

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

**APPEAL NO. 422 OF 2019**

**Dated: 14th March, 2023**

**Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon`ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**POWER GRID CORPORATION OF INDIA LIMITED**

*Through Managing Director*

“SAUDAMINI”, Plot No.-2

Sector-29, Gurgaon-122 001 (Haryana)

.... Appellant(s)

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY  
COMMISSION (CERC)**

*Through its Secretary*

3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building

36, Janpath Rd,

New Delhi -110001

**2. REWA ULTRA MEGA SOLAR LTD.**

*Through its Managing Director*

Urja Bhawan, Link Road No.2, Shivaji Nagar

Bhopal 462016

**3. MADHYA PRADESH POWER MANAGEMENT  
COMPANY LTD.**

*Through its Managing Director*

Shakti Bhawan Rampur,

Jabalpur 482008

**4. MAHARASHTRA STATE ELECTRICITY  
DISTRIBUTION CO. LTD.**

*Through its Managing Director*

Prakashgad, 4<sup>th</sup> Floor, Andheri (East),

Mumbai – 400 052

**5. GUJARAT URJA VIKAS NIGAM LTD.**

*Through its Chairman*  
Sardar Patel Vidyut Bhawan  
Race Course Road  
Vadodara- 390 007

**6. ELECTRICITY DEPARTMENT**

*Through its Chief Engineering (Electrical)*  
Government of Goa  
VidyutBhawan, Panaji  
Near Mandvi Hotel,  
Goa - 403 001

**7. ELECTRICITY DEPARTMENT**

*Through its Secretary (Fin.)*  
Administration of Daman & Diu  
Daman – 396 210

**8. ELECTRICITY DEPARTMENT**

*Through its Secretary (Fin.)*  
Administration of Dadra Nagar Haveli  
U.T., Silvassa – 396 230

**9. CHHATTISGARH STATE ELECTRICITY BOARD**

*Through its Chairman*  
P.O. Sunder Nagar, Dingani, Raipur  
Chhattisgarh – 492 013

**10. Madhya Pradesh Audyogik Kendra**

*Through its Chairman and Managing Director*  
Vikas Nigam (Indore) Ltd.  
3/54 Pres Complex, Agra-Bombay Road,  
Indore – 452 008

... Respondent(s)

Counsel for the Appellant(s) : Swapna Seshadri  
Surbhi Gupta For App1

Counsel for the Respondent(s) : Aditya Singh For Res2

Varun K Chopra  
Mehul Sharma For Res3

## **J U D G M E N T ( O R A L )**

1. This Appeal is preferred by the Petitioner before the Central Electricity Regulatory Commission (CERC) aggrieved by the order passed in Petition No.7/TT/2018 dated 5.11.2018. The Appellant herein had invoked the jurisdiction of CERC seeking determination of the transmission tariff from anticipated COD to 31.03.2019, for LILO of Vindhyachal-Jabalpur 400 KV 2<sup>nd</sup> D/C line (ckt 3&4) along with associated bays and equipment at 400/220 KV Rewa pooling station under transmission system for Ultra Mega Solar Park (750 MW) in Rewa District, Madhya Pradesh in the Western Region, under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, and the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014.

2. In the order under Appeal, the CERC noted that, as per the investment approval dated 15.01.2016, the scheduled COD of the transmission scheme was within 14 months from the date of investment approval, matching with commissioning schedule of Rewa Ultra Mega Solar Limited (RUMSL); accordingly, the scheduled COD of the instant asset was 15.3.2017, against which the COD of the instant asset was declared as 6.7.2018; as such there was a delay of 478 days in

commissioning the instant asset; the Appellant had submitted that, as per the 2014 Tariff Regulations, the timeline for construction of a new 400/220 kV sub-station was 30 months against which normally 24 months are taken in many projects in case of urgency; the Ministry of Power, vide its letter dated 8.1.2015, had directed the Appellant to complete the transmission lines including the pooling station in a compressed time schedule to match it with the generation of RUMSL; the timeline for construction of solar park was about 12-15 months as discussed in the 38<sup>th</sup> meeting of the Standing Committee of Power system planning in WR; hence, the Appellant had squeezed all the construction activities, and had reduced the time line to 14 months to match the transmission scheme with the commission of generation, as discussed in above mentioned Standing Committee Meeting; the Chairperson of RUMSL and the Principal Secretary, New and Renewable Energy Department, Govt. of Madhya Pradesh, had informed, vide letter dated 9.12.2016, that the time line of the Generation Project had been revised and could be connected with the transmission system in October, 2017; an affidavit was filed by the Appellant on 5.3.2018 stating that the Executive Engineer, RUMSL, vide letter dated 3.10.2017, had requested for revision of the time line, for operationalisation of LTA and connectivity of Rewa Project, to February, 2018; and by the letter dated 28.2.2018, regarding the minutes on Grid Integration of RUMSL and related issues held at WRLDC, POSOCO,

Mumbai on 27.2.2018, the Appellant was informed that the 6 X 220 kV bays were ready for charging along with 2 Nos. of 400/220 kV ICTs at Rewa Pooling Station, the 400kV LILO on Vindhyachal-Jabalpur-3&4 was ready, and RUMSL had informed that unit-1 was expected to be ready for its first synchronisation by 30.3.2018, the 2<sup>nd</sup> unit by 15.4.2018, and the 3<sup>rd</sup> unit by 30.4.2018.

3. The CERC then noted that the Madhya Pradesh Power Management Company Limited (MPPMCL) had, in their affidavit dated 6.2.2018, stated that the Appellant was granted approval to complete the work on 15.1.2016; as per the approval, the work was to be completed within 14 months, so as to match the implementation schedule of RUMSL; if there was any delay on the part of RUMSL, the liability should be on the part of RUMSL, and should not be loaded on the Respondents; and the Appellant's prayer for condonation of delay was liable to be rejected, and IEDC and IDC for the corresponding period should be disallowed.

4. The CERC then noted the contents of the rejoinder filed by the Appellant on 26.7.2018 wherein it was stated that the main objective of the transmission system was to evacuate power from the Ultra Mega Solar Park (750 MW) in Rewa District, Madhya Pradesh; the transmission system would be properly utilized only after commissioning of the solar

park; RUMSL had submitted the status of the project with the cumulative capacity to be commissioned; and, accordingly, the instant asset was put into commercial operation on 6.7.2018 matching with the generation of RUMSL.

5. The CERC then observed that, as per the investment approval dated 15.1.2016, the scheduled COD of the transmission scheme was 15.03.2017, against which the COD of the instant asset was declared on 6.7.2018 ie with a time over-run of 478 days; the Energisation Certificates dated 24.1.2018 and 31.1.2018, as issued by the Central Electricity Authority (CEA), showed that some of the elements of the instant asset were ready on 24.1.2018, and some on 31.1.2018; the appellant had claimed confirmed tariff for the elements of the instant asset, and had therefore claimed that instant asset was ready on 31.1.2018; the Appellant had neither explained the time over-run from the scheduled COD of 15.3.2017 to 30.1.2018 nor had they submitted any documentary evidence to justify the time delay for this period; and, as such, the time over-run from 15.3.2017 to 30.1.2018 was attributable to the Appellant.

6. With regards the delay from 31.1.2018 to 5.7.2018, the CERC noted that, on the basis of CEA Energisation Certificate, the asset was ready on 31.1.2018; in its affidavit dated 5.3.2018, the Appellant had initially

claimed 31.1.2018 as the COD under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations; however, vide their affidavit dated 21.8.2018, the Appellant had, instead, preferred to match the COD of the instant asset as 6.7.2018 instead of claiming 31.1.2018 as the COD under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations; and, accordingly, the entire time over-run from 15.3.2017 to 5.7.2018 (478 days) was not to be condoned. The CERC, however, allowed the IDC and IEDC for the period from 15.1.2016 to 15.3.2017 (426 days), ie the period, from the Investment Approval date to the scheduled COD, was only allowed to be capitalised.

7. Ms. Swapna Seshadri, learned Counsel for the Appellant, had submitted that several letters were addressed by RUMSL itself and several meetings were held, of which Minutes were recorded, which would establish that the transmission asset of the Appellant-Petitioner was ready on 31.01.2018; they had, perforce, to delay COD till 06.07.2018 to match with the COD of RUMSL which was on 05.07.2018, and the findings recorded by the CERC to the contrary were perverse and were based on no evidence. In its order dated 28.02.2023, this Tribunal had taken note of the submission of the learned Counsel that several documents had been placed on record before the CERC by the Appellant-Petitioner to show that there was no delay on their part, and the delay was solely on

the part of the generators represented by the 2<sup>nd</sup> Respondent; and that the Learned Counsel had sought time to file an affidavit asserting these facts and to place on record the relevant documents to show that the 2<sup>nd</sup> Respondent had themselves filed affidavits, and had addressed several letters requesting the Appellant to delay commissioning of their transmission asset. The Appellant was, accordingly, granted time till today to file the said affidavit.

8. An affidavit dated 13.03.2023 has been filed by the Senior General Manager (Commercial) of the Appellant-Petitioner stating that, in the pleadings filed in Petition No.7/TT/2018, the Appellant had placed the following documents:

- a. *Letter dated 08.01.2015 issued by the Ministry of Power ('MOP') to the Appellant approving the implementation of the transmission corridor connecting to the solar park and also implementing the same in compressed time schedule. (Page 21 of the Pleadings)*
- b. *The Order dated 24.11.2015 passed by the Central Commission in Petition No. 228/MP/2015 and I.A. NO. 30/2015 granting Regulatory Approval and directing the Appellant to match its transmission system with the upcoming generation projects in the solar park. (Pages 22-33 of the Pleadings)*
- c. *Relevant extracts from the 38<sup>th</sup> SCM (WR) Meeting held on 17.07.2015. (Pages 40-43 of the Pleadings)*



- d. *Relevant extracts from the 39<sup>th</sup> SCM (WR) Meeting held on 28.12.2015. (Pages 44-45 of the Pleadings)*
- e. *Relevant extracts from the 30<sup>th</sup> Meeting (WRPC) held on 08.01.2016 (Pages 47-48 of the Pleadings)*
- f. *Relevant extracts from the 40<sup>th</sup> SCM (WR) Meeting held on 01.06.2016 (Pages 49-56 of the Pleadings)*
- g. *Long Term Access Agreement ('LTA') dated 09.12.2016 signed between the Appellant and the Respondent No. 2 - Rewa Ultra Mega Solar Limited (hereinafter referred to as 'RUMSL'). (Pages 57-66 of the Pleadings)*
- h. *Letter dated 09.12.2016 of RUMSL to the Appellant to defer the commissioning of the transmission system till October 2017. (Page 67 of the Pleadings)*
- i. *The Minutes of the 15<sup>th</sup> Joint Coordination Committee ('JCC') Meeting for High Capacity Corridor for IPPs in the Western Region held on 27.03.2017: Minutes issued on 28.04.2017. (Pages 70-71 of the Pleadings)*
- j. *The Minutes of the 16<sup>th</sup> Joint Coordination Committee ('JCC') Meeting for High Capacity Corridor for IPPs in the Western Region held on 16.06.2017: Minutes issued on 09.08.2017. (Pages 68-69 of the Pleadings)*
- k. *Letter dated 03.10.2017 of RUMSL to the Appellant to defer the commissioning of the transmission system from October 2017 to February 2018. (Page 160-161 of the Pleadings)*
- l. *The CEA Energization Certificate dated 31.01.2018 for Asset-1 (LILO of 400 KV D/C Vindhyachal-Jabalpur Line 3-4 at Rewa Pooling Station).(Page 162 of the Pleadings)*

m. *Minutes of the Meeting held on 27.02.2018 : Minutes issued on 28.01.2018 between several entities including RUMSL and the Appellant where RUMSL informed its further deferment of the solar park. (Pages 170-182 of the Pleadings)*

n. *Additional Affidavit filed by the Appellant on 05.03.2018 before the Central Commission specifically stating that it is making its best efforts to match the commission of the transmission system with the expected generation at Rewa. (Pages 156-157 of the Pleadings)*

9. To the said affidavit dated 13.03.2023, the aforesaid documents are enclosed which the Appellant claims would show that they had delayed commissioning of their assets till 06.07.2018 only to accommodate the 2<sup>nd</sup> Respondent, and they cannot be penalized on this score. The documents enclosed along with the affidavit do appear to justify the submission, urged on behalf of the Appellant, that the 2<sup>nd</sup> Respondent had repeatedly requested them to delay the COD. We, however, refrain from expressing a conclusive opinion in this regard for these are matters for the CERC to consider after taking note of the documents, enclosed along with this affidavit, which are said to form part of the record in the Petition filed earlier before the CERC. To buttress her submission that these documents formed part of the original pleadings before the CERC, Ms. Swapna Seshadri, learned Counsel, would draw our attention to the documents referred to in Para-2 of the said affidavit wherein the relevant pages of the

pleadings, which contain the said letters and Minutes, have been specifically referred to.

10. While, Mr. Aditya Singh, learned Counsel for the 2<sup>nd</sup> Respondent, and Mr. Varun Singh Chopra, learned Counsel for the 3<sup>rd</sup> Respondent, submit that they have not been able to ascertain the veracity of the contents of this affidavit, and they are in no position to either assert or deny the Appellant's claim to have filed these documents along with their pleadings before the CERC earlier, we see no reason to defer hearing of this Appeal only to enable the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to verify these aspects, since the Appellant-Petitioner, by way of a solemn and sworn affidavit, has specifically asserted that these documents were part of the record before the CERC, and were overlooked while passing the order under appeal.

11. The interests of the Respondents would be adequately safeguarded on the CERC being directed to examine the matter afresh in the light of the aforesaid documents making it clear that, while doing so, it is always open to the CERC to ascertain whether or not these documents formed part of the original records before it. Needless to state that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents can also avail their legal remedies in-case the contents of the affidavit dated 13.03.2023 are found not to be true.

12. In light of the aforesaid observations, the order under appeal is set aside, and the matter is remanded to the CERC for consideration of the Petition afresh, in the light of the affidavit dated 13.03.2023 filed by the Appellant-Petitioner, after giving all the parties to the proceedings a reasonable opportunity of being heard.

13. The Appeal is disposed of accordingly.

Pronounced in open Court on this 14<sup>th</sup> Day of March 2023

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

*pr/tp/ks*