

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**ORDER ON IA NO. 11 OF 2017 IN APPEAL NO. 193 OF 2016 &
IA NOS. 412 OF 2016, 413 OF 2016 & 414 OF 2016 FILED BEFORE
THE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 1st December, 2017

Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTER OF

Raichur Sholapur Transmission Company Limited

Patel Estate Road, Jogeshwari West

Mumbai-400102

[Through its Authorised Representative

Mr. Kunj Rajgaria]

..... Appellant

VERSUS

- 1. Power Grid Corporation of India Limited**
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi-110016
- 2. Gujarat Urja Vikas Nigam Limited**
Sardar Patel Vidyut Bhavan, Race Course
Vadodara-390007, Gujarat, India
- 3. Madhya Pradesh Power Trading Company Limited**
Shakti Bhawan, Vidyut Nagar, Rampur, Jabalpur
Madhya Pradesh-482008
- 4. Chattisgarh State Power Distribution Company Limited**
Energy Info Tech Centre,
Daganiya, Raipur,
Chhattisgarh-492 013
- 5. Goa State Electricity Department**
3rd Floor, Vidyut Bhavan, Tiswadi
Goa-403001
- 6. Electricity Department, Daman**
Plot No. 35, O IDC Complex,
Near Fire Station, Somnath,
Nani Daman-396210

- 7. DNH Power Distribution Corporation Limited**
Vidhyut Bhavan
Opp. Secretariat,
Silvassa-396230
- 8. Madhya Pradesh Audyogik Kendra Vikas Nigam Limited**
3/54, Press Complex, Free Press House,
Agra-Mumbai Road, Indore
Madhya Pradesh-452 008
- 9. Jindal Power Limited**
Jindal Centre, 12, Bhikaji Cama Place,
New Delhi-110 066
- 10. Torrent Power Limited, Ahmedabad**
Torrent House, Off Ashram Road,
Ahmedabad-380009
- 11. PTC India Limited**
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi-110066
- 12. Adani Power Limited**
Achalraj, Opp Mayor Bungalow,
Law Garden,
Ahmedabad-380006
Gujarat, India
- 13. Heavy Water Project,
Department of Atomic Energy**
5th Floor, Vikram Sarabhai Bhavan,
Anushakti Nagar,
Mumbai-400094
- 14. Kerala State Electricity Board**
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004
- 15. Tamil Nadu Generation and
Distribution Corporation Limited**
NPKRR Maaligai, 144, Anna Salai,
Chennai-600002
- 16. Electricity Department**
Govt. Of Puducherry,
Cuddalore Road, Marapalam, Mudaliarpeta,
Puducherry-685004

17. Northern Power Distribution Company of A.P. Ltd.

Vidyut Bhavan, Nakkalgutta, Hanamkonda,
Warangal-506001

18. Eastern Power Distribution Company of A.P. Ltd.

P&T Colony, Seethammadhara,
Vishakhapatnam-530013

19. Southern Power Distribution Company of A.P. Ltd.

House No. 19-13-65/A,
Behind Srinivasapuram Kalayana Mandapam,
Kesavyanagunta, Tiruchanoor Road,
Tirupati-517 501

20. Central Power Distribution Company of A.P. Ltd.

Asmangadh, New Malakpet, Malakpet,
Hyderabad-500060

21. Power Company of Karnataka Ltd.

5th Floor, KPTCL Building,
Kaveri Bhavan, Gandhi Nagar,
Bangalore

22. Lanco Kondapali Power Ltd.

Plot No. 4, Software Units Layout,
HITEC City, Madhapur,
Hyderabad-500081

23. Maharashtra State Electricity Distribution Co. Ltd.

Hongkong Bank Building,
M.G. Road, Fort, Mumbai-400001

..... **Respondents**

Counsel for the Appellant ... Mr. Ramji Srinivasan, Sr. Adv.
Mr. Rakesh Sinha
Mr. Samrat Sengupta
Mr. Sohil Yadav

Counsel for the Respondent(s)... Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Mr. Shubham Arya for R-2

Mr. P.V. Dinesh
Ms. Arushi Singh for R-13

Mr. S. Vallinayagam for R-15

Mr. Sandeep Bajaj

Mr. Soayib Qureshi
Mr. Shouryl Mittal for R-23

(I) The Appellant has sought the following reliefs in the Appeal No. 193 of 2016:

- (a) Allow the appeal and set aside Impugned Order dated 27.06.2016 passed by the Learned Central Electricity Regulatory Commission in Petition No. 419/MP/2014 (Raichur Sholapur Transmission Co. Ltd. V. Power Grid Corporation of India Limited & Ors.);
- (b) Direct the Respondents (beneficiaries of the project i.e. Raichur Sholapur 765 kV Single Circuit Line – I) to release the performance bank guarantees dated 29.12.2010 issued on behalf of the consortium members by Patel Engineering Limited and hold that the Appellant is not liable for the delays which occurred in the execution of the Project;
- (c) Direct that the scheduled Commercial Operation Date is changed to 04.06.2014 from 07.01.2014 with regard to the project; and
- (d) Pass such other or further order or orders as to this Hon'ble Tribunal may deem fit & proper in the interest of justice.

(II) Following prayer sought in the IA No. 11 of 2017 in Appeal No. 193 of 2016:

(Application to bring on record additional facts and/or documents and urge additional grounds of appeal)

- (a) Permit the Applicant to bring on record the additional documents i.e. ANNEXURE A-25 to ANNEXURE A-29 and/or the facts above and urge the grounds of appeal.
- (b) Pass such order and/or further orders in favour of the Applicant as this Hon'ble Tribunal may deem fit and proper

(III) Following prayer sought in the IA No. 412 of 2016 in Appeal No. 193 of 2016:

(Application for interim stay)

- a) Stay the operation and implementation of the impugned order dated 27.06.2016 passed by the Learned Central Electricity Regulatory Commission, New Delhi in Petition No. 419/MP/2014 (Raichur-Sholapur Transmission Co. Ltd. V Powr Grid Corporation of India Limited & Ors.)
- b) Restrain the Respondents from encashing or accepting any moneys under the Bank Guarantees furnished by the lead consortium member of the Appellant i.e. Patel Engineering Limited and/or forbear from taking any step or further steps from invoking the said Bank Guarantees;
- c) Grant ex-parte ad interim relief in terms of prayer (a) and (b) above;

(IV) Following prayer sought in the IA No. 413 of 2016 in Appeal No. 193 of 2016:

(Application for exemption from filing certified copy of the impugned judgment/order)

- a) Exempt the appellant from filing certified copy of the impugned order dated 27.06.2016 passed by the Learned Central Electricity Regulatory Commission, New Delhi in Petition No. 419/MP/2014 (Raichur-Sholapur Transmission Co. Ltd. V Powr Grid Corporation of India Limited & Ors.)

(V) Following prayer sought in the IA No. 414 of 2016 in Appeal No. 193 of 2016:

(Application for exemption from filing typed copy of Annexures)

- a) Exempt the appellant from filing typed copies of Annexures filed with the appeal

(VI) Presented this Appeal for consideration under following Question of Law:

- (I) Whether the Learned Commission was justified in dismissing the petition when the Appellant was not responsible for delay in commissioning the project?

- (II) Whether the Learned Commission is correct in interpreting clause 11.5.1 of the TSA as laying a mandatory requirement of giving a notice?
- (III) Whether clause 11.5.1 of the TSA at all required written notice to be issued by the Appellant to the LTTCs or that period indicated within which such notice be issued was mandatory?
- (IV) Whether the requirement of issuing written notice under clause 11.5.1 of the TSA, if any, merely directory and non-issuance of such notice did not affect the rights of the Appellant?
- (V) Whether the LTTCs/beneficiaries in any event had due notice/ deemed to have due notice of the force majeure events resulting in delay in commissioning of the project?
- (VI) Whether the Appellant was entitled to release of the bank guarantees furnished by its consortium members?
- (VII) Whether the Appellant was entitled to change in the scheduled Commercial Operation Date to 4.06.2014 from 7.01.2014?

ORDER

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. The learned senior counsel, Shri Ramji Srinivasan, appearing for the Appellant, after hearing quite some time, during the course of the submission, he submitted that in the light of the statement made and ground urged on IA No. 11 of 2017 in Appeal No. 193 of 2016, the instant IAs, being IA Nos. 11 of 2017, 412 of 2016, 413 of 2016 & 414 of 2016 and the Appeal, being Appeal No. 193 of 2016, filed by the Appellant, may kindly be dismissed as withdrawn reserving liberty to the Appellant to file review petition to review the Impugned Order dated 27.06.2016 passed in Petition No. 419/MP/2014, on the file of the Central Electricity Regulatory Commission, New Delhi (*Raichur Sholapur Transmission Company Limited vs*

Power Grid Corporation of India Limited, New Delhi and Ors.) within a period of two weeks from today.

2. Further, he submitted that in the event, the Appellant could not get any relief in the review petition to be filed before the Central Electricity Regulatory Commission, New Delhi, the Appellant may be permitted to redress his grievances by questioning the correctness of the order dated 27.06.2016 passed in Petition No. 419/MP/2014 and order to be passed in review petition on the file of the Central Electricity Regulatory Commission, New Delhi. Liberty may kindly be reserved to the Appellant to question the legality and validity of orders before the appropriate legal forum.

3. He, further, submitted that all the contentions and grounds urged by the Appellant in the memo of appeal and also in the IA No. 11 of 2017, may kindly be left open.

4. **Per contra**, the learned counsel, Mr. M.G. Ramachandran, appearing for the Respondent No.2; learned counsel, Mr. P.V. Dinesh, appearing for the Respondent No. 13; Mr. S. Vallinayagam appearing for the Respondent No. 15 and; learned counsel, Mr. Shouryl Mittal, appearing for the Respondent No. 23, submitted that, in the light of the submissions made by the learned senior counsel, Shri Ramji Srinivasan, appearing for the Appellant, may be placed on record. The instant Appeal, being Appeal No. 193 of 2016 and IAs, being IA Nos. 11 of 2017, 412 of 2016, 413 of 2016 & 414 of 2016, filed by the Appellant may be dismissed as not pressed, as requested. However, all the contentions of the Respondents and stand taken by them in their reply to the main Appeal, being Appeal No. 193 of 2016 as well as IA No. 11 of 2017, may kindly be left open.

5. The submissions made by the learned counsel for the parties, as stated above, is placed on record.

6. The instant IA No. 11 of 2017 and main appeal, being Appeal No. 193 of 2016, on the file of this Appellate Tribunal for Electricity, New Delhi are dismissed as withdrawn reserving liberty to the Appellant to file review petition before the Central Electricity Regulatory Commission, New Delhi to review the order dated 27.06.2016 passed in Petition No. 419/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi within a period of two weeks from today. All the contentions and grounds urged by both the parties in the main Appeal, being Appeal No. 193 of 2016 as well as in IA No. 11 of 2017, are left open.

7. In the event, the Appellant could not get any relief in the review petition to be filed before the Central Electricity Regulatory Commission, New Delhi, the Appellant is entitled to question the legality and validity of the order to be passed by the Central Electricity Regulatory Commission, New Delhi in review petition and also the order dated 27.06.2016 passed in Petition No. 419/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi, if they so advised or need arise.

8. In view of Appeal No. 193 of 2016 on the file of the Appellate Tribunal for Electricity, New Delhi has been dismissed as withdrawn, on account of which, the relief sought in IA Nos. 412 of 2016, 413 of 2016 and 414 of 2016 does not survive for considerations and, hence, stand disposed of.

9. With these observations, the instant IA No. 11 of 2017 and Appeal No. 193 of 2016 on the file of this Appellate Tribunal for Electricity, New Delhi are stand disposed of in the interest of justice and equity.

PRONOUNCED IN THE OPEN COURT ON THIS 1ST DAY OF DECEMBER, 2017.

(S.D. Dubey)
Technical Member

ss/vt

(Justice N.K. Patil)
Judicial Member