

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri A.K. Basu, Chairperson**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**
- 4. Shri A.H. Jung, Member**

Petition No. 155/2005

In the matter of

Reimbursement of loss of Return on Equity in Ranganadi transmission system due to delay in completion of Ranganadi H.E. Project.

And in the matter of

Power Grid Corporation of India Ltd., Gurgaon **Petitioner**

Vs

North-Eastern Electric Power Corporation Ltd., Shillong ...**Respondent**

The following were present:

1. Shri V.K. Gupta, PGCIL
2. Shri U.K. Tyagi, PGCIL
3. Shri C. Kannan, PGCIL

**ORDER
(DATE OF HEARING: 24.1.2006)**

Heard Shri U.K. Tyagi for the petitioner on admission.

2. The petitioner, Power Grid Corporation of India Ltd, has filed this petition for recovery of an amount of Rs.90.39 crore from the respondent, North-Eastern Electric Power Corporation Ltd., stated to be on account of loss of return on equity because of delay in commissioning of Ranganadi HEP by the respondent.

3. It has been stated that Ranganadi HEP was anticipated to be completed in 1998-99 and, therefore, 400 kV D/C Ranganadi-Ballipara transmission line associated with Ranganadi HEP was commissioned by the petitioner in August 1998. Units I & II of Ranganadi HEP were commissioned in February 2002 and Unit III in March 2002. The petitioner has stated that during the period between June 1998 to November 2001 the transmission line was used temporarily for providing construction power to Ranganadi HEP. It is stated that even after commissioning, different units of Ranganadi HEP were on prolonged outages because of technical problems and Unit I, II and III became effectively operational only after 31.5.2003, 26.9.2003 and 31.1.2003 respectively. We find that there is some inconsistency in the statement made when it is stated that the transmission line was commissioned in August 1998 but was used by the respondent since June 1998.

4. The petitioner is stated to have deployed an amount of Rs.100.86 crore as equity from internal resources. The petitioner has submitted that as a consequence of delay in completion of Ranganadi HEP, it suffered loss of tariff, including return on equity. In view of some draft audit para relating to the petitioner, Ministry of Power by its letter dated 7.10.2003 has decided that loss of return on equity (with interest) suffered by the petitioner for delay in completion of Ranganadi HEP should be recovered from the respondent over a period of five years after initial moratorium of five years. Ministry of Power has advised the petitioner to move the Commission with the above approach. The petitioner has calculated total amount of Rs.90.39 crore (including interest) based on the decision of Ministry of Power and has proposed to recover the amount in five instalments of Rs.18.08 crore each commencing from September 2003.

5. The petitioner lodged its claim with the respondent who by its letter dated 12.8.2004, Encl-6 to the petition has, however, disputed its liability to make any payment.

6. The representative of the petitioner emphatically submitted the adjudication of the dispute falls within the jurisdiction of the Commission, as it is a tariff related issue. The representative of the petitioner referred to an earlier decision of the Commission rendered while considering tariff for 400 kV D/C Nathpa-Jhakri transmission line wherein the petitioner was said to have been allowed the benefit of IEDC/IDC because of late commissioning of Nathpa-Jhakri Hydro-electric Project. We may notice that the question of awarding compensation for late commissioning of the generating station was neither raised nor decided by the Commission. Therefore, the earlier decision is of no assistance in the present case.

7. The petitioner seeks compensation for late commissioning of the generating station owned by the respondent who has disputed the petitioner's claim. The petitioner and the respondent are the public sector undertakings under the control of the Central Government in Ministry of Power. The Hon'ble Supreme Court in a number of cases has deprecated the tendency of public sector undertakings of the Central Government and Union of India fighting their cases in the courts/tribunals. In this context, the observations in the Oil and Natural Gas Commission and Another Vs Collector of Central Excise [1992 Supp (2) Supreme Court Cases 432] as extracted below, are relevant:

“This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight

their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level."

8. Accordingly, Cabinet Secretary was called upon to report to the Court as to why litigation was being conducted when two sides are public sector undertakings of Union of India. After consideration of the report of the Cabinet Secretary, the Hon'ble Supreme Court in ONGC and another Vs Collector of Central Excise [1995 Supp (4) Supreme Court Cases 541) directed that:

"..... the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline."

9. Subsequently, in view of the directions of the Hon'ble Supreme Court in the same case vide its order dated 7.1.1994, Cabinet Secretariat vide OM No.53/3/10/94-Cab. dated 24.1.1994 decided as under:

"(i) All the pending matters before any Court or Tribunal should also be subject matter of the deliberations of the Committee. All the matters pending as on 7.1.1994 either instituted by the Union of India or any of the Public Sector Undertakings, shall within one month from the said date i.e. 7.1.1994 be referred by the appellant or the petitioner, as the case may be, to the High Power Committee.

- (ii) There should be no bar to the lodgement of an appeal or petition either by the Union of India or by the Public Sector Undertakings before any Court or Tribunal, so as to save limitation. But before such filings every endeavour should be made to have the clearance of the Committee. However, as to what the Court or Tribunal should do if such judicial remedies are sought before such a Court or Tribunal, the Supreme Court's order of 11th October, 1991 clarifies:-

“It shall be the obligation of every High Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceeding would not be proceeded with”.

- (iii) Wherever appeals/petitions etc., are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the petitioner, as the case may be, shall within one month from such filing, refer the matter to the High Power Committee, with prior notice to the designated authority in Cabinet Secretariat (Under Secretary (Coordination)) authorized to receive notices in that behalf. The reference shall be deemed to have been made and become effective only after the notice of the reference is lodged with the Under Secretary (Coordination) in the Cabinet Secretariat. The reference shall be deemed to be valid if made in the case of Union of India by its Secretary, in the Ministry of Finance, Department of Revenue and in the case of Public Sector Undertakings by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after, such reference to the Committee is made in the manner indicated that the operation of the order of proceedings under challenge, shall be suspended till the Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.”

10. Cabinet Secretariat vide the said OM dated 24.1.1994 has also decided that the disputes between the Ministry/Department of Government of India and Public Sector Undertakings should refer the dispute to the High Power Committee, headed by the Cabinet Secretary.

11. As has been noticed above, in the present case both the parties involved in the dispute are under the administrative control of the Central Government. Although Ministry of Power decided that the loss suffered by the petitioner was to be

compensated by the respondent, no efforts seem to have been made by the Central Government for recovery of the amount in view of the dispute by the respondent in the light of the directions of the Hon'ble Supreme Court and the decision of the Cabinet Secretariat. Therefore, in the first instance efforts need to be made in the Ministry to resolve the dispute in keeping with the observations of the Hon'ble Supreme Court reproduced above and the instructions contained in Cabinet Secretariat OM dated 24.1.1994 *ibid*.

12. Accordingly, the petition is dismissed at admission stage. In case the dispute is not resolved through the efforts of the Central Government, the petitioner may approach the appropriate forum in accordance with law for appropriate relief.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 30th January 2006