

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 63/RP/2016**

**in**

**Petition No.104/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 : 20.7.2017**

**In the matter of:**

Review petition under Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 12.4.2016 in Petition No. 104/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. Bihar State Power (Holding) Company Limited  
(Formerly Bihar State Electricity Board),  
Bidyut Bhawan, Bailey road,  
Patna-800 001, Bihar
2. West Bengal State Electricity Distribution Company Ltd.  
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
6. Jharkhand State Electricity Board  
In Front of Main Secretariat Doranda,  
Ranchi-834 002.

.....Respondents

**For petitioner** : Shri Deepak Jain, Advocate, PGCIL  
Ms. Shantala Sankrit, Advocate, PGCIL  
Shri Tanay AK Pareek, Advocate, PGCIL  
Ms. Tanvi Sharma, Advocate, PGCIL  
Shri S.S Raju, PGCIL  
Shri M.M. Mondal, PGCIL  
Shri S.K. Venkatesan, PGCIL  
Shri Amit Yadav, PGCIL  
Ms. Pratibha Raje Parmar, PGCIL

**For respondent** : None

### **ORDER**

This review petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 12.4.2016 in Petition No.104/TT/2013, wherein the transmission tariff was allowed for Re-conductring Ckt-II of 400 kV D/C Siliguri-Purnea (HTLS cond.) transmission line under ERSS-I in Eastern Region (hereinafter referred to as the “instant assets”) for 2009-14 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of



Tariff) Regulations, 2009 (referred as "2009 Tariff Regulations"). In the impugned order, against total time over-run of 43 months, 28.5 months' delay was condoned. Aggrieved by the said order, the Review Petitioner has filed the instant review petition. The Review Petitioner has prayed to condone the complete time over-run of 43 months in commissioning of the asset covered under Petition No. 104/TT/2013 and the IDC and IEDC for the corresponding period be reinstated.

### **Brief facts of the case**

2. The Review Petitioner filed Petition No. 104/TT/2013 seeking tariff for Re-conductring Ckt-II of 400 kV D/C Siliguri-Purnea (HTLS cond.) Transmission Line as per the 2014 Tariff Regulations. As per the Investment Approval (IA) dated 4.10.2006, the project was scheduled to be commissioned within 36 months (i.e. by 1.11.2009) whereas the asset was actually commissioned on 1.6.2013. Out of time over-run of 43 months, 28.5 months were condoned and the remaining 14.5 months were not condoned in the impugned order. The Commission while dealing the time over-run in Petition No. 104/TT/2013 has inter-alia held as under:-

"19. We have considered the submissions of the petitioner. There was delay in tie-up with World Bank which delayed the award of contract by 18 months, i.e. from the date of investment approval to the date of signing of loan agreement on 28.3.2008. In a similar case, the delay due to tie-up with World Bank was condoned in order dated 12.5.2015 in Petition No.53/TT/2013. We are of the view that the delay of 18 months in signing the loan agreement with World Bank is due to the procedures laid down by it and hence it is condoned. The time over-run of four and half months (from 1.2.2012 to 16.6.2012) due to delay in delivery of conductor due to tsunami in Japan is a force majeure condition and it is beyond the control of the petitioner and hence it is condoned. Time over-run of one month (from 17.6.2012 to 16.7.2012) on account of tower collapse due to storm (after excluding over lapping delay) is also beyond the control of petitioner so it is condoned. Time over-run of 5 months due to shifting of shutdown from May to October, 2015 is also condoned. Accordingly, out of total time over-run of 43 months in commissioning of the instant asset 28.5 months are condoned and the remaining 14.5 months is not condoned."



3. The review petition was admitted on 14.12.2016 and the respondents were directed to file reply to the review petition. However, none of the respondents have filed any reply.

### **Grounds for Review**

4. The grounds submitted by the Review Petitioner for review in the review petition and affidavit dated 28.2.2017 are as follows:-

- a) High Tension Low Sag (HTLS) conductor was being used for the first time in India and funded by World Bank. This new conductor was capable of carrying more power on same tower structure than any other conductor. This resulted in cost saving and less burden on the DICs.
- b) The contract was awarded in September, 2010, after all necessary compliance with the World Bank, which was scheduled to be awarded around mid 2007 as per approved FR plan. After signing of the loan agreement with the World Bank, it took around 24 months to award the contract which again required the compliance and NOC from the World Bank.
- c) Chronology of events was submitted to the Commission in the Petition No. 104/TT/2013 vide affidavit dated 28.5.2014 and the same was inadvertently overlooked while condoning the delay in the impugned order.
- d) The petitioner had to modify the qualifying requirements as per requirement of the funding agency and resultantly, there was delay of two years in finalization of contracts after draft bidding documents were forwarded to World Bank for their approval. Further, HTLS conductor was also to be sourced through international



competitive bidding route which was not available in India. Further, during this period no investment was made in this project.

- e) The Review Petitioner endeavored to fund this project through Multilateral Funding Agencies like the World Bank, Asian Development Bank etc. through which besides deemed exports benefits, loans can be availed at cheaper rate of interest as compared to the domestic sources resulting in the lower capital cost of the project and thereby cost savings to the beneficiaries.
- f) The Review Petitioner during the period 2006-08 was in the process of obtaining loan from the World Bank for its various projects in tranches. The funds for these projects were segregated to be covered under PSDP-III and PSDP-IV loans of the World Bank. The Review Petitioner has followed Single Stage Bidding Process except for the technically complex projects wherein two stage bidding process were followed for award of contracts for elements under these projects. As per the policy of the World Bank, the procurement process with a threshold value of more than US \$25 million were subjected to prior review of the World Bank wherein each stage of procurement process viz., Bidding Documents, publication of notice inviting tender, bidding responses, evaluation report and award of contract are approved by the World Bank.
- g) The time taken for Single Stage bidding process (i.e. from preparation of bidding documents to signing of contract) under the earlier review procedure of the Bank is 7 to 12 months for projects funded under PSDP-III Loan and 6 to 21 months for



projects funded by PSDP-IV Loan. Whereas, the time taken for two stage bidding process was 18 months or more for project funded under PSDP-III and PSDP-IV.

- h) In the instant case two stage bidding process was adopted by the Review Petitioner under prior review procedures of World Bank keeping in view the technical complexities arising out due to introduction of new and unfamiliar HTLS technology in the Indian Power Transmission Sector which hindered firming up/finalization of the technical specification and commercial conditions.
- i) There was an initial delay due to tie up of loan from the World Bank. The second tranche of US \$600 million (PSDP-IV Loan) was subsequently signed on 28.3.2008 and accordingly thereafter, the procurement process was initiated for re-conductoring for 400 kV D/C Siliguri-Purnea transmission line under ERSS-I. The delay in availing loan from funding agency was not foreseen by the Review petitioner. There was further delay of two years in finalization of contracts after draft bidding documents were forwarded to the World Bank for their approval. The Review Petitioner had to modify/revise the qualifying requirements on two occasions as per the requirement of the funding agency which could not be envisaged/contemplated during the planning/initial stage. The World Bank procedures being pre-requisite to the financial closure of the packages, the time spent in compliance thereof were beyond the control of the Review Petitioner. The time taken by the Review Petitioner in the instant case for the bidding process is comparable to the average time taken for bidding process for other projects under two stage bidding process.



j) Further, severe ROW constraints were faced in various locations during de-stringing phases. Sometimes local villagers mixed up with anti-social elements threatened the contractors and stopped the work at various locations. Prolonged persuasion and meetings at District administration level were taken several times.

5. During the hearing on 24.1.2017, the learned counsel for the Review Petitioner submitted that the time over-run in signing the loan agreement with World Bank in March, 2008, after the Investment Approval in October, 2006 has been condoned. However, the delay in finalization of contracts after approval of World Bank due to various requirements has not been condoned. Learned counsel further submitted that the reasons for time over-run are beyond the Review Petitioner's control and requested to condone the complete time over-run of 43 months in commissioning of the instant asset.

### **Analysis and Decision**

6. We have considered the submissions of the Review Petitioner. The instant assets were scheduled to be commissioned by 1.11.2009, however they were commissioned on 1.6.2013. There was time over-run of 43 months in commissioning of the instant assets. Time over-run of 28.5 months due to the time taken for grant of loan by the World Bank, Tsunami in Japan, tower collapse and delay in grant of shut-down were condoned and the remaining period of time over-run was not condoned. The Review Petitioner has filed the instant review petition seeking condonation of the remaining 14.5 months of time over-run. Review Petitioner has contended that the delay in award of contract due to World Bank, delay due to International Competitive Bidding and delay to RoW issues were not appreciated in the impugned order.



7. The Review Petitioner's first contention is that the Commission did not consider the delay in awarding the contract. The Review Petitioner submitted that the contract was awarded in September, 2010 after complying with the requirements of the World Bank, which was scheduled to be awarded in the middle of 2007 as per the FR. This delay of 38 months in awarding the contract was beyond the control of the Review Petitioner and should be condoned. After signing the loan agreement on 28.3.2008 with World Bank, it took around 24 months to award the contract after complying with the requirements of the World Bank. The requirements were raised for the first time which was not envisaged by the Review Petitioner initially. Further, the World Bank revised the Qualifying Requirements on two occasions and the two-stage bidding process delayed the award of contract.

8. We have considered the submissions of the Review Petitioner. On 29.8.2008, World Bank approved the Qualification Requirement (QR) and technical specifications and on 3.9.2010 loan agreement was signed. The Review Petitioner, in affidavits dated 15.12.2015 and 19.10.2015 filed in the main petition submitted that the Review Petitioner planned to complete the award of contract of conductor in June, 2007 i.e. 9 months from the date of Investment Approval (4.10.2006). It is observed that at the time of Investment Approval, the Review Petitioner had forwarded proposal to Ministry of Power (MoP). Further, MoP had forwarded the same to Ministry of Finance (MoF) as per para 17 and 10 of order dated 12.4.2016 in Petition No. 104/TT/2013. From the submissions of the Review Petitioner with regard to World Bank funding for the period 2003 to 2005, it is observed that period from sending bid documents to contract signing





is around 7 months to 15 months. With regard to World Bank funding for the period 2006 to 2008, it is observed that period from preparation of bid documents to contract signing is around 4 months to 20 months. The Review Petitioner was fully aware at the time of Investment Approval that proposal of funding is at a very preliminary stage and MoP and MoF may take some time for approving the documents, however, the Review Petitioner provided for only 9 months for the entire activity of MoP approval to contract signing. The Review Petitioner was conscious that it would take upto 15 months time by World Bank from the date of bid documents preparation to contract signing, which is only a part of the entire activity of getting the loan. However, the Review Petitioner has not factored properly the time required for loan signing with World Bank and award of contract. It is observed from the chronology of events submitted by the Review Petitioner, i.e. 29.8.2008 (approved QR and Technical Specifications) to 3.9.2010 (date of signing of the agreement), that there is no delay on the part of the World Bank. The World Bank has replied promptly to all Review Petitioner's communication. The Review Petitioner has stated that World Bank requested to modify QR twice which is beyond the control of the Review Petitioner. However, requirement of revision of QR by World Bank cannot be said to be beyond the control of Review Petitioner as preparation of QR as per requirements of World Bank was responsibility of the Review Petitioner. It is observed from the submissions of the Review Petitioner that the time over-run from 29.8.2008 to 3.9.2010 was fully within the control of the Review Petitioner. Further, the Review Petitioner had raised the issue of revision of the Qualifying Requirements by the World Bank on two occasions and two stage bidding process in the main petition and the Commission issued order dated 12.4.2016 after considering the Review Petitioner's



submissions. The Review Petitioner cannot reargue the matter on merits at the review stage. Accordingly, review on this count is not allowed.

9. The Review Petitioner's second contention is that the delay due to International Competition Bidding was not considered in the impugned order. The Review Petitioner has submitted that delay of two years in finalisation of contracts after forwarding the Bidding Documents to the World Bank for approval was not considered by the Commission. Further, the HTLS conductor was not available in India and was sourced through International Competitive Bidding route and was introduced for the first time in India. We have considered the submissions of the Review Petitioner. As regards the contention that HTLS conductor was not available in India and was sourced through International Competitive Bidding, the Review Petitioner was well aware of the fact that the HTLS conductor was not available in India and was to be sourced through international bidding. Accordingly, the Review Petitioner should have factored the time required for acquiring the HTLS through international bidding while getting the timeline approved for purchasing the HTLS conductor. Further, the Review Petitioner has availed World Bank funding in the past and was aware of the various requirements of the World Bank. We are of the view that the Review Petitioner failed to factor the time required for purchasing the HTLS conductor through international bidding at the time Investment Approval. The delay in acquiring the HTLS conductor is attributable to the Review Petitioner. Further, the Review Petitioner had raised the issue of international bidding and World Bank procedures in the main petition and the Commission issued order dated 12.4.2016 considering the Review Petitioner's submissions. The Review



Petitioner cannot reargue the matter on merits at the review stage. Accordingly, the review on this count is also not allowed.

10. The third contention of the Review Petitioner is that the Commission did not consider the delay that occurred due to RoW issues in the impugned order. The Review Petitioner has submitted letters dated 10.1.2013, 28.1.2013 and 29.1.2013 in Petition No. 104/TT/2013. The Review petitioner has submitted that at least two months delay occurred due to RoW problems. We have gone through three letters. We notice that letter dated 10.1.2013 was addressed to SDO, Islampur requesting for co-operation for re-conductoring work of 400 kV D/C Siliguri-Purnea transmission line. The said letter is just an intimation regarding start of work. Subsequently, two letters dated 28.1.2013 and 29.1.2013 were addressed to District Administration regarding RoW issues. There is no further communication to prove RoW problem continued for two months. We are not convinced that the RoW problems continued for two months in the absence of any documentary evidence. Further, RoW issues were considered by the Commission in the impugned order. The Review Petitioner is trying to reargue the matter on merits, which is not allowed at the stage of review. Accordingly, the Review Petitioner's prayer for review on this count is also disallowed.

11. The Review Petition No.63/RP/2016 is disposed of.

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

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

sd/-  
**(A.K. Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson

