

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 40/MP/2019

Subject : Petition under Section 73(n), 79(1)(c) and 79(1)(f) and other applicable provisions of the Electricity Act, 2003 and in terms of the Appellate Tribunal's order dated 1.2.2019 read with order dated 7.2.2019 in Appeal Nos. 200 of 2015 and 201 of 2015.

Petitioner : Talcher II Transmission Co. Limited (TTCL)

Respondents : Power Grid Corporation of India Limited (PGCIL) and Ors.

Petition No. 41/MP/2019

Subject : Petition under Section 73(n), 79(1)(c) and 79(1)(f) and other applicable provisions of the Electricity Act, 2003 and in terms of the Appellate Tribunal's order dated 1.2.2019 read with order dated 7.2.2019 in Appeal Nos. 200 of 2015 and 201 of 2015.

Petitioner : North Karanpura Transmission Co. Limited (NKTCL)

Respondents : Power Grid Corporation of India Limited (PGCIL) and Ors

Date of Hearing : 11.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Sanjay Sen, Sr. Advocate, TTCL and NKTCL
Shri Buddy Ranganadhan, Advocate, TTCL and NKTCL
Shri Hasan Murtaza, Advocate, TTCL and NKTCL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL
Shri S. Vallinayagam, Advocate, TANGEDCO
Dr. R. Kathiravan, TANGEDCO

Record of Proceedings

The matters were listed for hearing through video conferencing.

2. Learned senior counsel for the Petitioners submitted that the present Petitions have been filed consequent to the liberty granted by the Appellate Tribunal



for Electricity (Appellate Tribunal) vide its order dated 1.2.2019 to the Petitioners to file the necessary applications for redressal of their grievances before this Commission. Learned senior counsel further submitted as under:

(a) The Petitioners are inter-State transmission licensees, which were initially set-up as Special Purpose Vehicles by REC Transmission Project Company Limited for implementation of 'Talcher-II augmentation Scheme' and 'NK Transmission Scheme' respectively. Pursuant to the Tariff Based Competitive Bidding Process, the companies were acquired by the successful bidder, Reliance Transmission Company Limited. The Petitioners have also entered into Transmission Service Agreements with the beneficiaries/Long-Term Transmission Customers (LTTCs) on 10.9.2009.

(b) The Petitioners had approached the Commission vide Petition Nos. 169/MP/2011 and 170/MP/2011, *inter-alia*, for declaration of delay in grant of authorization under Section 164 of the Electricity Act, 2003 (the Act) as force majeure event under the TSA and for extension of the date of commercial operation of the Projects. However, the Commission vide its order dated 9.5.2013 disposed of the said Petitions, *inter-alia*, holding that time taken for authorisation under Section 164 of the Act is not a force majeure event.

(c) Aggrieved by the said decision of the Commission, the Petitioners had filed Appeal Nos. 139 of 2013 and 140 of 2013 before the Appellate Tribunal. Vide judgment dated 2.12.2013, the Appellate Tribunal, *inter-alia*, held that the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure. The aforesaid judgment of Appellate Tribunal has been challenged by the LTTCs before the Hon'ble Supreme Court, which is pending for adjudication.

(d) During pendency of Petition Nos. 169/MP/2011 and 170/MP/2011, Power Grid Corporation of India Limited (PGCIL), in its capacity as Central Transmission Utility, had filed Petition Nos. 19/MP/2013 and 20/MP/2013 before the Commission, *inter-alia*, for initiation of proceedings for revocation of transmission licences under Section 19 of the Act. The Commission vide its order dated 2.9.2015 disposed of the said Petitions directing the Petitioners to submit their firm commitment and action plan to implement the transmission project within 15 days from the date of issue of the order. The Commission also observed that in case of failure to submit the firm commitment for implementation of the projects by the Petitioners, action will be initiated for revocation of licence.

(e) Against the order dated 2.9.2015, the Petitioners had filed Appeal Nos. 200/2015 and 201/2015 before the Appellate Tribunal. Based on request of the Petitioners with liberty to approach the Commission for filing the Petitions for redressing their grievances, Appellate Tribunal vide its order dated 1.2.2019 disposed of the appeals. Accordingly, the scope of the present proceedings is to revisit the situation as existed on 2.9.2015 and assess what ought to be the future course of action.

(f) In the above backdrop, the Petitioners have, *inter-alia*, prayed for an assessment as to whether the transmission projects as a whole or in part or with modification are required and, if so what should be the scope of work and



for seeking necessary advice from the CEA to assess the requirement or redundancy of the North Karanpura Transmission system and Talcher-II augmentation scheme. In the alternative, if the Projects are no longer required, the Petitioners have prayed to the Commission to pass necessary orders relieving the Petitioners from executing the Project return of the Contract Performance Guarantee/ Bank Guarantee and reimbursement of expenditure incurred on the project so far.

(f) During the course of hearing of appeals before the Appellate Tribunal, the beneficiaries/LTTCs of the transmission Projects had, *inter-alia*, raised the issue regarding the requirement of the said transmission Projects in the present circumstances. In the instant Petitions also, TANGEDCO and MPPMCL, in their replies, have stated that the said transmission Projects are not required anymore.

3. After hearing the learned senior counsel for the Petitioners, the Commission observed that the Petitioners have been granted inter-State Transmission licences for implementation of the respective transmission Projects as specified in the transmission licences read with Transmission Service Agreements. The licensees, therefore, are under obligation to implement the transmission Projects in respect of which transmission licences have been granted to them and in accordance with the terms and conditions specified in the Transmission Service Agreements. The Commission further observed that the functions of planning and co-ordination relating to inter-State transmission system and ensuring development of an efficient, co-ordinated and economical system of inter-State transmission system have been vested with Central Transmission Utility under Section 38(2)(b) and (c) of the Act and therefore CTU would be assisting the Commission to determine as to whether the subject transmission systems are required or not in the current circumstances. The Commission noted that, apart from the submissions of certain beneficiaries, there is no decision/documents indicating/establishing that the transmission Projects in questions are no longer required. Accordingly, the Commission directed the Petitioners to plead their cases on the basis that the said transmission Projects are required to be implemented as on date and to amend their Petitions including the prayers suitably by 26.6.2020. In doing so, the Petitioners are at liberty to put forth/plead various difficulties/events obstructing them from implementing the said transmission Projects.. Learned senior counsel for the Petitioners agreed and sought time to amend the Petitions and prayers accordingly.

4. The Commission further directed CTU to submit on affidavit by 15.7.2020 as to whether, in the current circumstances, the said transmission Projects are required or not after carrying out the consultations with the concerned stakeholders, including CEA. In case, the CTU fails to file the said affidavit within the stipulated time frame, it shall be presumed that the said transmission Projects are required and the Commission shall proceed with the cases accordingly.

5. Learned counsel for TANGEDCO submitted that Petitioners have also not extended the Bank Guarantees after 31.3.2020 and therefore, the Petitioners may be directed to extend the Bank Guarantee furnished under the TSA. In response, learned counsel for the Petitioners submitted that the Bank Guarantees furnished under the TSAs have been extended and the Respondents may be restrained from



taking any coercive actions pending adjudication of the present Petitions. Accordingly, the Commission directed the Petitioners to keep the Bank Guarantees furnished under the TSA alive during the pendency of the Petitions and Respondents/Beneficiaries not to take any coercive actions against the Petitioners.

6. The Petitions shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

