

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No.7/IA/2018 in Petition No. 187/MP/2015

Coram:

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

Date of Order : 18th of January, 2019

In the matter of:

Application under Section 94(2) of the Electricity Act, 2003 for expunging portions of the order dated 11.10.2017 passed in Petition No. 187/MP/2015

And in the matter of:

Power Grid Corporation of India Limited,
'SAUDAMINI', Plot No-2,
Sector-29, Gurgaon – 122001 (Haryana)

...Applicant/Respondent

Vs

Essar Power Gujarat Limited (EPGL)
Equinox Business Park 5th Floor,
Tower-2, Bandra-Kurla Complex
L.B.S. Marg, Kurla (W)
Mumbai-40070

.... Respondent/Petitioner

And in the matter of:

Petition under Section 79 (1) (f) and (k) of the Electricity Act, 2003, in connection with the disputes and differences arising under the Transmission Agreement dated 3.1.2011 between ESSAR Power Gujarat Ltd. and Power Grid Corporation of India Ltd and abeyance of connectivity, in respect of the ESSAR Gujarat TPS Bachau 400 kV D/C (Triple) line and extension of Bachau Sub-station.

For Applicant/Respondent : Shri S. B. Upadhyay, Senior Advocate, PGCIL
Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Parichita Choudhary, Advocate, PGCIL
Shri S. K. Venkatesan, PGCIL



Shri Pankaj Sharma, PGCIL
Shri V. P. Rastogi, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri Zafrul Hasan, PGCIL

For Respondent/ Petitioner : Ms. Astha Sharma Advocate, EPGL
Ms. Shilpa Singh, Advocate, EPGL
Ms. Shruti Verma, EPGL

ORDER

Power Grid Corporation of India Limited (hereinafter referred to as “PGCIL”) has filed the instant Interlocutory Application praying for expunction of certain portion of para 42 and 46 of the order dated 11.10.2017 in Petition No. 187/MP/2015.

Brief background

2. Essar Power Gujarat Limited (hereinafter referred to as “EPGL”) filed Petition No. 187/MP/2015 seeking (a) to declare that EPGL is entitled to claim *force majeure* as provided in Clause 8 of the Transmission Service Agreement with PGCIL, (b) to keep the connectivity granted to EPGL till the revised date of commissioning of generation project and (c) restrain PGCIL from making any claims for transmission charges for the connectivity line till the commissioning of the generation project. Petition No.187/MP/2015 was disposed of by the Commission vide order dated 11.10.2017 with certain directions.

3. PGCIL filed the present application being aggrieved by the observation of the Commission in Para 42 and 46 of the order dated 11.10.2017 extracted as under:-



“42. As we have held, execution of the subject transmission line was carried out by PGCIL on account of the failure of the Petitioner to provide clarity whether the transmission system is required or not. However, we feel that PGCIL in its capacity as CTU should have taken a proactive role to ensure coordinated execution and avoid mismatch between the commissioning of the generating station and transmission system. We are of the view that there is a requirement of ring-fencing between the functions of CTU and PGCIL as a transmission licensee to ensure impartiality. We request Ministry of Power to look into this aspect.”

“46. We have noticed that PGCIL has gone ahead with execution of the transmission line despite the Phase-II of the generating station of the Petitioner making zero progress on the ground. PGCIL should have explored the possibility for short closure of the contract seeing adverse progress of the generation project and claimed damages from the Petitioner which the PGCIL was liable to pay to the OEM contractor and to meet other related expenditure. As a prudent utility practice, PGCIL is directed to make appropriate provisions in the contracts with the suppliers as well as in the TSA to take care of such eventuality. In view of the above, the Commission express its displeasure towards PGCIL for not adopting prudent utility practice while executing the subject transmission system.”

4. PGCIL has submitted that though the Commission in the order dated 11.10.2017 had held that PGCIL discharged its functions as a Central Transmission Utility and as a transmission licensee was prudent while awarding the contract, the Commission had recorded contrary findings in the highlighted portions of paras 42 and 46 of the order.

5. PGCIL has submitted that if the transmission line was not required, it was duty of EPGL to inform PGCIL that the subject transmission line was not required to be constructed. It was only on 6.7.2013 that EPGL through a letter requested PGCIL to keep the transmission project in abeyance, by which time the dedicated transmission line was in the advanced stage of commissioning. PGCIL has submitted that it informed EPGL in all coordination meetings about the construction of transmission system and that EPGL would be liable to pay the same but EPGL never objected to it. PGCIL has submitted that EPGL continuously informed PGCIL that EPGL was in possession of land and construction activities are under progress. However, EPGL denied PGCIL the



access to EPGL's site for ascertaining the ongoing construction activities and to finalise the termination of the transmission line while making requests to extend the connectivity. Only on the directions of the Commission, EPGL held a meeting with PGCIL on 14.12.2015 at Salaya wherein EPGL conveyed that the gantry location was yet to be decided.

6. PGCIL has submitted that there has been no conflict in the role of PGCIL as a CTU and as a transmission licensee. As CTU, the PGCIL included the planning of the dedicated transmission line in its consolidated planning. The sequence of events with respect to approval of transmission system and discussion at various meetings establishes that the PGCIL acted diligently by adopting prudent practice for completing the transmission system. PGCIL has submitted that the finding in para 42 of the order that as CTU, the PGCIL should have played a more proactive role is contrary to the observation in para 39 wherein it was observed that PGCIL discharged its responsibility under the Act, Connectivity Regulations and the Transmission Service Agreement.

7. PGCIL has further submitted that the observations made against PGCIL in para 46 are contrary to the finding in para 36 wherein the Commission observed that on the basis of the confirmation by EPGL about the placing of award for BTG and BoP on 25.2.2010, reported substantial progress of works at site and the request of the EPGL for commissioning of the connectivity line matching with Unit 1 of the generating station in December, 2013, it cannot be said that PGCIL has not acted with due diligence while awarding the transmission package in January, 2012.



8. PGCIL has submitted that it had acted in a prudent manner while discharging its duties both as a CTU and as a transmission licensee. PGCIL has submitted that the observations made by the Commission in the order dated 11.10.2017 against PGCIL are being relied upon by EPGL in appeal and may also be relied upon by other parties. PGCIL has requested to expunge the observations made in para 42 and 46 of the order that are contrary to the findings of the Commission.

Analysis and Decision

9. We have considered the submissions of the submissions of PGCIL. The Commission based on the facts on record observed in para 36 of the order dated 11.10.2017 observed as under:-

“36. In the 4th Coordination Committee Meeting of IPPs granted/applied LTOA/LTA in WR held on 9.7.2012, the representative of the Petitioner submitted the status report of the Phase II of the generation project as under:

“They informed that 100 Ha of Govt. Land is under their possession, whereas, 77 Ha of Pvt. Land is in possession of group companies. Necessary lease agreement for the same is in process.

Fuel Linkage: For 2X660 MW FSA has been signed with Essar shipping and logistic limited for supply of imported coal from Indonesia/Mozambique and other countries. For 4X150 MW FSA has been signed with Essar Oil Ltd. dated 3.9.2010 for long term supply of pet coke from Essar refinery. POWERGRID asked them to submit a copy of the FSA.

Environment clearance in progress. Water linkage obtained. No forest is involved. Consent to establish under progress.

EPC award for BTG placed with Global Supplies (FZE) on 25.2.2010. Award of BoP placed with Essar Projects India Ltd. on 25.02.2010”

It is noticed that the representative of the Petitioner confirmed about the placing of award for BTG as well as BoP on 25.2.2010 apart from reporting substantial progress in acquisition of land, fuel linkage, environmental clearance, financial closure, start of civil works at site. According to the Petitioner, PGCIL should have called for the information in terms of proviso under Regulation 8(8) of the Connectivity Regulations before awarding the contract for the transmission line. It is pertinent to mention that the said provisos were



introduced through an amendment carried out on 22.3.2012. Award of contract for the transmission line was prior to that date and therefore, PGCIL could not be expected to comply with the regulation which was not in existence on the date of award of the contract. But the issue is whether PGCIL has made due diligence before awarding the contract for transmission system. Keeping in view the preparatory works undertaken by the Petitioner which has been noted in para 31 and 32 of the order dated 13.12.2011 in Petition No. 154/MP/2011 and the request of the Petitioner vide its letter dated 16.8.2011 for the commissioning of the connectivity line matching with Unit 1 of the generating station in December, 2013, it cannot be said that PGCIL has not acted with due diligence while awarding the transmission package in January, 2012.”

10. The Commission also took note of the fact that EPGL in its letter dated 17.8.2012 requested PGCIL to extend the date of connectivity and LTA date to March, 2016 and in the letter dated 6.7.2013 to keep the transmission project in abeyance and proceeded to consider whether PGCIL could have acted on the said request even though the contract for the packages was awarded. The observation of the Commission in para 42 of the order is extracted as under:-

“42. As we have held, execution of the subject transmission line was carried out by PGCIL on account of the failure of the Petitioner to provide clarity whether the transmission system is required or not. However, we feel that PGCIL in its capacity as CTU should have taken a proactive role to ensure coordinated execution and avoid mismatch between the commissioning of the generating station and transmission system. We are of the view that there is a requirement of ring-fencing between the functions of CTU and PGCIL as a transmission licensee to ensure impartiality. We request Ministry of Power to look into this aspect.”

11. Further in Para 46, the Commission has observed as under:-

“46. We have noticed that PGCIL has gone ahead with execution of the transmission line despite the Phase-II of the generating station of the Petitioner making zero progress on the ground. PGCIL should have explored the possibility for short closure of the contract seeing adverse progress of the generation project and claimed damages from the Petitioner which the PGCIL was liable to pay to the OEM contractor and to meet other related expenditure. As a prudent utility practice, PGCIL is directed to make appropriate provisions in the contracts with the suppliers as well as in the TSA to take care of such eventuality. In view of the above, the Commission express its displeasure towards PGCIL for not adopting prudent utility practice while executing the subject transmission system.”



12. The above observations have been made in the context of the issue whether PGCIL should have planned execution of its transmission system keeping in view the progress of the generating station, particularly when the transmission line is meant for evacuation of power from the generating station. The result of not taking a pro-active action to terminate execution of the line through foreclosure of contract on account of adverse progress of the generating project has resulted in the installation of a transmission line which cannot be put into useful service. Therefore, the observation of the Commission was in larger public interest and for future guidance of PGCIL to take care of the situations where the transmission assets would be stranded on account of non-availability of the users for whom such transmission assets were constructed. Those observations should not be construed as adverse comments on the conduct of PGCIL.

13. As regards observations in para 42, the Commission has expressed its view in a number of tariff orders and in the impugned order that there is a conflict of interest between CTU and PGCIL which needs to be resolved through proper ring fencing. These observations are advisory in nature and the Commission does not agree with PGCIL for deletion of the said observations.

14. Learned senior counsel for the PGCIL had submitted during the hearing that the last but one sentence of para 46 is being construed that PGCIL is not following prudent utility practice and the last sentence is being construed that PGCIL has been censured for not following the prudent utility practice. Keeping in view the submissions of the learned senior counsel, we modify the last but one sentence of para 46 as under:-



“PGCIL is directed to make appropriate provisions in the contracts with the suppliers as well as in the TSA to take care of such eventuality.”

Further, we delete the last sentence of para 46.

15. I.A. No. 7/IA/2018 is disposed of as above.

(Dr. M.K. Iyer)
Member

(P.K. Pujari)
Chairperson

