

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 359 OF 2019

Dated: 27.10.2022

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

In the matter of:

Power Grid Corporation of India Limited,
"Saudamini", Sector 29, Gurgaon – 122001
Haryana

.... Appellant (s)

Versus

1. Central Electricity Regulatory Commission,
Through its Secretary,
3rd and 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110001
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Vidyut Mar,
Jaipur – 302005
3. Ajmer Vidyut Vitran Nigam Ltd,
Vidhyut Bhawan, Janpath,
Jyoti Nagar,
Jaipur, Rajasthan 302005
4. Jaipur Vidyut Vitran Nigam Ltd,
Vidhyut Bhawan, Janpath,
Jyoti Nagar,
Jaipur, Rajasthan 302005
5. Jodhpur Vidyut Vitran Nigam Ltd,
Vidhyut Bhawan, Janpath,
Jyoti Nagar,
Jaipur, Rajasthan 302005
6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla -171004 (HP)
7. Punjab State Electricity Board,
220kV Sub Station, Abroal,
Patiala - 147001

8. Haryana Power Purchase Centre,
Shakti Bhawan, Energy Exchange,
Room No. 446, Top Floor, Sector -6,
Panchkula (Haryana) -134109 Haryana.
9. Power Development Department,
Government of Jammu and Kashmir,
Janipura Grid Station,
Jammu (Tawi) – 180007.
10. Uttar Pradesh Power Corporation Limited
(UPPCL),
10TH Floor, Shakti Bhawan Extn,
14, Ashok Marg
Lucknow -226001
11. Delhi Transco Limited,
Kotal Road (Near ITO),
New Delhi- 110002.
12. BSES Yamuna Power Limited,
Shakti Kiran Building,
Kakardooma, Delhi -110092
13. BSES Rajdhani Power Limited (BRPL),
BSES Bhawan, 2nd Floor, B Block,
Behind Nehru Place Bus Terminal,
Nehru Place, New Delhi – 110019.
14. North Delhi Power Ltd.
Power Trading and Load Dispatch Group
Cannet Building, Adjacent to 66/11kv
Pitampura 3 Grid building
Near PP Jewellers,
Pitampur, New Delhi- 110034
15. The Principal Secretary,
Chandigarh Administration
4th Floor, UT Secretariat,
Sector -9, Chandigarh- 160009.
16. Uttrakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Near Balli Wala Chowk,
Dehradun, Uttarakhand – 248001.

17. North Central Railway,
Through Divisional Railway Manager,
DRM Office, Nawab Yusuf Road,
Allahabad, Uttar Pradesh – 211011.
18. New Delhi Municipal Council,
Through its Secretary,
Palika Kendra, Sansad Marg,
New Delhi -110001
19. Mytrah Energy (India) Ltd.
Through its Chairman and Managing Director,
8001, 8th floor, Q- City,
Nanakramguda, Gachibowli
Hyderabad – 500032, Telangana
20. Suzlon Power Infrastructure Limited
Through its Chairman and Managing Director,
5 Shrimali Society
Near Shree Krishna Centre,
Navrangpura , Ahmedabad- 380009.
21. Karnataka Power Transmission
Corporation Ltd.,
Kaveri Bhavan, Bangalore – 560009.
22. Transmission Corporation of Andhra
Pradesh Ltd.,
Vidyut Soudha, Hyderabad – 500082.
23. Kerala State Electricity Board (KSEB)
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram – 695004.
24. Tamil Nadu Electricity Board (TNEB),
NPKRR Maaligai, 800, Anna Salai,
Chennai – 600002.
25. Electricity Department,
Government of Goa,
Vidyut Bhavan, 3rd Floor,
Panaji, Goa – 403802.
26. Electricity Department,
Government of Pondicherry,

- Pondicherry – 605001.
27. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL), P&T Colony, Seethmmadhara, Vishakhapatnam, Andhra Pradesh – 530013.
 28. Southern Power Distribution Company of Andhra Pradesh Limited, Srinivasasa Kalyana Mandapam Backside, Tiruchanoor Road, Kesavayana Gunta, Tirupati Chittoor District, Andhra Pradesh – 517501.
 29. Central Power Distribution Company of Andhra Pradesh, Corporate Office, Mint Compound, Hyderabad, Andhra Pradesh – 500063.
 30. Northern Power Distribution Company of Andhra Pradesh Limited, Opposite NIT Petrol Pump, Chaitanyapuri, Kazipet, Warangal, Andhra Pradesh – 506004.
 31. Bangalore Electricity Supply Company Ltd., Corporate Office, K.R. Circle, Bangalore, Karnataka – 560001.
 32. Gulbarga Electricity Supply Company Limited, Station Main Road, Gulbarga, Karnataka – 585102.
 33. Hubli Electricity Supply Company Limited, Navanagar, PB Road, Hubli, Karnataka – 580025.
 34. MESCOM Corporate Office, Paradigm Plaza, AB Shetty Circle, Mangalore, Karnataka – 575001.
 35. Chamundeshwari Electricity Supply Corporation Limited (CESC),

927, LJ Avenue, Ground Floor,
New Kanthara Urs Road,
Mysore, Karnataka – 570009.

36. Transmission Corporation of Telangana Ltd.,
Vidyut Soudha,
Hyderabad – 500082. Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Mr. Amal Nair
Ms. Sugandh Khanna

Counsel for the Respondent(s) : Mr. Rajiv Srivastava
Ms. Gargi Srivastava for R-10

Mr. Mohit K. Mudgal
Mr. Sachin Dubey for R-12 & 13

Mr. Hemant Sahai
Mr. Nitish Gupta
Ms. Parichita Chowdhury for R-19

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

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

1. The appeal at hand questions the correctness, legality and propriety of the view taken by the *Central Electricity Regulatory Commission* (“Central Commission”) by its Order dated 06.08.2019 in Petition no. 172/TT/2018 which had been taken out by the appellant seeking tariff determination in respect of its transmission system for the period commencing from the date of commercial operation (“COD”) to 31.03.2019, to the extent thereby the time over run of 383 days in commissioning of Assets-III & IV has not been condoned, and, consequently, the *Interest During Construction* (“IDC”) and *Incidental Expenditure During Construction* (“IEDC”) for the corresponding period has been disallowed in the tariff computation.

2. Though the appeal was filed also questioning the restriction of IEDC to 5% of the hard cost based on abstract cost estimates statedly contrary to the provision of tariff regulations, the said issue is not pressed for the reason it has since been resolved.

3. The Assets III & IV which form part of the “*Green Energy Corridors: Inter State Transmission Scheme (ISTS) – Part A*” are described as under:

Asset-III

2X400 kV D/C(Quad) Tirunelveli Pooling Station-Tuticorin Pooling station line along with new 400/230KV (GIS) Tirunelveli Pooling Sub-station with 2X125 MVAR 400 kV Bus reactors and associated bays at 400/230 kV Tuticorin Pooling station.

Asset-IV

2X500 MVA 400/230 kV transformers along with associated bays and equipments at new 400/230 kV (GIS) Tirunelveli Pooling Sub-station.

4. The appellant had sought to explain before the Central Commission that it had postponed the commissioning of the above-mentioned assets so as to match with the commissioning schedule of the associated generating unit of another entity i.e. *Mytrah Energy (India) Limited* (“Mytrah”). The Commission has ruled on the subject thus:

“ ...

38. The petitioner has attributed the time over-run for Asset-III and Asset-IV due to delay in commissioning of associated generating units of Mytrah Energy (India) Limited. Mytrah Energy Limited vide letter dated 6.5.2016 intimated the petitioner that commissioning of its generating units has been postponed to March, 2018. Accordingly, the petitioner decided to postpone the commissioning of Asset-III and IV as per the commissioning schedule of the generation at Mytrah Energy Limited. The petitioner has submitted letter dated 6.5.2016 wherein Mytrah Energy addressed to PGCIL that the pooling station commissioning date may be shifted from February, 2017 to March, 2018. We have gone through the submissions of the petitioner. The petitioner has submitted CEA energisation certificates dated 20.3.2018, 29.3.2018, 4.5.2018. From these

certificates, it observed that Asset-III and IV have become ready only with effect from 4.5.2018. Hence, the time delay 383 days from SCOD (16.4.2017) to 4.5.2018, was within the control of the petitioner as the petitioner on its own preferred to defer the COD to match with the generation. As such, out of total time delay of 420 days, 383 days is not condoned and the time delay of 37 days from 5.5.2018 to 10.6.2018 is condoned for Asset-III and Asset-IV.

...”

5. Having heard the learned counsel on both sides, we are of the view that the matter requires revisit by the Central Commission in as much as it seems to be against the consistent view taken by the Central Commission in a series of similarly placed other matters. To illustrate this, we may refer to the following part of Order dated 25.06.2019 of the Central Commission in Petition no. 242/TT/2018:

"The line reactors under Assets II & III were essentially a part of the generation linked line from Lower Subansiri- Biswanath Chariali. Accordingly, it can be argued that the delay in Biswanath Chariali substation land may not be having conclusive bearing on the implementation of the instant assets II & III. Therefore, the reasons of delay due to land are not being discussed further for determining their impact on the time over-run of the instant assets II & III.

30.However, in the event of substantial delay of the generation project itself, the Petitioner had to consciously defer the implementation of line as well as line reactors. The Petitioner took up the implementation of instant assets II & III only after the necessity was felt to contain high voltage in upper Assam and Arunachal Pradesh, subsequent to the decision taken during the aforesaid 6th SCM of NER and 17th NERPC Meeting."

6. Similarly, in Petition no. 208/TT/2016, the Central Commission, by its Order dated 22.11.2017, had held thus:

"16. We have considered the submissions of the petitioner for approval of COD of the Asset-5A and Asset-5B as 24.3.2017 and 20.5.2017 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has submitted that it has completed the work under its scope but GETCO has not completed the work under its control and as such sought approval of COD of Asset-5A and Asset5B under

proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has submitted that it had made its elements ready but was prevented from regular service for reasons not attributable to it. We are of the view that the COD of the assets should match with the upstream/downstream assets for their proper utilization and the petitioner should have taken appropriate measures to ensure the same through Implementation Agreement. In the instant case, the downstream assets under the scope of GETCO have not been put into commercial operation and the petitioner has not produced any document to show that the instant assets are put to any alternative use. Since assets have not been put to regular use, we are not inclined to approved the COD of Assets-5A and 5B under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as prayed by the petitioner. As such, the tariff of Assets-5A and 5B is not allowed in the instant order. The petitioner may approach the Commission for tariff for these assets after the COD of the downstream system.”

7. Further, it is pointed out that the Central Commission, by its Order dated 19.09.2017 in Petition no. 233/TT/2016, had taken the following view:

"18. We have considered the submissions made by the petitioner regarding the COD of Asset-III. Out of the four bays covered in Asset-III, the COD of two bays is allowed matching with downstream line on 20.10.2016. The COD of remaining two bays as claimed by the petitioner under Regulation 4(3)(ii) is not admissible. The COD for remaining two bays is allowed on 10.3.2017 matching with commissioning of downstream system. The IDC/IEDC in respect of two bays which is considered as commissioned on 10.3.2017 shall not be capitalized and same (from 20.10.2016 to 9.3.2017) shall be borne by the BSPTCL."

8. We do not wish to load this decision with any further extracts from other orders of the Central Commission but would add that similar approach seems to have been adopted in Order dated 01.09.2017 in Petition no. 209/TT/2016 and Order dated 30.11.2017 in Petition no. 60/TT/2017 as well.

9. In above facts and circumstances, with the consent of all parties, we set aside the impugned order to the extent under challenge here and remit the issue to the Central Commission for revisit, the Central Commission

being expected to be consistent and to bear in mind the view taken in similarly placed other matters some of which have been mentioned above.

10. It appears that some of the respondents may have certain other submissions to make on the subject of condonation. We reserve their rights to raise all such contentions before the Central Commission in the remand proceedings.

11. The Central Commission shall revisit the issue, after hearing all stakeholders and pass a fresh order in accordance with law not feeling bound by the view taken earlier.

12. The appeal is disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 27TH DAY OF OCTOBER, 2022.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson