

**New State Motor Garage
Sahakar Marg, Jaipur – 302 005**

**Counsel for the Review Petitioner(s)/ : Mr. P.N. Bhandari
Respondents**

**Counsel for the Respondent(s) : Mr. M.G. Ramachandran
Appellant(s)**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Review Petition has been filed by Jaipur Vidyut Vitaran Nigam Limited. and others for Review of judgment dated 29.10.2013 passed by this Tribunal in Appeal no. 236 of 2012.

2. The main contention of the Review Petitioners/ Respondents is that letter dated 23.6.2008 from Raj West Power Ltd. to Energy Secretary, Government of

Rajasthan was not considered by the Tribunal while giving the findings and had this letter been considered, the conclusion in the case would have been different.

3. We have heard Shri P.N. Bhandari, Learned Counsel for the Review Petitioners/Respondents and Shri M.G. Ramachandran, Learned Counsel for the Respondent/Appellant.

4. Shri P.N. Bhandari, Learned Counsel for the Review Petitioners has submitted that M/s. Raj West had admitted in letter dated 23.6.2008 that Rs. 2.43/- was the actual tariff which had perhaps escaped the attention of the Tribunal and this was an apparent error on the face of the record. He has also made submissions and has filed elaborate written submissions re-arguing their case in the main Appeal.

5. According to Mr. M.G. Ramachandran, the Tribunal had duly taken into account letter of offer by Raj West dated 16.11.2004, Government of Rajasthan's letter dated 28.1.2006 related to the PPA signed on 26.10.2006. The letter dated 23.6.2008 written after two years of the signing of the PPA also reiterates the same position and understanding as is conveyed in the letters dated 16.11.2004 and 28.1.2006 with regard to the present controversy. Thus, according to him, the Review Petitioners were re-agitating the issues which had already been considered and decided by this Tribunal.
6. We have carefully considered the submissions of both the parties.
7. We find that letter dated 23.6.2008 formed part of the record of the Appeal even though it was not referred to and not considered by the State Commission in the

order dated 17.10.2012 impugned in the Appeal no. 236 of 2012. This letter has also not been referred to in the impugned judgment.

8. Letter dated 23.6.2008 was written by M/s. Raj West to Government of Rajasthan when the first unit of the power plant was going to be commissioned and the lignite mine from which lignite was to be supplied to the power plant was getting delayed due to problem of acquisition of land being faced by M/s. BLMCL, the mining company. Therefore, Raj West had proposed operation of the power plant on coal to be procured from the market till the mining company was in a position to deliver lignite to the power plant. However, Raj West had stated that in view of use of coal to be procured from the market, they would not be able to commit providing power at the tariff of Rs. 2.43 per unit. The relevant extracts of the letter are as under:-

“Raj West Power Limited

*Regd Office: The Enclave, New
Prabhadevi Road,
Off Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400 025*

*Phone: 022-2432 8000
Fax: 022-2432 0740
Website: www.jsw.in*

June 23, 2008

*The Energy Secretary
Energy Department
Government of Rajasthan
Secretariat
Jaipur*

Dear Sir,

*Reg: 1) Implementation Agreement dated may 29, 2006
2) Intimation of Cabinet Order vide your letter no. F
2(3)/urja/2005 dated 28-1-06
3) Power Purchase Agreement dated 26th October 2006
with Rajasthan Discoms.*

*Sub: First year tariff for Implementation, Operation and
maintenance of Lignite cum Thermal Power plant and
associated facility of 8x135MW based on Lignite
mines from Jalipa and Kapurdi mines at Barmer
District in Rajasthan*

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IA provides for the certain conditions for determination of Power Tariff as enumerated in Cabinete Order vide letter no. F 2(3)/urja/2005 dated 28-1-2006. The conditions stipulated in the letter states that determination of Power Tariff shall be based on determination of Capital cost, transfer price of lignite and cost of generation as per Rajasthan Electricity Regulatory Commission's (RERC) regulation and first years tariff shall be less than first years tariff determined for Giral Power Project i.e. Rs. 2.43 per unit.

As the fuel for the first year cannot be provided by BLMCL and will have to be sourced from the market, we shall not be able to commit providing the power at the tariff of Rs. 2.43 per unit. The cost of power as mentioned in your letter dated January 28, 2006 will be determined by the landed cost of fuel for the power plant. It may be noted that in case of 1st year tariff for Giral Power Project approved at Rs. 2.43/unit, the fuel was being provided from the pithead mines at a very nominal cost as compared to the market rate for bought out fuel. Hence, due adjustment needs to be provided in the tariff pricing for the power produced from the bought out fuel.

RWPL is committed to ensure that the power plant is set up in record time to bridge the widening deficit of power faced by the State and are agreeable for determination of tariff as per RERC regulation which provides for a regulated return to the stakeholders.

Considering the above, we request your good self to revise the rate for the 1st year based on the eventual nature of bought out fuel to be used for operation of the power plant

during the first year of operation instead of limiting to Rs. 2.43 per unit. Besides, we also earnestly request you to kindly ensure that RSMML is provided with adequate assistance in completing the land acquisition in due course whereby the lignite can be made available by BLMCL.

*Thanking you,
For Raj West Power Limited*

Director”

9. According to Shri P.N. Bhandari, the Learned Counsel for the Review Petitioners, the above letter clearly indicated the understanding of M/s. Raj West that the first year tariff of the project was Rs. 2.43 per unit.

10. We find that in the above letter, M/s. Raj West has referred to Implementation Agreement which provided for certain conditions for power tariff as enumerated in the Cabinet order communicated vide dated 28.1.2006. The letter also stipulates the condition in letter dated 28.1.2006 that determination of power tariff shall be

based on determination of capital cost, transfer price of lignite and cost of generation as per the State Commission's Regulations and first year tariff shall be less than first year tariff determined for Giral Power Project i.e. Rs. 2.43 per unit. M/s. Raj West have also indicated that in view of fuel to be sourced from the market instead of the linked lignite mine, they would not be able to commit providing the power at the tariff of Rs. 2.43 per unit. The Review Petitioners are referring to the later part of the letter ignoring the earlier paragraph. Complete reading of the letter dated 23.6.2008 would indicate that it conveys the same position and understanding as conveyed in letters of offer dated 16.11.2004 and State Government's letter dated 28.1.2006 conveying the Cabinet decision regarding the first year tariff of the power project of Raj West.

11. We find that the State Commission in its order dated 17.10.2012 which was challenged before this Tribunal by Raj West in Appeal no. 236 of 2012 had also not referred to the letter dated 23.6.2008 and relied on Raj West's offer dated 16.11.2004, Cabinet decision dated 24.1.2006 communicated through letter dated 28.1.2006 and the PPA before arriving at the findings in the matter rejecting the Petition of Raj West.

12. In the impugned judgment, the Tribunal has also considered the letter of offer dated 16.11.2004, the letter of State Government dated 28.1.2006 relating to the tariff and the PPA. We find that the letter dated 23.6.2008 also conveys the same position as indicated in letters dated 16.11.2004 and 28.1.2006 with regard to the first year tariff linking it to first year tariff of Giral Project which were duly considered by this Tribunal. In the impugned judgment, the Tribunal has dealt with the

- issue of capping of the first year tariff of the power project of Raj West in detail and the letter dated 23.6.2008 would have no effect on the findings of the Tribunal in the impugned judgment.
13. The other submissions of Learned Counsel for the Review Petitioners are on the merits of the case which cannot be considered in the Review.
 14. As such, we do not find any error apparent on the face of the record in the judgment dated 29.10.2013.
 15. Consequently, we find that there is no merit in the Review Petition and accordingly dismiss the same.
 16. Pronounced in the open court on this **9th day of May, 2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~
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