

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

**R.P. No. 8 of 2013 in
Appeal No. 76 of 2012**

Dated: 28th May, 2013

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

In the matter of:

1. **M/s. Raj West Power Limited,
Office No. 2 & 3, 7th Floor,
Main Upasana Plaza,
C-44, Sardar Patel Marg, C-Scheme,
Jaipur-302 001** ... **Review Petitioner/
Appellant**

Versus

1. **Rajasthan Electricity Regulatory Commission,
Vidyut Viniyamak Bhawan,
Near State Motor Garage,
Sahakar Marg,
Jaipur-302 005.**
2. **Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur-302 055
Rajasthan.**
3. **Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hathi Bhata,
Ajmer-305 001 (Rajasthan).**
4. **Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Estate,
Jodhpur-342003, Rajasthan**
5. **Secretary (Energy),
Government of Rajasthan,
Secretariat, Jaipur-302005
Rajasthan.**

6. **Rajasthan State Mines and Minerals Limited
4, Meera Marg, Udaipur-303 001,
Rajasthan**
7. **Rajasthan Rajya Vidyut Utpadhan Nigam,
Jyoti Nagar, Vidyut Bhawan,
Jaipur-302005 (Rajasthan)**
8. **Barmer Lignite Mining Company Limited,
Office No. 2 & 3, 7th Floor,
Main Upasana Plaza,
C-44, Sardar Patel Marg, C-Scheme,
Jaipur-302 001** ... **Respondents**

Counsel for Review Petitioner/
Appellant

: Mr. M.G. Ramachandran,
Ms. Swagatika Sahoo

Counsel for the Respondent(s):

Mr. R.K. Mehta, &
Mr. Rajiv Ranjan Pathak for R-1
Mr. P.N. Bhandari for R-2,3 & 4

ORDER

This Review Petition has been filed by M/s. Raj West Power Limited in Appeal no. 76 of 2012. By the judgment dated 8.4.2013, this Tribunal in Appeal no. 76 of 2012 had upheld the order of the State Commission for the conduct of competitive bidding for mining contract by Barmer Lignite Mining Company without any Right of First Refusal to Raj West or their consortium member. The Review

Petitioner/Appellant has submitted that the above judgment requires review and clarification for the sustained functioning of the lignite mining-cum-power project.

2. We have heard Shri M.G. Ramachandran, learned counsel for the Review Petitioner/Appellant. He has made the following submissions:

- a) All the units of the power project of the Review Petitioner/Appellant have since been commissioned and have been in operation with Lignite mined from the linked mines. As on date, M/s. South West Mining Limited nominated by the Review Petitioner/Appellant as Mine Development Operator is undertaking the mining operation.

- b) In order to operationalize the mining operations for supplying lignite to already commissioned power plant, the Review Petitioner/Appellant has provided a sum of Rs. 368.59 crores by way of subordinated loan to the Barmer Lignite Mining Company at a subsidized interest rate and caused JSW Group to provide the necessary undertakings to lenders which have enabled Barmer Lignite Mining Company to borrow a loan of Rs. 1260 crores from the lenders for meeting the capital expenditure on land and other capital assets related to the mining project.
- c) The International Competitive Bidding Process in terms of the directions of the State Commission and the judgment of this Tribunal is likely to take sometime. In the

meantime, the mining operations have to be continued for making available the requisite quantity of lignite for operation of the power plant.

- d) Therefore, the Tribunal may clarify that the mining operation pending successful completion of the competitive bidding, is continued as before without any break so that the power project may continue to operate.
- e) Consequent to the separation of the lignite mining from the Power Project, the Review Petitioner/Appellant will have no right to nominate the mining contractor. The consequential changes are necessary to be implemented wherein the Barmer Lignite Mining Company should assume all financial

and other liabilities and exposure for the mining component of the project.

3. The Review Petitioner/Appellant further seeks for clarification about the following aspects for smooth functioning of the mining operation and sustained operation of the power plant:

- a) The selected bidder shall fully indemnify Barmer Lignite Mining Company in regard to the liability on the mining operation to enable it to fulfill its obligations to make available lignite to the power station.
- b) It shall be the responsibility of the selected bidder to undertake mining and make available the requisite quantum of lignite to the power plant and assume all financial risks and liabilities in regard to the same.

- c) It shall be the responsibility of the Barmer Lignite Mining Company to make available the requisite quantum of lignite and be liable financially for the same in accordance with the indemnification provided to the Review Petitioner in the Fuel Supply Agreement and Barmer Lignite Mining Company will in turn be indemnified by the selected bidder.
- d) The Petitioner will no longer be responsible for the mining venture and consequently the Petitioner has to be paid deemed generation charges in the event of non-availability of lignite for any reason.
- e) The State of Rajasthan, Rajasthan State Mines and Minerals Limited and Joint Venture Mining Company have to release the JSW group including the Petitioner from all

financial obligations and exposures in regard to the funding of the mining project including the amount already arranged from the lenders.

- f) Rajasthan State Mines and Minerals Limited and Barmer Lignite Mining Company to arrange for the repayment of amount given to the latter as subordinate loan by the Petitioner.
- g) Rajasthan State Mines and Minerals Limited and Barmer Lignite Mining Company and the Mining Contractor to be selected through the ICB have to assume the obligation in regard to the amount expended by the South West Mining Limited on the excavation of the Box Cut of the linked mine and refund the same

to South West Mining Ltd. at the time of cessation of mining operations by it.

4. On the above issues, we have also heard Shri P.N. Bhandari, learned counsel for the Respondent nos. 2 to 4 and Shri R.K. Mehta, learned counsel for the State Commission.

5. Shri P.N. Bhandri, learned counsel for the Respondent nos. 2 to 4 submitted that the existing arrangements for mining of lignite supplied to the Power plant have to be continued till the fresh bidding exercise for mining contract is completed. On the other issues raised by the Review Petitioner/Appellant, he submitted that the Review Petitioner/Appellant was trying to inject fresh issues which were neither part of the pleadings nor were argued either before the Tribunal or before the State Commission and,

therefore, raising these issues in the Review Petition are not permissible.

6. Shri R.K. Mehta, learned counsel for the State Commission submitted that the Review Petitioner could approach the State Commission for orders on the above issues.

7. Admittedly, during the pendency of the Appeal before this Tribunal, the existing arrangements for mining of lignite for supply to the power plant were continuing. Hence, we feel that passing of the judgment by this Tribunal on competitive bidding for selection of successful Mine Development Operator should not disturb the existing arrangements till the new Mine Development Operator takes over the mining operations. Therefore, the Review Petitioner/Appellant

is permitted to approach the State Commission for obtaining necessary order in this regard.

8. As regards other issues raised by the Review Petitioner/Appellant relating to mining operations by the Barmer Lignite Mining Co. or the successful bidder and their financial and contractual liability etc., we find that these issues were not part of the Appeal and they were not argued in the main Appeal. Therefore, these issues which may be relevant for smooth operation of the mining and power project may have to be dealt with by the State Commission.

9. Accordingly, we give liberty to the Review Petitioner/Appellant to raise these issues before the State Commission and the State Commission shall consider them and pass appropriate orders in

accordance with law keeping in view smooth operation of mining and power projects.

10. With these observations, the Review Petition is disposed of.

11. Pronounced in the open court on this **28th day of May, 2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

vs