

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 40/RP/2016

**In
Petition No.305/TT/2013**

Coram:

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

Date of Order : 11.7.2017

In the matter of:

Review petition under Section 94 of the Electricity Act, 2003 read with Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 17.3.2016 in Petition No. 305/TT/2013.

And in the matter of:

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

.....**Petitioner**

Vs

1. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh-492 013.
2. Madhya Pradesh Power Management Company Ltd.,
Shakti Bhawan, Rampur
Jabalpur-482 008.
3. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th floor
Andehri (East), Mumbai-400 052.



4. Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara-390 007.
5. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa-403 001.
6. Electricity Department,
Administration of Daman and Diu,
Daman-396210.
7. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T. Silvassa-396 230.
8. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd.,
3/54, Press Complex, Agra-Bombay Road
Indore-452 008.

.....Respondents

For petitioner : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Jasbir Singh, PGCIL
Shri K.K. Jain, PGCIL
Shri S.S Raju, PGCIL
Shri M.M. Mondal, PGCIL
Shri Rakesh Prasad, PGCIL

For respondent : Shri Rajeev Kumar Gupta, MPPMCL

ORDER

The instant review petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Section 94 of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 17.3.2016 in Petition No.305/TT/2013, wherein the transmission tariff was allowed for 765 kV, 1500 MVA ICT-2 along with associated bays at Dharmjaygarh Sub-station under Supplementary



Transmission Scheme of upcoming IPP Projects in Chhattisgarh in Western Region for tariff block 2014-19 period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (referred as "2014 Tariff Regulations"). The petitioner has submitted that there are errors apparent in the impugned order as time over-run of about 3 months and additional return on equity of 0.5% for early commissioning of the instant assets within the timeline specified in the 2014 Tariff Regulations have been disallowed.

Brief facts of the case

2. As per the Investment Approval (IA) dated 22.3.2012 accorded by Board of Directors of PGCIL, the project was scheduled to be commissioned within 24 months i.e. by 21.3.2014. As against this, the asset was commissioned on 19.6.2014 resulting in time over-run of 2 months and 29 days on which no decision could be taken in the absence of the CVC Guidelines relied upon by the Review Petitioner. Instead of disallowing the claims for IDC and IEDC for the said period, liberty was granted to the Review Petitioner to submit all relevant documents including CVC Guidelines in support of its claim for IDC and IEDC for 2 months and 29 days.

3. As regards the Review Petitioner's claim for additional return on equity of 0.5%, the Commission disallowed the same as the Review Petitioner failed to submit the certificate from the concerned Regional Power Committee as required under the 2014 Tariff Regulations. The relevant extract of the impugned order is as under:-

"36. The petitioner has claimed additional RoE of 0.5% for timely completion of the instant assets. As per the investment approval, 2 Nos. 1500MVA ICTs were to be installed at Dharamjaygarh/Korba pooling station. However, it is observed that only 1 no. ICT has been installed at Dharmjaygarh/Korba pooling station. The complete scope as per IA has not been completed within stipulated time. Further, the petitioner has not submitted the



certificate from RPC/NRPC certifying that the commissioning of the instant asset will benefit the system operation in the regional/national grid as required under proviso (iii) to clause (2) of Regulation 24 of the 2014 Tariff Regulations. Therefore, the petitioner's prayer for additional RoE of 0.5% is not allowed."

4. The petition was admitted on 27.9.2016. The notices were issued to the respondents to file their replies. Reply to the Review Petition has been filed by M.P. Power Management Company (MPPMCL) vide affidavit dated 29.10.2016 and the Review Petitioner has filed its rejoinder vide affidavit dated 8.2.2017.

Grounds for Review

5. The Review Petitioner has submitted that certain material facts and documents that were brought on record vide affidavit 17.2.2016 were not considered by the Commission while passing the impugned order which constituted an error apparent on the face of record. The Review Petitioner has made the following submissions in support of this ground for review:-

(a) The Review Petitioner vide affidavit dated 5.6.2015 in Petition No. 305/TT/2013 had submitted the certificate of trial operation, reasons of time over-run, price quoted by the lowest bidder and time taken for re-tendering process along with dates and activities. The required details alongwith documentary evidence was submitted under the said affidavit. The Review Petitioner also filed an affidavit dated 17.2.2016 demonstrating in detail the reasons for time over-run. The Commission omitted to take into account the submissions made and documents placed on record vide affidavit dated 5.6.2015 and 17.2.2016 and disallowed the prayer for time over-run.



(b) The Review Petitioner did not file the CVC Guidelines as the same was in public domain. The Review Petitioner has submitted copy of CVC guidelines alongwith the review petition.

(c) Some of the documentary evidences wherein replies to Siemens letter dated 10.4.2012 were given by PGCIL was missed out inadvertently. Copy of letters dated 17.4.2012, 19.4.2012 and 28.4.2012 addressed to Siemens were attached collectively with affidavit dated 17.2.2016.

(d) In Petition No. 40/TT/2014 regarding the tariff for ICT 1 at Dharmajaygarh for the period 2014-19 covered under the same transmission project, the Commission has condoned the time - of 100 days on the basis of similar set of documents filed by the Review Petitioner except for a copy of the CVC guidelines. The Commission has adopted different yardsticks for condoning time over-run of the same project while approving transmission tariff for two different periods which is an error in the impugned order.

(e) As regards disallowance of additional RoE, the instant asset was commissioned during 2014-19 tariff period and the certificate from WRPC regarding commissioning of the asset was submitted vide affidavit dated 24.11.2015. However, since the Review Petitioner could not submit the certificate of Regional Power Committee certifying that the commissioning of the subject asset would be for the benefit the system operation in the regional/national grid, the Commission erroneously assumed that the project was not complete and disallowed the claim of the additional RoE.



6. During the hearing on 15.12.2016 learned counsel for the Review Petitioner submitted that the detailed reasons for time over-run was submitted vide affidavit dated 17.2.2016 in the main petition. Since the CVC guidelines are in public domain and accessible to all, the Review Petitioner did not file same. Learned counsel further submitted that the WRLDC certificate under Regulation 24(iii) of the 2014 Tariff Regulations was placed on record vide affidavit dated 24.11.2015 in the main petition which was inadvertently not considered by the Commission while deciding the Review Petitioner's claim for additional return on equity in the impugned order. Learned counsel submitted that disallowance of time over-run and additional RoE are errors apparent on the face of record and hence the review be allowed by suitably revising the impugned order.

7. As regards disallowance of time over-run, the representative of MPPMCL submitted that the Commission has rightly rejected the claim by recognizing the delay of 5 months from publication of NIT dated 6.6.2012 till the placement of award on 11.1.2013 which was purely within the control of the Review Petitioner. It was obligation of the Review Petitioner to select the contractor after proper evaluation of their capacity and status. The representative of MPPMCL submitted that there was absence of foreseeability on the part of the Review Petitioner in framing the terms and conditions of the agreement to deal with taxes and duties imposed through the Union Budget after the contract was awarded. Further, the situation was not beyond the control of the Review Petitioner as it was the responsibility of the Review Petitioner to select the contractors after proper evaluation of their capacity.



8. In response, learned counsel for the Review Petitioner clarified that post submission and opening of the bids, the lowest bidder Siemens Limited (SIEMENS) sought increase in bid prices on the pretext of change in taxes/duties in Union Budget 2012-13 vide their letter dated 10.4.2012 which was not tenable as per terms of bidding documents. Therefore, the bidding process was annulled and fresh bid were invited in line with CVC provisions. The annulment of bidding process and again starting the bidding process afresh under SSTE bidding procedure has caused an unavoidable initial delay of 9 months and work could start after January 2013. However, the total delay was reduced to approximately 3 months by expediting the entire process.

Analysis and Decision

9. We have considered the submission of the Review Petitioner and MPPMCL. The Review Petitioner has contended that the reasons for time over-run given in the affidavits dated 5.6.2015 and 17.2.2016 alongwith the documentary evidence were not considered in the impugned order. The reasons for time over-run given in affidavit dated 5.6.2015 were considered by the Commission in the impugned order as under:-

“16. The petitioner was directed to submit the certificate of trial operation, reason for time over-run, price quoted by the lowest bidder and time taken in retendering process along with the date and activities. In response, the petitioner vide affidavit dated 5.6.2015 has submitted the date of submission and opening of the bids. The petitioner has further submitted that the lowest bidder M/s Siemens Ltd sought increase in bid prices on pretext of change in taxes/duties in Union Budget 2012-13, which was not tenable as per terms of bidding documents and their letter claiming compensation and consequent increase in bid prices tantamount to withdrawal of their bid. The bidding process was annulled and fresh bid was invited in line with CVC's provision, which states that there should be re-tendering in a transparent and fair manner in such situation where lowest bidder withdraws their offer before the work order is placed. The price quoted by the lowest bidder was EURO 45,83,963+INR 212,86,43,718 (excluding taxes and duties). The NIT was published on 6.6.2012 and after due process LOA was issued on 11.1.2013 and it took about 7 months in the process.....”



17. We have considered the reasons and documents submitted by the petitioner regarding time over-run. It is observed that Siemens in its letter had requested for compensation for the increase in excise duty, CVD and service tax to be included in the control price. The petitioner was asked to submit detailed reason for withdrawal by lowest bidder. The petitioner has submitted that the bidding process was annulled and fresh bids were invited in line with the CVC guidelines since the bidder asked for adjustment of the impact of increase in excise duty, CVD and service tax. It is however noticed from the letter of M/s Siemens dated 10.4.2012 that in the past in December 2008 when taxes and duties were reduced on submitted bids, the petitioner had reduced the prices of bought out finished goods and services on the offered L1 value and awarded the contract. The petitioner has not submitted the copy of the tender documents containing the terms and conditions for submission of the bids by the contractor. The petitioner has not submitted the copy of the CVC guidelines under which the petitioner cancelled the bidding process and invited the fresh bid which involved a period of additional 7 months. Despite the rebidding, the petitioner has achieved the COD with a time over-run of 2 months and 29 days. In the absence of the relevant documents, it is difficult to take a view with regard to the time over-run of 2 months 29 days. Since it is a tariff petition filed in 2013, we do not intend to delay its disposal by calling for fresh information. We are not allowing the time over-run of 2 months 29 days on account of the rebidding process. However, liberty is granted to the petitioner to submit all relevant documents including CVC Guidelines in support of its claim for IDC and IEDC for the 2 months 29 days.”

It is apparent from the above para that the submissions made by the Review Petitioner were considered in the impugned order. Since the CVC Guidelines were on not on record, liberty was granted to the Review Petitioner to substantiate its claims on the basis of the CVC Guidelines.

10. The Review Petitioner has submitted that the CVC Guidelines were in the public domain and hence the Review Petitioner did not place the same on record. We are constrained to observe that the explanation of the Review Petitioner cannot be accepted since the Review Petitioner is obliged to place all relevant documents on record on the basis of any Act or Rules or Guidelines which are relied upon in support of the claim. In any case, the claim of the Review Petitioner was not rejected but put on hold to be considered after the Review Petitioner approaches with the relevant document. Therefore,



there is no error apparent on the face of the record and no review is made out on this ground.

11. As already stated, liberty was granted to the Review Petitioner to submit all relevant documents including CVC Guidelines in support of its claim for IDC and IEDC for the 2 months 29 days. The Review Petitioner has placed the CVC Guidelines on record and has substantiated its claims with reasonable explanations. It is observed that the Siemens Ltd., the L-1 bidder, sought increase in the bid prices due to change in taxes/duties in the Union Budget 2012-13. Siemens demand for compensation and increase in bid prices amounted to withdrawal of bid as per the bidding documents. As per the CVC Order No.68/10/05 dated 25.10.2005 there should not be any negotiations under normal conditions and negotiations may take place in exceptional cases like proprietary items or items with limited source supply. Further, as per the order there should be retendering in case the L-1 backs out. The relevant portions of the CVCs order dated 25.10.2005 is extracted hereunder:-

“(i) There should not be any negotiations. Negotiations if at all shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. Negotiations shall be held with L-1 only. Counter offers tantamount to negotiations and should be treated at par with negotiation.

(ii) Negotiations can be recommended in exceptional circumstances only after due application of mind and recording valid, logical reasons justifying negotiations. In case of inability to obtain the desired results by way of reduction in rates and negotiations prove infructuous, satisfactory explanations are required to be recorded by the Committee who recommended the negotiations. The Committee shall be responsible for lack of application of mind in case its negotiations have only unnecessarily delayed the award of work/contract.”

“3. In case of L-1 backing out there should be re-tendering as per extant instructions.”



In the instant case, negotiations are not possible as the items are not in the nature of proprietary items or limited source supply items. Further, in case of L-1 bidder backing out, there should be retendering.

12. Accordingly, the Review Petitioner annulled the bidding process and called for fresh bids as per the guidelines issued by CVC. This resulted in the time over-run of 2 months and 29 days in commissioning of the instant assets. We are of the view that the time over-run cannot be attributed to the Review Petitioner and accordingly, it is condoned. Consequently, the IDC and IEDC disallowed for the period of 2 months and 29 days in order dated 17.3.2016 is allowed to be capitalised. The Review Petitioner is directed to adjust the bid security amount recovered from Siemens in the capital cost. The same shall be submitted by the petitioner at the time of true-up of the petition. However, the Review Petitioner is directed to devise its bidding documents in consonance with bidding guidelines issued by CVC in such a manner that the post bid increase in taxes and duties are taken care of.

13. The next ground for review is the disallowance of additional RoE of 0.5% for commissioning the instant asset within the timeline specified in the 2014 Tariff Regulations. This asset is a part of the transmission project and was commissioned ahead of the other elements of the project. As per proviso to Regulation 24(2) of the 2014 Tariff Regulations, additional ROE can be allowed for an element of the project under the following circumstances:

“(iii) Additional RoE of 0.5% may be allowed if any element of the transmission project is completed within the specified timeline and it is certified by the Regional Power Committee/National Power Committee that commissioning of the particular element will benefit the system operation in the regional/national grid.”



The general principle is that 0.5% additional RoE shall be allowed if the project as a whole is completed within the specified timeline as given in Appendix I of the 2014 Tariff Regulations. Proviso (iii) carves out an exception for an element if it is certified by NPC/RPC that such element will benefit the system operation at regional or national level. In other words, the utility of the element from the point of view of system operation has to be established independent of the transmission project of which the element is a part. The instant asset cannot qualify for additional RoE under the main provision as all the elements of the project were not complete. The asset also could not have been covered under proviso (iii) on the ground that the Review Petitioner did not submit the required certificate from the RPC/NPC. It is the case of the Review Petitioner that the certificate from WRPC was submitted vide affidavit dated 24.11.2015 which could not be considered by the Commission while passing the impugned order. We have gone through the affidavit dated 24.11.2015. The Review Petitioner has submitted a Certificate from WRPC regarding the commercial operation of the instant asset. Relevant portion of the Certificate is extracted as under:-

“This is to certify that following transmission elements of PGCIL Chhattisgarh project have been commissioned within timelines as per the claim made by PGCIL vide letter dated 10.7.2015 and certification issued by WRLDC stating commissioning of the above element will be beneficial for system operation in Regional/National grid vide their letter dated 9.10.2015”

14. We find that the certificate submitted by the Review Petitioner satisfies the conditions of proviso (iii) under clause (2) of Regulation 24 of 2014 Tariff Regulations. Accordingly, the review on this count is also allowed.



15. The tariff of 765 kV, 1500 MVA ICT-2 along with associated bays at Dharmjaygarh Sub-station shall be revised at the time of truing-up of tariff in terms of Regulation 8 of the 2014 Tariff Regulations.

16. Review Petition No.40/RP/2016 is disposed of in terms of the above.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

