

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER IN DFR NO. 1992 OF 2018 &
IA NO. 706 OF 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI

Dated : 31st July, 2018

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

In the matter of:

Srijan Energy Systems Pvt. Ltd.
Office No.1, Gandhi Colony,
Jaora, Ratlam,
Madhya Pradesh - 457 226
Through its Authohzed Signatory
Mr. Soumya Ranjan Parida

...APPELLANT

VERSUS

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

2. **POWER GRID CORPORATION OF INDIA LIMITED (PGCIL)**
Chief Operating Officer (CTU-Planning)
Power Grid Corporation of India Limited
Saudamini, Plot No.-2, Sector-29
Gurugram – 122 001, Haryana, India

...RESPONDENTS

Counsel for the Appellant(s) : Mr. Sumanta Nayak
Mr. Samiron Borkataky

Counsel for the Respondent(s): Mr. Dhananjay Baijal
Mr. Nikhil Nayyar for R-1

Ms. Suparna Srivastava
Mr. Tushar Mathur for R-2

The Srijan Energy Systems Pvt. Ltd., the Appellant herein, has filed the instant Appeal, being DFR No. 1992 of 2018, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, being aggrieved by the impugned order dated 15.05.2018 passed in Case No.L-1/(3)/2009-CERC on the file of the Central Electricity Regulatory Commission, New Delhi.

The Appellant has sought the following reliefs in the instant Appeal, being DFR No. 1992 of 2018:

- (i) to set aside the impugned order dated 15.05.2018 passed by the Respondent Commission vide which the Respondent Commission approved the Detailed Procedure made under Regulation 27 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 for grant of Connectivity to projects based on renewable energy sources to inter-State Transmission System;
- (ii) to pass an order granting stay of the operation of the Detailed Procedure approved by the impugned order dated 15.05.2018 passed by the Respondent Commission, till the adjudication of the present appeal;

or in the alternative

- (ii) to pass an order granting stay of the issuance of Stage II connectivity to any applicant under the Detailed Procedure approved by the impugned order dated 15.05.2018 passed by the

Respondent Commission, till the adjudication of the present appeal;

- (iii) to order maintenance of status quo in relation to the rights of the Appellant to the Two (2) Bays being, Bay No. 219 and 222, that has been allotted to the Appellant at the existing Bhuj Pooling Station and which were secured by the Appellant after following due process as per the prevailing regulation and for which Rs 1.38 cr has been paid by the Appellant to Respondent No. 2;
- (iv) to pass an order directing Respondent No. 2 to immediately grant connectivity to the Appellant for its Bhuj 2 project as was recommended for grant on 31.07.2017 by the Respondent; and
- (v) to pass such other or further order(s) as this Hon'ble Tribunal may deem appropriate.

The Appellant has presented this Appeal for considering the following Questions of Law:

- A. Whether the Respondent Commission by passing the impugned order has completely overlooked its own findings and observations in MP/145/2017, under which order the Respondent No. 2 was directed to formulate a new Detailed Procedure?
- B. Whether the Respondent Commission's impugned order, in so much as, it remits the Appellant's Bhuj 1 project to the position of a Deemed Grantee of Stage II connectivity (Clause 5.1.2) subject to conditions in clause 9.2, is hit by the doctrine of promissory estoppel, since the Appellant's Phase I connectivity, LTA for 300 MW and allotment of bays which is now threatened to be revoked, had been obtained by diligently

following the requirements mandated by the Respondent No. 2 under the erstwhile Detailed Procedure?

- C. Whether the impugned order is grossly prejudicial in view of the fact the same lends preferential support to the winners of the SECI e-reverse auctions, who had not undertaken any of the procedures as mandated under the erstwhile Detailed Procedure and may now fall foul of the requirement of commissioning their project within 18 months from the date of Letter of Award as per the terms of the bids?
- D. Whether the impugned order passed by the Respondent Commission, in so much as, it treats the Appellant's Bhuj2 Project in the category of pending application (Clause 5.1.5), despite the fact that the Appellant's application had already been recommended for grant of connectivity, after thorough evaluation by Respondent No. 2, and the non-grant is only owing to the Respondent No. 2's omissions, is hit by the doctrine of legitimate expectation?
- E. Whether the Respondent Commission has completely overlooked the fact that the Appellant had mobilised all its resources by following the procedure mandated by the Respondent No. 2 itself under the erstwhile Detailed Procedure (approved by Respondent Commission) and had achieved several milestones by investing substantial time and money?
- F. Whether the Respondent Commission has failed to appreciate that the retrospective application envisaged in the impugned order would lead to irreparable financial loss, substantial time loss, and wastage of efforts already put in to place in relation to Phase I and Phase II of the Appellant's project?

- G. Whether the Respondent Commission has failed to appreciate that the Appellant does not fall in the category of a wind power generator which had acquired connectivity and had not taken any actions towards project development for a long period of time?
- H. Whether the impugned order is in violation of Regulation 27 of Connectivity Regulations, in so much as, the Respondent Commission has completely ignored the requirement of the second proviso to Regulation 27, which requires Respondent No. 2 to submit a statement indicating as to which of the comments of stakeholders have not been accepted by it along with reasons thereof?

ORDER

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

1. We have heard the learned counsel, Mr. Sumanta Nayak, appearing for the Appellant for quite some time.
2. During the course of the hearing, the learned counsel appearing for the Appellant, on instructions from the Appellant, submitted that, the instant Appeal, being DFR No. 1992 of 2018 & IA No. 706 of 2018, filed by the Appellant may kindly be dismissed as withdrawn reserving liberty to the Appellant to redress his grievance before the Central Electricity Regulatory Commission, New Delhi and all the grounds urged in the instant memo of appeal may kindly be left open.
3. Submissions made by the learned counsel appearing for the Appellant, as stated above, are placed on record.

4. The Registry is directed to number the Appeal.

5. In view of the aforementioned submissions made by the learned counsel appearing for the Appellant, the instant Appeal is dismissed as withdrawn reserving liberty to the Appellant to redress his grievances before the Central Electricity Regulatory Commission, New Delhi. All the contentions urged by the Appellant in the instant memo of appeal are left open.

6. With these observations, the instant Appeal, being DFR No. 1992 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi, stands disposed of.

[IA NO. 706 OF 2018 – Leave to file Appeal]

7. In view of the instant Appeal on the file of the Appellate Tribunal for Electricity, New Delhi has been dismissed as withdrawn, on account of which, reliefs sought in IA No. 706 of 2018 does not survive for considerations and, hence, stands disposed of as having become infructuous.

8. Order accordingly.

(S.D. Dubey)
Technical Member
js/vt

(Justice N.K. Patil)
Judicial Member