

**COURT-I**

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**IA No. 378 of 2019 in  
APPEAL NO. 202 OF 2018**

**Dated : 27<sup>th</sup> May, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**Jaipur Vidyut Vitran Nigam Ltd. & Ors. .... Appellant(s)  
Versus  
Rajasthan Electricity Regulatory Commission & Anr. .... Respondent(s)**

**All India Power Engineers' Federation,  
Registered Head Office B-1A/45A,  
Janakpuri, New Delhi 110058  
through its Chief Patron ..... Applicant**

**Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.  
Ms. Ranjitha Ramachandran  
Mr. Shubham Arya  
Ms. Susan Mathew  
Mr. Alok Pareek**

**Counsel for the Respondent(s) : Mr. Amit Kapur  
Ms. Poonam Verma  
Ms. Abiha Zaidi  
Ms. Tanesha Sultan Singh for R.2**

**Counsel for the Applicant(s) : Mr. Pawan Sachdeva  
Mr. Paramjit Singh  
Mr. Ashok Kumar Jain**

## **ORDER**

***(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)***

1. This application is filed seeking permission to allow the applicant to intervene in the above mentioned appeal.
  
2. The applicant claims to be a registered body under the Societies Act having registered office at New Delhi to represent the body of all Power Engineers working in power utilities under Central Government and State Government in India. They claim that they are looking after the interest of consumers of power in the country. The intervener claims that it has *locus standi* to maintain this application since the Hon'ble Apex Court vide its Judgment dated 08.12.2016 in Civil Appeal Nos. 5881-82 of 2016 opined that the applicant can maintain cause of consumer.
  
3. According to the applicant, the bid document issued by the procurer did not prescribe any specific fuel to be used by the successful bidder in the generation and supply of electricity. Therefore, the successful bidder was entitled to decide both on the nature of the fuel whether coal or gas, and also whether the fuel should be procured from domestic suppliers or imported. This is very clearly indicated in the bid document.

4. The 2<sup>nd</sup> Respondent was the successful bidder in respect of Kawai Power Project in the state of Rajasthan. In the bid document so far as fuel is concerned, they quoted as under:

**“2. Fuel.**

- *Domestic coal:*

<i>Name of the allocated mine (in case of mine allocation)</i>	<i>Not applicable</i>
<i>Proven reserves of the mine (in case of mine allocation)</i>	<i>Not applicable</i>
<i>Quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the sake:</i>	<i>5.544 MMPTA of domestic coal. Supporting computation attached.</i>
<i>Particular of documents enclosed in support of the above.</i>	<i>Adani Group has entered into a MoU with Govt. of Rajasthan (GoR) for development of Kawai Power Project (copy enclosed). Under this MoU, GoR has assured its support for allocation of captive coal block or coal linkage. The necessary actions in this regard are being taken by APRL and GoR</i>

- **. Imported Coal.**

*Captive coal block/coal linkage will be made available for the Kawai project with the support of Govt. of Rajasthan. However, we have also made an arrangement for supply of imported coal for at least 50% of the total requirement of the power project for 5 years, as fall back support arrangement.*

<i>Name of the mine acquired or owned and country</i>	<i>Not applicable</i>
<i>Proven reserves of the mine (in case of mine allocation)</i>	<i>Not applicable</i>
<i>At least fifty percent (50%) of the quantity of coal required for power station at Normative Availability on an annual basis and supporting computation for the same.</i>	<i>2.54 Million MT with coal having GCV (ARB) of 4250 Kcal/Kg. Supporting computation attached.</i>
<i>Copy of the fuel supply agreement (s) for the least fifty percent (50%) of the total the quantity of coal required for a term if at least five (5) years or the term of the PPA (which even is less) for the power station at Normative Availability on an annual basis</i>	<i>Copy of the fuel Supply Agreement dated 25<sup>th</sup> June 2009 with Adani Enterprises Ltd. For supply of 3 Million MT of Imported coal up to Sep. 2018 is attached. Out Fuel supplier AEL, who is the largest coal trading company of the country, has long term arrangements with coal mines in Indonesia, Australia and South Africa for trading of coal.</i>
<i>Particular of documents enclosed in support of the above.</i>	<i>FSA dated 25<sup>th</sup> June 2009</i>

*The computation of coal consumption of normative availability was given as Under:*

*Computation of coal consumption of normative  
Availability*

*Name of the Power Project Kawai Thermal Power Project*

<i>Particular</i>		<i>Domestic Coal</i>	<i>Imported</i>

<i>Capacity</i>	<i>MW</i>	<i>1320</i>	<i>1320</i>	<i>Total Capa city 1320 MW.</i>
<i>Normative Availability</i>	<i>%</i>	<i>85%</i>	<i>85%</i>	
<i>Annual Generation</i>	<i>Mus</i>	<i>9829</i>	<i>9829</i>	
<i>SHR</i>	<i>Kcal/Kwh</i>	<i>2200</i>	<i>2200</i>	
<i>GCV</i>	<i>Kcal/Kg</i>	<i>3900</i>	<i>4250</i>	
<i>SCC</i>	<i>Kg/Kwh</i>	<i>0.5564</i>	<i>0.518</i>	
<i>100% Coal Requirement at Normative Availability</i>	<i>MMTPA</i>	<i>5.544</i>	<i>5.088</i>	
<i>50% Coal Requirement at Normative Availability</i>	<i>MMTPA</i>		<i>2.544"</i>	

5. After submission of the bid, certain clarifications were sought by Rajasthan Rajya Vidyut Prasaran Nigam Limited (“**RRVPNL**”) from 2<sup>nd</sup> Respondent with regard to fuel arrangement, and in response, the 2<sup>nd</sup> Respondent clarified its position by letter dated 12.09.2009. In pursuance of such clarification by 2<sup>nd</sup> Respondent, letter of intent was issued by RRVPNL on 17.12.2009 subject to the following conditions:

*“Your offer to provide 1200 MW power at the rates mentioned at Annexure-1 and escalations thereof on domestic coal is based on your commitment that the above rates would be applicable even in case of coal requirement being met by you by way of backup arrangement with imported coal.”*

6. This was accepted by the 2<sup>nd</sup> Respondent without any reservation, and thereafter PPA came to be executed between the parties on 28.01.2010. Same came to be approved by the State Commission on 31.05.2010 and tariff of Rs.3.238 per kWh was adopted for supplying 1200 MW electricity. The State Commission did refer to factum of undertaking given by 2<sup>nd</sup> Respondent that lower escalation in domestic coal or imported coal would be applied in tariff by the 2<sup>nd</sup> Respondent. In Memorandum of Understanding dated 20.03.2008 between Government of Rajasthan and the 2<sup>nd</sup> Respondent, at Clause 2.2 the Government of Rajasthan stated as under so far as assurance for supply of coal is concerned.

*“The State will facilitate implementation of the Project as may be required including making its best efforts to facilitate getting coal linkage/coal block from the Central Government or coal from any other source for the Project.”*

7. The applicant further refers to guidelines issued by the Government of India in the standard bid documents so far as coal linkage. In terms of

these guidelines, to become a successful bidder, for a plant to run on domestic coal, bidder has to have firm coal linkage. However, in case of imported coal, bidder should have either acquired mines having provided reserves for at least 50% of the coal required or should have a fuel supply arrangement for at least 50% of quantity of coal required for a term of at least 5 years or the term of PPA, whichever is less. It is contended on behalf of the applicant that though the 2<sup>nd</sup> Respondent was not qualified in terms of the above said guidelines in its bid, but it had made arrangement with another company, for supply of coal, and entered into coal supply arrangement with Adani Enterprise Limited on 25.06.2009. The relevant clauses of the agreement are as under:

*“Article 4: Sale and Purchase*

*4.1 Sale and Purchase*

*4.1.1 The Supplier represents and confirms that the Supplier firm and sufficient arrangements with Coal Mines and Coal Trading companies for procurement of Contract Quantity of Standard Coal from the Designated Mines. The Supplier shall transport by vessel, deliver and sell to the Purchaser, and the Purchaser shall purchase, take delivery of, and pay for Contract Quantity of Standard Coal at the Delivery Point and of the quality determined in accordance with and subject to the terms of this Agreement.*

*4.2 Undertaking by Supplier:*

*The Supplier hereby undertakes and represents to the Purchase that it shall:*

*(a) For the duration of the Contract Period, maintain sufficient quantities of Standard Coal to enable it to supply to the Purchase with the Contract Quantity of Standard Coal committed under this Agreement; it has no other agreements or arrangements, and will not enter into any other agreements or arrangements which prejudice its ability to supply such Contract Quantity of Standard Coal to the Purchaser under this Agreement from the Designated Mines;*

*(b) have full legal and beneficial title to all Standard Coal agreed to be delivered and, on delivery, such coal will be free from any liens, charges, encumbrances, equities and adverse claims whatsoever and the Supplier will indemnify and keep indemnified the Purchase from and*

*(c) against any losses, damages, and expenses (including legal fees) suffered as a result of any breach of this undertaking.*

#### *Article 5 : Quantities*

##### *5.1 Start-Up Tonnage*

*During the Start-up Period, the Supplier shall sell to the Purchase and the purchaser shall buy from the Supplier 0.17 Million Metric Tonnes of Standard Coal (the “Start-Up tonnage Quantity”)*

##### *5.2 Contract Quantity*

*During the Contract Period the following shall apply:*

- a) *Supplier shall sell to the Purchaser and the Purchaser shall buy from the Supplier up to 3 Million Metric Tones of Standard Coal in each Contract Year (the “Firm Quantity”) during the Contract Period (excluding the Start-Up Period).*
- b) *In addition to the Firm quantity, the Supplier shall, if requested, sell to the Purchaser up to 0.15 Million Metric Tonnes of Standard Coal each Contract Year (the “Optional Quantity”) during the Contract Period (excluding the Start-up period) which shall be % of the Contracted Capacity.*

### *5.3 Excess Quantity*

*In addition to the firm and Optional Quantity, the Supplier shall, if requested, use best endeavours to sell to the Purchaser quantity not exceeding 2.5 Million Metric Tonnes of Standard Coal each Contract Year (the “Excess Quantity”) during the Contract Period.”*

**8.** According to the applicant, the bid of the 2<sup>nd</sup> Respondent was evaluated on the basis of domestic coal, therefore, the agreement entered into by the 2<sup>nd</sup> Respondent with its sister concern was of no consequence. However, this agreement was terminated on 10.06.2010. In spite of the bid of 2<sup>nd</sup> Respondent not being in conformity with the guidelines issued by the Government of India in terms of Section 63 of the Electricity Act, the same was accepted.

9. On 22.03.2013, the 2<sup>nd</sup> Respondent approached the State Commission with a petition claiming compensatory tariff on account of increase in the cost of coal due to non-availability of domestic coal, on the ground of change in law event. This was allowed on 17.05.2018 granting compensatory tariff to the 2<sup>nd</sup> Respondent. Aggrieved by the same, the Appellant Nos. 1 to 4 in the above appeal approached this Tribunal. They further contend that the Rajasthan Electricity Regulatory Commission (“RERC”) opined that the Petitioner was entitled to reliefs in terms of PPA for additional cost incurred on procurement of coal, which was not allocated by coal India as per new distribution policy (**NCDP 2007**) which could not be allotted due to change in policy on 20.12.2013. They opined that this amounts to change in law in terms of definition of law in PPA and so also in terms of law laid down by the Hon’ble Apex Court in the case of ***Energy Watch Dog vs. Central Electricity Regulatory Commission & Ors. (2017 (14) SCC 80)***. According to the applicant, the said order passed by RERC is arbitrary and patently contrary to the decision of the Hon’ble Supreme Court in Energy Watch Dog’s case. According to the applicant, the said decision, apart from being contrary to the law laid down by the Apex Court, also adversely affect the interest of consumers and public at large. The applicant learnt that APRL has claimed an exorbitant

amount of more than 5000 Crores from Rajasthan discoms which eventually would affect the consumers in the form of tariffs.

**10.** Under the above circumstances, according to the applicant they seek permission to intervene to give proper assistance to this Tribunal by making submission on the scope of implication of decision of Hon'ble Supreme Court in Energy Watch Dog's case, and the role of regulatory commission to safeguard the interest of the consumers. They contend that their intervention will not prejudice or have any adverse impact on any of the stake- holders therefore, they should be allowed to intervene.

**11.** In response to this, objections of 2<sup>nd</sup> Respondent came to be filed contending that the applicant only intends to abuse the process of law and it is in the nature of dilatory and vexatious, therefore the application deserves to be dismissed with costs.

**12.** According to the 2<sup>nd</sup> Respondent, no legitimate ground exists to permit such intervention. The 2<sup>nd</sup> Respondent submits that the applicant is trying to mislead this Tribunal suggesting that Supreme Court has granted an *omnibus locus standi* in an unrelated matter i.e., ***All India Power Engineer Federation & Ors. Vs. Sasan Power Limited & Ors. (2017 (1)***

**SCC 487).** The application suffers for suppressing the material facts. There is no direction in **All India Power |Engineer Federation's case** recognizing the applicant's *locus standi* to intervene in all cases concerning the power sector. The applicant has not approached this Tribunal with clean hands is the stand of the 2<sup>nd</sup> Respondent.

**13.** The applicant has also suppressed its failed attempt to assail the order of this Tribunal dated 24.09.2018 by filing an appeal before the Supreme Court (Diary No. 47474/2017). The order dated 24.09.2018 was upheld by the Apex Court with minor modifications by reducing payment of dues from 70% to 50%. The Supreme Court in its Order dated 15.02.2019 in **All India Power Engineer's Federation's case** reprimanded the applicant for its attempt to approach the Apex Court without there being *bona fides*, therefore dismissed the same with costs of Rs.1,00,000/-. According to the 2<sup>nd</sup> Respondent, in terms of law laid down by the Apex Court in **K.D. Sharma vs. Sail (2008 (12) SCC 481)** the conduct of the applicant in suppressing material fact or any attempt to mislead the court itself can be a ground to refuse the intervention application. They also refer to **Kensington Income Tax Commrs. (1917 (1) KB 486)** to contend that if court is misled or deceived by not fairly submitting the statement of facts, the Court should refuse to hear such party. If suppression of material facts

is established, the orders even if given in favour of such guilty party, should be set aside.

**14.** The 2<sup>nd</sup> Respondent further contends that the applicant being neither a representative nor a consumer of the power supplied by Rajashtan Discoms has no connection whatsoever to the present proceedings. They further contend that the application of the applicant being in the nature of Public Interest Litigation cannot be entertained, since there is no such provision under the Electricity Act. Such observations were already made by this Tribunal in several matters.

**15.** According to the 2<sup>nd</sup> Respondent, since the present appeal relates to a bilateral dispute arising out of power purchase provisions between the parties concerned, the applicant being outsider to the PPA has no role to play in the adjudication of the present dispute. The applicant was not a party before the RERC where the 2<sup>nd</sup> Respondent had sought relief based on the contractual provisions. Further, the applicant has not suffered any legal grievance and it is not prejudiced and adversely affected by the impugned order of the Tribunal.

**16.** It is more than six years since the proceedings are pending before the RERC i.e., 2013. The applicant neither approached nor intervened in the proceedings in the last six years. At this stage, when final arguments are at the stage of conclusion, this belated application cannot be entertained. If intervention application is allowed at this stage, it would be detrimental to the concerned parties and would cause undue delay and financial losses apart from abuse of process of this Tribunal.

**17.** Written submissions filed by the applicant are scandalous and amounts to abuse of process, and without leave of this Tribunal, such submissions ought not to have been filed. At the threshold, such pleadings must be rejected. The allegation of DRI inquiry etc., raised by the applicant has no bearing on the present matter, which pertains to change in law event and consequent compensation to the generator. Applicant by this application is trying to re-assail the order of the Tribunal dated 24.09.2018 which was confirmed by the Hon'ble Apex Court vide its Order dated 29.10.2018. With these objections, the 2<sup>nd</sup> Respondent sought for dismissal of the application with exemplary costs.

**18.** We have gone through the application, objections, written arguments and also have considered the oral submission made by the counsel on the Intervention Application. The point that would arise for our consideration is -

“whether the application filed by All India Power Engineers’ Federation seeking leave to intervene in the present appeal deserves to be allowed?”

**19.** The sequence of dates and details of pendency of the petition filed by the Appellant till date are as under:

(a) Petition No. 392 of 2013 was filed by Adani Power Rajasthan Ltd. (Respondent No. 2 herein) on 23.03.2013 before RERC. This Petition was heard on 10 dates over two years, between 04.06.2013 and 06.08.2015 i.e., on 04.06.2013, 01.08.2013, 06.12.2013, 24.04.2014, 19.06.2014, 10.03.2015, 28.05.2015, 02.07.2015 and 16.07.2015 and 06.08.2015. The Applicant never intervened before the RERC.

(b) Rajasthan Discoms and Adani Rajasthan filed Appeal Nos. 42 of 2015 and 78 of 2015 challenging the interim order dated 30.05.2014 passed by RERC. These appeals came up for hearing about 13 times between 02.03.2015 and 03.08.2016, i.e. on 02.03.2015, 16.03.2015, 16.04.2015, 14.05.2015, 21.07.2015, 10.08.2015, 10.09.2015, 12.10.2015, 09.06.2016, 11.05.2016, 11.07.2016, 14.07.2016 and 03.08.2016. The Applicant never intervened before the Tribunal.

(c) On 03.08.2016, this Tribunal remanded the matter back to RERC in view of its findings in the Full Bench Judgment dated 11.04.2016. The matter was again heard by RERC on 4 occasions, i.e., 08.09.2016, 20.10.2016, 03.11.2016 and 23.11.2016 over the course of 1 year. Once again, the Applicant never intervened.

(d) On 11.04.2017, Hon'ble Supreme Court delivered its judgment in ***Energy Watchdog vs. CERC & Ors. (2017) 14 SCC 80***, to settle the issues in appeal arising out of Full Bench Judgment of this Tribunal.

(e) On 09.05.2017, the Judgment was placed before RERC to adjudicate upon Petition in light of law so laid down. The matter was then heard on 18.05.2017 and 07.09.2017 culminating in order dated

17.05.2018 allowing Petition No. 392 of 2013. Once again the Applicant never intervened.

(f) On 01.07.2018, Rajasthan Discoms filed Appeal No. 202 of 2018. Cross Appeal No. 305 of 2018 was filed by Adani Rajasthan before this Tribunal on 02.08.2018. Hearings in the Appeals have taken place before the Tribunal on 14.08.2018, 28.08.2018, 06.09.2018, 07.09.2018, 24.09.2018, 11.10.2018, 02.11.2018, 10.12.2018, 24.01.2019, 11.02.2019 and 13.03.2019. The Applicant did not intervene on any of these occasions.

(g) On 24.09.2018, this Tribunal passed an Order dismissing Application for stay and directed Rajasthan Discoms to pay 70% of the compensation claimed under Change in Law, as provisional payment (pending final decision in the Appeal).

(h) On 01.10.2018, Rajasthan Discoms filed Civil Appeal (C.A. No. 10188 of 2018) along with Application for Stay (IA No. 144333 of 2018) before the Hon'ble Supreme Court challenging the Order of APTEL dated 24.09.2018. On 29.10.2018, the Hon'ble Supreme Court disposed of the Civil Appeal along with the Application for Stay filed by Discoms. Supreme Court directed the Discoms to pay 50%

of the claim under Change in Law. The Applicant did not intervene at this stage too.

(i) Admittedly on 19.12.2018, the Civil Appeal (Diary No. 47474) was filed by the Applicant before the Hon'ble Supreme Court challenging the order of the APTEL dated 24.09.2018. On 15.02.2019, Supreme Court dismissed the Appeal observing as under:

“ ...

*We construe the attempt of the appellant to approach this Court in the manner done, not to be bonafide. We, therefore, not only dismiss the appeal in limine, but impose cost of Rs.1,00,000/- (Rupees one lakh only) to be deposited within a period of four weeks from today with the Supreme Court Legal Services Committee.”*

**20.** Subsequent to 15.02.2019 Order, this Intervention Application came to be filed on 13.03.2019.

**21.** We fail to understand why the Applicant kept quiet from 2013 to February 2019. It never approached RERC where the generating company

(second Respondent) had sought relief based on the contractual provisions i.e., PPA. We also notice that objects or aims of the Appellant's Organization are not placed before this Tribunal to know its real intention. The present Appeal pertains to change in law events and its consequences. Certainly, this is a bilateral dispute arising out of the contractual terms between the parties (PPA) to which the Applicant is not a party. The controversial issues raised pertain to adjudication of claims arising out of the PPA provisions. The Appellant – Discom is contesting the impugned orders passed by RERC pertaining to change in law events and its consequences. When parties to the contract are seriously prosecuting the litigation, especially when the Appeal itself is filed by Discom against whom relief is granted by RERC in the impugned order, we fail to understand what additional assistance the Applicant/Intervener intends to give to the Tribunal in a matter to which the Applicant is a third party. This is not a Public Interest Litigation.

**22.** There is no blanket permission to this Applicant by the Hon'ble Supreme Court in ***All India Power Engineer Federation & Ors. vs. Sasan Power Limited & Ors. [(2017) 1 SCC 487]*** to appear in all the Appeals which are fought between generators and respective Discoms.

**23.** The Orders of the Apex Court dated 15.02.2019 indicate that the Hon'ble Supreme Court felt the applicant approaching the Apex Court in the Civil Appeal (Diary No. 47474) does not seem to be bone fide, and opining so, the Hon'ble Court imposed a sum of Rs.1,00,000/- as costs against this Applicant. The Applicant has not suffered any legal grievance as such. We could appreciate the stand of the Applicant if Discom in the main Appeal is not prosecuting the Appeal seriously.

**24.** It is relevant to reproduce the law laid down by the Hon'ble Apex Court in such matters and how Hon'ble Apex Court and other Courts across the world have opined when attempts were made to mislead the Court with suppression of fact.

***[K.D. Sharma vs. SAIL (2008) 12 SCC 481]***

*“36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your*

application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

**37.** *In Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] Viscount Reading, C.J. observed: [KB pp.495-96)*

*“... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion, a careful examination will be made of the facts as they are and as they have been stated in the applicant’s affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the*

result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

*“45. In Agricultural & Processed Food Products v. Oswal Agro Furane [(1996) 4 SCC 297] the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. **Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of “very important fact”, this Court set aside the order of the High Court.”*** (Emphasis supplied]

**25.** The glaring suppression of fact, according to the second Respondent, is suppressing the Orders of the Hon'ble Apex Court dated 15.02.2019 in the Civil Appeal when this Applicant challenged the orders of this Tribunal dated 24.09.2018 and the Applicant was saddled with cost of Rs.1,00,000/- (Rupees One Lakh only).

**26.** It is pertinent to mention that till the Respondent – Generating Company brought this fact to the notice of the Tribunal, this was not placed

on record by the Applicant when he filed the Intervention Application on 13.03.2019. This is nothing but an attempt to suppress material fact in an attempt to mislead the Tribunal. We, deprecate the conduct of the Applicant in approaching the Tribunal by suppressing material fact. Therefore, it can be presumed that there was serious attempt to mislead the Tribunal by the Applicant.

**27.** It is not in dispute that merely a person not being a party to the proceedings is automatically disentitled to file an Appeal. With leave of the Appellate Court, a person claiming to be an aggrieved party can approach the Court only if he can establish prima facie that he is an affected party or prejudiced due to the order impugned. Therefore, a person cannot be brought under the definition of aggrieved party if such a person being not happy about the benefit granted to some party comes before the higher authority challenging the benefit. He has to establish that the order impugned has caused a legal grievance to him adversely affecting his interest or wrongfully a benefit is refused to him. The Applicant/Intervener herein cannot be a party who has suffered legal grievance, legal injury or deprived of something it was entitled to.

**28.** This Tribunal is not exercising its jurisdiction under Article 226 of the Constitution. It is well settled that Public Interest Litigation is not

maintainable before the State Electricity Regulatory Commission or Central Electricity Regulatory Commission. Similarly, it cannot be before this Tribunal as well.

**29.** The Applicant has also tried to bring on record by way of written submissions imputing various allegations against the Respondent – generator like over invoicing of coal and some circulars said to have been issued by Directorate of Revenue Intelligence alerting different Customs and Excise Authorities throughout the country. As on today, there is no establishment of imputation of misconduct or otherwise against the second Respondent. Even otherwise, since the Appeal pertains to implementation of terms of contract, this Tribunal has to consider terms and conditions of agreement between the parties and law prevailing or applicable to the facts of the case. The Applicant cannot make scandalous, frivolous or vexatious allegations in the absence of any established conduct of the Respondent. Even otherwise, as the present Appeal is prosecuted by the Appellant – Discom, the present application is misconceived.

**30.** Under the above circumstances, we are of the opinion that the attempt of the Applicant/Intervener is only to delay the proceedings with

ulterior motive as contended by the second Respondent. Such action of the applicant is to be deprecated. Therefore, we are of the opinion, the application deserves to be dismissed with cost of Rs.50,000/- (Rupees Fifty Thousand only).

List the main appeal on 10<sup>th</sup> July 2019.

**Pronounced in the Open Court on this 27<sup>th</sup> day of May, 2019.**

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

**(Justice Manjula Chellur)**  
**Chairperson**

✓  
**REPORTABLE / ~~NON-REPORTABLE~~**

*ts/tpd*