

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 23/RP/2014
in
Petition No. 71/MP/2014**

**Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S.Bakshi, Member**

**Date of Hearing: 27.11.2014
Date of order: 05.01.2015**

In the matter of

Review of the order dated 2.7.2014 passed by the Commission in Petition No. 71/MP/2014 titled as "Power Grid Corporation of India Limited Vs Western Region Transmission (Maharashtra) Private Limited".

**And
In the matter of**

Western Region Transmission (Maharashtra) Private Limited
12th Floor, Building No.10 B,
DLF Cyber City,
Guargaon-122 002

....Review Petitioner

Vs

1. Power Grid Corporation of India
B-9, Qutab Institutional Area
Katwaria Sarai,
New Delhi-110 016
2. MP Power Trading Company Ltd.
Shakti Bhawan, Rampur,
Jabalpur:482008
3. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Race Course Road,
Vadodara-390007

4. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL),
Prakashgad, Bandra (East),
Mumbai-400051

5. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL),
Vidyut Seva Bhavan, P.O. Sundernagar,
Danganiya, Raipur-492013

6. Government of Goa, Electricity Department
Vidyut Bhavan,
Panaji, Goa-403001

7. Electricity Department, Administration of Daman & Diu
Secretariat, Fort Area, Moti Daman,
Daman-396220

8. Electricity Department
Govt. of UT of Dadra & Nagar Haveli,
Silvassa-396230

9. M.P.Audyogik Kendra Vikas Nigam Ltd.
3/54, Press Complex, Agra Mumbai Road,
Indore-452 008.

.....Respondents

The following were present:

Shri Amit Kapur, Advocate for the Review Petitioner
Shri Vishnu Sudarsan, Advocate for the Review Petitioner
Shri Devashesh Marwah, Advocate for the Review Petitioner
Ms. Sugandha Somani, Advocate for the Review Petitioner
Shri L.N.Mishra, WRTMPL
Shri Naveen Nagpal, WRTMPL
Shri Rupin Rawat, WRTMPL
Shri Krishna Keshav, Advocate, PGCIL
Shri S.M.Sinha, PGCIL
Shri R.K.Dutta, PGCIL
Shri Ajasra Gupta, MPPMCL

ORDER

The Review Petitioner, Western Region Transmission (Maharashtra) Private Limited (WRTMPL), has filed this Review Petition for seeking review of the Commission`s order dated 2.7.2014 in Petition No. 71/MP/2014, filed by Power Grid

Corporation of India Limited for extension of Required Commercial Operation Date (RCoD) of Western Region System Strengthening Scheme-II, Project B on account of events analogous to force majeure which have occurred subsequent to the award of the project.

2. The Review Petitioner has sought review of the impugned order on the following grounds:

(a) WRTMPL has never accepted before this Commission or any other stakeholder that the extension of RCoD will not have any impact on the transmission charges payable by the beneficiaries of the project.

(b) The petition was listed for the first time before this Commission on 22.5.2014 on admission. On that date, as a respondent, there was no occasion for WRTMPL to have filed a reply or to have made a statement. In fact, WRTMPL did not accept that extension in RCoD would not have any impact on the transmission charges. WRTMPL specifically contended that since PGCIL's petition was limited to the issue of extension of RCoD of the project, any contention regarding impact on transmission charges was beyond the scope of the original petition.

(c) WRTMPL did not approach PGCIL on the issue of transmission charges, since the latter does not have jurisdiction on the subject matter which is to be approved by this Commission.

3. The Review Petitioner has submitted that during the course of hearing on 22.5.2014 in Petition No. 71/MP/2014, learned counsel for WRTMPL had submitted as under:

(a) WRTMPL was not opposed to admission of the matter and was agreeable to PGCIL`s submission only in so far as it related to the extension of RCoD up to 1.1.2014;

(b) PGCIL`s petition was limited to seeking extension of RCoD and the issue of alteration of transmission charges was not within the scope of the PGCIL`s petition and was a separate matter;

(c) It was a settled position of law that when there is a delay in execution of a project due to events which are beyond the control of the parties, benefit of additional costs incurred due to time over-run should be provided to the developer.

(d) WRTMPL requested the Commission not to make any observations with respect to transmission charges.

4. The Review Petitioner has submitted that WRTMPL neither in any written pleading nor in the hearing before the Commission accepted that extension of RCoD would not have any impact on the transmission charges. The Review Petitioner has submitted that no specific claims pertaining to enhancement of transmission charges have been raised by WRTMPL from PGCIL. The Review Petitioner has submitted that PGCIL is not the appropriate authority to be approached for any issue relating to tariff of

the project. The Review Petitioner has submitted that WRTMPL intends to file a separate petition on the issue of enhancement of transmission charges before the Commission and accordingly, during the hearing on 22.5.2014 in Petition No. 71/MP/2014, WRTMPL had requested the Commission not to make any observation with regard to tariff which is outside the scope of the said petition.

5. The Review Petitioner has submitted that observation of the Commission in para 10 of the order that "WRTMPL has accepted that the extension of RCoD would not have any impact on the transmission charges payable by the beneficiaries" is an error apparent on the face of record.

6. Accordingly, the Review Petitioner has made the following prayers:

- "(a) Admit the present review petition;
- (b) Modify the order dated 2.7.2014 in Petition No. 71/MP/2014 in terms of the submissions made in the present review petition and
 - (i) To record submissions made by WRTMPL during the course of the hearing in Petition No.71/MP/2014 on 22.5.2014 being:
 - a. That WRTMPL was not opposed to admission of the matter and was agreeable to PGCIL's submissions only in so far as they related to the extension of RCoD up to 1.1.2014;
 - b. That PGCIL petition was limited to seeking extension of RCoD and the issue of alteration of transmission charges was not within the scope of the PGCIL Petition and was a separate matter;
 - c. It is settled position of law that when there is a delay in execution of a project due to events which are beyond the control of the parties, benefit of additional costs incurred due to time over-run should be provided to the developer;
 - d. That the Hon`ble Commission may not pass any observations with respects to transmission charges.
 - (ii) to limit the scope of the Impugned order to extension of RCoD without any observation on transmission charges.

(c) Pass such order as this Hon`ble Commission may deem fit and proper in the facts and circumstances of the case."

7. The matter was heard on 21.8.2014. The respondents, vide Record of Proceedings for the hearing dated 21.8.2014, were directed to file their replies on admission. Power Grid Corporation of India Limited (PGCIL) and M.P Power Management Company Limited (MPPMCL) have filed their replies.

8. PGCIL in its reply dated 11.9.2014 has submitted as under:

(a) On various occasions, WRTMPL sought extension of RCOD which was not accepted by PGCIL. However, PGCIL vide its letters dated 17.2.2012, 14.3.2013 and 30.8.2013 requested the Review Petitioner to complete the project within timelines stipulated in the said letters and the Review Petitioner was also informed that it would not be entitled for enhancement of tariff on account of delay in execution of the project.

(b) The Review Petitioner has accepted the aforesaid stand of PGCIL without any protest through acknowledgment of all the said letters. As per Implementation Agreement (IA) entered into between WRTMPL and PGCIL, the Review Petitioner is responsible to seek approval of the transmission service charges from this Commission. However, IA does not provide for enhancement or change of transmission service charge.

(c) The role of PGCIL under IA is primarily of a facilitator for execution of the project by the Review Petitioner and beneficiaries of the transmission line will pay the transmission charges to the Review Petitioner.

(d) Pursuant to the various orders regarding extension of RCoD and in terms of IA as amended from time to time, PGCIL vide its letter dated 8.9.2014 extended the RCoD to 1.1.2014 on the ground of events analogous for force majeure and in the said letter dated 8.9.2014, it was reiterated that the Review Petitioner shall not be entitled for any enhancement of tariff on account of extension of RCoD.

9. The Review Petitioner in its rejoinder dated 19.9.2014 to the reply of PGCIL has submitted as under:

(a) On 7.10.2010 and 13.10.2010 WRTMPL issued communications to PGCIL requesting for extension in RCoD of the project by nine months on account of reasons beyond the control of WRTMPL under Clause 4.3 (iii) of IA, without seeking any enhancement in transmission charges, the same being out of the jurisdiction of PGCIL. PGCIL vide its letter dated 4.11.2010 forwarded the said communications of WRTMPL to this Commission which was treated as Petition No. 296/2010. The only purpose of this petition was to seek extension of RCoD and complete the project at the earliest. The project was under implementation and partially completed, the assessment of cost-over-run was not feasible and hence the Review Petitioner did not seek any enhancement of transmission service charges on account of extension of RCoD during the proceeding of Petition No. 296/2010.

(b) WRTMPL did not approach PGCIL for transmission tariff related issues since PGCIL does not have the power/jurisdiction on any tariff related issues with regard to the project.

(c) WRTMPL is obligated to consult PGCIL on all implementation aspects of the project in terms of the IA. However, transmission service charge has been kept beyond the realms of the IA and will be as approved by this Commission. The review petitioner has submitted that in terms of Clause 5.1 (ii) of the IA, this Commission has the jurisdiction for approving financial compensation over and above the approved transmission service charges.

10. M.P Power Management Company Limited (MPPMCL) in its reply dated 13.11.2014 has submitted that on or before the date of hearing of the Petition No. 71/MP/2014, Review Petitioner never requested for grant of time to file its reply and written submission. The Review Petitioner has not corrected or countered the submission made by senior counsel for PGCIL during the hearing. If the Review Petitioner would not have been in total agreement on the issue with PGCIL, it would have, very conveniently, chosen to counter it then and there or to file a reply specifically disputing and denying that proposed extension of RCoD would have a bearing on transmission charges. However, the Review Petitioner, in full agreement with submission of PGCIL conceded to the prayers in Petition No. 71/MP/2014. MPPMCL has submitted that since the tariff of the project has been adopted under Section 63 of the Act, the impact of transmission charges on account of extension of RCoD is not permissible. MPPMCL has further submitted that the Review Petition may be dismissed with costs as the impugned order does not suffer from any error, or illegality.

11. During the course of hearing on 27.11.2014, learned counsel for the petitioner requested to review and rectify the impugned order to the effect that WRTML accepted

PGCIL's submissions only in so far as they related to the extension of RCoD of Project B and any impact of the extension of RCoD on the transmission charges payable by the beneficiaries would be subject to approval of the Commission. Learned counsel for PGCIL submitted that the role of PGCIL under the IA is primarily of a facilitator for the execution of the project by the Review Petitioner and the beneficiaries of the Project are liable to pay the transmission charges to the Review Petitioner.

Analysis and Decision

12. We have heard learned counsels for the Review Petitioner and PGCIL and perused the documents on record. In the present petition, the Review Petitioner has sought review of the order of the Commission dated 2.7.2014 on the ground that the finding recorded in para 10 of the impugned order is not as per the submission of the counsel for WRTMPL. The Review Petitioner has prayed to limit the scope of the impugned order to extension of RCoD without any observation on transmission charges.

13. The Commission under Section 94 of the Electricity Act, 2003 has the power to review its order on one of the three grounds, namely, error apparent on the face of record, discovery of new and important matter or evidence which after due diligence was not within the knowledge or could not be produced by the Review Petitioner when the order was made, and due to any sufficient reasons. The Review Petitioner has sought review of the impugned order on the ground of error apparent on the face of the record. According to the Review Petitioner, the impugned order stipulates that WRTMPL has accepted that extension of RCoD would not have any impact on the transmission charges and the said observation is contrary to the express submission

made by its counsel during the hearing on 22.5.2014, in the Petition No. 71/MP/2014 and also for the same reason that the Review Petitioner has not accepted the same in its communication exchanged with PGCIL.

14. We have to consider the submissions of the Review Petitioner in the light of the facts leading to the issue of the impugned order:

(a) The petitioner has been approaching PGCIL for extension of RCoD of the project from time to time for various reasons. The Review Petitioner first approached PGCIL for extension of time for execution of the project vide letters dated 7.10.2010 and 13.10.2010. The said letters were sent by PGCIL to the Commission which were treated as Petition No. 296/2010. The Commission after hearing PGCIL, respondent beneficiaries and the Review Petitioner, vide order dated 31.12.2010 issued the following directions:

“15. The next question arises as to what relief can be granted by the Commission to the petitioners on account of delay in commencement of the project for the reasons beyond their control. The petitioners have written the letters dated 7.10.2010 and 13.10.2010 to the Respondent No. 1 for extension of time in terms of the under clause 4.3(iii) of the Implementation Agreement which have been forwarded by Respondent No. 1 to the Commission for perusal. The Commission had to intervene and treat the letters as a petition considering the indifferent attitude shown by Respondent No. 1 to take appropriate decision in accordance with the Implementation Agreement. The representative of Respondent No. 1 during the hearing had explained that the letters were forwarded to the Commission since the Commission had extended the RCoD while granting licence to the Petitioners. We reiterate that the Commission had no intention to intervene in a matter which is governed by the terms and conditions of Implementation Agreement between the petitioners and the Respondent No. 1. The Commission in its order dated 30.12.2008 while granting the licences to the petitioners had to issue appropriate directions to the beneficiaries to sign the PTA and granted 24 months time for completion of the project while denying any increase in the transmission service charges to the petitioners by virtue of extension of time in order to ensure that the commencement of work on the project is not further delayed.”

(b) In pursuance of the above directions of the Commission, the PGCIL vide its letter dated 10.3.2011 extended the RCoD of the project upto 31.8.2011. In para 4.0 of the letter it has been mentioned that WRTMPL shall not be entitled for any enhancement of tariff on account of extension of RCoD.

(c) Subsequently, the petitioner approached PGCIL for extension of RCoD vide its letter dated 22.8.2011 which was considered by PGCIL in consultation with the beneficiaries. PGCIL vide its letter dated 17.2.2012 permitted time till 30.11.2012 to the Review Petitioner to complete the project with the condition that WRTMPL shall not be entitled to any enhancement of tariff on account of delay in execution of the project.

(d) Again, the Review Petitioner vide its letter dated 22.11.2012 approached PGCIL for extension of RCoD. PGCIL vide its letter dated 14.3.2013 after consultation with the beneficiaries of the project extended time till 31.5.2013 for extension of RCoD. PGCIL vide its letter dated 30.8.2013 after consultation with the beneficiaries had extended the time till 30.9.2013 for completion of the project with the following condition:

"8.0 M/s WRTMPL shall not be entitled for any enhancement of tariff on account of delay in the execution of Western Region System Strengthening Scheme-II (Project-B)."

There is nothing on record which states that the Review Petitioner had opposed the conditions laid down by PGCIL regarding enhancement of tariff.

(e) The Review Petitioner in its letter dated 7.2.2014 apprised PGCIL about the various force majeure events affecting the schedule of completion of the project. In para 12 of the said letter, it has been stated as under:

"12. On account of the above description and settled position of law, it may be stated that issues on account of which the Project got delayed were beyond the control of WRTML and hence are akin to Force Majeure events and it is requested that RCoD of the project may be re-fixed as 1st January, 2014.

(f) For considering the request of Review Petitioner for extension of RCoD, PGCIL appointed a Committee, which gave its recommendations that the events are beyond the control of the Review Petitioner. PGCIL in para 28 (h) of the main petition submitted as under:

"h. Accordingly, the Committee opined that RCoD may be extended up to 1.1.2014. With regard to interest of the beneficiaries, Respondent No. 1 has already acknowledged our earlier letters that extension of RCoD of the project would not have any adverse impact on transmission charges payable by the beneficiaries and shall remain unaltered as indicated in the Power Transmission Agreement (PTA). ..."

No document has been placed on record which states that the Review Petitioner was not agreeable to the recommendations of the Committee appointed by PGCIL.

(g) Based on the recommendations of the Committee, PGCIL filed the petition for extension of RCoD to 1.1.2014. Para 30 of the petition is relevant which is extracted as under:

"30. Further, the role of the petitioner under the IA is primarily of a facilitator for execution of the project by the respondent No. 1, WRTMPL. The real beneficiaries of the project are the respondent no. 2 to 9, who will pay the transmission charges to the WRTMPL i.e. respondent No. 1. The transmission charges shall not be altered even if the RCoD is extended on the ground of

circumstances analogous to the force majeure event. However, the said beneficiaries have opposed the extension of RCoD beyond 31.8.2011."

15. From the above, it is evident that PGCIL has been extending the time for execution of the project with the condition that the Review Petitioner would not be entitled for enhancement of transmission charges on account of such extension. It is noteworthy that PGCIL has not agreed to the extension of RCoD beyond 1.8.2011 even though it has allowed extension of time for completion of project. After commercial operation of the project with effect from 1.1.2014, the Review Petitioner approached PGCIL for extension of RCoD. PGCIL constituted a Committee and based on its recommendation decided to extend RCoD. PGCIL approached the Commission as the beneficiaries were not agreeable to extension of RCoD. Throughout the entire period, the Review Petitioner has not challenged any of the letters issued by PGCIL for extension of the time for completion of the project subject to the condition that the Review Petitioner would not be entitled for revision of transmission charges. Taking note of the fact that the Review Petitioner has been accepting the conditions imposed by PGCIL after consultation with the beneficiaries regarding non-revision of transmission charges at the time of extension of RCoD, the Commission directed PGCIL and the Review Petitioner to mutually decide the RCoD as recommended by the Committee. In view of the above, we do not find any error in the impugned order and the Review Petition is accordingly dismissed.

Sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(M.Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson