

**Before the Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 118 of 2012**

**Dated 03<sup>rd</sup> May, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**Power Grid Corporation of India Ltd.,**  
**Saudamini, Plot No.2,**  
**Sector-29,**  
**Gurgaon-122 001**

**...Appellant(s)**

**Versus**

- 1. Central Electricity Regulatory Commission**  
**3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,**  
**36, Janpath, New Delhi-110 001**
- 2. Madhya Pradesh Power Trading Company Ltd.,**  
**Shakti Bhawan, Rampur,**  
**Jabalpur-482 008**
- 3. Maharashtra State Electricity Distribution Co. Ltd.,**  
**5<sup>th</sup> Floor, Prakashgad,**  
**Plot No.9, Anant Kanekar Marg,**

**Bandra (East),  
Mumbai-400 051**

- 4. Gujarat Urja Vikas Nigam 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 & Diu,  
Power House Building,  
2<sup>nd</sup> Floor,  
Daman-396 210**
- 7. Electricity Department,  
Administration of Dadra & Nagar Haveli  
U.T.Silvassa-396 230**
- 8. Chhatisgarh State Electricity Board,  
PO Sundar Nagar,  
Dangania,  
Raipur, Chhattisgarh-492 013**
- 9. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore)  
3/54, Press Complex,  
Agra Mumbai Road,  
Indore-452 008**

...Respondent(s)

**Counsel for Appellant(s) : Mr. M.G. Ramachandran  
Mr. Anand K Ganesan  
Ms. Swapna Seshadari  
Ms. Swagatika Sahoo**

**Counsel for the Respondent(s):Mr. Manu Seshadri for CERC**

**JUDGMENT**

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

1. Power Grid Corporation of India Limited is the Appellant herein.
2. As against the main order dated 18.6.2010 passed by the Central Electricity Regulatory Commission and the Review Order dated 3.2.2012, the Appellant has filed the present Appeal.

3. By the impugned order, the Central Electricity Regulatory Commission has not allowed the claim of the Appellant for inclusion of the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) on account of belated delivery of the Interconnecting Transformer at Bhattapara Sub-Station, part of associated transmission system of Sipat-II Super Thermal Power Station. Aggrieved by this, the Appellant has presented this Appeal.
  
4. The short facts are as under:
  - a) The Appellant discharges the functions of Central Transmission Utility engaged in the Transmission of Electricity.
  
  - b) The tariff of the Appellant for the inter-state transmission of electricity is regulated by the Central Electricity Regulatory Commission u/s 79 of the Electricity Act, 2003.
  
  - c) The Central Commission framed the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 providing for

the terms and conditions for the determination of transmission tariff of the Appellant.

d) One of the Transmission systems established by the Appellant is the transmission system associated with the Sipat II of the Western Region. The investment approval for the above transmission system was granted on 23.8.2004. The scheduled Commercial Operation Date as per the investment approval was fixed as August, 2007. The above transmission system included the Inter connecting Transformer-II at Bhattapara Sub-Station. There was a delay of 16 months in the commissioning of the Interconnecting Transformer (ICT) II, since the global crisis prevalent and the non-availability of the CRGO Steel resulted in short supply of Interconnecting Transformers. Ultimately, the ICT II was commissioned on 1.1.2009.

e) Upon commissioning of the ICT - II under Sipat –II system, the Appellant filed a Petition in Petition No.242/2009 before the Central Commission for determination of tariff from the date of Commercial

Operation namely 1.1.2009 to 31.3.2009 under the Tariff Regulations, 2004 of the Central Commission.

f) By the order dated 18.6.2010, the Central Commission determined the tariff for the ICT-II for the said period. However, the Central Commission did not accept the prayer of the Appellant for condoning the delay of 16 months in the commissioning of the transmission elements.

g) Aggrieved by the above order dated 18.6.2010, the Appellant filed a Review Petition before the Central Commission contending that the delay was beyond its control. The Appellant placed on record before the Central Commission during the course of Review Proceedings, the communication received from BHEL regarding the reasons for delay in supply of ICT-II. However, the Central Commission dismissed the Review Petition confirming the earlier order dated 18.6.2010 on this issue by the order dated 3.2.2012. Hence, this Appeal against these orders.

5. The learned Counsel for the Appellant has made the following submissions:

- (a) The Central Commission has failed to appreciate that the delay in commissioning the ICT-II was not due to any failure attributable to the Appellant but the same was only on account of the global crisis in the availability of CRGO steel which was required to manufacture the Inter Connecting Transformer.
- (b) In the absence of any default on the part of the Appellant, the interest During Construction and the Incidental Expenses During Construction cannot be denied merely on the ground that there was a delay in commissioning of the ICT-II.
- (c) The Central Commission ought to have taken note of the fact that non-availability of CRGO steel was due to the global crisis which was clearly in the nature of Force Majeure event. This cannot be attributed to the Appellant. In fact, the Appellant

had acted in the most prudent manner by utilizing the resources to the most critical projects.

- (d) During the Course of the Review Proceedings, the Appellant has produced the letter sent by BHEL addressed to the Appellant for the delay in the supply of Inter Connecting transformer. This letter could not be traced during the course of original proceedings. However, the Central Commission refused to accept the explanation for the delay on the strength of the letter dated 28.11.2006 sent by BHEL.

5. In reply to the above submissions, the learned Counsel for the Central Commission has defended the impugned order by pointing out the reasons and the findings given by the Central Commission both in the main order dated 18.6.2010 as well as the Review order dated 3.2.2012 and justified the same.
6. In the light of the above rival contentions urged by both the parties, the following question would arise for consideration:



**“Whether the Central Commission has correctly appreciated the reasons for the delay in commissioning of the interconnecting transformer –II and has given the valid reasons for rejecting the claim for Interest during Construction and Incidental Expenses During Construction?”**

7. Before dealing with this question, it would be worthwhile to refer to the findings given by the Central Commission both in the order dated 18.6.2010, the original proceedings as well as in the order dated 3.2.2012 rejecting the Review Petition filed by the Appellant.
8. The Central Commission in the impugned order dated 18.6.2010 has given the reasons for not accepting the explanation for delay of 16 months as under:

***Time over-run***

*16. In regard to delay, the representative of the petitioner submitted that the delay has been not attributable to it and has been on account of delay in delivery of ICT from M/s BHEL which is due to the global crisis in availability of CRGO steel. However, the petitioner has prioritized the transformer supplies from*

*BHEL to the critical projects keeping in view the evacuation from generation projects and system requirements. During the hearing, the petitioner vide Record of Proceeding held on 22.12.2009 was directed to furnish the policy of Power Grid regarding delay in construction of transmission assets specifying the issues related to contractual agreement between Power Grid and the suppliers and the amount of liquidated damages to be recovered from the vendors.*

*17. The petitioner, vide its affidavit 18.3.2010, has submitted that delay was on account of shortage of CRGO. The petitioner further submitted that delay in the supply of transformer by M/s BHEL shall be examined at the time of contract closing which is yet to be done. The final completion cost of the assets covered under the subject petition is yet to be determined. It is noticed that M/s BHEL wrote letter the petitioner on 6.12.2007 on the subject “315 MVA Auto transformer Package – A and B for Power grid’s Melakottaiyur and Hiriyyur –Kozikode sub-station associated with Kaiga 3 & 4 Transmission System” indicating delay in supply of transformers/ ICTs for these transmission systems. In this letter, there is no reference to the transformers/ICTs to be supplied at Bhattapara sub-station under Sipat-II transmission system of Western Region.*

18. *The delay on the part of the petitioner for commissioning cannot be justified. Hence the same cannot be passed on to the beneficiaries. The Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) have been restricted for determining the capital cost of the project as on the date of commercial operation. There is a reported delay of 16 months in commissioning of the transmission asset from the original schedule date. Therefore, pro-rata IDC and IEDC have been reduced from the total 52 month`s IDC+IEDC to arrive at the capital expenditure as on the date of commercial operation. The cost escalation and IDC because of the unjustified delay shall be borne by the petitioner.*

9. The crux of the reasons given by the Central Commission for rejecting the claim is given as under:
- a) According to the Petitioner, the delay would not be attributable to the Petitioner and the same was on account of the delay in delivery of ICT from M/S. BHEL which is due to the global crisis in availability of CRGO Steel. However, the Petitioner has prioritized the transformer supplies from BHEL to the

critical projects keeping in view the evacuation from generation projects and system requirements.

- b) The Petitioner produced the letter dated 6.12.2007. In this letter, it is stated indicating the delay in supply of transformers for the transmission system for Kaiga 3 & 4 Transmission system. There is no reference in this letter with regard to supply to the stations under Sipat-II transmission system. As such, this letter does not give any explanation for the delay in the supply to the transmission system in question.
- c) The delay on the part of the Petitioner which is not justified cannot be passed on to the beneficiaries. Because of the delay of 16 months, the pro-rata IDC and IEDC have been reduced from the total 52 months to arrive at the capital expenditure as on the date of commercial operation. Therefore, the cost of escalation, because of the unjustified delay shall be borne by the Petitioner only.

10. Let us now see the reasons for rejecting the claim given in the review order dated 3.2.2012. The relevant portion is as follows:

***Discovery of new and important matter or evidence***

*8. The review petitioner has submitted that subsequent to issue of the order dated 18.6.2010, it discovered certain material documents which could not be filed earlier as part of the original Petition No.242/2009. The review petitioner has submitted that after perusal of the impugned order, the Commercial Department of PGCIL tried its level best to trace out if any specific letter with regard to the CRGO crisis was received from M/s BHEL and also requested other Departments and concerned Regional Head Quarters to trace any such letter. With due diligence, the review petitioner was able to trace M/s BHEL's letter of 28.11.2006 from its CMG Department on the subject "Diversion of 315 MVA Transformers and 80/50 MVAr. Shunt Reactors for Powergrid Projects", which inter-alia reflected that on account of CRGO issue, the testing of equipment was held up by BHEL which resulted in slippage on the delivery commitments and consequently this affected the completion of the transmission element in time.*

*9. The review petitioner has sought review of the impugned order on the basis of the letter dated*

*28.11.2006 written by Transformer Sales Division of M/s. BHEL, Bhopal to the petitioner. It is a settled law that when a review is sought on the ground of discovery of new evidence, the evidence must be relevant and of such a character that if it had been given in the petition, it might have possibly altered the judgment. Before a review is allowed on this ground it must be established that the applicant had acted with due diligence and that the existence of evidence was not within its knowledge. Mere discovery of new and important matter or evidence is not sufficient ground for review. The party seeking the review has to show that such additional material was not within its knowledge and even after exercise of due diligence, the document could not be produced in the court earlier.*

.....

*11. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of a judgment or order. It has to be established that due diligence was exercised and despite that, the evidence or material sought to be produced at the stage of review could not be produced before the order was passed. It is not the case of the review petitioner that these documents were not within the knowledge of its officers. The review petitioner has admitted that the documents were with the CMG Department, while the matter was*

*handled by the Commercial Department. In our view, the CMG Department and the Commercial Department of the review petitioner's organization cannot be treated as different and distinct entities. The two departments are the limbs of the same organization. The review petitioner as a legal entity cannot cite lack of internal co-ordination or lack of inter-departmental consultations as the ground for review. To us it appears to be the case of want of due diligence on the part of the review petitioner.*

*12. We consider the relevance of the documents relied by the review petitioner. The letter speaks about the slippages that occurred on account of severe scarcity of CRGO steel globally. During the first review meeting between M/s BHEL and the review petitioner held on 10.5.2006, certain priorities were jointly identified and accordingly realignment was done to meet the requirements. The requirements were again reviewed on 30.8.2006, when M/s BHEL informed the review petitioner that it tried to realign its operations accordingly and expedited manufacturing to meet these commitments. However, in the said letter, M/s BHEL indicated that it lost substantial time when the manufacturing as well as testing of the equipment was held up on account of CRGO issue. It went to state it tried to meet the obligations to supply by using the TKES make, CRGO steel, but due to non-acceptance*

*of TKES make CRGO steel by the review petitioner, complete inspection and further manufacturing of Power grid equipment came to standstill for a fairly long time. Until inspection and testing of Powergrid jobs got resumed, it lost lot of time and therefore, naturally slipped further on its delivery commitments made in August 2006.*

.....

*14. We have considered M/s BHEL's letter of 28.11.2006. M/s BHEL raised many issues like non-acceptance of different make of CRGO steel, additional cost implication due to diversion, change in engineering design, etc. The review petitioner has not submitted the copy of its response to M/s BHEL's letter, while seeking condonation of the delay in commissioning of ICT-II at Bhattapara. We are unable to link this letter to the slippage in supplying the 315 MVA ICT-II for Bhattapara sub-station on account of shortage of CRGO steel. Therefore, the document now being relied on by the review petitioner is not relevant to the order sought to be reviewed and cannot be considered as new and important matter of evidence.*

*15. In view of the above, we reject the contention of the review petitioner in this regard.*



11. The gist of the reasons given in the Review order is given as under:

- a) The Petitioner has sought review of the impugned order dated 18.6.2010 on the basis of the letter dated 28.11.2006 written by M/s. BHEL to the Petitioner now produced to establish the grounds for review to demonstrate that the Petitioner had acted with due diligence and that the existence of evidence was not within its knowledge.
- b) It is not the case of the Petitioner that this document was not in the knowledge of its officers. The Petitioner has admitted that the document was with CMG Department while the matter was being handled by the Commercial Department. The CMG Department and the Commercial Department are the limbs of the same organization. The Petitioner as a single legal entity cannot cite lack of internal co-ordination as the ground for Review. Therefore, it is a case of the lack of due diligence on the part of the Review Petitioner.

c) The letter dated 28.11.2006 sent by BHEL to the Petitioner raised many issues like non acceptance of different make of CRGO steel, additional cost implication due to diversion etc., The Review Petitioner has not submitted the copy of its response to M/S. BHEL's letter. There is no link to this letter with the delay in supply of ICT-II to the transmission system in question on account of shortage of CRGO steel. Therefore, this document cannot be said to be relevant for seeking the Review of the earlier order.

d) There is also no error apparent on the face of the record. As such, the claim of the Appellant cannot be granted in the absence of Petitioner making out a case for review. Hence, the Review is rejected.

12. Thus, both the orders which dealt with the claim of the Appellant in respect of Interest During Construction and Incidental Expenses During Construction, have given reasons to reject the claim.

13. According to the Appellant, these reasons are not valid. It is an admitted case of the Appellant that the Bhattapara

transformer had been diverted in order to meet the purported urgent requirements of Muzaffarpur Sub-Station as requirement at Bhattapara Sub-Station was not critical in view of delay in commissioning of Sipat-II Thermal Power Project.

14. The Central Commission's Tariff Regulation, 2004 provide that subject to prudence check by the commission, the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. We have to now examine as to whether the reasons attributed to delay in commissioning of the ICT II at Bhattapara sub-station was due to factors beyond the control of the Appellant and there has been no imprudence on the part of the Appellant.
15. Let us first examine the reasons given by the Appellant in the petition filed before the Central Commission.

**“6.1.2      *Reasons for delay***

*During 2006-07, Petitioner had been facing the crunch in the supply of power transformers, particularly in respect of orders on M/s BHEL, due to global crisis in availability of CRGO. The problem was more acute in 2006-07 which slowly watered down in the subsequent years by the time the backlog was overcome. As a result, Petitioner was constrained to prioritize the transformer supplies from BHEL to the critical projects keeping in view the evacuation from generation projects/System requirements.*

*In this context mention may be made of the urgent requirement to replace the burnt ICT of Baripada Sub-station of ER which was diverted from Narendra of SR, which in turn was decided to be replenished from Muzaffarpur that was then readily available. However, Muzaffarpur Sub-station, being an important link for Tala Trans. System as well as for establishment of high capacity NER/ER – NR/WER Inter-regional link, was required to be commissioned in a time-bound manner from system point of view. This was made possible through inter-project diversions of transformers from less critical projects, such as from Sipat-I/ II ATS where generation projects were lagging behind. Bhattapara S/S is the farthest link in Sipat II ATS, connected with one 400 kV LILO line. Thus it was weighed as one of the most viable option at that time to divert its 2<sup>nd</sup> ICT to Muzaffarpur as it was more critical as mentioned above. The ICT of Bhattapara*

*(Sipat-II) was finally used in Muzaffarpur as the earlier planned supply of Rajgarh ICT (Sipat-I) had met an accident during transportation.*

*Later on, the ICT of Rajgarh after its repair was delivered at Bhatapara Sub-station in Aug/Sep'08 and the same was commissioned in Dec'08. It may be noteworthy to mention that 2<sup>nd</sup> ICT of Bhatapara was commissioned matching with 2<sup>nd</sup> unit (unit-5) of Sipat-II Generation Project and as such there was no evacuation constraint on account of delayed delivery of the ICT.”*

16. The Appellant in its petition has stated that:-

- i) During 2006-07 POWERGRID was facing crunch in supply of transformers from BHEL due to global crisis in availability of CRGO steel. As a result POWERGRID was constrained to prioritize the transformer supplies from BHEL to critical projects keeping in view the evacuation from generation projects and System requirements.

- ii) ICT II from Bhattapara sub-station was diverted to Muzaffarpur sub-station as Muzaffarpur sub-station being an important link for establishment of high capacity North Eastern Region/Eastern Region – Northern/Western inter-regional link, was required to be commissioned in a time bound manner from system point of view. The commissioning of ICT II at Bhattapara was less critical as the Sipat-II generation project was lagging behind the schedule.
- iii) Later on the ICT of Rajgarh sub-station was diverted to Bhattapara in August/September, 2008 and was commissioned in December, 2008. ICT II at Bhattapara was commissioned matching with commissioning of the 2<sup>nd</sup> unit of Sipat-II Generation Project and as such there was no power evacuation constraint on account of delayed delivery of the ICT.

17. Papers submitted by the Appellant with affidavit dated 18.03.2010 before the Central Commission clearly indicate major problems in supplies of CRGO. BHEL's letter dated 06.12.2007 furnished along with the affidavit indicates unavailability of CRGO in international markets because of heavy industrialization in China and rush of all available CRGO steel for infrastructural development there as large quantity of CRGO steel from major world markets was purchased by China. According to BHEL, this created a huge dent in availability of CRGO and structural steel internationally as the manufacturers of CRGO are limited in numbers internationally. Even though the letter of BHEL has been sent with respect to supply of ICT associated with Kaiga 3 and 4 transmission system, it clearly indicated the general problem of shortage of CRGO Steel faced by BHEL in the year 2007 affecting the supply of inter

connecting transformers during that period which was also relevant to the ICT-II at Bhattapara. Accordingly, POWERGRID had to prioritize transformers supplies from BHEL to their sub-stations depending on the system requirement.

18. Learned Counsel for the Appellant has pointed out that the Central Commission in its order dated 20.07.2009 regarding transmission system of Kaiga 3 and 4 had recognized the delay in commissioning of ICTs related to Kaiga 3 and 4 transmission system due to non-availability of CRGO in international market and had considered the delay in commission of the ICTs for 'reasons beyond the control of POWREGRID'. The ICT of Kaiga 3 and 4 was also commissioned in the year 2009.



19. In view of above, it is clearly established that BHEL was facing shortage of CRGO steel due to non-availability in the international market in the year 2007 and the supplies of transformers to POWERGRID from BHEL were affected forcing POWERGRID to prioritize the supplies of ICTs to its various sub-stations depending on the system requirements. It is also not disputed that there was delay in commissioning of Sipat-II thermal power project as a result of which commissioning of the IInd interconnecting transformers at Bhattapara was not critical and the ICT could be spared for use at location where it was required more critically. The question that would arise for consideration here is as to whether the diversion of ICT from one sub-station to another looking into the system priority should be considered prudent or the delay in commissioning of the project should be considered mechanically as per the original schedule of

commissioning of the project as attributable to POWERGRID (Appellant).

20. Learned Counsel for the Appellant has strenuously argued that it was not only prudent on the part of the Appellant but also it was the duty of the Appellant as the Central Transmission Utility to ensure that the transformers were first utilized in such projects which were more critical. Any prudent person in case of shortage would prioritize the supply to the most critical requirements rather in such locations where there is no immediate need.
21. We find force in the arguments of Ld. Counsel for the Appellant. Section 38(2) provides that the Central Transmission Utility ("CTU") is responsible to undertake transmission of electricity through inter-State transmission

system, to discharge all functions of planning and coordination relating to inter-State transmission system and to ensure development of efficient, coordinated and economical system of inter-State transmission lines for smooth flow for electricity from generating stations to the load centers. The duties of the transmission licensees as per Section 40 of the Electricity Act 2003 would include to build, maintain and operate an efficient, coordinated and economical transmission system.

22. The Appellant being a transmission licensee and Central Transmission Utility(CTU), is thus responsible to ensure development of efficient, coordinated and economical inter-State transmission system for smooth flow of electricity from generating station to the load centre. Thus, prioritizing the commissioning of interconnecting transformers from system consideration in the event of shortage caused due to the

non-availability of raw materials in the international market was a prudent decision in a developing inter-State transmission system where POWERGRID is in the process of constructing a number of sub-stations. Prioritizing the supply and commissioning of interconnecting transformers depending on the critical system requirements may arise in a developing system in a shortage condition and this flexibility should be available to POWERGRID, being a transmission licensee and Central Transmission Utility.

23. According to Learned Counsel for the State Commission, the Appellant has voluntarily deviated from its own commissioning schedule and the non-adherence to the schedule was not on account of alleged shortage of CRGO steel but on account of allegedly more critical requirement in another sub-station and on this ground alone the Appellant

would not be entitled to the disallowed portion of 16 months IDC/IEDC.

24. We are unable to agree with the contention of the Learned Counsel for the State Commission. The diversion of ICT was necessitated by the crunch in supply of ICTs for the various sub-stations of the Appellant by BHEL due to CRGO crisis in the international market. The Appellant is in the process of constructing a number of sub-stations in the country in developing inter-State transmission system. The Appellant is also operating and maintaining the inter-State transmission system. When the Appellant has diverted ICT-II of Bhattapara, being part of the associated transmission system set up for evacuation of power from Sipat II thermal project as its commissioning was not critical, due to delay in commissioning of the Sipat-II generation project, to a sub-station where commissioning of ICT was considered critical

due to system consideration, the said diversion is justified and the same could not be considered as imprudent.

25. It is evident from the documents furnished by the Appellant in its affidavit dated 18.3.2010 before the State Commission that there was shortage of CRGO in the international market around the year 2007 due to which BHEL was not able to supply transformers in time. CRGO steel shortage was also recognized by the Central Commission in its order dated 20.07.2009 regarding transmission system of the Kaiga 3 and 4. In the said order, the Central Commission had observed that the delay in commissioning of the ICTs of Kaiga 3 and 4 was due to shortage of CRGO steel which was beyond the control of POWERGRID.
26. Under the condition of supply of transformers prevailing at that time due to shortage of CRGO steel, we can not expect

that the Appellant would install and commission ICTs mechanically as per their commissioning schedule. It is true that the Appellant could have installed the ICT-II at Bhattapara instead of diverting it to Muzaffarpur to avert delay in commissioning of the ICT at Bhattapara. But, in this case, instead of acting mechanically, the Appellant applied its mind and diverted the ICT from Bhattapara to Muzaffarpur for system consideration in the interest of smooth operation of the inter-State transmission system and the North Eastern - Eastern - West and Western Grid. We feel that such action on the part of the Appellant is prudent and justified.

27. According to the Learned Counsel for the State Commission, the Appellant is entitled to liquidity damages from BHEL and the Appellant would not be entitled to claim the same relief before two different Forums. As rightly pointed by the Appellant, the liquidity damages recovered by the Appellant

from the BHEL for delay in supply of transformers has to be adjusted against the capital cost of the ICT. Accordingly, the capital cost of the ICT would be reduced to the extent of liquidity damages recovered from BHEL. The Appellant is, therefore, directed to furnish the capital cost of ICT after accounting for the liquidity damages recovered from BHEL for delay in supply of the ICT before the Central Commission.

28. In view of the above, we conclude that the delay in commissioning of ICT - II at Bhattapara Sub-Station was beyond the control of POWERGRID due to the problem in supply of CRGO steel in international market which forced POWERGRID to prioritize the commissioning of the interconnecting transformers.



29. **Summary of our findings:**

i) BHEL was experiencing shortage of CRGO steel due to unavailability in the international market affecting supply of Inter Connecting Transformers to POWERGRID. In view of crunch in supply of ICTs POWERGRID was constrained to prioritize the supplies of ICTs to its various Sub-Stations depending on the system requirements.

ii) In view of delay in commissioning of Sipat-II Thermal Power Station, the commissioning of ICT-II at Bhattapara was not critical and accordingly, POWERGRID diverted the ICT from Bhattapara to meet the critical requirements of Muzaffarpur Sub-Station as it was considered necessary keeping in view the system

requirements. This resulted in delay in commissioning of ICT-II at Battapara.

iii) Prioritizing the commissioning of the ICTs from system consideration due to crunch in supply of transformers caused due to CRGO crisis was a prudent decision. In a similar case, the Central Commission in its order dated 20.7.2009, considered the delay in commissioning of ICTs due to shortage of CRGO steel which was beyond the control of POWERGRID.

iv) The delay in commissioning of ICT-II at Bhattapara Sub-Station was beyond the control of POWERGRID.

v) The Liquidated Damages recovered by POWERGRID from BHEL for delay in supply of the ICT will be deducted from the capital cost of the ICT.

29. In view of our above findings, the Appeal is allowed. The impugned orders are set aside. The Central Commission is directed to pass consequential orders in terms of our findings. No order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

**Dated: 03<sup>rd</sup> May,2013.**

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**REPORTABLE/~~NON-REPORTABLE~~**