

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 22/RP/2016

**in
Petition No. 106/TT/2014**

Coram:

**Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

**Date of Hearing: 13.06.2016
Date of Order : 29.06.2016**

In the matter of

Review of Commission's order dated 21.12.2015 in Petition No. 106/TT/2014 under section 94(1) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of

Power Grid Corporation of India Limited,
"Saudamani", Plot No.2,
Sector-29, Gurgaon -122 001

.....Petitioner

Vs

1. Bihar State Power (Holding) Company Ltd
(Formerly Bihar State Electricity Board -BSEB)
Vidyut Bhavan, Bailey Road, Patna – 800 001
2. West Bengal State Electricity Distribution Company
Bidyut Bhawan, Bidhan Nagar
Block DJ, Sector-II, Salt Lake City
Calcutta - 700 091
3. Grid Corporation of Orissa Ltd.
Shahid Nagar, Bhubaneswar - 751 007
4. Damodar Valley Corporation
DVC Tower, Maniktala
Civic centre, VIP Road, Calcutta - 700 054
5. Power Department
Government of Sikkim, Gangtok - 737 101



Parties present: Shri M. M. Mondal, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Jasbir Singh, PGCIL
Shri S. S Raju, PGCIL
Smt. Swapna Seshadri, PGCIL

Order

This review petition has been filed by Power Grid Corporation of India (PGCIL) seeking review of the order dated 21.12.2015 in Petition No. 106/TT/2014, whereby the tariff for (i) Asset 1- 400 kV D/C (Quad) Ranchi (New) – Ranchi (Old) – I transmission line and associated 400 kV Line bays at Ranchi (New) Sub-station and Ranchi (old) Sub-station (ii) Asset 2- 765/415 kV, 3 x 500 MVA ICT II at Ranchi along with associated bays at 765 kV Ranchi (New) sub-station under the common scheme for 765 KV Pooling Stations & N/W for NR, import by NR from ER and NER/SR/WR via ER and common scheme for network for WR and import by WR from ER and from NER/SR/WR via ER in the Western Region was allowed for 2009-14 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

2. Brief facts of the case are as follows:

- a. As per the investment approval dated 29.8.2008, the instant transmission assets were scheduled to be commissioned within 48 months i.e. by 1.9.2012. However, the instant assets were commissioned on 1.2.2014. Thus, there was a time over-run of 17 months in commissioning of both the assets. The total time over-run of 17 months in case of Asset 2 was condoned vide order dated 16.11.2015. 15 months time over-run in respect of Asset 1 was condoned and time over-run of 2



months from 1.12.2013 to 1.2.2014 was not condoned and accordingly proportionate IDC and IEDC for two months were disallowed.

3. The relevant portions of the order dated 21.12.2015 in Petition No. 106/TT/2014 with respect to delay in commissioning of Asset 1 are as follows:-

“13.the period of 17 months delay from the scheduled date of commercial operation (1.9.2012) to the actual date of commercial operation (1.2.2014) concurrently includes the following over-runs:-

- (a) Delay in granting forest clearance by the State and Central Authorities: The investment approval for the scheme was granted on 29.8.2008. Forest land involved in the instant line assets is 13.375 Ha in Ranchi-Ranchi (New) Line-I. The petitioner submitted the proposal for diversion of forest land for construction of transmission lines on 14.11.2009 to the Nodal officer, Jharkhand State forest department, Ranchi. The final clearance was issued on 13.11.2013 and tree felling order was received on 9.12.2013
- (b) Delay on account of stopping of work under the directions of the District Administration due to alleged infringement of the lines with the proposed ring road around Ranchi. First meeting regarding infringement with National highway was held on 25.1.2012. Consequent to a series of letters, meetings and communication as evidenced by the letters submitted by the petitioner, the matter was finally resolved after route realignment as suggested by National Highway Authorities of India on 10.10.2013.”

“16. We have considered the submissions of the petitioner and our views are given below.

Asset 1:

- (a) As regards, forest clearance, it is noted that generally, walk over survey takes around 30 days of time (depending on the area to be covered). Post survey file preparation takes another 10-15 days of time. One can simultaneously obtain Gram Panchayat NOC, Collector certificates, DFO certificates etc. For area less than 40 Hectares, forest land diversion Stage I process takes around 6 months and 3 months for Stage II clearance. Similarly, for area larger than 40 Hectares, Stage I clearance takes around 12-14 months and then another 3 months for Stage II clearance. In the instant case, the investment approval for the scheme was granted on 29.8.2008. Forest land involved in the instant line assets is 13.375 Ha in Ranchi-Ranchi (New) Line-I and 12.461 Ha in Ranchi-Ranchi (New) Line-II. The petitioner submitted the proposal for diversion of forest land for construction of transmission lines in 14.11.2009 to the Nodal officer, Jharkhand State forest



department, Ranchi. The petitioner has not provided any justification for the delay during the period 29.8.2008 to 14.11.2009 i.e. from investment approval date to the submission of first proposal. Considering that it takes 3 months to complete the walk over survey and related initiation activities, the proposal should have been submitted by 1.12.2008. However, the petitioner submitted the proposal for forest clearance on 1.11.2009, petitioner took seven months to submit the proposal. We are of the view that the delay in obtaining the forest clearance is attributable to the petitioner and hence the same cannot be condoned.

- (b) As regards route realignment, it is observed that the construction of transmission lines had to be stopped under the instructions of the District Administration. It is seen that the first meeting regarding infringement with National highway was held on 25.1.2012. Consequent to a series of letters, meetings and communication as evidenced by the letters submitted by the petitioner, the issue was resolved on 10.10.2013. We are convinced that the petitioner had pursued the matter diligently and the delay on account of route realignment is attributable to reasons beyond the control of the petitioner. Thus, the time over-run during 25.1.2012 to 10.10.2013 is condoned. Needless to add that the delay till 10.10.2013 in obtaining Forest Clearance is subsumed in the above period.
- (c) It is seen from the details furnished by the petitioner that action for Forest clearance as well as Route Realignment were initiated in November, 2009 and January, 2012 respectively. Both these dates are well before the scheduled date of commercial operation i.e. 1.9.2012. Ironically, these activities concluded on 9.12.2013 and 10.10.2013, respectively. Thus, the time over-run from 1.9.2012 to 10.10.2013 is concurrently attributable to both these activities.
- (d) Time over-run beyond 10.10.2013 is attributable to delay in obtaining Forest Clearance till 9.12.2013, and final preparations, synchronization and clearances for trial operation from 9.12.2013 to 1.2.2014.

Based on the above, out of the total time over-run of 17 months in respect of Asset I, we condone the delay up to 10.10.2013 on account of route realignment requirement which could not be anticipated by the petitioner. We are also aware of the fact that after the issue of route realignment was resolved, the petitioner required some time for implementation, synchronization and clearances for trial operation, etc before the actual commissioning of the assets. Accordingly, we condone the delay of fifteen months upto 30.11.2013. The time over-run from 1.12.2013 to 1.2.2014 is condoned and proportionate IDC and IEDC for the period two months is disallowed.”

4. The petitioner has made the following prayers in the present review petition:-



- a. Condone the time over-run of 2 months in case of Asset 1, which was not condoned in the impugned order;
- b. Allow the proportionate IDC and IEDC for 2 months; and
- c. Condone the delay in filing the review petition.

5. The review petitioner has submitted that the Commission proceeded, in order dated 21.12.2015, that ideally 3 months from the date of investment approval are sufficient for completing the walk over survey and related activities. Accordingly, the walk over survey and the related activities should have been completed within three months of investment approval dated 29.8.2018, i.e by 1.12.2008 and the petitioner has only applied for the forest clearance on 14.11.2009.

6. The review petitioner has submitted that this was however a special case where walk over survey which was to take place was passing through some villages near the 765/400 kV Sub-station at Bero. There was resistance near 765/400 kV Bero Sub-station villages and even the plotting of transmission lines on village/mauza maps could not be completed on time. During survey of the transmission Line near Sub-Station, the survey team were attacked by villagers on 27.3.2009. The review petitioner has submitted, with the instant review petition, the copy of letter written to administration and paper cuttings in support of the attack.

7. The review petitioner has further submitted that the survey could not be carried out in Village Sakarpeda due to stiff resistance by villagers. A copy of letter and note approved by the competent authority for deviation in route due to this has been enclosed with the review petition. The review petitioner has submitted the dates on which the



petitioner applied and the dates on which the identification of land and Jungle-Jhari was received.

8. The review petitioner has submitted that in respect of some portions of land, there was a delay of almost 7 - 8 months for the identification of the land by the respective circle officers. Thus, the proposal to the Forest Department could only have been submitted by the petitioner after identification of G.M, Jungle-Jhari and forest lands. The review petitioner has further submitted that ordinarily, the ratio decided by the Commission in order dated 21.12.2015 that the application for forest clearance after route alignment, survey etc. should take only 3 months may be correct but the same does not hold good for the present case due to special circumstances.

9. During the hearing on 13.6.2016, the learned counsel for the petitioner submitted that the Commission has condoned the complete time overrun of 17 months on account of similar reasons in commissioning of other element of the subject scheme vide order dated 21.3.2016 in Petition No. 105/TT/2014. The petitioner has submitted that disallowance of IDC and IEDC for two months on account of time overrun in the commissioning of Asset 1 is an error apparent on the fact of record and accordingly the impugned order is required to be modified. The learned counsel requested to admit the present review petition and also to condone the entire time overrun of 17 months in commissioning of Asset 1 and consequently allow the IDC and IEDC for two months of delay.

10. As regards the delay in filing the review petition, the review petitioner has submitted that the delay in filing is on account of bona fide reasons as in December, 2015 and January, 2016, several transmission tariff orders have been passed by the Commission.



The review petitioner has submitted the order dated 21.12.2015 was communicated to the petitioner vide Commission's letter dated 25.2.2016 and was received by the petitioner on 29.2.2016. Subsequently, upon receipt of the Order dated 21.12.2015, the petitioner had to scrutinize all the relevant application dates of Forest Clearance. Some documents from the file were missing and the petitioner had to reconstruct the file by pulling out soft copies etc. The review petitioner has submitted that based on the advice of its counsel in Delhi it decided to challenge the impugned order in review petition which is more comprehensive in present matter. The said advice to file a review petition was received by the petitioner in the first week of February, 2016.

11. The review petitioner has further submitted that the matter was put to the management of the petitioner who concurred with the opinion of its counsel and decided to file the review petition before the Commission. Thereafter, the review petition was to be drafted. The counsel for the petitioner sought certain documents and clarification from the petitioner particularly with regard to its merit order issues. Upon receiving the clarifications, the review petition was drafted and forwarded to the petitioner on 8.4.2016. The same, after verification and finalization has been filed on 20.4.2016. The review petitioner has submitted that the delay in filing the review petition is due to above reasons and requested to condone the delay of 88 days in filing of the present review petition.

Analysis and Decision

12. We have heard the review petitioner and perused the documents on record. We take the issue of delay in filing the instant review petition. Regulation 103 of the Central



Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter

"Conduct of Business Regulations") provides as under:-

"103. (1) The Commission may at any time, on its own motion, or on an application of any of the persons or parties concerned, within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit: this clause may be exercised only for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations."

13. Further, Regulation 116 of the Conduct of Business Regulations provides as under:-

"116. Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission."

14. It is evident from the above provision that a review petition can be filed by a party within a period of 45 days from the date of issue of the order. This period can be enlarged or curtailed, if the party is able to show sufficient reason.

15. We now proceed to consider whether the review petitioner has made out a case for sufficient reason to meet the requirement of Regulation 116 of Conduct of Business Regulations for condonation of delay in filing the Review Petition. The impugned order was passed on 21.12.2015 in Petition No. 106/2014. The review petitioner has not filed review petition within the stipulated period of limitation of 45 days. The review petition has been filed after a delay of 83 days.

16. The above referred justification submitted by the petitioner in para 9 and para 10 shows that the order dated 21.12.2015 was communicated to the petitioner vide letter dated 25.2.2016 and received by the petitioner on 29.2.2016. As per the petitioner, it was



required to collect all the relevant documents and records, and to send the same to its counsel, who in turn had to prepare the draft petition and to send the same for approval and hence there was a delay of 83 days in filing the instant review petition. We find sufficient reasons have been given by the review petitioner for delay in filing the review petition. Therefore, we deem it appropriate to condone the delay of 83 days in filing the review and admit the review petition.

17. Next, we consider whether the grounds raised in the review petition meet the requirements of Order 47 Rule 1 of the CPC read with Section 94 of the Act. The power of the Commission to review its order under clause (f) of sub-section (1) of Section 94 of the Electricity Act is analogous to the power of a Civil Court under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure. We can review an order on any of the grounds enumerated in Order 47, Rule 1, but not otherwise. We shall now consider whether order dated 21.12.2015 suffers from any patent mistake or an error apparent so as to warrant its review.

18. We observe that the petitioner has submitted new information i.e. the reasons for delay in applying for forest clearance. The petitioner has submitted the dates on which the petitioner applied and the dates on which the identified GM land was received and the details are as under:-

Circle/Block	Date on which applied	Date on which identification of G.M and Jungle- Jhari Plots received	Delay (Months)
Mander	24.6.2009	23.7.2009	1
Namkom	24.6.2009	23.9.2009	3
Ratu	24.6.2009	24.7.2009	1
Kanke	12.5.2009	19.12.2009	7



Ormanjhi	24.6.2009	20.4.2010	10
Angara	24.6.2009	24.2.2010	8
Bero	24.6.2009	24.7.2009	1

19. It is observed that the petitioner has submitted the reasons towards difficulties faced in walkover survey which in turn resulted in delay in submitting the proposal for diversion of forest land. The petitioner, in the main Petition No. 106/TT/2014, had not cited any reason for delay in applying for the forest clearance. In the present review petition, the review petitioner has enclosed the letter dated 31.3.2008 and 30.4.2009 addressed to the District Collector, Ranchi, regarding the attack during the walkover survey and communication dated 12.5.2009, 24.6.2009, 24.7.2009, 23.9.2009 and 20.4.2010 to justify the delay in identification of land. Further, the petitioner has submitted the letter dated 11.9.2009 depicting the change in BOQ and revision in L2 network for the project.

20. The justification given by the review petitioner for difficulties faced during walk over survey, resistance by the villagers, change in BOQ that lead to consequential delay in applying for forest clearance was not submitted earlier in the main petition. These details have been submitted now in review petition. We are of the view that this information was available with the review petitioner and the review petitioner should have submitted these facts in the main petition.

21. During the hearing dated 13.6.2016, the learned counsel for the petitioner has referred to the order dated 21.3.2016 in Petition No. 105/2014, where the time overrun of 17 months was condoned in case of other element of the subject scheme and thus has requested to condone the delay in the present case.



22. We do not agree with the contention of the review petitioner. It is the responsibility of the review petitioner to submit all the relevant information which it considers pertinent to the issues involved in the petition at the time of filing the information. It appears from the submission of the review petitioner that the information was available with the petitioner but was not submitted. As per Order 47 Rule 1 of the Code of Civil Procedure, only discovery of new and important matter of evidence which after exercise of due diligence, was not within the knowledge or could not be produced at the time when decree was made shall be a ground for review. Though the information was in the possession of the review petitioner, the same was not produced even though the said information had a bearing on the allowability of time overrun in commissioning of the asset. In other words, the review petitioner had not made due diligence while submitting the information in the main petition.

23. The facts submitted in the review petition were not available with the Commission while issuing the order dated 21.12.2015 in the main Petition No. 106/2014. The petitioner should have substantiated the claims made in Petition No. 106/2014 with the documents submitted in the review petition. The order dated 14.3.2016 in Petition No. 105/2014 was based on the documents and facts submitted by the review petitioner. The order dated 21.12.2015 in Petition No.106/2014 and the order dated 14.3.2016 in Petition No. 105/2014 are not comparable to the extent of availability of information.

24. It appears that the review petitioner is submitting the said information in the review petition as an afterthought and taking into consideration the later order dated 14.3.2016 in Petition No.105/2014. Therefore, no case for review of the impugned order has been made out.



25. In view of the above discussion, no ground has been made out for review of the impugned order. Accordingly, Petition No.22/RP/2016 is dismissed at the admission stage.

**Sd/-
(Dr. M.K. Iyer)
Member**

**Sd/-
(A.S. Bakshi)
Member**

