

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

COURT-II

**APPEAL NO.182 OF 2020&
IA NO. 137 OF 2019**

Dated: **26.10.2021**

Present: **Hon'ble Mr. Justice R.K. Gauba, Judicial Member
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

**Himachal Pradesh Power Transmission Corp. Ltd. Appellant (s)
Versus
Central Electricity Regulatory Commission &Ors. Respondent(s)**

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent (s) : Mr. Sethu Ramalingam for R-1

Mr. R B Sharma
Mr. Mohit Mudgal
Mr. Sachin Dubey for R-13

Mr. Sitiesh Mukherjee
Mr. Aryaman Saxena for R-19

JUDGMENT (ORAL)

Per Hon'ble Mr. Justice R.K. Gauba, Judicial Member:

This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

The background facts and the narrow issue that requires to be addressed in the matter at this stage by us was captured in the proceedings recorded on 12.10.2021 which, to the extent relevant, reads thus:

"...The learned counsel for the appellant submits the issue is narrow and if the appeal itself can be taken up for final hearing and disposal, he will not press for any interim order.

With the consent of the parties, we take up the main appeal for final hearing and disposal.

The appeal is directed against the Order dated 20.07.2018 passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 116/TT/2017 whereby liability of paying transmission charges for Asset-V of the transmission system of 19th respondent i.e. Power Grid Corporation of India Limited (PGCIL) has been fastened on the appellant. The prime grouse of the appellant is that principles of natural justice have not been followed in as much as the order has been rendered without any notice to the appellant, inspite of specific directions by the CERC by earlier Order dated 22.08.2017 for impleadment of the appellant and due notice to it.

It is fairly conceded that in the petition before the CERC, originally presented by PGCIL, the appellant was not impleaded as a party respondent. Since relief against the interest of the appellant was being pressed, the CERC by Order dated 22.08.2017 directed the appellant to be added as a party, fresh memorandum of parties having been filed in compliance, the appellant being reflected as 18th respondent therein.

The CERC, by its Order dated 22.08.2017, had also directed notice to be issued to the appellant upon such impleadment. It is the contention of the appellant that no notice was served, the requisite steps taken by the 19th respondent (PGCIL) in the wake of the order dated 22.08.2017 being incorrect and inappropriate. It is pointed out from record that on the e-filing portal of CERC, instead of the appellant, another entity Himachal Pradesh Power Corporation Limited (HPPCL) was mapped. The parties agree that no formal notice was issued by CERC at any stage. There is no claim to the contrary by CERC in its reply. CERC instead accepted the affidavit dated 10.01.2018 submitted by PGCIL as a "proof of service". The document filed with the said affidavit dated 10.01.2018 submitted by PGCIL was in fact proof of dispatch, copy of speed post receipt having been submitted therewith. It is the submission of the appellant that since the speed post receipt does not mention full particulars of the appellant, due service cannot be inferred.

The short issue that requires to be addressed is as to whether there is due service on the appellant. If the answer is in the negative, the impugned order would be rendered bad as violative of the doctrine of Audi Alteram Partem. Conversely, if the conclusion is in the affirmative, the

contention of the appellant about denial of opportunity of hearing will have to be rejected.

The learned counsel for the 19th respondent seeks adjournment to come up with tracking report so that the issue can be conclusively answered. In all fairness, such opportunity deserves to be granted. The 19th respondent is given the opportunity to come up with proof of service in the form of tracking report of the Postal Department. The needful shall be done within a week hereof.

The hearing on the next date will be restricted to the consideration of the tracking report.

Be listed, on top of the board, accordingly under the heading "short matters" on 26.10.2021."

The respondent PGCIL has submitted written submission alongwith which it has submitted copy of a communication dated 20.10.2021 received from the Manager, Business Post Centre, at Gurgaon-122016, Department of Posts, India. The said communication has confirmed that certain postal article was booked against the Speed Post No. EH720806007IN dated 10.09.2017 for Shimla – 171005. The record being old, and having been weeded out, the said office is unable to confirm the delivery status thereof. Though the learned counsel for PGCIL would insist that the postal article regarding the communication from PGCIL was despatched and in this respect he would rely on internal office records maintained in regular course of business, we are not inclined to accept the submission that there is sufficient material to infer due service on the appellant. For this, we may again mention two prime facts. It is conceded that the Commission did not issue any notice to the appellant of its own. The issuance of notice was left to the 19th respondent (PGCIL), which submitted an affidavit of service

but without the proof of service, such affidavit being accompanied only by proof of despatch. The proof of despatch, as already observed, in the shape of postal receipt, does not contain the full particulars of the appellant. In the face of the further fact that another entity was mapped on the portal of the Commission in the wake of earlier orders, we are not inclined to accept mere production of the postal receipt as proof of due service.

In the above facts and circumstances, the impugned order dated 20.07.2018 passed by the CERC in Petition No.166/TT/2017 to the extent thereby liability of paying transmission charges for Asset-V of the transmission system of 19th respondent was fastened on the appellant is set aside. The matter in said respect is remitted to the Commission for reconsideration and fresh decision after hearing the appellant as well.

The parties shall appear before CERC for further proceedings in above light on 01.12.2021. Given the fact that the issue has simmered for long, we would expect the Commission to take a fresh decision expeditiously, preferably within four weeks of the date of first appearance fixed by us. Parties shall have the liberty to submit their written submissions before the Commission in advance of the date fixed by us.

The appeal and the pending applications are disposed of in above terms.

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(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Judicial Member