

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER DFR NO. 1052 OF 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: **27th March, 2018**

Present: **Hon'ble Mr. Justice N.K. Patil, Judicial Member**
 Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:

Essar Power M.P. Limited

Essar House,
11th Floor, 11 KK Marg, Opp. Racecourse,
Mahalaxmi Mumbai-400 034
Maharashtra

..... Appellant(s)

Versus

- 1. Central Electricity Regulatory Commission**
Through The Secretary
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110 001
- 2. Central Transmission Utility**
Through The COO
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016
Also at: Saudamini, Plot No.2, Sector-29,
Near IFFCO Chowk, Gurgaon
Haryana - 122 001
- 3. Western Regional Power Committee**
Through The Member Secretary
F-3, MIDC Area, Marol, Opp. SEEPZ, Central Road,
Andheri (East)
Mumbai-400 093
- 4. Essar Power Transmission Company Limited**
Through The Vice President
Lower Ground Floor,
Hotel Treebo Conclave Riviera
A-20, Kailash Colony
New Delhi-110 048
- 5. Central Electricity Authority**
Through The Member (Power Systems)
Sewa Bhawan, R.K. Puram, Sector-1,

Counsel for the Appellant(s) : Mr. Sudhir Nandrajog, Sr. Ad.
Mr. Alok Shankar
Ms. Nayantara Pande

Counsel for the Respondent(s) : Mr. Sandeep P Sahay
Ms. Shruti Verma for EPMPL (Rep.)

Ms. Sanjana Dua for
Ms. Suparna Srivastava for R-2

Mr. Kumar Mihir for R-4

ORDER

1. With the consent of the learned counsel appearing for the both the parties, the matter was taken up for final disposal.
2. The Appellant herein, questioning the legality and validity of the Impugned Order dated 19.01.2018 passed in Petition No. 10/MP/2018 on the file of the Central Electricity Regulatory Commission, New Delhi and filed this Appeal, being DFR No. 1052 of 2018 seeking following reliefs:
 - (a) Set aside the impugned order dated 19.01.2018 passed by the Respondent Commission to the extent it directs opening of the LILO on S/C at Mahan on Vindhyanchal Korba D/C Line.
 - (b) Declare that the LILO on S/C at Mahan on Vindhyanchal Korba D/C Line is a permanent element and cannot be disturbed.
 - (c) Pass such other order as this Hon'ble Tribunal may deem necessary in the interest of justice and equity.
3. The Appellant has presented this Appeal for considering the following substantive questions of law:

- (a) Whether CERC ignored its earlier order in 30/MP/2014 by failing to recognize the LILO at Mahan as a permanent element and directing its disconnection?
- (b) Whether CERC could have directed opening of the LILO at Mahan despite being made aware of the system requirements?
- (c) Whether it is desirable and/or necessary to shut-down an efficient and ready generating station in peak summer months when power demands across the country would be peaking?
- (d) Whether an asset developed by a transmission licensee after incurring significant cost and effort can be disallowed from being put in use?

4. The learned senior counsel, Mr. Sudhir Nandrajog, appearing for the Appellant and learned counsel, Mr Kumar Mihir, appearing for the fourth Respondent, at the outset, submitted that, they have filed undertaking affidavits on behalf of the Appellant and the fourth Respondent dated 26.03.2018. The same may kindly be taken on record and the instant appeal, being DFR No. 1052 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi may be disposed of in terms of the statement made in the aforementioned undertaking affidavits in the interest of justice and equity.

5. They undertake to carry out the works as expeditiously as possible and to ensure that the Mahan-Sipat Line is commissioned at the earliest but not later than 30.06.2018.

6. So far it relates to continue the LILO on S/C at Mahan on Vindhyanchal Korba D/C Line, the same is kept open.

7. The learned counsel, Ms. Sanjana Dua representing the learned counsel Ms. Suparna Srivastava, appearing for the second Respondent, on instruction, submitted that, the statements made by the learned senior counsel appearing for the Appellant and the learned

counsel appearing for the fourth Respondent in their undertaking affidavits dated 26.03.2018, may be placed on record and the instant appeal, being DFR No. 1052 of 2018, may be disposed of in the reasons stated therein modifying the Order impugned dated 19.01.2018 passed in Petition No. 10/MP/2018 on the file of the Central Electricity Regulatory Commission, New Delhi extending the time for completion of the aforementioned works till 30.06.2018.

8. We have heard the learned senior counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 2 and 4. Other respondents served unrepresented.

9. The undertaking affidavit filed on behalf of Essar Power M.P. Limited, Appellant herein, read as follows:

“UNDERTAKING ON BEHALF OF APPELLANT IN TERMS OF ORDER DATED 26.3.2018”

I Shruti Verma, W/o Hemant Kumar aged around 39 years working as Legal Advisor in the office of the Appellant Company, currently at A-430 Lower Ground Floor, Defence Colony- 110024, do hereby state as under:

1. *That I am the authorised representative of the Appellant and am well aware of the facts and circumstances of the present case and am therefore competent to affirm the present affidavit.*

2. *That this Hon’ble Tribunal during the hearing on 26.03.2018 directed the Appellant to furnish an affidavit of undertaking that the Mahan-Sipat Line shall be completed by Essar Power Transmission Company (hereafter “EPTCL”) at the earliest and not later than 30.06.2018.*

3. *That the Appellant owns and operates a 2 × 600 MW generating stations at Mahan. EPMPPL has with significant investment completed construction of the Unit-II of the Power Plant. The Second Unit has been stranded only because of the load restriction on the LILO (600 MW). EPMPPL has genuine interest to get the Mahan-Sipat Line completed at the earliest so that the Second Unit of the Power*

Plant can be put to use. Accordingly, EPMPL is doing everything possible within its means to help EPTCL complete the construction of the Mahan-Sipat Line.

4. *That the completion of the line is being delayed due to severe resistance from the land owners leading to idling of many gangs deployed on the site. The details of right of way issues on the site have been placed on record in the appeal and are not being repeated herein for the sake of brevity.*

5. *That EPMPL has been informed that despite severe resistance being faced at site, EPTCL and its contractors are making progress every day. This has been possible due to extraordinary deployment at the site. It is submitted that more than 450 people have been deployed at the site.*

6. *That, as per the direction of this Hon'ble Tribunal during the hearing on 26.03.2018, EPMPL undertakes to ensure that the works continue as fast as possible and the Mahan-Sipat Line is commissioned at the earliest but not later than 30.06.2018.*

7. *That the interim arrangement through the LILO should be continued as existing at present even beyond the deadline of 31.3.2018, as directed by the CERC and the appellant should be entitled to evacuate the power through the present LILO arrangement.*

DEPONENT

VERIFICATION:

That the contents of the above affidavit from paragraph 1 to 7 are true and correct and nothing stated therein is false and nothing material has been concealed therefrom.

Verified on 26th day of March, 2018 at Delhi.

DEPONENT”

10. The undertaking affidavit filed on behalf of Essar Power Transmission Company Limited, fourth Respondent herein, read as follows:

“UNDERTAKING ON BEHALF OF RESPONDENT NO. 4 – ESSAR POWER TRANSMISSION COMPANY LIMITED

I Sandeep Sahay, S/o Santosh B Sahay aged 44 years, resident of Flat No 101, Building M1, Riddhi Garden Complex, Film City Road, Malad East, Mumbai- 400097, presently at New Delhi do hereby state as under:

1. That I am the authorised representative of the Respondent No. 4 and am well aware of the facts and circumstances of the present case and am therefore competent to affirm the present affidavit.

2. That this Hon'ble Tribunal during the hearing on 26.03.2018 directed the Respondent No. 4 to furnish an undertaking to the effect that it shall complete the Mahan-Sipat Line at the earliest but not later than 30.06.2018.

3. I state that the Respondent No. 4 has already completed majority of the work involved and presently only approximately stringing of 40 km (out of 337 kms) is left to be completed which is taking time due to various Right of Way issues. Further Respondent No. 4 has invested a substantial amount of money in completion of the Mahan-Sipat Line and is doing everything possible within its means to complete the construction of the same.

4. That, as submitted above the completion of the line is being impeded due to severe encumbrance being encountered from the land owners. The details of right of way issues on the site have already been placed on record by way of the Appeal [pages 20-28 of appeal paper book] and are not being repeated herein for the sake of brevity.

5. I state that despite severe resistance being faced at site by EPTCL and its contractors, regular progress is being made which is evident from the following:

	<i>Foundation (Total - 942 Nos)</i>	<i>Towers (Total - 942 Nos)</i>	<i>Stringing (Total -337 kms)</i>
<i>Status as in July, 2017</i>	<i>938 -completed 4- balance</i>	<i>909- completed 33 – balance</i>	<i>197 completed 140 balance</i>
<i>Status as on date</i>	<i>942 completed</i>	<i>942 completed</i>	<i>297 completed 40 km balance</i>

6. I state that, as on date, more than 450 people have been deployed on the site and the Respondent No. 4 is also negotiating with the land owners for settling the Right of Way issues.

7. That as per the direction of this Hon'ble Tribunal, Respondent No. 4 undertakes to carry out the works as expeditiously as possible and to ensure that the Mahan-Sipat Line is commissioned at the earliest but not later than 30.06.2018.

DEPONENT

VERIFICATION:

That the contents of the above affidavit from paragraph 1 to 7 are true and correct and nothing stated therein is false and nothing material has been concealed therefrom.

Verified on 26th day of March, 2018 at Delhi.

DEPONENT”

11. In the light of the submissions made by the learned counsel appearing the Appellant and the learned counsel appearing for the Respondent Nos. 1 & 4 and the statement made in the undertaking affidavits filed on behalf of the Appellant and the fourth Respondent, as stated above, and for the reasons stated therein, we hereby modify the Impugned Order dated 19.01.2018 passed in Petition No. 10/MP/2018 on the file of the Central Electricity Regulatory Commission, New Delhi extending the time for commissioning of Mahan-Sipat Line as expeditiously as possible at any rate within a period upto 30.06.2018 without fail. It is needless to clarify that no further extension will be entertained.

11. Regarding prayer (b) i.e. Declare that the LILO on S/C at Mahan on Vindhyachal Korba D/C Line is a permanent element and cannot be disturbed, the liberty has been reserved to the Appellant to redress their grievance before the appropriate Legal Forum.

12. With these observations, the instant appeal, being DFR No. 1052 of 2018, filed by the Appellant stands disposed of.

(S.D. Dubey)
Technical Member
js/vt

(Justice N.K. Patil)
Judicial Member