

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated 27th April, 2012

Present: **HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,**
CHAIRPERSON,
HON'BLE RAKESH NATH, TECHNICAL MEMBER

Appeal No.134 OF 2011

In the Matter of:

Power Grid Corporation of India Ltd
Saudamini, Plot No12
Sector 29, Gurgaon -122 001
Haryana.

.....Appellant

Versus

1. **Central Electricity Regulatory
Commission**
3rd and 4th Floor, Chanderlok Building
36, Janpath, New Delhi -0 110 001.
2. **Madhya Pradesh power Trading Company Limited**
Shakti Bhawan, Rampur,
Jabalpur – 482 008.
3. **Maharashtra State Electricity Distribution Company Limited**
5th Floor, Prakashgad,
Plot No.9, Anant Kanekar Marg,
Bandra(East), Mumbai – 400 051.
4. **Gujarat Urja Vikas Niagam Limited**
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara-390 007.
5. **Electricity Department,**
Government of Goa, Vidyut Bhawan,
Near Mandvi Hotel, Panaji,
Goa – 403 001.

6. **Electricity Department,
Administration of Daman and Diu,
Power House Building, 2nd Floor,
Daman – 396 210.**
7. **Electricity Department,
Administration of Dadra and Nagar Haveli,
U.T. Silvassa – 396 230.**
8. **Chattisgarh State Electricity
Board,
P.O. Sunder Nagar, Dangania,
Raipur, Chattisgarh – 492 013.**
9. **Madhya Pradesh Audyogik
Kendra Vikas Niagam(Indore) Limited, 3/54, Press Complex,
Agra-Mumbai Road,
Indore-452 008.**

.....Respondents

Counsel for the Appellant **Mr. M. G. Ramachandran
Ms. Swapna Seshadri
Ms. Sneha Venkataramani
Mr. Anand K. Ganesan**

Counsel for the Respondent : **Mr. Manoj Dubey for R-2
Mr. Pramod Chodhary for R-2(Rep)**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Power Grid Corporation of India, the Appellant herein, has filed this Appeal as against the impugned order dated 08.6.2011 passed by the Central Electricity Regulatory Commission disallowing the Interest during construction and

Incidental Expenses during construction on the ground of delay in commissioning.

2. The short facts are as follows:-

a) The Power Grid Corporation of India is a Government Company. It discharges all functions of the Central transmission utility. Ministry of Power, Government of India, accorded the Investment Approval for implementing on East-West Corridor strengthening scheme through the letter dated 23.6.2006.

b) Accordingly, East-West transmission corridor strengthening scheme was agreed by all the constituents of the Western region to be included in the existing bulk power transmission agreement dated 31.3.1999. The project was scheduled to be commissioned within the period of 36 months from the date of the investment approval. As indicated above, investment approval was awarded on 23.6.2006. As per the Agreement the scheduled date of completion works out as 22.6.2009 and the date of Commercial Operation would be on 01.7.2009. However, the assets covered in the instant case were actually declared under Commercial Operation only on 01.10.2010. Thus, there was a 15 months' delay in execution of the Project.

c) The Appellant on 02.11.2010 filed a petition before the Central Commission for the approval of transmission tariff

for the project in question for the transmission line of the project in question along with bays associated with East West transmission corridor strengthening scheme from the date of commercial operation to 31.3.2014. In the said petition, the Appellant had claimed the Interest during construction and incidental expenses during the entire construction period till the actual date of commercial operation of the project i.e. the actual time taken to complete the project.

- d) The Central Commission after entertaining the petition directed the Appellant to submit the details regarding the reasons for the said delay in commissioning the project. Accordingly, the Appellant furnished the required details to the Central Commission through affidavits.
- e) After hearing the parties and considering those affidavits, the Central Commission passed the impugned order dated 08.6.2011 condoning the delay of 8 months and allowing the interest during construction, incidental expenses during construction only for the said period. But, however, the Commission disallowed for the balance period i.e. 7 months on the reason that the said period had not been properly explained.
- f) Aggrieved by this impugned order, the Appellant has filed this Appeal.

3. The Appellant has raised the only issue contending that the Central Commission has wrongly disallowed the interest during construction and incidental expenses during construction for a period of 7 months merely on the reason that there was no sufficient justification for the delay of 7 months despite the fact that the sufficient materials for the delay were furnished by the Appellant before the Commission explaining the said period of delay.
4. So, the only question which would arise for consideration is this –**“Whether Central Commission was correct in holding that there is no sufficient justification for the delay of 7 months i.e. March 2010 to September,2010 without considering the materials for such a delay provided by the Appellant before the Central Commission.?”**
5. On this issue we have heard both the Learned Counsel for the Appellant and Respondents. We have also gone through the Appeal grounds and reply. Let us first refer to the finding rendered by the Central Commission on this issue:-

“The petitioner has not given any justification for the remaining 3 months delay. Accordingly, IEDC and IDC have not been allowed from the month of March 2010 to September 2010 which amount to Rs.68.88 lakh and Rs.685.41 lakh respectively.”

6. This finding would indicate that the Central Commission has come to conclusion that the Appellant did not give any justification for the delay of 7 months. On the other hand, it is contended by the Appellant that entire 7 months have been explained by the Appellant through the affidavit by stating 4 months delay was caused due to the theft of the equipment and the balance 3 months delay was caused due to the fact that requisite approvals from Railways was not given in time and the Chattisgarh State Load Dispatch Centre also delayed grant of shutdown required for crossing EHV transmission lines of the State Transmission licensee.
7. On the other hand, Learned Counsel for Respondent justified the finding in the impugned order passed by the Central Commission.
8. As indicated above, the Central Commission has, in the impugned order, in respect of 4 months delay has held that the theft of the equipment can not be considered to be valid reason to condone the delay as the safety of material was the responsibility of the Appellant and delay due to theft could not be treated as *force majeure event*. This finding for rejecting the explanation with regard to delay of 4 months due to the theft can not be said to be perverse. As correctly pointed out by the Central Commission, the Appellant who was well aware of the route of transmission line, should have made adequate measures to ensure the safety of the

locations during construction. As this was not done, we can not hold the explanation for 4 months delay by citing the theft incident as satisfactory.

9. Therefore, we confirm the finding of the Central Commission in respect of 4 months delay. However, the Central Commission in respect of 3 months delay has simply stated *“the Petitioner has not given any justification for the remaining 3 months delay”*. We are not able to accept this finding. As a matter of fact, the Appellant in their petition filed before the Central Commission gave detailed reasons for the entire delay, which besides delay in approval of loan and theft and tower collapse also included delay in granting shut down for crossing of EHV lines of the State Transmission licensee by the State Load Dispatch Centre and crossing of Railway line by the Railways. In fact the Central Commission in the impugned order has recorded as under:

“The petitioner has further submitted that there was delay in getting approval from M/s CSPTCL and Railways for power line crossings. It has also been submitted that after award of transmission line to the respective contractors, preliminary route surveys are carried out and most optimal routes are selected considering the involvement of ROW, forest land and avoiding inhabited areas. Thereafter, detailed surveys are carried out to finalise the exact tower location and path of the transmission line”.

10. The reading of the petition filed by the Appellant, would make it clear that the delay of 3 months was attributed by the Appellant to certain reasons and circumstances but these have not been considered and verified by the Central Commission in order to hold that the explanation was not satisfactory. It merely observed in the impugned order “Petitioner has not given any justification for the remaining 3 months delay”.
11. According to the Appellant, the approval for railway crossing was granted in the month of September, 2010 only after which the Project could be completed and commissioned by the Appellant. If this is true, the time spent between restoration of the damaged towers in July, 2010 to grant of shut down by the Railways for Railway crossing on 14th/15th September may not be attributable to the Appellant’s fault. Therefore, the Central Commission ought to have considered these facts with reference to the delay and passed order after verification. Since this was not done in this case, we deem it fit to set aside the said portion of the order and remand the matter to the Central Commission for considering the said explanation in respect of 3 months delay and give a finding of the facts after verification of facts and hearing the parties.

Judgment in Appeal No.134 of 2011

12. Accordingly, this portion of the order is set aside and remanded. Appeal is partly allowed to the extent as indicated above.

13. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 27th April, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~