

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Appeal No. 397 of 2018 &  
IA Nos. 934 and 1895 of 2018, IA No. 1206 of 2022,  
IA No. 1066 of 2023, IA No. 188 of 2024**

**Dated: 11<sup>th</sup> December, 2024**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**Essar Power Transmission Company Limited**  
Lower Ground Floor, Hotel Treebo Conclave Riviera  
A-20, Kailash Colony, New Delhi 110048.

**.....Appellant**

**VERSUS**

- 1. Central Electricity Regulatory Commission,**  
Through Secretary,  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi- 110001.
- 2. Essar Power M. P. Limited,**  
Through CEO& MD,  
Essar House,  
11th Floor, 11 KK Marg,  
Opp Racecourse,  
Mahalaxmi, Mumbai - 400 034  
Maharashtra.
- 3. Power Grid Corporation of India Limited**  
Through Director Finance,  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016

Also At  
Saudamini, Plot No.2,  
Sector 29, Near IFFCO Chowk,  
Gurgaon (Haryana) – 122001.

**4. National Load Despatch Centre**

Through CEO& MD  
B-9, Qutub Institutional Area  
Katwaria Sarai,  
New Delhi-110016.

**5. Western Regional Power Committee**

Through Secretary  
F-3, MIDC Area, Marol,  
Opp. SEEPZ, Central Road,  
Andheri (East), Mumbai - 400 093  
Maharashtra.

**6. Essar Steel India Limited,**

Through CEO& MD  
27<sup>th</sup> KM on Surat - Hazira Road,  
Hazira, 394 270, District – Surat  
Gujarat.

**7. Government of Madhya Pradesh,**

Though Principal Secretary, Power  
Energy Department, Mantralaya  
Vallabh Bhavan, Bhopal- 462 004.

....Respondent(s)

Counsel on record for the Appellant(s) :

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Mr. Amit Kapur  
Mr. Abhishek Ashok Munot  
Mr. Kunal Kaul  
Mr. Malcolm Dinyar Desai

Mr. Tushar Nagar  
Mr. Samikrith Rao Puskuri  
Ms. Nayantara Pande  
Mr. Alok Shankar  
Mr. Abhishek Kakker  
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Mr. Harshit Singh  
Ms. Nehul Sharma  
Ms. Alchi Thapliyal  
Ms. Lavanya Panwar  
Mr. C. K. Rai  
Mr. Sachin Dubey for R-2

Mr. Pallav Mongia  
Mr. Mridul Chakravarty  
Mr. Tushar Srivastava  
Mr. Abhinav Goyal for R-3

Mr. Nitin Gaur  
Mr. Ashwin K. Nair  
Mr. Ravi Sharma  
Mr. Koshif Khan for Res. 7

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. M/s Essar Power Transmission Co. Ltd. (in short "Appellant" or "EPTCL") has filed the captioned Appeal challenging the Order dated 15.06.2016 passed by Central Electricity Regulatory Commission (hereinafter "CERC" or "Central Commission") in Petition No. 173/TT/2013 and 111/TT/2015 ("Tariff Order") as modified by order dated 28.02.2018 in Review Petition 33/RP/2016 ("Impugned Order").

#### **Parties**

2. The Appellant, EPTCL is a company, incorporated under the Companies Act, 1956 in 2006, engaged in the business of establishing, commissioning, setting up, operating, and maintaining electric power transmission systems forming part of the Inter-State Transmission System (ISTS), inter-alia granted a transmission licence from CERC for the development of the transmission system associated with the Mahan Thermal Power Station.

3. Respondent No. 1 is the Central Commission which is the Appropriate Commission having passed the Tariff Order and the Impugned Order.

4. Respondent No. 2 is Essar Power M.P. Limited (hereinafter “EPMPL”), which has set up the generating station, for which the Appellant commissioned the impugned transmission line for evacuating the power.
5. Respondent No. 3, Power Grid Corporation of India Limited is a deemed licensee under the Electricity Act, 2003 (hereinafter “Act”), and in the role of CTU is responsible for the payment of transmission tariff to licensees in terms of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.
6. Respondent No. 4, the National Load Despatch Centre (hereinafter “NLDC”), is the apex body to ensure the integrated operation of the national power system, inter-alia, constituted as per the Ministry of Power (hereinafter “MoP”) notification dated 02.03.2005.
7. Respondent No. 5 is Western Regional Power Committee (hereinafter “WRPC”), it was created by the Government of India, under sub-section 55 of Section 2 of the Act comprising of States of Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra and Goa and Union Territory of Daman & Diu and Dadra & Nagar Haveli, WRPC is required to facilitate the stability and smooth operation of the integrated grid and economy & efficiency in the operation of power system in the western region
8. Respondent No. 6 is Essar Steel India Limited, an integrated steel producer that has set up a 1.5 MTPA plate mill and a 0.6 MTPA pipe mill at Hazira.

9. Respondent No. 7 is the State Government of Madhya Pradesh.

**Facts of the Case (as submitted in the Appeal)**

10. The grievances and reasons for filing the Appeal as cited by the Appellant are noted in the following paragraphs.

11. Essar Power Transmission Company Limited was incorporated to develop the evacuation system associated with the Mahan Thermal Power Station (2×600 MW plant) being developed by EPMPPL, accordingly, in April 2008, the Central Commission issued a transmission licence to EPTCL to undertake the development of the power evacuation system through the development of the following transmission lines and bays:

<u>S.No</u>	<u>Particulars of the Line</u>	<u>Length (Kms)</u>
<b>A. Transmission Line</b>		
1.	400 kV D/C (triple conductor) transmission line from Mahan to Sipat Pooling sub-station	315
2.	LILO of existing 400 kV S/C Vindhyachal-Korba transmission line of Powergrid at Mahan	20

3.	400 kV D/C (twin conductor) transmission line from Gandhar NTPC switchyard to Hazira	97
<b>B. Substation/ Bays</b>		
4.	3X500 MVA 400 /220 kV sub-station at Hazira	
5.	2x50 MVAR line reactors at Sipat pooling sub-station	
6.	2x50 MVAR line reactors at Mahan	

12. The transmission licence provided the timeline for completion of the project as October 2010, therefore, a construction period of approximately 29 months was assumed in the said order, however, considering the development of the generation project, the Transmission Project was decided to be developed in stages, wherein, the Mahan-Sipat Line was proposed to be developed as stage-II.

13. However, due to reasons beyond the control of the Appellant (delay in grant of approval under Section 164 of the Electricity Act, delay in grant of forest clearance and delays due to ROW issues) the construction of the Stage-1 assets was delayed.

14. The Appellant filed a tariff petition numbered 173/TT/2013 praying for a determination of tariff for the entire assets. Central Commission vide order dated 12.09.2013 allowed recovery of provisional tariff for Stage-1 assets. Thereafter Appellant filed another tariff petition numbered 111/TT/2105 for true-up of the tariff for Stage asset for 01.04.2013 to 31.03.2014 and determination of tariff for the

2014-19 tariff period. CERC disposed of both petitions by a common order dated 15.06.2016. Vide the said order CERC for arbitrary and extraneous reasons denied capitalization of actual cost towards:

- (i) Compensation paid to landowners for RoW clearance
- (ii) Delay in completion of the lines on account of RoW issues
- (iii) Time overrun owing to delay in obtaining statutory approvals
- (iv) Delay in grant of approval under Section 164 of the Act:
- (v) Delay in grant of forest clearance
- (vi) Interest during construction and incidental expenditure during construction
- (vii) Reduction in capital cost on account of appointment of EPC contractor
- (viii) Non-allowance of administrative and specialist expenses
- (ix) Disallowance of certain O&M Costs

15. Since the reasons for each of the disallowances had errors apparent on the face of the record, the Appellant was constrained to file a review petition numbered 33/RP/2016 against the order dated 15.06.2016.

16. The Central Commission sought various details *inter alia* relating to the cost incurred towards interest, and ROW compensation. All information directed to be furnished was made available to the Central Commission through additional affidavits filed on 07.10.2016, 20.10.2016 and 29.11.2016. In addition to these affidavits, detailed written submissions were also filed by the Appellant.



17. However, despite satisfying itself that all the costs that have been claimed in the tariff petition have been legitimately incurred by the Appellant, CERC disallowed substantial amounts of ROW Compensation, reduced the capital cost of the project, did not allow IDC and IEDC (except for 5 months) and refused to condone the time overrun even when the same was caused entirely due to delay in grant of forest clearance, delay in grant of approval under Section 164 of the Electricity Act and ROW issues faced by the Appellant.

18. The disallowances have been made citing arbitrary and extraneous reasons. In the name of the prudence check for ROW costs, arbitrary standards for payment of compensation have been adopted ignoring the detailed guidelines notified by the MoP, valuation report (by government approved valuer) and auditors certificate confirming actual payments.

19. Time overrun for various reasons have been denied by stating that the works could have been started immediately after Board approval ignoring the fact that no works could have been undertaken without a transmission licence (issued in April 2008) and approval under Section 164 of the Act (issued in July 2010).

20. The interpretation of various statutory provisions such as the Telegraph Act is contrary to settled rules of statutory interpretation and untenable in law.

21. The instant appeal raises serious questions of law and facts and the same are discussed in detail in the accompanying appeal. The instant order is illegal and

liable to be modified to the extent of arbitrary disallowances made in the Impugned order.

### ***Submissions of the Appellant***

22. The Appellant submissions are noted as under:

#### Review of Project

23. EPTCL is an Inter-State Transmission Licensee in terms of CERC's Order dated 10.04.2008 in Petition No. 157/2007, amended on 15.09.2009 ("Transmission Licence"), to develop (on build, own and operate basis) the following Associated Transmission System for evacuation of power from Mahan Thermal Power Plant ("Mahan TPP") set-up by erst. Essar Power M.P. Ltd. ("EPMPL" or "Respondent No.2") now Mahan Energen Ltd.:

**Table No.1: Transmission Assets**

<b>I</b>	<b>Transmission Lines</b>	<b>Length(kms)</b>
1.	400 kV (triple conductor) D/C transmission line from Mahan to Sipat Pooling Sub-station.	336.70
2.	LILO of existing 400 kV S/C Vindhyachal - Korba transmission line of POWERGRID at Mahan.	22.40
3.	400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) switch-yard to Hazira.	104.6

<b>I</b>	<b>Transmission Lines</b>	<b>Length(kms)</b>
<b>II</b>	<b>Sub-stations / Bays</b>	<b>-</b>
1.	3X500 MVA, 400/220 kV Sub-station at Hazira	-
2.	2X50 MVAR line reactors at Sipat pooling Sub-station	-
3.	2X50 MVAR line reactors at Mahan	-
4.	1X80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400 kV bay	-
5.	2 Nos. 400 kV line bays at Sipat Pooling station.	-
6.	2 Nos. 400 kV line bays at Gandhar (NTPC) switchyard.	-
7.	4 Nos. 400 kV line bays at Mahan TPS.	-

24. EPTCL's present Appeal deals with the Stage-1 Transmission Assets viz., (i) 400 kV (twin conductor) D/C Transmission Line from Gandhar (NTPC) Switchyard to Hazira; (ii) LILO of 400 kV Vindyanchal - Korba Transmission Line; and (iii) Associated Bays.

### Background of Issues

25. The Stage-1 Transmission Assets were commissioned on 01.04.2013 with a delay as against the schedule of 01.11.2010 as envisaged in the Transmission License dated 10.04.2008. This construction took 60 months instead of the 29 months as envisaged by EPTCL.

26. This delay was on account of Right of Way (“RoW”) issues, delay in the grant of approval under Section 164 of the Electricity Act, 2003 (“Electricity Act”) and delay in the grant of Forest Clearance. Each of these events has been recognized by this Tribunal and CERC to be beyond the control of the developer.

27. On 15.06.2016, CERC issued the Impugned Tariff Order, to determine the Annual Transmission Charges at Rs. 64.84 Crores by allowing Capital Cost of only Rs. 292.91 Crores, as against Rs.112.71 Crores claimed by EPTCL on a total Capital Cost of Rs. 495.87 Crores incurred by it) has: -

- (a) Completely disallowed EPTCL’s claims towards:
  - (i) Compensation paid by EPTCL to landowners qua RoW;
  - (ii) Interest During Construction (“IDC”).
  - (iii) Delay caused on account of:
    - (1) RoW issues;
    - (2) Grant of approval under Section 164 of the Electricity Act; and
    - (3) Grant of Forest Clearance.
- (b) Made deductions re.
  - (i) Incidental Expenditure During Construction (“IEDC”);
  - (ii) EPC costs; and
  - (iii) Operation & Maintenance Expenses.

28. Due to certain errors apparent on the face of the record, on 27.07.2016 EPTCL filed Review Petition No. 33/RP/2016 before CERC.

29. On 28.02.2018, CERC passed the Impugned Review Order, revising the Annual Transmission Charges to Rs.79.92 Crores by increasing the total Capital Cost incurred by EPTCL to Rs. 366.23 Crores from Rs.292.91 Crores.

30. By its Impugned Order dated 19.12.2018, CERC crystallized the Transmission Tariff based on the principles decided in the aforesaid Review Order.

31. Table No.2 identifies the Capital Costs incurred and claimed by EPTCL vis-à-vis what was approved by CERC in the said Impugned Orders.

Table No.2 : Capital Costs incurred by EPTCL vis-à-vis approved by CERC

Particulars	Incurred/ claimed by EPTCL before CERC	Allowed by CERC in Impugned Tariff Order	Allowed by CERC in Impugned Review Order	Total Disallowances
RoW	₹ 76.7 Cr.	₹ 0.0 Cr.	₹ 45.9 Cr.	₹ 30.8 Cr.
Soft Costs (IDC & IEDC)	₹ 67.4 Cr.	₹ 0.7 Cr.	₹ 10.1 Cr.	₹ 57.3 Cr.
Capital Costs/ EPC	₹ 351.7 Cr.	₹ 292.2 Cr.	₹ 310.2 Cr.	₹ 28.7 Cr.
<b>Total</b>	<b>₹ 495.88 Cr.</b>	<b>₹ 292.91Cr.</b>	<b>₹ 366.23 Cr.</b>	<b>₹ 116.85 Cr.</b>

<b>Capital Cost</b>				
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32. It is noteworthy that although the Capital Cost of ₹ 495.88 Crores claimed by EPTCL was well below the then prevalent CERC's Capital Cost Benchmark of ₹ 535.41 Crores, CERC eventually allowed only ₹ 366.23 Crores, arbitrarily disallowing various claims made by EPTCL.

33. The challenge to the disallowances in the present Appeal can be divided into 2 broad categories, viz.: -

(a) **Category A:** 3 Issues covered by earlier Judgments and Orders of this Tribunal and CERC – condoning delays beyond the control of the developer.

(b) **Category B:** 2 Issues consequential to Category A.

(c) While EPTCL has in the present Appeal impugned CERC's findings disallowing capital cost of Rs. 28.72 Crores on account of the appointment of Essar Projects India Ltd. (EPIL) as the EPC contractor, EPTCL is not pressing the said claim before this Hon'ble Tribunal.

Table No.3: Issues before this Hon'ble Tribunal as per relevant Category

#	CATEGORY A	CATEGORY B
1.	Delay in grant of approval under	Compensation paid to landowners

#	CATEGORY A	CATEGORY B
	Section 164 of the Electricity Act.	for Right of Way.
2.	Delay in grant of Forest Clearance.	Consequential disallowance of IDC and IEDC
3.	Delay on account of Right of Way issues.	

34. MPPMCL being the only Respondent has focused its defence on the delay in the grant of Section 164 approval.

35. On 14.03.2022, CERC passed its Order in Petition No. 145/TT/2018 determining Transmission Tariff for EPTCL's Stage-2 Transmission Assets (commissioned on 22.09.2018) condoning **delays on account of grant of Forest Clearance** and **RoW issues**. The fact that Impugned Tariff Orders were passed without taking note of the settled principles of law and past precedents stands acknowledged by CERC by this Order. The *List of Authorities* being relied upon by the Appellant is placed at **Sr. No. 11 [ @ Pg. 387 of CC, Vol. 2]**.

36. Details of the issues and claims in the instant Appeal vis-à-vis those decided by CERC's Stage-2 Transmission Tariff Order dated 14.03.2022 are tabulated below:

**Table No.4: Common Issues / Claims in Stage-1 and Stage-2 Tariff Orders**

<b>Common Issues / Claims</b>	<b>Stage-1 Impugned Tariff Orders</b>	<b>Stage-2 Tariff Order</b>
Delay in grant of Forest Clearance.	Not condoned.	Condoned [Para 71]
Delay on account of Right of Way issues.	Not condoned.	Partly condoned. [Para 74]
Delay in grant of approval under Section 164 of the Electricity Act, 2003.	Not condoned.	Not condoned, since the same was disallowed in Stage-1 Impugned Orders.
Compensation paid to landowners qua RoW	Partly Disallowed	Allowed [Para 49 & 50]
Consequential disallowance of IDC and IEDC	As per findings above on specific issues.	As per findings above on specific issues.

37. CERC failed to appreciate that the delay caused to the project was on account of RoW disputes, delays in the grant of statutory approvals such as Section 164 permission and Forest Clearance, which were beyond EPTCL's control, being force majeure events as time and again held, and therefore to be condoned.

38. The Stage-1 Transmission Assets were commissioned on 01.04.2013 vis-à-vis 01.11.2010 (October 2010 – envisaged in the Transmission Licence). As such, there was a time over-run of 29 months owing to the aforesaid reasons.

39. Not only had EPTCL kept CEA and the CTU informed regarding the difficulties being faced by it in the timely execution of the project but it also sought



their assistance in various review meetings. Despite this, CERC made deductions in the Tariff owing to the delay in the completion of the project. Such deductions are completely unjustifiable and therefore deserve to be set aside by this Hon'ble Tribunal.

40. The Appellant invited our attention to the findings of the Commission as under:

- (a) Impugned Tariff Order dated 15.06.2016 - *Paras 43 – 49*
- (b) Impugned Review Order dated 28.02.2018 - *Paras 42 – 51*

41. The relevant impugned findings concerning the delay in the grant of approval under Section 164 of the Electricity Act in the Impugned Review Order dated 28.02.2018 (Paras 38; 48-50) are as under:

*“38. The Review Petitioner has further submitted that the time over-run in execution of Stage-I of the Project is attributable to the delay in grant of approval under Section 164 of the Act (Section 164 Approval) by the MoP. However, the delay due to Section 164 approval was not condoned, except for two months. According to the Review Petitioner, the Commission has omitted to consider the settled position of law that grant of Section 164 Approval is a sine qua non for the execution of a transmission project, and therefore the Review Petitioner could not have awarded the EPC contract for the execution of the Project before such approval was obtained. The Review Petitioner has submitted that due to delay in grant of Section 164 Approval, the award of contract was*

*delayed. The delay in publication of notice in two local daily newspapers was not a delay, as two months is a reasonable period for finalizing the transmission line. The Review Petitioner has submitted that Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 139 of 2013, held that delay in grant of Section 164 Approval is to be considered as a force majeure event and cannot be attributed to the project developer. The Review Petitioner has further submitted that the findings in order dated 15.6.2016 is contrary to the Commission's findings in Petition No. 73/MP/2014 and in Petition No. 296 of 2010. The Review Petitioner has submitted that the period allowable for the construction and commissioning of the Project may be considered from the date of grant of Section 164 Approval, in line with the judgment of the APTEL and earlier orders of the Commission.*

...

*48. With regard to Section 164 approval, the Review Petitioner applied to MoP on 10.3.2008. The Review Petitioner vide letters dated 21.4.2008 and 30.4.2008 informed MoP that it was granted transmission licence and requested to accord Section 164 approval. The Review Petitioner has obtained approval in July, 2009 and entire process took about 16 months in getting approval under Section 164 of the Act. The Review Petitioner has taken plea that the EPC Contract was delayed due to delay in obtaining approval under Sections 68 and 164 of the Act. The EPC Contract was awarded on 15.7.2009. It is observed that the Review Petitioner has awarded EPC Contract after obtaining approval under Section 164 of the Act.*

**49. The Review Petitioner's main contention is that the delay in getting approval under Section 164 of the Act is force majeure and as per position of law that grant of Section 164 approval is a sine qua non for the execution of a transmission project. The Review Petitioner has cited the precedence of the Appellate Tribunal for Electricity in North Karanpura Transmission co. Ltd. Vs. Central Electricity Regulatory Commission and Ors. Appeal No. 139 of 2013 dated 2.12.2013 where the Tribunal has categorically held that a delay in grant of Section 164 approval is to be considered as a force majeure event and cannot be attributed to the project developer. The Review Petitioner has stated that the approval under Section 164 of the Act is necessary for execution of the project as it authorizes the Review Petitioner to enter into the premise for the installation of the lines. It is observed that although Section 68 is necessary for execution of a line, Section 164 approval is not a mandatory requirement. Section 164 approval authorizes a person to execute a line with payment of compensation but without obtaining express "consent" of affected parties under Works of Licensees Rules, 2007.**

**50. It is observed that there is a process of approval under Section 164 of the Act as per establishment procedure and which requires time for detailed survey by the Review Petitioner, examination of the proposal by Government instrumentality (CEA) and compliance of queries by the Review Petitioner. Hence, the entire time taken in approval under Section 164 cannot be considered as**

***a “delay”. Therefore, while deciding the timeline of the project, as prudent practice, any developer will build in the certain time required for such approval/clearance. It may be pertinent to note that as per the tariff based competitive bidding guidelines, the timeline given for obtaining clearance/permission, is six months. Therefore, we are of the view that as prudent practice, the timeline for about 6 months is to be reasonably factored in by the Review Petitioner towards obtaining approvals. The time required to obtain approval upto 6 months cannot be considered as delay. After grant of transmission licence in April, 2008, the Review Petitioner applied for approval under Section 164 of the Act on 26.5.2008. But after finalization of the line route and communicating of same to CEA on 6.4.2009, MoP issued the approval under Section 164 within 2 months. Thus, the delay in grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner. In the light of above, delay in grant of approval under Section 164 is not condonable.”***

42. The transmission system developed by EPTCL is an Associated Transmission System for the evacuation of power from Mahan TPP and is not an independent transmission infrastructure. EPMPPL had initially envisaged that the evacuation system would be a dedicated system of EPMPPL. However, CERC by its Transmission Licence Order dated 10.04.2008 decided that it would not treat the transmission system as a ‘dedicated’ transmission system and that it may be

utilized in the future for carrying power other than that for which it was presently being constructed.

43. Since early 2006 (before the date of Investment Approval i.e., 21.12.2006) EPTCL and EPMPL had in earnest taken concrete steps for the construction of the transmission system for evacuation of power from Mahan TPP. EPMPL through PGCIL (CTU) had conducted a System Study/load flow analysis and made the necessary application for seeking Long Term Open Access.

44. Although the Investment Approval was granted on 21.12.2006, the Associated Transmission System to be set up for evacuation of power from Mahan TPP was identified only on 27.08.2007 (i.e., the date on which the Minutes of the 9th Meeting of the Western Region Constitutes was published).

45. Pursuant thereto, EPTCL filed Petition No. 157/2007 before CERC seeking a grant of Transmission Licence and made necessary Applications for the grant of:-

(a) Section 68 approval on 10.12.2007; and

(b) Section 164 approval on 10.03.2008,

i.e., after getting clarity that CERC was inclined to grant EPTCL the licence.

46. In this regard, the following dates and events are noteworthy:

Date	Event
21.12.2006	EPTCL received Investment Approval from its Board.
13.02.2007	Erst. EPMPPL made an application seeking Long Term Open Access for 1100 MW.
30.07.2007	The scheme for the Transmission Project was approved in the 9 <sup>th</sup> Meeting of the Western Region Constitutes.
27.08.2007	The Minutes of the Meeting for the 9 <sup>th</sup> Meeting of the Western Region Constitutes was published.
22.11.2007	EPTCL filed Petition No. 157/2007 before CERC for the grant of a transmission licence
10.12.2007	EPTCL applied for approval under Section 68 of the Electricity Act
12.02.2008 (uploaded on 29.02.2008)	CERC vide Daily Order in Petition No. 157/2007 noted that it proposes to issue a transmission licence to EPTCL.
10.03.2008	EPTCL applied to MoP for approval under Section 164 of the Electricity Act.
10.04.2008	Transmission Licence was granted to EPTCL.
21.04.2008 & 30.04.2008	EPTCL informed MoP regarding the grant of a Transmission Licence and requested approvals under Sections 68 and 164.
21.04.2008	Since EPTCL's proposed route included 2 bays in National Thermal Power Corporation's ("NTPC") Jhanor / Gandhar

Date	Event
	switchyard, EPTCL on 21.04.2008 requested NTPC to allot 2 bays at the switchyard for termination of the 400 kV D/c (Twin) Jhanor-Hazira line.
26.05.2008	EPTCL was accorded approval under Section 68 of the Electricity Act.
14.07.2008	<p>MoP advised EPTCL to fulfill the following requirements to enable MoP to process its application under Section 164:-</p> <p>(i) Publish the scheme in the Official Gazette of the State concerned and in at least two local daily newspapers <u>along with a notice of the date, not being less than two months after the date of such publication before which any person interested may make representation on such scheme and take into consideration the objections/ representations, if any, and submit a certificate along with application under Section 164 to this effect that the route selected will cause least damage.</u></p> <p>(ii) Attach a duly authenticated copy of the alignment with the application which would be retained in the Central Electricity Authority (“CEA”) for record and safekeeping.</p>
11.08.2008	NTPC belatedly responded to EPTCL’s request dated 21.04.2008 and suggested that 2 bays would be allotted to EPTCL, however, the same would be owned and maintained by NTPC and the parties would sign a commercial agreement for the same.

Date	Event
12.08.2008	EPTCL promptly conveyed its acceptance of NTPC's aforesaid proposal. It further requested NTPC to identify bays so that line take-off can be decided.
15.09.2008	NTPC conveyed its acceptance to allot 2 bays at its Gandhar switchyard to EPTCL and directed EPTCL to contact its commercial team for the execution of a commercial agreement.
23.09.2008	EPTCL published notices in newspapers having circulation in Madhya Pradesh, Chhattisgarh, and Gujarat.
14.11.2008	Bids were received by EPTCL regarding NITs for the Transmission Project.
08.12.2008	EPTCL informed MoP of publication regarding Section 164 approval in newspapers on 23.09.2008.
11.12.2008	MoP advised EPTCL to have the scheme published in the Official Gazette as well as 2 local daily newspapers inviting objections and, basis the said objections or representations submit a certificate to the effect that the proposed route would cause the least damage for the purposes of obtaining approval under Section 164 of the Electricity Act.
23.12.2008	The Scheme was published in the relevant newspapers as per the direction of the MoP on 11.12.2008.
10.01.2009	The Scheme was published in the Gazette of India as per the direction of MoP on 11.12.2008 for the purposes of obtaining approval under Section 164 of the Act.



Date	Event
12.03.2009	EPTCL informed MoP that it had not received any representation/ objection in response to the scheme published in the newspaper and gazette.
16.03.2009	MoP for the first time issued/ published the standard procedure for obtaining authorization under Section 164 of the Act.
02.04.2009	A meeting was held between CEA and EPTCL regarding the finalization of the route for the construction of the transmission assets.
06.04.2009	As desired by CEA, EPTCL informed MoP that the route for the transmission lines had been finalized considering all factors, inter alia, to ensure the least damage to the environment, construction methodologies to be adopted, availability of logistical support, operation and maintenance, etc. and to avoid forest area involvement completely or keep it bare minimum.
17.06.2009	MoP accorded its approval to EPTCL under Section 164 of the Act.

47. CERC returned the following erroneous findings while disallowing delay caused due to grant of approval under Section 164:

- (a) Although approval under Section 68 of the Electricity Act is necessary for the execution of a line, Section 164 approval is not mandatory.
- (b) There is a process of approval under Section 164 as per established procedure. Hence, the time taken for it cannot be considered a 'delay'.

(c) As per tariff-based competitive bidding guidelines, the timeline given for obtaining clearance/ permission is six months.

(d) After the grant of transmission license in April 2008, EPTCL applied for Section 164 approval on 26.05.2008. But after finalization of the line route and communicating the same to CEA on 06.04.2009, the Ministry of Power issued approval within 2 months, Hence, the delay in grant of approval is attributable to the delay in route finalization by EPTCL.

48. As regards the finding captured in para 2.9(a) above, it is submitted that this Hon'ble Tribunal has categorically held that approval under Section 164 of the Electricity Act is essential for laying of a transmission line, *North Karanpura Transmission Co. Ltd. v Central Electricity Regulatory Commission and Ors.*, Appeal No. 139 of 2013, (Hon'ble Tribunal's Order dated 02.12.2013). Hence, CERC's finding in this regard is directly contrary to this Hon'ble Tribunal's finding. Hence, any delay attributable to obtaining the necessary approval under Section 164 ought to be condoned. It is noteworthy that the Hon'ble Supreme Court has recently deprecated unnecessary litigation on settled issues [*Nabha Power Limited v. PSPCL* 2023 SCC OnLine SC 1280 and *GMR Warora Energy Limited v. CERC & Ors.* 2023 SCC OnLine 464].

49. As regards the finding captured in para 2.9(b) above, it is submitted that at the time of application, **there was no established procedure for grant of Section 164 approval.** EPTCL applied on 10.03.2008, while approval was granted on 17.06.2009. It was only on 16.03.2009 (i.e. only 3 months before the granting of approval to EPTCL and more than 1 year after EPTCL applied), that

did Ministry of Power issued a standard procedure for the grant of Section 164 approval. **In any case, it is submitted that EPTCL has explained the timeline from grant to approval on a day-to-day basis. Since it is apparent that EPTCL did not cause any undue delay, all of the 15-month period must be considered as a delay beyond the control of EPTCL.**

50. As regards the finding captured in para 2.9(c) above, it is submitted that Tariff Based Competitive Bidding Guidelines are issued under Section 63 of the Electricity Act. Per contra, the tariff for the present project is determined under Section 62. Hence, there is no applicability of the said Guidelines to the present case, in as much as the project was not conceptualized nor approval was given by CERC under the said Guidelines. In any case, the Guidelines dated 13.04.2006 (which pertain to the period when the present project was being developed) do not contain a stipulation that approvals ought to be obtained in 6 months.

51. In fact, CERC in para 44 notes that 6 months' time is insufficient for obtaining approvals.

52. As regards the finding captured in para 2.9(d) above, it is submitted that CERC erroneously recorded that EPTCL applied for Section 164 on 26.05.2008. In fact, this was applied for on 10.03.2008 itself. In terms of Section 164, approval may only be given to a licensee. Hence, EPTCL could not have applied for it in the absence of certainty of a licence. Furthermore, route finalization of a transmission line is to be achieved with various stakeholders (including CEA, forest authorities,

etc.) and **is not the sole prerogative of EPTCL**. Hence, it is incorrect to state that EPTCL delayed route finalization.

53. In any case, the **time taken by MoP in the present case for the grant of approval under Section 164 of the Electricity is identical to the time taken for WRSS projects**. While CERC has condoned the delay qua the WRSS project, it has used a different yardstick for EPTCL resulting in financial prejudice and hardship. In this regard, CERC's Order dated 31.12.2010 in *Western Region Transmission (Gujarat) Pvt. Ltd. v. Power Grid Corporation of India Ltd, Gurgaon (Petition No. 296 of 2010)* wherein approval was granted after 15 months is noteworthy.

54. This Hon'ble Tribunal and CERC have held that delay in the grant of approval under Section 164 is a Force Majeure event and thus condonable:-

- (a) North Karanpura Transmission Co. Ltd. v Central Electricity Regulatory Commission and Ors., Appeal No. 139 of 2013, Hon'ble Tribunal's Order dated 02.12.2013 – [Para 36]
- (b) Western Region Transmission (Gujarat) Pvt. Ltd. v. Power Grid Corporation of India Limited, Gurgaon, Petition No. 296 of 2010, CERC's Order dated 31.12.2010 [Paras 13 & 17]
- (c) Jabalpur Transmission Company Limited v. Adhunik Power and Natural Resources Limited & Ors., Petition No. 73/MP/2014, CERC's Order dated 16.10.2015 [Para 39]

55. It is noteworthy that MPPMCL's sole submission on the subject issue is that there was no apparent explanation for EPTCL having taken almost 2 months' time to publish the notices in the newspapers. As is evident from the list of dates above, the line alignment could only be finalized once NTPC gave its final approval on 15.09.2008 to allot 2 bays at its Gandhar/ Jhanor substation. Said bays form part of the scheme to be published by EPTCL, which was duly done on 23.09.2008. Hence, there is no delay attributable to EPTCL in any supposed delay in publishing the scheme.

56. On 11.12.2008, MoP noted that EPTCL's scheme be published in the Government of India Gazette. This was done through MoP itself on 10.01.2009.

57. Thus, it is submitted that CERC erred in failing to condone the delay in the grant of approval under Section 164 of the Electricity Act, despite acknowledging that MoP took 15 months (i.e., from 10.03.2008 to 17.06.2009) to grant the said approval.

58. The relevant findings in the Impugned Review Order dated 28.02.2018 are quoted as under:

*"36. The Review Petitioner has submitted that time over-run due to delay in grant of approval under Section 164 of the Electricity Act, 2003 (the Act) delay in grant of forest clearance and RoW issues was disallowed in the order dated 15.6.2016. The Review Petitioner has submitted that the time over-run was due to reasons not attributable to it and non-consideration of*

*the materials submitted amounts to apparent error which needs to be corrected.*

*37. The Review Petitioner has submitted in order dated 10.4.2008 in Petition No. 157/2007, the project was proposed to be commissioned by October, 2010, i.e., approximately after 29 months from the date of issuance of the transmission licence by the Commission. The Review Petitioner has submitted that in order dated 15.6.2016, the Commission considered the stipulated period for execution of the transmission lines as 24 months which is an error. We have gone through the order dated 15.6.2016, October, 2010 has been considered as the completion schedule as was noted in the order dated 10.4.2008. However, the 24 months in order dated 15.6.2016 being a typographic error is rectified as 29 months.*

...

*41. The Review Petitioner has submitted that the delay in execution and commissioning of Stage-I of the Project is attributable to the RoW related issues pertaining to the laying of the 400 kV D/C Gandhar-Hazira transmission line. It was observed in the impugned order that details of only one court case was submitted and in the absence of the details of other cases, it is unable to take any decision on this issue. However, all material and relevant facts pertaining to the RoW issues were submitted vide affidavit dated 17.12.2015 filed in I.A. No. 38/IA/2015. The details of one of the case filed by Shri Prakash Modi was presented for illustrative purposes, with the bonafide belief that the details pertaining to the said litigation would be sufficient for adjudication on the issue of delay due to RoW issues, as the said litigation had the most significant impact on the execution of the*

*Project. The dispute with Shri Prakash Modi stalled the project execution work for more than two years in one of the locations. Stage-I of the Project was commissioned within two months of the resolution of the dispute. The details of the other RoW related cases were not placed on record earlier. It appears that exhaustive evidence was required in support of the Review Petitioner's contentions pertaining to delay in execution of the Project due to RoW related issues. The list of 112 cases relating to the RoW issues during the project execution phase in different courts against the Review Petitioner is submitted...*

...

*42. We have considered the submissions of the Review Petitioner. The actual commissioning of the Stage-I project is 1.4.2013 against the scheduled completion date of 1.11.2010 on account (a) delay due to RoW issues (b) Delay in getting forest clearance and (c) delay in getting approval under Section 164 of the Act. The chronology of events as submitted by the Review Petitioner in original petition is as under:....*

*43. It is observed that the Investment Approval was granted by the Board of Directors of the Review Petitioner on 21.12.2006 with schedule commissioning of project in October, 2010 matching with commissioning of the Mahan Generating station. A such, the Review Petitioner had about 46 months in commissioning of the project from the date of Investment Approval.*

*44. The Review Petitioner applied for transmission licence on 22.11.2007, i.e. about 11 months after the Investment Approval and was granted transmission licence on 29.4.2008 i.e. about 16 months after the Investment*

*Approval. Hence, the Review Petitioner had 30 months for the execution of project including getting approval under Section 68 and 164 of the Act and getting forest clearance etc. Considering 24 months' time for the execution of project as per the EPC Contract, it transpires that about 6 months' time was scheduled for inviting EPC bids and placing order, getting approval under Sections 68 and 164 of the Act and in getting forest clearance. In our view, the estimate time of 6 months was insufficient for getting above approvals and to carry out competitive bidding process etc. The Review Petitioner should have carried out activities in a planned manner keeping in view time required for approvals and placement of contracts.*

*45. In our view, seeking approval under Section 164 of the Act, making application for Forest Clearance and finalization of EPC contract are three distinct activities and can be undertaken simultaneously. The tentative or otherwise, transmission line route alignment is essential for all the three activities stated above. The Review Petitioner made application for forest clearance on 23.3.2009 and gave letter of route finalization to CEA on 6.4.2009. In January, 2010 revised application was made for the forest clearance. Thereafter, it took about 37 months in getting the forest clearance in February, 2013. **We find that the Review Petitioner applied for forest clearance only after finalization of transmission line route and scope of scheme in March, 2009.***

*46. We have examined the impact of delay in application for forest clearance after about two years and three months of initial investment approval in December, 2006. The Review Petitioner has submitted that the route*



alignment including acquiring maps, walk over survey route etc. after the grant of transmission licence was started in May, 2008. **The transmission line under consideration was part of a dedicated line of Essar and therefore, the grant of transmission licence was not a necessary condition for applying for forest clearance. We observe that the Review Petitioner could have applied for forest clearance on obtaining Section 68 approval but it did not apply for same in May, 2008 and applied for forest clearance only in 23.3.2009.** The Review Petitioner made application for approval under Section 68 to MoP in December, 2007 i.e. after one year of initial Investment Approval in December, 2006. In our view, such an application should have been made earlier, i.e. maximum within six months of initial Board approval. Considering that in the instant case, it took 37 months for forest clearance, **if the Review Petitioner would have applied for forest clearance in December, 2007, the forest clearance would have been obtained by February, 2011 and line could have been commissioned by April, 2011 as the Review Petitioner has taken only two months to commission line after obtaining forest clearance.**

47. If we consider the delay from date of finalization of the EPC contract as January, 2008 then considering 24 months construction period as per Letter of Intent and 10 months delay due to Right of Way problems due to court cases etc., the work could have been completed in 34 months i.e. by October, 2010. In the light of above, delay of 5 months from November, 2010 to 31.3.2011 out of 29 months is held not attributable to the Review Petitioner and is condoned.

48. With regard to Section 164 approval, the Review Petitioner applied to MoP on 10.3.2008. The Review Petitioner vide letters dated 21.4.2008 and 30.4.2008 informed MoP that it was granted transmission licence and requested to accord Section 164 approval. The Review Petitioner has obtained approval in July, 2009 and entire process took about 16 months in getting approval under Section 164 of the Act. The Review Petitioner has taken plea that the EPC Contract was delayed due to delay in obtaining approval under Sections 68 and 164 of the Act. The EPC Contract was awarded on 15.7.2009. It is observed that the Review Petitioner has awarded EPC Contract after obtaining approval under Section 164 of the Act.

49. The Review Petitioner's main contention is that the delay in getting approval under Section 164 of the Act is force majeure and as per position of law that grant of Section 164 approval is a sine qua non for the execution of a transmission project. The Review Petitioner has cited the precedence of the Appellate Tribunal for Electricity in North Karanpura Transmission co. Ltd. Vs. Central Electricity Regulatory Commission and Ors. Appeal No. 139 of 2013 dated 2.12.2013 where the Tribunal has categorically held that a delay in grant of Section 164 approval is to be considered as a force majeure event and cannot be attributed to the project developer. The Review Petitioner has stated that the approval under Section 164 of the Act is necessary for execution of the project as it authorizes the Review Petitioner to enter into the premise for the installation of the lines. **It is observed that although Section 68 is necessary for execution of a line, Section 164 approval is not a mandatory requirement. Section 164 approval**

***authorizes a person to execute a line with payment of compensation but without obtaining express “consent” of affected parties under Works of Licensees Rules, 2007.***

***50. It is observed that there is a process of approval under Section 164 of the Act as per establishment procedure and which requires time for detailed survey by the Review Petitioner, examination of the proposal by Government instrumentality (CEA) and compliance of queries by the Review Petitioner. Hence, the entire time taken in approval under Section 164 cannot be considered as a “delay”. Therefore, while deciding the timeline of the project, as prudent practice, any developer will build in the certain time required for such approval/clearance. It may be pertinent to note that as per the tariff based competitive bidding guidelines, the timeline given for obtaining clearance/permission, is six months. Therefore, we are of the view that as prudent practice, the timeline for about 6 months is to be reasonably factored in by the Review Petitioner towards obtaining approvals. The time required to obtain approval upto 6 months cannot be considered as delay. After grant of transmission licence in April, 2008, the Review Petitioner applied for approval under Section 164 of the Act on 26.5.2008. But after finalization of the line route and communicating of same to CEA on 6.4.2009, MoP issued the approval under Section 164 within 2 months. Thus, the delay in grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner. In the light of above, delay in grant of approval under Section 164 is not condonable.***

***51. As discussed above in preceding paragraph, the delay in grant of***

***approval under Section 164 of the Act is not condoned. Further, it is observed that the major delay of 24 months (out of 29 months) is attributable to the delay in application of forest clearance. If this delay had not occurred, the ROW problem due to court cases would have occurred earlier and as such the line could have commissioned by April, 2011. In the light of the above, the delay of 5 months starting from November, 2010 to 31.3.2011 out of 29 months is not attributable to the Review Petitioner and is therefore condoned.”***

59. CERC merely held that had there not been a delay in the grant of forest clearance, RoW issues would have occurred earlier and thereafter the line could have been commissioned by April 2011. CERC has not disputed the fact that there were RoW issues. It is submitted that even if there was no delay in the grant of forest clearance, there still would have been RoW issues. Thus, it is erroneous to surmise that RoW issues would have occurred earlier if there had been no delay in the grant of forest clearance.

60. The Gandhar – Hazira Transmission Line passes through very heavily industrialized areas of Baruch, Olpad, Akleshwar, Surat, and Hazira areas in the State of Gujarat. EPTCL faced severe and regular resistance from various landowners and farmers during the construction of towers, etc. while executing the Stage-1 Transmission Assets. This was even though the Ministry of Power had granted approval under Section 164 of the Electricity Act, to obviate any such post-facto objections being raised by owners and occupiers of lands.

61. For this reason, EPTCL had to regularly seek assistance from local administration, authorities, and police protection at different locations so as to complete the work. There were more than 100 cases filed in various courts pertaining to RoW matters. Furthermore, there were instances of complete stoppage of work and even EPTCL's employees being physically manhandled.

62. All the details of the RoW issues were placed before CERC. Of the various RoW-related matters, completion of the Project was stalled for almost 2 years due to a dispute with one Mr. Prakash Modi in Bharuch District, who did not allow construction even after detailed negotiations and follow-up of almost 10 months after issuing the notice on 20.05.2011. Due to this, EPTCL filed SCA No.12179/2012 in the Hon'ble Gujarat High Court, which by its Order dated 03.10.2012 directed the District Magistrate to resolve the issue. On 30.01.2013, the District Magistrate passed an order permitting the execution of works, which was thereafter completed in February 2013 with the support of Government Authorities. The magnitude and significance of this dispute are also borne out by the fact that Stage 1 of the Project was commissioned within 2 months of the resolution of this dispute.

63. It is submitted that, due to such resistance and obstruction in carrying out the transmission works, there was a delay of approx. 3 years in completing the project (viz., the first RoW instance letter being 05.01.2010 and the last letter being dated 13.03.2013).

64. CERC has consistently in a catena of Orders taken cognizance of the issues faced by developers and has condoned the delay caused due to RoW issues. However, CERC failed to consider the same in the instant case and wrongly penalized EPTCL. In this regard, the following Orders are noteworthy: -

- (a) CERC's Order dated 15.03.2016 in PGCIL vs. Madhya Pradesh Power Trading Co Ltd (Petition No. 57/TT/2013) [Para 20]
- (b) CERC's Order dated 22.03.2016 in Power Grid Corporation of India Ltd v. Madhya Pradesh Power Trading Co Ltd (Petition No. 412/TT/2014) [Para 18]
- (c) CERC's Order dated 29.04.2016 in Power Grid Corporation of India Ltd v. Madhya Pradesh Power Trading Co Ltd (Petition No. 110/TT/2014) [Para 13 & 23]
- (d) CERC's Order dated 29.12.2016 in Parbati Koldam Transmission Co Ltd vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (Petition No: 156/TT/2015) [Para 34]
- (e) CERC's Order dated 16.01.2017 in Parbati Koldam Transmission Co Ltd vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (Petition No: 384/TT/2014) [Para 54]
- (f) CERC's Order dated 20.09.2017 in *PGCIL v. Bihar State Electricity Board* (Petition No: 278/TT/2015) [Paras 24-25 & 39]
- (g) CERC's Order dated 31.12.2015 in *PGCIL v. Bihar State Electricity Board* (Petition No: 34/TT/2014) [Para 21]

65. It is most respectfully submitted that none of the aforesaid orders passed by CERC have been set aside.

66. It is also pertinent to note that CERC in its Order dated 14.03.2022 (determining Transmission Tariff for EPTCL's Stage-2 Transmission Assets) has duly condoned the delay caused on account of Right of Way issues.

67. Thus, it is most respectfully prayed that the delay in execution of the project on account of severe RoW issues be condoned, as the same was beyond EPTCL's control.

68. The relevant impugned findings concerning the delay in obtaining Forest Clearance in the Impugned Review Order dated 28.02.2018 (Paras 39-40; 43-47) are as under:

*“43. It is observed that the Investment Approval was granted by the Board of Directors of the Review Petitioner on 21.12.2006 with schedule commissioning of project in October, 2010 matching with commissioning of the Mahan Generating station. As such, the Review Petitioner had about 46 months in commissioning of the project from the date of Investment Approval.*

*44. The Review Petitioner applied for transmission licence on 22.11.2007, i.e. about 11 months after the Investment Approval and was granted transmission licence on 29.4.2008 i.e. about 16 months after the Investment Approval. Hence, the Review Petitioner had 30 months for the execution of*



*project including getting approval under Section 68 and 164 of the Act and getting forest clearance etc. Considering 24 months' time for the execution of project as per the EPC Contract, it transpires that about 6 months' time was scheduled for inviting EPC bids and placing order, getting approval under Sections 68 and 164 of the Act and in getting forest clearance. In our view, the estimate time of 6 months was insufficient for getting above approvals and to carry out competitive bidding process etc. The Review Petitioner should have carried out activities in a planned manner keeping in view time required for approvals and placement of contracts.*

***45. In our view, seeking approval under Section 164 of the Act, making application for Forest Clearance and finalization of EPC contract are three distinct activities and can be undertaken simultaneously. The tentative or otherwise, transmission line route alignment is essential for all the three activities stated above. The Review Petitioner made application for forest clearance on 23.3.2009 and gave letter of route finalization to CEA on 6.4.2009. In January, 2010 revised application was made for the forest clearance. Thereafter, it took about 37 months in getting the forest clearance in February, 2013. We find that the Review Petitioner applied for forest clearance only after finalization of transmission line route and scope of scheme in March, 2009.***

***46. We have examined the impact of delay in application for forest clearance after about two years and three months of initial investment approval in December, 2006. The Review Petitioner has submitted that the route alignment including acquiring maps, walk over survey route etc. after the grant of transmission licence was started in May, 2008.***



***The transmission line under consideration was part of a dedicated line of Essar and therefore, the grant of transmission licence was not a necessary condition for applying for forest clearance. We observe that the Review Petitioner could have applied for forest clearance on obtaining Section 68 approval but it did not apply for same in May, 2008 and applied for forest clearance only in 23.3.2009. The Review Petitioner made application for approval under Section 68 to MoP in December, 2007 i.e. after one year of initial Investment Approval in December, 2006. In our view, such an application should have been made earlier, i.e. maximum within six months of initial Board approval. Considering that in the instant case, it took 37 months for forest clearance, if the Review Petitioner would have applied for forest clearance in December, 2007, the forest clearance would have been obtained by February, 2011 and line could have been commissioned by April, 2011 as the Review Petitioner has taken only two months to commission line after obtaining forest clearance.***

*47. If we consider the delay from date of finalization of the EPC contract as January, 2008 then considering 24 months construction period as per Letter of Intent and 10 months delay due to Right of Way problems due to court cases etc., the work could have been completed in 34 months i.e. by October, 2010. In the light of above, delay of 5 months from November, 2010 to 31.3.2011 out of 29 months is held not attributable to the Review Petitioner and is condoned.”*

69. As stated above, the Associated Transmission System to be developed by EPTCL was approved only on 30.07.2007 in the 9th Meeting of Western Region

Constituents regarding Long-Term Open Access applications. The Minutes of the said Meeting were published on 27.08.2007 (i.e., a month later). Within 3 months of the transmission scheme being approved, EPTCL applied to CERC seeking a grant of a Transmission Licence.

70. Upon the Transmission Licence being issued on 10.04.2008, EPTCL took all the necessary steps including: -

- (a) collection of maps from land and revenue offices;
- (b) walk over survey from Hazira to Gandha (Jhanor NTPC) - approx. 105 kms. including forest area;
- (c) preliminary inspection carried out by the Forest Rangers in Surat, Bharuch and Vyara districts and completed;
- (d) counting of trees in the alignment route.
- (e) regular meetings with different governmental agencies such as Road and Bridge Dept., Railways, River and Airport Authorities, for finalization of the transmission route of the Gandha-Hazira line.

71. After completing the foregoing steps, EPTCL applied for Forest Clearance on 25.03.2009 and the same was granted only on 06.02.2013 (i.e., after a lapse of 47 months).

72. While CERC has consistently held that delay in the grant of Forest Clearance is a Force Majeure event and therefore condonable, it has in the instant case refused to condone the delay. CERC has erroneously held that:

- (a) Seeking approval under Section 164 of the Electricity Act, applying for Forest Clearance, and finalization of EPC contract are three distinct activities that can be undertaken simultaneously.
- (b) EPTCL could have applied for forest clearance on obtaining Section 68 approval in May 2008 but it applied only on 25.03.2009.
- (c) EPTCL applied for Section 68 approval after one year of Investment Approval. This ought to have been done within 6 months of Investment Approval.
- (d) Had EPTCL applied for Forest Clearance within 6 months of Investment Approval (21.12.2006), the same would have been obtained by February 2011.

73. It is submitted that CERC's aforementioned conclusion is based on hypotheses and fails to consider the facts of the case at hand and the procedure for making the application for Forest Clearance. In this regard, it is pertinent to highlight that:-

- (a) The elements of the ATS were identified only on 27.08.2007 i.e., 8 months after the Investment Approval date. Evidently, CERC's hypothesis requiring EPTCL to apply for forest approval within 6 months of Investment Approval fails in limine, considering the specific facts of this case.
- (b) Applications for grant of Forest Clearance can only begin once the transmission route has been identified and finalized. After completing all

necessary steps, EPTCL applied for Forest Clearance on 25.03.2009. In fact, CERC erroneously held that Section 164 approval, Forest clearance and EPC contract can be pursued simultaneously. It is submitted that an EPC contract cannot be issued if route has not been finalized, which can only be done once Forest Clearance is received.

(c) No significant works can be started by a private entity such as EPTCL before obtaining a transmission license. EPTCL had no prior license before beginning on the project and any consideration of timeline can only begin after grant of Transmission Licence by CERC (i.e., 10.04.2008). It is erroneous to assume the start date as date of Investment Approval of a private entity such as EPTCL. Even otherwise, if a particular delay has been caused, those particular days must be condoned. The mere fact that the process has started after date of Investment Approval is immaterial.

74. CERC neither in the Impugned Tariff Order nor in the Impugned Review Order has suggested that EPTCL was not diligent pursuant to making its application for Forest Clearance. Therefore, CERC's refusal to condone the delay on the grounds that the EPTCL should have made the application for Forest Clearance within 6 months of Investment Approval is baseless and deserves to be set aside.

75. While MOEF prescribes a time period of 10 months for a grant of Forest Clearance, EPTCL received its Forest Clearance only on 06.02.2013 i.e., after 47

months of making the application. Undisputedly, this delay is completely beyond EPTCL's reasonable control.

76. It is further pertinent to highlight that, CERC erred in assuming 12.01.2010 (date of Revised Application) as the date on which EPTCL made its application for Forest Clearance, thus calculating 37 months from January 2010 to February 2013. In this regard, it is submitted that: -

- (a) The revised proposal was sent only with respect to Protected Forest Land after further optimizing the usage of Forest Land.
- (b) No changes in the application were made with respect to Reserved Forest Land.

77. CERC has also noted that EPTCL achieved COD of the Stage-1 Transmission Assets on 01.04.2013 i.e., within 2 months after getting Forest Clearance on 06.02.2013. This evidences that EPTCL had been diligent in completing the balance part of the transmission assets and ensuring the Project is not delayed any further. Undisputedly, EPTCL could only complete the transmission line after getting Forest Clearance and CERC has failed to appreciate the fact that any delay in construction of the line was owing to factors not within EPTCL's control.

78. The relevant dates demonstrating various steps taken by EPTCL to acquire the Forest Clearance promptly are tabulated below for ease of reference:

Date	Events
2003 – 04	Essar Power Limited (EPOL) contemplated establishing and operating a 2000 MW (4x500 MW) Thermal Power Plant (Mahan TPP) in the State of Madhya Pradesh.
19.10.2005	Essar Power MP Ltd. (EPMPL) was incorporated.
04.01.2006	EPTCL was incorporated.
2006	At the request of EPMPL, PGCIL (CTU) published a System Study Report for evacuation of power from Mahan TPP.
21.12.2006	EPTCL obtained Investment Approval from its Board.
01.01.2007	PGCIL (CTU) published a Supplementary System Study Report for the evacuation of power from Mahan TPP.
13.02.2007	EPMPL made an application to PGCIL seeking Long Term Open Access for 1100 MW.
30.07.2007	During the 9 <sup>th</sup> Meeting of Western Region Constituents held at Indore regarding long-term access applications, EPMPL's request/ application for evacuation of 1100 MW from Mahan TPP to locations in M.P. and Gujarat was considered and approved. Furthermore, the Associated Transmission System for the evacuation of power from Mahan TPP was identified.
27.08.2007	Minutes of the 9 <sup>th</sup> Meeting of Western Region constituents approving the EPMPL Associated Transmission Scheme were published (i.e., almost a month later).
01.11.2007	PGCIL approved EPMPL's LTOA application for 1100 MW power, considering the injection and delivery points finalized in

Date	Events
	the Western Region constituents meeting.
22.11.2007	EPTCL filed Petition No. 157/2007 before CERC seeking a grant of Transmission License.
10.04.2008	CERC granted a Transmission License to EPTCL.
21.04.2008 & 30.04.2008	EPTCL informed MoP that it was granted a Transmission License and requested approval under Sections 68 and 164 of the Act respectively.
26.05.2008	EPTCL was accorded approval under Section 68 of the Electricity Act.
26.05.2008 to 16.03.2009	EPTCL carried out necessary formalities as intimated by MoP for the grant of approval under Section 164 of the Electricity Act.
25.03.2009	EPTCL made its <u>Application for Forest Clearance</u> by submitting its proposal to the Dy. Conservator of Forest, Surat, and Tapi Forest Divisions respectively. EPTCL sought forest division for 4.7 Ha (total forest land involvement) and requested the Dy. CF (Surat & Tapi Divisions) to depute respective forest officials for a joint site visit.
29.03.2009	Dy. CF, Surat permitted a joint survey in the forest stretch as indicated in EPTCL's forest proposal. He also provided certain information re. Protected Forest land involvement near various villages and Talukas in Surat district.
02.04.2009	A meeting was held between CEA and EPTCL regarding the

Date	Events
	finalization of the route for the construction of the transmission lines.
16.04.2009	EPTCL issued a letter to Dy. CF Surat submitting therewith a fresh proposal for forest clearance (after adding details of non-forest areas). EPTCL further informed that the 400 kV Gandha – Hazira Transmission Line is crossing SH, without occupying Protected Forest (“PF”) Land. EPTCL once again requested that forest officials be deputed for joint site inspection.
12.01.2010	EPTCL informed <b>PCCF</b> Gandhinagar and CF Bharuch that the Gandhar-Hazira Transmission Line is being de-routed and the PF land involvement is less. EPTCL also submitted a cost comparison statement.
-	Pursuant thereto, EPTCL constantly followed up in person and over telecon and provided all the information that was sought by the Forest Department. Various inter-departmental queries were raised by the Forest Dept. and clarifications provided by EPTCL. Furthermore, forest officials conducted various joint site visits upon EPTCL's constant follow-up, and all necessary corrections were incorporated into the forest proposal.
11.10.2011	PCCF Gandhinagar gave its comments and suggestion to CF Vyra re. diversion of 0.2392 Ha PF land for de-routing of the 400 kV Gandhar Hazira line in Surat division and 0.69 Ha PF Land.



Date	Events
20.10.2011	Dy. CF Surat requested EPTCL to follow and comply by all the rules and regulations prescribed under Schedule Tribe & Other Traditional Forest Dwellers (Recognition of Forest Right Act, 2006). EPTCL was informed that after this its proposal would be processed further.
20.03.2012	Ministry of Environment and Forest (“ <b>MoEF</b> ”) by its letter to PC Environment & Forest, Govt. of Gujarat granted <b><u>Stage I Forest Approval</u></b> to EPTCL's forest proposal.
06.02.2013	MoEF vide its letter to PC Environment & Forest, Govt of Gujarat granted <b><u>Stage II approval and Final Forest Clearance to EPTCL.</u></b>

79. CERC while determining the Tariff regarding EPTCL’s Stage-2 Transmission Assets (Order dated 14.03.2022) has rightly condoned the time-overrun on account of the delay in the grant of Forest Clearance. In the said Order, CERC has also rightly condoned the time-overrun with the start date as 01.11.2010 (considering the SCOD was October 2010). Per contra, in the Impugned Final Review Order, CERC erred by condoning a time overrun of 37 months on account of Forest Clearance with the start date of December 2007 (i.e. time was condoned until March 2011). It is most respectfully submitted that the time overrun for Stage-1 Transmission Assets should also be condoned from the start date of 01.11.2010, and 37 months thence on account of the delay of grant of forest clearance.

80. CERC has routinely held that delay in the grant of Forest Clearance being beyond the control of the developer is an event of force majeure. In this regard, the following decisions are noteworthy: -

- (a) Order dated 16.10.2015 passed by CERC in Jabalpur Transmission Co Ltd vs. Adhunik Power and Natural Resources Ltd & Ors (Petition No. 73/MP/2014) (Para 35).
- (b) Order dated 31.03.2016 passed by CERC in PGCIL vs Rajasthan Rajya Vidyut Prasaran Nigam Ltd (Petition No. 280/TT/2015) (Para 19).
- (c) Order dated 31.12.2015 passed by CERC in PGCIL v. Bihar State Electricity Board (Petition No: 34/TT/2014) (Para 21).
- (d) Order dated 09.08.2020 passed by CERC in Teestavalley Power Transmission Ltd. v. PTC India Ltd. (Petition No: 96/TT/2019) (Para 39).
- (e) Order dated 24.08.2016 passed by CERC in East North Interconnection Co Ltd vs. Jodhpur Vidyut Vitran Nigam (Petition No: 32/MP/2014) (Paras 21 & 23)
- (f) Order dated 15.05.2018 passed by CERC in Teestavalley Power Transmission Ltd. Vs. PTC India Ltd (Petition No: 108/TT/2016) (Para 47).
- (g) Order dated 29.12.2016 passed by CERC in Parbati Koldam Transmission Co Ltd vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd (Petition No: 156/TT/2015) (Para 33).

81. Evidently, the time taken to obtain the Forest Clearance has always been condoned by CERC as being beyond the control of a developer. Accordingly, the

period from March 2009 to February 2013 as demonstrated above, was clearly beyond EPTCL's control and ought to be condoned.

82. The Appellant submitted that the Commission has erred in disallowing the actual expenditure concerning the compensation paid to land owners.

B.1 - Compensation paid to landowners for Right of Way		
Claimed before CERC	Allowed by CERC	Disallowed by CERC & resultant impact on Tariff
₹ 76.73 Crores • ₹ 0.77 Cr. – towards LILO Line. • ₹ 73.40 Cr. – towards Gandhar Hazira Line. • ₹ 2.56 Cr. – Additional Capitalization of RoW.	₹ 45.94 Crores (Allowed in Impugned Review Order dated 28.02.2018)	Disallowed Capex – ₹ 30.79 Crores Will increase Tariff by ₹ 6.7 Crores if allowed.

83. The Appellant placed before us the Impugned Tariff Order dated 15.06.2016 – Paras 33(h):

*“33. We have considered the submissions of the petitioner regarding the capital cost. The submissions and the claim made by the petitioner are analysed hereunder:-*

*... (h) The petitioner has submitted that Right of way (ROW) was resolved by paying heavy compensation to the approximately 2500 land owners which has increased the cost of compensation paid to*

*`7340 lakh. The details of the compensation paid to the land owners towards compensation have been submitted by the petitioner in I.A. No. 38/IA/2015. We have perused the information provided by the petitioner and it is observed that it contains only the list of farmers along with payment details. The compensation of land value due to installation of tower/pylon structure or compensation towards diminution of land value in the width of ROW Corridor due to laying of transmission line and imposing certain restriction is determined/decided by District Magistrate or any other authority. The petitioner has not submitted copy of the order or directions issued by the District Magistrate or any other authority or the State Government regarding the amount of compensation to be paid. In the absence of this document(s), we are unable to carry out prudence check of the compensation paid by the petitioner. Therefore, increase in cost due to compensation paid is not considered for computation of transmission charges. However, liberty is granted to the petitioner to submit the requisite documents regarding order or directions issued by the District Magistrate or any other authority or the State Government regarding the amount of compensation to be paid for consideration of the Commission.”*

84. The Appellant also referred to the Impugned Review Order dated 28.02.2018 – Paras 22, 27-35, 68-73:

*“22. We have made a random check of the compensation paid in*

*different talukas as a matter of prudence. The recipients of the compensation have been verified with the and documents 7/12 and 8/A certificates. The type of land/crop for which the compensation claimed by the Review Petitioner has been reconciled with the land documents (7/12 and 8/A). Further, name of the land owner as per receipt has been verified with name indicated in land documents .It is noted that the documentary proof submitted by the Review Petitioner in support of the amount paid as per payment receipt are matching with the land documents submitted by the land owners mentioned in the 7/12 and 8/A documents....*

*27. The diminution of land depends on the following factors:-*

- a) Type (urban or agricultural or Government owned) or situation of land where tower location is proposed (middle of the land or at the side of land or at the border of the farm land);*
- b) Degree of the land affected whether line passes over small part of land or from the centre of the land area or from the border of the land area.*

*28. We have noticed that the Maharashtra Transmission Corporation Limited (MTCL) has submitted the practice followed by them as part of suggestion to MoP. The compensation of land on tower location has been adopted commensurate with the use of land. In this regard, MSETCL"s letter, as given in the appendix to above said MoP guidelines has been perused. The relevant portion of the letter regarding type of land is as under:-*

<b>Land Classification</b>	<b>Type of Land</b>	<b>Compensation to be paid</b>
A	Non-cultivable agriculture land	25%
B	Cultivable agriculture land	50%
C	Fruit bearing agriculture land	60%
D	Non-agriculture land	65%

29. In view of above, the amount claimed by the Review Petitioner has been further rationalized. The Review Petitioner's claim of `7673 lakh is within the value as per Jantri Rate i.e. `8615 lakh. Therefore, we have also considered the Review Petitioner's claim for the purpose of the further rationalization by considering the following aspects:-

- a) Consideration of agricultural land
- b) Situation of land (tower and line area)
- c) Escalation/appreciation of the land price.

30. The Review Petitioner has submitted the Government valuer report which indicates that the transmission lines are passing through both agriculture and industrialized areas. According to the submission of the Review Petitioner, the lines are passing through Olpad (39%), Hansot (9%), Ankleshwar (33%), Jhagadiya (7%) and Bharuch (12%) talukas. As per the report of the Government valuer, all talukas are urban and industrial area except Hansot (9%). We have considered the classification considered by the MTCL for tower location which provides the maximum compensation for non-agriculture land i.e. urban or

*industrial as 65% and cultivable agriculture land 50%. The Review Petitioner has not submitted the percentage of the agriculture and industrial area covered in each taluka. Since the Review Petitioner has submitted that all talukas except Hansot (9%) is covered under urban and industrial area, the compensation can be rationalized as under:-*

***“(Amount in ₹)***

Taluka	Tower land area (Sq.mtr)	stringing land area (Sq.mtr)	Jantri Rate (₹/Sq.Mtr) <sup>4</sup>	65% Land value of tower area (in ₹) <sup>1</sup>	15% Land value for stringing area <sup>3</sup>
Olpad	19907	1613408	1350	17468393.00	326715120.00
Hansot	3101	387924	202	313201.00	0 <sup>2</sup>
Ankleshwar	19221	1659967	300	3748095.00	74698515.00
Bharuch	6252	575413	816	3316060.80	70430551.20
Jhagadiya	7764.67	283274.44	295	1488875.50	12534894.00
<b>Total</b>				2,63,34,625.00	48,43,79,080.00

<sup>1</sup> Land compensation to tower area is considered as 65% taking into account the situation of land except Hansot where it is considered as 50%

<sup>2</sup> Land value across stringing area is not considered as there is no substantial damage for the agricultural land.

<sup>3</sup> Calculation of area is verified as submitted by the Review Petitioner. 15% of land value is worked out based on Jantri rate and area

<sup>4</sup> Jantri rate represents market rate, therefore, we have considered the Jantri rate.”

*31. As discussed earlier, provisions of Telegraph Act provide for minimization of the damages which the transmission licensee shall have to exercise before considering compensation of damages. The situation of land plays an important role in minimization of damages. The Review Petitioner should have made efforts to minimize compensation as envisaged under the Telegraph Act. If the entire area is covered by agriculture and barren land, the damages can be reduced significantly. Since the line passes through area dominated by urban/industrial zone,*

it is believed that the Review Petitioner could have managed to reduce about 20-30% of damages. (Maharashtra has considered this reduction to the extent of 35% for urban area for tower location and no land compensation for stringing area). Taking into consideration that the area under consideration is dominated by urban and industrial area and as discussed above, we have considered 30% rationalization in stringing area on account of line passing through non-urban and industrial area. Accordingly, the compensation worked out above has been revised as under:-

**(Amount in ₹)**

<b>Taluka</b>	<b>(Tower land compensation) 65% Land value of tower area</b>	<b>(Land beneath the tower line) 15% land value for stringing area*</b>	<b>Crop compensation</b>	<b>Total</b>
Olpad	1,74,68,393.00	22,87,00,584.00	4,02,97,248.00	28,64,66,225.00
Hansot	3,13,201.00	0	88,52,654.00	91,65,855.00
Ankleshwar	37,48,095.00	5,22,88,961.00	6,76,12,156.00	12,36,49,212.00
Bharuch	33,16,061.00	4,93,01,386.00	1,59,35,040.00	6,85,52,487.00
Jhagadiya	14,88,875.00	87,74,425.80	2,45,51,368.00	3,48,14,669.00
	<b>2,63,34,625.00</b>	<b>33,90,65,356.00</b>	<b>15,72,48,466.00</b>	<b>52,26,48,447.00</b>

\*30% rationalization is considered against the avoidable damages or possible the length of line unaffected by ROW.

32. The schedule COD of the transmission system was 15.7.2011 as per the investment approval. As per affidavit dated 1.8.2013 (as submitted in the impugned order), the Review Petitioner has submitted that Letter of Award was issued on 15.7.2009. However, the Review Petitioner has considered Jantri rate of 2011. If the Review Petitioner had executed the transmission as per the timeline envisaged in the



license, the Review Petitioner would have saved escalation in land price. Therefore, due to delay in addressing the RoW issues, the Review Petitioner is not entitled for reimbursement of expenditure which is attributable to the negligence/inefficiency of the Review Petitioner.

33. The Resolution dated 18.4.2011 issued by the Government of Gujarat provides for the following:- “(1) Before implementation of New Jantri 2011, Jantri (ASR) 2006 dated 1.4.2008 was in implementation. In that reference in new Jantri 2011, the assessment of land and immovable property are increased and it is held that 50% reduction relief will be given in it.”

From the above stipulation, it can be inferred that there is increase in Jantri rate by 50% over a period from 1.4.2008 to 31.3.2011 (3 years), which works out to escalation of 17.3% per annum in Jantri rate.

34. We have considered the revised Jantri rate of 17.30% escalation rate after taking into account all practical aspects. The compensation granted has been worked out as under:-

(Amount in ₹)

Taluka	(Tower land compensation) 65% Land value of tower area	(Land beneath the tower line) 15% land value for stringing area*	Crop Compensation	Total
Olpad	1,44,46,361	18,91,35,383	4,02,97,248	24,38,78,992
Hansot	2,59,017	0	88,52,654	91,11,671
Ankleshwa	30,99,675	4,32,42,970	6,76,12,156	11,39,54,801
Bharuch	27,42,382	4,07,72,246	1,59,35,040	5,94,49,668
Jhagadiya	12,31,300	72,56,450	2,45,51,368	3,30,39,118
	<b>2,17,78,735</b>	<b>28,04,07,050</b>	<b>15,72,48,466</b>	<b>45,94,34,250</b>

**\*escalation of 17.30% reduced for one year only.**

35. The crop compensation worked out by the Government valuer based on market rate of the relevant year as specified by District Agriculture Officer is in order. Therefore, Rs. 157248467 have been considered as crop compensation. Accordingly, aggregate compensation has been worked out as under:-

**(Amount in ₹)**

<b>Compensation against damage to land</b>	<b>Compensation against damage to crop</b>	<b>Total</b>
302185784	157248466	459434250

85. EPTCL had claimed a total of ₹ 76.73 Crores as expenditure incurred by it towards payments made to approx. 2,500 landowners for Right of Way (RoW). The compensation payments were made from July 2010. EPTCL's Stage-1 transmission assets achieved COD on 01.04.2013. There were no Central or State guidelines to guide transmission licensees regarding (negotiating/determining) the quantum of compensation to be paid. Hence, payments were made after negotiations with the affected landowners in terms of Sections 10 and 16 of the Indian Telegraph Act, 1885 ("Telegraph Act") read with Sections 67 and 68 of the Electricity Act - keeping in mind: -

- (i) The then prevailing circle rates (Jantri rates);
- (ii) Area impacted by the works;
- (iii) Damage to crops, etc.

86. In terms of Section 16(3) of the Telegraph Act, the District Judge is required to decide the 'sufficiency of compensation paid' under Section 10 only in case a dispute is raised by filing an application for that purpose by the transmission licensee or any affected landowner. Other than such dispute, a District Judge is not mandated to determine or sign off on the compensation paid/ to be paid to every landowner affected by the transmission works.

87. All relevant and necessary details of RoW payments made by EPTCL along with an Auditor's Certificate dated 25.07.2016 and a detailed Valuation Report dated 15.09.2016 issued by a Government Valuer was duly placed on record demonstrating the reasonableness of compensation paid. In terms of CERC's query and to demonstrate its prudence, EPTCL submitted the compensation based on land value and as per the MoP Guidelines dated 15.10.2015. The calculation tables recorded in Para 24 of the Impugned Review Order qua the same are set out below:

TABLE NO.1

Taluka	Tower land area (Sq.mtr)	Stringing land area (Sq.mtr)	Jantri Rate (₹/ Sq.mtr)	85% Land value of tower area (in ₹)	15% Land value of stringing area (in₹)
Olpad	19907	1613408	1350	2,28,43,283.00	39,20,58,144.00
Hansot	3101	387924	202	5,32,442.00	1,41,04,917.00
Ankleshwar	19221	1659967	300	49,01,355.00	8,96,38,218.00
Bharuch	6252	575413	816	43,36,387.00	8,45,16,661.00
Jhagadiya	7765	283274.44	295	19,46,991.00	1,50,41,873.00
<b>Total</b>				<b>3,45,60,457.00</b>	<b>59,53,59,813.00</b>

TABLE NO.2

Taluka	No. of Towers	Area of crop Damaged (tower+ Stringing)	Crop Damaged	Production (ton/ hectare)	Rate/ ton (in ₹)	Value of Crop Damaged (tower+ Stringing)
Olpad	97	195.6	Sugarcane	93.645	2200	4,02,97,248.00
Hansot	20	42.97	Sugarcane	93.645	2200	88,52,654.00
Ankleshwar	50	104.61	Sugarcane	93.645	2200	2,15,51,779.00
Ankleshwar	32	65.23	Banana	70.61	10000	4,60,60,377.00
Bharuch	-	0.63	Sugarcane	93.65	2200	1,28,805.00
Bharuch	9	21.23	Banana	70.612	10000	1,49,90,844.00
Bharuch	17	37.56	Cotton	70.612	40500	8,15,391.00
Jhagadiya	19	34.77	Banana	0.536	10000	2,45,51,368.00
<b>Total of compensation towards cost of crop damaged by installation of tower and</b>						<b>15,72,48,467.00</b>

88. CERC in the Impugned Review Order duly noticed these and notes that: -

- (a) The documentary proof submitted by EPTCL in support of the amounts paid match with the land documents.
- (b) EPTCL's claim of ₹ 76.73 Crores is within the value as per Jantri Rate i.e. ₹ 86.15 Crores, as submitted by the Government Valuer.

89. Having noticed that actual payments made were well within the Jantri (circle) rates, to check the reasonability of the cost, CERC decided to carry out a prudence check on 7 factors since EPTCL did not produce the certificate of a District Magistrate or any other authority or the State Government.

- “1) Auditor Certificate for compensation payment.
- 2) Verification of payment with land records.
- 3) Report of Government valuer with regard to:
  - a. Valuation of the land based on applicable market rates,

- b. Valuation of the land based on relevant Jantri Rates; and
  - c. Compensation towards damage to the crops.
- 4) Guidelines of the MoP for compensation. [Issued on 15.10.2015]
  - 5) Consideration of agricultural land as per report of Government valuer.
  - 6) Consideration of situation of land (tower and line area) as followed by MSETCL. [Recorded in Minutes of MoP meeting dt. 30.04.2015]
  - 7) Escalation/appreciation of the land price due to delay.”

90. CERC erred by placing reliance on the 2015 MoP Guidelines to check the prudence/reasonableness of costs incurred by EPTCL from 2008 to 2012 for the transmission system commissioned on 01.04.2013. Ministry of Power's Guidelines for payment of compensation towards damages regarding the Right of Way for transmission lines were issued on 15.10.2015 (i.e., 30 months after the COD of the Transmission lines in question). Such Guidelines could neither have been factored in by EPTCL nor considered by CERC for “prudence/reasonability”.

91. Further, the CERC has erred in placing reliance on the MSETCL's proposal to MoP vis-à-vis MoP's Guidelines itself.

92. To further slash the costs incurred by EPTCL, CERC went on to slash the MoP Guidelines rate by considering suggestions made by Maharashtra State Electricity Transmission Corporation Ltd. (“MSETCL”) to MoP (which were not accepted in the MoP's Guidelines). A copy of such MSETCL suggestions is not available on record or in the public domain. It is mentioned in the attachment to the Minutes of the MoP meeting dated 30.04.2015.

93. Consequently:

(a) CERC slashed the maximum compensation for non-agricultural land (urban or industrial land) to 65% and for cultivable agricultural land to 50% vis-à-vis 85% envisaged in MoP's Guidelines.

(b) CERC did not consider the land value across the stringing area qua agricultural land (Hansot Taluka) on the assumption that there is no substantial damage to agricultural land. The 'rationalized' figures arrived at by CERC based on the aforesaid erroneous assumptions is reproduced below:-

**TABLE NO. 3**

**“(Amount in ₹)”**

Taluka	Tower land area (Sq.mtr)	stringing land area (Sq.mtr)	Jantri Rate (₹/Sq.Mtr) <sup>4</sup>	65% Land value of tower area (in ₹) <sup>1</sup>	15% Land value for stringing area <sup>3</sup>
Olpad	19907	1613408	1350	17468393.00	326715120.00
Hansot	3101	387924	202	313201.00	0 <sup>2</sup>
Ankleshwar	19221	1659967	300	3748095.00	74698515.00
Bharuch	6252	575413	816	3316060.80	70430551.20
Jhagadiya	7764.67	283274.44	295	1488875.50	12534894.00
<b>Total</b>				2,63,34,625.00	48,43,79,080.00

<sup>1</sup> Land compensation to tower area is considered as 65% taking into account the situation of land except Hansot where it is considered as 50%

<sup>2</sup> Land value across stringing area is not considered as there is no substantial damage for the agricultural land.

<sup>3</sup> Calculation of area is verified as submitted by the Review Petitioner. 15% of land value is worked out based on Jantri rate and area

<sup>4</sup> Jantri rate represents market rate, therefore, we have considered the Jantri rate.”

94. Thus, CERC has acted unreasonably and arbitrarily to: -

- (a) Reduce by 13% compensation paid by EPTCL to ₹ 66.8 Crores (65%) vis-à-vis ₹ 76.7 Crores actually paid by EPTCL. Had the MoP Guidelines @ 85% been applied, it would have given a compensation level of ₹ 87.35 Crores.
- (b) Reduced the compensation paid towards the stringing area by 18.64% from ₹ 59,53,59,813 to ₹ 48,43,79,080 (₹11,09,80,733/-).

95. CERC thereafter proceeded to further reduce the actual cost incurred by EPTCL by assuming that:-

- (a) Location of land plays an important role in minimization of damages;
- (b) If the entire area was agricultural and barren land, damages could be reduced significantly; and
- (c) Since the line passes through urban/industrial areas, CERC further reduced the compensation by 30% in the stringing area.

**TABLE NO. 4**

(Amount in ₹)

Taluka	(Tower land compensation) 65% Land value of tower	(Land beneath the tower line) 15% land value for stringing area*	Crop compensation	Total
Olpad	1,74,68,393.00	22,87,00,584.00	4,02,97,248.00	28,64,66,225.00
Hansot	3,13,201.00	0	88,52,654.00	91,65,855.00
Ankleshwar	37,48,095.00	5,22,88,961.00	6,76,12,156.00	12,36,49,212.00
Bharuch	33,16,061.00	4,93,01,386.00	1,59,35,040.00	6,85,52,487.00
Jhagadiya	14,88,875.00	87,74,425.80	2,45,51,368.00	3,48,14,669.00
	<b>2,63,34,625.00</b>	<b>33,90,65,356.00</b>	<b>15,72,48,466.00</b>	<b>52,26,48,447.00</b>

\*30% rationalization is considered against the avoidable damages or possible the length of line unaffected by ROW.

96. It is submitted that once the route is finalized in consultation with CEA/ Ministry and the line is constructed, such post-facto reduction in actual audited RoW costs (which is within notified Jantri rates) based on extraneous considerations is unlawful and violative of Sections 61, 62 and 64 of the Act since:

- (a) The route to be followed by any transmission licensee is not a private decision and is finalized in consultation with CEA, taking into account diverse factors including avoiding forest areas and minimum tree cutting, etc.
- (b) Regulation 88 of the CEA (Technical Standards for Electrical Plants and Electrical Lines) Regulations, 2010 provides for "Routing of Transmission Line" and inter alia mandates that: -
  - (i) Route alignment of the transmission line shall be most economical from the point of view of construction and maintenance.
  - (ii) Routing of transmission lines through protected/ reserved forest areas should be avoided. In case it is not possible to avoid the forests completely, then the route should be aligned in such a way that cutting of trees is minimal.
  - (iii) The number of angle points shall be kept to a minimum.
  - (iv) Marshy and low-lying areas, riverbeds, earth slip zones, crossings of major river, railway lines, national/ state highways, overhead EHV power line and communication lines, areas subjected to flooding such as nallah, large habitations, densely populated areas,



restricted areas such as civil and military airfield, aircraft landing approaches should be avoided.

(v) All alignments should be easily accessible both in dry and rainy seasons to enable maintenance throughout the year.

(vi) Areas requiring special foundations and those prone to flooding should be avoided.

97. EPTCL followed standard industry practice for optimizing the route and complied with the above criterion. It is pertinent to highlight that, after undertaking a detailed survey of the route for the Stage-1 Transmission Assets, the total forest diversion was identified as 1.1040 Hectares. Since a large forest area was involved, EPTCL undertook a fresh survey to identify a route that involved lower forest diversion while maintaining RoW for the project. Accordingly, a new route was identified requiring forest diversion of 0.7912 Hectares. Basis the revised proposal which required lower forest diversion, Forest Clearance for Stage-1 Transmission Asset was awarded on 06.02.2013.

98. Once the route is finalized and approved by CEA, there cannot be an artificial reduction of RoW cost on the ground that it should have been planned to avoid industrial/ urban areas, as done by CERC in the instant case. The transmission route was approved by CEA, so as to cause the least impact on the environment. Therefore, it was not capable of being further optimized, as wrongly held by CERC, as an afterthought during the tariff determination process.

99. To achieve a further reduction in actual incurred costs, CERC reduced the applicable Jantri (circle) rates by 17.30% for the purpose of calculating compensation on the ground that: -

- (a) Scheduled COD was 15.07.2011 as per the investment approval and EPTCL had considered Jantri rates of 2011.
- (b) Had EPTCL executed the project on time, it would have saved escalation in land price.

100. Hence the RoW compensation paid was slashed by 40% as under: -

**TABLE NO. 5**

**(Amount in ₹)**

Taluka	(Tower land compensation) 65% Land value	(Land beneath the tower line) 15% land value for	Crop Compensation	Total
Olpad	1,44,46,361	18,91,35,383	4,02,97,248	24,38,78,992
Hansot	2,59,017	0	88,52,654	91,11,671
Ankleshwar	30,99,675	4,32,42,970	6,76,12,156	11,39,54,801
Bharuch	27,42,382	4,07,72,246	1,59,35,040	5,94,49,668
Jhagadiya	12,31,300	72,56,450	2,45,51,368	3,30,39,118
	<b>2,17,78,735</b>	<b>28,04,07,050</b>	<b>15,72,48,466</b>	<b>45,94,34,250</b>

\*escalation of 17.30% reduced for one year only.

101. Having noted in the Impugned Review Order, the RoW cost of ₹ 0.77 Crore towards the LILO line of 22.4 Kms. and additional capitalization on account of RoW cost of ₹2.56 Crores qua the Gandhar-Hazira Line, CERC failed to consider either cost. CERC has neither disallowed the same nor provided any reason for its non-consideration.

102. The entire deduction of Rs. 30.8 Crores CERC is baseless and unlawful which may be struck down. There is no other Tariff Order where such deductions in actually incurred, duly audited RoW costs have been made for reasons stated by CERC.

103. The Appellant put forth his submissions on the disallowance of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC)

Claimed before CERC	Allowed by CERC	Disallowed by CERC & resultant impact on Tariff
₹ 67.4 Crores • ₹ 62.82 Cr. – IDC • ₹ 5.35 Cr. – IEDC	₹ 10.07 Crores • ₹ 8.30 Cr. – IDC • ₹ 1.76 Cr. – IEDC (Impugned Review Order dated 28.02.2018)	Disallowed Capex – ₹ 57.34 Crores Will increase Tariff by ₹ 12.51 Crores if allowed.

104. The Appellant referred to the Impugned Tariff Order dated 15.06.2016 – Paras 50-51, the Impugned Review Order dated 28.02.2018 – Paras 52, 53, and the Impugned Final Review Order dated 19.12.2018 – Paras 6,7.

105. EPTCL had claimed ₹ 62.82 Crores towards IDC and Rs. 5.35 Crores towards IEDC. However, CERC by the Impugned Tariff Order disallowed the entire claim of IDC and ₹ 4.66 Crores towards IEDC on the ground that the time over-

run in commissioning and execution of the Stage-1 Transmission Assets was not condoned.

106. By the Impugned Review Order dated 28.02.2018, CERC allowed IDC and IEDC only for 5 months instead of the actual period of 25 months, without assigning any reason or justification. By way of the Impugned Final Review Order dated 19.12.2018, CERC allowed IDC of ₹ 8.30 Crores and IEDC of ₹ 1.76 Crores.

107. It is submitted that CERC failed to appreciate Regulation 7 of the CERC (Terms and Conditions of Tariff) Regulations, 2009 (“2009 Tariff Regulations”), which deals with Capital Cost. Capital Cost of a project includes Interest During Construction (IDC) and Financing Charges.

108. Furthermore, in terms of the First Proviso to Regulation 15 of the 2009 Tariff Regulations, which deals with Return on Equity, a developer is entitled to an additional return of 0.5% (i.e., over and above the return on equity) in case the project is completed within the timeline specified in Appendix-II of the 2009 Tariff Regulations.

109. A perusal of Regulation 15 along with Appendix-II of the 2009 Tariff Regulations and Para 13.12.1 of Statement of Reasons would amply reveal that these provisions deal with Return on Equity and the completion time frame provided therein refers only to additional Return on Equity of 0.5%. It does limit the time frame for the calculation of IDC.

110. Evidently, the minimum time period required for the construction of a project has been identified in the 2009 Tariff Regulations. Thus, there can never be a situation where the Capital Cost of the project is determined where IDC for a period less than the period specified in Appendix II is taken into account. Such a determination of Capital Cost would be clearly in teeth with the express provision of the 2009 Tariff Regulations.

111. It is further submitted that IDC and IEDC for the entire period cannot be disallowed on the grounds that the first drawdown was after the estimated COD, as has been erroneously done by CERC in the instant case. In all cases where part delay in construction is allowed, IDC for the normative construction period and the period for which delay is condoned should be allowed in the tariff. IDC for the construction period is a recognized head of Capital Cost and denial thereof is essentially a deviation from the Regulations which are binding on CERC.

112. It is most respectfully submitted that acting prudently, EPTCL delayed the drawdown on the loan to minimize the impact of IDC. EPTCL is being penalized for its prudence and IDC which was actually incurred has been completely disallowed by CERC, thereby prejudicing EPTCL. It is submitted that CERC's aforesaid conclusion is contrary to the express provisions of the 2009 Tariff Regulations and principles of norm-based tariff determination.

113. In this regard, it is pertinent to note that, this Hon'ble Tribunal has held that IDC must be calculated on the basis of actual capital expenditure during

construction. [Judgment dated 12.01.2012 in PGCIL vs CERC & Ors. (Appeal No. 104 of 2011) Paras 11, 13]

114. Disallowances of IDC and IEDC for the normative construction period is without basis and have resulted in the disallowance of legitimate costs incurred by EPTCL in the construction of Stage-1 Assets. Evidently, CERC's findings on IDC and IEDC are clearly in the teeth of the applicable Regulations, this Hon'ble Tribunal's orders, and therefore unsustainable.

115. It is further submitted that the consequence of condonation of delay of 5 months as provided in the Impugned Review Order should have resulted in allowing IDC for the normative construction period (i.e., 29 months) plus a period of 5 months and not for only 5 months. CERC has erred in not allowing Rs. 57.34 Crores towards IDC and IEDC and the same must be allowed to be passed through in tariff.

116. Additionally, EPTCL submitted that it has completed the Stage-1 Transmission Assets and has prudently incurred expenses thereof. The cost of a similar transmission project in terms of the CERC Benchmark Norms at that time would have come to ₹ 535.41 Crores. Per contra, EPTCL has incurred ₹ 495.87 Crores.

117. It is submitted that CERC is required to undertake the determination of tariff by taking into account the mandate of the Electricity Act and the Regulations framed thereunder. The common thread running through provisions of the

Electricity Act, Tariff Policy, 2016, and the Regulations is that tariff must ensure recovery of the cost of the concerned asset.

118. Clause 5.10 of the Tariff Policy, 2016 provides that consumer interest is best served in ensuring viability and sustainability of the entire value chain viz., generation, transmission, and distribution of electricity, while at the same time facilitating power supply at a reasonable rate to consumers. As such, it is not only imprudent but also illegal to artificially reduce tariff by disallowing capitalization of actual costs incurred, as the same shall result in the entire value chain suffering.

119. It is submitted that this Hon'ble Tribunal has laid down the parameters for determining what factors should be considered controllable for the purpose of condoning delay in the commissioning of a project. The disallowances in the Impugned Orders are clearly in teeth with the law laid down by this Hon'ble Tribunal and otherwise consistently followed by CERC.

120. Although the tariff determination in the instant case has been undertaken under the 2009 Tariff Regulations, the CERC (Terms and Conditions of Tariff) Regulation, 2014 has *pari-materia* provisions. As such, it is pertinent to refer to the definition of "prudence check" so as to understand the scope of prudence check undertaken by CERC while determining EPTCL's tariff:

*(48) 'Prudence Check' means scrutiny of reasonableness of capital expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for*

*determination of tariff. While carrying out the Prudence Check, the Commission shall look into whether the generating company or transmission licensee has been careful in its judgments and decisions for executing the project or has been careful and vigilant in executing the project;*

121. It is submitted that the 2009 Tariff Regulations are common for both generation and transmission projects. Since the generation of power under the Electricity Act is a de-licensed activity, the timelines for a generation project can commence from the date of Investment Approval by the developer.

122. However, the same yardstick cannot be applied to a (private) Transmission Licensee, as no significant work can be carried out without obtaining a licence. It is pertinent to note that, the timelines specified in Appendix-II of the 2009 Tariff Regulations may also be applied to transmission projects undertaken by PGCIL and/ or any other entity which is already an ISTS licensee. However, for a private developer such as EPTCL, the timelines cannot be said to commence from the date of Investment Approval and should commence only from the date of grant of License by the Appropriate Commission. It is only after obtaining the licence that the developer can be assured of having the right to implement a transmission project.

123. In this regard, this Hon'ble Tribunal Judgment dated 12.01.2012 in Appeal No. 104 of 2011 titled PGCIL vs CERC & Ors. (supra), wherein it is held that the



time to be taken for construction has to be calculated from the award of the EPC contract and not from the date of Investment Approval, is noteworthy.

124. It is most respectfully submitted that the timelines specified in Appendix-II of the 2009 Tariff Regulations for building and commissioning of transmission lines, were subsequently amended (increased) in the 2014 Tariff Regulations. EPTCL verily believes that the reason for increasing the timeline for completion is mainly because CERC took cognizance of the fact that the timelines prescribed in the 2009 Regulations were burdensome.

125. In view of the above submissions, it is most respectfully prayed that this Hon'ble Tribunal allow the instant Appeal and grant the reliefs sought therein.

***Submissions of the Respondent No. 3, PGCIL (No Written Submissions filed by the Respondent No. 3)***

126. Respondent No. 3 vide a memo filed submitted that after reviewing the contents of the Appeal and related Applications, no written reply is necessary since no specific averments, allegations, or reliefs, interim or otherwise, have been sought against it by the Appellant.

***Submissions of the Respondent No. 7, MPPMCL***

127. Respondent No. 7 has not filed any written submissions in response to the prayers made by the Appellant, however, the oral arguments made during the

hearing shall be considered on the merit of the case on one issue i.e. delay in the “Grant of approval under Section 164 of the Electricity Act”, as the arguments were limited to only this issue.

128. The main contention of the Respondent is that the Appellant has failed to explain the reasons for the delay in obtaining the approval under section 164 and accordingly, the Central Commission is right in disallowing the delay as claimed by the Appellant.

### **Our Observations and Conclusions**

129. The issues before us, after hearing the Appellant and Respondent No. 7, MPPMCL are as follows:

- (a) Delay in grant of approval under Section 164 of the Electricity Act.
- (b) Delay in grant of Forest Clearance.
- (c) Delay on account of Right of Way issues.
- (d) Compensation paid to landowners for Right of Way.
- (e) Consequential disallowance of IDC and IEDC

130. The Appellant argued that the delay in commissioning of the project was on account of RoW disputes, delays in the grant of statutory approvals such as Section 164 permission and Forest Clearance, which were beyond EPTCL’s control, being *force majeure* events as time and again held by this Tribunal.

131. Only Respondent No. 7, MPPMCL has placed its arguments before us, limited to issue no. (a).

**Issue (a)**

132. The Project achieved COD on 01.04.2013 with a delay of 29 months as against the scheduled date of 01.11.2010 (October 2010 – envisaged in the Transmission Licence).

133. Although the Investment Approval was granted to the scheme on 21.12.2006, the Associated Transmission System to be set up for evacuation of power from Mahan TPP was identified only on 27.08.2007 (i.e., the date on which the Minutes of the 9th Meeting of the Western Region Constitutes was published).

134. It cannot be disputed that any ISTS line can be commissioned only after obtaining approval from the beneficiaries, which is generally concurred during the Regional Power Committee (RPC) meetings, WRPC in this case.

135. Therefore, the zero date for obtaining subsequent statutory approvals is 27.08.2007 only.

136. In accordance with the approval of the scheme by the WRPC, the Appellant filed a petition before the CERC on 22.11.2007 for obtaining the transmission licence as the CERC decided that the impugned transmission line was to be constructed as an ISTS line and not as a dedicated transmission line.

137. Thereafter, only on 12.02.2008, the CERC decided to grant a transmission licence to the Appellant, which was subsequently, granted on 10.04.2008. i.e. after four and a half months from the date of filing of the petition by the Appellant.

138. However, taking proactive steps, the Appellant applied to MoP for approval under Section 164 of the Electricity Act. 10.03.2008 (before the grant of licence), even to the fact that section 164 approvals are granted to transmission licensees only.

139. The Appellant vide letters dated 21.04.2008 and 30.04.2008 informed MoP regarding the grant of Transmission Licence by CERC and requested approvals under Sections 68 and 164.

140. It was on 14.07.2008 that the MoP asked EPTCL to publish a notice in 2 daily newspapers to obtain approval under Section 164 of the Act, which the Appellant published on 23.09.2008.

141. MoP was informed on 08.12.2008 regarding the publication in newspapers on 23.09.2008, i.e. after allowing 60 days to the landowners to furnish their comments.

142. Thereafter, the MoP, on 11.12.2008, again asked the Appellant to publish the notices in the official Gazette as well as in the newspapers.

143. The scheme was immediately published in the newspapers, however, it was only on 10.01.2009 that the Scheme was published in the Gazette of India as per the direction of MoP.

144. On being asked about the procedure and the timelines for the grant of approval under section 164, the Appellant informed that at the time of application i.e. in 2008, there was no standard procedure by MoP and only on 16.03.2009 that the MoP notified the Standard Procedure for obtaining authorization under Section 164 of the Act for the first time.

145. On 02.04.2009, a meeting was held between CEA and EPTCL regarding the final route proposed by the Appellant for the construction of the transmission assets, and the final route as agreed was conveyed to MoP on 06.04.2009.

146. It is important to note here that the publication of the scheme is required to obtain the objections of the landowners who are affected by the construction of the transmission line and a standard time of 60 days is given for that purpose from the date of publication of the notice.

147. The approval under section 164 was granted on 17.06.2009.

148. In the light of above, it is important to note the findings of the CERC on the rejection of the submissions of the Appellants:

(a) Although approval under Section 68 of the Electricity Act is necessary

for the execution of a line, Section 164 approval is not mandatory, relevant extract of **Para 49 of the Impugned Order is quoted as under:**

*“---It is observed that although Section 68 is necessary for execution of a line, Section 164 approval is not a mandatory requirement. Section 164 approval authorizes a person to execute a line with payment of compensation but without obtaining express “consent” of affected parties under Works of Licensees Rules, 2007.--”*

- (b) There is a process of approval under Section 164 as per established procedure. Hence, the time taken for it cannot be considered a ‘delay’, the relevant extract of **Para 50 of the Impugned Order is quoted as under:**

*“It is observed that there is a process of approval under Section 164 of the Act as per establishment procedure---”*

- (c) The Central Commission has referred to the tariff based competitive bidding guidelines notified under section 63, stating that the timeline given for obtaining clearance/ permission is six months, the relevant extract of **Para 50 of the Impugned Order is quoted as under:**

*“It may be pertinent to note that as per the tariff based competitive*

*bidding guidelines, the timeline given for obtaining clearance/permission, is six months. Therefore, we are of the view that as prudent practice, the timeline for about 6 months is to be reasonably factored in by the Review Petitioner towards obtaining approvals. The time required to obtain approval upto 6 months cannot be considered as delay.”*

- (d) After granting of transmission licence in April 2008, EPTCL informed MoP regarding the grant of licence for Section 164 approval on 21.04.2008/30.04.2008. But after finalization of the line route and communicating the same to CEA on 06.04.2009, the Ministry of Power issued approval within 2 months, Hence, the delay in grant of approval is attributable to the delay in route finalization by EPTCL, the relevant extract of ***Para 50 of the Impugned Order is quoted as under:***

*“After grant of transmission licence in April, 2008, the Review Petitioner applied for approval under Section 164 of the Act on 26.5.2008. But after finalization of the line route and communicating of same to CEA on 6.4.2009, MoP issued the approval under Section 164 within 2 months. Thus, the delay in grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner.”*

149. We find the observations of the Commission erroneous, unacceptable, and unjustified; the Commission has recorded its findings without ascertaining the facts.

150. The finding of the CERC that the approval under section 164 is not mandatory and cannot be covered under the force majeure event is in the teeth of this Tribunal's judgment in ***North Karanpura Transmission Co. Ltd v. Secretary, Central Electricity Regulatory Commission, 2013 SCC OnLine APTEL 149: [2013] APTEL 142***, the relevant extract is quoted as under:

**“36.To sum up: In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.”**

151. The Central Commission has failed to comply with the principle laid by this Tribunal, the Impugned Order passed by the Central Commission is unjust and perverse.

152. It is a settled principle of law that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

153. Reliance is placed on:

- i) ***Union of India v. Kamlakshi Finance Corpn. Ltd., 1992 Supp (1) SCC 443 at page 445-*** The principles of judicial discipline require that



the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. (para 6)

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The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them. (para 8)

ii) ***Jain Exports (P) Ltd. v. Union of India, (1988) 3 SCC 579***

In a tier system, undoubtedly decisions of higher authorities are binding on lower authorities and quasi-judicial tribunals are also bound by this discipline. (para 9)

154. The Central Commission is bound to follow the principle as laid down by this Tribunal which has achieved finality.

155. Further, the Appellant applied for section 164 approval on 10.03.2008, whereas MoP notified the "Standard Procedure" for obtaining the authorization under section 164 of the Act on 16.03.2009 for the first time, after more than a year from the date of the Appellant's application, therefore, the observation of the Commission "*that there is a process of approval under Section 164 of the Act as per establishment procedure---*" is based on wrong assumption that there exist a procedure, which is incorrect, and has to be rejected.

156. Further, the CERC has equated the projects under section 63 with projects under section 62 with reference to the timeline for obtaining the authorization under section 164, the Appellant submitted that there is no applicability of the said Guidelines notified under section 63, for the competitive bidding route, to the present case, as much as the project was not conceptualized nor approval was given by the CERC under the said Guidelines.

157. The Appellant also argued that the said Guidelines dated 13.04.2006 (which pertain to the period when the present project was being developed) do not contain a stipulation that approvals ought to be obtained in 6 months, in fact, the CERC in para 44 notes that 6 months is insufficient for obtaining approvals.

158. There were no guidelines specifying the timeline for obtaining the approval under section 164.

159. We agree with the submissions of the Appellant, the finding of the Central Commission is unreasonable and without any factual timeline.

160. As regards the finding regarding the dates considered by the CERC that MoP issued approval within two months from the date of the finalization of the route by CEA on 06.04.2009 and observing the time taken from the date of application (wrongly noted by the CERC as 26.05.2008 instead of 10.03.2008) till the finalization of the route is on account of delay in finalizing the route which is attributable to the Appellant, is totally arbitrary and unjustified and deserves to be

rejected completely, it seems that the Commission has ignored the process required to be completed for obtaining the approval under section 164.

161. There was no delay in obtaining the approval as per the procedure followed at that time.

162. We reject the finding of the Commission to that count as the Appellant has placed on record the complete process placed before us as noted above.

163. Undisputedly, Section 164 approval can only be given to a licensee, therefore, the Appellant has applied for it after ascertaining the grant of licence. Further, route finalization of a transmission line is completed after consultation with various stakeholders (including CEA, Forest Authorities, etc.), and it is not the sole prerogative of the developer.

164. We find the findings of the Central Commission as perverse and devoid of merit and above-said findings deserve to be set aside.

165. However, as argued by Respondent No. 7, it is important to note the relevant dates as placed before us, to ascertain whether there is any delay attributable to the Appellant.

166. The Appellant has placed before us the chronology of the events, as under:

Date	Event
21.12.2006	EPTCL received Investment Approval from its Board.
13.02.2007	Erst. EPMPPL made an application seeking Long Term Open Access for 1100 MW.
30.07.2007	The scheme for the Transmission Project was approved in the 9 <sup>th</sup> Meeting of the Western Region Constitutes.
27.08.2007	The Minutes of the Meeting for the 9 <sup>th</sup> Meeting of the Western Region Constitutes was published.
22.11.2007	EPTCL filed Petition No. 157/2007 before CERC for the grant of a transmission licence
10.12.2007	EPTCL applied for approval under Section 68 of the Electricity Act
12.02.2008 (uploaded on 29.02.2008)	CERC vide Daily Order in Petition No. 157/2007 noted that it proposes to issue a transmission licence to EPTCL.
10.03.2008	EPTCL applied to MoP for approval under Section 164 of the Electricity Act.
10.04.2008	Transmission Licence was granted to EPTCL.
21.04.2008& 30.04.2008	EPTCL informed MoP regarding the grant of a Transmission Licence and requested approvals under Sections 68 and 164.
21.04.2008	Since EPTCL's proposed route included 2 bays in National Thermal Power Corporation's ("NTPC") Jhanor / Gandhar switchyard, EPTCL on 21.04.2008 requested NTPC to allot

Date	Event
	2 bays at the switchyard for termination of the 400 kV D/c (Twin) Jhanor-Hazira line.
26.05.2008	EPTCL was accorded approval under Section 68 of the Electricity Act.
14.07.2008	<p>MoP advised EPTCL to fulfill the following requirements to enable MoP to process its application under Section 164:-</p> <p>(i) Publish the scheme in the Official Gazette of the State concerned and in at least two local daily newspapers <u>along with a notice of the date, not being less than two months after the date of such publication before which any person interested may make representation on such scheme and take into consideration the objections/ representations, if any, and submit a certificate along with application under Section 164 to this effect that the route selected will cause least damage.</u></p> <p>(ii) Attach a duly authenticated copy of the alignment with the application which would be retained in the Central Electricity Authority (“CEA”) for record and safekeeping.</p>
11.08.2008	NTPC belatedly responded to EPTCL’s request dated 21.04.2008 and suggested that 2 bays would be allotted to EPTCL, however, the same would be owned and maintained by NTPC and the parties would sign a commercial agreement for the same.

Date	Event
12.08.2008	EPTCL promptly conveyed its acceptance of NTPC's aforesaid proposal. It further requested NTPC to identify bays so that line take-off can be decided.
15.09.2008	NTPC conveyed its acceptance to allot 2 bays at its Gandhar switchyard to EPTCL and directed EPTCL to contact its commercial team for the execution of a commercial agreement.
23.09.2008	EPTCL published notices in newspapers having circulation in Madhya Pradesh, Chhattisgarh, and Gujarat.
14.11.2008	Bids were received by EPTCL regarding NITs for the Transmission Project.
08.12.2008	EPTCL informed MoP of publication regarding Section 164 approval in newspapers on 23.09.2008.
11.12.2008	MoP advised EPTCL to have the scheme published in the Official Gazette as well as 2 local daily newspapers inviting objections and, basis the said objections or representations submit a certificate to the effect that the proposed route would cause the least damage for the purposes of obtaining approval under Section 164 of the Electricity Act.
23.12.2008	The Scheme was published in the relevant newspapers as per the direction of the MoP on 11.12.2008.
10.01.2009	The Scheme was published in the Gazette of India as per

Date	Event
	the direction of MoP on 11.12.2008 for the purposes of obtaining approval under Section 164 of the Act.
12.03.2009	EPTCL informed MoP that it had not received any representation/ objection in response to the scheme published in the newspaper and gazette.
16.03.2009	MoP for the first time issued/ published the standard procedure for obtaining authorization under Section 164 of the Act.
02.04.2009	A meeting was held between CEA and EPTCL regarding the finalization of the route for the construction of the transmission assets.
06.04.2009	As desired by CEA, EPTCL informed MoP that the route for the transmission lines had been finalized considering all factors, inter alia, to ensure the least damage to the environment, construction methodologies to be adopted, availability of logistical support, operation and maintenance, etc. and to avoid forest area involvement completely or keep it bare minimum.
17.06.2009	MoP accorded its approval to EPTCL under Section 164 of the Act.

167. The Appellant applied to MoP to obtain approval on 10.03.2008 well before the grant of the licence to the Appellant on 10.04.2008, thereafter, only on 14.07.2008, the MoP responded to the application of the Appellant inter-alia

directing the Appellant to publish the route in the newspaper, we find no reason to attribute such delay to the Appellant.

168. Thereafter, the notice was published in the newspaper on 23.09.2008 i.e., after two months from the date of receiving direction from MoP.

169. Further, dates suggest that there is no delay in compliance with the process, as 60 days are to be given to the land owners to furnish their objections against the notice published.

170. The Appellant invited our attention stating that the time taken by MoP in the present case for the grant of approval under Section 164 of the Electricity is identical to the time taken for WRSS projects, wherein the CERC has condoned the delay qua the WRSS project, arguing that it has applied a different yardstick in its case, stating that the CERC's vide Order dated 31.12.2010 in ***Western Region Transmission (Gujarat) Pvt. Ltd. v. Power Grid Corporation of India Ltd, Gurgaon (Petition No. 296 of 2010)*** has approved the delay of 15 months.

171. Reliance was placed on this Tribunal judgment in ***North Karanpura Transmission Co. Ltd. v Central Electricity Regulatory Commission and Ors., Appeal No. 139 of 2013, Hon'ble Tribunal's Order dated 02.12.2013 – [Para 36]*** and following orders of the CERC where it has been held that delay in grant of approval under Section 164 is a Force Majeure event and thus condonable:-



(a) *Western Region Transmission (Gujarat) Pvt. Ltd. v. Power Grid Corporation of India Limited, Gurgaon*, Petition No. 296 of 2010, Order dated 31.12.2010 [Paras 13 & 17]

(b) *Jabalpur Transmission Company Limited v. Adhunik Power and Natural Resources Limited & Ors.*, Petition No. 73/MP/2014, Order dated 16.10.2015 [Para 39]

172. From the dates and events referred to hereinabove, the delay which can be attributed to the Appellant, besides the reasonable time which would invariably and in all cases be taken by the Appropriate Government to confer, upon any licensee, powers under Section 164 of the Electricity Act, would relate to the period between 14.07.2008 when the Ministry of Power issued directives till the actual publication on 23.09.2008, after considering the procedural time taken for such publication.

173. Section 164 of the Electricity Act, which relates to exercise of powers of the Telegraph Authority in certain cases, enables the Appropriate Government by order in writing, for placing of electric lines or electrical plant for the transmission of electricity, to confer upon a licensee, and subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose, any of the powers which the telegraph authority possesses under the Indian Telegraph Act with respect to the placing of telegraph lines and posts.

174. Even though no time lines are prescribed for exercise of power under Section 164, a reasonable period would invariably be taken in considering the application submitted by the appellant, and in conferring on them the powers under Section 164 of the Electricity Act. We are of the view that a reasonable period, for the Appropriate Government to consider the application, and confer the powers under Section 164 on any applicant (such as the appellant in the present case), should be taken as two months.

175. Apart from the time taken from 14.07.2008 till 23.09.2008 for publication of the scheme, an additional period of two months, from the date of submission of application till conferment of power under Section 164 shall be taken as the reasonable period for conferment of such powers. The delay in granting approval under Section 164 beyond two months, shall be taken as the period of delay which cannot be attributed to the Appellant.

176. Issue No. (a) is answered accordingly.

**Issue (b)**

177. After receiving the transmission licence, as the Commission has in principle decided to grant licence earlier and the transmission was to be commissioned according to the licence, the Appellant took the following steps necessary for obtaining the Forest Clearance:-

- (a) collection of maps from land and revenue offices;
- (b) walk over survey from Hazira to Gandha (Jhanor NTPC) - approx. 105 kms. including forest area;
- (c) preliminary inspection carried out by the Forest Rangers in Surat, Bharuch and Vyara districts and completed;
- (d) counting of trees in the alignment route.
- (e) regular meetings with different governmental agencies such as Road and Bridge Dept., Railways, River and Airport Authorities, for finalization of the transmission route of the Gandha-Hazira line.

178. It cannot be denied that some of these activities are connected to the proposed/ tentative finalization by the Appellant, such route was recommended to MoP on 02.04.2009, as already noted in the foregoing paragraphs.

179. After completing the foregoing steps, EPTCL applied for Forest Clearance on 25.03.2009, based on the proposed / tentative finalized route, and the same was obtained only on 06.02.2013 (i.e., after a lapse of 47 months).

180. The relevant dates demonstrating various steps taken by EPTCL to acquire the Forest Clearance in a timely manner are tabulated below for ease of reference:

<b>Date</b>	<b>Events</b>
2003 – 04	Essar Power Limited (EPOL) contemplated establishing and

Date	Events
	operating a 2000 MW (4x500 MW) Thermal Power Plant (Mahan TPP) in the State of Madhya Pradesh.
19.10.2005	Essar Power MP Ltd. (EPMPL) was incorporated.
04.01.2006	EPTCL was incorporated.
2006	At the request of EPMPL, PGCIL (CTU) published a System Study Report for evacuation of power from Mahan TPP.
21.12.2006	EPTCL obtained Investment Approval from its Board.
01.01.2007	PGCIL (CTU) published a Supplementary System Study Report for evacuation of power from Mahan TPP.
13.02.2007	EPMPL made an application to PGCIL seeking Long Term Open Access for 1100 MW.
30.07.2007	During the 9 <sup>th</sup> Meeting of Western Region Constituents held at Indore regarding long term access applications, EPMPL's request/ application for evacuation of 1100 MW from Mahan TPP to locations in M.P. and Gujarat was considered and approved. Furthermore, the Associated Transmission System for evacuation of power from Mahan TPP was identified.
27.08.2007	Minutes of the 9 <sup>th</sup> Meeting of Western Region constituents approving the EPMPL Associated Transmission Scheme was published (i.e., almost a month later).
01.11.2007	PGCIL approved EPMPL's LTOA application for 1100 MW power, considering the injection and delivery points finalized in the Western Region constituents meeting.

Date	Events
22.11.2007	EPTCL filed Petition No. 157/2007 before Ld. CERC seeking grant of Transmission License.
10.04.2008	Ld. CERC granted a Transmission License to EPTCL.
21.04.2008 & 30.04.2008	EPTCL informed MoP that it was granted Transmission License and requested approval under Sections 68 and 164 of the Act respectively.
26.05.2008	EPTCL was accorded approval under Section 68 of the Electricity Act.
26.05.2008 to 16.03.2009	EPTCL carried out necessary formalities as intimated by MoP for grant of approval under Section 164 of the Electricity Act.
25.03.2009	EPTCL made its <u>Application for Forest Clearance</u> by submitting its proposal to the Dy. Conservator of Forest, Surat and Tapi Forest Divisions respectively. EPTCL sought forest division for 4.7 Ha (total forest land involvement) and requested the Dy. CF (Surat & Tapi Divisions) to depute respective forest officials for joint site visit.
29.03.2009	Dy. CF, Surat permitted joint survey in the forest stretch as indicated in EPTCL's forest proposal. He also provided certain information re. Protected Forest land involvement near various villages and Taluka's in Surat district.
02.04.2009	A meeting was held between CEA and EPTCL re. finalization of the route for construction of the transmission lines.

Date	Events
16.04.2009	EPTCL issued a letter to Dy. CF Surat submitting therewith a fresh proposal for forest clearance (after adding details of non-forest area). EPTCL further informed that, the 400 kV Gandha – Hazira Transmission Line is crossing SH, without occupying Protected Forest (“PF”) Land. EPTCL once again requested that forest officials be deputed for joint site inspection.
12.01.2010	EPTCL informed <b>PCCF</b> Gandhinagar and CF Bharuch that the Gandhar-Hazira Transmission Line is being de-routed and the PF land involvement is less. EPTCL also submitted a cost comparison statement.
-	Pursuant thereto, EPTCL's constantly followed up in person and over telecon, and provided all the information which was sought by the Forest Department. Various inter departmental queries were raised by the Forest Dept. and clarifications provided by EPTCL. Furthermore, forest officials conducted various joint site visit upon EPTCL's constant follow-up and all necessary corrections were incorporated in the forest proposal.
11.10.2011	PCCF Gandhinagar gave its comments and suggestion to CF Vyra re. diversion of 0.2392 Ha PF land for de-routing of the 400 kV Gandhar Hazira line in Surat division and 0.69 Ha PF Land.
20.10.2011	Dy. CF Surat requested EPTCL to follow and comply by all the rules and regulations prescribed under Schedule Tribe & Other

Date	Events
	Traditional Forest Dwellers (Recognition of Forest Right Act, 2006). EPTCL was informed that after this its proposal would be processed further.
20.03.2012	Ministry of Environment and Forest (“ <b>MoEF</b> ”) by its letter to PC Environment & Forest, Govt. of Gujarat granted <b><u>Stage I Forest Approval</u></b> to EPTCL's forest proposal.
06.02.2013	MoEF vide its letter to PC Environment & Forest, Govt of Gujarat granted <b><u>Stage II approval and Final Forest Clearance to EPTCL.</u></b>

181. The Appellant argued that the CERC has consistently held that delay in the grant of Forest Clearance is a Force Majeure event and therefore condonable, it has in the instant case refused to condone the delay, observing that:

- (a) Seeking approval under Section 164 of the Electricity Act, applying for Forest Clearance, and finalization of EPC contract are three distinct activities that can be undertaken simultaneously.
- (b) EPTCL could have applied for forest clearance on obtaining Section 68 approval in May 2008 but it applied only on 25.03.2009.
- (c) EPTCL applied for Section 68 approval after one year of Investment Approval. This ought to have been done within 6 months of Investment Approval.

(d) Had EPTCL applied for Forest Clearance within 6 months of Investment Approval (21.12.2006), the same would have been obtained by February 2011.

182. For the sake of clarity, the relevant paragraphs are noted again:

***“45. In our view, seeking approval under Section 164 of the Act, making application for Forest Clearance and finalization of EPC contract are three distinct activities and can be undertaken simultaneously. The tentative or otherwise, transmission line route alignment is essential for all the three activities stated above. The Review Petitioner made application for forest clearance on 23.3.2009 and gave letter of route finalization to CEA on 6.4.2009. In January, 2010 revised application was made for the forest clearance. Thereafter, it took about 37 months in getting the forest clearance in February, 2013. We find that the Review Petitioner applied for forest clearance only after finalization of transmission line route and scope of scheme in March, 2009.***

***46. We have examined the impact of delay in application for forest clearance after about two years and three months of initial investment approval in December, 2006. The Review Petitioner has submitted that the route alignment including acquiring maps, walk over survey route etc. after the grant of transmission licence was started in May, 2008. The transmission line under consideration was part of a dedicated line of Essar and therefore, the grant of transmission licence was not a necessary condition for applying for forest clearance. We observe that the***



***Review Petitioner could have applied for forest clearance on obtaining Section 68 approval but it did not apply for same in May, 2008 and applied for forest clearance only in 23.3.2009. The Review Petitioner made application for approval under Section 68 to MoP in December, 2007 i.e. after one year of initial Investment Approval in December, 2006. In our view, such an application should have been made earlier, i.e. maximum within six months of initial Board approval. Considering that in the instant case, it took 37 months for forest clearance, if the Review Petitioner would have applied for forest clearance in December, 2007, the forest clearance would have been obtained by February, 2011 and line could have been commissioned by April, 2011 as the Review Petitioner has taken only two months to commission line after obtaining forest clearance.***

183. The Central Commission has itself noted that the tentative or otherwise, transmission line route alignment is essential for all the three activities stated above, i.e. including the Forest Clearance.

184. While applying for Forest Clearance, it is important that the route alignment is finalized as the grant of Forest Clearance can only begin once the transmission route has been identified and finalized, it is seen that after completing all necessary steps, the Appellant applied for Forest Clearance on 25.03.2009, once a tentative route is finalized by the Appellant, as also observed by the Commission –“ ***The tentative or otherwise, transmission line route alignment is essential for all the three activities stated above.***”

185. The Appellant submitted that the CERC erroneously held that Section 164 approval, Forest clearance, and EPC contract can be pursued simultaneously, in fact, an EPC contract cannot be issued without the finalization of the route and the Forest Clearance is received.

186. Undisputedly, the EPC contract is based on the final route as approved for the laying of the transmission line and, as such cannot be awarded before the forest clearance and the final route is approved.

187. As already noted, the elements of the impugned scheme were identified only on 27.08.2007 i.e., 8 months after the Investment Approval date, therefore, the CERC's finding that the Appellant should have applied for forest approval within 6 months of Investment Approval is without facts.

188. Further, the impugned transmission line is an ISTS line and not a dedicated line, even if we agree with CERC that it was conceived as a transmission line, the route alignment is required to be finalized before carrying out the pre-commissioning activities.

189. Also, the applications for a grant of Forest Clearance can only begin once the transmission route has been identified and tentatively finalized, after completing all necessary steps, the Appellant applied for Forest Clearance on 25.03.2009.

190. We agree with the Appellant that no significant work can be started by a private entity such as the Appellant before obtaining a transmission licence, the Appellant had no prior licence before beginning on the project and any consideration of timeline can only begin after the grant of Transmission Licence by CERC (i.e., 10.04.2008).

191. It is erroneous to assume the start date as the date of Investment Approval of a private entity such as the Appellant, the Appellant argued that nowhere in the Impugned Tariff Order nor the Impugned Review Order suggested that the Appellant was not diligent pursuant to making its application for Forest Clearance, therefore, CERC's refusal to condone the delay on the ground that the Appellant should have made the application for Forest Clearance within 6 months of Investment Approval is unreasonable and deserves to be set aside.

192. It is noteworthy that MOEF prescribes a time period of 10 months for a grant of Forest Clearance, however, the Appellant received its Forest Clearance only on 06.02.2013 i.e., after 47 months of making the application, undisputedly, this delay is completely beyond EPTCL's reasonable control.

193. The argument of the Appellant is justified that the CERC has erred in considering 12.01.2010 (date of Revised Application) as the date on which the Appellant made its another application for Forest Clearance, thus calculating 37 months from January 2010 to February 2013, submitted as under: -

- (a) The revised proposal was sent only with respect to Protected Forest Land after further optimizing the usage of Forest Land.

(b) No changes in the application were made with respect to Reserved Forest Land.

194. As seen from the table above, EPTCL, on 12.01.2010, informed **PCCF** Gandhinagar and CF Bharuch that the Gandhar-Hazira Transmission Line is being de-routed and the PF land involvement is less. EPTCL also submitted a cost comparison statement.

195. It is also argued that CERC while determining the Tariff for the Appellant's Stage-2 Transmission Assets (Order dated 14.03.2022) has rightly condoned the time-overrun on account of the delay in grant of Forest Clearance. In the said Order the CERC has condoned the time-overrun with the start date as 01.11.2010 (considering the SCOD was October, 2010), per contra, in the Impugned Final Review Order, the CERC erred by condoning a time overrun of 37 months on account of Forest Clearance with the start date of December 2007 (i.e. time was condoned until March 2011).

196. Reliance is placed on various orders of the CERC wherein it has been held that delay in the grant of Forest Clearance being beyond the control of the developer is an event of force majeure, in this regard, the following decisions are placed on record: -

(a) Order dated 16.10.2015 passed by Ld. CERC in *Jabalpur Transmission Co Ltd vs. Adhunik Power and Natural Resources Ltd & Ors* (Petition No. 73/MP/2014) (Para 35).

(b) Order dated 31.03.2016 passed by Ld. CERC in *PGCIL vs Rajasthan*

*Rajya Vidyut Prasaran Nigam Ltd* (Petition No. 280/TT/2015) (Para 19).

(c) Order dated 31.12.2015 passed by Ld. CERC in *PGCIL v. Bihar State Electricity Board* (Petition No: 34/TT/2014) (Para 21).

(d) Order dated 09.08.2020 passed by Ld. CERC in *Teestavalley Power Transmission Ltd. v. PTC India Ltd.* (Petition No: 96/TT/2019) (Para 39).

(e) Order dated 24.08.2016 passed by Ld. CERC in *East North Interconnection Co Ltd vs. Jodhpur Vidyut Vitran Nigam Ltd.* (Petition No: 32/MP/2014) (Paras 21 & 23)

(f) Order dated 15.05.2018 passed by Ld. CERC in *Teestavalley Power Transmission Ltd. Vs. PTC India Ltd* (Petition No: 108/TT/2016) (Para 47).

(g) Order dated 29.12.2016 passed by Ld. CERC in *Parbati Koldam Transmission Co Ltd vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd* (Petition No: 156/TT/2015) (Para 33).

197. In the light of above, we find the decision of CERC as arbitrary and unacceptable, accordingly, the time taken for obtaining the Forest Clearance is beyond the control of the Appellant and the period from March 2009 to February 2013 is condoned.

### **Issue (c) & (d)**

198. The Appellant claimed a total of ₹ 76.73 Crores as expenditure incurred by it towards payments made to approx. 2,500 landowners for Right of Way (RoW), further claimed that all relevant and necessary details of such payments made by it were duly placed on record before the CERC, in fact, CERC not only made random checks of the

compensation paid in different talukas as a matter of prudence but also reconciled compensation claimed by the Appellant for the type of land/ crop with the land documents.

199. Based on the prudence, the CERC in Para 22 of the Impugned Review Order observed that the documentary proof submitted by the Appellant in support of the amounts paid by it as per the payment receipts match with the land documents.

200. The Central Commission ignored the letters issued by the District Magistrate, Surat, and SDM, Bharuch, stating that compensation towards RoW is to be mutually decided between the Transmission Licensee and the landowners, and refused to capitalize the entire RoW Cost incurred and instead sought to apply the test of 'reasonableness of costs'.

201. The Appellant argued that the CERC, for reasons alien to the tariff determination process under Section 62, made deductions to the actual cost incurred by the Appellant, so as to rationalize the same further, this is despite being satisfied that the amounts paid by EPTCL were on the lower side.

202. The Central Commission in the Impugned Review Order duly noticed that:-

- (a) The documentary proof submitted by EPTCL in support of the amounts paid match with the land documents.
- (b) EPTCL's claim of ₹ 76.73 Crores is within the value as per Jantri Rate i.e. ₹ 86.15 Crores, as submitted by the Government Valuer.

203. The Appellant had placed before the CERC the “Jantri rates” prevalent at the time compensation was paid by the Appellant to landowners i.e., during construction, however, the CERC in the Impugned Review Order erroneously assumed an escalation at the rate of 17.30% on the Jantri rates for the period 01.04.2008 to 31.03.2011 (considering the revised rates notified by Govt. of Gujarat vide Resolution dated 18.04.2011) and made deductions thereto.

204. The CERC relying on the Govt. of Gujarat Resolution dated 18.04.2011 observed that there was an increase in the “Jantri rate” by 50% from 01.04.2008 to 31.03.2011 (3 years). On the basis that the total escalation in 3 years is 50%, the CERC deducted 1 year’s escalation i.e., at the rate of 17.30% from the payable compensation and as such, considered the applicable year as 2010.

205. The Appellant argued that the foregoing methodology employed by the CERC is not only arbitrary but also erroneous, especially in light of the fact that, the CERC in the Impugned Review Order has condoned the delay up to 31.03.2011 i.e., the date on which the 2011 Jantri rates became applicable.

206. Therefore, the reduction in the rate of compensation allowed by 17.30% is incorrect.

207. Further, the CERC reduced compensation paid by the Appellant for the usage of land in industrial/ urban areas by 30% based on hypothetical assumptions that the damage/route could have been optimized further, rationalization of RoW costs on the

ground that the route could have been optimized further is unheard of and deserves to be set aside, the route once finalized by MoP cannot be changed by the Developer/Appellant.

208. It is further to note that:

(a) The route to be followed by any transmission licensee is not a private decision and is finalized in consultation with CEA, before being approved by MoP, taking into account diverse factors including avoiding forest areas and minimum tree cutting, etc.

(b) Regulation 88 of the CEA (Technical Standards for Electrical Plants and Electrical Lines) Regulations, 2010 provides for "Routing of Transmission Line" and inter alia mandates that:-

(i) Route alignment of the transmission line shall be most economical from the point of view of construction and maintenance.

(ii) Routing of transmission line through protected/ reserved forest area should be avoided. In case it is not possible to avoid the forests completely, then route should be aligned in such a way that cutting of trees is minimum.

(iii) The number of angle points shall be kept to a minimum.

(iv) Marshy and low-lying areas, riverbeds, earth slip zones, crossings of major river, railway lines, national/ state highways, overhead EHV power line and communication lines, areas subjected to flooding such as nallah, large habitations, densely populated areas, restricted areas such as civil and military airfield, aircraft landing approaches should be avoided.

(v) All alignments should be easily accessible both in dry and rainy



seasons to enable maintenance throughout the year.

(vi) Areas requiring special foundations and those prone to flooding should be avoided.

209. In the instant case, the route optimization was done after complying with the above criterion.

210. It is submitted that the Appellant undertook a detailed survey of the route for the Stage-1 Transmission Assets, the total forest diversion was identified as 1.1040 Hectares, since, a large forest area was involved, the Appellant undertook a fresh survey to identify a route in which involved lower forest diversion while maintaining RoW for the project. Accordingly, a new route was identified requiring forest diversion of 0.7912 Hectares and it was on this basis, that the revised proposal which required lower forest diversion, Forest Clearance for Stage-1 Transmission Asset was awarded on 06.02.2013.

211. As already noted, once the route is finalized and approved by MoP, there cannot be an artificial reduction of RoW cost on the ground that it should have been planned to avoid industrial/ urban areas, as done by the CERC in the instant case, the purpose of discussions and finalization of the route in consultation with CEA, is to ensure least impact on the environment. Therefore, it was not capable of being further optimized, as wrongly held by the CERC during the tariff determination process.

212. It is also argued before us that the CERC placing reliance on MSETCL's suggestions to MoP for the compensation to be paid while procuring RoW, rationalized the RoW costs even further.

213. It cannot be disputed that the MSETCL's inputs for the compensation payable are merely suggestions to MoP while framing the RoW Compensation Guidelines, however, the Compensation payable by a licensee is specifically provided for in the said Guidelines dated 15.10.2015.

214. The reasonableness of RoW costs cannot be first judged against the norms specified by MoP, as the period under dispute is before the notification of these guidelines and therefore cannot be optimized based on the alleged practice followed by MSETCL (an intra-state transmission licensee) on benchmarks given as a suggestion.

215. If at all any reliance can be placed, it has to be on the GoI Guidelines, however, that also is out of context as notified much later.

216. On being asked, it is informed that the suggestion as put forth by MSETCL has not been completely incorporated in the MoP guidelines.

217. Further, the Appellant's Gandhar – Hazira transmission line is part of the Inter-State Transmission System passing through the State of Gujarat, and in no place is passing through the State of Maharashtra, the decision of CERC is flawed in applying the rates/ methodology suggested by MSETCL to MoP.

218. We are satisfied that the decision of the CERC placing reliance on MSETCL's suggestion is incorrect and has to be rejected.

219. We find the contention of the Appellant as satisfactory, the CERC failed to consider the numerous court cases filed against the Appellant seeking enhancement of compensation. The fact that such cases were filed is writ large that the payments made by the Appellant were not only prudent but also reasonable.

220. The Appellant submitted that it had paid an amount of ₹ 7.25 Crores towards RoW compensation in approx. 200 matters that were pending in the District Courts and other fora for enhancement of compensation. It is pertinent to highlight that in the group of 70 farmers, 7 farmers had made a cumulative demand for ₹ 51 Crores, as the enhanced compensation.

221. We are satisfied that the deduction of Rs. 30.8 Crores made by the CERC is incorrect and without any reasoning, actual payments made by the Appellant within the 'Jantri rates' or the orders of the State Authorities have to be paid to the Appellant.

**Issue (e)**

222. The IDC/IEDC has to be determined on the basis of the time over run and the increased compensation paid to the farm owners, accordingly, the Central Commission is directed to re-determine the IDC/IEDC subject to time over run allowed and the actual compensation paid as concluded in the foregoing paragraphs.

223. The Appeal is allowed in favour of the Appellant as concluded herein above.

**ORDER**

In the light of above, the captioned Appeal No. 397 of 2018 has merit and is allowed, the Impugned Order dated 15.06.2016 passed by Central Electricity Regulatory Commission in Petition No. 173/TT/2013 and 111/TT/2015, as modified by order dated 28.02.2018 in Review Petition 33/RP/2016, is set aside to the extent as concluded herein above.

The Central Electricity Regulatory Commission is directed to pass the consequential order expeditiously as the matter pertains to the year 2016.

The pending IAs, if any, are also disposed of accordingly.

**PRONOUNCED IN THE OPEN COURT ON THIS 11<sup>th</sup> DAY OF DECEMBER, 2024.**

**(Sandesh Kumar Sharma)  
Technical Member**

**(Justice Ramesh Ranganathan)  
Chairperson**

*pr/mkj*