

Central Electricity Regulatory Commission

Power Grid Corporation Of India ... vs Rajasthan Power Procurement ... on 16 July, 2007

Bench: B Bhushan, R Krishnamoorthy

ORDER

1. The application is made for review of order dated 21.3.2007 in Petition No. 138/2006, whereby the Commission approved the final transmission charges from 1.8.2005 to 31.3.2009 in respect of 400 kV D/C Dhauliganga-Bareilly (UPPCL) with bays at Bareilly (UPPCL) (hereinafter referred to as "the transmission line"). The application is already admitted.

2. We heard the representatives of the parties present at hearing.

3. The petitioner had made an application (Petition No. 160/2006) for approval of provisional transmission tariff for the transmission line from 1.8.2005, the date of commercial operation. In the said application, the petitioner had sought approval for recovery of annual lease rent as actually paid to Forest Department, Government of Uttaranchal (now Uttarakhand) for 29 years, presently fixed at Rs. 2.31 crore/year. The Commission in its order dated 7.4.2006 in Petition No. 160/2005, had, inter alia, observed as under:

4. The petitioner has also submitted that Govt. of Uttaranchal vide letter dated 21.5.2004 approved transfer of 364.154 hectare of land on lease for a period of 30 years in Pithorgarh, Champavat and Udhamnagar district. Subsequently, Government of Uttaranchal vide letter dated 11.10.2004 approved transfer of 102.49 hectare of land on 30 years' lease in the area falling under Askot Wild Life Sanctuary, Pithorgarh district. As per the letter dated 21.5.2004, 10% of market value of land is required to be paid by the petitioner as lease rent per annum. The petitioner company has deposited Rs. 2.31 crores on lease rent for one year as per the present rent and is liable to pay the annual lease rent as per actuals applicable from time to time. The petitioner has sought permission of the Commission to recover the lease rent from the respondents. These aspects will be considered by the Commission at the time of approval of final tariff.

4. Subsequently, the petitioner made an application for approval of final tariff for the transmission line, taken on Commission's file as Petition No. 138/2006. In this application also, the petitioner sought approval for recovery of annual lease rent from the respondents. The final transmission tariff in respect of transmission line was approved by the Commission by its order dated 21.3.2007. However, the said order dated 21.3.2007 is silent as regards the recovery of the lease rent. Against the above noted facts, the petitioner has sought review of the said order dated 21.3.2007, again praying for approval of recovery of annual lease rent of Rs. 2.31 crore/year or as may be fixed by the Forest Department, Government of Uttaranchal from time to time, directly from the respondents on the basis of production of documentary evidence for payment of lease rent to the State Government.

5. It has been stated that Ministry of Environment and Forest, Government of India conveyed its approval for diversion of 466.583 hectares of forest land, a part of which (102.429 hectare) was falling in Ascot Wild Life Sanctuary, for construction of the transmission line. The State Government by its letter dated 21.5.2004 accorded approval for transfer of 364.154 hectare to the

petitioner for a period of 30 years. It was, inter alia, stipulated by the State Government that the petitioner would pay annual lease rent @ 10% of the market rate of land transferred under lease. Because of the ban imposed by the Hon'ble Supreme Court of India on non-forest work in wild life sanctuaries/national parks, the approval of the State Government for transfer of 102.429 hectare of land in Ascot Wild Life Sanctuary could not be accorded. However, based on an application made by the petitioner, the Hon'ble Supreme Court by its order dated 13.8.2004, granted permission for forest clearance in Ascot Wild Life Sanctuary subject to the condition that the petitioner would deposit 5% of the total project cost of Rs. 150.53 crore for the compensatory and afforestation work for undertaking conservation and protection of Ascot Wild Life Sanctuary. Thereafter, the State Government by its letter dated 11.10.2004 approved transfer of remaining 102.429 hectare of land to the petitioner on lease for a period of 30 years subject to the conditions stipulated in its letter dated 21.5.2004. The State Government has worked out lease rent of Rs. 230.67 lakh/annum based on the market value of Rs. 2306.77 lakh of the total land leased out to the petitioner for 30 years. The petitioner seeks recovery of this amount.

6. The Distribution Companies in the State of Rajasthan in their similarly worded replies have stated that there is no error in the order dated 21.3.2007 and accordingly, the present application for review is not maintainable.

7. We have considered the submission made on their behalf, but are not convinced. As it has already been noted, the Commission in its order dated 7.4.2006 had decided that the question of recovery of lease rent by the petitioner would be considered while approving final tariff for the transmission line. However, while approving final tariff by order dated 21.3.2007 this aspect escaped the attention of the Commission. The petitioner should not be prejudiced on account of the omission of the Commission. Therefore, in our view, this is an error apparent on the face of record which can be rectified through the process of review.

8. We are thus satisfied that a case for review has been made out. However, considering that the prayer made by the petitioner for recovery of the lease rent will not affect the transmission charges already approved, we are considering the second prayer made by the petitioner in these very proceedings.

9. Uttar Pradesh Power Corporation Ltd (UPPCL) in its reply has stated that the Hon'ble Supreme Court in its order dated 13.8.2004 has directed that an amount representing 5% of the total project cost of Rs. 150.53 crore is payable as one time charges to the Forest Department. Therefore, UPPCL has prayed that the petitioner should pursue the matter with the State Government to accept one time payment as directed by the Hon'ble Supreme Court and recover the same from the beneficiaries as interest on loan along with instalment of repayment of loan on annual basis.

10. We have perused the order of the Hon'ble Supreme Court. The Hon'ble Supreme Court has directed that 5% of the total project cost of Rs. 150.53 crore is payable towards compensatory and afforestation fund for undertaking conservation and protection of Ascot Wild Life Sanctuary. The Hon'ble Supreme Court has not passed any order regarding payment of lease rent by the petitioner to the State Government. Therefore, we do not find any merit on the UPPCL's submission.

11. The representative of Punjab State Electricity Board submitted at the hearing that in accordance with the State Government's letter dated 9.9.2005, the lease rent is payable @ 1% of the market value of land and not @ 10% as claimed by the petitioner. In this regard, the petitioner has placed on record as a part of the petition the correspondence exchanged with the State Government. The petitioner by its letter dated 29.3.2006 impressed upon the State Government to charge lease rent in accordance with its letter dated 9.9.2005. However, the State Government by its letter dated 1.5.2006 declined the petitioner's request on the ground that the policy guidelines contained in the said letter dated 9.9.2005 are to be applied prospectively to the leases accorded after the issue of that letter. As in the present case approval for transfer of land on lease for accorded prior to issue of letter dated 9.9.2005 (by letters dated 21.5.2004 and 11.10.2004), the petitioner was liable to pay lease rent @ 10% of the market value of the land leased out. In this manner, the efforts made by the petitioner to persuade the State Government to levy the lease rent @ 1% of the market value of land have not succeeded.

12. We are satisfied that the petitioner is to pay lease rent to the State Government on annual basis @ Rs. 230.67 lakh. The amount of lease rent paid for the first year has already been capitalized. We direct that the amount payable during the next 29 years will be recovered by the petitioner from the respondent on monthly basis for the remaining lease period, that is, 29 years, while raising the bills for the transmission charges for the transmission line approved by the Commission. The amount recovered shall be regularized on production of evidence for payment of the lease rent by the petitioner to the State Government.

13. Accordingly, the petition for review stands disposed of.