

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 238 OF 2021

Dated: 27.09.2022

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

In the matter of:

SIPAT TRANSMISSION LIMITED

Through its Authorized Signatory
Adani Corporate House,
Shantigram Near Vaishno Devi Circle,
S. G. Highway, Khodiyar,
Ahmedabad– 82421, Gujarat.

Appellant(s)

Versus

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
3rd& 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi- 110001.
2. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Through its Chairman & Managing Director
Prakashgad, 4th Floor, Bandra East,
Mumbai– 400051, Maharashtra
3. **M.P. POWER MANAGEMENT COMPANY LIMITED**
Through its Managing Director
Block No. – 11, Ground Floor,
Shakti Bhawan, Vidhyut Nagar,
Rampur, Jabalpur – 4820008, Madhya Pradesh.
4. **CHHATTISGARH STATE POWER DISTRIBUTION COMPANY LIMITED**
Through its Managing Director
P.O. Sunder Nagar, Dangania,
Raipur– 492013, Chhattisgarh.
5. **GUJARAT URJA VIKAS NIGAM LIMITED**
Through its General Manager
Vidhyut Bhawan, Race Course,
Vadodara– 390007, Gujarat.

6. **ELECTRICITY DEPARTMENT OF GOA**

Through its Chief Electrical Engineer

Govt. of Goa, Aquem Alto

Margaon, Goa – 403401.

7. **DNH POWER DISTRIBUTION CORPORATION LIMITED**

Through its Chief Engineer

66kV, Amlı Ind. Estate, Silvassa,

Dadar Nagar Havelı – 396230.

8. **ELECTRICITY DEPARTMENT, ADMINISTRATION OF
DAMAN AND DIU**

Through its Executive Engineer

Plot No. 35, OİDC Complex,

Near Fire Station, Somnath,

Daman – 396210.

Respondent(s)

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.
Mr. Sourav Roy
Mr. Prabudh Singh
Mr. Kaushal Sharma
Mr. Shashank Agrawal

Counsel for the Respondent(s) : Mr. Ravi Prakash
Ms. Nikita Choukse
Mr. Sahil Sood for R-2

Mr. Ravin Dubey for R-3

J U D G E M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a transmission licensee which had entered into a Transmission Service Agreement (TSA) on 24.06.2015 with the respondent long term customers, they being led by the second respondent/ Maharashtra State Electricity Distribution Company Limited (MSEDCL). The TSA contains a provision on *Change in Law* (CIL) compensation (Article 12). The appellant has brought a challenge to the Order dated 16.06.2021 passed by Central Electricity Regulatory Commission (CERC) on its Petition (no. 453/MP/2019) feeling aggrieved on account of denial of compensation

with reference to “change in configuration of towers to ‘D’ – ‘D’ type on both sides of the crossing”, as also the carrying cost claim with reference to certain other events which were allowed.

2. The claim of compensation on account of change in law leading to additional expenditure incurred after the cut-of-date was with reference to the following:

- (a) Levy of Swatchh Bharat Cess and Krishi Kalyan Cess;
- (b) Increase in the rate of Maharashtra Value Added Tax;
- (c) Increase in the effective customs duty on the import of primary aluminium products;
- (d) Increase in effective rate of taxation rates due to enactment of GST Laws;
- (e) Increase in compensation towards damages in relation to Right of Way (RoW) for transmission lines;
- (f) Levy of GST on RoW payments to be made to the landowners; and
- (g) Change in configuration of towers to ‘D’ – ‘D’ type on both sides of the crossing.

3. As mentioned at the outset, the claim with reference to configuration of towers to the specified type has been declined while the other claims were accepted though carrying cost was not granted by the impugned decision.

4. After some hearing, it is agreed on both sides that the matter would require views of Central Electricity Authority (CEA) to be taken on the issue of change in configuration of towers to ‘D’ – ‘D’ type on both sides of the crossing, as was insisted upon by Power Grid Corporation of India Limited

(PGCIL) and Chhattisgarh State Power Transmission Company Limited (CSPTCL), the appellant having been statedly constrained to incur additional expenditure on account only of such insistence.

5. In the given facts and circumstances, we remit the issue to the above extent to the CERC for reconsideration, after seeking opinion of CEA. Needless to add, the Commission shall be obliged to hear the parties before it passes a fresh order on this aspect, not feeling influenced or bound by the view taken by the order under appeal.

6. As mentioned earlier, the appeal also agitated the claim for carrying cost with reference to the change in law compensation which has been allowed, part of such claim being under remit as above. In our view, the law has developed over the period on this issue, reliance being placed by the appellant on various decisions including judgment dated 15.09.2022 in Appeal no. 256 of 2019 & batch in the case of *Parampujya Solar Energy Pvt. Ltd & anr v. Central Electricity Regulatory Commission & ors.*

7. With the consent of both sides, we remit the above said issue as well to the Central Commission for a fresh visit. Needless to add, the Commission shall be bound to follow the law as has been declared by Supreme Court and by this tribunal on the subject. Of course, the Commission will afford the hearing to the parties before deciding that issue afresh. We may add that in case the claim for carrying cost raised by the

appellant is upheld by the Commission, it shall be also obliged to quantify the compensation payable and pass all consequential orders in its wake.

8. Nothing in this order shall be construed as an expression of opinion on the issues by us, contentions of both sides being kept open.

9. We would expect the Commission to proceed with the compliance with order of remit as above with the necessary expedition and take a fresh call at an early date preferably within six months from today.

10. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson