

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

IA NO. 577 OF 2016 IN APPEAL NO. 281 OF 2016

Dated: 19th September, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

NHPC LIMITED)
NHPC Office Complex,)
Sector 33, Faridabad, (Haryana) – 121003).... **Appellant(s)**

AND

1. POWER GRID CORPORATION OF INDIA LTD.)
"Saudamani", Plot No.2,)
Sector-29, Gurgaon – 122001)

2. NTPC LIMITED)
NTPC Bhawan,)
Core 7, Scope Complex, Institutional Area,)
Lodhi Road, New Delhi – 110003)

3. PARBATI KOLDAM TRANSMISSION COMPANY LIMITED)
Building No. 10 B, 12th Floor,)
DLF Cibre City, Shankar Chauk,)
Haryana – 122001)

4. CENTRAL ELECTRICITY REGULATORY COMMISSION)
(a statutory body incorporated under the)
Electricity Act, 2003),)
3rd & 4th Floors, Chanderlok Building,)
36, Janpath, New Delhi - 110001).... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sachin Datta, Sr. Adv.
Mr. Rajiv Shankar Dvivedi
Mr. Utkarsh Singh
Mr. A.K. Pandey
Mr. J.K. Jha

Counsel for the Respondent(s) : Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya for R-1

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

Mr. Vishal Anand
Ms. Aparajita Upadhyay for R-3

Mr. Sethu Ramalingam for R-4

ORDER

1. The Appellant is a Generating Company as defined under Section 2(28) of the Electricity Act, 2003 (“**the said Act**”). The Appellant’s Parbati Hydro Electric Project, Stage-III (“**Parbati-III**”) is located in the State of Himachal Pradesh. Respondent No.1 is Power Grid Corporation of India which is responsible for development of transmission lines. Respondent No.4 is the Central

Electricity Regulatory Commission (“**CERC**”) whose order dated 21/07/2016 is challenged in this appeal.

2. Admittedly, the Appellant and Respondent No.1 had signed Indemnification Agreement on 22/07/2005 to protect mutual interest. Pursuant to the same the development of Associated Transmission System (“**ATS**”) of Parbati-III was under the scope of Respondent No.1.

3. Respondent No.1 filed a petition for determination of transmission tariff for combined assets of transmission system associated with Parbati-III in the CERC. The CERC vide its order dated 26/05/2015 considered only Asset-I and Asset-III for tariff with effect from 01/08/2012. Tariff of Asset-II was denied by the CERC. Paragraph 23 of the said order read as under:

“23. The Commission vide RoP dated 9.10.2014 directed the petitioner to submit on affidavit the status of actual usage of the asset. The petitioner vide affidavit dated 3.12.2014 has submitted that in view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the

petitioner has commissioned the asset with effect from 1.8.2013. It is observed that unit # 1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC. Our decision is in conformity with Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 as amended from time to time which provides as under:-

“(6) For Long Term Customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”

Respondent No.1 raised bill amounting to Rs. 74.78 crores to the Appellant based on the said order.

4. The Appellant filed review petition being Review Petition No.25/RP/2015 for review of the above paragraph 23. The CERC by its order dated 29/12/2015 recalled paragraph 23 quoted above and heard the matter on the limited aspect of sharing of

transmission charges. The matter was heard on 21/07/2016 and by the impugned order dated 21/07/2016 the above quoted paragraph 23 was substituted by following paragraph:

“23. In view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the petitioner has commissioned the asset with effect from 1.8.2013. Unit#1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC in terms of Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The CTU is directed to examine whether these transmission assets were used by other generators during the period in question, and if so, the transmission charges paid by them shall be utilised to reduce the liability of NHPC.”

The Appellant is *inter alia* aggrieved by the above paragraph and hence this appeal. In this application, the Appellant has prayed that the impugned order be stayed during the pendency of the instant appeal.

5. We have heard Mr. Datta, learned senior counsel appearing for the Appellant. Counsel submitted that the CERC failed to consider

the applicability of Indemnification Agreement. Counsel drew our attention to Regulation 8(6) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charge and Losses) Regulations 2010 (“**the said Regulations**”) and contended that it is evident that the transmission charges are paid by the beneficiaries. Counsel submitted that the concerned transmission lines are also used by several other power stations. In this connection, Counsel drew our attention to Paragraph 20 of the supplementary reply of the Appellant dated 22/02/2016 filed before the CERC. Counsel submitted that it was therefore wrong on the part of the CERC to place entire burden of transmission charges on the Appellant. Counsel submitted that the Appellant has therefore an extremely good case on merits. Grave and irreparable harm will be caused if the impugned order is not stayed during the pendency of this appeal. Counsel submitted that in the circumstances the prayer made in the application be granted.

6. We have heard Mr. M.G. Ramachandran, learned counsel appearing for Respondent No.1. Mr. Ramachandran submitted that

no case is made out for stay of the impugned order. Counsel submitted that transmission system is constructed solely for the evacuation of power generated from Assets associated with the Appellant's Parbati-III power project. Counsel submitted that the CERC has rightly directed the Appellant to pay the transmission charges from 01/08/2013 to 23/03/2014. In this connection, counsel drew our attention to the investment approvals dated 31/07/2006 and 09/08/2006 and the Appellant's letter 12/06/2013. Counsel submitted that in the circumstances the application be dismissed. Ms. Suparna Srivastava learned counsel appearing for Respondent No.2 and Mr. Sethu Ramalingam learned counsel appearing for the CERC supported the impugned order.

7. It is beyond doubt that Respondent No.1 has constructed and commissioned the transmission system associated with Parbati-III consisting of Assets-I,II and III. The said Assets are intended for evacuation of power generated from Parbati-III Hydro Power Station of the Appellant and not for any other generating station. Investment approval dated 09/08/2006 makes this clear. Admittedly, the Appellant vide its letter dated 12/06/2013 called

upon Respondent No.1 to commission the Assets at an early date. It is the case of Respondent No.1 that at the instance of the Appellant the Assets were completed in all respects in July 2013 and were declared by Respondent No.1 under commercial operation effective from 01/08/2013. However, the Appellant commissioned the Assets only on 24/03/2014.

8. Having regard to the above factual matrix of the case and relevant provisions of the said Regulations particularly Regulation 8(6) thereof we are of the *prima facie* opinion that once transmission assets are commissioned Respondent No.1 is entitled to payment of transmission charges. Respondent No.1 having incurred capital expenditure cannot be denied its legitimate payments. As per Regulation 8(6) of the said Regulations transmission charges are generally paid by the beneficiaries procuring power from generating stations. However, when the transmission assets are declared under commercial operation but there is no power flow because the generator has not yet commissioned generating station, the liability of the transmission charges has to be borne by the generator. At

the cost of repetition it must be stated that the Appellant vide its letter dated 12/06/2013 requested Respondent No.1 to make transmission line available claiming that it was ready for commissioning in the month of June,2013. Respondent No.1 completed Asset-I and III at the instance of the Appellant in July,2013 and the Assets were declared under commercial operation effective from 01/08/2013. However, the Appellant commissioned the Plant only on 24/03/2014. It *prima facie* appears to us that in these circumstances, the CERC's order holding that the Appellant liable to pay transmission charges from 01/08/2013 to 23/03/2014 cannot be called illegal. We also find that the CERC has directed Respondent No.1 to examine whether concerned transmission assets were used by other generators during the period in question and has observed that if that is so the transmission charges paid by the Appellant shall be utilized to reduce the liability of the Appellant. *Prima facie* we are unable to find any infirmity in the impugned order. The interim application will have to be therefore dismissed and is accordingly dismissed. We, however wish to make it clear that all observations made by

us are *prima facie* observations made for the disposal of the instant application.

9. List the Appeal for hearing on **27th November,2017**.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson