

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.45 of 2017

In

LPA 1978 of 2016

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Essar Power (Jharkhand) Limited, a company incorporated under the Companies Act, 1956, having its registered office null address at, Lower Ground Floor, Hotel Conclave Boutique, A-20, Kailash Colony, New Delhi- 1100048.

.... Petitioner/s

Versus

1. Bihar State Power Holding Company Limited. through G.M. Commerce, B.S.P.H. Col. Ltd., having its registered office at 1st Floor, Vidyut Bhawan, Bailey Road, Patna - 800001, Bihar.
2. The Union of India, through Secretary, Ministry of Coal, having its adress at Shastri Bhawan, P.O. & P.S. Parliament Street, Town & District - New Delhi(N.C.T. of Delhi).
3. ICICI Bank Limited, through its Manager, having its office at ICICI Centre, 163, H.T. Parekh Marg Backbay Reclamation, Churchgate, Mumbai - 400020

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate

Mr. Ashish Giri, Advocate

For the Respondent no. 1: Mr. Mr. Anand Ojha, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

10 18-07-2017

I.A. No. 1056 of 2017

Heard.

This application has been filed for condoning the delay for about seventy eight days in preferring the Civil Review petition.

No counter affidavit has been filed on behalf of the respondents.



For the reasons mentioned in the interlocutory application, we are satisfied that sufficient cause has been shown by the petitioner which prevented him from preferring the Civil Review petition within time.

As a result, this interlocutory application is allowed and the delay in filing the Civil Review petition is hereby condoned.

Civil Review No. 45 of 2017

This civil review application has been filed by the petitioner for modification of paragraph-22 of the judgment and order under review dated 28.10.2016 passed in LPA No. 1978 of 2016.

It is contended on behalf of the petitioner that the matter has been kept open for Bihar Electricity Regulatory Commission (BERC) to take a decision afresh as and when the dispute reaches to BERC. According to the petitioner, appropriate authority is CERC.

Learned counsel appearing on behalf of Power Holding Company submits that BERC is the appropriate Commission and it is BERC which has approved the Tariffs.

However, a copy of the agreement has been shown to us and Clause 14.3.1.1 thereof discloses that such dispute shall be



submitted to adjudication by the “**Appropriate Commission**” and the appeal against the decisions of the “**Appropriate Commission**” shall be made only as per the provisions of the Electricity Act, 2003 as amended from time to time. However, in view of the consensus arrived at between the parties, the paragraph-22 is substituted as under.

“The appellant shall, however, withdraw its petition, which has been filed before CERC and we leave it open to the “**Appropriate Commission**” to take decision afresh on the dispute between the parties if and when such dispute reaches before the “**Appropriate Commission**”. ”

However, apart from the above, we make it clear that we have not formed or expressed any opinion as to who is the appropriate authority at this stage which obviously would be as per agreement and provisions of the Electricity Act.

Accordingly, this application stands disposed of.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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