

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**IA. No. 28/2020 in
Petition No. 92/MP/2018**

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

Date of Order: 8th February, 2021

In the matter of

Application on behalf of the Petitioner praying for listing of the present Petition before a bench not comprising of Shri I. S. Jha, Hon'ble Member.

**And
In the matter of**

Shiga Energy Private Limited
5th Floor, DLF Building, No.8,
Tower C, DLF Cyber City,
Phase-II, Gurugram, Haryana-122 002

... Petitioner

Vs.

Power Grid Corporation of India Limited
Saudamini, Plot No.2,
Sector 29, IFFCO Chowk,
Gurugram, Haryana-122 001 and others

... Respondents

Parties Present:

Shri Sanjay Sen, Sr. Advocate, SEPL
Shri Deepak Khurana, Advocate, SEPL
Shri Vineet Tayal, Advocate, SEP
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri Raghvendra Kumar, Advocate, Govt. of Sikkim
Ms. Jyoti Prasad, PGCIL
Shri Ashok Pal, PGCIL

ORDER

The Petitioner, Shiga Energy Private Limited, has filed the Petition with the following prayers:

“(a) Pass an order directing Respondent No. 1 to pay a sum of Rs. 112.39 crore, being the financial loss suffered by the Petitioner on account of delay in commencement of the Long Term Access granted to the Petitioner, due to delay in implementation of the 'Transmission System' falling in the scope of Respondent No. 1 along with interest on the same till the date of payment of the amount by Respondent No. 1 to the Petitioner;

(b) In the alternate to prayer (a), pass an order directing Respondent No. 1 to pay a sum of Rs. 101.59 crore, being the IDC charges of the Petitioner to its lenders under the financing documents, as also the preliminary & pre-operative expenses and additional claims of contractors engaged in the THEP, on account of delay in commencement of the Long Term Access granted to the Petitioner, due to delay in implementation of the Transmission system falling in the scope of Respondent No. 1 along with interest on the same till the date of payment of the amount by Respondent No. 1 to the Petitioner; and

(c) Pass an ad-interim order directing Respondent No. 1 to forthwith pay an amount of Rs. 98.51 crore as interim compensation towards the claim made in prayer (a) or (b), as the case may be.”

2. Subsequently, the Petitioner has filed Interlocutory Application No. 28/2020 along with the following prayers:

“(a) Allow the present Application and list the matter before a Bench not comprising Sh. I.S. Jha, Hon'ble Member;

(b) Pass such other or further orders as the Commission may deem fit and proper in the facts and circumstances of the case.”

3. The aforesaid prayer in the IA has been made on basis of the following submissions of the Petitioner:

“3. It is pertinent to note that in the present Petition, the Petitioner has claimed damages from PGCIL on account of breach of its contractual obligations under the Long Term Open Access granted to the Petitioner. The period for which damages has been claimed is from January 2017 to 10.10.2017. It is submitted that Shri I. S. Jha, the Hon'ble Member on the Bench was part of the decision-making process on behalf of PGCIL and as such, has personal knowledge of the issues involved in the present matter. While the Petitioner has utmost regard for Shri Jha, however, for the overall interest of justice, it would not be appropriate for the matter to be heard and decided by

Shri Jha. The Petitioner had written a letter on 25.02.2020 to the Secretary, Central Electricity Regulatory Commission, to place the matter before an appropriate bench. Since there is no other alternative bench currently available, the Petitioner prays that the matter may be kept in abeyance pending availability of alternate bench. Accordingly, the Petitioner, by way of the present Application, is praying for listing of the present Petition before a bench not comprising Sh. I. S. Jha, Hon'ble Member."

4. The matter was heard through video conferencing. Learned senior counsel for the Petitioner during the hearing on 20.8.2020 submitted that the Petitioner has filed the Interlocutory Application No. 28/2020 praying to list the main Petition before a Bench not comprising of Shri I. S. Jha, Member (CERC) on the ground of apprehension of bias, as Shri Jha was part of the decision making process of the Respondent, PGCIL in his capacity as Chairman and Managing Director and he may have personal knowledge of the issues involved in the main Petition. Learned senior counsel specifically submitted that the Petitioner is not contending any bias but it is only an apprehension.

5. Learned senior counsel further submitted that the Commission has the option of dismissing the IA or listing the Petition before a Bench as requested by the Petitioner or adjourning the hearing of the Petition *sine die*.

6. Learned senior counsel sought liberty to place on record a written note on the legal aspect of 'apprehension of biasness' in light of the relevant decisions of the Hon'ble Supreme Court. Learned senior counsel was permitted to file written note and accordingly, he has filed the written note.

7. Learned senior counsel for the Petitioner has submitted the following in the written note dated 26.8.2020:

"there is no allegation of bias that the Applicant/ Petitioner has made in the present application. The entire premise on which the application is based on is that since the Hon'ble Member was part of the decision making process of PGCIL and as such, has

personal knowledge of the issues involved in the present matter, for overall interest of justice, it would not be appropriate for the matter to be heard and decided by a bench comprising of the said Hon'ble Member."

8. In the said written note, reference has been made to the judgment of the Hon'ble Supreme Court in *Ranjit Thakur v. Union of India and Others*, reported in (1987) 4 SCC 611, wherein it has been observed as follows:

"....

17. *As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him.*

..."

9. Further, the written note refers to the judgment of the Hon'ble Supreme Court in *Manak Lal v. Dr. Prem Chand Singhvi* [AIR 1957 SC 425], it was observed (AIR p. 429, para 4) as follows:

"5. ... every member of a tribunal that [sits to] try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

10. We have considered the submissions of the learned senior counsel for the Petitioner. Hon'ble Supreme Court in its judgment in the case of *Crawford Bayley & Co. and others v. Union of India and others* [(2006) 6 SCC 25] had an occasion to consider the concept of bias of an officer in a statutory authority. Hon'ble Supreme Court in the said judgment held that the doctrine of bias is not attracted. It was further held that the doctrine of bias comes into play only when it is shown that the officer

concerned has personal bias or personal interest or is personally interested in the matter concerned. Relevant portion of the said judgment is extracted as under:

“18. In this connection, a reference was made to Delhi Financial Corpn. v. Rajiv Anand (2004 (11) SCC 625) with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and / or has already taken a decision one way or the other which he may be interested in supporting.”

11. Considering the submissions of the learned senior counsel for the Petitioner and in view of the cited judgments as stated above, we do not find merit in the IA. However, considering the prayers of the Petitioner and options suggested by the learned senior counsel for the Petitioner during the hearing, the Petition No. 92/MP/2018 is adjourned sine die.

12. Accordingly, the IA No.28/2020 stands disposed of in terms of above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K.Pujari)
Chairperson