reconsidered afresh in accordance with law, and therefore we do not propose to consider several other grounds and submissions made by the learned counsel

appearing for the Appellant and the Respondents. We think these are not germane to the case at present in deciding the case because we thought fit that the impugned Order passed by the State Commission cannot be sustainable in law on account of non-affording of reasonable opportunity of hearing to the Appellant.

51. Therefore, the only issue that arises for consideration that whether impugned Order dated 10.04.2015 passed in Petition No. RERC-476/2014 on the file of RERC is sustainable in law.

52. The principal submission of the learned counsel appearing for the Appellant that the Respondent No. 1 to 4 has issued a copy of the Order/Procedure dated 17.08.2009 and also a copy of the Order dated 06.11.2012 issued by the first Respondent vide Annexure 'D' & 'E' respectively. Thereafter, a copy of the Demand Notice dated 20.02.2013 was issued by the first Respondent to the Appellant. Immediately after receipt of the Demand Notice, the Appellants have filed a detailed reply-cum-letter forwarded on 27.02.2013 vide Annexure 'G' and thereafter a copy of the Demand Notice at Annexure 'H' dated 17.05.2013 was issued by the first Respondent to the Appellant and thereafter, the Appellant has filed a letter-cum-reply dated 01.06.2013 vide Annexure 'I'.

53. It is the specific case of the Appellants that the condition cannot now be unilaterally changed retrospectively after fulfillment of all obligations by both

the parties and these are unacceptable and against the principle of natural justice. The Demand Notice is absolutely against the conditions of the contract entered between Rajasthan Discoms Power Procurement Centre (RDPPC) and DCM Shriram Consolidated Ltd (DSCL). The Order bearing No. JPR5-564 dated 17.08.2009 issued by the Jaipur Discoms clearly spell out the procedure for adjustment of energy drawn and any revision in the procedure after lapse of three years is illegal and void ab initio and unacceptable since the power supplied to RDPPC in 2009 and 2010 was based on the above mentioned prevailing procedure (JPR5-564) and LOI dated 30.06.2009.

54. In the above facts and circumstances, the letter-cum-demand notice dated 20.02.2013 is unreasonable, arbitrary and unsustainable in law. Therefore, they prayed to immediately withdraw the same in the interest of justice. Their stand has been clearly brought to the notice of the SE(RDPPC) on similar nature vide Annexure 'I' dated 01.06.2013 also has been pointed out in detail and specifically stated that the letter dated 17.05.2013 is illegal, unreasonable, without jurisdiction, unacceptable, against the principles of natural justice and hence needs to be immediately withdrawn.

55. The authorities of the Respondent Nos. 1 to 4 neither considered nor looked into the matter. Therefore, there is no other option except to question the Demand Notice issued by the concerned Officer of the Respondent Nos. 1 to 4 has been challenged by way of filing the writ petition before the Hon'ble Court

of Rajasthan. The Writ Petition filed by the Appellants is disposed of reserving liberty to the Appellants to redress their grievances before the RERC, Rajasthan in accordance with the relevant provisions of the Electricity Act and Regulations.

56. Accordingly, they have filed the Petition before the fifth Respondent. The fifth Respondent, in turn, without considering the case made out by the Appellants has rejected the Petition. The order impugned passed by the fifth Respondent is liable to be set aside at the threshold on account of non-affording of reasonable opportunity to the Appellant and non-consideration of their reply filed to the Demand Notice before the competent authority of Respondent Nos. 1 to 4, the impugned order passed by the fifth Respondent is liable to be vitiated on this ground also.

57. *Per contra*, learned counsel appearing for the Respondents, inter alia, contended and justified the impugned Order passed by the fifth Respondent considering the relevant rules and regulations and specifically with reference to the LOI, Clause-5, the Order has been passed and as per this clause, the only energy bill paid for will have to be adjusted and the Procedure/Order issued on 17.08.2009 is not in accordance with the terms of LOI. Therefore, the same cannot be relied upon to retain unjust benefit wrongly extended to the Appellants. This aspect of the matter has been rightly considered, just and

reasonable order has been passed. Therefore, interference of this Court does not call for.

58. After careful consideration of the rival submission and in the light of the facts placed before us, in our view, Order dated 17.08.2009 and revised Order of adjustment dated 6.11.2012 are only billing procedure Order. They do not have any statutory character. They are only contract (LOI) Performance Orders. Therefore, what will govern the relations is the terms of LOI and not earlier Procedure/Order. We have perused clause-5 of LOI which deals with adjustment of bills. As per this clause, the only energy billed and paid / sold shall have to be adjusted. The Procedure/Order issued on 17.8.2009 is not in accordance with the terms of the LOI. The same cannot be relied upon to retain the unjust benefit. It is significant to note that the said reasoning assigned by the State Commission is contrary to the material on record in paras 11 to 13 of the Order impugned. Therefore, we are of the considered view that the said reasoning cannot be sustainable in law. It is liable to be vitiated at the threshold on the ground that it is a specific case of the Appellants that by way of filing reply-cum-letters dated 27.02.1013 at Annexure 'G' and dated 01.06.2013 at Annexure 'I', wherein they specifically pleaded and pointed out that any revision procedure after lapse of three years is illegal and void ab initio and it is against the principles of natural justice. We are of the considered view that the impugned Order passed by the State Commission cannot be sustainable on account of non-considering the specific case made out by the Appellant and their



reply statement to the Notice. Not following the well-settled law laid down by the Hon'ble Apex Court and this Tribunal, and passing an order against thereof is in gross violation of the principles of natural justice.

59. It is worthwhile to place the reliance on the judgment of the Hon'ble Supreme Court in Manohar S/o Manikrao oAnchule vs. State of Maharashtra and Another [(2012)13SCC 14]. In Para 25 of the said judgment, the Apex Court has held, thus,

“25. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall no demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.”

60. In view of the well settled law laid down by the Hon'ble Apex Court and the Hon'ble High Courts and also this Tribunal, in host of judgments, any order passed in violation of gross total principal of natural justice, such Order cannot be sustainable in the eyes of law. Therefore, the Order impugned passed by the fifth Respondent is liable to be set aside on this ground alone without going any further on the merits and demerits of the case in hand. It is suffice for this Tribunal to reserve all the contentions of both the parties left open, which will safeguard the interests of Appellant and Respondents. Therefore, we are of the considered view that expressing any views on the submissions of the learned counsel appearing for the Appellant and the Respondents would prejudice the

case of the Appellant and the Respondents made out before the State Commission.

61. The State Commission has failed to consider the root-cause of the matter and it ought to have had a holistic approach in deciding the case on the basis of relevant material available on records. Further, it is manifested on the careful reading of the impugned Order that the State Commission has utterly failed to consider the relevant material available on records and the case made out by the Appellants. This aspect of the matter has not been looked into nor considered nor appreciated by the State Commission. Therefore, on this ground also, the instant Appeal filed by the Appellant is liable to be set aside.

62. In the light of the facts and circumstance of the case, as stated above, the instant Appeal filed by the Appellants is allowed in part, as impugned Order dated 10.04.2015 passed in Petition No. RERC-476/14 on the file of the Rajasthan Electricity Regulatory Commission, Rajasthan vide Annexure 'A' is set aside.

- (i) The matter stands remitted back to the fifth Respondent for fresh consideration and pass appropriate orders in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 1 to 4 and dispose off as expeditiously as possible at any rate within the period of six months from the date of appearance of the parties before the fifth Respondent.

(ii) The Appellant and Respondent Nos. 1 to 4 herein are directed to appear before the fifth Respondent personally or through their counsel on 23.04.2018 at 11:00 a.m. without notice to collect necessary date of hearing.

(iii) All the contentions of both the parties are left open.

**PRONOUNCED IN THE OPEN COURT ON THIS 20<sup>TH</sup> DAY OF MARCH, 2018.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

√ REPORTABLE

*Bn*