

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

R.P. No. 11 of 2013 in
Appeal No. 85 of 2012

Dated: 16th September, 2013

Present: Hon'ble Mr. Justice M. KarpagaVinayagam, Chairperson
Hon'ble Mr. RakeshNath, Technical Member

In the matter of:

Reliance Infrastructure Limited
H-Block, 1st Floor Dhirubhai
Ambani Knowledge City
Navi Mumbai – 400 710

...Appellant(s)

Versus

1. The Maharashtra Electricity Regulatory
Commission
World Trade Centre No.1
13th Floor, Cuffee Parade,
Colaba Mumbai – 400 001

...Respondent(s)

2. Mumbai GrahakPanchayatGrahakBhavan,
SantDyaneshwarMarg Vile Parle (W),
Mumbai – 400 056

3. **Prayas C/o. Amrita Clinic,
Athawale Corner Deccan Gymkhana,
Karve Road Pune – 411 004**
4. **Thane Belapur Industries Association
Plot No. P-14, MIDC,
Rabale Village Post: Ghansoli,
Navi Mumbai – 400 071**
5. **Vidarbha Industries Association
1st Floor, UdyogBhavan Civil Lines,
Nagpur – 400 041**
6. **Shri N. Ponrathnam
25, Majithia Industrial Estate
WamanTukaramPatilMargDeonar,
Mumbai – 400 088**
7. **ShriSandeep N. Ohri
A-74, Tirupati Tower Thakur Complex,
Kandivali (East) Mumbai – 400 101**
8. **ShriRakshpalAbrolBhartiyaUdhami
AvamUpbhoktaSangh
MadhuCompund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063**

Counsel for the Appellant (s): **Ms. Anjali Chandurkar**
Mr. HasanMurtaza

Counsel for the Respondents (s): **Mr. Buddy Ranganadhan**

ORDER

RAKESH NATH, TECHNICAL MEMBER

This Review Petition has been filed by Reliance Infrastructure Ltd. against judgment dated 20.5.2013 passed by this Tribunal in Appeal no. 85 of 2012 with respect of findings on the issue relating to disallowance of Power Purchase Cost in respect of Day Ahead transaction on certain days in Final True Up of FY 2009-10 and Annual Performance Review for FY 2010-11 of the Review Petitioner/Appellant.

2. In the judgment dated 20.5.2013 the Tribunal upheld disallowance of part of Power Purchase Cost by the State Commission in respect of Day Ahead transactions on certain days of FY 2009-10 and 2010-11 on the following grounds.
 - i) It was found from the impugned order that no satisfactory explanation was given by the Appellant for carrying out the transactions at rates higher than Maximum Market Clearing

Price of the PowerExchange. The Appellants has given new arguments justifying the power procurement at higher rates which is not permissible at Appeal stage.

- ii) The Appellant's contention that the State Commission allowed the Day Ahead power procurement at higher rates on the certain days to Tata Power Company and BEST, the other distribution licensees, could not be substantiated through the copies of the true-up orders of Tata Power and BEST for the FY 2009-10 submitted by the Appellant as there was no specific finding of the State Commission about the transactions on the above dates.
3. The Review Petitioner has filed Review Petition on the ground that there is error apparent on the face of the record in the above findings of the Tribunal.
4. We have heard Ms. Anjali Chandurkar, Learned Counsel for thereviewPetitioner/Appellant and Mr. Buddy A.

Ranganadhan, Learned Counsel for the State Commission on the above issue.

5. Ms. Anjali Chandurkar, Learned Counsel for the Review Petitioner/Appellant, has made the following submissions.
 - a) The Appellant in the written submissions had relied upon the Interim Energy Balancing and Settlement Account under Inter State ABT for June 2009 issued by SLDC which showed purchases made by Tata Power Company and BEST. The Appellant also annexed debit notes raised by the Appellant for the dates in question in FY 2009-10 when it was heading the Mumbai Power Management Group (“MPMG”).
 - b) There was shortage of power on the Indian Energy Exchange and it was not an assured source to procure supply on those days and the decision of MPMG could not be faulted.
 - c) In so far as FY 2010-11 is concerned, it was submitted that the market snapshot annexed in the Appeal that the buy bids were twice the sell bids on IEX and therefore Rs.0.48

crore ought to have been allowed and not the Weighted Average Market Rates as is done in the impugned order of the State Commission.

- d) It is wrong to say that no explanation was given by the Appellant to the State Commission. The perusal of the impugned order does not reflect this.
- e) The chain of correspondence between the State Commission and the Review Petitioner/Appellant set out in the Review Petition would show that all the queries raised by the State Commission were answered to the Commission's satisfaction.
- f) The Appellant was not given an opportunity to explain the aforesaid transaction at all. Thus, it was submitted before the Tribunal that if an opportunity was given, the Appellant would have given the justification which was set out in the Appeal.

- g) The Review Petitioner/Appellant be given an opportunity to give all details to the State Commission in respect of the Day Ahead transactions in question.
6. Learned Counsel for the Review Petitioner also filed written submissions.
7. According to the Buddy A. Ranganadhan, Learned Counsel for the State Commission, the Review Petitioner/Appellant has not been able to point out any error apparent on the face of record. The Commission had sought clarification from the Appellant on all power market transactions where the price was higher than the maximum clearing price at the market for that particular day. Therefore, it is wrong for the Appellant to contend that the State Commission had not specifically made queries with regard to the particular transactions which had been disallowed in the impugned order.

8. We have carefully considered the contentions of the Review Petitioner and the Respondent.
9. It is very clear from the impugned order of the State Commission as well as the query of the State Commission from the Review Petitioner/Appellant quoted in the chain of correspondence now referred to by the Review Petitioner/Appellant, that the State Commission had clearly observed that it had found that certain Day Ahead power purchases were at much higher rates than the Maximum Market Price of respective date and it sought clarification for such transactions. Thus, the Review Petitioner/Appellant was expected to give reasons for procuring power in Day Ahead transactions at rates higher than the maximum price at the Power Exchange for each day where the purchase price was higher than the Maximum Market Price. However, Review Petitioner did not furnish satisfactory reasons as to why the rates were higher than the Maximum Market Price

of the respective dates. Therefore, it is incorrect to contend that the Review Petitioner/Appellant was not given opportunity to explain to the State Commission the reasons for procurement of Day Ahead power at higher rates.

10. The true up orders of the Tata Power Company and BEST also did not indicate that they had procured high cost power on the dates in question i.e. 5th, 10th& 19th June 2009 and 1st July 2010. This was also not explained by the Review Petitioner/Appellant before the State Commission.
11. We have also examined the letters sent by the Review Petitioner in response to the queries made by the State Commission which are now furnished by the Review Petitioner. We find that the Review Petitioner/Appellant had not given satisfactory clarification regarding the Day Ahead transactions done at rates higher than the maximum market price for the respective date. The Review Petitioner/Appellant only indicated that the Day Ahead

transaction during 2009-10 was done through Mumbai Power Management Group.

12. We hold that the impugned findings in our judgment dated 20.5.2013 have been given only after considering all the contentions of the Review Petitioner/Appellant and as such we do not find any error apparent on the face of record in the judgment. Accordingly, we dismiss the Review Petition.

13. Pronounced in the open court on this 16th day of September, 2013.

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice M. Karpaga Vinayagam)
Chairperson