

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

ORDER IN APPEAL NO. 200 OF 2015
AND
APPEAL NO. 201 OF 2015
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 1st February, 2019

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

APPEAL NO. 200 OF 2015

In the matter of:

North Karanpura Transmission Company Ltd.
12th Floor, 10B, DLF Cyber City,
Gurgaon -122 002

..... **Appellant(s)**

VERSUS

1. **Central Electricity Regulatory Commission**
3 & 4 Floor, Chanderlok Building
36, Janpath,
New Delhi 110 001
2. **Power Grid Corporation of India Ltd**
Corporate Office : Saudamini
Plot No. 2, Sector 29
Gurgaon 122 001
3. **Reliance Power Transmission Limited**
5th Floor, JMD Galleria
Sector 48, Sohna Road
Gurgaon 122 018
4. **Maharashtra State Electricity Distribution Co. Ltd.**
Prakashghad, Anant Kanekar Marg
Bandra (East),
Mumbai 400 051

5. **Dakshin Gujarat Viz Company limited**
Manavarachha Road, Kaopdara
Surat 395 006
6. **Madhya Gujarat Viz Company Limited**
Sadar Patel Vidyut Bhavan,
Race Course
Vadodara 390 007
7. **Paschim Gujarat Viz Company Limited**
Laxminagar, Namava Main Road
Rajkot 360014
8. **Gujarat Urja Vikas Nigam Limited**
Sadar Patel Vidyut Bhavan
Race Course,
Vadodara 390 007
9. **Uttar Gujarat Viz Company Limited**
Vish Nagar Road,
Mensana 384 001
10. **Madhya Pradesh Power Trading Company Limited**
Shakti Bhawan, Vidyut Nagar
Rampur,
Jabalpur 482 008
11. **MP Poorva Keshtra Vidyut Vitaran Company Limited**
Block No. 7, Shakti Bhawan
Jabalpur – 482008
12. **MP Pachim Khestra Vidyut Vitaran Company Limited**
GPH Compound, Polo Ground
Indore 452 015
13. **MP Madhya Kshetra Vidyut Vitaran Company Limited**
Bijli Nagar Colony, Nishtha Parisar
Govindpura,
Bhopal 462 023
14. **MP Audoyukik Kendra Vikas Nivam Limited**
Free Press House, 1st Floor
3/54, Press Complex, A.B. Road
Indore 452 008

15. **Chhattisgarh State Power Transmission Co. Ltd.**
Vidyut Seva Bhawan Parisar
Danganiya,
Raipur 492 013
16. **Goa State Electricity Department**
Vidyut Bhawan, Panaji
Goa 403 001
17. **Electricity Department**
UT of Daman and Diu
Sachivalaya, Moti Daman
Via Vapi, Daman 396 210
18. **Electricity Department**
Administration of Dadar Nagar Haveli
Dadra Nagar Haveli UT
Silvassa 396 230
19. **Heavy Water Projects**
Department of Atomic Energy
Heavy Water Board
Vikram Sarabhai Bhawan
Anushakti Nagar
Mumbai 400 054
20. **Jindal Power Limited**
Jindal Centre, 12, Bhikaiji Cama Place
New Delhi 110 066
21. **Torrent Power Limited**
Torrent House, Off. Ashram Road
Ahmedabad 380 009
22. **PTC India Limited**
2nd Floor, NBCC Tower
15, Bhjikaji Cama Place
New Delhi 110 066
23. **Adani Power Limited**
Adani House, Plot No. 83
Institutional Area, Sector 32
Gurgaon 122 001
24. **Rajasthan Power Procurement Centre**

- Shed No. 5/6, Vidyut Bhawan, Janpath
Jyoti Nagar,
Jaipur 302 005
25. **Jodhpur Vidyut Vitran Nigam Ltd.**
New Power House Industrial Area
Jodhpur 342 003
26. **Jaipur Vidyut Vitran Nigam Ltd.**
Vidyut Bhawan, Janpath
Jyoti Nagar,
Jaipur 302 005
27. **Ajmer Vidyut Vitran Nigam Ltd.**
Old Power House, Hathi Bhata
Jaipur Road,
Ajmer 305 001
28. **BSES Yamuna Power Ltd.**
2nd Floor, B Block
Shakti Kiran Building
Near Karkardooma Court
New Delhi- 110092
29. **BSES Rajdhani Power Ltd.**
BSES Bhawan, 2nd Floor
B Block, Behind Nehru Place Bus Terminal
Nehru Place,
New Delhi- 110019
30. **North Delhi Rajdhani Power Limited**
CENNET Building 33 kV Sub Section Building
Hudson Lines, Kingway Camp
Delhi 110 009
31. **New Delhi Municipal Council**
Palika Kendra Building
Opposite Jantar Mantar
Parliament Street,
New Delhi 110 001
32. **Uttarakhand Power Corporation Limited**
Urja Bhawan, Kanwali Road
Dehradun 248 001

33. **Uttar Pradesh Power Corporation Limited**
Shakti Bhawan, 14, Ashoka Road
Lucknow 226 001
34. **Pashimachal Vidyut Vitaran Nigam Limited**
Victoria Park, PIME,
Meerut 250 001
35. **Poorvanchal Vidyut Vitaran Nigam Limited**
Hydel Colony, Bhikaripur,
Varanasi 221 004
36. **Dakshinanchal Vidyut Vitaran Nigam Limited**
Urja Bhavan, NH-2, (Agra-Delhi By-pass Road
Sikandra, Agra 282 007
37. **Madhyanchal Vidyut Vitaran Nigam Limited**
4A, Gokhale Road,
Lucknow 226 001
38. **Kanpur Electricity Supply Company Limited (KESCO)**
14/71, Civil Lines,
Kanpur 208 001
39. Chief Electrical Distribution Engineer
North Central Railway
Head Quarter Officer, Subedarganj
Allahabad 211 033
40. **Uttar Haryana Bijili Vitran Nigam Limited**
Vidyut Sadan, C-16, Sector 6
Panchkula - 134109
41. **Dakshin Haryana Bijili Vitran Nigam Limited**
Vidyut Sadan, Vidyut Nagar
Hisar 125 005
42. **Punjab State Power Corporation Ltd.**
Old PSEB Headquarter Building
The Mall Road,
Patiala 147 001
43. **The Principal Secretary to J & K Govt.**
Civil Secretariat,
Srinagar 190 001

44. **Himachal Pradesh State Electricity Board**

Vidyut Bhawan,
Shimla 171 004

45. **Electricity Department**

5th Floor, UT Chandigarh Secretariat Building
Sector 9, Chandigarh – 160017

46. **Central Electricity Authority**

Sewa Bhawan, Rama Krishna Puram
Sector-1, New Delhi

..... **Respondents**

Counsel for the Appellant (s): Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza
Ms. Divya Anand
Mr. Kartik Anand

Counsel for the Respondent(s): Mr. Saurabh Mishra for R-1

Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Ranjitha Ramachandran for R-2

Ms. Shruti Awasthi for R-4

Mr. Anand K. Ganesan
Mr. Ashwin Ramanathan for R-8

Mr. Ashish Anand Bernard
Mr. Paramhans Sahani for R-10

Mr. Bipin Gupta for R-25 to 27

Mr. Alok Shankar
Mr. Mahip Singh for R-30

Mr. Rajiv Srivastava
Ms. Garima Srivastava
Ms. Gargi Srivastava for R-33 to 36

APPEAL NO. 201 OF 2015

In the matter of:

Talcher II Transmission Company Ltd.

12th Floor, Building No. 10B, DLF Cyber City,
Gurgaon -122 002

..... **Appellant(s)**

VERSUS

1. **Central Electricity Regulatory Commission**
3 & 4 Floor, Chanderlok Building
36, Janpath,
New Delhi 110 001
2. **Power Grid Corporation of India Ltd**
Corporate Office : Saudamini
Plot No. 2, Sector 29
Gurgaon 122 001
3. **Reliance Power Transmission Limited**
5th Floor, JMD Galleria
Sector 48, Sohna Road
Gurgaon 122 018
4. **Tamil Nadu State Electricity Board**
6th Floor, Western Wing
144, Anna Salai,
Chennai – 600 002
5. **Eastern Power Distribution Company of
Andhra Pradesh Limited**
P&T Colony, Seethammadhara
Vishakhapatnam 530 020
6. **Southern Power Distribution Company of
Andhra Pradesh Limited**
Srinivasa Kalyana Mandapam Backside
Tiruchanoor Road, Kesavayana gunta
Tirupati 517 501
7. **Central Power Distribution Company of
Andhra Pradesh Limited (APCPDCL)**
6-1-50, Corporate Office
Mint Compound,
Hyderabad 500 004
8. **Northern Power Distribution Company of
Andhra Pradesh Limited (APNPDCL)**
Vidyut Bhavan, Nakkalagutta,
Hanamakonda, Warangal 506001

9. **Power Company of Karnataka Limited**
Room No. 501, 5th Floor,
KPTCL Building, Kaveri Bhavan,
Bangalore 560 009
10. **Bangalore Electricity Supply Company Limited**
Power Purchase, BESCOM
2nd Floor, Corporate Office,
K.R. Circle,
Bangalore – 560 001
11. **Gulbarga Electricity Supply Co. Ltd. (GESCOM)**
Station Main Road,
Gulbarga 585 102
12. **Hubli Electricity Supply Co. Ltd.**
Corporate Office Navanagar
P.B. Road, Hubli 580 025
13. **Mangalore Electricity Supply Co. Ltd.**
Corporate Office, Paradigm Plaza,
A.B. Shetty Circle,
Mangalore 575001
14. **Chamundeshwari Electricity Supply Co. Ltd.**
Corporate Office, 927, L.J. Avenue,
New Kantharaj Urs Road, Saraswathipuram
Mysore 570 009
15. **Kerala State Electricity Board**
Vydyuthi Bhavan, Pattom
Thiruvananthapuram 695 004
16. **Puducherry Electricity Department**
137, Netaji Subhash Chandra Bose Road,
Puducherry 605 001
17. **Grid Corporation of Orissa Limited (GRIDCO)**
Janpath,
Bhubaneswar 751022
18. **Central Electricity Supply Utility of Orissa (CESU)**
2nd Floor, IDCO Tower, (Rupali Square)
Janpath,
Bhubaneshwar 751022

19. **Western Electricity Supply Co. Ltd. (WESCO)**
Burla, Sambalpur 768017
20. **Southern Electricity Supply Co. Ltd. (SOUTHCO)**
Behrampur, Ganjam 760 004
21. **North Eastern Supply Co. Ltd. (NESCO)**
Januganj, Balasore 756019
22. **Central Electricity Authority**
Sewa Bhawan, Rama Krishna Puram
Sector-1,
New Delhi

..... **Respondents**

Counsel for the Appellant (s): Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza
Ms. Divya Anand
Mr. Kartik Anand

Counsel for the Respondent(s): Mr. Saurabh Mishra for R-1

Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Ranjitha Ramachandran for R-2

Mr. G. Umapathy
Mr. S. Vallinayagam for R-4

Mr. R. Kathiravan
Mr. R. Jayaprakash for TANGEDCO

The Appellants have presented the instant two Appeals seeking the following reliefs:

- (a) The Hon'ble tribunal may be pleased to quash and set aside the impugned order dated 2nd September, 2015 passed by the Respondent No. 1 Commission in Petition No. 19/MP/2013 (In Appeal No. 200 of 2015) and Petition No. 20/MP/2013 (In Appeal No. 201 of 2015) and to set off the adverse affect in time and cost

overruns due to unavoidable delays owing to the circumstances explained in paragraphs 7 and 9 of this appeal,

- (b) That this Hon'ble Tribunal may be pleased to extend the COD of the project by giving clear working period of 30, 36, 42 months of each element as provided for initially to be reckon from the date of grant of authorization under section 68 of the Electricity Act, 2003 and issuance of Project Import Certification as per Project Import Regulations 1986 and compensate for reduction of "Revenue Earning years".
- (c) Grant such escalation of Input/Capital Costs as pleaded above by the Appellant, and relief for loss of opportunity in view of extension of this project.
- (d) Pending hearing and final disposal of this Appeal, the Long Term Transmission Customers may be ordered not to take any coercive action against the Appellant including encashment of contract performance guarantees furnished by the appellants under the TSA.
- (e) Grant such further escalation on Input/capital costs for the time during which the matter was pending before the Hon'ble Central Commission and also for the time that the matter pends before this Hon'ble Tribunal; and

- (f) For such other and further relief's as the nature and circumstances of the case may require.

The Appellants have presented the instant two Appeals for considering the following Questions of Law:

- I. Did the Respondent Commission err in passing the impugned order while holding that no direction is required to be issued on the prayers of Respondent No.2?
- II. Does the impugned order adopt a procedure which is ex-facie contrary to Section 19 of the 2003 Act?
- III. Whether in the absence of an enquiry under sub-section (1) of section 19 the impugned order and the proceedings thereunder being not maintainable, stand vitiated in law?
- IV. Whether the Respondent Commission err in holding that it did not notice any finding in the judgement of this Hon'ble Tribunal as far as the claim of the Appellant that it was not obliged to perform its obligation under the transmission service agreement being affected by *force majeure*?
- V. Whether the Respondent Commission disregarded the decision of this Hon'ble Tribunal rendered in judgement dated 2nd December, 2013 in Appeal Nos. 139 and 140 of 2013 ?

- VI. Is the impugned order ex-facie unlawful and contrary to the fundamental concept of judicial propriety and discipline as also opposed to the doctrine of merger ?
- VII. Did the Respondent Commission fail to understand that the Appellant was not seeking to renege from its obligation to execute the project, but was seeking an extension of the commercial operation date as there was a delay on account of grant of approval u/s 164 by the Central Government as held by this Hon'ble Tribunal in its Judgement in Appeal Nos. 139 and 140 of 2013?
- VIII. Whether the Respondent Commission can in law pull out the Appellant from the transmission project where the Appellant has been selected by as competitive bidding process initiated by Rural Electrification Corporation for implementing the transmission project without resolving the issues arising under the contract between the parties i.e. the transmission service agreement and the tender documents?
- IX. Whether the impugned order reducing the completion targets to 30 months in effect tantamount to an amendment to the transmission licence without following the procedure of amendment of licence u/s 18 of the 2003 Act?

- X. Did Respondent Commission fail to appreciate that in absence of a valid approval under section 68 the Appellant cannot undertake to complete the project within the timelines specified in the impugned order?

ORDER

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

1. In Appeal No. 200 of 2015, the Appellant, North Karanpura Transmission Co. Ltd., is questioning the legality and validity of the Order dated 02.09.2015 passed by the Central Electricity Regulatory Commission (CERC), New Delhi in Petition No. 19/MP/2013 in the case of Power Grid Corporation of India Ltd. v North Karanpura Transmission Company Ltd. & Ors.
2. In Appeal No. 201 of 2015, the Appellant, Talchur-II Transmission Co Ltd. is questioning the legality and validity of the Order dated 02.09.2015 passed by the Central Electricity Regulatory Commission, New Delhi in Petition No. 20/MP/2013 in the case of Power Grid Corporation of India Ltd. v North Karanpura Transmission Company Ltd. & Ors.
3. The learned counsel, Mr. Buddy A. Ranganadhan, appearing for the Appellants, during the course of his submissions, submitted that, the instant two appeals filed by the Appellants may kindly be disposed of reserving liberty to the Appellants to file necessary applications before the first

Respondent/CERC for redressing their grievances within a period of two weeks from today.

4. Further, the counsel for the Appellants submitted that, liberty also may kindly be reserved to the Appellants to assail the correctness of the impugned Orders dated 02.09.2015 passed in Petition Nos. 19/MP/2013 and 20/MP/2013 respectively and, in the event, orders passed by the first Respondent/CERC are against the Appellants, the Appellants may kindly be permitted to file the appeals against the impugned Orders as well as the order passed by the first Respondent/CERC on the applications filed by the Appellants before this Tribunal.

5. We have heard the learned counsel for the Appellant and the learned counsel for the Respondents.

6. Submissions of the counsel appearing for the Appellants, as stated supra, are placed on record.

7. In view of the submissions of the learned counsel for the Appellants, as stated supra, the instant two appeals, being Appeal Nos. 200 of 2015 and 201 of 2015, stand disposed of reserving liberty to the Appellants to file the necessary applications for redressing their grievances before the first

Respondent/CERC, New Delhi within a period of two weeks from the date of the receipt of this Order.

8. The liberty is also reserved to the Appellants in the event the prayers sought in the applications to be filed by the Appellants before the first Respondent/CERC are not considered or rejected by the first Respondent/CERC, the Appellants are permitted to file the appeals before this Tribunal questioning the correctness of the order impugned dated 02.09.2015 in Petition Nos. 19/MP/2013 and 20/MP/2013 and also against the order passed on the applications filed by the Appellants before the first Respondent/CERC.

With these observations the instant two appeals, being No. 200 of 2015 and 201 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi stand disposed of.

Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

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