

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Review Application No. 02/2017
(M.A. No. 110/2017)
In
Appeal No. 79/2014**

**And
Review Application No. 04/2017
(M.A. No. 325/2017)
In
Appeal No. 79/2014**

**And
Review Application No. 06/2017
(M.A. No. 330/2017 & M.A. No. 331/2017)
In
Appeal No. 79/2014**

Debadityo Sinha & Ors. Vs. Union of India & Ors.

CORAM:

**HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

Present: Applicant/Appellant(s) :

**:Mr. Pinaki Mishra, Sr. Adv., Mr. Vijay K. Sindhi, Adv., Mr. Sanjeev Kumar, Adv., Mr. Anshul Sehgal, Adv. Mr. Tarunvir Singh Khehar, Adv.
:Mr. Pradeep Misra and Mr. Daleep Dhyani, Adv.**

Date and Remarks	Orders of the Tribunal
Item Nos. 7 to 9 March 31, 2017 ps	<p><u>M.A. 325/2017.</u></p> <p>The Applicant in the M.A. has presented a Review Application invoking Section 19(4) Act of the NGT Act, 2010 seeking review of the Judgment dated 21.12.2016 passed in Appeal No. 79/2014 and M.A.'s 694/2014 and 511/2015.</p> <p>By M.A. No. 225/2017 the review applicant has sought grant of interim order to stay the judgment under the review dated 21.12.2016.</p> <p>In response to the notice in the Review Application and this M.A, Ms. Parul Gupta has appeared for the applicant (Debaditya Sinha and Ors.-Appeal No.</p>

79/2014) who is respondent in the Review Applications.

She has also filed detailed reply to the review application and a synopsis of the contention opposing the interim relief sought.

We have heard the Learned Designated Senior Mr. Pinaki Mishra, Counsel appearing for the project proponent/review petitioner in Review Application 04 of 2017, Additional Solicitor General for the State of U.P. and the Union of India as also the Learned Advocate appearing for MoEF.

Learned Senior Counsel, Mr. Pinaki Mishra for the project proponent/Applicant would submit that though they have sought for an interim order of stay, presently and they would not press for the said relief but would avail adjudication of the review on its merit. Submission is placed on record.

However, he seeks an interim order to direct the State of U.P. who has entered into power purchase agreement with the project proponent to extend the period of transaction for further period, subject to result of the Review Application.

The relief so sought has met with serious opposition from in Applicant 79 of 2014. Ms. Parul Gupta has filed a brief note of a submission in which she has taken the following contentions:-

1. Approval, renewal and revocation of Power Purchase Agreement is entirely in the domain of the State Electricity Regulatory Commission under the Electricity Act, 2003. Thus, it is entirely upon

the Commission to decide on the relief sought.

2. The Power Purchase Agreement is an agreement between Power Producer and Purchaser. There may be many such agreements entered into by the project proponent but all depend on the validity of the Environmental Clearance. Once the EC has been cancelled by this Tribunal by the order under review, no permission could be granted to revalidate or validate agreement which falls consequent to quashing of the Environmental Clearance.

3. The relief sought for renewal of PPA is based on the presumption that this Tribunal may grant relief in their favour. It is likely to set a bad precedent.

Responding to this contention, Learned Sr. Counsel submits that the applicant has entertained into unjustified apprehension, for reason this Tribunal is considering every issue relating to the Review Application and therefore, there is no question of presuming any interim order passed either would be in favour of the Review Applicant or the Appellant/Respondent.

He submits that the Power Purchase Agreement forms the core and soul of the entire project as the generation of power must be consumed. The State of U.P. has entered into power purchase agreement. Being a party to these proceedings they have also requested that the relief sought by the project proponent to revalidate PPA be granted and therefore, there is no prejudice that is likely to be caused to the Applicant in the Appeal No. 79 of 2014 who is armed with order of the Tribunal.

The Power Purchase Agreement is to expire by flux

of time on 31st March, 2017, unless it is validated. In case the project proponent succeeds in its Review Application it will be next to impossible to get fresh buyers for the power that is likely to be generated by the project and in such as event the consequences following there from will have very adverse impact on the project proponent. He has referred to the intended purpose of the State Government approving the project proponent for the general welfare of the backward area in the State of U. P. which is devoid of the power supply.

He submits that the project is in public interest and therefore, a very pragmatic approach has to be adopted. Lastly, he submits the applicant has failed to point out what prejudice is likely to be caused in case the Tribunal grants interim relief or makes any observation.

The State of UP has virtually championed the cause of project proponent. Learned AAG representing the State of UP would submit that the Power Purchase Agreement entered into by the State with the Project Proponent is in public interest. It will provide electric energy to the remote areas of the State which are deprived of basic amenities and requirement in life. Thus, he submits that Tribunal may permit State of UP and the Project Proponent to renew the Power Purchase Agreement which will expire in a afflux of time on 31st March, 2017.

Having considered the request of applicant and the grounds of opposition, we must observe that this Tribunal is presently seized of the matter in R.A. No. 04/2017. The Appellant who is opposing this review has questioned the maintainability of R.A. on merit and

limitation.

We are yet to hear the R.A. on these two issues.

The fact situation undoubtedly is that the Judgment in Appeal No. 79/2014 dated 21/12/2016 has neither been annulled/modified/or interfered in any appeal action. Therefore, it needs no mention that all concerned and those brought within the mischief of direction of the Tribunal are aware of the consequences flowing from the ultimate decision taken in the said appeal. It is also not in dispute that the EC has been cancelled of course subject to certain conditions in the order under review.

The question raised is whether, under given circumstances, this Tribunal could pass any order directing the parties to renew the power purchase agreement.

Admittedly, the Power Purchase Agreement is a *bi-parte* commercial transaction between the project proponent and the buyer namely the State of U. P. . It is also not in dispute that any such transaction is subject to permission/approval i.e. Electricity Regulation Commission referred to in the Electricity Act, 2003.

As far as this Tribunal is concerned, jurisdiction is confirmed to issue related to Environment and the impugned jurisdiction regarding Environment Clearance in which validity or otherwise of any commercial transaction had not arise for consideration. But the fact situation is the effect of Judgment of this Tribunal on such transaction.

We do not wish to express any opinion on that but

would like to conclude by observing that the power purchase agreement referred to in the application being a bi-partite agreement between the Project Proponent and the purchaser of the electricity by the State of UP. They are competent to transact further.

It is commercial transaction and therefore, they may on their own violation transact and agree upon such terms and conditions with regard to renewal etc by mutual consent for which no specific direction from this tribunal may be necessary.

Liberty to transact further terms and conditions may be permissible under the original agreement as may be suitable for them for extension of period etc for which there need not be any specific direction from this Tribunal to the parties. We further conclude by observation that any order for that matter, the expression does not mean to affect or prejudice the contention of the Review Application or the appellant to be interpreted.

List it for final hearing on 18th April, 2017.

.....JM
(Dr. Jawad Rahim)

.....EM
(Ranjan Chatterjee)