

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 25/RP/2018
in Petition No. 108/TT/2016**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order : 30.12.2019

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 15.5.2018 in Petition No. 108/TT/2016.

And in the matter of:

Teestavalley Power Transmission Ltd.
2nd Floor, Vijaya Building
17, Barakhamba Road, New Delhi – 110001

.....Review Petitioner

Vs

1. Teesta Urja Ltd.
2nd Floor, Vijaya Building
17, Barakhamba Road, New Delhi-110001
2. PTC India Ltd.
2nd Floor, NBCC Tower
15, Bhikaji Cama Place, New Delhi – 110066
3. Energy and Power Department
Government of Sikkim
Kazi Road, Gangtok – 737101, Sikkim
4. Sneha Kinetic Power Projects Pvt. Ltd.
Sonam Complex, Jeevan Theng Marg Development Area
Near Little Pixel International School,
Gangtok – 737101, Sikkim
5. Powergrid Corporation of India Ltd.
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk
Gurgaon – 122001, Haryana
6. Punjab State Power Corporation Ltd.
The Mall, Patiala – 147001, Punjab



7. Uttar Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Plot No. C16, Sector-6
Panchkula – 134109, Haryana
8. Dakshin Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Vidyut Nagar,
Hisar – 125005, Haryana
9. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6
Panchkula – 134109, Haryana
10. Ajmer Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road
Ajmer– 305004, Rajasthan
11. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath
Jaipur - 302005, Rajasthan
12. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House, Industrial Area
Jodhpur – 342003, Rajasthan
13. Rajasthan Urja Vikas Nigam Ltd.
Vidyut Bhawan, Janpath
Jyoti Nagar Jaipur – 302005, Rajasthan
14. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawa, 14, Ashok Marg
Lucknow – 226001, Uttar Pradesh

...Respondents

- For Review Petitioner** : Shri Ankur Gupta, Advocate, TPTL
Ms. Sharda, TPTL
Shri Jaideep Lakhtakia, TPTL
- For Respondents** : Shri S.K Aggrawal, Advocate, Rajasthan Discoms
Ms. Preeti Saxena, Advocate, Rajasthan Discoms
Ms. Shikha Saloni, Advocate, Rajasthan Discoms

ORDER

Teestavalley Power Transmission Ltd. (“TPTL”) has filed the instant Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103



of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 15.5.2018 in Petition No. 108/TT/2016.

Background

2. TPTL filed Petition No. 108/TT/2016 for determination of tariff of Circuit No. 2 and Circuit No. 1 (a) of 400 kV D/C Teesta III-Rangpo Section of 400 kV D/C Teesta III-Kishanganj Transmission Line (hereinafter referred to as "transmission assets") for the 2014-19 period in terms of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "2014 Tariff Regulations"). The tariff for the said assets was allowed by the Commission vide order dated 15.5.2018.

3. As per the Investment Approval, the instant project was scheduled to be put into commercial operation within 35 months from the date of financial closure and the financial closure was on 31.3.2010. Accordingly, the instant assets were scheduled to be put into commercial operation on 28.2.2013. The COD of Circuit (2) and 1(a) was approved by the Commission as 17.1.2017 and 14.4.2017 respectively and thus there was time over-run in case of both the assets. The time over-run from the scheduled COD of the respective assets upto 30.6.2016 was condoned in the order dated 15.5.2018 on the ground of RoW issues and other reasons. However, the time over-run from 1.7.2016 upto their approved dates of commercial operation was not condoned as the Review Petitioner did not explain the reasons for the time over-run for the said period.

4. Aggrieved with the Commission's decision of non-condonation of time over-run from 1.7.2016 to the COD of the respective assets in order dated 15.5.2018, TPTL has filed the instant Review Petition. Besides this, TPTL has further contended that the Commission has erroneously deducted an amount of ₹858.01 lakh twice in case



of Circuit No.2 in the said impugned order. TPTL has sought review of the above two findings of the Commission in order dated 15.5.2018 in Petition No.108/TT/2016.

5. TPTL has made the following prayers:-

“a) Admit the Review Petition,

b) Allow the present Review Petition on the aspects limited to non-condonation of delay for the period 1.7.2016 to 14.11.2016

c) Reinstate the amount of ₹858.01 lakh, deducted from the Hard Cost of Circuit No.2, and

d) Pass such further order(s) or direction(s) as the Commission may deem fit and proper in the facts and circumstances of the case.”

Submissions of TPTL

6. TPTL has made the following submissions in support of the instant Review Petition.

(a) Time over-run in case of the instant transmission assets for the period 1.7.2016 to 14.11.2016 i.e. 4 months and 13 days, was not condoned on the ground that TPTL did not explain the time taken for stringing of Circuit No. 2 and Circuit No. 1(a). However, specific submissions were made in the main petition for the said duration of time over-run but the Commission inadvertently did not take into consideration the time over-run after the Hon'ble High Court of Sikkim disposed the case filed by the land owners vide order dated 26.3.2016 in favour of TPTL and thereby vacating the stay against stringing work.

(b) In spite of High Court decision, landowners did not allow stringing works. TPTL vide letter dated 30.3.2016 requested Superintendent of Police, East Sikkim to intervene to enable completion of the instant transmission assets. A Committee was formed by Government of Sikkim on 8.4.2016 to resolve ROW issues. However, the matter remained unresolved and was only resolved with the intervention of the district administration on 25.9.2016. As per the



compliance report submitted to CEA, the work was completed before 15.11.2016.

(c) The above facts were not considered in order dated 15.5.2018, thereby resulting in non-condonation of delay for the period 1.7.2016 to 14.11.2016 i.e. 4 months and 13 days. This is error apparent on the face of the record which is required to be corrected. As such, condone the time over-run of 4 months and 13 days and allow capitalisation of IDC and IEDC of the said period.

(d) An amount of ₹858.01 lakh has been deducted twice in respect of Circuit No.2 from the hard cost as on COD and total IDC and IEDC claimed as on COD which is contrary to the Petitioner's Audited Certificate dated 15.9.2017. Deduction of ₹858.01 lakh twice is apparent error and hence the said amount of ₹858.01 lakh should be included in the Hard Cost of the Circuit No. 2 as it is already reduced from IEDC in Para 53 of the impugned order.

(e) The grounds raised in the instant Review Petition falls within the scope of error apparent on the face of record or for any other sufficient reason as mandated in Order 47 Rule 1 of the Civil Procedure Code, 1908.

7. The Review Petition was admitted on 30.1.2019 and notices were issued to the Respondents. Respondent Nos. 10 to 13 namely Ajmer Vidyut Vitran Nigam Ltd., Jaipur Vidyut Vitran Nigam Ltd., Jodhpur Vidyut Vitran Nigam Ltd. and Rajasthan Urja Vikas Nigam Ltd. (hereinafter collectively referred to as Rajasthan Discoms) have filed reply vide affidavit dated 2.5.2019 to the Review Petition. In response, TPTL has filed its rejoinder to the reply filed by Rajasthan Discoms vide affidavit dated 30.5.2019.



Reply of Rajasthan Discoms

8. Rajasthan Discoms have made the following submissions in their reply filed by affidavit dated 2.5.2019:-

(a) The Commission has considered the time over-run in case of subject assets in the order dated 15.5.2018 and rejected the claim of TPTL for the period from 1.7.2016 to 14.11.2016 as the main petition is silent about the reasons of time over for the said period.

(b) The Commission considered the submissions made by TPTL in the main petition and thereafter disallowed a part of the time over-run. TPTL is attempting to contest a settled and decided issue. The instant Review Petition is an appeal in disguise, which may be rejected in limine. In terms of the ruling of the Hon'ble Supreme Court in Vijay Sharma vs State (NCT of Delhi) in (2018) 8 SCC 186, TPTL cannot re-agitate same issue again by way of a Review Petition.

(d) The cost disallowed is justified as IEDC claimed is higher than 5% of the hard cost and there is no discrepancy in disallowance of an amount of ₹858.01 lakh.

Rejoinder of TPTL

9. TPTL, in response to the reply of Rajasthan Discoms, has submitted the following clarifications vide affidavit dated 30.5.2019.

(a) The letter to the Superintendent of Police dated 30.3.2016 and notification of Government of Sikkim dated 8.4.2016 were annexed to the main petition clearly indicate that RoW issues were not resolved in spite Hon'ble High Court of Sikkim order dated 26.3.2016. TPTL has filed additional documents in Para 3.4 of the Review Petition to underline the RoW issues beyond 26.3.2016.



(b) TPTL vide letter dated 17.8.2016 to the District Collector, East Sikkim, apprised that out of the total length of 35.688 km of the priority section, 34.188 km was completed and only 1.5 km comprising three sections was pending for stinging due to hindrances created by land owners. Order dated 19.8.2016 of the Court of District Magistrate, East Sikkim, clearly brings out TPTL having sought police protection, the approval obtained under Section 68 of the Electricity Act, 2003 powers of Telegraph Authority bestowed on TPTL and the obligation of TPTL to pay only the compensation charges for damages to property. The order concludes that TPTL is permitted to exercise its power to place the transmission lines and posts as per the approvals and established norms.

(c) As regards issue of capping of IEDC @ 5%, TPTL has already filed an Appeal No. 356/2018 which is pending before APTEL. Therefore, in summation, the restricting IEDC @ 5% of Hard Cost is not justified. The Commission has disallowed the IEDC of the Circuit No. 2 and Circuit No. 1 (a) by restricting it to 5.00% of the hard cost based on the Abstract Cost Estimate. Such capping has been done by quoting mere precedence and is not in accordance with the Tariff Regulations.

Analysis and Decision

10. We have considered the submissions of TPTL and Rajasthan Discoms. As per the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908, any person feeling aggrieved by any order may apply for review on the following grounds:-

- a) Discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when order was made, or



- b) On account of some mistake or error apparent on face of record, or
- c) For any other sufficient reason.

11. TPTL has sought review of the order dated 15.5.2018 on the grounds that there are errors apparent on the face of record and there are sufficient reasons for review. TPTL has sought review of the order dated 15.5.2018 on the issue of disallowance of part of the time over-run and double deduction of an amount of ₹858.01 lakh. As regards the issue of disallowance of time over-run from 1.7.2016 to 14.11.2016, TPTL has contended that in spite of specific submissions made in the main petition, time over-run on account of delay in stringing work due to issues with land owners has not been condoned. Rajasthan Discoms in response have contended that the submissions of TPTL were duly considered based the materials available on record and TPTL cannot now raise new facts which were not part of record in the original petition.

12. It is observed that the Commission considered the time over-run due to land-owners resistance beyond the vacation of stay by order of Hon'ble High Court of Sikkim dated 26.3.2016, up to 30.6.2016. Further, the Commission while arriving at its finding of condonation of delay due to RoW issues also took into consideration all the documents on record. In support of its claim for condonation of time over-run beyond 30.6.2016, TPTL has not placed any document on record in the main petition. The documents submitted by TPTL were already considered in the order dated 15.5.2018 and there is no merit in TPTL's contention that the documents submitted by TPTL were not considered by the Commission.

13. TPTL has submitted two set of documents in the instant Review Petition as "Annexure 2 – High court order and Correspondence between TPTL & respective authorities," and "Annexure 3 – Correspondence between TPTL & respective



authorities". The documents at Annexure 2 were filed by TPTL in the main petition and they were already considered by the Commission in order dated 15.5.2018 as stated above. TPTL has filed four documents as Annexure 3 in the instant Review Petition, which were not submitted in the main petition. These documents are dated 3.5.2016, 17.8.2016, 19.8.2016 and 8.9.2016. Two of the documents were written by TPTL, one document is from Energy and Power Department, Sikkim to TPTL and the other is an order issued by District Magistrate, East Sikkim where TPTL is a party. Thus, all the four documents were in the knowledge of TPTL. The Commission, vide Record of Proceedings dated 11.7.2017 in main petition, directed TPTL to submit the detailed reasons and chronology of time over-run alongwith documentary proof and TPTL vide affidavit dated 8.9.2017 submitted the documents in support of its claim. Thus, TPTL had been given opportunity in 2017 in the main petition to submit the reasons for time over-run alongwith documentary proof. However, TPTL did not file these documents in the main petition and has filed them now in the instant Review Petition. During the hearing in the instant matter on 22.1.2019, learned counsel for TPTL submitted that the letter dated 17.8.2016 addressed to the District Collector, East Sikkim and 8.9.2016 requesting Superintendent of Police, East Sikkim to intervene and provide police protection to TPTL site officials were not readily available with it and it came in its possession subsequently. Both the letters referred by TPTL during the hearing were written by TPTL and the other two documents filed as Annexure 3 in the instant Review Petition were within the knowledge of TPTL. We are not able to agree with TPTL that the said documents were not in its possession during the proceedings in the main petition. We are of the view that TPTL has failed to exercise due diligence in bringing facts on record and its failure cannot be entertained at the stage of review ignoring the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908, Thus, there is no error on the face of record or other



sufficient reason which mandates review or modification of the Commission's decision to disallow part of the time over-run.

14. The second contention of TPTL was that an amount of ₹858.01 lakh was deducted twice in respect of Circuit No.2, from the hard cost and from the total IDC and IEDC, which is not as per TPTL's Audited Certificate dated 15.9.2017. In response, the Rajasthan Discoms have contended that cost disallowed is justified as IEDC claimed is higher than 5% of the hard cost and there is no discrepancy in concluding the same. On re-examination, it is observed that in the order dated 15.5.2018, inadvertently ₹858.01 lakh was deducted twice, which needs to be corrected. Therefore, review of order dated 15.5.2018 on this account is allowed.

15. Accordingly, the tariff allowed for instant assets shall be revised at the time of truing up of the tariff of 2014-19 period to the extent of double deduction of IEDC. All other terms of the order dated 15.5.2018 shall remain unchanged.

16. Review Petition No. 25/RP/2018 is disposed of in terms of the above.

sd/-

(Dr. M.K. Iyer)
Member

sd/-

(P.K. Pujari)
Chairperson

