

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 213/2010

in

Petition No. 242/2009

Coram: Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Date of Hearing: 16.11.2010

Date of Order: 3.2.2012

**In the matter of:**

Review of order dated 18.06.2010 of in Petition No. 242/2009 in the matter of approval of final transmission tariff for 315 MVA ICT-II at Bhattapara Sub-station (DOCO: 01.01.2009) under Sipat-II transmission system in Western Region under Regulation 103 (1) read with Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

**And**

**In the matter of:**

Power Grid Corporation of India Ltd

.....**Petitioner**

Vs

Madhya Pradesh Power Trading Company Ltd, Jabalpur  
Maharashtra State Electricity Distribution Co. Ltd., Mumbai  
Gujarat Urja Vikas Nigam Ltd., Vadodara  
Electricity Department, Govt. of Goa, Goa  
Electricity Department, Administration of Daman & Diu, Daman  
Electricity Department, Administration of Dadra Nagar Haveli, Silvassa  
Chhattisgarh State Electricity Board, Chhattisgarh  
Madhya Pradesh Audyogik Kendra, Indore

.....**Respondents**

## **The following were present**

Shri M.M. Mondal, PGCIL  
Shri R. Prasad, PGCIL  
Shri R.K. Gupta, PGCIL  
Shri U.K. Tyagi, PGCIL

## **ORDER**

This application has been filed by Power Grid Corporation of India Ltd (hereinafter "the review petitioner") seeking review of the order of the Commission dated 18.6.2010 in Petition No. 242/2009 pertaining to final transmission tariff for 315 MVA ICT-II at Bhattapara Sub-station (DOCO:1.1.2009) under Sipat-II transmission system in Western Region from date of commercial operation to 31.3.2009.

## **BACKGROUND**

2. The tariff for 315 MVA ICT II at Bhattapara sub-station under Sipat-II transmission system was declared under commercial operation on 1.1.2009 against the scheduled date of commissioning of August 2007 resulting in a delay of 16 months. The review petitioner had submitted that the delay of 16 months could not be attributed to it since the delay in commissioning of the ICT-II was on account of delay in delivery of ICT by M/s BHEL. There was shortage of CRGO steel globally. The Commission in its order dated 18.6.2010 took notice of the M/s. BHEL's letter to the review petitioner on 6.12.2007 on the subject "315 MV Auto transformers Package-A and B for Power Grid's Melkottaiyur and Hiriur-Kozhikode sub-station associated with Kaiga 3 & 4 Transmission System" indicating delay in supply of transformers/ICTs for the subject transmission system. In this letter, there was no reference to the transformers /ICTs to

be supplied at Bhattapara sub-station under Sipat-II transmission system of Western Region. The Commission after considering the submissions of the petitioner came to the conclusion that the reasons for delay were unjustified and accordingly, the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) for 16 months were disallowed while determining the capital cost of the project.

3. Aggrieved by the order dated 18.6.2010 in Petition No.242/2009, the petitioner has filed this review petition under Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business Regulations), 1999 Regulations (hereinafter referred to as "1999 regulations"). The petitioner has submitted the following:-

(a) The shortage of CRGO was a global issue and was beyond the control of the petitioner. To overcome the crisis of shortage of CRGO steel, the petitioner prioritized the supplies of power transformers to more critical projects, through appropriate and prudent planning strategy. Since the Sipat-II generation was getting delayed, the petitioner planned to commission the asset on 1.1.2009 without affecting the power evacuation from Sipat-II generation.

(b) The petitioner had furnished, along with the affidavit dated 16.3.2010, the correspondence with the Ministry of Power, IEEMA, File Note of the Vendor-Customer Meet, etc to highlight the shortage of CRGO globally which was beyond the control of the petitioner. The letter from M/s BHEL dated 6.12.2007 on the subject "315 MV Auto transformers Package-A and B for Power Grid's Melkottaiyur and Hiriyyur-Kozhikode sub-station associated with Kaiga 3 & 4

Transmission System" was submitted only to highlight the crisis of the shortage of CRGO and Structural Steel internationally, requesting for extension in the delivery of these transformers by March 2008.

(c) The petitioner was able to discover a letter written by Transformer Sales Division of M/s. BHEL, Bhopal which showed that slippage in delivery commitments was on account of the delay in testing of equipment, which was due to CRGO issue. The letter could not be filed earlier since the petitioner was not able to trace the letter. On account of disallowance of IDC and IEDC for the period of delay in commissioning, the petitioner has been put to a huge financial loss to the tune of ₹ 62.34 lakh for reasons that are beyond its control. The petitioner has requested to consider M/s. BHEL's letter of 28.11.2006 and to restore IDC and IEDC for the full period of 52 months by reviewing the impugned order.

4. The review petitioner has sought review of the order dated 18.6.2010 on two grounds, namely, error apparent on the face of record and for any other sufficient reason. The review petitioner has submitted that non-consideration of the document enclosed with the affidavit dated 16.3.2010 and non-availability of the M/s BHEL's letter dated 28.11.2006 at the relevant time are errors apparent on the face of the record requiring review of the order dated 18.6.2010.

5. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), Respondent No. 2, in its affidavit dated 23.8.201, has submitted that the delay in commercial operation of the asset is due to internal adjustments/arrangements of the petitioner and hence the impact of delay should not be passed on to the beneficiaries.

6. Section 94(1)(f) of the Electricity Act, 2003 provides that the Commission shall have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court which passed the order under the following circumstances;

*“(a) On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or*

*(b) On account of a mistake or error apparent on the face of the record, or*

*(c) For any other sufficient reasons.”*

7. The grounds urged in the review petition have been discussed in the subsequent paragraphs in the light of the above principles.

### **Discovery of new and important matter or evidence**

8. The review petitioner has submitted that subsequent to issue of the order dated 18.6.2010, it discovered certain material documents which could not be filed earlier as part of the original Petition No.242/2009. The review petitioner has submitted that after perusal of the impugned order, the Commercial Department of PGCIL tried its level best to trace out if any specific letter with regard to the CRGO crisis was received from

M/s BHEL and also requested other Departments and concerned Regional Head Quarters to trace any such letter. With due diligence, the review petitioner was able to trace M/s BHEL's letter of 28.11.2006 from its CMG Department on the subject "Diversion of 315 MVA Transformers and 80/50 MV Ar. Shunt Reactors for Powergrid Projects", which inter-alia reflected that on account of CRGO issue, the testing of equipment was held up by BHEL which resulted in slippage on the delivery commitments and consequently this affected the completion of the transmission element in time.

9. The review petitioner has sought review of the impugned order on the basis of the letter dated 28.11.2006 written by Transformer Sales Division of M/s. BHEL, Bhopal to the petitioner. It is a settled law that when a review is sought on the ground of discovery of new evidence, the evidence must be relevant and of such a character that if it had been given in the petition, it might have possibly altered the judgment. Before a review is allowed on this ground it must be established that the applicant had acted with due diligence and that the existence of evidence was not within its knowledge. Mere discovery of new and important matter or evidence is not sufficient ground for review. The party seeking the review has to show that such additional material was not within its knowledge and even after exercise of due diligence, the document could not be produced in the court earlier.

10. In Ramaswami Padayachi v. Shanmuga Padayachi, [(1959) 2 Mad LJ 201], the High Court of Madras has held that:-

*"When a review is sought under O.47, R. 1, Civil Procedure Code, on the ground of discovery of new evidence, such evidence must be (1) relevant and (2) of such a character that, if it had been given in the suit, it might possibly have altered the judgment. The new evidence must at least be such as is presumable to be believed, and, if believed, would be conclusive. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made. The party seeking a review should prove strictly the diligence he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. A bare assertion in the affidavit that the party could not trace the documents earlier will not do. It is not the proper function of a review application to supplement the evidence or to make it serve the purpose of merely introducing evidence which might possibly have had some effect upon the result."*

11. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of a judgment or order. It has to be established that due diligence was exercised and despite that, the evidence or material sought to be produced at the stage of review could not be produced before the order was passed. It is not the case of the review petitioner that these documents were not within the knowledge of its officers. The review petitioner has admitted that the documents were with the CMG Department, while the matter was handled by the Commercial Department. In our view, the CMG Department and the Commercial Department of the review petitioner's organisation cannot be treated as different and distinct entities. The two departments are the limbs of the same organization. The review petitioner as a legal entity cannot cite lack of internal co-ordination or lack of inter-departmental consultations as the ground for review. To us it appears to be the case of want of due diligence on the part of the review petitioner.

12. We consider the relevance of the documents relied by the review petitioner. The letter speaks about the slippages that occurred on account of severe scarcity of CRGO

steel globally. During the first review meeting between M/s BHEL and the review petitioner held on 10.5.2006, certain priorities were jointly identified and accordingly re-alignment was done to meet the requirements. The requirements were again reviewed on 30.8.2006, when M/s BHEL informed the review petitioner that it tried to realign its operations accordingly and expedited manufacturing to meet these commitments. However, in the said letter, M/s BHEL indicated that it lost substantial time when the manufacturing as well as testing of the equipment was held up on account of CRGO issue. It went to state it tried to meet the obligations to supply by using the TKES make, CRGO steel, but due to non-acceptance of TKES make CRGO steel by the review petitioner, complete inspection and further manufacturing of Powergrid equipment came to standstill for a fairly long time. Until inspection and testing of Powergrid jobs got resumed, it lost lot of time and therefore, naturally slipped further on its delivery commitments made in August 2006.

13. M/s BHEL also submitted that it has no reservations in diverting the equipment desired by the review petitioner. However, it indicated that Letter of Award was placed based on BHEL's offer for the designated sub-station sites as per tender specifications. M/s BHEL also wanted Powergrid to confirm that there would not be additional cost implication on it due to the proposed diversion and the change in engineering design requirement at different sites.

14. We have considered M/s BHEL's letter of 28.11.2006. M/s BHEL raised many issues like non-acceptance of different make of CRGO steel, additional cost implication



due to diversion, change in engineering design, etc. The review petitioner has not submitted the copy of its response to M/s BHEL's letter, while seeking condonation of the delay in commissioning of ICT-II at Bhattapara. We are unable to link this letter to the slippage in supplying the 315 MVA ICT-II for Bhattapara sub-station on account of shortage of CRGO steel. Therefore, the document now being relied on by the review petitioner is not relevant to the order sought to be reviewed and cannot be considered as new and important matter of evidence.

15. In view of the above, we reject the contention of the review petitioner in this regard.

#### **Error apparent on the face of record**

16. The petitioner has submitted that the order suffers from error apparent on the face of the record on the ground that the Commission while passing the impugned order did not take into account the documents filed along with the affidavit dated 16.3.2010. The documents filed along with the affidavit dated 16.3.2010 (wrongly recorded as 18.3.2010 in the impugned order) were considered at Paragraph no.17 of the impugned order. While considering the said affidavit and the documents filed along with it, we observed in the impugned order as follows:-

*“It is noticed that M/s BHEL wrote letter to the petitioner on 6.12.2007 on the subject “315 MVA Autotransformer Package – A and B for Power Grid’s Melakottaiyur and Hiriyur – Kozhikode sub-station associated with Kaiga 3 & 4 Transmission System” indicating delay in supply of transformers/ICTs for these transmission systems. In this letter, there is no reference to the transformers/ICTs to be supplied at Bhattapara sub-station under Sipat-II transmission system of Western Region.”*

17. We came to the conclusion that the delay for commissioning the 315 MVA ICT –II for Bhattapara sub-station was not justified and accordingly disallowed the IDC and IEDC for the period of delay. The letter dated 15.6.2005 enclosed with the affidavit dated 16.3.2010 from Secretary, Ministry of Power, Government of India to the Secretary, Ministry of Steel, Government of India highlighted the non-availability of CRGO steel, especially for the small manufacturer. Also the Minutes of Vendor Customer Meet for CRGO on 23.3.2005 enclosed with this affidavit concluded as follows:-

*"In conclusion, President, IEEMA summarized the discussions that in the current market scenario each entrepreneur has to deal with the situation and decide his own market strategy. It is heartening to know that all the mills are supporting their existing customers to the best of their abilities."*

18. The enclosures to the affidavit dated 16.3.2010 stated the shortage during 2005 especially for the small manufacturers and increased prices of the steel. After due perusal of these, we did not deem it fit to mention the same in the order dated 18.6.2010 in Petition No. 242/2009.

19. The petitioner has also sought the review on the ground of sufficient reasons. It is well settled that sufficient reasons should be analogous to the other reasons specified i.e. discovery of new and important matter of evidence and error apparent on the face of the record. The petitioner has not made out a case on this ground and accordingly, review on this ground is rejected.

20. In view of the above, the review petition fails on all grounds and is accordingly dismissed.

21. Another issue raised by the review petitioner is that the ICT-II was commissioned without affecting the power evacuation from Sipat-II generation. It is not relevant to consider this in the present review petition.

22. Madhya Pradesh Power Trading Company Ltd. (MPPTCL), Respondent No. 1, vide its affidavit dated 15.11.2010, has requested to clarify that the transmission charges shall be borne by Chhattisgarh State Electricity Board (CSEB), Respondent No.7, as prayed by the petitioner in 242/2009. It is clarified that the impugned order is clear in this regard and for any further clarifications, MPPTCL may file a suitable petition.

23. This order disposes of Review Petition No. 213/2010.

Sd/-

(V.S. VERMA)  
MEMBER

Sd/-

(S. JAYARAMAN)  
MEMBER

Sd/-

(Dr. PRAMOD DEO)  
CHAIRPERSON