

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 11/RP/2015

in

Petition No. 99/TT/2012

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Hearing: 06.08.2015

Date of Order : 23.09.2015

In the matter of:

Review Petition under section 94 of the Electricity Act, 2003 read with Regulations 103 (1) of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 24.3.2015 in Petition No. 99/TT/2012

And

In the matter of

Power Grid Corporation of India Limited,
Saudamini, Plot No. 2,
Sector 29, Gurgaon-122001
Haryana

.....**Petitioner**

Vs

1. Rajasthan Power Procurement Centre,
Vidyut Bhawan, Vidyut Marg,
Jaipur- 302 005
2. Ajmer Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur-302 024



3. Jaipur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur-302 024
4. Jodhpur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur-302 024
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla- 171 004
6. Punjab State Electricity Board
The Mall, Patiala-147 001
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109
8. Power Development Department,
Govt. of Jammu and Kashmir,
Mini Secretariat, Jammu-180 001
9. UP Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 226 001
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi- 110 002
11. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi- 110 019
12. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi- 110 019
13. North Delhi Power Ltd.,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11kV Pitampura-3,



Grid Building, Near PP Jewellers,
Pitampura, New Delhi-110 034

14. Chandigarh Administration,
Sector-9, Chandigarh-160 009

15. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun- 248 001

16. North Central Railway,
Allahabad- 211 003

17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002

.....**Respondents**

For petitioner : Mrs. Suparna Srivastava, Advocate, PGCIL
Shri S.K Venkatesan, PGCIL
Shri Rakesh Prasad, PGCIL
Ms. Sangeeta Edwards, PGCIL

For respondent : Shri R. B. Sharma, Advocate, BRPL

Order

This review petition has been filed by Power Grid Corporation of India Limited (PGCIL) seeking review of the order dated 24.3.2015 in Petition No. 99/TT/2012, wherein transmission tariff for assets associated with 765 kV systems for Central part of Northern Grid Part-III in Northern Region for the period starting from the date of commercial operation to 31.3.2014 was allowed.



2. The petitioner has sought review of the impugned order on the following aspects: -

- (i) Disallowance of time over-run of 2 months out of total time over-run of 20 months with respect to Asset-6;
- (ii) Disallowance of annuity to land owners payable by the petitioner for the next 31 years as per the Relief and Rehabilitation Policy of the government of Haryana; and
- (iii) Disallowance of cost of “foundation for structure” for the transmission assets comprised in Assets-3, 5, 7 and 8 involving Bhiwani Sub-station.

3. We would deal with the above said aspects in the following paragraphs.

Time over-run in case of Asset 6

4. As per Investment Approval (IA) dated 3.11.2009, the assets were scheduled to be commissioned within 30 months from the date of IA, i.e. by 1.6.2012. There was delay in the commissioning of all the assets except Asset 3. The Commission condoned the delay in commissioning of Assets 1, 2, 4, 5, 7 and 8. The delay of two months in the commissioning of Asset 6 was not condoned. The relevant portion of the impugned order is as under:-

“28... As regards the commissioning of Asset-6, there is a delay of 20 months. The petitioner has attributed the delay to hindrance created by the villagers of village Pipli Khera, village Bamla, village Tihar Malik etc. at various locations of this line. It has been



stated that the matter was taken up with Higher Authorities in the Administration to resolve the issue. The RoW problem was so serious that the police protection was taken for construction of this line. The petitioner has submitted copies of letters written to SDM, Bhiwani, SHO, Sadar Thana, Bhiwani, SDM Gohana, Sonapat, SHO, Bhiwani, SHO, Maham, Rohtak, SDM Mohana, Sonapat, SHO, Kharak, Bhiwani, the Deputy Commissioner, Rohtak (HR), the Deputy Commissioner, Sonapat (HR) and the District Magistrate, Bhiwani (HR). The letters submitted by the petitioner indicate the hindrances caused at various locations for the erection of 765 kV Meerut-Bhiwani Transmission Line. The letters submitted by the petitioner in regard to hindrances caused by villagers at various locations of 765 kV S/C Meerut-Bhiwani do not indicate the start date and end date of the hindrance. From the submission of the petitioner it is difficult to determine the delay at each tower location. There is evidence to establish that work was held up at different locations from 10.6.2011 to 1.2.2012 and again from 19.10.2012 to 6.8.2013. Letters in the month of June, 2011, August, 2011, December, 2011, February, 2012, October, 2012, November, 2012, December, 2012, January, 2013 February, 2013, March, 2013, April, 2013, July, 2013 and August, 2013 submitted under Affidavit dated 17.10.2014, establish this. We, therefore, have no hesitation in condoning the delay of 18 months i.e. from 10.6.2011 to 1.2.2012 (8 months) and from 19.10.2012 to 5.8.2013 (10 months). The delay of remaining 2 months in respect of Asset 6 is disallowed. Consequently, the capital cost of this asset is reduced by ₹358.66 lakh (₹301.66 lakh towards IDC and ₹57.00 lakh towards IEDC).”

4. The review petitioner has submitted the following justification for condoning the time over-run of two months:-

a) There was time over-run of 20 months in case of Asset 6 due to RoW issues.

The review petitioner placed on record in the main petition the, correspondence showing that the issue of RoW was taken up with the concerned authorities and accordingly the Commission condoned the delay of 18 months. The Commission condoned the period of time over-run of 18 months in two installments of 8 months and 10 months and the intervening period of 2 months was not condoned as no correspondence pertaining to those 2 months was placed on record. The RoW issue was there for all the



20 months and it had prevented the petitioner from undertaking the work related to Asset 6 during the intervening months. The correspondence during the second installment of condoned period of 10 months clearly shows that the issue regarding right of way has continued throughout the 20 months. The copy of the letter to SHO at Maham (Rohtak) shows that there were several hindrances from the residents; and

- b) The RoW problem may be considered from 10.6.2011 to 19.10.2012 as the said problem and agitation by the villagers has been persisting continuously and not in parts during 10.6.2011 to 1.2.2012 and again from 19.10.2012 to 6.8.2013.

5. BRPL in its reply submitted that the petitioner is expected to justify each and every day's delay. The petitioner has not explained the delay with justification for which the Commission disallowed the time over-run of 2 months. Therefore, there is no error on the face of record.

6. We have considered the reply of BRPL and the submissions of the review petitioner and have perused the material on record. As stated by the review petitioner, the period of 2 months falls between the condoned period of 8 months and 10 months. No material was produced by the review petitioner to show that the matter was pursued with the authorities during these 2 months. Accordingly, the 2 months of time over-run was not condoned. The petitioner has now submitted another correspondence dated



30.9.2012, wherein SHO at Maham (Rohtak) was apprised about several hindrances from the residents. It is seen that the letter dated 30.9.2012 contains no receipt of the Police Station. Further, Order 47, Rule 1, of Code of Civil Procedure allows review on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by of the review petitioner at the time when the impugned order was passed. This is not the case in the instant review petition. This new supporting document was available with the petitioner at the time of filing of main petition and hence cannot be considered in the review. Hence, there is no error apparent on the face of record and accordingly review on this count is not allowed.

Annuity to land owners

7. The petitioner has submitted that the Commission has given no finding on the issue of annuity to land owners while passing the order dated 24.3.2015, determining the transmission tariff for the subject assets. The review petitioner in support of its prayer for annuity charges has submitted as under:-

- a) The Government of Haryana, vide notification dated 9.11.2010, laid down a comprehensive revised policy laying down the floor rates in different parts of the State for acquisition of land. The revised policy included revised rates of annuity payable for a period of 33 years as a social security benefit for the landowners whose land was acquired by the Government;



- b) In accordance with Relief and Rehabilitation (R&R) policy of the Government of Haryana, the petitioner was required to pay annuity of ₹1202.22 lakh for 33 years to the private landowners in the state of Haryana whose lands were being acquired for setting up of the petitioner's transmission assets;
- c) The above requirement of paying annuity to the landowners was brought to the notice of the Commission in affidavit dated 17.10.2014 in the main petition. The Commission took note of this affidavit in its record of proceedings for hearing held on 13.11.2014. The payments towards annuity made during the construction period was booked upto COD and the balance annuity for the remaining 31 years which was to be paid was not booked in the capital cost;
- d) The petitioner, vide affidavit dated 12.12.2014, submitted that annuity payment was made to the land owners of Panchkula, Bhiwani and Jind Sub-stations in Haryana where land is acquired after implementation of R&R policy in Haryana. The petitioner also attached the relevant documents of correspondence;
- e) The annuity payment required to be made by the petitioner was on account of the Relief & Rehabilitation policy of the Government of Haryana and, as such, was beyond the petitioner's control. This annuity payment was not included in the capital cost of the project submitted before the Commission in its tariff petition and as such, the petitioner was entitled to be allowed recovery of the same from the respondent beneficiaries. However, in the Commission's order



dated 24.3.2015, there is no finding on the issue as regards annuity payment. Such rectification will not affect the transmission charges already approved.

8. The learned counsel for the petitioner submitted that the Commission has allowed annuity payment for Dhauliganga transmission system in its order dated 16.7.2007 in Review Petition No. 73/2007. The petitioner has already paid annuity for the period 2012-13 and 2013-14, but the same was not included in the capital cost of assets covered in the petition. The Commission vide RoP dated 13.11.2014 observed that the petitioner should have entered into an agreement with the LIC for payment of annuity to the landowners. The representative of the petitioner submitted that attempts to enter into an agreement with LIC have failed. The annuity up to 31.3.2014 which is already paid to the land owners should therefore be reimbursed.

9. Learned counsel for BRPL submitted that the petitioner has brought the issue to the notice of the Commission vide affidavit dated 12.12.2014, although the policy was announced in the year 2010. There is no provision for allowing the annuity in the 2009 Tariff Regulations and accordingly the Commission suggested that the petitioner should enter into an agreement with the LIC for payment of annuity to the landowner. The petitioner has submitted that though attempts were made by the petitioner to buy annuity from LIC, the petitioner was not successful. Referring to the contention of the review petitioner that no finding on the issue of annuity was given by the Commission, learned counsel for BRPL submitted that any relief claimed in the plaint, which is not



expressly granted in the order, shall be deemed to have been refused. Learned counsel of the BRPL further submitted that the Commission's order dated 16.7.2007 in Review Petition No. 73/2007 is on lease rent and the instant review petition is on the issue of annuity to land owners.

10. We have considered the submissions made by learned counsel for the petitioner, BRPL and documents available on record. The Commission in its order dated 16.7.2007 in Review Petition No. 73/2007 has allowed annuity payment for Dhaulinganga transmission system to be recovered from respondents. The relevant extract from the order is as follows:-

"12. We are satisfied that the petitioner is to pay lease rent to the State Government on annual basis @ Rs. 230.67 lakh. The amount of lease rent paid for the first year has already been capitalized. We direct that the amount payable during the next 29 years will be recovered by the petitioner from the respondent on monthly basis for the remaining lease period, that is, 29 years, while raising the bills for the transmission charges for the transmission line approved by the Commission. The amount recovered shall be regularized on production of evidence for payment of the lease rent by the petitioner to the State Government."

11. As per the above decision, the petitioner was allowed to recover the lease rent on annuity basis. Though the petitioner had made a similar claim in this petition with regard to the payment of annuity to the land owners over a period of 31 years in its affidavit dated 17.10.2014 which was also taken note of in RoP dated 13.11.2014, the said information could not be considered while passing the impugned order. This in our view is an error apparent on the face of record and accordingly, the review is allowed on this ground.



Cost Variation for the "foundation of structure" for the transmission assets

12. In its order dated 24.3.2015 in Petition No. 99/TT/2012, the Commission restricted the cost of foundation of structure for Assets-3, 5, 7 and 8 involving Bhiwani Sub-station. The relevant paragraph of the order is as under:-

"20. We have considered the submissions of the petitioner and PSPCL. The petitioner has not filed its rejoinder to the reply filed by PSPCL. We are not happy with the petitioner for not filing its rejoinder to the PSPCL's reply inspite of clear direction to this effect on 13.11.2014. In response to Commission's queries, the petitioner has clarified that the LLO of one circuit had increased from 7.5 km as per FR to 15 km during actual execution. The petitioner has not furnished any explanation regarding the higher completion cost of the "foundation for structure" of the assets at Bhiwani Sub-station. Further, the reasons submitted by the petitioner for the steep increase in cost of certain items are not exhaustive and the information submitted by the petitioner do not give the details like change in volume of work, scope of work or cost and the extent of change from estimate to actual. Keeping in view, we are constrained to restrict the cost of the "foundation for structure" for assets involving Bhiwani Sub-station to FR cost. The petitioner is at liberty to reply to the PSPCL queries dated 10.7.2012 and 13.2.2013 and submit detailed justification of the foundation cost at the time of truing-up."

13. The petitioner in paragraph 15 of the Review Petition has sought the review of the above decision, stating as under:-

"15. That in this manner, though the justification for cost variation was submitted by the petitioner in its affidavit dated 27.2.2013, this Hon'ble Commission was not satisfied of the adequacy of the same and accordingly granted liberty to the petitioner to file rejoinder to the queries of PSPCL and submit detailed justification for the foundation cost at the time of truing up. The petitioner submits that since it is approaching this Hon'ble Commission for review of order dated 24.3.2015 on the aspects of time over-run and annuity payment, it is also including the issue of cost variation in the present petition alongwith reply to queries of PSPCL and detailed justification for cost variation of Foundation of Structure as directed by this Hon'ble Commission....."

14. The Commission has already granted liberty to the petitioner to approach the Commission at the time of truing up with detailed justification of the foundation cost.



The petitioner is seeking the determination of the foundation cost at the stage of review where the scope is very limited. As rightly pointed out by PSPCL and learned counsel for BRPL, there is huge variation between the original estimates and the actual expenditure and the same needs detailed analysis which cannot be undertaken at the stage of review. Accordingly, review is not allowed on this ground.

15. Review Petition No. 11/RP/2015 is partly allowed in terms of the above.

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

