

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

ORDER IN APPEAL NO. 33 OF 2018 &
IA NO. 173 OF 2018
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 31st January, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Odisha Power Transmission Corporation Ltd.

Represented through its
Chairman-Cum-Managing Director,
Janpath, Bhubaneswar- 751022
Odisha.

..... Appellant

VERSUS

1. Power Grid Corporation of India Limited,

Represented through its
Chairman-Cum-Managing Director ,
"Saudamini", Plot No. 2,
Sector-29, Gurgaon – 122 001

2. Jharkhand State Electricity Board

Represented through its
Chairman-Cum-Managing Director,
In front of Main Secretariat,
Doranda, Ranchi – 834002

3. Jharkhand Urja Sancharan Nigam Ltd.,

Represented through its
Chairman-Cum-Managing Director,
Engineering Building, HEC,
Dhurwa, Ranchi – 834004

4. Central Electricity Regulatory Commission,

3rd /4th Floor, Chanderlok Building,
26, Janpath,
New Delhi 110001

..... Respondents

Counsel for the Appellant (s) : Mr. Raj Kumar Mehta
Ms. Himanshi Andley

Counsel for the Respondent(s): Mr. Sitiesh Mukherjee
Mr. Divyanshu Bhatt
Mr. Deep Rao for R-1

Respondent Nos. 2 to 4, though served, are unrepresented.

The Appellant has presented the instant Appeal seeking the following reliefs::

- (a) Set aside the order dated 20.09.2017 passed by Central Electricity Regulatory Commission in Petition No. 278/TT/2015 to the extent it directs that Transmission Charges of Asset 2 and Asset 6a from the date of COD till commissioning of the downstream network will be borne by OPTCL;
- (b) Direct that Billing, collection and disbursement of the Transmission Charges approved for Asset 2 and Asset 6a from the COD till 31.03.2019 will be governed by the provisions of Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time as provided in Regulation 43 of the CERC Tariff Regulations, 2014;
- (c) Pass such other Order/s as may be deemed just and proper in the facts and circumstances of the case.

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

- I. Whether the Learned Commission was justified in directing that the Appellant Odisha Power Transmission Corporation Limited (“OPTCL”) the STU formed under Section 39 of the Electricity Act, 2003 is liable to pay part of the Annual Fixed Charge (AFC) in respect of Asset-2 and Asset - 6a of the CTU, Power Grid Corporation of India Limited (PGCIL) approved by the Learned Commission in the impugned order for non-commissioning of Downstream Assets under Eastern Region System Strengthening Scheme (ERSS-III) ?
- II. Whether the Learned Commission erred in directing OPTCL to share part of the AFC approved by the Commission in the impugned order in respect of Asset-2 and Asset - 6a of PGCIL from COD allowed by the Commission for these Assets till Commissioning of OPTCL Downstream Assets, even though there was no subsisting Implementation Agreement between OPTCL & PGCIL?
- III. Whether the Learned Commission was justified in directing that part of the AFC in respect of Asset-2 and Asset-6a of PGCIL approved by the Commission should be shared by OPTCL even though CERC (Sharing of Inter-State Transmission Charges and Losses), Regulations, 2010 which are in force with effect from 01.07.2011 provide for sharing of the Total Transmission Charges and Losses by DICs (Designated Inter-State Customers) under PoC methodology?
- IV. Whether the Learned Commission erred in placing reliance on its earlier order dated 05.08.2015 in Petition No.

11/SM/2014, order dated 19.04.2016 in Petition No. 100/TT/2014, order dated 21.09.2016 in Petition No. 43/MP/2016, order dated 04.01.2017 in Petition No. 155/MP/2016 and finally order dated 24.02.2017 in Petition No. 85/TT/2015 on the issue of Sharing of Transmission Charges even though OPTCL was not a party to any of the above proceedings before the Commission ?

- V. Whether the Learned Commission was justified in condoning the delay on the part of PGCIL in achieving COD of Asset-2 and Asset-6a but not condoning the delay in commissioning of Downstream Assets by the Appellant OPTCL, even though the delay in both cases was due to identical reasons like Severe Rain, Flood, RoW Issues, Forest and selection of Dead-end Tower Design at Pandiabil end etc.?
- VI. Whether the direction for Transmission Charges of the Asset-2(LILO of one Ckt. of 400kV Baripada-Mendhasal DC Line at OPTCL's New-Duburi Sub-Station) to be borne by OPTCL till Commissioning of Downstream Network is justified even though the Downstream Assets of the Appellant OPTCL were in fact constructed much before COD of PGCIL Assets but were charged at 220kV Voltage Level since PGCIL could not extend 400kV Power Supply in time?
- VII. Whether PGCIL is liable to compensate OPTCL for the delay in commissioning of its Asset (LILO of one Ckt. of 400kV Baripada-Mendhasal DC line) for not extending 400kV Power Supply to OPTCL's New-Duburi Sub-Station?
- VIII. Whether the inability of PGCIL during the year 2015 to complete Asset-6a (400kV Pandiabil GIS Sub-Station and Associated Lines)before start of world famous Nabakalebar

Festival, 2015 of Lord Jagannath in Puri, Odisha when OPTCL could not connect its Downstream Assets to Pandiabil Sub-Station of PGCIL as per Original Plan to supply Power to its Samangara Sub-Station (Puri) for uninterrupted Power Supply to Puri Town for the said Festival and instead connected to another 220 kV Sub-Station of OPTCL incurring extra cost of Rs. 18.66 Crore, could be construed as OPTCL's inability to complete and commission the Downstream Assets ?

- IX. Whether PGCIL is liable to compensate OPTCL for incurring extra expenditure of Rs. 18.66 Crore due to delay in commissioning of its Asset-6a (400kV Pandiabil GIS Sub-Station and Associated Lines) for extending power supply to OPTCL's Samangara Sub-Station required for stable power supply in view of Nabakalebar Festival, 2015?
- X. Whether the Learned Commission erred in directing the Appellant OPTCL to share the AFC of the Asset-2 and Asset-6a from COD till Commissioning of its Downstream Assets even though in fact the Downstream Assets of OPTCL relating to Asset-2 were already completed beforehand and waiting for PGCIL Assets to be commissioned for receiving Power Supply for the Consumers of the State of Odisha and construction of Downstream Assets of OPTCL relating to Asset-6a as per Original Plan had to be re-planned for meeting the stable power supply requirement for Puri Town keeping in view Nabakalebar Festival, 2015 of Lord Jagannath?
- XI. Whether the Learned Commission was justified in disposing of Petition No. 278/TT/2015 by passing the impugned order

dated 20.09.2017 only on the basis of documents filed by PGCIL on 27.05.2016, 28.11.2016, 30.01.2017, 24.03.2017, 25.08.2017 and 01.09.2017 even though copies of the said documents were never served on OPTCL?

ORDER

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

1. In the instant Appeal, the Appellant, Odisha Power Transmission Ltd (OPTCL) is questioning the legality and validity of the Order dated 20.09.2017 passed by the Central Electricity Regulatory Commission, New Delhi in Petition No. 278/TT/2015 in the case of Power Grid Corporation of India Ltd. v Bihar State Power (Holding) Company Ltd & Ors.

2. Heard the learned counsel, Mr. R.K. Mehta, appearing for the Appellant/OPTCL for quite some time. During the course of his submissions, the counsel for the Appellant submitted that, the instant appeal, being Appeal No. 33 of 2018, may be disposed of reserving liberty to the Appellant to file a review petition for reviewing the impugned Order dated 20.09.2017 passed by the Central Electricity Regulatory Commission, New Delhi (fourth Respondent herein) in Petition No. 278/TT/2015 within a period of three weeks from today. All the contentions and grounds urged by the Appellant in the instant appeal may kindly be left open.

3. The learned counsel, Mr. Divyanshu Bhatt, appearing for the first Respondent, submitted that, in the light of the submission of the learned counsel for the Appellant, as stated supra, an appropriate order may be passed to meet the ends of justice.

Submissions of the learned counsel appearing for the Appellant and the first Respondent, as stated supra, are placed on record.

Respondent Nos. 2 to 4, though served, are unrepresented.

4. In the light of the submissions of the learned counsel for the Appellant and the learned counsel for the first Respondent, as stated supra, the instant appeal, being No. 33 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

The liberty is reserved to the Appellant to file a review petition for reviewing the impugned Order dated 20.09.2017 passed in Petition No. 278/TT/2015 on the file of the Central Electricity Regulatory Commission, New Delhi (fourth Respondent herein) within a period of three weeks from today.

All the contentions and grounds urged by the Appellant in the instant appeal are left open.

With these observations the instant appeal, being No. 33 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

IA NO. 173 of 2018

In view of the Appeal No. 33 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 173 of 2018 does not survive for consideration and, hence, stands disposed of.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

vt/vg

(Justice N.K. Patil)
Judicial Member