

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO. 57 OF 2022 &  
APPEAL NO. 49 OF 2022**

**Dated: 05.05.2022**

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**APPEAL NO. 57 OF 2022**

**Jaipur Vidyut Vitran Nigam Limited (JVVNL)**

Vidyut Bhwan, Janpath,  
Jaipur-302005 (Raj.),  
Through its Managing Director

**Ajmer Vidyut Vitran Nigam Limited (AVVNL)**

Vidyut Bhawan, Panchsheel Nagar,  
Markarwali Road,  
Ajmer – 305004 (Raj.)  
Through its Managing Director

**Jodhpur Vidyut Vitran Nigam Limited (JDVVNL)**

New Power House, Industrial Area,  
Jodhpur – 342003 (Raj.)  
Through its Managing Director

.... Appellant(s)

**VERSUS**

**1. M/s Barmer Lignite Mining Company Limited (BLMCL)**

7<sup>th</sup> Floor, Man Upasana Plaza,  
C-44, Sardar Patel Marg, C-Scheme,  
Jaipur - 302001 (Raj)

**2. M/s JSW Energy (Barmer) Limited**

(Formerly : Rajwest Power Ltd.),  
7<sup>th</sup> Floor, Man Upasana Plaza,  
C-44, Sardar Patel Marg, C-Scheme,  
Jaipur - 302001 (Raj)

**3. Rajasthan Electricity Regulatory Commission**

“Vidyut Vinyamak Bhawan”,  
Near State Motor Garage,  
Sahakar Marg,  
Jaipur-302005 (Raj.)

... Respondents

Counsel for the Appellant (s) :

Mr. P.N. Bhandari  
Mr. Paramhans Sahani for App1-3

Counsel for the Respondent (s) :

**Mr. Sanjay Sen, Sr. Adv.**  
Ms. Mandakini Ghosh  
Mr. Aman Anand  
Mr. Aman Dixit for R-1&2

**In the matter of:**

**APPEAL NO. 49 OF 2022**

**Jaipur Vidyut Vitran Nigam Limited (JVVNL)**

Vidyut Bhwan, Janpath,  
Jaipur-302005 (Raj.),  
Through its Managing Director

**Ajmer Vidyut Vitran Nigam Limited (AVVNL)**

Vidyut Bhawan, Panchsheel Nagar,  
Markarwali Road,  
Ajmer – 305004 (Raj.)  
Through its Managing Director

**Jodhpur Vidyut Vitran Nigam Limited (JDVVNL)**

New Power House, Industrial Area,  
Jodhpur – 342003 (Raj.)  
Through its Managing Director

.... Appellant(s)

***VERSUS***

**1. M/s Rajwest Power Ltd.,**

7<sup>th</sup> Floor, Man Upasana Plaza,  
C-44, Sardar Patel Marg, C-Scheme,  
Jaipur - 302001 (Raj)

**2. Rajasthan Electricity Regulatory Commission**

“Vidyut Vinyamak Bhawan”,  
Near State Motor Garage,  
Sahakar Marg,  
Jaipur-302005 (Raj.)

... Respondents

Counsel for the Appellant (s) : Mr. P.N. Bhandari  
Mr. Paramhans Sahani for App1-3

Counsel for the Respondent (s) : **Mr. Sanjay Sen, Sr. Adv.**  
Ms. Mandakini Ghosh  
Mr. Aman Anand  
Mr. Aman Dixit for R-1

## **J U D G M E N T (Oral)**

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON**

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.
2. These appeals were preferred by the distribution licensees operating in the State of Rajasthan, they being aggrieved by the orders dated 24.06.2019 & 29.01.2020 on IA No.13 of 2018 in Petition No. RERC/966/2016 and Review Petition registered as RERC/1550/2019 in the first captioned matter and Orders dated 13.06.2019 & 27.01.2020 on Petition No. RERC/1286/17 and Review–cum-Clarificatory Petition No.1540/19 in the second captioned matter passed by the Respondent/Rajasthan Electricity Regulatory Commission (*the State Commission*).
3. The prime grounds are that the State Commission has failed to determine finally the Gross Calorific Value (GCV) of lignite which is used as fuel by the respondent generating companies, such determination of GCV being essential in terms of the extant Regulations for regulating the variable cost paid by the distribution licensee for the supply of electricity generated by the said respondents. It appears the issue of GCV was raised expressly in the review proceedings and the relevant observations of the State Commission are found in Para 10 & 11 of the order dated 29.01.2020 which read thus:

*“Para 10*

*The only issue raised in the petition is to consider actual GCV in order dt. 24.06.2019 instead of GCV allowed for mine plan. It is observed that earlier also Commission in tariff order dated 18.05.2018 has considered the GCV of lignite as per the Mine Plan for determination of tariff for FY*

2017-18. The similar approach was adopted by the Commission in determination of tariff for FY 2018-19 in order dated 13.06.2019.

Para 11

*The Commission uptill now has allowed Transfer Price of Lignite as fixed percentage of claimed figures pending the final determination of the same. As the Transfer Price is being allowed on provisional basis without carrying out the prudence check of the claimed figure, therefore pending the determination of final transfer price, the Commission has considered the GCV as per the Mine Plan. However, the appropriate adjustment of variation in price and GCV of Lignite is to be considered at the time of truing up/once the transfer price of lignite is finalized and at that time the detailed analysis of actual GCV will also be carried out and final view regarding GCV shall be taken accordingly.”*

**4.** The relevant tariff regulations referred to by the parties read as under:

*“51. Energy Charges*

*The energy (variable) charges for Thermal Generating Stations shall cover landed fuel costs and shall be computed as follows:*

.....

*(4) Adjustment of rate of energy charge (REC) on account of variation in price or heat value of fuels:*

*Initially, Weighted Average Gross Calorific Value and landed cost of blended coal/ lignite or gas or liquid fuel shall be taken as per actuals of the preceding three months. Any variation shall be ADJUSTED ON MONTH TO MONTH BASIS on the basis of average Gross Calorific Value of blended coal/lignite or gas....*

*(5) Landed Cost of fuel: The landed cost of fuel shall include price of fuel corresponding to the grade/quality/calorific value of fuel inclusive of .....as percentage of the quantity of fuel dispatched by the fuel supply company DURING THE MONTH as specified in regulation 45(7).”*

**5.** From the submissions made by the appellant through counsel, it emerges that the distribution licensees are concerned because of *ad hoc* approach adopted by the State Commission in the matter, it being the argument that the variable cost cannot be regulated on the basis of provisional determination of the GCV etc.

6. It appears that the State Commission has by a subsequent order dated 26.03.2021 in Petition Nos. 593/2016, 608-609/2016, 966/2016, 1285/2017 and 1510/2019 expressed inability to determine the transmission price of lignite and capital cost of mining for certain difficulties or reasons. The order dated 26.03.2021 of the State Commission is subject matter of another set of appeals namely Appeal Nos. 152 & 153 of 2021 which are listed for 22.07.2022, such appeals having been taken out by the generating companies, the appellants herein being party respondents in those appeals as well.

7. The issue of GCV raised in the appeals at hand is connected to the subject matter in aforementioned other appeals. In our considered view, it is not desirable to examine these inter-connected issues in separate proceedings. In the given facts and circumstances, we feel that the issue of final determination of GCV for the computation of variable cost required to be done on basis of actuals would be better examined against the backdrop of the issue raised in Appeal Nos. 152 & 153 of 2021.

8. Thus, reserving the contentions of the appellants herein as urged in these appeals and allowing them to agitate the same in the course of hearing in Appeal Nos. 152 & 153 of 2021, we dispose of these appeals leaving the issue open.

9. The appeals are disposed of with these observations.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING  
ON THIS 05<sup>th</sup> DAY OF MAY, 2022.**

**(Sandesh Kumar Sharma)**  
Technical Member

*pr/tp*

**(Justice R.K. Gauba)**  
Officiating Chairperson