

Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Appeal No. 117 of 2014

Dated: 16th September, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

Power Grid Corporation of India Ltd.

Saudamini, Plot No.2,
Sector 29, Gurgaon – 122 001
Haryana.

... Appellant(s) /Petitioner

Versus

- 1. Central Electricity Regulatory Commission**
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001.
- 2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,**
Vidyut Bhawan,
Jyoti Nagar, Janpath,
Jaipur – 302 005.
- 3. Ajmer Vidyut Vitran Nigam Ltd.,**
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur – 302 005.
- 4. Jaipur Vidyut Vitran Nigam Ltd.,**
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur – 302 005.
- 5. Jodhpur Vidyut Vitran Nigam Ltd.,**
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur – 302 005.
- 6. Himachal Pradesh State Electricity Board Ltd.,**
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla – 171004.

- 7. Punjab State Power Corporation Ltd.,**
The Mall, Patiala – 147 001.
- 8. Haryana Power Purchase Centre**
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134 109.
- 9. Power Development Department**
Govt. of Jammu & Kashmir,
Mini Secretariat, Jammu – 180 006.
- 10. Uttar Pradesh Power Corporation Ltd.,**
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 001.
- 11. Delhi Transco Ltd.,**
Shakti Sadan, Kotla Road,
New Delhi – 110 002.
- 12. BSES Yamuna Power Ltd.,**
Shakti Kiran Building,
Karkardooma, Delhi – 110 092.
- 13. BSES Rajdhani Power Ltd.,**
BSES Bhawan, Building No.20, Nehru Place,
New Delhi – 110019.
- 14. Tata Power Distribution Company Limited**
(Formerly North Delhi Power Limited)
Power Trading & Load Dispatch Group
Cennet Building, Grid Building,
Near PP Jewellers, Pitam Pura,
New Delhi – 110 034.
- 15. Chandigarh Administration**
Sector-9, Chandigarh – 160 022.
- 16. Uttarakhand Power Corporation Ltd.,**
Urja Bhawan, Kanwali Road,
Dehradun – 248 001.
- 17. North Central Railway**
Regional Head Quarter,
Civil Lines, Allahabad – 211 001.

18. New Delhi Municipal Council

Palika Kendra, Sansad Marg,
New Delhi – 110 002.

... Respondent(s)

Counsel for the Appellant(s) : Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan, Ms. Poorva
Saigal and Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. S. K. Agarwal, Mr. Devendra
Kumar, Mr. J. K. Gupta,
Mr. Jauhari Mahana, Mr. Amongh
Pravat, Mr. Gautam K. Laha,
Mr. Ravi Agarwal, Mr. Siddhatha
Singh for R.3 to 5

Mr. S. K. Chaturvedi, Mr. Sanjay
Kumar Acharya for R.No.11

Mr. R. B. Sharma for R.No.13

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The present appeal has been filed under section 111 of the Electricity Act 2003 by the appellant/petitioner against the impugned order dated 20.01.2014 passed by the Central Electricity Regulatory Commission (hereinafter called the 'Central Commission') in Petition No.85/TT/2011 whereby the Central Commission has determined the tariff for the Transmission Assets of the appellant, namely, (I) 400 kV D/C Koteshwar HEP – Tehri (Koteshwar) Pooling station Circuit-I & II (Asset 1), (II) LILO of Circuit-I of 765 kV Tehri – Meerut Lines at Tehri (Koteshwar) Pooling station along with associated bays (Asset 2), (III) LILO of Circuit-I of 765 kV Tehri – Meerut Lines at Tehri (Koteshwar) Pooling station along with associated bays (Asset 3) forming part of the transmission System associated with Koteshwar HEP (hereinafter referred to as 'Koteshwar Transmission System') in Northern Region for the tariff period

2009-2014 while exercising the powers under Central Electricity Regulatory Commission (Terms and Conditions for determination of tariff) Regulations 2009 (hereinafter called the Tariff Regulations 2009). The Central Commission by the impugned order while dealing with the aspect of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC), has disallowed the claim of the appellant/petitioner amounting to Rs.1287.50 lakhs.

- 2) In the impugned order, the Central Commission, has condoned the delay of 11 months in totality out of 33 months delay for the reasons namely agitation by villagers during August 2011, July 2008 and October 2008, was suspended because of manhandling of appellant's and contractor's employees and delay in completion of slope protection work. However, the Central Commission has disallowed the time overrun of 22 months out of total 33 months claimed by the appellant, Power Grid and consequently disallowed the IDC and IEDC of Rs.1278.50 Lacs. The appellant claimed time overrun of 33 months, namely, from the scheduled completion date of 24.06.2008 to actual completion dated 01.03.2011 / 01.04.2011 / 01.07.2011. The scheduled completion date was 24.06.2008/01.07.2008, namely, 27 months from the date of letter of award i.e. 24.03.2006.
- 3) The brief facts of the matter for our purpose of deciding the appeal are as under:
 - i) that on 01.06.2005, the Board of Directors of the appellant approved the investment for the Koteshwar Transmission System at an estimated cost of Rs.260.34 crores including the IDC of Rs.13.34 crore based on the 4th quarter 2004 price level.
 - ii) that the investment approval in the said transmission system of the appellant was granted on 01.06.2005 by the Board of Directors

of the appellant. The scheduled commissioning date of the said transmission system was 27 months from the date of letter of award, namely, 24.03.2006 for the transmission package as a whole.

- iii) that the letter of award was issued on 24.03.2006 and thus the completion schedule date was 24.06.2008 which was 27 months from 24.03.2006.
- iv) that the actual commissioning date of transmission system was 01.03.2011, 01.04.2011 and 01.07.2011. The actual total time overrun in completion of the transmission system was 33 months.
- v) that the reasons for the delay in completion of the said transmission project were as under:
 - a) The delay in getting the physical possession of the land on which the transmission project was to be installed even after the vesting of the land under the Land Acquisition proceedings in April 2006
 - b) The delay in getting the land ad-measuring 0.962 Ha required for dumping material excavated at the project site;
 - c) Unlawful obstruction by the villagers in the construction activities and Manhandling of officials involved in the construction and consequent stoppage of work;
 - d) Unseasonal rains in the area during September 2010 leading to heavy sliding of the hill and the approach road being closed;
 - e) Collapse of Terrace VI and the need for locating the project at a different site;
 - f) The project work could not be carried out in the revised location due to the mistake of revenue authority who had left out 0.052 hectare of land in acquisition which was later

acquired and handed over to the appellant only on
03.06.2010

- vi) that as per the appellant/petitioner the documents in support of the said reasons for the time overrun were furnished in the petition before the Central Commission but the Central Commission while passing the impugned order has not considered the documents and the reasons in proper and correct perspective hence this appeal.
- 4) We have heard at length Mr. M.G. Ramachandran, the learned counsel for the appellant, Mr. S.K. Agarwal for respondent No. 3 to 5 and Mr.R.B.Sharma for respondent No.13 and have gone through the material on record including written submissions filed by the contesting parties.
- 5) The sole issue involved for our consideration is whether the Central Commission is justified in disallowing the said time overrun of 22 months out of the total 33 months claimed by the appellant Power Grid and consequently disallowed the IDC and IEDC of Rs.1287.50 lakhs.
- 6) The following submissions have been made on behalf of the appellant on the issue :
- (i) That the Central Commission has not properly considered the reasons and the justification given by Power Grid for the time over run. The Central Commission in paragraph 31 of the impugned order, has proceeded on the simplicitor basis that land acquisition was completed on 20.04.2006 when the Government authorities handed over the possession of the entire land, except the small part of 0.962 hectare. The case of the appellant before the Central Commission was that the land acquisition was done in April 2006.

This was only the vesting of the land in Power grid in pursuance to the legal formalities undertaken under the Land Acquisition Act. The vesting of the land does not necessarily amount to start construction activities and continuing the same without interruption. The appellant had filed Affidavit dated 19.06.2012 and other Affidavits replying to the specific queries of the Central Commission that the land was acquired in April 2006 explaining the event subsequent to April 2006. The appellant had stated that although a major part of the land was acquired in April 2006 and possession was given by the Revenue Department to Power Grid but the local villagers/land lords were not ready to allow the appellant, Power Grid to take possession and undertake works raising various demands.

- ii) That the Central commission has failed to consider the letters attached to the petition, which letters specifically talk about unlawful obstruction of the work by the villagers of the village affecting the implementation of the project.
- iii) That the second part of the delay in regard to the land was with reference to 0.962 hectare which was required for dumping of excavation material during construction.
- iv) That the land allocated to the appellant in hilly slopes was found to be not enough to undertake dumping of the excavated material.
- v) That in March 2007 Power Grid approached the Revenue authorities for acquisition of the additional land of 0.962 hectare. The acquisition proceedings for additional land were delayed despite several attempts of the Power Grid till October, 2007. Even

after the additional land of 0.962 hectare was allocated, the villagers did not permit the construction of the project for dumping of the excavation material till December, 2007.

- vi) That the Central Commission with regard to delay in acquisition of the land has proceeded on the wrong basis that the appellant ought to have been aware of the requirements of dumping area and could have taken steps to arrange the land for such dumping. The Central Commission has failed to appreciate that the delay in the availability of additional land for dumping was not on account of act of manhandling on part of the appellant but the inability of the Uttarakhand Revenue authorities to make the land available through proper acquisition proceedings.
- vii) That some part of the total land project was acquired in the month of April 2006 and some in October, 2007 for dumping purpose and remaining land was acquired in June 2010. However, the villagers were not ready to hand over land to the appellant due to their demands for their money.
- viii) That the Central Commission has failed to consider the contents of the various Affidavits of the appellant to support the reasons for justifying the delay.
- ix) That the Central Commission has not considered that the levelling work could not be started due to non-availability of land for dumping and obstruction by the villagers and non-delivery of such land by the villagers after acquisition. The Central Commission has wrongly and totally ignored the claim of the appellant that the land acquired for the project being a slope cannot be used for

dumping. After the acquisition of 0.962 hectare for dumping purpose, the local villagers did not allow the work of site levelling to start. The said work remained suspended from October, 2007 to December 2007 which caused further delay in the said levelling work.

- x) That the Central Commission has wrongly denied the delay on the purported ground the appellant is supposed to be aware of the requirements of dumping area and there was no adequate planning on this aspect by the appellant.

- xi) That the delay was also due to inadvertent mistake of Revenue authorities in acquiring the land. In this regard after Terrace VI collapsed twice, the revised location was submitted and finally approved on 11.12.2008. The project work could not be carried out in the revised location due to the mistake of Revenue authorities who had left out 0.052 hectare of land in acquisition. The same land was subsequently acquired and handed over to the appellant only on 03.06.2010.

- xii) That the Central Commission, while dealing with the approval of Right of Way (ROW) and agitation by villagers, has wrongly condoned only 3 months delay against the total delay of 8 months. It has considered the suspension of work due to agitations by the villagers for 3 months (August, 2007, July 2008, October 2008) without giving any reasons for not considering the remaining period of 5 months. The said reasons were explained in the Affidavits and documents of the appellant which show that the project work was suspended during the months of May 2006, July

2006, February 2007, July 2007, October 2007 and again from July 2010 to October 2010 due to agitation by the villagers.

- xiii) That during the period till October, 2008 the construction of the project was also affected on account of the Right of Way problems created by the villagers and continuance interference. Thereafter also the construction of the project was seriously affected on account of agitation by villagers. The said agitation had gone to the level of the physical assault of the officers of the appellant and ultimately at the intervention of the Chief Secretary, Uttarakhand, the matter got sorted out in October, 2010.
- xiv) That ultimately in November 2008 after the recommendation of IIT Delhi, the slope protection work including engineering work was undertaken and eventually the slope protection work was completed. It was in December 2008, Terrace VI collapsed twice requiring allocation of some part of the project in a different place. This required alternative land which got acquired on 03.06.2010.
- xv) That the Central Commission, in the impugned order, has not considered the reasons stated by the appellant and has wrongly concluded that the Power Grid/appellant has not brought to notice any serious impediments on the construction of the project.
- xvi) That with regard to delay due to rain, the Central Commission has unreasonably held that the rain and other related activities are normal features in hilly areas which could be easily foreseen at the stage of preparation of feasibility report and therefore, rain and such related activities in the hilly areas cannot be categorised as extraordinary situation to justify the delay. The Central

Commission has not considered the factum of unprecedented heavy rains which could not be foreseen.

- xvii) That the Central Commission has only considered in an arbitrary manner the delay of 3 months in regard to the Right of Way problems created by the villagers and 7 months in regard to the slope protection work without considering the Affidavits and documents filed by the appellant.
- xviii) That the Central Commission has ignored the period of delay in regard to the agitation by the villagers affecting the use of land where the project was to be established, error on the part of Revenue authorities who had left out the part of the land (0.052 hectare) during the acquisition of land for dumping yard which was later acquired only on 03.06.2010.
- xix) That the above transmission project was for evacuation of power from the Koteshwar Hydro Power Project of Tehri Hydro Development Corporation (THDC). The Commercial Operation Date (COD) of the Koteshwar project, namely, Units 1 to IV were 01.04.2011, 26.10.2011, 13.02.2012 and 01.04.2012. There was, therefore, no adverse impact on the beneficiaries on the account of transmission line being available from March 2011 onwards. In fact, the beneficiaries have been benefitted by reason of the transmission project coming along with the Koteshwar Hydro Power Project as they will not be servicing equity as well as some of the operating expenses of the transmission project till March 2011. Had the transmission system been in place on the scheduled commercial operation date, the beneficiaries would have paid tariff for the period from the COD till the commissioning of the Hydro

Power Project also, which aspect has not been considered by the Central Commission.

- 7) **Per contra**, the following submissions have been made on behalf of respondent No.13, namely, BSES Rajdhani Power Ltd.
- i) That the Investment Approval (IA) for the said transmission project was made by Directors of the Board on 01.06.2005.
 - ii) That the Central Commission has rightly, properly and legally condoned the delay of 11 months as against claim of 33 months of the appellant.
 - iii) That the scheduled completion period of the said transmission project was decided by the appellant himself as may be seen from the Investment Approval dated 01.06.2005 which clearly stipulates that the project was scheduled for completion within 27 months from the date of issue of letter of award. The scheduled completion period is normally decided keeping in view the terrain, climate, topology and other relevant factors. Normally, the scheduled completion period of the project commences from the date of Investment Approval but in this case, scheduled completion date commenced from the letter of award for Gas Insulated Sub-station Package (GIS Package) which in the opinion of the appellant, constitutes the critical items or works for the purposes of determining the scheduled completion period. In spite of the cushion availed by the appellant in the form of commencing the scheduled completion period of the project from the date of letter of award for GIS package, the work could not be completed by the appellant within the specified period of 27 months. The completion of this work had taken 36 months extra which clearly

indicates lack of coordination and supervision by the appellant, Power Grid, and its employees.

- iv) That the Central Commission, after considering the submissions of the appellant/petitioner in support of time overrun and objections of the respondent, passed the aforesaid impugned order and rightly disallowed the remaining time overrun.
- v) That the Impugned Order clearly shows that the Commission has examined the issue in detail and in its correct perspective the Commission has rightly condoned the delay of 11 months in the construction of assets and disallowed the IDC/IEDC for the remaining period of delay of 22 months. Thus, the Central Commission allowed wherever it was justified but rejected the portion which was unreasonable.
- vi) That the Central Commission had given more than adequate opportunities to the appellant to justify the time overrun and the appellant filed as many as four Affidavits in support of its claim and yet could not convince the Commission for the disallowed time overrun.
- vii) That so far as the question of non-availability of only a small portion of 0.0962 hectare of land is concerned; the land for dumping of excavated earth was given on 16.03.2007 although the 'Investment Approval' for this work was given on 01.06.2005. The appellant clearly admits that the land acquisition is the time consuming process, hence, the appellant was expected to plan in advance which was not done. The appellant cannot blame the Uttarakhand Revenue authorities or Police authorities for its own

failure to make the requisition of land after its identification for dumping of excavated earth. The appellant must not blame the Central Commission for his own act of omission and commission. It is a clear case of imprudence on the part of the appellant.

- viii) That the appellant has questioned the grant of condoning only 3 months in respect of 'Right of Way' problems as against alleged demand of 8 months. The Central Commission has been liberal even in condoning 3 months time overrun as there are no police records to substantiate suspension of work due to agitation by villagers. Similarly, one month's condonation of time overrun has been allowed on the ground of manhandling of the appellant's officials as well as contractor's employees.

- ix) That it is contended by the appellant that the Terrace VI collapsed twice, therefore, the revised location drawing was submitted and finally approved on 11.12.2008. According to the appellant, the work could not be carried out in revised location due to inadvertent mistake of Revenue authorities who had left out the part land measuring 0.052 hectare during acquisition. The land was acquired subsequently after undergoing afresh the acquisition process and the appellant/petitioner got possession of that part of land on 03.06.2010. The entire confusion rests with the appellant. The collapse of Terrace VI twice is either attributable to the design failure or poor quality of work and both these factors were within the control of the appellant. So far as the fresh acquisition of land measuring 0.052 hectare is concerned, it was the duty of the appellant to ensure that nothing was left out and the possession of entire land requested was given. If the appellant had been careful while taking possession of the land, this situation would not have

arisen. Thus, the delay on this issue was entirely within the control of the appellant. The appellant must desist from blaming other authorities and rather he must look within himself for time overrun.

8) **Our consideration and conclusion:**

We have cited above the contentions raised by rival parties on the aforesaid issue. Now a reproduction of the relevant part of the impugned order dated 20.01.2014 passed by the Central Commission appears to be relevant for the purpose of appreciation and our own analysis on the said issue which is as under:

“29. We have considered the submissions of the petitioner in support of time overrun and the objections of the respondents. In the instant case commissioning of the generation project has been delayed. The transmission line was declared under commercial operation on 1.3.2011 matching with the 1st unit of Koteshwar HEP in April 2011. The petitioner has submitted some documents in support of Row problem during construction phase. From the documents it is seen that there were instances of stoppage of work as well as manhandling of the officials involved in the construction. We now analyze in detail the reasons given by the petitioner in support of its plea for condonation of delay.

30. The plea raised by PSPCL in regard to delay of commissioning of 50% series compensation is not relevant since the petitioner is presently not seeking approval for the transmission charges for that asset. The implications of delay in case of that asset are left to be considered when the petitioner approaches the Commission for approval of its transmission charges.

31. *The petitioner's plea of delay in land acquisition is not justified as possession of major chunk of land was handed over to the petitioner on 20.4.2006. The petitioner has not brought to our notice any serious impediment on construction from any side at the time possession of land was given. The possession of only a small portion of land (0.962 hectare) meant for dumping of excavated material was delayed and land was handed over to the petitioner on 8.10.2007. For this delay too the petitioner cannot be allowed to draw any advantage. The petitioner is supposed to be aware of requirement of dumping area and should have taken timely steps to arrange for land to be used as dumping area for excavated material. The petitioner's plea leads us to believe that there was no adequate planning on this aspect. As regards the delay in acquisition of land measuring 0.052 hectare it is pointed out that the petitioner does not seem to have exercised due diligence and has contributed to the delay attributed to non-acquisition as the acquisition of land was completed by October, 2007 with acquisition of 0.926 hectare of land, and the petitioner became aware of non-acquisition only in December, 2008. As per the schedule Koteshwar transmission system ought to have been completed by June, 2008.*

32. *Similarly, there is no merit in the petitioner's plea that the delay in commissioning of Koteshwar transmission system was attributed to rain etc. It is pointed out that the rain and other related activities is the normal feature in hilly areas which could be easily foreseen at the stage of preparation of FR. Rain and related activities in the hilly areas cannot be categorised as extraordinary situations to justify delay. It is also to be noted that the petitioner has not produced any documentary evidence to support its claim of prevalence of the so-called extraordinary situations which prevented it from continuing with the construction at site. It is also pointed out that the specific period during which the local*

highway/roads remained closed has also not been stated by the petitioner.

33. From the documents made available by the petitioner, it is noted that there were severe Row problems triggered by agitations by the villagers during August, 2007, July 2008 and October 2008 which led to suspension of work repeatedly. Therefore, considering the duration for which the work was held up, the total delay of 3 months can be said to be beyond the control of the petitioner and delay is hereby condoned. Another period during which the work remained suspended because of manhandling of the petitioner's and contractor's employees is also condoned. In our opinion, delay of maximum of one month can be apportioned to this cause.

34. There is delay in completion of the slope protection for which the petitioner hired a consultant from IIT Delhi, for conducting a survey in that area. The slope protection work is considered additional work to be carried out for Sub-station construction based on actual site conditions. The Commission has already dealt with similar issue in its order dated 22.4.2013 in Petition No.7/TT/2011(ICTs at Pithoragarh along with associated bays), and condoned the delay on slop protection work due to peculiar Location of Sub-station and geographical factors. Accordingly, the delay of 7 months in the instant petition is condoned due to peculiar Location of Sub-station.

35. Thus, in totality, the delay of 11 months is condoned. For the remaining period of delay, IDC/IEDC is being deducted from the gross block of the respective asset on the date of commercial operation."

- 9) As we have stated above, the transmission assets in this appeal is Koteswar Tehri Pooling Point Double Circuit and associated transmission network. The Investment Approval for this transmission

system was granted on 01.06.2005 by Directors of the appellant, Power Grid. The scheduled completion date of the transmission system, as admitted by the appellant, was 27 months from the date of letter of award for the transmission package as a whole. The letter of award was issued on 24.03.2006. Hence, the scheduled completion date of the said transmission project of the appellant was 24.06.2008, which was 27 months from the date of letter of award i.e. 24.03.2006. The actual completion date of commissioning system, as appears from the record, and pleadings of the parties, and also admitted by the appellant was 01.03.2011, 01.04.2011 and 01.07.2011. According to the appellant, actual total time overrun in the commissioning of the transmission system was 33 months.

- 10) We have considered the various reasons cited and argued by the appellant on the said time overrun and compared the same reasons with the findings recorded in the impugned order passed by the Central Commission. After considering the various reasons put forth by the appellant/petitioner the Central Commission has, as mentioned above, allowed the time overrun of 11 months on findings just and proper justification for the time overrun of 11 months. Since the Central Commission did not find any proper, correct and legal justification for the remaining time overrun of 22 months has disallowed the same and consequently disallowed the IDC and IEDC of Rs.1287.50 Lacs.
- 11) The contentions of Mr. R. B. Sharma, learned counsel appearing for respondent No.13, to the effect that in this case the scheduled completion period of the project was decided by the appellant himself, namely, Power Grid, as evident from the 'Investment Approval' dated 01.06.2005 which clearly stipulates that the project is to be scheduled within 27 months from the date of letter of award. The letter of award in

this case is 24.03.2006. On this calculation, the scheduled commissioning date of the transmission asset was 24.06.2008 which is 27 months from 24.03.2006. The actual commissioning date of the transmission project of the appellant is 33 months thereafter. The said contention of Mr. Sharma appears to be valid, proper and well merited. We agree to the submissions of Mr. Sharma, learned counsel for respondent No.13 that the scheduled completion period is normally decided keeping in view the terrain, climate, topology and other relevant factors. Normally, the scheduled completion period of the project commences from the date of 'Investment Approval' but in the present case the scheduled completion period commenced from the date of letter of award for Gas Insulated Sub-station package which in the opinion of the appellant constituted the critical items or works for the purpose of determining the scheduled completion period. Despite this cushion availed by the appellant in the present case the completion of the transmission asset of the appellant could not be completed within the specified period of 27 months which got completed in 33 extra months. Thus the commissioning of transmission assets of the appellant had taken 33 months extra which clearly indicates lack of coordination and supervision by the appellant and its employees.

- 12) We may note here that the Central commission, after going into the details of the Affidavits and reasons mentioned therein passed the impugned order correctly and disallowed the time overrun of 22 months because there was no justification for the said time overrun of 22 months.
- 13) It appears from the material on record that the transmission line was declared under commercial operation from 01.03.2011 matching with the first unit of Koteshwar HEP (Hydro Electric Project) in April 2011. It is

seen from the documents filed by the appellant in support of ROW approval during construction phase that there were instances of stoppage of work as well as manhandling of officials involved in the construction. The learned Central Commission, after considering these reasons in impugned order, has held that the appellant/petitioner's plea of delay in land acquisition is not justified as major chunk of land was handed over to the appellant on 20.04.2006. No serious impediments on construction of any site at the time of possession were brought to the notice of the Central Commission. The possession of only a small portion of land (0.0962 hectare) meant for dumping of excavated material was delayed and that part of the land was handed to the appellant on 08.10.2007. It is mentioned in the impugned order that for this delay the appellant cannot be allowed to draw any advantage.

- 14) We have gone through various aspects of the matter considering various reasons cited by the appellant for disallowed time overrun period and we also find that the appellant/petitioner is supposed to be aware of dumping area and should have taken steps to arrange for land to be used as dumping area for excavated material and this all happened due to inadequate awareness or planning on this aspect of the appellant/petitioner. So far as the delay in acquisition of land measuring 0.052 hectare is concerned, it is apparent from the material on record that the appellant/ petitioner did not exercise due diligence and attributed to the delay to the non-acquisition as acquisition of land was completed by October 2007 including acquisition of 0.962 hectare of land and the appellant became aware of the non-acquisition of 0.052 hectare only in December 2008. As per record, the scheduled Koteshwar transmission system ought to have been completed by June 2008. On our careful perusal and analysis of material on record and also the reasons mentioned in Affidavits of the appellant, we find that the delay in

commissioning of the said transmission system was attributed to the appellant/petitioner and not to the rains etc. because the rains and other related factors are normal features in the hilly areas which could be easily foreseen at the stage of preparation of FR. We further find that such rains and related factors in the hilly areas cannot be categorised as the extraordinary situation to justify the said delay. Particularly, when there was no documentary evidence of the weather department or meteorological that during the relevant period there were heavy rains which could not be foreseen and which could have prevented the appellant from continuing with the construction at site. The Central Commission has rightly allowed the total delay of 3 months on considering the duration for which the work was held due to the problems caused by agitation of villagers during August 2007, July 2008 and October 2008 which led to suspension of work repeatedly. The Central Commission also condoned another period of one month during which work remained suspended due to manhandling of officials and employees.

- 15) This is an admitted case of the appellant that there occurred a delay of slope protection work for which the appellant hired a Consultant from IIT, Delhi for conducting a survey in that area. Even after the Consultant was hired, the Terrace VI collapsed not once but twice. These all show a negligence and lack of proper care and coordination on the part of the appellant/petitioner. The slope protection work is considered additional work to be carried out for the sub-station construction based on actual site conditions. On this account, the Central Commission has rightly and properly condoned the delay of 7 months due to peculiar location of the sub-station of the appellant.

- 16) According to the appellant, Terrace VI collapsed twice, therefore, the revised location drawing was submitted and finally approved on 11.12.2008 and the work could not be carried out in revised location due to inadvertent mistake of Revenue authorities who had left out a part of the land, measuring 0.052 hectare, to the acquisition. The documentary evidence of record establishes that the 0.052 hectare of land was acquired subsequently after undergoing afresh acquisition process and the appellant got possession of that part of the land on 03.06.2010. The collapse of Terrace VI twice is attributed to the design failure or poor quality of work which factors were within the control of the appellant. If for a moment we accept the contention of the appellant that a part of the land measuring 0.052 hectare of the land to be acquired was inadvertently or anyhow left out and was not acquired during main land acquisition proceedings then it was the duty of the appellant at the relevant time to ensure that nothing was left out and possession of the entire land, as requested, was given to the appellant. Had the appellant been careful while taking possession of the land to be acquired this situation would not have arisen and for that the appellant is solely responsible for not being prudent and cautious at the relevant time because this delay of non-acquisition of a very little piece of land measuring 0.052 hectare could have been highlighted at the right time by the appellant and appellant's failure to detect that fault was under control of the appellant. The appellant cannot be allowed to blame the Revenue authorities of the district for not acquiring that little piece of land measuring 0.052 hectare which was later acquired and handed over to the appellant on 03.06.2010 by the Revenue authorities.
- 17) In view of the above discussions, we find ourselves in agreement with the findings recorded in the impugned order and there appears to be no sufficient and justifiable reasons to detract from the said findings. The

Central Commission has already shown a lenient view to the Power Grid (appellant) while passing the impugned order. The impugned order of the Central Commission is just, legal and correct one requiring no interference at this stage from us because the same is based on correct and legal appreciation of the evidence and other material on record. The Central Commission is fully justified in disallowing the said time overrun of 22 months as we have in detail cited above. The sole issue is decided against the appellant/petitioner and the appeal merits dismissal.

ORDER

This appeal is hereby dismissed and the impugned order dated 20.01.2014 passed by the Central Commission is hereby affirmed.

There is no order as to costs.

Pronounced in the open court on this **16th September, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~