

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.6 OF 2020**

**Dated: 17.02.2022**

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

**In the matter of:**

**M/S GREENKO BUDHIL HYDRO POWER PVT. LTD.**

(Formerly known as M/s Lanco Budhil Hydro Power Private Limited)

*[Through Authorized Signatory]*

P. No. 1367, Road No. 45,

Jubilee Hills, Hyderabad- 500033

.... Appellant(s)

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*[Through its Secretary]*

3rd & 4th Floor, Chanderlok Building,

36, Janpath, New Delhi – 110001

**2. POWER GRID CORPORATION OF INDIA LIMITED**

*[Through its Managing Director]*

“Saudamini”, Plot No. 2,

Sector-29, Gurgaon-122 001

... Respondent(s)

Counsel for the Appellant (s)

:

**Mr.Sanjay Sen, Sr. Adv.**

Mr.Hemant Singh

Mr. Lakshyajit Singh Bagdwal

Ms. Roberta Elwin

Counsel for the Respondent (s)

:

**Ms. Suparna Srivastava** for R-2

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

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

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

2. During the pendency of this appeal, the responsibilities of Power Grid Corporation of India Limited (PGCIL) have been taken over by a new

company namely Central Transmission Utility of India Limited (CTUIL). We had allowed substitution of PGCIL by CTUIL by our order dated 04.01.2022.

3. The appellant (generating company) is aggrieved by the order dated 20.11.2019 passed by the Central Electricity Regularity Commission (CERC) in petition no.265/MP/2018 to the extent thereby the liability to pay transmission charges to the second respondent PGCIL (now CTUIL) towards supply of free power of 8.4 MW to the utility of State of Himachal Pradesh for the period anterior to the filing of the petition challenging the demand raised by PGCIL (now CTUIL) by its letters dated 02.08.2018 and 14.08.2018 was fastened on the appellant.

4. The appeal is resisted by PGCIL (now CTUIL) on the ground that though under the Bulk Power Transmission Agreement dated 18.10.2007, there was arrangement put in position for transmission of electricity generated by the appellant to the extent of capacity of 61.6 MW, a commitment was made for the appellant to also bear the transmission charges towards free power made available to the utility of State of Himachal Pradesh (viz. Himachal Pradesh State Electricity Board or, for short, "HPSEB"), in the event of no separate arrangement for such transmission being put in position by the appellant and/or HPSEB. It is pointed out that vis-à-vis the impugned demand by letters dated 02.08.2018 and 14.08.2018, the CERC has accepted the contentions of the appellant by holding thus:

*"41. In the present case, we have perused the provisions of the Implementation Agreement between Government of Himachal Pradesh and LGPPL. Para 5.4 of the Implementation Agreement provides as under:-*

*"5.4 Royalty*

*5.4.1 The royalty in the shape of free power will be levied @12% of the Deliverable Energy (Net generation measured at the interconnection point) of the project for the period starting from the date of synchronization of the first generating unit and extending upto 12 years from Commercial Operation Date of the Project. For the balance Agreement of 28 years, the royalty in the shape of free power will be charged @ 18% of the Deliverable Energy.*

*5.4.2 In case the Government levies any duty/tax on generation and supply of power, the same shall be borne by the Company except for royalty which will be borne by the Government."*

*Deliverable Energy has been defined in the implementation Agreement as under:*

*1.2.15 "Deliverable Energy" shall mean the electrical energy generated at the Station, as measured at generator(s) terminals less the summation of the following:*

*(i) Actual auxiliary consumption for the bona fide use of auxiliaries, lightening and ventilation in the Power Station and intake works and the transformation losses (from generation voltage to transmission voltage) of the step up transformers at the power house switchyard; and*

*(ii) Transmission losses at actual, which shall be the difference of the electrical energy measured at sending and receiving ends of the transmission line (i.e. the power station end and the interconnection point);*

*For this purpose and subject to above, the energy meter reading shall be taken on monthly basis at the inter-connection point."*

*Memorandum of Understanding between Government of Himachal Pradesh and M/s LGPPL dated 23.9.2004 provides as follows:*

*"8. The Company will be required to make arrangements for evacuation of power from the project to the Board's/PGCIL's substation (designated or interconnection point) as per the provisions in the DPR. For evacuation of power beyond the interconnection point, the Company shall tie up with HPSEEB/PGCIL for arrangement of suitable integrated transmission system at mutually agreed Wheeling Charges."*

*42. The Government of Himachal Pradesh is entitled for royalty @12%/18% of the deliverable energy which is measured at the generator terminal. There is no provision in the MOU or IA which saddles the Petitioner with the liability to evacuate free power from the generation bus bar till the STU point. In fact, Government of Himachal Pradesh and HPSEB have neither applied for LTA nor have asked the Petitioner to apply for LTA for free power on their behalf to PGCIL. On the other hand, HPSEB is evacuating its share of free power by availing short term open access.*

*43. The Petitioner has signed the BPTA and accepted the liability for paying the transmission charges for free power in case transmission arrangement is not made by the Petitioner/HPSEB. Accordingly, HPSEB is already paying the Short Term Open Access charges for evacuating free power from the bus bar of the generating station. The Petitioner, therefore, cannot be held liable for transmission charges for the capacity corresponding to free power as Long Term Customer as the Petitioner had neither applied on its own nor on behalf of*

*Government of Himachal Pradesh/ HPSEB for LTA for this capacity and accordingly, it has not been treated as Long Term Customer in the BPTA, as PTC has been treated.*

.....

*46. In light of above, we are of the view that even though the Petitioner has signed the BPTA, it has neither applied for nor was granted LTA for free power. Since free power is evacuated by HPSEB by availing short term open access, the Petitioner cannot be saddled with the transmission charges for the same power subject to our decision on Issue No.2.”*

**5.** It is pointed out that after having rejected the demand of PGCIL (now CTUIL) by the impugned letters through observations recorded as above, the Commission has proceeded to hold thus:

*“47. Since the Petitioner has signed BPTA and has voluntarily accepted the liability for payment of Northern regional transmission charges for free power till the adequate arrangement is made by Petitioner/HPSEB, and nothing has been produced on record to prove that it has ever disputed such liability till filing of the present petition, the Petitioner cannot escape the liability for transmission charges till the date of filing of instant petition when the Petitioner disputed its liability for transmission charges for free power. Accordingly, we hold that the Petitioner shall not be liable for payment of transmission charges for free power from the date of filing of this petition. Keeping in view the totality of the facts of the case and the provisions of the MOU and IA, we hold that since the Petitioner did not apply for LTA, the Petitioner shall not have liability to pay the transmission charges for free power from the date of filing of the petition. However, the bills already raised by CTU towards free power after the date of filing this petition shall be adjusted against STOA charges within a period of 3 months from date of issue of this Order.”*

**6.** Having heard the learned counsel for the parties at length, we are of the view that the above formulation of the final directions on the petition preferred by the appellant could not and should not have been reached without impleading HPSEB as a party to the proceedings. After all, it is the said entity which has been drawing the free power, as royalty claimed by the State, statedly under short-term open access arrangement.

**7.** Upon questions in the above nature being raised, the learned counsel for the parties sought time to seek further instructions. In the resumed hearing, the learned counsel now fairly agree that HPSEB was a proper party, if not a necessary party, to the proceedings in which the impugned

decision was rendered. For complete closure to the expectation of PGCIL (now CTUIL) for transmission charges for the period in question to be paid to it, it is only appropriate that the CERC be called upon to rehear all concerned entities, including HPSEB and decide the matter as to the liability for paying transmission charges for the period prior to the petition being filed, to be decided afresh. We order accordingly.

8. For clarity, we must add that we are not disturbing the conclusions and findings reached by the Commission through Paras 41 to 43 and 46 as have been extracted above vis-à-vis the impugned demands through letters dated 02.08.2018 and 14.08.2018. We may note that the rejection of the said demands as bad in law, and under the contractual arrangement, has not been questioned or challenged by PGCIL (now CTUIL) by any independent appeal and, therefore, has attained finality.

9. The short issue of the liability to pay the transmission charges for period anterior to the filing of the petition, and the identity of the party which must bear such charges for the said period, is remitted to CERC for further hearing and fresh adjudication. As observed above, before hearing the parties already on board, the CERC shall implead and issue notice to HPSEB as well.

10. The bank guarantee which the appellant is stated to have furnished shall not be invoked till the matter to the above extent is re-decided by the CERC. Needless to add, the appellant shall keep the said bank guarantee alive for the requisite period. We would request the CERC to expedite the further process in terms of the above remit and decide the matter at an early date.

11. The appeal is disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING  
ON THIS 17<sup>th</sup> DAY OF FEBRUARY, 2022.**

**(Sandesh Kumar Sharma)**  
Technical Member

**(Justice R.K. Gauba)**  
Officiating Chairperson

*pr/TP*