

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 212 OF 2015 &
IA NO. 277 OF 2016 ON THE FILE OF THE APPELLATE
TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 24th October, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:

West Bengal State Electricity Distribution Company Limited,
Vidyut Bhavan, Block DJ, Section-II,
Salt Lake City,
Kolkata – 700 091. Appellant(s)

Versus

- 1. Central Electricity Regulatory Commission,**
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001.

- 2. N.H.P.C. Limited,**
N.H.P.C. Office Complex,
Sector-33, Faridabad-121003,
Haryana

- 3. M/s Tata Consulting Engineers Ltd.,**
Matulya Centre A, 1st Floor,
249 Senapati Bapat Marg, Lower Parel (West),
Mumbai 400 013, India Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Mazag Andrabi
Mr. Varun Kapur

Counsel for the Respondent(s) : Mr. Rajiv Shankar Dvivedi
Mr. S.K. Sarkar
Ms. Arti Dvivedi for R-2

The Appellant has sought the following reliefs in Appeal No. 212 of 2015:

- (a) Allow the present appeal and set aside the impugned order dated 22.01.2015 passed by the Hon'ble Commission in Petition No.115/GT/2013 to the extent the same has been challenged in terms of the facts and grounds indicated above.
- (b) Pass such further or further order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

The Appellant has presented in this Appeal for consideration under the following Questions of Law:

- a) Whether the Learned Commission is required to independency assess and address any concerns that have been raised by Stakeholders / beneficiary in the tariff proceedings? And whether the Learned Commission is required to record reasons in support of its decision on such concerns/objections?
- b) Whether the Learned Commission erred in concluding the time and cost overruns without subjecting the submissions of Appellant and Respondent No.2 herein, to judicial scrutiny?
- c) Whether the Learned Commission was justified in law in disposing off the Appellant's objections on the grounds that they have been addressed by Respondent NO.2 & 3 without indicating reasons for their satisfaction thereto?
- d) Whether the Learned Commission has carried out Prudence Check in relation to capital cost in the manner as postulated under the Tariff Regulation?

- e) Whether the Impugned Order suffered from errors apparent on the face of the record, including misconception of facts and law?
- f) Whether the Learned Commission has erred in determining the generating tariff of the Project by allowing time and cost overrun in absence of material documents such as Detailed Project Report (DPR) and Environmental Impact Assessment (EIA) Report; Insurance and Survey Reports wherever applicable?
- g) Whether the Learned Commission was justified by ignoring the factual and substantive discrepancies between the submissions made by the Respondent No.2 and the designated Independent Agency i.e. Respondent No.2?
- h) Whether any reliance could have been placed by the Respondent No.1 on the report of Respondent No.3 in view of the apparent discrepancies in data and information in such report?

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. We have heard learned senior counsel, Mr. Sanjay Sen, appearing for the Appellant and learned counsel, Mr. Rajiv Shankar Dvivedi, appearing for Respondent No.2.

2. Learned counsel appearing for Respondent No.2 has filed a communication dated 03.07.2018 and the same was taken on record.

3. Learned counsel appearing for Respondent No.2 submitted that in the light of the communication dated 03.07.2018, the instant appeal filed by the Appellant may be disposed of reserving liberty to the party to redress their grievance before the first Respondent.

4. ***Per contra***, learned senior counsel , Mr. Sanjay Sen, appearing for the Appellant submitted that in the light of the submission made by Respondent No.2, the instant appeal may be disposed of reserving liberty to the Appellant to file necessary application for seeking relief before the first Respondent and also directing the first Respondent to dispose of the matter afresh in accordance with law after affording reasonable opportunity to the Appellant and the second Respondent, without being influenced of the observations made in the impugned order dated 22.01.2015 passed in Petition No.115/GT/2013.

5. All the contentions of both the parties may be left open.

6. Submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the second Respondent, as stated above, are placed on record.

7. In the light of the communication dated 03.07.2018 issued by Mr. T. Rout, Chief (Law), Central Electricity Regulatory Commission and also the submissions made by the learned counsel appearing for the Respondent No.2, as stated above, the instant appeal filed by the

Appellant stands disposed of reserving liberty to the Appellant to file necessary application for seeking appropriate relief. In the event such application is filed for seeking relief, the first Respondent, CERC is directed to dispose of the same in accordance with law after affording reasonable opportunity to the Appellant and the Respondent No.2 without being influenced of the impugned order dated 22.01.2015 in Petition No.115/GT/2013 and shall be disposed of as expeditiously.

8. With these observations, the instant Appeal filed by the Appellant, being Appeal No. 212 of 2015, stands disposed of.

9. Party to bear the whole cost.

10. Order accordingly.

IA NO. 277 OF 2016

In view of the disposal of the Appeal No. 212 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of as withdrawn, on account of which, the relief sought in IA No.277 of 2016 does not survive for consideration and, hence, stands disposed of.

(S.D. Dubey)
Technical Member
Pr/pk

(Justice N.K. Patil)
Judicial Member