

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

(APPELLATE JURISDICTION)

APPEAL NO. 114 OF 2014

Dated: 4th February, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF

1. Jaipur Vidyut Vitran Nigam Limited,

Vidyut Bhawan, Janpath,
Jaipur - 302005
Through Its Managing Director

2. Jodhpur Vidyut Vitran Nigam Limited,

New Power House, Industrial Area,
Jodhpur-342003. (Rajasthan)
Through Its Managing Director

3. Ajmer Vidyut Vitran Nigam Limited,

Vidyut Bhawan, Panchshel Nagar,
Makarwali Road, Ajmer 305004
(Rajasthan)
Through Its Managing Director

..... Appellants

VERSUS

1. Rajasthan Electricity Regulatory Commission,

"Vidyut Vinyamak Bhawan",
Near State Motor Garage,
Sahakar Marg, Jaipur 302 005
Through Its Secretary.

2. Rajwest Power Limited,

7th Floor, Man Upasana Plaza, C-44,
Sardar Patel Marg, C-Scheme,
Jaipur - 302 001.

3. Barmer Lignite Mining Company Ltd.,

7th Floor, Man Upasana Plaza,
C-44, Sardar Patel Marg, C-Scheme,
Jaipur-302 001.

4. Samta Power,
54/144, Madhyam Marg,
Mansarovar,
Jaipur-302 020

..... **Respondents**

Counsel for the Appellant ...	Mr. P.N. Bhandari
Counsel for the Respondent(s)...	Mr. Mr. Raj Kumar Mehta, Mr. Abhishek Upadhyay Ms. Himanshi Pandey for R-1
	Mr. M.G. Ramachandran Ms. Anushree Bardhan Mr. Shubham Arya for R-2
	Mr. Arun Kumar Verma Mr. Ramanuj Kumar Ms. Sahiti Kachroo Mr. Rahul Kamal for R-3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The Appellants, who are Distribution Licensees in the State of Rajasthan, have preferred the instant Appeal under Section 111 of the Electricity Act, 2003, against the Order, dated 13.1.2014, passed by the Rajasthan Electricity Regulatory Commission (in short, the 'State Commission'), in Petitions, being petitions no. RERC-244/2011 and 245/2011, in the matter of M/s Samta Power and Discoms seeking clarifications on the State Commission's order, dated 17.8.2011, whereby the learned State Commission has disposed-off/dismissed both the clarificatory applications of M/s Samta Power/Respondent No.4 herein, and Discoms/Appellants observing that the State Commission is not required to go into the micro management of affairs of a company and it is for Barmer Lignite Mining Company Ltd (in short, 'BLMCL')/Respondent No.3 herein, a Government Company, to ensure that competitive bidding is undertaken in a manner, which serves the larger public interest and that bidding is genuine and competitive. Though, the Managing Director of the

Company is a nominee of Rajwest Power Limited (in short, 'RWPL') and, substantial management control over the affairs of the Company vests with Managing Director as per Joint Venture Agreement, the mining entity, being a Govt. Company, is still subject to all checks and control as are applicable to a Govt. Company. The State Commission has, in the impugned order, dated 13.1.2014, in para 24 & 25, further observed as under:

“24. The example of order of Regulatory Commission of Punjab given by applicants, which was in respect of GVK Power Project, has no relevance. The Commission at this stage cannot amend its earlier orders, which were not appealed against and have become final as far as bidding is concerned. It may be mentioned that the order of Punjab Electricity Regulatory Commission came much later (on 6.3.2009) than the order dated 19.10.2006 of the Commission and facts and circumstances are quite different.

25. In the light of the position discussed above, we find no merit in both the applications and they stand disposed of accordingly.”

2. The Appellants are the Distribution Licensees in the State of Rajasthan. Respondent No.1 is the State Electricity Regulatory Commission, which is empowered to discharge various functions in accordance with the Electricity Act, 2003. Respondent No.2/Rajwest Power Limited (RWPL) is a power generating company and Respondent No.3/Barmer Lignite Mining Company Ltd. (BLMCL) is a Mining Developer-cum-Operator (MDO) and Respondent No.4/Samta Power is a NGO.

3. The main grievances of the Appellants, in the instant Appeal, are as under:

- (a) that the State Commission, vide its impugned order, dated 13.1.2014, turned down both the clarificatory applications on the ground that the State Commission's earlier order, dated 17.8.2011, was challenged before this Appellate Tribunal and, hence, the State Commission's order, dated 17.8.2011, had merged in the judgment of this Appellate Tribunal, therefore, the State Commission was unable to make any modification in its

earlier order, dated 17.8.2011. According to the Appellants, the State Commission failed to appreciate that this Appellate Tribunal had totally affirmed State Commission's order, dated 17.8.2011, and there was nothing which had prevented the State Commission from giving clarification on the clarificatory applications.

- (b) that the State Commission took the view that in the State Commission's order of 2006 itself, the State Commission had decided that the bidding would be organized by Rajwest Power Ltd hence, the Discoms/Distribution Licensee could not be associated with the bidding process. In fact, the State Commission's order of 2006 was concerned with the "in principle determination of Capital Cost of the Project", therefore, certain stray and passing remarks in that order were obiter dicta. Hence, the State Commission's order of 2006 could not be treated as one time all purpose order for the next 30 years.

4. The relevant facts, for the purpose of deciding this Appeal, are as under:

- (i) that the Appellant-Discoms had filed an application, dated 6.5.2013, under regulations 72 read with regulation 74 of RERC (Transaction of Business) Regulation, 2005 (in short, 'State Business Regulations, 2005'), seeking clarification on State Commission's order, dated 17.8.2011, issued in the aforesaid petitions, being petitions no. RERC-244/2011 and 245/2011.
- (ii) that M/s Samta Power/Respondent No.4, also filed an application, dated 24.7.2012, under regulation 72 read with regulations 73 & 74 of State Business Regulations, 2005 seeking clarification on State Commission's orders, dated 5.1.2010, 17.8.2011 & 8.6.2012.

- (iii) that the State Commission has turned down both the afore-stated clarificatory applications through the impugned order, dated 13.1.2014.
- (iv) that while deciding the petition no.244/11 & 245/11, filed by Rajwest Power Ltd. and Barmer Lignite Mining Co. Ltd., the State Commission, vide its order, dated 17.8.2011, found serious irregularities in the International Competitive Bidding organized by Rajwest and directed for fresh International Competitive Bidding. The order, dated 17.8.2011, of the State Commission was affirmed by this Appellate Tribunal in Appeal No.76 of 2012, vide its judgment, dated 8.4.2013, and observed as under:

“36 (iv) In view of above we do not like to interfere with the findings of the State Commission for conducting of competitive bidding for mining contract by the Joint Venture company without any Right of First Refusal to Raj West or their consortium member.

37. In view of above the Appeal is dismissed without any cost.”

- (v) that the State Commission, while deciding the clarificatory applications by the impugned order totally had stuck up with its earlier order, dated 19.10.2006. Para 96 of which order reads as under:

“96. As regards bidding of plant machinery & services, Raj West have replied as under :-

“We are following the mechanism to ensure that techno commercially viable agencies are selected at the competitive price without affecting the project schedule:

a) Reputed Consultants will be appointed for preparing the detailed scope and evaluation of the techno-commercial offers.

b) The enquiries for the outsourcing contract shall be floated to various reputed contractors from approved vendor list of the Consultant on limited tender basis.

c) The Consultant will evaluate the technical and commercial offers received from the contractors and will provide the Company their recommendation for the award of the contract.

In view of the above, we do not envisage the need for association of the PURCHASER in this mechanism”

- (vi) that the State Commission’s order of 2006 was issued in the context of petition for “in-principle determination of the capital cost” of the project. The scope of that petition could not be enlarged by travelling beyond the petition. Everything for the next 30 years was not supposed to be decided in the order of 2006. The State Commission, in its order of 2006, in para 123 thereof held as under:

WE HAVE NOT EXAMINED PPA PROVISION IN DETAILS. Its approval may be sought separately through petition. PPA may be reviewed by the parties to PPA on these aspects before seeking its approval WHEN IT WILL BE EXAMINED IN DETAIL.”

- (vii) that the detailed methodology for competitive bidding etc. was to be considered subsequently in the petition for scrutiny of the PPA and not in any other petition prior to that.
- (viii) that the State Commission, in its order, dated 17.8.2011, while directing for fresh international competitive bidding had observed that having concluded about the conflict of interest, the Commission cannot be mute spectator in the subsequent proceedings.
- (ix) that, though, Respondent No.3/BLMCL is a Government company, but there is not even a single government employee in that company, it is totally under the control of Respondent No.2/ Rajwest Power Ltd. because time and again, both the parties have filed joint petitions before the State Commission as well as Appeals before this Appellate Tribunal and they have been jointly represented by the same counsel. The State Commission has

ignored the fact that it is a cost plus generation project of around Rs. 7000 crores. Therefore, every expenditure incurred by Respondent - Rajwest/ BLMCL group is allowed as a pass through by the State Commission and, consequently, paid by the Distribution Licensees. Mining is the biggest component of the project. Payment of around Rs.25,000 crores will be made on account of mining during the life of the project and the Appellant-Discoms have, therefore, major interest in the transparency of the bidding because the Discoms will have to bear the entire expenditure incurred arising out of the mining contract.

- (x) that the State Commission has ignored the request of the Appellants that the international competitive bidding should not be allowed to be conducted by Rajwest/BLMCL group alone but it should be done jointly by the Rajwest/BLMCL group on the one hand and Discoms on the other hand and in that situation, Respondent-Rajwest/BLMCL group cannot be said to be adversely affected, even remotely with the association of Discoms in the bidding process. Such a clarification would not come in conflict with any Rule, Regulation or the PPA.
- (xi) that Rajwest Power Ltd. awarded the contract to a party who was not qualified and who did not even participate in the bidding. The State Commission has refused to take any safeguard to ensure that similar manipulation is not repeated by Rajwest/BLMCL group once again in the fresh bidding
- (xii) that the order of rebidding is not an academic exercise. Rebidding must serve some purpose i.e. to ensure that there is no scope for further manipulation in the second international competitive bidding. Therefore, without plugging the loop holes, the fresh bidding may be counter-productive and may lead to greater financial burden on the Appellants and ultimately on the consumers.

(xiii) that the State Commission, in its order of 2006, in para 27 thereof, had observed that “*Similarly, bidding for 30 years may not be appropriate, more so in respect of case-1. However, the period should be more than 7 years.*” In spite of this, the bids were invited for 12 years and finally, the contract was awarded for 30 years. It was not justified on the part of the State Commission to ignore the conduct of the Rajwest Group while ordering for fresh international competitive bidding.

5. We have heard Mr. P.N. Bhandari, the learned Counsel for the Appellants, Mr. Raj Kumar Mehta, the learned counsel for the Respondent No.1, Mr. M.G. Ramachandran, the learned counsel for the Respondent No.2 and Mr. Arun Verma, the learned counsel for the Respondent No.3 and gone through the material available on record including the impugned order passed by the State Commission.

6. The only issue which arises for our consideration in the instant Appeal is ***whether the State Commission is justified in disposing-of/dismissing both the clarificatory applications while passing the impugned order, dated 13.1.2014, on the ground mentioned in the impugned order?***

7. The admitted facts are that the impugned order, dated 13.1.2014, has been passed by the State Commission on the two clarificatory applications, one filed by M/s Samta Power/Respondent No.4 herein, and another filed by the Appellants/Distribution Licensees under regulations 72, 73 & 74 of the State Business Regulations, 2005 seeking clarification on the State Commission’s order, dated 17.8.2011, issued in the aforesaid petitions, being petitions no. RERC-244/2011 and 245/2011. Both the clarificatory applications have been disposed-of/dismissed by the impugned order by the State Commission on the following grounds:

- (i) that the earlier order, dated 17.8.2011, of the State Commission was challenged before this Appellate Tribunal hence, the same had merged in the judgment of this Appellate Tribunal and, therefore, the State Commission was unable to make any modification in its earlier order, dated 17.8.2011 and,
- (ii) that in the order of 2006 itself, the State Commission had decided that the bidding would be organized by Rajwest Power Ltd./Respondent No.2 herein, and hence, the Appellant-Discoms herein could not be associated with the bidding.

8. For the purpose of testing the legality and correctness of the impugned order, dated 13.1.2014, we deem it necessary to have a look at the said clarificatory applications which were filed by the Discoms/Appellants and Samta Power, an NGO, (Respondent No.4) before the State Commission seeking clarification of the State Commission's earlier order, dated 17.8.2011.

9. The main contention of both the Applicants i.e. M/s Samta Power and Discoms/Appellants during the hearing of both the clarificatory applications before the State Commission was that there was a grave apprehension and doubt in bidding to be genuine and competitive, if the same is carried out by BLMCL, the mining entity. The learned State Commission found that the said contention was based on the flawed and vitiated nature of bidding conducted earlier and which was not accepted by the State Commission vide its order, dated 17.8.2011. Further contention of the Appellants before the State Commission was that both the parties i.e. RWPL/Respondent No.2 and BLMCL/Respondent No.3, are inter-dependent with RWPL having management control of BLMCL and, hence, truly transparent and competitive bidding might not materialize. The Discoms, being the ultimate procurer of power, should be associated with the bidding and they cited example of the order, dated 6.3.2009, of Punjab Electricity Regulatory Commission in GVK Power case, wherein it had been held that the developer in association with procurer would undertake

competitive bidding process. The Respondent No.2 & 3 pleaded before the State Commission that the issue of competitive bidding had already been decided by the State Commission vide order, dated 19.10.2006, and that stands accepted by all concerned, including Discoms and the Discoms has now again raised the issue of bidding process in response to the application filed by BLMCL seeking some clarification in the State Commission's order, dated 17.8.2011, the State Commission in the order, dated 5.1.2010, did not agree for associating Discoms with the bidding process and the same view was again taken-up by the State Commission in its subsequent order, dated 8.6.2012, issued in respect of approval of PPA. The State Commission has disposed off/dismissed both the clarificatory applications including one filed by the Distribution Licensee/Appellants vide impugned order on the afore-stated grounds.

10. M/s Rajwest Power Ltd. and M/s Barmer Lignite Mining Company Ltd. have filed petitions, being petitions no. RERC-244/2011 and 245/2011 respectively before the learned State Commission against all the three Discoms (Appellants herein). M/s Rajwest Power Ltd., a generating company, filed a petition before the State Commission on 25.1.2011 for determination of provisional tariff for Unit (1 & 2) on lignite from Kapurdi mine and Unit (3 & 4) on alternate fuel for FY 2012-13, seeking following tariff for FY 2012-13:

	Unit-I	Unit-II
Fixed Charges (Rs./Kwh)	2.40	2.53
Energy Charges (Rs./Kwh)	2.31	2.31
Total Charges (Rs./Kwh)	4.71	4.84

M/s Barmer Lignite Mining Company Ltd., a mining entity, also filed a petition before the State Commission on 28.1.2011, for assessment of transfer price of lignite from Jalipa & Kapurdi mine blocks for supply of Lignite to power plant of RWPL and praying for to allow transfer price of Rs.1884/MT which includes Rs.1055/MT plus price variation to Mine

Developer-cum-Operator (MOD), fixed cost and taxes, duties & levies.

11. The learned State Commission, vide main order, dated 17.8.2011, passed the following order:

“Summing up and Conclusion:

24. Decision of the Commission on various issues are summarized as under:

- (1) The petition for lignite transfer price of BLMCL is maintainable.*
- (2) The petition for scrutiny of PPA needs to be filed by the licensee and it should be done at the earliest.*
- (3) There is a ceiling on first year tariff and for adjudicating upon the dispute there on, a petition under Sec. 86(1)(f) would have to be filed.*
- (4) The bidding undertaken for outsourcing of lignite extraction is not in accordance with earlier order dated 19.10.2006. Therefore, the variable cost of lignite transfer price endorsed by the independent person cannot be accepted and as a result, lignite transfer price is not determinable.*
- (5) Interim tariff, therefore, also cannot be worked out for want of fuel cost.*
- (6) A fresh bidding for outsourcing would need to be undertaken as per directions given in 2006 order.*
- (7) The outsourcing bidding may be undertaken only for Kapurdi, as Jalipa mines would become operational not earlier than FY 13-14, as indicated in the petition.*
- (8) For bidding, BLMCL is advised to give due consideration to short term bidding in case such a tender is likely to lead to lower cost, as discussed earlier. A supplementary petition would need to be filed after completion of the said bidding for determination of lignite transfer price.*
- (9) The petitioner BLMCL could work out the lignite extraction cost based on lignite mines being operated by RSMML with due adjustment in respect of stripping ratio, depth of mine and variation in other relevant parameters and furnish that to the Commission for working out lignite transfer price for the interim period till the rate, based on transparent bidding for outsourcing, gets finalized.*
- (10) Further hearing in the matter would be fixed based on option as emerges in respect of lignite transfer price or as deemed*

appropriate.”

12. The Appellants filed the above stated clarificatory petitions/ applications under the State Business Regulations, 2005 for certain clarifications in the order, dated 17.8.2011, passed by the State Commission with the following prayers:

- (a) To clarify how the observations in para 11(a)(ii) is to be implemented, which reads as under:

“11(a)(ii) Though bidding was conducted by CRISIL, nevertheless any such process requires decision as well as approval of the procurer.”

Further, the State Commission, in para 11(g) of the order, dated 17.8.2011, observed as under:

“11. (g) As is well-known, the objective of a transparent and competitive bidding is to arrive at a reasonable price. a rate emerging out of the bidding is to be accepted only if procurer is satisfied as regards to reasonability of offer.”

How can these directions be implemented, if the entire bidding exercise is given exclusively in the hands of Rajwest.

- (b) The State Commission in its order, dated 17.8.2011, in para 11(a)(iii) having observed that there was a conflict of interest even in price determination for MDO, SWML. The State Commission may clarify how this conflict of interest can be eliminated – whether a joint committee of the petitioner and respondents can be given the authority to conduct the bidding to avoid all pre and post bidding disputes.
- (c) The State Commission has discovered a plethora of lapses in conducting the bidding. The State Commission may clarify how these loopholes would be plugged while the command remains

in the hands of Rajwest.

13. We have, in the upper part of this judgment carefully gone through the State Commission's orders, dated 19.10.2006, 17.8.2011 and the impugned order, dated 13.1.2014. We have also studied the points which require clarification by the State Commission. We have cited above the actual relief sought by the Discoms/Appellants in the clarificatory petition/application which has been disposed-off by the impugned order, dated 13.1.2014.

14. After considering each and every aspect of the matter in hand, we find ourselves in agreement with the impugned order, dated 13.1.2014, passed by the State Commission. We find no perversity or illegality on any score in the impugned order passed by the State Commission.

15. The Appellant-Discoms had sought such clarification in the nature of review from the State Commission belatedly. The Appellant, vide their clarification application, dated 6.5.2013, sought for clarification of the Order, dated 17.8.2011, passed by the State Commission in Petition No. 245 of 2011, which order at the date of the application already stood merged with the Order, dated 8.4.2013, passed by this Appellate Tribunal in Appeal No. 76 of 2012. We clearly hold that it is, therefore, not open for the Appellant-Discoms to claim any clarification/review of the Order, dated 17.8.2011, passed by the State Commission, particularly, in the context of the Discoms having chosen not to raise any of the issues or aspects before this Appellate Tribunal during the hearing in Appeal No. 76 of 2012.

16. The order, dated 19.10.2006, passed by the State Commission, categorically mentioned that a two stage transparent bidding has to be adopted, and Para 61 of the order, dated 19.10.2006, stipulates that the beneficiary Vitran Nigams (Discoms) need only to be kept apprised of various procurement activities and the copies of the contracts would be made available to them, if asked for.

17. The interpretation and application of the order of the State Commission, dated 19.10.2006, had been the subject matter of various proceedings before the State Commission and this Appellate Tribunal, the Appellant-Discoms accepted the order, dated 19.10.2006, of the State Commission on the aspects of non-participation of the Discoms in the Competitive Bidding Process for Mine Development Operations. These aspects have become final and binding on the Appellant-Discoms and cannot legally be reopened at this stage.

18. We may, further note that the Appellant-Discoms for the second time raised this issue in response to Respondent no.3's clarification petition, dated 25.11.2011, filed in relation to the order, dated 17.8.2011. Not only this, the State Commission, vide Para 4 & 13 of the State Commission's order, dated 5.1.2012, held as under:-

“4. Sh. P.N. Bhandari, learned counsel of respondents submitted that the application of petitioner is pre-mature and tantamount to seeking judgment in advance. Sh. Bhandari suggested that Commission should take petitions in sequential manner, petition filed by the RWPL for adjudication of dispute should be taken up first and thereafter petition for approval of PPA should be finalized. He submitted that bidding mechanism be laid down in PPA and bidding be taken recourse to only after that. Sh. Bhandari stated that the petitioner desires endorsement of IA from Commission and wants to let PPA be a shell document, which should not be allowed. Sh. Bhandari submitted that each and every commercial condition should be laid down in PPA, including the norms of bidding, and PPA should not be influenced by IA. Sh. Bhandari, referring to the case of GVK v/s Punjab SERC referred by the petitioner prayed that the power procurer i.e. Discoms, should be directed to conduct the bidding process for outsourcing of mining contract since fuel cost is a pass through element and a major component of tariff.”

“13. It may be mentioned that order dated 19.10.2006 of the Commission makes it clear that two stage transparent bidding has to be adopted and para 61 of the said order stipulates that the beneficiary VitranNigams (Discoms) need to be kept apprised of various procurement activities and the copies of the contracts could also be made available to them if asked for. In the light of

the said position, contention of the learned counsel of the Vitran Nigams, as regards role of the Discoms in bidding, mentioned in para 4 of the order is beyond the scope of the application under consideration.”

19. We may further observe that the Appellant-Discoms raised this issue again for the third time in their Petition filed for approval of Power Purchase Agreement. The State Commission, in paras 25 & 29 of its order, dated 8.6.2012, on approval of Power Purchase Agreement, once again held that there is no need to involve the Appellant-Discoms in competitive bidding process. The Appellant-Discoms did not file any appeal or otherwise question the above orders, dated 19.10.2006, 5.1.2010 & 8.6.2012, of the State Commission, which orders have already attained finality and have decided the issue of participation of the Appellants in the Mine Development Operator selection process. We clearly hold now that the Appellants cannot be permitted to re-agitate the same issue again by way of a clarification/disguised review application.

20. After study of various contents of the matter before us, we find that there is no justification whatsoever for the Appellant-Discoms to seek participation in the process to be undertaken for selection of the mine developer based on nothing but an unfounded apprehension that the Respondent No. 3 would not act fairly. We do not find any basis for the existence of such apprehension in the mind of the Appellant-Discoms because the Respondent No.3, a mining entity, is a Government of Rajasthan Company wherein M/s Rajasthan State Mines and Minerals Limited (RSMML), a wholly owned Govt. of Rajasthan undertaking holds majority shares. The board of directors of the Respondent No. 3 consists of the Additional Chief Secretary- Government of Rajasthan as the Chairman and; Principal Secretary- Mines, Secretary-Energy and Managing Director of M/s RSMML as directors. As such, there appears to be enough participation by the Government of Rajasthan/RSMML in the bidding process. The entire bidding process is to be conducted under the supervision of the board of directors of the Respondent No. 3, which is a

mining entity and, further, the affairs of the Respondent No. 3 are subject to checks and scrutiny by virtue of it being a Government Company.

21. In the afore-stated circumstances and the facts of the present matter, there is absolutely no justification for the Appellant-Discoms, which are also the Government of Rajasthan undertakings to claim any participation independently in the bidding process, more particularly when the issues relating to tariff are decided by the State Commission after giving fair opportunity of hearing to the Appellants and all stakeholders.

22. In view of the above discussion, we do not find any merit in the contention of the Appellants and the approach of the State Commission appears to be just, legal and correct one requiring no interference from us in the findings recorded in the impugned order. Thus, the impugned order is just and legal warranting no interference at this stage by this Appellate Tribunal.

23. We may, further, mention here that the Appellant, the same Discoms, filed an Appeal No. 10 of 2015 before this Appellate Tribunal against the State Commission's order, 31.10.2014, passed in petition no. RERC-245 of 2011. The said order, dated 31.10.2014, was passed on an application filed by M/s Barmer Lignite Mining Company Limited, a mining entity, for approval of tender document to be issued for selection of Mine Developer-cum-Operator for extraction of lignite from Kapurdi and Jalipa lignite mines and the said Appeal No. 10 of 2015 has been dismissed by this Appellate Tribunal, vide its judgment, dated 6.5.2015, with the following observations:

"13. We have taken note of the apprehensions of the Appellants expressed in the submissions and also the submissions of BLMCL inter alia, that having asserted that the State Commission found large-scale irregularities in the ICB organized by RWPL and, therefore, the State Commission quashed the earlier ICB, it is strange that the Appellants should now ask for the same ICB document to be used by BLMCL to conduct fresh bidding exercise and that there is no provision in law which empowers the State Commission to review and approve draft

tender document and its role is limited to determining the transfer price of lignite. We are, however, of the opinion that at this stage it is not necessary to interfere with the bidding process. We are mindful of the fact that in the earlier order, the State Commission has severely commented upon the serious irregularities in the earlier bidding process and had quashed earlier ICB. The State Commission will have to be, therefore, very careful. Final decision should be taken by the State Commission after hearing all concerned and after applying its mind to all relevant aspects of the matter. We have noted that paragraph 17 of the impugned order, which we have quoted hereinabove, the State Commission has cautioned BLMCL that the bidding process has to be fair and transparent. It is also observed that interest of consumers of the State, who ultimately bear the cost through tariff must always be kept in mind. The State Commission has expressed hope that BLMCL being a Government company will follow principles of fair play and reasonableness and will hold the bidding process in a transparent manner and obtain the price and submit the same to the State Commission. The State Commission has observed that thereafter it will consider all aspects before taking a final decision.

14. We are sure that what the State Commission has expressed in paragraph 17 of the impugned order will be followed by it and the BLMCL in letter and spirit. We have no reason to express any apprehension that the State Commission will not do so because the State Commission had quashed the earlier bidding because of serious irregularities. The State Commission was, therefore, conscious of its duties and behaved like a protector of consumer interest. It would be, therefore, wrong to presume that the State Commission will not act in accordance with what it has expressed in the impugned order. The State Commission will have the opportunity to determine/approve the transfer price of lignite after BLMCL approaches the State Commission with the lignite mining extraction cost which is finalized as part of the bidding process. At that stage, it will be open to the State Commission to consider all relevant aspects before approving the transfer price in accordance with law. We are informed that at this stage, public notice is issued and all concerned are heard. Needless to say that the Appellants would also be heard. We hope and trust that the State Commission will take a final decision having regard to the background of the case and the apprehension expressed by the Appellants, which we have quoted in extenso in this order with a purpose and keeping in mind interest of the consumers and the case of BLMCL. The State Commission must adopt a balanced approach. In case the Appellants are aggrieved by the final decision taken by the State Commission, they can always take recourse to necessary remedy in accordance with law to redress their grievance. With the above observations, we dispose of the appeal. We make it clear however that nothing said by us in this order should be treated as

expression of our opinion on the merits of either the Appellants' case or the Respondents' case."

24. In view of the above discussions, the issue whether the State Commission is justified in disposing-of/dismissing both the clarificatory applications while passing the impugned order, dated 13.1.2014, on the ground mentioned in the impugned order, is decided against the Appellant. Consequently, the instant Appeal, being Appeal No. 114 of 2014 is worthy of dismissal.

ORDER

25. The present Appeal, being Appeal No. 114 of 2014, is hereby dismissed and the impugned order, dated 13.1.2014, passed by the Rajasthan Electricity Regulatory Commission, is hereby upheld. There shall be no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 4TH DAY OF FEBRUARY, 2016.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

√ REPORTABLE/NON-REPORTABLE

vt