

by it. Prima facie, there ought not be any objection to grant the prayer made. The prayer made is, however, beset with implications on an earlier order of the Commission. Therefore, we are considering the matter in detail in the light of background facts.

Background Facts

2. An application was made by the Consortium of Tenaga Nasional Berhad, Malaysia and Kalpataru Power Transmission Limited (the Consortium) for grant of transmission licence for the transmission lines on built-own-operate-transfer basis under sub-section (1) of Section 15 of the Electricity Act, 2003 (the Act). The Consortium had initially indicated the estimated completion cost of Rs.675.87 crore and the levelised tariff of Rs.99.47 crore per year applicable for a period of 30 years. The petitioner in its capacity as the Central Transmission Utility (CTU), in its recommendations under sub-section (4) of Section 15 of the Act, pointed out that the levelised tariff of Consortium was higher by 12.34% to 24.33% than that calculated by the petitioner by applying different factors. The petitioner indicated the levelised tariff of Rs.73 crore per year.

3. In accordance with the terms and conditions of tariff notified by the Commission, the primary criteria of determination of tariff is the completion cost. Therefore, the Commission was to be satisfied on the question of estimated completion cost of the transmission lines before granting the Consortium's application for licence. Accordingly, under directions of the Commission a revised affidavit was filed by the Consortium wherein the estimated completion cost of the transmission lines was scaled down to Rs.657 crore. The revised cost indicated by

the Consortium was the firm completion cost. The petitioner in its advice, however, indicated the benchmark completion cost of Rs.557.80 crore (October 2004 price level). It also indicated another estimated completion cost to Rs.617 crore. It was explained on behalf of the petitioner that the estimated completion cost of Rs.617 crore was worked out in keeping with the methodology adopted by the applicant for computation of the estimated completion cost of Rs.675.87 crore. It was further explained that the benchmark price of Rs.557.80 crore had been arrived at by applying the methodology prescribed by the Central Government in Ministry of Finance for computation of estimated completion cost for the central projects. On consideration of the facts placed on record by the Consortium and the petitioner, the Commission found that grant of licence to the Consortium for execution of the transmission lines could prove prejudicial to the interests of the end consumer since it would result in higher tariff and the Commission rejected the application for grant of licence. In this regard, the Commission's observations as contained in the order dated 27.4.2004 are reproduced below:

“26. The Commission's objective is two-fold namely, (i) to promote investment in the electricity sector and (ii) to protect interest of the consumers. The consumer interest cannot be sacrificed at the altar of promotion of private sector participation in the power sector. On analysis of the proposals for estimated completion cost and the likely tariff on commissioning of the transmission lines, we are convinced that grant of license will not benefit the end consumer. On the contrary, he may be forced to a higher tariff. On these considerations, we reject the applicant's prayer for grant of licence for the Bina-Nagda-Dehgam transmission lines.”

4. The Commission in para 27 of its order dated 27.4.2004 proceeded to record that the petitioner while constructing the transmission lines shall make every effort to contain the cost within the benchmark price of Rs.557 crore. The Commission,

however, further noted that the completion cost of the transmission lines should not exceed Rs.617 crore, the revised price indicated by the petitioner.

5. The petitioner filed an application for review of the order dated 27.4.2004, which was registered as Review Petition No.58/2004. In the application for review, the petitioner had specifically prayed for deletion of the observations contained in para 27 of the order dated 27.4.2004 regarding completion of the transmission lines by the petitioner at the estimated completion cost indicated by it in the original proceedings. The application for review was, however, dismissed by order dated 26.7.2004 rejecting at the threshold that the petitioner's prayer for omission of para 27 of the order dated 27.4.2004.

6. Thus, so far as the Commission is concerned, the order dated 27.4.2004 in the Consortium's application for grant of licence and the order dated 26.7.2004 in the petitioner's application for review have become final.

Present Petition

7. It is stated by the petitioner that it has invited domestic competitive bids for award of contract for construction of the transmission lines. It has been stated that the base cost works out to Rs.630.76 crore at 4th quarter 2004 price level based on the prices quoted by the bidders for different packages. It is further submitted that the estimated completion cost on the base cost of Rs.630.76 crore works out to Rs.686.32 crore by applying the average increase of WPI and CPI for the past 12 months. According to the petitioner, the increase in the estimated completion cost of the transmission lines worked out now as compared to the estimated completion

cost furnished in the proceedings for grant of transmission licence to the Consortium, is on account of steep hike in the price of steel and other raw material in the recent past. The petitioner has filed IEEMA price circulars to support its contention of increase in prices of steel and other raw material like zinc, aluminium, etc. It has been stated that the estimated completion cost of Rs.557 crore was worked out in November 2003 by considering the average updated rates of three latest contracts awarded between June 2003 and August 2003 based on bids invited during July 2002 to January 2003. It is explained that these prices were updated to October 2004 price level by extrapolating indices and then average completion cost of Rs.557 crore was arrived at in accordance with the guidelines issued by the Central Government, by taking the completion in April 2007. Further, it is submitted that in view of the steep hike in prices of inputs, the petitioner is unable to complete the transmission lines within the earlier estimated completion cost of Rs.617 crore. The petitioner has submitted that for the purpose of tariff for the transmission lines, the approved cost should be considered in accordance with the terms and conditions for determination of tariff notified by the Commission. In sum and substance, the petitioner's contention in the present petition goes against the advice rendered by it in the petition filed by the Consortium for grant of inter-State transmission licence.

8. The respondents have generally opposed the petitioner's prayer.

9. We have heard Shri M.G. Ramachandran, Advocate for the petitioner.

Findings

10. It appears to us that the petition has been filed to legitimise the presently estimated completion cost of Rs.686.3 crore since in the past the petitioner never filed any application as in the present case. Thus, the petitioner has in essence sought review of the observations made by the Commission in para 27 of the order dated 27.4.2004 wherein the completion cost was capped at Rs.617 crore. An application for review made by the petitioner for deletion of these observations has already been rejected. Therefore, no further application for review is maintainable. The present application is, therefore, liable to be summarily dismissed on this ground only. The petitioner as a public authority has a duty to act fairly and consistently. It cannot be permitted to act in a contradictory and misleading manner since otherwise it would amount to an abuse of discretion vested in its capacity as the Central Transmission Utility. The advice given by the petitioner was intended to be acted upon and was, therefore, binding on it, since otherwise it would cause injustice to the third parties and public namely, the Consortium and the consumers of the transmission lines who would be required to pay higher tariff if the prayer is allowed. It also amounts to blocking private sector investment which was being made available to the consumer at a lower cost. The only acceptable solution that appears to us is the enforcement of the representation of estimated completion cost made by the petitioner in the proceedings on the application for grant of licence by the Consortium. On these considerations, the petitioner can claim tariff on construction of the transmission lines at a cost not exceeding Rs.617 crore.

11. We are, however, considering the matter in more detail. The primary reason for filing of the present petition, as stated by the petitioner is the “unprecedented” increase in steel prices within a span of 8 months between October 2003 to June

2004, though the petitioner has also submitted that there are increases in the cost of other construction material such as cement, reinforcement, fuel, etc. We take judicial notice of the present trend in fall of steel prices. It has been noticed that in the recent past, the steel prices have started to come down. It may also be noted that the Consortium during the hearing of its petition had pleaded that steel prices are likely to go up considering the future market for various metals. The present petitioner had contested this argument of the Consortium. That being the position, the Commission cannot allow higher costs for building the same transmission system to the detriment of interest of consumers, which it is duty bound to protect under the Act.

12. At the hearing, a submission was made on behalf of the petitioner that in case the ceiling laid down by the Commission in its order dated 27.4.2004 for completion of transmission lines was not relaxed, the petitioner would not undertake construction of these transmission lines. We express our deep concern on this submission. The petitioner has sought to apply pressure tactics. The execution of the transmission lines has not been entrusted to the petitioner by the Commission. We find that the approval for construction of the transmission lines was accorded by the Central Government in Ministry of Power under its letter dated 10.12.2003. As per this letter, a part of the transmission system is to be constructed by the petitioner and the remaining part through IPTC route. In the said letter dated 10.12.2003, it is conveyed that the petitioner would execute the portion identified under IPTC's scope of work, in the eventuality of IPTC route not materialising. The efforts were made for construction of the transmission lines, earmarked for IPTC route through the private party. However, these efforts have not materialised as the application for grant of licence by the Consortium, shortlisted by following IPTC route, has been rejected, primarily at the bidding of the petitioner who projected lower completion cost and the

levelised tariff than the estimated completion cost and the levelised tariff indicated by the Consortium. Therefore, in accordance with the approval granted by the Central Government, the owner of the petitioner, the construction of the transmission lines stands entrusted to the petitioner and has to be undertaken by it. As pointed out before, the CTU is duty bound to ensure development of the transmission system for smooth flow of electricity from generating stations to load centers under Section 38 (2) (c). There cannot be any escape from this, otherwise it will cause serious prejudice to public interest as the electricity generated will not reach the load centres.

13. At the hearing, it was further submitted by the petitioner that its recommendations given in the application for grant of transmission licence made by the Consortium were in its capacity as the Central Transmission Utility, whereas presently, the construction of the transmission lines is to be undertaken by the Power Grid Corporation of India Limited. Therefore, the estimated completion cost indicated by the Central Transmission Utility in the earlier proceedings for grant of transmission licence cannot be held to be binding on Power Grid Corporation of India Ltd, the petitioner. We do not find merit in this submission of the petitioner either. The petitioner is notified as the Central Transmission Utility by the Central Government. Under sub-section (2) of Section 38. The petitioner, as the Central Transmission Utility, is assigned the function to undertake transmission of electricity through the inter-state transmission system. The inter-state transmission system, as defined in sub-section (36) of Section 2 of the Act, includes the transmission of electricity on “a system built, owned, maintained, or controlled by a Central Transmission Utility”. The combined reading of sub-section (36) of Section 2 and Section 38 of the Act, reveals that construction of inter-state transmission lines falls within the statutory function of the petitioner in its capacity as the Central

Transmission Utility and not as Power Grid Corporation of India Ltd since otherwise Power Grid Corporation of India Ltd. was to obtain the transmission licence from the Commission for undertaking transmission of electricity. Only the Central Transmission Utility under second proviso to Section 14 of the Act, is a deemed transmission licensee and not the Power Grid Corporation of India Ltd. Therefore, the petitioner cannot be heard to urge that its functions under sub-section (4) of Section 15 of the Act are different from those under Section 38 of the Act. In case the petitioner feels that its role as the Central Transmission Utility conflicts with its commercial interests, it should approach the Central Government so that some other Government Company could be notified as the Central Transmission Utility in accordance with law, to perform the statutory functions assigned to the Central Transmission Utility under the Act.

14. We had offered the petitioner to claim levelised tariff @ Rs.73 crore per year for a period of 30 years as projected by the petitioner itself before the Commission in the original proceedings for grant of transmission licence. This offer, however, was not acceptable to the petitioner as the levelised tariff was stated to have been arrived at based on the estimated completion cost of Rs.617 crore only.

Conclusion

15. In the light of the above discussion, the petitioner would be at liberty to follow the procedure for execution of the transmission lines as narrated in the petition, and would be entitled to claim tariff at a cost not exceeding Rs.617 crore as earlier directed in para 27 of the order dated 27.4.2004. The Commission will however allow changes in IDC in the event of petitioner contracting loans on floating rates of

interest. Similarly, changes on account of change of law will also be passed on in the tariff. The petition stands disposed of in these terms.

16. A copy of this order be sent to the Central Government in Ministry of Power drawing specific attention of the Secretary to paras 12 and 13 above.

Sd/-
(A.H. JUNG)
BASU
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK)
CHAIRMAN

New Delhi dated the 2nd August, 2005