

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Review Petition No. 11 of 2012 in
Appeal No. 97 of 2011

Dated: 23rd August, 2013

Present: HON'BLE MR. JUSTICE KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

1. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidhyut Bhavan,
Race Course, Vadodara.
2. Dakshin Gujarat Vij Company Limited
Nana Varachha Road, Kapodara Char Rasta,
Surat-395 006. ..Review Petitioners

VERSUS

1. M/s Hindustan Chemicals Limited
GIDC Industrial Estate,
Olpad, Dist: Surat. (Gujarat)
2. Gujarat Electricity Regulatory Commission
1st Floor Neptune Tower
Ashram Road, Ahmedabad
Gujarat Review Respondents

Counsel for the Petitioners : Mr Anand Ganesan

Counsel for the Respondents : Mr Sumit Pushkar
Mr Ajay Bhargava

Order

Per V.J.Talwar, Technical Member

1. M/s Gujarat Urja Vikas Nigam Limited and M/s Dakshin Gujarat Vij Company Limited are the Review Petitioners. They have filed this Review Petition against the judgment dated 28.8.2012 of this Tribunal in Appeal No. 97 of 2011 permitting setting off the electricity for Captive consumption of by Wind Turbine Generator of 1st Respondent from the date of the Commissioning of the Wind Turbine Generator.
2. In this Review Petition, the Review Petitioners have pointed out that some of the primary issues raised by them had not been considered by this Tribunal and there was no finding or decision of this Tribunal on those issues raised by the Review Petitioners in Appeal No. 97 of 2011, and therefore, the Judgement warrants Review.
3. According to the Review Petitioners, the matter in issue in the Appeal No. 97 of 2011 was not providing the setoff of the electricity generated by Wind Turbine Generator set up by the 1st Respondent in an area other than the area of supply of 2nd Review Petitioner for captive use from the date of commissioning of the generator. It is submitted by the Review Petitioners that this Tribunal's Judgement dated 28.08.2012 suffers from following errors apparent on the face of the record including the non-consideration of various issues raised by the Review Petitioners before the Tribunal.
 - i. Notice of the Establishment of Wind Turbine Generator by the Respondent No. 1

- ii. Delay in execution of the Wheeling Agreement has been attributed to the Review Petitioners
 - iii. Claim of the Respondent No. 2 not maintainable in the absence of the Transmission Licensee being made a party by the Respondent No. 1
 - iv. No claim or prayer by Respondent No. 1 against the Review Petitioner No. 1
 - v. Revision of the energy accounting
4. According to the Review Petitioners, this Tribunal has not considered various submissions made by the Review Petitioners in support of these issues. On this basis, it is contended that the Tribunal's judgment dated 28.8.2012 suffers from errors apparent on the face of record on these issues and consequently it deserves review under the review jurisdiction of this Tribunal.
5. The learned Counsel for the 1st Respondent raised the issue of maintainability of this Review Petition contending that the Review Petitioners have already filed an Appeal before the Hon'ble Supreme Court raising the same very issues as in this Review Petition and the said Appeal has since been admitted by the Hon'ble Supreme Court, the present Review Petition is not maintainable. It was also contended by the learned counsel for the 1st Respondent that the issues raised but not considered by the Tribunal in favour of the party raising the said issues were deemed to have been rejected by the Court. For such type of rejection, the only remedy available is by way of challenging the same in an Appeal before the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003. Having

approached the Hon'ble Supreme Court in Appeal under Section 125 of the Act, the Review Petitioners have no right to file this Review Petition before this Tribunal.

6. Learned Counsel for the Review Petitioners admitted that an Appeal has been filed before the Hon'ble Supreme Court raising these very issues. He further clarified that since the contentions urged by the Review Petitioners on these issues had not been considered by this Tribunal, the Hon'ble Supreme Court may require the findings of this Tribunal on these issues and therefore, the present Review Petition has been filed.
7. Thus, the only ground for filing this Review Petition is that even though an Appeal had been filed before the Hon'ble Supreme Court, since this Tribunal has not considered the issues raised by the Review Petitioners in the Appeal, the Review Petitioners have been constrained to file this Review Petition.
8. The Review Petitioners have raised the following contentions, which according to them have not been dealt with by this Tribunal.
 - a. The Tribunal has not considered the Agreement between Appellant/Respondent No.1 and the Transmission Licensee (GETCO) which provides that power injected prior to signing of Agreement shall not be considered by the GETCO, which was not made a party by the Respondent No.1 before this Tribunal.
 - b. The Tribunal did not consider the pleas of the Review Petitioners as well as the decisions of the Hon'ble Supreme Court on the

nature of constructive notice relied upon by the Review Petitioner and the Tribunal has wrongly imputed knowledge to Review Petitioners, even when the Respondent No.1 was only claiming constructive notice.

- c. The Tribunal has wrongly held that delay in execution of the Wheeling Agreement dated 20 March, 2010 was due to Review Petitioner's fault, whereas there is a specific finding by the State Commission to the contrary, which has not been challenged by the Respondent No.1.
 - d. The Tribunal has wrongly held that the Review Petitioner No. 1 has been unduly enriched even when there was no pleading by the Respondent No.1 before the State Commission.
 - e. The Tribunal has wrongly given findings with reference to the issue of bulk supply tariff, the set off by the Review Petitioner No.1 and the truing up proceedings etc which were never raised or argued.
 - f. The Tribunal has wrongly held that revision of energy accounting could have been done in the similar way as was done for a previous period. However, the Tribunal has failed to appreciate that the revision ought not to have been done because of the fault on the part of Respondent No.1
9. All the above grounds would indicate that this Tribunal has not considered the issues raised by the Review Petitioners and according to the Review Petitioners, this Tribunal has committed error on the face of the record.

10. We have carefully considered the submissions of both the parties. Admittedly, these are the grounds for Appeal under Section 125 of the Act before Hon'ble Supreme Court. Hence, it would not be appropriate for us to give our findings on these issues in view of the fact that an Appeal has already been filed before the Hon'ble Supreme Court raising the very same issues and the same has been admitted and these issues are pending consideration by the Hon'ble Supreme Court. Therefore, we are not inclined to give any finding on these issues. With these observations the Review Petition is disposed of.

(V J Talwar)
Technical Member

(Justice Karpaga Vinayagam)
Chairperson

Dated: 23rd August, 2013

REPORTABLE/~~NOT REPORTABLE~~