

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**EXECUTION PETITION No.4 OF 2021**

Dated: 31.05.2024

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

**In the matter of:**

**RAJASTHAN RAJYA VIDYUT PRASARAN NIGAM LIMITED**

*Through Superintending Engineer (NPP)*

Vidyut Bhawan, Jyoti Nagar,

Jaipur 302 005

Email ID: [se.sold@rvpn.co.in](mailto:se.sold@rvpn.co.in)

... Petitioner

*Versus*

**1. INOX WIND ENERGY LIMITED**

*Through its authorized representative*

Having Registered Office at

ABS Towers, 3<sup>rd</sup> Floor, Old Padre Road,

Vadodara 390007, Gujarat

Email ID: [investors.iwl@inoxwind.com](mailto:investors.iwl@inoxwind.com)

[contact@inoxrenewables.com](mailto:contact@inoxrenewables.com)

**2. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*Through its Secretary*

3<sup>rd</sup> and 4<sup>th</sup> Floor, Chandralok Building,

36, Janpath, New Delhi 110 001

Email ID: [registry.cerc@nic.in](mailto:registry.cerc@nic.in)

[efiling@cercind.gov.in](mailto:efiling@cercind.gov.in)

... Respondent(s)

Counsel on record for the Petitioner(s) : Pradeep Misra

Counsel on record for the Respondent(s) : Alok Krishna Agarwal  
Naveen Chawla  
Mayank Bughani for Res. 1

## **ORDER**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. By way of this Execution Petition filed under Section 120(3) of the Electricity Act, 2003, read with Order XXI of the Civil Procedure Code, 1908, the petitioner is seeking enforcement of order dated 26.11.2014 passed by this Tribunal in appeal bearing No.162/2013.

2. The petitioner is a state transmission utility in the State of Rajasthan and has been authorized to operate the State Load Despatch Centre. The 1<sup>st</sup> respondent owns a wind farm with an installed capacity of 12MW at Jaisalmer, Rajasthan and the power generated by the said generating station is injected at 132 KV GSS Jaisalmer through 33KV Sadia II feeder.

3. The petitioner had filed a petition bearing No.14/MP/2011 before the Central Electricity Regulatory Commission (in short "CERC") alleging violation of CERC (UI Charges and Related Matter) Regulations, 2009, as well as resort to deliberate gaming by the 1<sup>st</sup> respondent and thus, seeking to penalize the generating station and also permitting the petitioner to refuse interstate open access to it in case, there is any further violation of more than 30% from the schedule and to limit the total energy sale by 1<sup>st</sup> respondent as per the Capacity Utilization Factor (CUF) for wind farm.

4. Vide order dated 09.05.2013, the Central Commission concluded that the charge of gaming stands proved against the 1<sup>st</sup> respondent and

accordingly directed it to pay a sum of Rs.870 lakhs to the petitioner which it had gained during the relevant period on account of under injection of power, as compensation for the loss suffered by the petitioner. The said penalty amount was directed to be paid by the 1<sup>st</sup> respondent to the petitioner within one month from the date of the order.

**5.** The 1<sup>st</sup> respondent assailed the said order dated 09.05.2013 of CERC before this Tribunal by way of appeal No.162/2013. Finding no infirmity in the impugned order of the CERC, this Tribunal dismissed the appeal vide judgment dated 26.11.2014.

**6.** Considering the said factual background, this Tribunal raised a doubt regarding the maintainability of the Execution Petition before the Tribunal and accordingly the parties were directed to address arguments on the aspect of maintainability.

**7.** We have heard Shri Pradeep Misra, Advocate, on behalf of the petitioner and Mr. Alok Agarwal, Advocate, on behalf of the 1<sup>st</sup> respondent on the aspect of maintainability of the Execution Petition before this Tribunal. We have also gone through the written submissions filed on behalf of the petitioner.

**8.** The learned counsel for the petitioner has drawn our attention to Sub-Section 3 of Section 120 of the Electricity Act, 2003 to canvas that this Tribunal is bound to execute any order made by it as a decree of civil court. It is argued that since the judgment dated 26.11.2014 has been passed by this Tribunal, it can be executed only by this Tribunal and therefore, the Execution Petition is maintainable. He also placed reliance upon judgment

of the Hon'ble Supreme Court reported as *Maharashtra State Electricity Distribution Company Limited vs. Ratnagiri Gas and Power Private Limited & Ors.* 2023 (15) SCALE to buttress his submissions.

**9.** In order to decide the issue regarding maintainability of the instant Execution Petition before this Tribunal we find it profitable to quote Sub-Section 3 of Section 120 of the Electricity Act, 2003 hereunder:-

*“(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.”*

**10.** It cannot be gainsaid that this legal provision makes any order passed by this Tribunal under the Act executable by the Tribunal as a decree of civil court. However, in the instant case, the petitioner is actually and in effect seeking execution / enforcement of the order dated 09.05.2013 passed by CERC in petition No.14/MP/2011. What this Tribunal has done by way of judgment dated 26.11.2014 is dismissal of the appeal filed by wind power generator i.e. the 1<sup>st</sup> respondent against the said order dated 09.05.2013 of CERC, thereby upholding the same. No fresh order or direction has been passed by this Tribunal *dehors* the order dated 09.05.2013 of CERC. This Tribunal has neither modified nor reversed the said impugned order of the CERC.

**11.** Therefore, the petitioner should have approached the CERC by way of the execution petition for recovery of compensation from the 1<sup>st</sup> respondent as directed vide order dated 09.05.2013.

**12.** Reliance placed by the petitioner upon the judgment of the Hon'ble Supreme Court in *Maharashtra State Electricity Distribution Company Limited vs. Ratnagiri Gas and Power Private Limited & Ors.* (Supra) is totally misplaced. The issue of maintainability of the execution proceedings before the APTEL had not arisen in that case before the Hon'ble Supreme Court and there is no discussion on this issue in the entire judgment.

**13.** Hence, the execution petition is hereby dismissed as not maintainable before the Tribunal with liberty to the petitioner to file the same before the CERC, of course subject to the law of limitation.

**Pronounced in the open court on this the 31<sup>st</sup> day of May, 2024.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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