

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 55 OF 2022

Dated: 18.08.2022

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

In the matter of:

**M/S TEESTAVALLEY POWER TRANSMISSION
LIMITED**

Authorized Signatory Mr. Rajesh Garg
Bhikaji Cama Bhawan, Unit# 604,
6th Floor, Bhikaji Cama Place
New Delhi 110 066

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Appellant(s)

VERSUS

**1. CENTRAL ELECTRICITY REGULATORY
COMMISSION**

3rd Floor, Chanderlok Building,
36, Janpath,
New Delhi- 110001
(Represented by its Secretary)

2. PTC INDIA LIMITED

2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place
New Delhi 110 066
(Represented by its CMD)

3. ENERGY AND POWER DEPARTMENT

Government of Sikkim
Kazi Road, Gangtok-737101
(Represented by its PCE-cum-Secretary)

4. TEESTA URJA LIMITED

Bhikaji Cama Bhawan, Unit# 604,
6th Floor, Bhikaji Cama Place
New Delhi 110 066
(Represented by its Managing Director)

5. M/S SNEHA KINETIC POWER PROJECTS PVT. LTD.

Sonam Complex, Jeevan Theng Marg
Development Area,
Near Little Pixel International School,
Gangtok-737101, Sikkim
(Represented by its Managing Director)

6. M/S POWERGRID CORPORATION OF INDIA LTD.

Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk
Gurgaon – 122001, Haryana
(Represented by its CMD)

7. PUNJAB STATE POWER CORPORATION LTD.

The mall, Patiala – 147001, Punjab
(Represented by its CMD)

8. UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

Vidyut Sadan, Plot No.C16, Sector-6
Panchkula-134109, Haryana
(Represented by its MD)

9. DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED

Vidyut Sadan, Vidyut Nagar,
Hisar -125005, Haryana
(Represented by its MD)

10. HARYANA POWER PURCHASE CENTRE

Shakt Bhawan, Sector-6
Panchkula-134109, Haryana
(Represented by its Chief Engineer)

11. AJMER VIDYUT VITRAN NIGAM LIMITED

Vidyut Bhawan, Panchsheel Nagar
Makarwali Road, Ajmer-305004, Rajasthan
(Represented by its CMD)

12. JAIPUR VIDYUT VITRAN NIGAM LIMITED

Vidyut Bhawan, Janpath
Jaipur-302005, Rajasthan
(Represented by its CMD)

13. JODHPUR VIDYUT VITRAN NIGAM LIMITED

New Power House, Industrial Area
Jodhpur-342003, Rajasthan
(Represented by its CMD)

14. RAJASTHAN URJA VIKAS NIGAM LIMITED

Vidyut Bhawan, Janpath
Jyoti Nagar, Jaipur-302005, Rajasthan
(Represented by its CMD)

15. UTTAR PRADESH POWER CORPORATION LTD.

Shakti Bhawan, 14, Ashok Marg
Lucknow -226001, Uttar Pradesh
(Represented by its CMD)

.... Respondent(s)

Counsel for the Appellant (s) : Mr. Tarun Johri
Mr. Ankur Gupta

Counsel for the Respondent (s) : Mr. Pallav Mongia
Mr. Ankush Mangol for R-6

J U D G M E N T (Oral)

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

1. While dealing with the Petition no.108/TT/2016 presented by the appellant herein seeking approval of transmission tariff of 400 kV D/C *Teesta III-Rangpo* Section up to LILO point at *Rangpo* for the control period 2014-19 under Section 62 & 79(1)(d) of the Electricity Act, 2003, the respondent *Central Electricity Regulatory Commission* ("the Central Commission") also examined the issue of time over-run vis-à-vis Circuit-2 and Circuit 1(a), declining to condone the delay for the period 01.07.2016 to 14.11.2016 (04 months and 13 days) observing that the appellant (petitioner before the Central Commission) had "not explained the reasons for delay in stringing time taken". The appellant had gone back to the Central Commission by Review Petition No. 25/RP/2018 presenting certain additional documents, over and above what had been submitted earlier,

seeking a review. The Central Commission declined to grant any relief on the said review petition by order dated 30.12.2019 refusing to look into the additional material, *inter alia*, on the ground the appellant had failed to exercise due diligence in such regard, the material submitted with the main petition having been “already considered”. The present appeal challenges both the original order dated 15.05.2018 and the review order dated 30.12.2019 pointing out that the observation of the Central Commission that the delay had not been “explained” is *ex facie* erroneous in as much as the Commission by the main order itself has noted at Para 43. c.(v) the circumstances prevalent during the relevant period, as pleaded in the petition.

2. The learned counsel for the appellant has placed before us a copy of the pleadings which had been filed before the Central Commission, particularly the reply of the appellant herein to the queries raised by the Central Commission vide the record of proceedings dated 11.07.2017 it being supported by an affidavit sworn on 16.09.2017. The reasons for delay for the asset circuit 1 (a) & 2, particularly relating to the activity of stringing, as set out in the said affidavit read as under:-

“(5) – ROW issues between tower location/span AP 61-62 – ROW issues have hampered construction activities in this location as landowners did not allow construction work in this area and filed petition in High Court Lok Adalat and then to High Court in Sikkim against construction works in these locations. This caused delay of 31 months from August 2013 to March 2016. The decision of Sikkim High Court was delivered on 26 March, 2016 and even after that the local landowners kept on creating hurdles and did not allow the work of stringing to be commenced there. Finally after the intervention of the District Collector the matter could be resolved and stringing work started on October 2016 and completed in November 2016. For further details and documentary evidence, please refer Paragraph 4.10.5 (page no.0025) of Petition No.108/TT/2016 submitted on 24.06.2016”.

3. From the pleadings, as captured in the impugned order at length, and from the material placed before us, we note that there was a *status quo* order passed by the jurisdictional High Court on the dispute relating to the *Right of Way* (ROW) issues, which litigation culminated in final order rendered on 26.03.2016. It appears that the Central Commission has assumed that with the decision of the High Court, the ROW issues had come to an end and the appellant was in a position to resume and complete the stringing work expeditiously, it being not convinced by the delay that had occurred up to 14.11.2016 treating the same as unexplained. The pleadings which had been presented before the Central Commission, on the contrary, reflect that despite the High Court decision the resistance from the land owners had continued, this obliging the appellant herein to approach the civil authorities for aid and assistance. It is in this regard that the appellant relies on the correspondence that had been exchanged during the relevant period, the stringing work having eventually been resumed in October, 2016 and completed in November, 2016.

4. It is also a grievance of the appellant that on identical issues coming up before the Central Commission vis-à-vis Circuit 1(b), same explanations as have been ignored in the present matter have been accepted as sufficient to condone the delay, this being the view taken by the same Commission by its order dated 22.01.2020 on Petition no. 368/TT/2018.

5. Having heard the learned counsel on both sides, we find that the Central Commission has fallen in error by observing in the order dated 15.05.2018 that the appellant had not given any explanation for the delay for the period in question. There were pleadings before the Commission offering the explanation, the same being *prima facie* supported by some material presented at that stage. Proceeding on the assumption that the

explanation had not even been tendered has resulted in the material submitted in support having been glossed over. The appellant had gone in review and had relied on some additional material. At that stage, the Central Commission could have risen to the occasion and visited the issue again in light of the pleadings and material that had been submitted in the first instance. Instead of doing so, the Commission seems to have proceeded on the premise that whatever material had been submitted earlier had been duly considered. That is where another error occurred. The view taken on the additional material, in these facts and circumstances, appears to us to be hyper-technical and, therefore, unacceptable.

6. In the above facts and circumstances, we set aside the impugned order to the extent thereby the prayer for condonation of delay for the period 01.07.2016 to 14.11.2016 has been declined. The issue to that extent is remitted to the Central Commission with a direction to consider it again in light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings. Given the contrary view taken vis-à-vis Circuit 1(b) by the subsequent order dated 22.01.2020, it will be advisable for the Central Commission to bear in mind the approach taken in such other matter as well.

7. The Central Commission shall take up the case at an early date by issuing notices to all concerned and decide the matter on remand, in accordance with law, as expeditiously as possible.

8. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson