

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**I.A. NO.336 OF 2015
IN
APPEAL NO.198 OF 2015**

Dated: 11th December, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member.**

In the matter of:-

**POWER GRID CORPORATION OF)
INDIA LIMITED,)
"Saudamini", Plot No.2, Sector-29,)
Gurgaon-122001.) ... Appellant**

AND

1. **CENTRAL ELECTRICITY)
REGULATORY COMMISSION,)
3rd and 4th Floor, Chanderlok)
Building, 36, Janpath, New)
Delhi - 110001.)**
2. **RAJASTHAN RAJYA VIDYUT)
PRASARAN NIGAM LIMITED,)
Vidyut Bhawan, Vidyut Marg,)
Jaipur - 302005.)**
3. **AJMER VIDYUT VITRAN)
NIGAM LIMITED,)
400 Kv gss Building (Ground)
Floor), Ajmer Road, Heerapura,)
Jaipur - 302024.)**

4. **JAIPUR VIDYUT VITRAN)**
NIGAM LIMITED,)
400 Kv gss Building (Ground)
Floor), Ajmer Road, Heerapura,)
Jaipur – 302024.)
5. **JODHPUR VIDYUT VITRAN)**
NIGAM LIMITED,)
400 Kv gss Building (Ground)
Floor), Ajmer Road, Heerapura,)
Jaipur – 302024.)
6. **HIMACHAL PRADESH STATE)**
ELECTRICITY BOARD,)
Vidyut Bhawan, Kumar House)
Complex Building II, Shimla –)
171 004.)
7. **PUNJAB STATE ELECTRICITY)**
BOARD,)
The Mall, Patiala – 147 001.)
8. **HARYANA POWER PURCHASE)**
CENTRE,)
Shakti Bhawan, Sector-6,)
Panchkula (Haryana) – 134109.)
9. **POWER DEVELOPMENT)**
DEPARTMENT,)
Government of Jammu and)
Kashmir, Mini Secretariat,)
Jammu – 180001.)
10. **UTTAR PRADESH POWER)**
CORPORATION LIMITED,)
(Formerly Uttar Pradesh State)
Electricity Board), Shakti)
Bhawan, 14, Ashok Marg,)
Lucknow – 226 001.)

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11. **DELHI TRANSCO LIMITED,**)
Shakti Sadan, Kotla Road, New)
Delhi – 110 002.)
 12. **BSES YAMUNA POWER)**
LIMITED,)
Shakti Kiran Building,)
Karkardooma, Delhi – 110 092.)
 13. **BSES RAJDHANI POWER)**
LIMITED,)
BSES Bhawan, Nehru Place,)
New Delhi – 110 019.)
 14. **NORTH DELHI POWER)**
LIMITED,)
Power Trading & Load Dispatch)
Group, Cennet Building,)
Adjacent to 66/11kV Pitampura-)
3, Grid Building, Near PP)
Jewelers – 110 034.)
 15. **CHANDIGARH)**
ADMINISTRATION,)
Sector 9, Chandigarh – 160009.)
 16. **UTTRAKHAND POWER)**
CORPORATION LIMITED)
Urja Bhawan, Kanwali Road,)
Dehradun – 248001.)
 17. **NORTH CENTRAL RAILWAY,)**
Allahabad – 211 011.)
 18. **NEW DELHI MUNICIPAL)**
COUNCIL,)
Palika Kendra, Sansad Marg,)
New Delhi – 110 002.)

19. **STERLITE INDUSTRIES (I))**
LIMITED,)
SIPCOT Industrial Complex,)
Madurai Bypass Road, TV)
Puram P.O., Tuticorin – 628 002,)
Tamil Nadu.) **... Respondents**

Counsel for the Appellant(s) : Ms. Swapna Seshadri.

Counsel for the Respondent(s) : Mr. R.B. Sharma for **R-13**.

J U D G M E N T

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. In this Appeal, the Appellant - Power Grid Corporation of India Limited (“**PGCIL**”) has challenged order dated 10.06.2015/22.06.2015 passed by the Central Electricity Regulatory Commission (“**the Central Commission**”) in Petition No.42/TT/2013. On 29/9/2015, we had issued notice on the appeal as well as on the interim application. Dasti in addition was granted. Respondents have been served. Affidavit of service has been filed.

2. Gist of the Appellant’s case needs to be stated.

The Appellant is a Government Company and is undertaking Inter-State Transmission of Electricity in India. It discharges its functions under the regulatory control of the Central Commission. One of the transmission schemes being executed in part by the Appellant is the Transmission Scheme for enabling import of NER/ER surplus power by NR in Eastern Region, for the 2009-14 period. The scope of the work to be executed by the Appellant consists of the following:

- “i. Asset-I: 2 nos. 400 kV lines bays along with 2 nos. 80 MVAR switchable line reactors at 400 kV Siliguri Sub-station; and*
- ii. Asset-II: 2 nos. 400 kV lines bays at Bongaigaon Sub-station.”*

3. The transmission project was scheduled to be commissioned within 18 months from the date of the approval and accordingly, the scheduled date of commissioning of the project works out to be 18.3.2013. As against the above, Asset-I was commissioned on 1.4.2013 and Asset-II was commissioned on 1.6.2013. It is the case of the Appellant that even though the Appellant completed the execution of the

above transmission assets, there was a delay of 20 months in commissioning of the associated Siliguri-Bongaigaon 400 kV D/C transmission line, which was being executed by M/s. Sterlite Industries Limited under the competitive bidding. To complete the facts, it must be stated here that the Central Commission has passed an order in Petition No.162/MP/2011 condoning the said delay.

4. It is pointed out that the Central Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (**“Tariff Regulations, 2009”**). The Tariff Regulations, 2009 have come into force on 1.4.2009 and were to remain in force for a period of five years till 31.3.2014. Regulation 3(12)(c) of the Tariff Regulations, 2009 reads as under:

*3(12) “**Date of commercial operation**” or “**COD**” means (c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:*

Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service.”

5. On 17.1.2013, the Appellant filed the instant petition before the Central Commission praying for determination of tariff of Assets-I and II mentioned hereinabove and also for applying second proviso to Regulation 3(12)(c) and declare the assets as commercially operational. In the said petition, the Appellant had sought approval of the transmission charges for Asset-I and II nos. 400 kV line bays along with 2 nos. 80 MVAR switchable line reactors at 400 kV Siliguri Sub-station and Asset-II 2 nos. 400 kV line bays at Bongaigaon Sub-station under Transmission Schemes for enabling import of NER/ER surplus power by NR in Eastern Region, for the period from 1.2.2013 to 31.3.2014, based on the Tariff

Regulations, 2009. The Appellant had also prayed for approval of provisional tariff as per clause (4) of Regulation 5 of the Tariff Regulations, 2009.

6. The Central Commission in its order relied on the judgment of this Tribunal dated 2/7/2012 in **Punjab State Power Corporation Limited v. Power Grid Corporation of India Limited in Appeal No.123 of 2011**, where this Tribunal has held as under:

“10. A transmission system may comprise of one or more transmission lines and sub-station, inter-connecting transformer, etc. According to above definition an element of the transmission system which includes a transmission line, could be declared as attained COD if the following conditions are met.

- i) it has been charged successfully,*
- ii) its trial operation has been successfully carried out, and*
- iii) it is in regular service.”*

7. Applying the above judgment, while disposing of the petition, this Tribunal observed as under:

“12. We are of the view that the instant transmission assets could be charged and trial operation could be successfully carried out only on commissioning of the Bongaigaon-Siliguri Transmission Line, which is stated to have been commissioned in November, 2014. Accordingly, the date of commercial operation of the transmission assets could be only during the 2014-19 tariff period. However, the petitioner has claimed tariff for the transmission assets as per the 2009 Tariff Regulations. As such, the petitioner is directed to file a fresh petition claiming tariff for the transmission assets as per the 2014 Tariff Regulations within 30 days of issue of this order.”

8. Written submissions opposing application for stay have been filed on behalf of Respondent No.13. Other Respondents have not chosen to appear though served.

9. We have heard Mr. Sen, learned counsel for the Appellant and Mr. Sharma, learned counsel for Respondent No.13 and read their written submissions on the application for stay. Mr. Sen, learned counsel submitted that the Appellant has completed the scope of its work. The transmission assets were ready for regular service but the transmission was delayed because of delay caused by third party i.e. M/s. Sterlite Industries Limited. Such a case is covered by the second

proviso to Regulation 3(12)(c) of the Tariff Regulations, 2009. The Appellant has, therefore, rightly claimed tariff for transmission assets as per 2009 Tariff Regulations and it was wrong on the part of the Central Commission to direct the Appellant to file fresh petition claiming tariff for the transmission assets as per the 2014 Tariff Regulations.

10. Counsel submitted that **Punjab State Power Corporation Limited**, is not applicable to this case because in that case this Tribunal was dealing with a transmission line. In this case, there is a sub-station which is existing, and had to be upgraded. The bays and reactors have to be charged simultaneously since the reactor is being used as a bus reactor at Siliguri to control the problem of high voltage at the Siliguri Sub-station (even in the absence of the commissioning of the line) as per the directive issued by POSOCO dated 20.11.2012. To the written submission, a sketch is annexed as Appendix-X. Admittedly, the sketch was not filed in the Central Commission. At Appendix-B, the testing and pre-commissioning report of the equipment are annexed. Counsel

submitted that some of the documents comprising Appendix-B were not before the Central Commission. Appendix-C (which are minutes of the meeting of the Eastern Regional Power Committee) and Appendix-D which is letter dated 20.11.2012 of POSOCO are stated to be on record.

11. Mr. Sharma, learned counsel for Respondent No.13 submitted that in this appeal, the Appellant has raised a new fact related to the switchable line reactor about its usefulness in maintaining desired voltage level and improving the voltage profile at Siliguri Sub-station. This was not raised before the State Commission. Counsel submitted that the judgment of this Tribunal in **Punjab State Power Corporation Limited** is squarely applicable to this case and, therefore, the application deserves to be dismissed.

12. In our opinion, the Appellant has not made out any case for stay of the impugned order. The Appellant appears to have raised certain new issues like use of reactor as a bus reactor at Siliguri to control the problem of high voltage at the Siliguri Sub-Station even in the absence of the commissioning of line.

There is no indication in the impugned order that these points were raised nor is it contended that these points were raised and not dealt with by the Central Commission. The sketch which is produced in this Tribunal was not produced before the Central Commission. Certain documents which are annexed to the Appellant's written submissions were admittedly not filed before the Central Commission. At this stage, therefore, we are unable to take those points into consideration.

13. In our opinion, the present case is clearly covered by the **Punjab State Power Corporation Limited**. In that case, 400 KV Barh Balia double circuit transmission line was planned by the Appellant who was Respondent No.1 therein for evacuation of power output from Barh STPS to NTPC. The construction of transmission line and switchgear at the Balia end was in the scope of the works of the Appellant. The switchgear and sub-station at Barh end was to be constructed by NTPC as per Government of India guidelines. The commissioning of Barh STPS was delayed by NTPC. Works of Barh Balia line in the

scope of the Appellant was completed in June 2010. On 30.6.2010, the line was idle charged from Balia end by the Appellant. The Appellant declared commercial operation of the line w.e.f. 1.7.2010 even though the transmission line at Barh end was not ready on that day and was completed only in August, 2011. The Appellant filed petition before the Central Commission for determination of tariff. The Appellant placed reliance on second proviso to Regulation 3(12)(c) of the Tariff Regulations. The Appellant's contention was rejected by this Tribunal holding that merely because the components of the transmission line in the scope of the Appellant were ready, the line could not be considered as completed and ready for use till the switchgear and protection and metering arrangements etc. at Barh end of the line were completed. Transmission line could not be considered as completed unless all the components of the transmission are ready for use. This Tribunal held that second proviso to Regulation 12(c) will be applicable if the transmission line is ready in all respect for regular use but is prevented for use due to some reasons beyond the control of transmission licensee, e.g. high voltage

in the system. In the present case, bays and line reactors covered in the petition were ready but the successful trial operation and charging could not be carried out without the Bangaigaon-Siliguri Transmission line getting commissioned. We have already quoted the relevant portion of **Punjab State Power Corporation Limited** hereinabove. Therefore, this case, in our prima facie opinion, is also not covered by second proviso to Regulation 3(12)(c) of the 2009 Tariff Regulations.

13. Our attention is drawn by counsel for Respondent No.13 to the Memorandum dated 19.9.2011 issued by the Appellant which contains investment approval for the Appellant's sub-station works. It is clearly stated therein that subject assets are required for Bongaigaon-Siliguri 400 KV D/C transmission line and are to be matched with it. Prima facie, therefore, there is substance in the submission of counsel for Respondent No.13 that the subject assets can be in regular service only when the 400 regular KV station line is ready.

14. Counsel for the Appellant submitted that the judgment of this Tribunal in **Punjab State Power Corporation Limited** is

challenged in the Supreme Court. That may be so. However, as long as the said judgment is not set aside by the Supreme Court it continues to bind us. We *prima facie* see no reason to take a different view. The Appellant is, therefore, not entitled to stay of the impugned order. The interim application is rejected. We, however, make it clear that all observations made by us which touch the merits of the case are *prima facie* observations made for the purpose of deciding the interim application.

15. The Registry to place the appeal on board for final hearing on 22.02.2016.

16. Pronounced in the Open Court on this 11th day of December, 2015.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

✓ **REPORTABLE/NON-REPORTABLE**