

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 26/RP/2017
in
Petition No. 85/TT/2015**

- Subject** : Review of Commission's order dated 24.2.2017 in Petition No. 85/TT/2015 pertaining to approval of transmission for 8 nos. Assets under Eastern Region Strengthening Scheme (ERSS-III) for the period 2014-19.
- Date of Hearing** : 16.10.2018
- Coram** : Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member
- Petitioner** : PGCIL
- Respondents** : North Bihar Power Distribution Company Ltd &Ors.
- Parties present:** ShriSitesh Mukherjee, Advocate, PGCIL
ShriDivyanshu Bhatt, Advocate, PGCIL
ShriArjunAgarwal, Advocate, PGCIL
Shri S.S. Raju, PGCIL
ShriAmitYadav, PGCIL
Shri R.B. Sharma, Advocate, BSP(H)CL

Record of Proceedings

During the hearing learned counsel for the Petitioner submitted that the Commission had not considered the relevant material facts related to the time over-run in the commissioning of the transmission assets at Lakhisarai Sub-station and ChaibasaSub-station. Accordingly, he prayed that the time over-run may be condoned for the following reasons:-

- (a) As regards the delay in acquisition of land (pertaining to Lakhisarai), the Commission had erred in holding that no documentary evidence was submitted by the Petitioner to substantiate the time over-run. There were persistent follow ups by PGCIL for expediting the acquisition process and the same corroborated through various letters to the concerned authorities.
- (b) PGCIL had followed up with the Land Acquisition Authorities for the period between 9.8.2010-2.10.2010, but the same was not considered by the Commission while passing the said order.
- (c) From the correspondences exchanged between PGCIL and the State



Government Authority, it is evident that PGCIL had diligently pursued with the concerned Authorities to expedite the process of land acquisition. The time over-run of 12 months was, however, due to reasons beyond its control.

- (d) For the period of delay from August, 2010 to 27.5.2013, the Commission had failed to appreciate that during this period PGCIL, after getting possession of the requisite land, was undertaking the construction activity related to the sub-station and the transmission assets. As per standard practice, it takes 20 months from construction activities and in case of flood situation, it takes additional two months. PGCIL commissioned the system on 1.6.2014.
- (e) PGCIL had also submitted the rainfall data in Lakhisarai during September to October, 2012 which was 60% higher than the year 2011. Also from the photographs submitted, the magnitude of the devastation appears to be heavy and the work could not be undertaken immediately. Hence, the delay of two months which is beyond the control of PGCIL may be condoned on this ground.
- (f) As regards Chaibasa Sub-station, the delay for the period from 22.10.2010 to 19.5.2011 was beyond the control of PGCIL and the same should have been condoned by the Commission taking into account the material evidence filed by PGCIL on record.
- (g) In respect of the delay from 14.12.2011 to 16.12.2012, the Commission failed to appreciate the correspondences made between PGCIL and the Authorities with regard to land acquisition and the section 6 notification by the State Government.
- (h) The Commission failed to consider the chronology of events submitted by PGCIL with regard to process of acquisition of land and the regular follow-up by PGCIL resulting in the land being handed over to PGCIL in April, 2013.
- (i) Though the effective date was 1.2.2012, due to land acquisition problem and unprecedented rain PGCIL had lost 48 months at the start of the Commissioning work. This delay is not attributable to PGCIL and the delay may be condoned. PGCIL is therefore entitled to IDC and IEDC consequent upon condonation of the aforesaid delays.

2. Based on the above, learned counsel for the Petitioner prayed that the order dated 24.2.2017 may be modified and tariff may be revised after condonation of delay and allowing IDC and IEDC.

3. In response, the learned counsel for the Respondent- BSP(H)CL objected to the above submissions and mainly submitted as under:-



- (a) The tabulated details of time over-run furnished by the Petitioner only indicate the action on the part of the Petitioner except in few instances where land acquisition authorities have instructed the Petitioner to perform certain functions. Even otherwise the justifications submitted by the Petitioner, if not expressly granted, shall be deemed to have been refused (Commission's order dated 27.8.2007 in Review Petition No. 70/2007 referred to).
- (b) The Commission in its order had examined the documents and the submissions of the Petitioner and have clearly observed that it was difficult to assess the time taken at various stages of land acquisition. Moreover, the Petitioner had not submitted the supported documents like DPR, CPM Analysis and PERT chart/Bar chart. Therefore, the prayer of the Petitioner to condone the delay is liable to be rejected.
- (c) Though the Petitioner had submitted the images of rain affected areas, it has not submitted any valid documentary evidence to substantiate that rain and water accumulation was abnormal and hence the delay was not condoned. As regards, submission of photograph as justification for delay, the APTEL in its judgment dated 13.8.2015 in Appeal No. 281 of 2014 had held that filing of any photograph does not by itself lead to the proof of the facts shown in the photograph. Hence, there is no scope of review on this ground.
- (d) Reply filed in the matter may be considered during disposal of this petition.

4. Accordingly, the Commission after hearing the parties reserved its order in the petition.

By order of the Commission

sd/
(B.Sreekumar)
Dy. Chief (Law)

