

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.342 OF 2022

Dated: 09.07.2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

JSW ENERGY (BARMER) LTD.

Through its Assistant General Manager,
Office No. 2 & 3, 7th Floor,
Man Upasana Plaza,
C-44, Sardar Patel Marg, C-Scheme,
Jaipur - 302 001
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... Appellant

Versus

1. Secretary
Rajasthan Electricity Regulatory Commission
Vidyut Viniyamak Bhawan,
Near State Motor Garage,
Sahakar Marg,
Jaipur-302 005 (Rajasthan)
Email: rercjpr@yahoo.co.in
2. Managing Director
Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur – 302 005 (Rajasthan)
Email: md@jvvnI.org
3. Managing Director
Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata,
Ajmer – 305001 (Rajasthan)
Email: avvnI0145@yahoo.com

4. Managing Director
Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Estate,
Jodhpur-342 003 (Rajasthan)
Email: md.jdvvnl@rajasthan.gov.in ... Respondent(s)

Counsel for the Appellant(s) : Sanjay Sen, Senior Advocate
Aman Anand
Aman Dixit
Abhimanyu Maheshwari

Counsel for the Respondent(s): P.N. Bhandari
Paramhans Sahani for Res.2,3&4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The present appeal is directed against the order dated 12.07.2022 passed by the 1st respondent Rajasthan Electricity Regulatory Commission (for short "the Commission") thereby declining the prayer of the appellant for upgradation of Lime Handling System (LHS) in its lignite based thermal generating system at Barmer, Rajasthan.

2. We may note at the outset that this is the second round of litigation between the parties on this issue. The petition filed by the appellant was earlier allowed by the Commission vide order dated 30.05.2019 granting in principle permission to it for upgradation / modification of Electrostatic Precipitator (ESP) and Lime Handling System (LHS). The 2nd respondent Jaipur Vidyut Vitran Nigam Limited filed a review petition seeking review of the said order dated 30.05.2019 of the commission which was dismissed by

the Commission vide order dated 15.01.2020. Both the above orders dated 30.05.2019 as well as 15.01.2020 were assailed by the Discoms before this Tribunal by way of appeal No.58/2022. Noting that the Commission had simply chosen to go by the advice of Central Electricity Authority (CEA) without examining on its own the need for such augmentation of Lime Handling System, this Tribunal vide order dated 21.04.2022 allowed the appeal and remanded the case back to the Commission for a fresh decision in accordance with law by a reasoned order. We find it pertinent to quote the relevant portion of the said order dated 21.04.2022 of this Tribunal hereunder: -

“4. Having heard the learned counsel on both sides, on careful perusal of the impugned decision, we find that the Commission has not examined on its own the need for such augmentation of the handling system. It has chosen to simply go by the advisement of the CEA. Though the opinion of CEA carries weight, in an adversarial situation adopting the recommendation as decision of the Commission may not be a correct approach. The learned counsel for the first Respondent fairly agreed, having taken instructions, that since the Appellants (Distribution Licensees) who are procurers of electricity from the former are aggrieved because of the additional burden in the cost of electricity that the addition of lime handling system would bring in, it would be appropriate, just and fair that the Commission be asked to independently examine the issue of need of such system and take a fresh call on the basis of inputs given or objections raised by the Appellants as well.

5. Since the impugned order is conspicuously silent on the above part of scrutiny, we feel it would be appropriate to set aside the impugned order to the extent it had the effect of granting in-principle approval for the

additional lime handling system and remand the matter to the Commission for fresh consideration. We order accordingly.

6. In the result, the matter arising out of the petition of the first Respondent, to the above extent, is remanded back to the Commission for fresh decision in accordance with law by a reasoned order which, needless to add, will be rendered by the Commission after affording effective opportunity of hearing to both sides. By abundant caution, we add that the Commission will approach the issue with open mind uninfluenced by the decision taken earlier. Contentions of both sides are kept open. Given the nature of the controversy, it is desirable that the Commission passes the fresh order expeditiously. We would request the Commission to do so preferably within two months of this remand order.

7. The appeal is disposed of in above terms.”

3. After hearing the parties again in pursuance to the above noted order of this Tribunal, the Commission passed the impugned order dated 12.07.2022 holding that the existing LHS in the appellant’s generating station is sufficient to meet the requirements as per the emission norms and there is no requirement of additional LHS as of now. At the same time liberty has been given to the appellant to approach the Commission at appropriate time in case actual monthly weighted average sulphur content in the lignite is on the rising trend. The relevant portion of the impugned order is reproduced hereunder:-

“22. In view of data submitted by the Petitioner, it is clear that up till now sulphur content in lignite has not crossed the 1% limit. The average utilization of Lime Handling System is well below the current capacity of

2x60TPH. The Sox emission has been less than the new emission norms of 600 mg/Nm³. Thus Petitioner's claim for additional lime handling plant is based on hypothetical grounds and the apprehension that sulphur content may surpass 2% limit has no scientific or logical basis.

23. The Commission, therefore, is of the considered view that at present levels of sulphur content, existing Lime Handling System is sufficient to meet the requirements as per revised emission norms and there is no requirement of additional LHS as of now. However, the Petitioner is at liberty to approach the Commission at appropriate time if actual monthly weighted average sulphur content in lignite is on rising trend.

24. The petition stands disposed of accordingly."

4. The appellant is a generating company which operates a 1080MW lignite based thermal generating station at Barmer, Rajasthan. It has entered into a long-term Power Purchase Agreement (PPA) with the respondent Nos.2 to 4 (Discoms operating in Rajasthan) for supply of electricity to them. The appellant has installed LHS in the generating station in the year 2013 with the capacity of 120 tons per hour (TPH) keeping in view 2% sulphur content in the lignite which is obtained from Kapurdi / Jalipa lignite mines. It is important to mention here that no emission norms for SO₂ had been prescribed by that time. The revised emission norms have been prescribed as 600 mg/Nm³ for SO₂ by the Ministry of Environment, Forest and Climate Change (MoEF&CC) vide notification dated 07.12.2015.

5. It was to ensure compliance with these revised emission norms that the appellant had approached the Commission seeking in principle approval for additional capitalization on account of upgradation of EPS and LHS.

6. Learned Counsel for the appellant vehemently argued that the Commission erred in ignoring the advice of CEA as well as its own view contained in previous order dated 20.05.2019 without any cogent reason or discussion. It is submitted that the advice of CEA, a technical body, could not have been substituted by the Commission on such a technical issue in the absence of any compelling reasons to do so. The learned counsel further argued that the Commission has failed to consider that the appellant has already incurred considerable expenses on upgrading of the LHS in pursuance to the in-principle approval granted to it by the Commission vide its order dated 30.05.2019 and it has been with full knowledge and participation of the respondents and therefore, the contrary opinion rendered by the Commission in the impugned order is totally unfair, unjust and legally untenable. It is, further, argued that the borehole data clearly suggests that the sulphur content in lignite from Kapurdi / Jalipa lignite mines will reach 2% or more during the course of mining over a period of 30 years but it is difficult to predict when exactly will it happen and therefore, this position coupled with the fact that breach in the SO₂ levels is now a punishable offence attracting penalty under Sections 15 and 16 of Environment Protection Act, 1886, necessitates provisioning for redundancies as a matter of prudent utility practice. According to the learned counsel, the need to install 60TPH additional capacity LHS stands fully established.

7. On behalf of respondent Nos.2,3&4, the Discoms, it is stated that the appellant had grossly misled the CEA by one-sided figures without indicating that the Discoms are strongly contesting its stand and therefore, the advice of CEA upon which the appellant has been placing strong reliance, has been

rightly ignored by the Commission. It is argued that the borehole data is just a projection of estimated sulphur levels only which cannot be equated with actual sulphur levels. It is, further argued that when latest laboratory figures are available, there is no logic in relying upon 35-year-old estimated figures produced by the appellant. The learned counsel further pointed out that since the sulphur level in the lignite has not crossed even 1% for years together, projection that it will shoot-up by more than 100% in near future is totally unrealistic, imaginary and baseless. According to learned counsel, the Commission has gone into minutest details in scrutinizing appellant's claim and has given a very balanced and justified view of the matter while giving liberty to the appellant to approach it again in case there is any rising trend in the sulphur level in the lignite.

8. We have perused the impugned order as well as the entire material on record and have given thoughtful consideration to the rival submissions made by the counsels on behalf of the parties. Written submissions filed by the learned counsels have also been perused.

9. It appears that during the remand proceedings, the Commission had asked the appellant to furnish following additional information:-

“(a) Actual average monthly data of sulphur content (%), GCV in the lignite, for last eight years.

(b) Average monthly data of actual specific lignite consumption (kg/kWh) for last eight years.

(c) Actual average monthly specific lime consumption (kg/kWh) and actual average monthly lime consumption in tons per hour (TPH) terms for last eight years.

(d) Actual monthly average utilization hours and actual shut down time (in hours) for each of the lime handling system for past eight years.

(e) Range of Sulphur content (%) in the lignite from Kapurdi and Jalipa Mines as per the latest mine plan approved by the Government of India with supporting documents.

(f) Actual average monthly data for So₂ emission (mg/Nm³) for past eight years.”

10. It is not in dispute that the perusal of GCV data submitted by the appellant for the Financial Years (FY) 2014-15 to 2021-22 shows that the sulphur content in the lignite during these years has been in the range of 0.3% to 0.95%. In the months of January, February and March 2022, the sulphur content in lignite was 0.41%, 0.47% and 0.46% respectively whereas the GCV of lignite was in the range of 2756 kCal/kg to 3285 kCal/kg. It is also not disputed that the average monthly lime consumption for FY 2018-19 to 2021-22 as per the data submitted by the appellant itself has been in the range of 31 TPH to 68 TPH which shows that the average utilization of Lime Handling System was well below the current capacity of 120 TPH. It is also not disputed that the Sulphur Oxide (SO₂) emission for FYs 2014-15 to 2021-22 has been in the range of 11mg/Nm³ to 526 mg/Nm³ as per the unit wise actual average monthly data furnished by the appellant, which is less than the revised emission norms of 600 mg/Nm³. Considering the

afore-stated data, we find no infirmity in the view rendered by the Commission that the appellant's claim for additional lime handling plant is based only on hypothetical grounds.

11. The argument put forward on behalf of the appellant that the Commission has erroneously ignored the advice of a technical body like CEA needs outright rejection in view of the observations of this Tribunal in order dated 21.04.2022 in appeal No.58/2022, which have already been quoted in Para No.2 hereinabove. While remanding the case back to the Commission, this Tribunal had mandated the Commission to examine the need for augmentation of LHS in the appellant's generating station on its own independently and not to simply go by the advice of CEA. That is exactly what has been done by the Commission. Further, we also do not feel impressed by the borehole data furnished by the appellant for the reason that it only appears to be an estimated projection of sulphur level in the lignite, and therefore, cannot be treated as authentic and reliable document on this aspect.

12. It is manifest from the record that since the year 2013 when the appellant had installed LHS in its thermal generating station, the sulphur content in the lignite never crossed even 1%. It reached the highest level of 0.95% and again went down to 0.41%, 0.47% and 0.46% in the months of January, February, and March, 2022. Considering the same, it is highly unlikely that the sulphur level would reach 2% in near future, and therefore, we do not find it justified to place any further burden upon the end consumers of the electricity as of now by permitting the appellant to augment its LHS which would increase the cost of electricity.

13. We also note that by the impugned order, the Commission has rejected the claim of the appellant for the time being only in view of the data scrutinized by it and has given liberty to the appellant to approach it again in case the sulphur content in the lignite is on rising trend, which fully protects the rights of the appellant.

14. In view thereof, we do not find any error or infirmity in the impugned order of the Commission. The appeal is sans any merit and is accordingly dismissed.

Pronounced in the open court on this the 09th day of July, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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