

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.106 of 2014

Dated: the 27th March, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

Power Grid Corporation of India Ltd.,
Saudamini, Plot No.2,
Sector 29, Gurgaon-122 001
Haryana

..... Appellant(s)

Versus

1. **Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi-110001**
2. **Rajasthan Rajya Vidyut Prasaran Nigam Limitd
Vidyut Bhawan, Jyoti Nagar, Janpath
Jaipur-302 005**
3. **Ajmer Vidyut Vitran Nigam Limited
400kV GSS Building (Ground Floor)
Ajmer Road, Heerapura, Jaipur-302 005**
4. **Jaipur Vidyut Vitran Nigam Limited
400kV GSS Building (Ground Floor)
Ajmer Road, Heerapura, Jaipur-302005**
5. **Jodhpur Vidyut Vitran Nigam Limited
400kV GSS Building (Ground Floor)
Ajmer Road, Heerapura, Jaipur-302005**
6. **Himachal Pradesh State Electricity Board Ltd.,
Vidyut Bhawan, Kumar House Complex Bldg II,
Shimla-171 004**
7. **Punjab State Power Corporation Ltd.,
The Mall, Patiala-147 001**
8. **Haryana Power Purcahse Centre
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134 109**

9. **Power Development Department
Govt of Jammu & Kashmir,
Mini Secretariat, Jammu-180 006**
10. **Uttar Pradesh Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg
Lucknow-226 001**
11. **Delhi Transco Ltd
Shakti Bhawan, Kotla Road,
New Delhi-110 002**
12. **BSES Yamuna Power Limited
Shakti Kiran Building,
Karkardooma, Delhi-110 092**
13. **BSES Rajdhani Power Limited
BSES Bhawan, Building No.20, Nehru Place,
New Delhi-110019**
14. **Tata Power Distribution Company Limited
(Formerly North Delhi Power Limited)
Power Trading & Load Dispatch Group
Cennet Building, Grid Building,
Near PP Jewellers, Pitampura
New Delhi-110034**
15. **Chandigarh Administration
Sector 9, Chandigarh-160 022**
16. **Uttarakhand Power Corporation Ltd
Urja Bhawan, Kanwali Road,
Dehradun-248 001**
17. **North Central Railway Regional HQ,
Civil Lines, Allahabad-211 001**
18. **New Delhi Municipal Council,
Palika Kentra, Sansad Marg,
New Delhi-110062**

...Respondent(s)

Counsel for the Appellant(s) : Mr. M G Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal
Ms. Ranjitha Ramachandran
Ms. Swagatika Sahoo

Counsel for the Respondent(s): Mr. Sakesh Kumar for R-1
Mr. Pradeep Misra
Mr. Suraj Singh for R-2 to R-5
Mr. Rajiv Srivastava for R-10
Mr. R B Sharma for R-13
Mr. Majoj Kumar Sharma for R-3 to R-5

J U D G M E N T

PER HON'BLE MR.JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The Appellant Petitioner, Power Grid Corporation of India Limited has filed this Appeal u/s 111 of the Electricity Act, 2013 against the Order dated 23.1.2014 (Impugned Order) passed by the Central Electricity Regulatory Commission (Central Commission) in Petition No.205/TT/2012 titled as Powergrid Corporation of India Limited Vs Rajasthan Rajya Vidyut Prasaran Nigam Limited and Others whereby the learned Central Commission has determined the tariff for the transmission assets of the Appellant, namely, (i) 400/220 kv, 315 MVA ICT-I along with associated bays at Bhiwani Sub Station and (ii) 400/220 kv, 315 MVA ICT II along with associated bays at Bhiwani Sub Station under 765 KV system for Central Part of Northern Grid Part III in northern Region.
2. The Central Commission while dealing with the aspect of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) has disallowed the claim of the Appellant amount to Rs.117.72 lakhs on the ground that the Appellant Petitioner was directed to submit the Programme Evaluation Review Technology (PERT) chart clearly showing the critical path to establish that the reasons for the delay were beyond the control of the Appellant Petitioner and it had failed to file the same.
3. The Appellant Petitioner did not file the said Programme Evaluation Review Technology (PERT) Chart and chose to file the L2 Network which did not clearly establish that the reasons for the time over-run of six months were beyond the control of the Appellant Petitioner and the Appellant Petitioner in

spite of the directions of the Central Commission had failed to file the Programme Evaluation Review Technology (PERT) chart which would have helped to understand the fact whether activities associated with the assets under the instant Petition were critical. Thus, the learned Central Commission by the Impugned Order has held that the information filed by the Appellant Petitioner did not show that the reasons for the delay for time over-run of six months in commissioning the transmission assets of the Appellant were beyond its control and accordingly the time over-run of six months in the said petition has not been allowed in the Impugned Order.

4. In the Impugned Order, the IDC and IEDC for six months time over-run have been reduced from the capital cost claimed as on the date of commercial operation for the purpose of determination of the transmission tariff.
5. The Appellant, herein Powergrid Corporation of India Limited is a Government Company registered under the Companies Act, 1956 established with the object of undertaking Inter State Transmission of electricity in India and discharges the functions of the Central Transmission Utility (CTU) and is engaged in the transmission of electricity and other functions provided under the Electricity Act, 2003.
6. The main grievance of the Appellant Petitioner is that the learned Central Commission, in the Impugned Order, has not allowed the claim for the time over run of six months on the ground of non availability of sufficient information to show the delay in handing over the land and the Central Commission has, however, not fully considered the justifications given by the Appellant in its Affidavit along with the supporting documents properly to arrive at the correct and proper conclusion.
7. Thus, the Appellant has filed the instant Appeal on the ground that the Central Commission has wrongly disallowed Rs.117.72 lakhs towards Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) on the ground of delay of six months in the commissioning of the transmission assets.

8. The Respondent No.1 is the Central Electricity Regulatory Commission which has notified the Central Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2009 (herein referred to as the “**Tariff Regulations, 2009**”), during the period from 1.4.2009 to 31.3.2014. Respondent No.2 to 18 are mostly the Power Distribution Licensees in various States of India.
9. The relevant facts giving rise to the instant Appeal are as under:
- 9.1 that on 3.11.2009, the Board of Directors of the Appellant approved the investment approval for the transmission project of 765 KV system for Central Part of Northern Grid Part-III. As per the investment approval, the transmission assets were to be commissioned within 30 months from the date of investment approval. As per the Investment approval, assets were scheduled to be commissioned within 30 months i.e. by 3.5.2012 or scheduled date of commercial operation would be 1.6.2012. The assets which are subject matter of the present Appeal are as under:
- (i) 400/220 Kv, 315 MVA ICT-I along with associated bays at Bhiwani Sub Station (Asset I)
 - (ii) 400/220 Kv, 315 MVA ICT-II along with associated bays at Bhiwani Sub-Station (Asset II).
- 9.2 that with the construction of the above sub station at Bhiwani forming part of the above scope of work involved acquisition of adequate land. The substation land had to be acquired through land acquisition proceedings under the Land Acquisition Act. Accordingly, the Appellant approached the concerned parties in the State of Haryana for acquiring the land for the project.

- 9.3 that the authorities acquired 127 acres of land. The award for the land was given on 13.01.2011. However, due to opposition of the villagers of Bhiwani, the demarcation of the land could not be done and consequently, there was a delay in handing over the project land to the Appellant.
- 9.4 that the Appellant, time and again requested the Deputy Commissioner Bhiwani, District Commissioner Bhiwani and Sub Divisional Magistrate Bhiwani for demarcation and handing over of the land to the Appellant. The Revenue Officer on 21.3.2011 through a letter requested the Tehsildar Bhiwani to expedite the process of demarcation and to hand over the land to the Appellant immediately.
- 9.5 that in the month of April, 2011, despite all possible efforts of the Appellant, only 88 acres of land out of 127 acres of land was handed over to the Appellant. It was on 15.5.2011, the remaining project land of 39 acres was handed over to the Appellant.
- 9.6 that on 16.5.2011, some of the farmers of the said land that was acquired, created disturbances and threatened the officers and employees of the Appellant Petitioner who sought police protection to facilitate the work being carried out without interference of the villagers.
- 9.7 that on 14.8.2012, the Appellant filed a Petition being Petition No.205 of 2012 before the Central Commission for determination of transmission tariff for asset 1 and Asset 2 on the basis of capital expenditure incurred or to be incurred up to the anticipated date of commercial operation and estimated additional capital expenditure projected to be incurred from the anticipated date of commercial operation i.e. 01.12.2012 to 31.03.2014.

- 9.8 that was stated in the said Petition by the Appellant that the delay in anticipated commissioning of Asset-I and Asset-II was due to the delay in handing over the sub station land at Bhiwani which is beyond the control of the Appellant Petitioner and the delay should be condoned.
- 9.9 that the audit certificate was prepared considering anticipated DOCO of 01.12.2012 for Asset-I and Asset-2 and the tariff was calculated accordingly. These assets were not yet commissioned. The billing was to be done from actual DOCO.
- 9.10 that the Asset-I and II were commissioned on 1.12.2012 with a delay of six months.
- 9.11 that during the proceedings in petition No.205/TT of 2012, the Central Commission, from time to time, sought for various information , detailed justifications, clarifications etc from the Appellant regarding the delay. The Appellant submitted the requisite details regarding the delay in commissioning of Asset-I and II through Affidavit dated 22.2.2013 and 11.9.2013 before the Central Commission.
- 9.12 that the Central Commission by the Impugned Order 23.1.2014, decided the transmission tariff for the project of the Appellant and did not allow the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) as claimed by the Appellant for the said delay of six months in commissioning of Asset-I and Asset-II.
- 9.13 The said Impugned Order is under challenge before us in the Instant Appeal.

10. We have heard the arguments of Mr. M G Ramachandran, the learned Counsel for the Appellant and Mr. Pradeep Misra learned Counsel for R-2 to 5 and Mr. Rajiv Srivastava learned Counsel for R-10 and also gone through the written submissions and the materials available on record.
11. The only issue for our consideration in the instant Appeal is **Whether in the facts and circumstances of the case, the Central Commission is justified in rejecting the claim of the Appellant Petitioner for time over-run in respect of Asset-I and Asset-II only for the reasons that it had not filed the Programme Evaluation Review Technology (PERT) chart and the delay of six months in commissioning the said assets could not be explained beyond the control of the Appellant Petitioner?**
12. On this issue, the following submissions have been made by the Appellant.
 - 12.1 That the Central Commission has wrongly and unjustly disallowed the claim of the Appellant broadly on the following three grounds:
 - (a) Non availability of sufficient documents to show the delay in handling over the land;
 - (b) The commissioning activities of the transmission projects are contrary to the schedule of the L2 Network;
 - (c) Non availability of Programme Evaluation Review Technology (PERT) Chart;
 - 12.2 that the Appellant in its Petition as well as in its Affidavits filed before the Central Commission had specifically claimed that the reason for the delay had been on account of delay in getting possession of the land due to protest by the villagers/land owners whose land was to be acquired and

which act was beyond the control of the Appellant Petitioner. The Central Commission has failed to consider the Affidavit dated 22.2.2013 and 11.9.2013 filed by the Appellant in which the Appellant had given necessary information for the said delay along with relevant documents.

- 12.3 that the documents relating to communication between the Appellant and the concerned State authorities clearly establish that the Appellant was diligently acting to get the possession of the project land at the earliest and there was no default on its part.
- 12.4 that the award for the land acquisition was given on 13.1.2011 and immediately thereafter the Appellant vide letters dated 8.2.2011, 11.2.2011, 14.2.2011 and 11.3.2011 sent to Supdt of Police Bhiwani, District Revenue Officer, Deputy Commissioner of District Bhiwani and District Commissioner of Bhiwani requested for providing police protection to the officials of the Appellant Power Grid from the local villagers who had threatened the officials with dire consequences for carrying out the survey at the site and also requested for acquisition of remaining 30 Kilas of land because of which the site construction could not be completely made.
- 12.5 that the villagers/land owners sent a communication dated 17.2.2011 to the Deputy Revenue Officer requesting for the higher compensation of their crop growing in the land which was acquired for the said project.
- 12.6 that vide communication dated 11.3.2011, the DGM, Power Grid assured the Deputy Commissioner, Bhiwani Distt that no work had taken place in the land for which the compensation had not been accepted and requested the District authorities for demarcation and handing over the land to the

Appellant Power Grid as per the land acquisition award to the Appellant. The Appellant through its DGM Power Grid, vide letter dated 8.4.2011 to Sub Divisional Magistrate requested action for acquisition of 39 acres of the 127 acres of land to be acquired for starting the project.

- 12.7 that in a nutshell, through different communications, the officials of the Appellant had requested the District Authorities for demarcation and acquisition of the project land and to provide police protection for completing the demarcation and acquisition work.
- 12.8 that the District Revenue Officer on 21.3.2011 through a letter requested Tehsildar Bhiwani to expedite the process of demarcation and handover the land to the Appellant immediately. Then, in the month of April, 2011 only 88 acres out of 127 acres of total project land was handed over to the Appellant. The remaining project land of 39 acres was handed over to the Appellant on 15.5.2011.
- 12.9 that the Appellant acquired the total project land of 127 acres by 15.5.2011. However, the farmers of the said land on 16.5.2011 threatened the employees of the Appellant and then the Appellant sought police protection to facilitate the work of construction being carried out without interference of the villagers.
- 12.10 that the award of the land was given by the Appellant on 13.1.2011 and thereafter due to the dispute of the land owners regarding higher compensation for the crop standing on the land and due to delay in demarcation and acquisition of the project land and police protection etc., the construction work on the site could start only after 16.5.2011 with the help of police and District administration.

12.11 that since the possession of total project land was delivered to the Appellant only on 15.5.2011, it was only after acquiring the total project land, the construction work on the site could start thereafter and in the said circumstances it was not possible for the Appellant to complete the project work within the officially stipulated time and the commissioning of the project could only be made with a delay of six months which delay was fully justified.

12.12 that the learned Central Commission in the Impugned Order held that the Appellant had not submitted actual date of handing over of the project land to show that the delay in commissioning of the project was due to the delay in land acquisition. As per the contents of the Affidavit dated 22.2.2013, filed by the Appellant along with the documents it is established that the total project land was handed over to the Appellant on 15.5.2011 in the presence of the villagers, concerned land acquisition authorities and the authorities of the Appellant.

12.13 that thus, the said delay of six months in commissioning of the project was beyond the control of the Appellant and therefore the same ought to have been allowed by the Central Commission as the said delay was on account of supervening circumstances for which the Appellant cannot be penalized by disallowance of the IDC and IEDC amounting to Rs.117.72 lakhs.

12.14 that the Central Commission has erred in disallowing the claim of the Appellant on the basis that 765/400 kv ICTs in the same substation were commissioned prior to Asset-I and II with a delay of only one month which is contrary to the plan in L2 Network.

12.15 that the Central Commission has failed to appreciate that as per L-2 Network, 1 line Bay, 1 ICT bay and 1 Reactor under 765 KV yard was scheduled to be commissioned in November, 2011 and 400 KV yard was scheduled to be commissioned in March, 2012 with a gap of four months. Since, the 765 KV Single Circuit Line Bhiwani-Moga Line was in advanced stage of completion, when the total land was handed over to the Appellant, the completion of associated bays were taken up on priority basis for matching with the Bhiwani-Moga line. Therefore, 765 KV/400 ICTs were commissioned prior to commissioning of 400/200 KV ICTs even if both were part of the same sub station. Further, as per the L-2 network, the scheduled commissioning of 765/400 KV ICTs were prior to the commissioning of 400/220 KV system.

12.16 that it is evident from the L-2 network that land for Bhiwani substation was scheduled to be handed over to the Appellant in April, 2010. However, the total land was handed over in May, 2011 after a delay of 13 months against the time schedule of the L2 Network.

12.17 that the Central Commission has erroneously interpreted the L-2 Network and disallowed the claim of the Appellant only on the basis of the scheduled date of structure erection and equipment erection of the 765 KV and 400 KV in the L2 Network.

12.18 that the 400/220 KV system is envisaged to feed power for intra-State network to be developed by the State Utiliteis. Even though, the 220 KV associated line of HVPNL were not ready, the 400/220 KV system was completed and commissioned on 1.12.2012 within 17 months from the date of the land acquisition. Thus, there was no abnormality in the above events for the Central Commission to draw any adverse inference.

12.19 that it is true that the learned Central Commission had directed the Appellant to file Programme Evaluation Review Technology (PERT) chart but since there is no Regulation requiring preparation of Programme Evaluation Review Technology (PERT) Chart by the Appellant, the Appellant submitted for the purpose of the project management and financial management the L-2 Network. The Appellant is using the L-2 network extensively in place of Programme Evaluation Review Technology (PERT) Chart. Since there was no provision under any Regulation or law requiring the Appellant to prepare the Programme Evaluation Review Technology (PERT) chart, the Programme Evaluation Review Technology (PERT) chart was not prepared and still not being prepared by the Appellant. Since the Appellant is using the L-2 network extensively in place of Programme Evaluation Review Technology (PERT) Chart, the chart showing L-2 network was produced before the Central Commission at the relevant time.

13. Per contra, the learned Counsel for the Respondent No.2 to 5 have made the following submissions:

13.1 that the Appellant in the Petition filed before the Central Commission did not mention any reason of delay between 1.6.2012 to 13.8.2012 and hence there was no mention of any kind of explanation in the Petition of the Appellant regarding delay of 1½ months in the commissioning of the project consisting of the Asset-I and Asset-II. Since the scheduled date of commissioning of the said project was 1.6.2012 and the Petition was filed by the Appellant for determination of the tariff for Asset I and II on 14.8.2012, the Appellant was bound to mention the reasons for the delay of 1½ months between 1.6.2012 to 13.8.2012, which it failed to do.

- 13.2 that while praying for determination of transmission tariff for the said transmission assets, no reasons was mentioned for the delay of six months caused in the commissioning of the said assets. Since the said project was commissioned on 1.12.2012, the Appellant was bound or required to explain the reasons resulting in delay of six months in commissioning of the project.
- 13.3 that the Appellant has not furnished sufficient reasons to show that the delay caused was beyond the control of the Appellant. The Respondents on the one hand could not get the benefit of the project due to delay and on the other hand, cannot be penalized with IDC and IEDC for no fault on their part.
- 13.4 that Section 61 (d) of the Electricity Act, 2003 provides that the appropriate Commission shall specify the terms and conditions for determination of tariff subject to the provisions of Section 61 (d) and in doing so, shall be guided by the principle of safeguarding of consumer's interests and at the same time recovery of cost of electricity in a reasonable manner. If the said contention of the Appellant is accepted, the tariff will be higher at the hands of consumers which is against the aim and spirit of the Act.
- 13.5 that as per the Appellant out of 127 acres of acquired land, 88 acres were handed over in April, 2011 and the remaining 39 acres were handed over on 15.5.2011. In the entire pleadings, the Appellant has not shown that these Asset-I and Asset-2 could not be installed in 88 acres of land handed over to the Appellant.

- 13.6 that the Commission has rightly disallowed the said IDC and IEDC during the period of six months delay in commissioning of the aforesaid Assets.
- 13.7 that this Appellate Tribunal approved the orders of the Central Commission in respect of the Appellant wherein IDC and IEDC had been disallowed on the ground of delay in various judgments of this Tribunal.
14. that in addition to above counter submissions, the learned Counsel for Distribution Licensee (R-13) has submitted that the aim of the Electricity Act is to provide electricity at the cheapest rate to the end consumers. Once a time line of 30 months was prescribed in the Investment Approval of the Appellant and 27 months timeline as provided in the letter of award clearly shows that a cushion of nearly three months was available which has been used by the Appellant to his benefit.
- 14.1 that the qualifying time schedule for the works of this nature as per appendix-II of the Tariff Regulations, 2009 is 24 months. Thus, by all standards, the timeline of 30 months for completion of this project was much more than required and there is no justification for any extension of the time period. The Central Commission is wholly justified in holding the Appellant responsible for time over run of 6 months in the Impugned Order.
- 14.2 that the Central Commission during the hearing on 30.7.2013 asked the Appellant to file Programme Evaluation Review Technology (PERT) chart indicating the activities on critical path and impact of delay on those activities. The Appellant in its Affidavit dated 11.9.2013, denied filing of the Programme Evaluation Review Technology (PERT) chart on the ground that Petitioner uses L2 Network in place of Programme Evaluation

Review Technology (PERT) chart for project monitoring. Programme Evaluation Review Technology (PERT)/CPM is widely used for techniques in project management. The Programme Evaluation Review Technology (PERT) chart clearly shows the sequence and inter-relationships of all activities in the project. The critical path on the network determines the duration of the project. Programme Evaluation Review Technology (PERT) chart can be drawn easily from the L2 Network and therefore it was not difficult for the Appellant to supply the information to the Commission to prove its point related to the delay in the execution of the project.

- 14.3 that the Appellant, by not filing the Programme Evaluation Review Technology (PERT) chart has clearly concealed the relevant material and information in the form desired by the Central Commission. The Appellant must know that he is operating in a Regulatory environment and is required to file the complete details to claim the benefits. When the Appellant wilfully denied the relevant details to the Commission, it had no option but to quote the judgment date d28.11.2013 in Appeal No.165 of 2012 of this Tribunal.
15. Let us discuss the issue in question.
16. Now we are to decide whether the Central Commission is justified in disallowing the Interest During Construction and Incidental Expenses During Construction for six months delay in commissioning of the transmission project of the Appellant on the ground that the Appellant Petitioner in spite of being directed to submit the Programme Evaluation Review Technology (PERT) chart, did not file the Programme Evaluation Review Technology (PERT) chart and filed the L-2 Network Chart.

Before proceeding to come to our conclusion, we deem it appropriate to reproduce the relevant part of the Impugned Order, which is as under:

“Time over-run, IEDC and IDC

11. As per investment approval, the assets were scheduled to be commissioned within 30 months from the date of investment approval i.e. by 3.5.2012, say 1.6.2012 against which assets covered in the instant petition were put under commercial operation on 1.12.2012. Accordingly, there is a delay of six months in commissioning the assets.

12. The petitioner has submitted that the delay in commissioning was on account of delay in handing over of Sub-station land at Bhiwani by the authorities. The petitioner, vide affidavit dated 20.2.2013, has submitted the copy of the communications it had with the authorities. The petitioner has not submitted the scheduled/expected and the actual date of handing over the sub station land at Bhiwani. The information filed is not sufficient and it does not show that there has been delay in handing over the land.

13. BRPL, has submitted that the entire IDC and IEDC for the time delay of six months should be borne by the petitioner and the same should not be passed on to the beneficiaries.

14. The Commission, during the hearing on 30.7.2013 directed the petitioner to submit Programme Evaluation Review Technology (PERT) chart indicating the activities on critical path and impact of delay on those activities. Petitioner vide affidavit dated 11.9.2013 has submitted that it uses L2 Network in place of Programme Evaluation Review Technology (PERT) chart and accordingly the petitioner has placed on record a copy of the L2 Network.

15. On perusal of the L2 Network, it is revealed that the 765 kV Structure Erection (ID:1035) and 400 kV Structure Erection (ID: 1038) were scheduled to start on 15.11.2010 and 25.8.2010 respectively and to be completed by 19.5.2011 and 1.4.2011 respectively. In other words, the 400 kV Structure Erection was planned to be completed 50 days earlier than 765 kV sub-station erection. Similarly, 765 kV Equipment Erection (ID: 1058) as well as 400 kV Equipment Erection (ID: 1061) were scheduled to start on 4.4.2011 and was scheduled to finish on 23.6.2011 and 13.6.2011 respectively. In other words, the 400 kV Equipment Erection was scheduled to be completed 10 days prior to completion of 765 kV equipment.

18. The petitioner was directed to submit the Programme Evaluation Review Technology (PERT) chart clearly showing the critical path to establish that the reasons for the delay were beyond the control of the petitioner. The petitioner has not filed the Programme Evaluation Review Technology (PERT) chart and chose to file the L2 Network. The L2 Network filed by the petitioner does not clearly establish that the reasons for time over-run of 6 months were beyond the control of the petitioner. The petitioner should have filed the Programme Evaluation Review Technology (PERT) chart as directed and it may have helped its case to understand the fact whether activities associating with the assets under the instant petition are critical. The information filed by the petitioner does not show that the reasons for the delay are beyond its control. Accordingly, the time over-run in the instant petition is not condoned. IDC and IEDC for six months have been reduced from the capital cost claimed, as on the date of commercial operation, for the purpose of determination of transmission tariff. Details of the IDC and IEDC disallowed is as follows:-

(Rs.in lakh)

Asset-I		
Detail of IDC and IEDC as per CA certificate dated 17.7.2012		
	IDC	IEDC
Upto March, 2012	85.09	10.62
From April, 2012 to May, 2012	16.18	0.00
From June'12 to Nov'12	58.80	0.00
Total IDC and IEDC claimed	160.07	10.62
Details of IDC Disallowed for six months		
From June'12 to Nov'12 (for 6 months)	58.80	0.00
Total Disallowed IDC (for 6 months)	58.80	0.00

(Rs.in lakh)

Asset-II		
Detail of IDC and IEDC as per CA certificate dated 17.7.2012		
	IDC	IEDC
Upto March, 2012	85.22	10.64
From April, 2012 to May, 2012	16.21	0.00
From June'12 to Nov'12	58.92	0.00
Total IDC and IEDC claimed	160.35	10.64
Details of IDC Disallowed for six months		
From June'12 to Nov'12 (for 6 months)	58.92	0.00
Total Disallowed IDC (for 6 months)	58.92	0.00

19. The IDC disallowed for the period of delay has been deducted proportionately from the cost of elements as on date of commercial operation (excluding land). Further, no amount of IEDC has been deducted as petitioner has not claimed any amount of IEDC during the period of delay.

The main contention of the Appellant is that the learned Central Commission has wrongly disallowed Rs.117.72 lakhs towards IDC and IEDC on the ground of delay of six months in commissioning the assets. There was a delay of six months due to opposition of land owners in the work of demarcation of the land acquired under the land acquisition proceedings. The Appellant got possession of the entire land to be acquired only on 16.5.2011. Since some problem was created by the land owners, the possession was peacefully and completely acquired by the Appellant on 16.5.2011 with the help of police and Revenue Authorities. According to the investment approval, the said transmission project comprising of Asset-I and Asset-II was to be commissioned by 3.5.2012 namely on 1.6.2012. The award for the said acquired land was given by the Appellant Petitioner to the land owners on 13.1.2011. The possession of the major portion of the land was acquired by the Appellant in April 2011. Thus, according to the Appellant, the Appellant through its continuous efforts succeeded in getting possession of the total project land on 15.5.2011.

The other contention of the learned Counsel for the Appellant is that the learned Central Commission has not considered and relied on the contents of the affidavit, dated 22.2.2013 and 11.9.2013 filed by the Appellant before the Central Commission at the relevant time. The learned Central Commission, without considering the said Affidavits, rejected the submissions of the Appellant Petitioner that the delay of six months in commissioning of the transmission project of the Appellant was on account of delay in handing over the possession of the sub station land at Bhiwani by the Revenue Officer. The Central

Commission has wrongly noted in the Impugned Order that the actual date of handing over of sub station land at Bhiwani was not mentioned by the Appellant and information filed was not sufficient and did not show that there was a delay in handing over the said sub station land.

Since the Appellant does not prepare Programme Evaluation Review Technology (PERT), chart it only uses L-2 line network in place of Programme Evaluation Review Technology (PERT) chart said Chart could not be produced by the Appellant before the Central Commission and the Central Commission has wrongly not relied on L-2 Network Chart.

It is apparent from L-2 network Chart that since 765 KV single Circuit line Bhiwani-Moga line was in advance stages of completion when the total land was handed over to the Appellant, the completion of the associated based work were taken on priority basis for matching with the Bhiwani-Moga line and therefore, 765 /400 kV ICTs were commissioned prior to commissioning of 400/220 kV ICTs even if both were part of the same sub staion.

As per L-2 Net work also, the scheduled commissioning of 765/400 KV ICTs were prior to commissioning of 400/220 KV system. The learned Central Commission has not appreciated this aspect of the Appellant's submission while passing the Impugned Order and wrongly interpreted the details given in the L-2 network by the Appellant.

17. Refuting the aforesaid contentions of the Appellant, the main submission of the Respondents is that the reasons for delay of six months were neither mentioned by the Appellant Petitioner in the instant Petition filed before the Central Commission nor disclosed during the hearing. Appellant failed to furnish sufficient reasons to

explain the delay of six months in the commissioning of the said project of the Appellant being beyond the control of the Appellant.

In the entire pleadings, the Appellant failed to show that the Asset-I and II could not be installed in 88 acres of land handed over to the Appellant.

18. According to the Respondents, this Tribunal has approved the other orders passed by the Central Commission in respect of the Appellant wherein IDC and IEDC had been disallowed on the ground of delay in project commissioning in Appeal No.13 of 2014, Appeal No.107 of 2014 and Appeal No.187 of 2014. This Appellate Tribunal in the said Appeals decided earlier, also relied upon Section 61(d) of the Electricity Act and confirmed the orders of the Central Commission on the ground that award of IDC and IEDC would amount to higher tariff which would be prejudicial to the interest of the consumers.
19. After hearing the rival contentions and going through the material available on record including the Impugned Order, the following facts are established:
 - (a) that as per the investment approval for the said project dated 3.11.2009, the said assets were to be commissioned within 30 months from the date of the investment approval and as such, the assets were scheduled to be commissioned by 3.5.2012 and scheduled date of commercial operation would be 1.6.2012.
 - (b) that the Auditor's certificate was prepared considering the anticipated DOCO of 1.12.2012 for Asset-I and Asset-II and the tariff has been calculated accordingly. These assets were not yet

commissioned. The billing was required to be done from actual DOCO.

(c) that the aforesaid Assets I and II were commissioned on 1.12.2012 with a delay of six months.

(d) that award for the land acquisition was given by the Appellant on 13.1.2011 and immediately thereafter, the Appellant vide various communications between 8.2.2011 to 8.4.2011 wrote several letters to the District Revenue Authorities and Police Authorities requesting them to provide police protection to the officers of the Appellant from the local villagers who had threatened the officials with dire consequence for carrying out survey at the site and for acquisition of remaining land, which delayed the construction work at the site. All the letters are available on record to further clarify that the land owners also sent communication dated 17.2.2011 to the Deputy Revenue Officer requesting for higher compensation for their crops and on query, the Appellant vide communication dated 11.3.2011 assured the Dy Commissioner of Bhiwani that no work had taken place in the land for which the compensation had not been expedited and requested for demarcation and handing over of the total project land to the Appellant. Not only this, the Deputy Revenue Officer on 21.3.2011 directed the Tehsildar Bhiwani to expedite the process of demarcation and handover the land to the Appellant immediately and it was then in the month of April, 2011, only 88 acres out 127 acres of land was handed over to the Appellant and the remaining 39 acres of project land was handed over to the Appellant on 15.5.2011.

20. After a deep scrutiny of the various correspondences made by the Officers and employees of the Appellant to the District Revenue Officer and Police Officers, it becomes evident that the land owners, whose land was to be acquired for the said project, moved an Application to the District Revenue Officer on 17.2.2011 praying for higher compensation for their crops growing in the said land and the District Revenue Officer on that letter asked the Appellant to assure that no work had taken place in the said land to be acquired for which the compensation has not been expedited and it was only on 11.3.2011 by which communication the Appellant assured the Dy Commissioner of Bhiwani that no work had taken place in the land for which compensation had not been expedited and requested for demarcation of the said land and handing over of the possession of the said land was made. Thus, the District Police and Revenue Authorities came into action with the help of police, the demarcation of the said land was made and possession of the major portion of the land was handed over to the Appellant on 15th April, 2011 and the remaining possession of the land was handed over to the Appellant on 15.5.2011. Thus, due to problems created by the land owners, there was a delay in demarcation of the said land and ultimately with the police help, the said land was demarcated by the District Revenue Authorities and possession of the land was given in April, 2011 and remaining part of the land was handed over to the Appellant on 15.5.2011.

21. It is further evident from the said communication between farmers and District authorities on the one hand and between the Appellant and the District Authorities on the other hand that the District Revenue Officer on 21.3.2011 directed the Tehsildar to expedite the possession of the demarcation and handed over the land to the Appellant immediately. Since

the Appellant had to give assurance to the Dy Commissioner Bhiwani vide communication dated 11.3.2011 on the application of the farmers dated 17.2.2011, praying for higher compensation for the crops growing in the land, the work could not be started on the site within the stipulated time.

22. From the communication mentioned above, we find that for about at least two months from 15.3.2011 to 16.5.2011, the delay occurred due to the problems created by the farmers/land owners of the land to be acquired when they were seeking for higher compensation for their crop growing in their land and the Appellant requested the District authorities to demarcate the land on the spot and handover the possession of the total project land to the Appellant. We further find that these factors were beyond the control of the Appellant Petitioner. Thus, we find that the Appellant Petitioner is entitled to the time over run of two months out of the claim of the six months and accordingly, the Appellant Petitioner should be allowed IDC for this period of two months. We further find that in the facts and circumstances of the case, the learned Central Commission is not justified in rejecting the claim of the Appellant Petitioner for time over run of six months only for the reason that the Appellant had not filed PERT chart. Under these circumstances, the delay of two months out of total delay of six months claimed by the Appellant Petitioner in commissioning the said transmission project should be allowed to the Appellant Petitioner because the said delay cannot be said to be attributed to the Appellant and was beyond the control of the Appellant Petitioner.
23. It is established from the material on record including various communications detailed above that for two months from 15.3.2011 to 16.5.2011, the Appellant could not commission the said project and this

delay of two months occurred due to the problems created by farmers/land owners when they moved some Application before the District Authorities praying for higher compensation for their crops growing in the said land. This period was consumed in getting the land demarcated on the spot and further in getting the possession of the total project land and these reasons were beyond the control of the Appellant Petitioner. Therefore, the delay of two months out of total six months delay claimed by the Appellant Petitioner should be condoned and accordingly, the Appellant Petitioner should be allowed Interest during Construction for the said period of two months.

24. The approach of the Central Commission in passing the Impugned Order does not appear just, judicious and judicial one as it should have considered the said factors due to which the said delay of two months occurred in commissioning of the said project by the Appellant and the said factors should have been found beyond the control of the Appellant Petitioner. The Impugned Order, to this extent which we have indicated above is vitiated and suffers from the vice of illegality and is liable to be set aside.
25. Under these circumstances, this Appeal is liable to be partly allowed on the said issue.
26. We find legal justification in condoning the delay of two months in the commissioning of the said transmission project by the Appellant Petitioner out of the total delay of six months claimed by the Appellant.

ORDER

This Appeal is partly allowed and the Impugned Order dated 23.1.2014 passed by the learned Central Commission in Petition No.205/TT/2012 is set aside to the extent stated above. The Appellant Petitioner is entitled to the delay of two months in the commissioning of the said transmission project and the Appellant is entitled to Interest during Constructions for the period of two months accordingly. The learned Central Commission is directed to pass the consequential orders within three months from today. There is no order as to cost.

26. Pronounced in Open Court on this **27th Day of March, 2015.**

(T Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated :27th March, 2015



REPORTABLE / ~~NON-REPORTABLE~~