

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9193 OF 2012

Power Grid Corporation of India Ltd. ... Appellant
VERSUS

Punjab State Power Corporation Ltd.
And Others ... Respondents

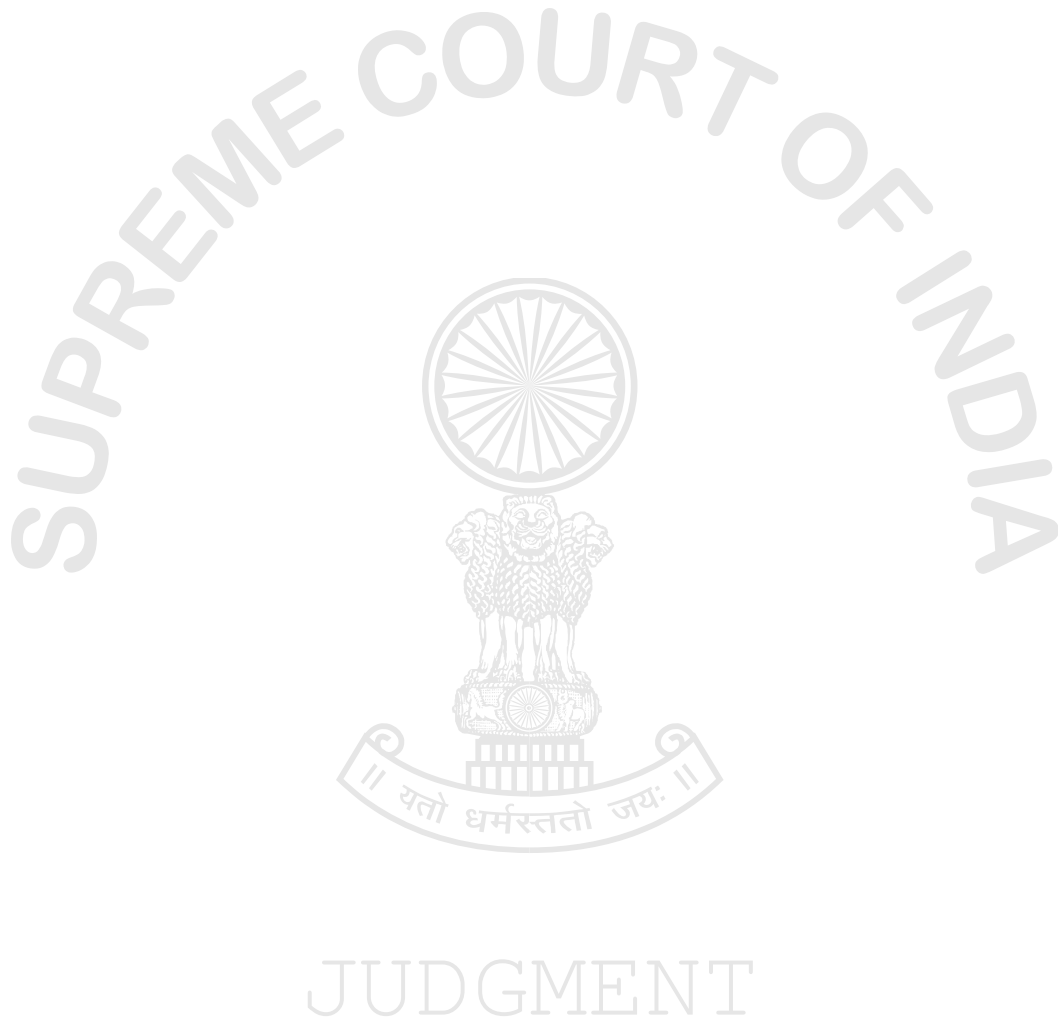
WITH
CIVIL APPEAL NO. 9302 of 2012

J U D G M E N T

Prafulla C. Pant, J.

These appeals preferred under section 125 of Electricity Act, 2003 are directed against orders dated 02.07.2012 and 08.11.2012 respectively, passed by Appellate Tribunal for Electricity, New Delhi (for short “the Tribunal”), whereby Appeal No. 123 of 2011 was allowed and Review Petition No. 09 of 2012 filed against that order was dismissed by the Tribunal, and matter was remanded back to Central Electricity Regulatory Commission (CERC)

for redetermination of date of commercial operations (COD)
of 400 KV Barh-Balia double circuit transmission?



2. The issue involved in the present case is as to:-

Whether the new transmission line charged from one end by the transmission licensee without switchgear, protection system and metering arrangement (not in the scope of works of the transmission licensee) at the other end could not have been commissioned for the purpose of raising transmission charges against the beneficiaries in the light of second Proviso to clause (c) of Regulation 2 of Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2009 (for short "Regulations, 2009")?

3. We have heard Learned Counsel for the parties and perused the papers on record.

4. Brief facts of the case are that appellant Power Grid Corporation of India (for short "Power Grid") is a transmission licensee who constructed 400 KV Barh-Balia double circuit transmission. Punjab State Power Corporation Ltd. (respondent No. 1) is one of the

beneficiaries who is a successor-in-interest of Punjab State Electricity Board. Appellant had entered into contractual agreement, i.e Bulk Power Transmission Agreement with respondent No. 1 and other beneficiaries for providing the service of transmission lines. National Thermal Power Corporation (NTPC) was constructing a Super Thermal Power Station at Barh in the State of Bihar. The construction of the Sub-station including the switchgear and protection system at the Barh end was within the scope of work undertaken by NTPC. It is pleaded by the appellant that it had duly constructed and completed the work assigned to it by 30th June, 2010. It is further pleaded that the line was duly charged with all reactors and battery chargers in service and auxiliary supply was available and the system was running.

5. On 01-10-2010 the appellant filed a petition (No. 267 of 2010) before CERC for determination of transmission tariff for the period from 01-07-2010 to 31-03-2014. Admittedly the petition was heard by CERC on 25-01-2011,

and till that date respondent No. 1 had not raised any objection. The matter was reserved for the Judgment. Thereafter, respondent No. 1 appears to have filed an affidavit stating that that line was not operational. CERC, vide order dated 29-04-2011 decided the tariff for Barh-Balia line w.e.f 01-07-2010, payable by beneficiaries. Aggrieved by said order respondent No. 1 filed the appeal (No. 123 of 2011) before the Tribunal and pleaded that since condition of trial operation and regulatory services were not fulfilled, as such, the Central Commission erred in declaring the tariff w.e.f. 01-07-2010. The Tribunal accepted the plea of respondent No. 1, and remanded the matter. Hence, these appeals.

6. Before further discussion we think it just and proper to quote the relevant provision contained in Regulations, 2009 for the just decision of the case. Clause (12) of Regulation 3 defines 'date of commercial operation' (COD) as under:-

“(12). **‘Date of Commercial Operation’ of ‘COD’** means

- (a) In relation to a unit or block of the thermal generating station, the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice
- (b) to the beneficiaries, from 0000 hour of which scheduling process as per the Indian Electricity Grid Code (IEGC) is fully implemented, and in relation to the generating station as a whole, the date of commercial operation of the last unit or block of the generating station;
- (c) In relation to a unit of hydro generating station, the date declared by the generating company from 0000 hour of which, after notice to the beneficiaries, scheduling process in accordance with the Indian Electricity Grid Code is fully implemented, and in relation to the generating station as a whole, the date declared by the generating company after demonstrating peaking capability corresponding to installed capacity of the generating station through a successful trial run, after notice to the beneficiaries:

Note

1. In case the hydro generating station with pondage or storage is not able to demonstrate peaking capability corresponding to the installed capacity for the reasons of insufficient reservoir or pond level, the date of commercial operation of the last unit of the generating station shall be considered as the date of commercial operation of the generating station as a whole, provided that it will be mandatory for such hydro generating station to demonstrate peaking capability equivalent to installed capacity of the

generating unit or the generating station as and when such reservoir/pond level is achieved.

2. In case of purely run-of-river hydro generating station if the unit or the generating station is declared under commercial operation during lean inflows period when the water is not sufficient for such demonstration, it shall be mandatory for such hydro generating station or unit to demonstrate peaking capability equivalent to installed capacity as and when sufficient inflow is available.

(d) In relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:

Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service.”

7. The language in the above definition is clear and unambiguous. We agree with the Tribunal that COD of

transmission lines can be achieved only on fulfillment of following three conditions:-

- (i) The line has been charged successfully,
- (ii) Its trial operation has been successfully carried out, and
- (iii) It is in regular service.

8. It is contended on behalf of the appellant that what has been misinterpreted by the Tribunal is the second Proviso of clause (12) of Regulation 3 which provides that where transmission system is ready for regulatory services but prevented from providing the service for reasons not attributable to the transmission licensee, the commission has the power to approve the date of commercial operation prior to element coming into regular service. It is not disputed in the present case that Barh Sub-station was being constructed by NTPC, and Power Grid cannot be made to suffer as nothing was attributable to it.

9. On the other hand, on behalf of respondent No. 1 it is argued that the transmission line cannot be said to have been completed unless switchgear and other connected works are also completed, as provided in the definition of “transmission lines”.

10. We have considered the rival submissions. Sub-section (72) of Section 2 of Electricity Act, 2003 defines the word “transmission lines”, which reads as under: -

“2(72) “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.”

11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of

“transmission lines” given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

12. We are apprised at the bar that meanwhile during the pendency of these appeals, in compliance of the interim order, after hearing all the concerned parties, C.E.R.C. has decided the matter on 30-06-2015, and transmission line has been now declared successfully charged w.e.f. 01-09-2011 and the commercial operation has started on said date. However, the order dated 30-06-2015 passed by CERC is stated to be operative subject to decision of this

Court in the present appeals, due to the interim order passed by this court.

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs.

.....J.
[Ranjan Gogoi]

.....J.
[Prafulla C. Pant]

New Delhi;
March 03, 2016.