

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**R.P. No. 2 of 2014 in**  
**Appeal no. 165 of 2012**

**Dated :30<sup>th</sup> June, 2014**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of**

**Power Grid Corporation of India  
Limited  
Suadamani, Plot No.2, Sector 29  
Gurgaon - 122001  
Haryana**

**... Review Petitioner/  
Appellant**

**Versus**

- 1. Central Electricity Regulatory Commission ....Respondents**  
**Through its Secretary,**  
**3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building**  
**36, Janpath, New Delhi - 110001.**
- 2. Chattisgarh State Electricity Board,**  
**Through its Chairman,**  
**P.O. Sunder Nagar, Dangania,**  
**Raipur - 492013, Chhattisgarh**

**Counsel for the Appellant(s):** **Mr. M.G.Ramachandran**  
**Ms. Swagatika Sahoo**  
**Mr. Anushree Bardhan**  
**Mr. Arvind Kumar Dubay**

**Ms. Poorva Poorva Saigal**  
**Mr. Avinash Menon**

**Counsel for Respondent(s): Mr. K.S. Dhingra**

### **ORDER**

The Review Petitioner/Appellant filed Appeal no. 165 of 2012 before this Tribunal challenging the Central Commission's order dated 28.5.2012.

2. The said Appeal was dismissed by this Tribunal by judgment dated 28.11.2013. This judgment dated 28.11.2013 is challenged in this Review Petition by the Review Petitioner.
  
3. The Petitioner has raised two issues viz. (a) Disallowance of Interest During Construction and Incidental Expenses During Construction in respect of

- time over run and (b) Reduction of Capital Cost due to Non-submissions of Revised Cost Estimate.
4. The Learned Counsel for the Review Petitioner has urged the following grounds in respect of each of the issues raised in this Review Petition seeking for the Review of the judgment dated 28.11.2013.
  5. Let us now deal with these issues one by one.
    - (A) Interest During Construction and Incidental Expenses During Construction. On this issue, the Learned Counsel for the Petitioner has made following submissions:

“The Tribunal while confirming the disallowance by the Central Commission, proceeded on the wrong basis that the test which was being considered in category no. (ii), whereas the submission of the Review

petitioner was that Short Circuit Withstand Test at the relevant time was optional type as covered under category (iii). This is an error apparent on the face of record on the part of this Tribunal to proceed on the basis that the short circuit test was required to be conducted by the supplier of the transformer mandatorily. The Short Circuit Withstand Test conducted by the Review Petitioner is not one of the mandatory tests prior to the Technical Standard Regulations 2010 coming into force and was an optional test.”

6. On the other hand the Learned Counsel for the Central Commission has justified the findings of the Central Commission for disallowance by making the following reply:

“This Tribunal, in the impugned judgment has held that the transformer failed on Short Circuit Withstand Test because of the defective design. The conclusion arrived at by the Tribunal is that it has been admitted by the Review Petitioner itself that the transformer was redesigned by Messrs Areva after it failed the Short Circuit Withstand Test and, therefore, design of the failed transformer was defective. The Appellant in the memorandum of Appeal had admitted that it decided to validate the design of 315 MVA autotransformer to enhance the availability of the system and reliability. Now, it has been urged by the Review Petitioner that the aim of Short Circuit Withstand Test was not to ensure basic quality and reliability of power transmission. The Review Petitioner has earlier submitted in the Appeal that it was able to persuade Messrs Areva to redesign the transformer without any additional cost. But, the Review Petitioner has now

taken a stand which contradicts its earlier stand in the memorandum of Appeal. The Tribunal concluded in the impugned judgment regarding design of the failed transformer was arrived at on the basis of the averments in the memorandum of Appeal that the suitable modification was carried out in the design of the failed autotransformer after the detailed investigations of the reasons of its failure. Therefore, there is no apparent error in the conclusion on this issue.”

7. We have carefully considered the submissions of both the parties on this 1<sup>st</sup> issue. According to the Review Petitioner, the Technical Standard Regulations 2010 were not in force at the time of award for supply of transformer were placed on Messrs Areva after the investment approved on 30.1.2008 with scheduled COD on 01.11.2010 and therefore, the failure of the

transformer cannot be construed as failure of transformer to meet the specifications decided by the Review Petitioner. This aspect has been considered by this Tribunal on the basis of the materials available on record in the light of the pleadings contained in the Appeal as well as on the basis of the submissions made by the Appellant.

8. In summary of our findings in para 14 we have given our finding with reasons. The same is as follows:

*“a. Short Circuit Withstand Test may destroy the equipment altogether. Thus, it has been made Optional Type Test. It is performed on the transformer with the consent of both the supplier and the buyer. Both, the routine as well as the type tests are meant for ensuring the quality of the transformer. If any transformer fails of any of the type tests, the quality of such transformer becomes doubtful. The fact, as per the Appellant’s own admission, that when the transformers failed on Short Circuit Withstand Test, the Appellant got Messrs Areva to re-design the transformer and supply the redesigned transformer*

*would establish that the design of failed transformer was defective.”*

9. In view of our discussion and conclusion, we find no reason for Review of this finding.

10. The second issue is Reduction in Capital Cost.

The Learned Counsel for the Review Petitioner has made the following submissions on this issue:

“(A) This Tribunal while dealing with the issue relating to reduction of capital cost due to non-submissions of the revised cost estimate in the judgment merely proceeded on the basis that the reliance placed by the Review Petitioner on the notification dated 30.3.1992 of the Government of India ceases to be applicable after the enactment of Electricity Act 2003.

- (B) Notification dated 30.3.1992 was issued under Section 43 of the Electricity (Supply) Act 1948 as per this notification where the actual expenditure exceeds approved project cost, the excess expenditure as approved by the Central Electricity Authority shall be deemed to be actual expenditure.
- (C) Not only the above notification dated 30.3.1992 but also there is no Tariff Regulations providing that if in case of increase in the individual items forming part of the project, the revised cost approval is required. This Tribunal has proceeded on the basis that the Review Petitioner has deliberately not proceeded to get the excess cost of each individual asset forming part of the transmission system approved by the Board of Directors. The above assumption with regard to

conduct of the Review Petitioner is erroneous as the Board of Directors do not approve the individual cost of each equipment but only approves aggregate cost as is evident from the Board Resolution dated 30.01.2008. Therefore, this finding is wrong.”

11. With regard to this ground we have heard the Learned Counsel for the Central Commission.

This point has been dealt with by this Tribunal in paragraph 27 of the judgment dated 28.11.2013 which is as follows:

*“27. The Appellant has contended that since overall cost of the project has reduced from the approved cost, it was not required to obtain the approval of its’ own Board for Revised Cost Estimates for Raipur ICT III. The appellant has placed reliance on a Notification dated 30.3.1992 issued by the Government of India under section 43A of the Electricity (Supply) Act, 1948 stating that where the actual expenditure exceeds the approved project cost, the excess expenditure as*

*approved by the Central Electricity Authority shall be deemed to be the actual expenditure.”*

12. This plea made by the Appellant was turned down by this Tribunal holding that the notification has no relevance after repeal of Electricity (Supply) Act. The relevant observation is as follows:

*“28. Both the contention as well as the reliance of Appellant on 1992 notification are misplaced. The 1992 notification was issued in the context when the schemes of the Appellant were required to be approved by the Central Electricity Authority under Section 30 of the Electricity (Supply) Act, 1948. The 1948 Act has since been repealed and the Appellant is not required to get the approval of the CEA under the 2003 Act. Therefore, the 1992 notification has no relevance in the present matter.”*

13. The Appellant in the Review Petition has contended that in the absence of any specific provision in the regulations notified by the Commission, the consistent practice which was followed as per the

notification has to be guiding factor in dealing with the revised cost approval.

14. As a matter of fact, the Review Petitioner in this Review Petition seeks to reagitate this issue which has already been decided and concluded by this Tribunal on merits by raising the fresh pleas. After enactment of Electricity Act, the function of laying down the terms and conditions for determination of tariff are vested with the Appropriate Commission by virtue of Section 61 of the Electricity Act.
  
15. This Tribunal has specifically held that the said notification has no relevance. Thus, in the judgment this Tribunal has made some observations about its conduct of the Review Petitioner regarding its failure to obtain approval of the Board of Directors for excess

capital cost over the apportioned approved cost. Now for the first time, the Review Petitioner has produced the resolution of the Board of Directors passed at the meeting held on 30.1.2008 to show that the Board approved the aggregate capital cost for the Western Region System strengthening the scheme VI.

16. Admittedly the Appellant did not advert to the order dated 21.8.2008 either before the Central Commission or before this Tribunal in the proceedings in the Appeal, although the said order dated 21.8.2008 was within its knowledge. Similarly, the Review Petitioner had not produced any material in the form of Board Resolution either before the Central Commission during the proceeds or this Tribunal when Appeal was heard.

17. In view of the above, this ground also cannot be the valid ground for Review of the impugned judgment.

18. Consequently, the Review Petition is dismissed as devoid of merits.

19. Pronounced in the open court on this **30<sup>th</sup>**  
**day of June, 2014.**

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

**Dated:30<sup>th</sup> June,2014.**

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**REPORTABLE/NON-REPORTABLE**

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