

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

Appeal no. 205 of 2012

Dated: 12th February, 2014

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

In the matter of:

**Powrgrid Corporation of India Ltd. ... Appellant (s)
"Saudamini" Plot No. 2,
Sector – 29, Gurgaon,
Haryana – 122 001**

Versus

- 1. Central Electricity Regulator ...Respondent(s)
Commission
3rd & 4th 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.
Prakashgad, 4th Floor
Andheri (East), Mumbai – 400 052**
- 4. Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhawan
Race Course Road, Vadodara – 390 007**

5. **Electricity Department
Government of Goa
Vidyut Bhawan, Panaji
Ner Mandvi Hotel, Goa- 403 001**
6. **Electricity Department
Administration of DAMAN & DIU
Daman – 396 210**
7. **Electricity Department
Administration of Dadra Nagar Haveli
U.T. Silvassa – 396 230**
8. **Chhattisgarh State Electricity Board
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh – 492 013**
9. **Madhya Pradesh Audyogik Kendra
Vikas Nigam (Indore) Ltd.
3/54, Press Complex, Agra-Bombay Road
Indore – 452 008**

**Counsel for Appellant(s) : Mr. S.B. Upadhyay, Sr. Adv.
Mr. Pawan Upadhyay
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Mr. Jayesh Gaurav
Mr. Anish Upadhyay
Mr. Vivek Tripathi
Ms. Sharmila Upadhyay
Mr. Paban Kr. Mishra
Mr. Ankit Sibbal**

Counsel for the Respondent(s): Mr. Manoj Dubey

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The present Appeal has been filed by the Powergrid Corporation of India Ltd. ("Powergrid") against the order dated 16.5.2012 passed in Petition no. 349 of 2010 by the Central Electricity Regulatory Commission ("Central Commission") rejecting the request of the Appellant to condone the delay in commissioning of certain assets of the transmission project and consequently disallowing the Interest During Construction and Incidental Expenditure During Construction for the period of delay.

2. The short facts are as follows:

Powergrid, the Appellant herein, is a transmission licensee and Central Transmission Utility. The Central Commission is the first respondent. The beneficiaries of

the transmission system of Powergrid are the Respondents 2 to 9.

3. The Appellant filed a petition before the Central Commission for determination of tariff for the combined transmission assets commissioned in the Western Region for the tariff block 2009-14 along with an Application for condonation of delay in commissioning of Asset 4 and Asset 5. The Central Commission rejected the Application for condonation of delay and disallowed Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) and initial spares through the impugned order dated 16.5.2012. Aggrieved by the above disallowance, Powergrid has filed this Appeal.

4. The Appellant has made following submissions:

- i) As 84.50 Hectares of land fell in the forest area, the Appellant made necessary application for forest clearance to the concerned District Forest Officers in April, 2006. However, final forest clearance was granted by the Ministry of Environment and Forest on 19.5.2009. Thereafter, the Principal Chief Conservator of Forest, Bhopal issued order on 12.6.2009 for permission for felling trees for the purpose of laying down the transmission lines.

- ii) On 29.6.2009 the Divisional Forest Officer sent a letter addressed to Powergrid informing about the final forest clearance granted by the Ministry of Environment and Forest as also asking Powergrid to deposit the specified amount for disposal of the trees. However, this letter was not sent to the correct address of Powergrid. It was addressed to Deputy General Manager of Powergrid at Bhopal while this should have been addressed to

- Western Regional Headquarters of Powergrid at Nagpur which had sent the proposal for forest clearance.
- iii) On enquiry from the Divisional Forest Officer's office the Appellant on 28.8.2009 received a true copy of the letter dated 29.6.2009 which had been wrongly sent to Bhopal office of Powergrid. Immediately thereafter on 4.9.2009, Powergrid deposited the requisite amount for disposal of trees.
- iv) After carrying out other formalities and marking of trees on 6.3.2010, the Chief Conservator of Forest wrote a letter to the Forest ranger for starting the disposal of trees. Thus, more than 3½ years have taken in granting permission to Powergrid for laying down the transmission line in the forest area by the various authorities under the Forest Conservation Act, 2010.

This had adversely affected the progress of work in the forest area. Thus, the delay was beyond the control of Powergrid.

- v) Powergrid had started executing the project promptly within one month of obtaining the final permission for forest clearance and the project was commissioned on 1.3.211 and therefore, the delay could not be attributed to them.

- vi) The Central Commission has failed to consider the delay caused by the Forest Department in granting necessary clearance for felling of trees in the forest area. The Central Commission also did not take into account the delay of one month in Asset 4 because of non-availability of technical personnel by the foreign supplier. The Central Commission has also made

inconsistent reduction of spares of sub-station of Asset 4.

5. Madhya Pradesh Power Trading Company Ltd. has made the following reply:

“The delay in forest clearance could not be considered a force-majeure event. At the time of approval of the project, Powergrid was well aware of the various forest clearances involved and time taken in obtaining the same. Non-availability of technical personnel was a contractual matter between the Appellant and its contractor and should be settled as per their contract. The Appellant has other suitable remedies available for compensation against this issue and the delay on this account can not be passed on to the beneficiaries. Further, the non-availability of technical personnel could not be relied upon merely on the basis of the bald statement of the Appellant. Further, the cost of initial spares claimed by the Appellant was in excess of the

ceiling norms specified in the Central Commission's Regulations and therefore the same was rightly denied by the Central Commission.”

6. We have heard Shri S.B. Upadhyay, Learned Senior Counsel for the Appellant and Shri Manoj Dubey Learned Counsel for the Respondent no.2 on the above issues. On the basis of the rival contentions of the parties, the following questions would arise for our consideration:
 - i) Whether the Central Commission was correct in disallowing the IDC and IEDC for the period of delay in commissioning of the transmission assets rejecting the contention of Powergrid that the reasons for the delay were beyond their control?

- ii) Whether the Central Commission was correct in rejecting part of the claim of capitalization of initial spares by Powergrid?
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- 7. Let us take up the first issue regarding delay caused in completion of the project.

 - 8. According to Powergrid, the delay caused due to delay in forest clearance and non-availability of technical expert were beyond their control and the Central Commission ought to have allowed the IDC/IEDC for the entire period of delay as the same was not attributable to them. On the other hand the contention of the Respondent no.2 is that these factors were not force majeure events and hence the cost of time overrun due to these factors could not be passed on to the beneficiaries.

9. Let us first examine the findings of the Central Commission.

The Central Commission has noted that there was delay in commissioning of the Asset – 4 (Bus reactor at Gwalior sub-station) by 2 months and Asset 5 (Birsinghpur – Damoh transmission line) by 8 months.

The findings of the Central Commission are as under:-

“17. The reasons adduced by the petitioner to justify time over-run are examined hereunder:-

(a) During the hearing on 12.7.2011, the Commission directed the petitioner to furnish the detailed reasons for delay in commissioning of 50 MVAR Bus Reactor at Gwalior sub-station. The petitioner, vide affidavit dated 1.9.2011, has submitted that the Bus Reactor protection system along with associated panels was supplied by M/s Siemens India Limited and the integration of Bus bar reactor bays, alarms was to be done by M/s Siemens in association with M/s GE, Canada. Delay of one month in commissioning of Bus reactor at Gwalior sub-station was due to non-availability of SCADA personnel of GE Canada, which was not within the control of PGCIL.

- (b) *We are not impressed with the reasons given by the petitioner for delay. Non-availability of technical personnel is a contractual issue between the petitioner and the supplier and the petitioner should settle the issue as per the contract. There is no justification for condoning the delay and consequently passing on the burden of cost to the beneficiaries.*
- (c) *As regards the delay in commissioning of Asset-5 (400 kV D/C Birsinghpur-Damoh Transmission Line), it has been submitted, vide affidavit dated 1.9.2011, that although the final forest clearance was given by Ministry of Environment & Forests, Government of India, on 19.5.2009, the Forest Department of Madhya Pradesh issued order for permission to lay the transmission line within 46 m belt inside forest area for cutting the trees on 11.6.2009. The petitioner made payment against tree cutting on 4.9.2009 based on the demand note dated 29.6.2009 raised by Umaria forest circle (comprising Pali, Chandia, Nourozabad and Umaria). However, tree cutting work could not be carried out from June, 2009 to September, 2009 due to onset of monsoon season. Thereafter, CCF- Shahdol, vide letters dated 1.10.2009 and 23.2.2010, instructed PGCIL to undertake marking of the trees in association with forest officials. The same was executed accordingly. The permission for cutting the trees was accorded in March, 2010 in Chandia, Umaria and Nourazabad divisions and work was completed in April, 2010 except in Pali Division (2.8 km stretch), where tree cutting was held up for want of approval. Due to incessant rains in July and August, 2010, tree cutting could*

not be started. Finally, it started in September, 2010 and was completed in October, 2010.

- (d) We are not convinced about the reasons adduced for the delay. Onset of monsoon and incessant rain cannot be held as justifying factors for condoning delay. The petitioner made the payment against tree cutting on 4.9.2009 though the demand note was raised by the forest department on 29.6.2009. Further, it is not clear why PGCIL waited till 23.2.2010 to undertake marking of the trees, when CCF, Shahdol had vide letter dated 1.10.2009 instructed them to undertake marking in association with forest officials. Besides, no documentary evidence has been submitted to support that timely approval was sought in respect of 2.8 km of forest stretch in Pali Division. Thus, we hold that there is no justification for condoning the delay in this case either.*
- (e) CEA granted permission for charging both the lines including associated bays on 31.10.2010. The petitioner made the system ready for Ckt-3 and informed the same to SGTPS (MPGENCO) on the same day. However, the line could not be charged due to system constraint on account of Deepavali festival.*
- (f) It is the petitioner's responsibility to coordinate with the State authorities for charging the line. The submissions of the petitioner alleging system constraint for not charging the line have not been substantiated by any documentary evidence. On the contrary, there is documentary evidence to*

indicate that the petitioner has not completed the technical and commercial requirements of installing ABT meters in due time.

18. In view of the foregoing, we reject the request of the petitioner for condonation of delay. Accordingly, the IEDC and IDC claimed by the petitioner are disallowed to the extent indicated in the following table:-“

10. The findings of the Central Commission are summarized as under:

- i) Non-availability of technical personnel was a contractual issue between Powergrid and its supplier and Powergrid should settle the issue as per the terms of their contract. Thus, the burden of delay of one month in commissioning of bus reactor at Gawalior sub-station due to non-availability of technical personnel cannot be passed on to the beneficiaries.
- ii) Central Commission was not convinced about the reasons adduced for the delay in commissioning of 400

kV Double Circuit Birsinghpur – Damoh transmission line. Powergrid made payment against tree cutting on 4.9.2009 though the demand note was raised by the forest department on 29.6.2009. It was also not clear as to why Powergrid waited till 23.2.2010 to undertake marking of the trees when they were informed by Chief Conservator Forest, Shahdel vide letter dated 1.10.2009 to undertake marking in association with forest officials. Further, no documentary evidence was furnished to show that they had sought approval in respect of 2.8 km of forest stretch in Pali Division.

- iii) The submissions of Powergrid alleging system constraints for not charging the line had not been substantiated by any documentary evidence. On the other hand there was documentary evidence to indicate that Powergrid had not completed the technical and

- commercial requirements of installing ABT meters in due time.
11. Thus, the Central Commission has given adequate reasons for not condoning the delay in completion of Asset 4 and 5 and for consequential disallowance of IDC and IEDC.

 12. According to Regulation 7(1) of the 2009 Tariff Regulations, the Central Commission has to admit the capital cost including IDC based on the expenditure incurred or projected to be incurred upto the date of commercial operation after prudence check. The Central Commission after prudence check deemed it fit not to allow IDC/IEDC for the delay in commissioning of certain transmission assets after rejecting the claim of Powergrid that the delay was not attributable to them. In view of the reasons given by the Central Commission,

the rejection of the claim of Powergrid is fully justified.

Thus, the first issue is decided as against the Appellant.

13. The second issue is regarding cost of initial spares.
14. We find that the Central Commission has disallowed a part of cost of initial spares pertaining to the sub-station as the claim of Powergrid was in excess of the ceiling norms for initial spares specified in the Tariff Regulations.
15. Regulation 8 of 2009 Regulations provides that the initial spares shall be capitalized as a percentage of the original project cost subject to following ceiling norms:

Transmission line	0.75%
Transmission sub-station	2.5%
16. It is seen that Powergrid claimed initial spares of Rs. 307.23 lakhs for the sub-station and Rs. 35.48 lakhs for

transmission line. While the initial spares for transmission line were within the ceiling limits of Regulation 8, the cost of initial spares claimed for sub-station was in excess of the ceiling norms. Accordingly, the Central Commission deducted the cost of excess initial spares in sub-station from the capital cost for the purpose of tariff calculation.

17. Thus, we find that the Central Commission has followed its Tariff Regulations in deducting the excess cost of initial spares of sub-station over the specified ceiling norms. Therefore, we conclude that the finding of the Central Commission on this issue is valid. Thus, the second issue is also decided as against the Appellant.

18. Summary of our findings:

- i) We do not find any infirmity in the Central Commission's findings for rejecting the application**

of Powergrid for condonation of delay caused in commissioning the transmission Assets 4 and 5 for reasons of non-availability of technical personnel and delay in forest clearance.

ii) The Central Commission has correctly disallowed the excess amount of initial spares of the sub-station over the specified ceiling norms as per Regulation 8 of the 2009 Tariff Regulations.

19. In view of above the Appeal is dismissed as devoid of any merit. No order as to costs.

20. Pronounced in the open court on this 12th February, 2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE

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