

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

**Review Petition No. 5/RP/2021
in Petition No. 266/TT/2018
along with I.A. No. 18/2021 and IA No.19/2021**

Coram:

**Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order : 31.07.2021

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 27.1.2020 in Petition No. 266/TT/2018.

And in the matter of:

Maharashtra State Electricity Transmission Co. Limited,
Prakashganga, 6th Floor, Plot No. C-19, E-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai-400 051.

.....Review Petitioner

Versus

1. Power Grid Corporation of India Limited,
"Saudamini", Plot No. 2,
Sector-29, Gurgaon- 122 001 (Haryana).
2. Madhya Pradesh Power Management Company Limited (MPPMCL),
Shakti Bhawan, Rampur,
Jabalpur-482 008.
3. Madhya Pradesh Power Transmission Company Limited (MPPTCL),
Shakti Bhawan, Rampur,
Jabalpur-482 008.
4. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road,
Indore-452 008.
5. Maharashtra State Electricity Distribution Co. Limited,
Hongkong Bank Building, 3rd Floor,



M.G. Road, Fort, Mumbai-400 001.

6. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodara-390 007.
7. Gujarat Energy Transmission Corporation Limited,
Sardar Patel, Vidyut Bhawan, Race Course Road,
Vadodara-390 007.
8. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji, Near Mandvi Hotel,
Goa-403 001.
9. Electricity Department,
Administration of Daman and Diu,
Daman-396 210
10. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa-396 230.
11. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania,
Raipur, Chhattisgarh-492 013.
12. Chhattisgarh State Power Transmission Co. Limited,
Office of the Executive Director (C&P),
State Load Despatch Building,
Dangania, Raipur-492 013.
13. Chhattisgarh State Power Distribution Co. Limited,
P.O. Sunder Nagar, Dangania,
Raipur Chhattisgarh-492 013.

.....Respondents

For Review Petitioner : Shri Sudhanshu S. Choudhari, Advocate, MSETCL
Shri Jagannath Chude, MSETCL

For Respondents : Shri Manoj Dubey, Advocate, MPPMCL
Shri Anindya Khare, MPPMCL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri A. K. Verma, PGCIL
Shri V. P. Rastogi, PGCIL



ORDER

The Review Petitioner, Maharashtra State Electricity Transmission Company limited (MSETCL) has filed the instant review petition seeking review of the order dated 27.1.2020 in Petition No. 266/TT/2018, under Section 94(1)(f) of the Electricity Act, 2003 (in short, 'the 2003 Act') read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. MSETCL has also filed I.A. No.18/2021 for condonation of delay of 194 days in filing of the instant review petition and I.A. No.19/2021 for staying the operation of the impugned order dated 27.1.2020 pending adjudication of the review petition.

I.A. No. 18/IA/2021

2. MSETCL has attributed the delay of 194 days in filing of the instant review petition to three reasons, namely, no information about the impugned order dated 27.1.2020, covid-19 pandemic and filing of appeal (DFR No 261 of 2020) against order dated 27.1.2020 before APTEL and has requested to condone the delay in filing of the instant review petition. We condone the delay in filing of the instant review petition in view of reasons stated by the Petitioner. However, we are not able to agree with the contention of MSETCL that it was not aware of the order dated 27.1.2020 till an invoice dated 20.3.2020 was raised by PGCIL, as the order dated 27.1.2020 was mailed through the e-filing portal of the Commission on 28.1.2020 to the officer of MSETCL registered with the said e-filing portal as per the usual procedure.

Background

3. PGCIL filed Petition No. 266/TT/2018 for determination of transmission tariff from COD to 31.3.2019 in respect of the following assets:



Asset-1: 2 numbers 500 MVA, 400/220 kV ICTs along with associated bays at Parli (Powergrid) switching station and 4 nos. 220 kV line bays (for LILO of Parli - Harangul 220 kV lines and Parli Osmanabad 220 kV S/C line);

Asset-2: 2 numbers 220 kV line bays at Mapusa (Colvale) (Powergrid Sub-station (for Mapusa (Colvale) (Powergrid)-Tuem 220 kV D/C line); and

Asset-3: 2 numbers 400 kV line bays for 400 kV D/C Indore (Powergrid)-Ujjain Transmission Line at 765/400 kV Indore (Powergrid) Sub-station under WRSS-XVI.

4. PGCIL, vide affidavit dated 7.3.2019, in Petition No. 266/TT/2018 split the Asset-1 above into Asset-1A and Asset-1B as follows:

Asset-1A: 2 numbers 500 MVA, 400/220 kV ICTs along with associated bays at Parli (Powergrid) Switching Station; and

Asset-1B: 4 numbers 220 kV line bays (for LILO of Parli-Harangul 220 kV lines and Parli Osmanabad 220 kV S/C line) at Parli Sub- station.

5. PGCIL submitted that associated downstream assets of MSETCL, GED and MPPTCL were not ready and sought approval of COD of all the assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. Taking into consideration the submissions of PGCIL, COD of Assets-1A, Asset-1B, Asset-2 and Asset-3 was approved as 12.8.2018, 12.8.2018, 2.8.2018 and 11.1.2019 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The Commission vide order dated 27.1.2020 in Petition No. 266/TT/2018 (and subsequent Corrigendum dated 4.2.2020 in Petition No.266/TT/2018) approved the tariff for all the assets and held that the transmission charges of Asset-1A and Asset-1B from their COD up to COD of the downstream system i.e. 4 numbers 220 kV line bays (for LILO of Parli-Harangul 220 kV lines and Parli-Osmanabad 220 kV S/C line) at Parli Sub-station,



which are under the scope of MSETCL, would be borne by MSETCL. The relevant extract of the Corrigendum order dated 4.2.2020 is as follows:

“70. In case of Assets-1A and 1B, the transmission charges from their COD, i.e. 12.8.2018 upto the COD of downstream transmission system under the scope of MSETCL shall be borne by MSETCL. In case of Asset-2, the transmission charges from its COD, i.e. 2.8.2018 upto the COD of the downstream transmission system under the scope of GED shall be borne by GED and the transmission charges for Asset-3 from 11.1.2019 up to the COD of downstream transmission system under the scope of MPPTCL shall be borne by MPPTCL and thereafter, the transmission charges allowed in this order, as provided in Regulation 43 of the 2014 Tariff Regulations, shall be shared by the beneficiaries and long term transmission customers in terms of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.”

6. Aggrieved with the above-said finding of the Commission in the impugned order dated 27.1.2020, MSETCL has filed the instant Review Petition. MSETCL has made the following prayers:

- “(a) Allow the Review Petition and modify the Order dated 27.01.2020 passed in Petition No. 266/TT/2018 to the extent stated in the present Review Petition;*
- (b) Reject prayers pertaining to Assets 1A and 1B as prayed by PGCIL in Petition No. 266/TT/2018*
- (c) pass any such further order or orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”*

7. The impugned order dated 27.1.2020 was heard by coram of Chairperson, Dr. M.K. Iyer, Member and Shri I.S. Jha, Member. Dr. M.K. Iyer, Member has demitted office. Hence, the instant review petition is heard by coram of Chairperson and Shri I.S. Jha, Member.

8. The matter was heard through video conference on 20.7.2021 and the order was reserved on admission.

Submissions of MSETCL/ Review Petitioner

9. The gist of the submissions made by MSETCL in support of the instant review petition is as follows:



a) This Commission vide impugned order dated 27.1.2020 held that transmission charges from COD of Asset-1A and Asset-1B, i.e. 12.8.2018 up to COD of downstream transmission system under the scope of MSETCL would be borne by MSETCL.

b) There is an error in order dated 27.1.2020 as it was pronounced by solely relying upon submissions of PGCIL that 19.7.2018 was the sacrosanct date of completion of the said project. MSETCL had never explicitly or impliedly agreed to 19.7.2018 or any such date for completion of the said scheme/ project. There was no agreement entered into whatsoever between MSETCL and PGCIL regarding date of completion of the work. The scope of work kept on changing right till 27.7.2017 through mutual consent of MSETCL and PGCIL. PGCIL kept on revising its own expected date of completion. PGCIL finally completed their scope of work on 12.8.2018. PGCIL and MSETCL were aware of the local scenario, the shifting deadlines and the severe ROW issues faced by MSETCL.

c) The Commission vide Record of Proceedings dated 16.10.2019 had directed PGCIL to submit information related to efforts/ coordination made with MSETCL and the Implementation Agreement with MSETCL, if any. PGCIL did not submit any explicit agreement and rather relied on the Minutes of the 38th Meeting of Standing Committee on Power System Planning in Western Region held on 17.7.2015 at New Delhi.

d) Both parties should attempt to complete the said project in close timeframe as far as possible. It cannot be construed that what was binding on PGCIL through their own Board Resolution will be automatically binding on MSETCL, especially when MSETCL did not have any agreement regarding the proposed date of completion.

e) MSETCL was working diligently in best possible way towards completion of the work under its scope at the earliest, but it faced several Right of Way (RoW) issues. Some of the ROW issues were also incidental/ due to the delay caused by PGCIL.



f) PGCIL could not complete its scope of work within its own timeline and, hence, the entire project got delayed. June-July being the sowing season in the local area, the farmers objected to entry of MSETCL claiming that heavy equipment could destroy their standing crops.

g) MSETCL faced severe RoW issues while implementing its scope of work. Several landowners obstructed the line work at various locations, demanding for more compensation for their crop. To resolve the RoW issues, MSETCL continuously followed-up with district and revenue administration of the relevant districts in Maharashtra.

h) There were several H.T. Line crossings at locations and the outages at said location were required to be taken for stringing activity. The delay also occurred due to delay in grant of approval of outages at such locations. The delay in completion of work under its scope was purely incidental, unintentional and was owing to RoW issues that were beyond the control of MSETCL.

i) The 2014 Tariff Regulations do not provide for recovery of expenses/ costs/ damages towards time over-run by one transmission licensee by another transmission licensee. Proviso to Regulation 4(3) of the 2014 Tariff Regulations states that in case a transmission system or an element thereof is prevented from regular service or reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof. MSETCL could never avail the opportunity of approaching the Commission in this regard and to that extent, an ex-parte order was passed against the Review Petitioner.

j) MSETCL remained unrepresented throughout the proceedings of Petition No. 266/TT/2018 before the Commission and, thus, could never avail any opportunity of drawing the attention that there was no agreement



whatsoever. It was only when PGCIL sent an invoice dated 20.3.2020 to MSETCL claiming Rs.8.36 crore in pursuance of the impugned order, MSETCL came to know about the proceedings in Petition No.266/TT/2018. MSETCL has prayed to stay the operations of the said impugned order pending the final adjudication of the accompanying Review Petition.

k) MSETCL had earlier filed an appeal against the order dated 27.1.2020 before the APTEL and later withdrew it with liberty to approach the Commission by way of review petition.

10. During the hearing on 20.7.2021, learned counsel for MSETCL while reiterating the submissions made in the review petition submitted that it was not able to present its case before the Commission during the proceedings in Petition No. 266/TT/2018 and it came to know about the decision in the order dated 27.1.2020 of the Commission only when PGCIL raised a bill on it.

11. The representative of PGCIL, who happened to be present during the hearing, denied the contentions of the Review Petitioner and submitted that the Review Petitioner was given an opportunity to represent itself in Petition No. 266/TT/2018 but it did not file any reply in the matter and the Commission based on materials on record issued the impugned order. Representative of Petitioner submitted that MSETCL may be directed to pay the transmission charges as directed by the Commission in the impugned order.

Analysis and Decision

12. We have considered the submissions of MSETCL and perused the material available on record. The basic grievance of MSETCL is against the Commission's direction in order dated 27.1.2020 to bear the transmission charges of Asset-1A and Asset-1B from their COD (12.8.2018) to COD of the downstream transmission



system under its scope. MSETCL has contended that there is no agreement between MSETCL and PGCIL regarding the date of completion of work. MSETCL has submitted that the scope of work kept on changing with mutual consent of PGCIL and MSETCL and PGCIL was revising the date of completion of its scope of work. MSETCL has submitted that the time over-run in case of the transmission lines under its scope was due to the delay in the completion of work by PGCIL and the RoW issues it faced, which were beyond the control of MSETCL. MSETCL has further submitted that it was not represented in the proceedings before the Commission in Petition No. 266/TT/2018.

13. We observe that MSETCL is trying to agitate the matter on facts, which is not permitted at the stage of review. MSETCL should have presented these facts in the proceedings in Petition No.266/TT/2018 which it failed to do so. MSETCL has contended in I.A. No.18/2021 that the Petition No.266/TT/2018 was either not served or was sent to a wrong address or was misplaced by MSETCL and, therefore, it was not represented in the proceedings. However, as stated above, it is observed that MSETCL is registered in the e-filing portal of the Commission and as soon as a petition is filed, the petition and all the related communication thereafter is automatically sent to the mailing address of the officer registered on behalf of MSETCL. The possibility of communications getting sent to wrong address (as the mapping is done to the address given by MSETCL) or getting misplaced does not hold true for communications sent through electronic mode. Moreover, the Commission in Record of Proceedings of the hearing in Petition No.266/TT/2018 on 24.5.2019 specifically observed that it would like to hear MSETCL before approving COD of the transmission assets of PGCIL under proviso (ii) to Regulation 4(3) of the



2014 Tariff Regulations and directed MSETCL to file its reply. RoP was also mailed to MSETCL through the e-filing portal of the Commission on 3.6.2019. The relevant portion of RoP of 24.5.2019 is extracted hereunder:

“2. The Commission observed that MSETCL and MPPTCL who are executing the downstream assets have not filed the reply. The Commission observed that they would like to hear MSETCL and MPPTCL before approving COD of the instant transmission assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The Commission further directed the respondents including MSETCL and MPPTCL to file their reply in the matter, especially on the PGCIL’s request for approval of COD under Regulation 4(3) of the 2014 Tariff Regulations by 21.6.2019 on affidavit with the copy to the respondents and the petitioner to file its rejoinder, if any, by 1.7.2019.”

14. During the hearing on 20.7.2021, learned counsel for MSETCL admitted that though MSETCL had received the notice in the matter in time, it was not able to present its case before the Commission during the proceedings in Petition No. 266/TT/2018. We are of the view that sufficient notice was given to MSETCL but it chose not to file any reply. Therefore, MSETCL’s contention that it was not represented before the Commission during the proceedings in Petition No.266/TT/2018 as it was not aware of the proceedings is rejected. We are of the view that there is no error in the impugned order dated 27.1.2020 in Petition No.266/TT/2020 and it was decided on the merit of facts brought to the notice of the Commission during the proceedings in Petition No.266/TT/2018.

15. In view of the above discussions, Review Petition No. 5/RP/2021 along with I.A. No. 18/2021 and I.A. No.19/2021 are disposed of.

**sd/-
(I.S. Jha)
Member**

**sd/-
(P. K. Pujari)
Chairperson**

