

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 126/MP/2017**

- Subject : Petition for declaration and direction as to the status of the 400 kV D/C Transmission Line from India Gandhi Super Thermal Power Station (Aravali Power Station) to Daulatabad owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited (HVPNL).
- Date of Hearing : 21.5.2021
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri P. K. Singh, Member
- Petitioners : Uttar Haryana Bijli Vitran Nigam Limited and Ors.
- Respondents : Power System Operation Corporation Limited (POSOCO) and 2 Ors.
- Parties Present : Shri M. G. Ramachandran, Sr. Advocate, Haryana Utilities  
Ms. Poorva Saigal, Advocate, Haryana Utilities  
Shri Sitesh Mukherjee, Advocate, POSOCO  
Shri Abhieshek Kumar, Advocate, POSOCO  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Soumya Singh, Advocate, PGCIL  
Shri Gaurav Gupta, Haryana Utilities

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned counsel for the Respondent No.2, Power Grid Corporation of India Limited (PGCIL), mainly submitted the following:

(a) Certain considerations taken into account by the Commission in its order dated 4.5.2018, in particular at paragraph 31, while granting/ allowing the reliefs prospectively from the date of issue of the order stand as they are and continue to apply in the present remand proceedings as well.

(b) The bills for ISTS transmission charges have been raised on the Petitioners from July, 2011 onwards as per the prevailing regulatory regime. In support thereof, reliance was placed on the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ('2010 Sharing Regulations'), 3<sup>rd</sup> Amendment to the 2010 Sharing Regulations, definition of 'regional entity' under the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ('Grid Code') and definition of 'long-term customer' under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 ('Connectivity Regulations').

(c) Pursuant to the 3<sup>rd</sup> amendment to the 2010 Sharing Regulations, the Petitioners had themselves sought certification for inclusion of IGSTPS-Daulatabad transmission line as deemed ISTS line by POSOCO during the original proceedings. Thus, there was consensus *ad idem* that till the passing of the order dated 4.5.2018, bills for ISTS transmission charges have been raised on the Petitioners as per the existing provisions of 2010 Sharing Regulations.

(d) If a transmission element, which has been included in the computation for ISTS transmission charges and losses, is to be excluded from the computation with retrospective effect and the ISTS charges having been paid till then are to be refunded to DICs, the same would result in a retrospective deficit in the PoC pool. However, as per the principles laid down by the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi v. Vatika Township Pvt. Ltd. [(2015) 1 SCC1], exemption of transmission element from the computation for ISTS charges and losses can only be prospective since such exclusion, though conferring the relief from payment of ISTS transmission charges upon a DIC, impairs the right of other DICs/ transmission licensees acquired under the then applicable 2010 Sharing Regulations.

(e) In the event the order dated 4.5.2018 is allowed to be applied retrospectively, the same would entail the revision of the PoC rates by NLDC after carrying out the load flow studies for the period between July, 2011 to May, 2018. Thereafter, it requires approval of the revised PoC rates by the Commission, revision of Regional Transmission Accounts by Regional Power Committees and subsequent revision in billing by PGCIL/ CTU to all the DICs. This will lead to numerous unwarranted administrative difficulties.

(f) ISTS charges payable by the Petitioners 1 and 2 are to be recovered by them under their respective ARRs as approved by the State Commission. It can, therefore, never be the case of the Petitioners that having already recovered the ISTS charges under the ARRs for different years, they would seek refund of the said charges at a subsequent stage. The plea of the Petitioners for seeking a refund and passing the benefits to consumers is not valid in light of the ratio laid down by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. and Ors. v. Union of India and Ors. [(1997) 5 SCC 536], wherein it has been held that where the burden of duty (or charges paid under a statute) has already been passed on to the third parties, the claim of refund of the said duty is not sustainable.

3. In rebuttal, learned senior counsel for the Petitioners mainly submitted as under:

(a) The contention that there was change in the then prevailing regulatory regime pursuant to the Commission's order dated 4.5.2018 deserves to be rejected in terms of the observations of the Commission under issues 1 and 2 framed therein and answered in the favour of the Petitioners.

(b) While examining the status of IGSTPS-Daulatabad transmission line under issue 1, the Commission has categorically held that the said transmission line is not an inter-State transmission system as defined under Section 2(36) of the Electricity Act, 2003 ('the Act'). Thus, the consideration of the said transmission line as ISTS line or deemed ISTS line under the

provisions of the 2010 Sharing Regulations as contended would be contrary to the provision of the Act, which is the plenary Act for the electricity sector.

(c) In the said order, the Commission has also observed that where a bus bar of the generating station (IGSTPS, Jhajjar) is connected to the STU network for evacuation of power to the beneficiaries, such beneficiaries/ Petitioners cannot be considered as deemed LTA customers in terms of Regulation 2(m) of the Connectivity Regulations. Accordingly, it has also been held that no transmission charges and losses can be fastened on the Petitioner under Regulation 3 of 2010 Sharing Regulations.

(d) Reliance on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi v. Vatika Township Pvt. Ltd. & Ors., is misplaced and in fact supports the case of the Petitioners. In paragraph 32 of the said decision, it has been noted that the amendments/ declarations which are clarificatory/ declaratory in nature are usually held to be retrospective. In the order dated 4.5.2018, the Commission has clarified the already existing position in respect of Section 2(36) of the Act and accordingly, the same has to be retrospective in nature.

(e) The contention that computation of the amount is complex and it would be cumbersome to carry out is misplaced. The precise amount wrongly collected from the Petitioners for the aforesaid transmission line is already known to them. It is a well settled principle that the tariff setting and tariff adjustment are continuous process and there are a number of occasions where tariff relating to a control period is required to be adjusted in a subsequent/ later control period.

(f) The reliance on the decision of Hon'ble Supreme Court in the case of Mafatlal Industries and Ors. v. Union of India and Ors to state that only the party that has suffered loss can claim a relief is misconceived. The Petitioners have a duty of service to their consumers who had to bear the ISTS charges w.e.f. 1.7.2011 on account of the default on the part of implementing agencies i.e. POSOCO and CTU.

(g) The Petitioners have dealt with all the issues raised by the Respondent, PGCIL in their written submissions, which may be taken into the consideration. The Petitioners may be permitted to file compilation of the judgments as relied upon by the Petitioners.

4. After hearing the learned senior counsel and learned counsel for the parties, the Petitioners were permitted to file the compilation of the judgments as relied upon by them within a week from the issuance of the ROP.

5. Subject to the above, the Commission reserved the order in the matter.

**By order of the Commission**

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