2025 INSC 626

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5857-5858 OF 2011

POWERGRID COPORATION OF INDIA LIMITED **APPELLANT(S)**

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ORS. **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

This order will dispose of both Civil Appeal Nos. 5857 and 5858 of 2011.

2. Since both the civil appeals filed by the appellant under Section 125 of the Electricity Act, 2003 arise out of the

common order dated 23.03.2011 passed by the Appellate Tribunal for Electricity in Appeal Nos. 91-92 of 2009 with the issue being inter-related and between the same parties, both the appeals were heard together and are being disposed of by this common order.

3. Appellant in this case is Powergrid Corporation of India Limited.

4. In Appeal No. 91 of 2009, the challenge made was to the order dated 03.02.2009 passed by the Central Electricity Regulatory Commission in Petition No. 68 of 2008. In Appeal No. 92 of 2009, challenge made was to the order dated 03.02.2009 passed by the Central Electricity Regulatory Commission in Petition No. 80/2008. Both Appeal Nos. 91 and 92 of 2009 were dismissed by the Central Electricity Regulatory Commission *vide* the order dated 23.03.2011 (impugned order).

5. Hence, the two appeals.

6. This Court by order dated 01.08.2011 had issued notice.

7. Relevant facts may be briefly noted.

8. Appellant Powergrid Corporation of India Limited (for short 'Powergrid') is a public sector undertaking of the Government of India. It is mainly engaged in the business of transmission of power through its transmission network. It discharges its statutory functions under the Electricity Act, 2003 and transmits electricity throughout the country. On the other hand, respondent No. 1 is the Central Electricity Regulatory Commission. It is a statutory body established under the provisions of the erstwhile Electricity Regulatory Commission Act, 1998 (since repealed). After coming into force of the Electricity Act, 2003, the Central Electricity Regulatory Commission ('CERC' for short) began to exercise its functions under the said statute.

9. At the relevant point of time, appellant was a central transmission utility responsible for establishing transmission assets of Inter-State Transmission Systems ('ISTS' for short) dealing with planning and transmission of electricity. Amongst others, appellant owned and operated two transmission

systems in the northern region: Rihand I and Rihand II. Rihand I comprises of Mandola and Ballabgarh sub-stations whereas Rihand II comprises of Kaithal, Mainpuri and Abdullapur sub-stations. Rihand I had three Inter-connecting Transformers ('ICT' for short): one at Ballabgarh and two at Mandola. Rihand II had four ICTs: two at Kaithal and two at Mainpuri.

10. Between 28.04.2006 and 09.05.2006, all the three transformers in the Rihand I transmission system failed and broke down. In fact, those were burnt and damaged due to internal faults. Considering that it was peak summer season with high anticipated load demand in the National Capital Territory of Delhi, the transformers were required to be replaced immediately. According to the appellant, procurement of new transformers would have taken a long time. Therefore, it was decided to temporarily take out one transformer each from Mainpuri and Kaithal sub-stations and to divert the same to Ballabgarh and Mandola. It was also decided to divert one transformer which was procured for Bahadurgarh sub-station

to Mandola as commissioning at Bahadurgarh was scheduled later.

11. Accordingly, appellant restored the transformers at Ballabgarh and Mandola during the period from 29.05.2006 to 19.06.2006. The ICTs that were taken out from Mainpuri and Kaithal were restored by January and February, 2007 by new/repaired transformers.

12. Thereafter, appellant filed a petition before the CERC for approval of the transmission charges for the three replaced ICTs in Rihand I based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (referred to hereinafter as 'the Tariff Regulations'). The said petition was registered as Petition No. 68 of 2008. Appellant claimed de-capitalization for the transformers taken out from Mainpuri and Kaithal and additional capitalization for the new/repaired transformer originally procured for Bahadurgarh sub-station and installed at the two sub-stations of Mandola and Ballabgarh.

13. By order dated 03.02.2009, CERC did not allow the claim of the appellant and dismissed Petition No. 68 of 2008.

14. Aggrieved thereby, appellant preferred Appeal No. 91 of 2009 before the Appellate Tribunal for Electricity ('Appellate Tribunal' for short).

15. On 09.05.2006, the tariff for the Rihand transmission systems were determined by the CERC for the period from 01.04.2004 to 02.04.2009. On 04.09.2008, appellant filed a petition before the CERC for revision of tariff in respect of the Rihand transmission system for the period upto 02.04.2009 considering the net additional capitalization on account of replacement of the three burnt ICTs at Mandola and Ballabgarh. Appellant also sought for a direction to the Northern Regional Power Committee for issuance of revised availability certificate excluding the period when the three ICTs were decapitalized and not in use. According to the appellant, an availability certificate was required for claiming full transmission charges and incentives. It was registered as Petition No. 80 of 2008.

16. CERC *vide* the order dated 03.02.2009 disallowed the claim of the appellant for decapitalization of the damaged transformers and recapitalization of the installed transformers as replacement for the damaged transformers. CERC further held that the net cost for such replacement has to be met out from the insurance fund reserve maintained by the appellant under the internal insurance policy for which contribution was being paid by the beneficiaries in the form of operations and maintenance expenses. Further, CERC also did not accede to the prayer of the appellant for giving directions to the Northern Regional Power Committee for issuance of revised availability certificate. Accordingly, *vide* the aforesaid order dated 03.02.2009, Petition No. 80 of 2008 filed by the appellant was dismissed.

17. This led to filing of Appeal No. 92 of 2009 by the appellant before the Appellate Tribunal. Both the appeals were heard together by the Appellate Tribunal; and *vide* the impugned order dated 23.03.2011 dismissed the two appeals as being devoid of merit.

18. Learned counsel for the appellant submits that Appellate Tribunal had virtually rubber stamped the findings arrived at by the CERC. That apart it had interpreted Regulation 53(2)(iv) and Note 2 of the Tariff Regulations in a most illogical manner. If this is the interpretation, then no transmission licensee will ever get additional capitalization on restoration and replacement of the ICTs. He also submits that interpretation of the Appellate Tribunal *viz-a-viz* the self-insurance policy is wholly illogical without appreciating that the fire had occurred as a result of the machinery breakdown and hence it is not covered under the self-insurance policy.

18.1. Because of such erroneous decision, appellant has been denied Rs. 15.63 crores on account of capitalization and Rs. 4.58 crores on account of tariff *qua* Rihand I transmission system and Rs. 3.54 crores on account of capitalization *qua* Rihand II transmission system.

18.2. He submits that in April-May, 2006, the three ICTs at Mandola and Ballabhgarh were damaged due to internal faults

i.e. machinery breakdown which resulted in the burning of the ICTs.

19. Learned counsel again referred to Regulation 53(2) of the Tariff Regulations and submits that any work that may be required to be done by a transmission licensee for successfully operating the transmission system is permissible expenditure for capitalization, whether it is a new work or a replacement. Any other interpretation would render the aforesaid provision particularly Note 2 meaningless. Contrary to this Appellate Tribunal has returned a finding that replacement of ICTs/transformers is neither an additional work necessary for efficient and successful operation nor an old asset requiring replacement. Such a finding is unsustainable.

19.1. It is further submitted that Appellate Tribunal was not justified in denying decapitalization and additional capitalization of the ICTs on the ground that it was the responsibility of the appellant for maintenance of the transmission system. Appellant's decapitalization and capitalization were under the terms of accepted accounting

practice. By not factoring in the said expenditure as additional capitalization for the value of the ICTs has led to a non-cost reflective tariff being paid to the appellant. Finding rendered by the Appellate Tribunal that provisions of Regulation 53 of the Tariff Regulations does not cover replacement of damaged ICTs/transformers is incorrect for the reason that any additional expenditure is contemplated to be an additional capitalization if it relates to the efficient and successful operation of the project. Regulation 53 cannot be interpreted in a narrow and pedantic manner.

19.2. Referring to the self-insurance policy of the appellant, learned counsel submits that the same covers losses from fire, whether it is internal or external or even if it is due to machinery breakdown. Fire was not the direct cause of the damage to the ICTs/transformers; rather it was machinery failure that possibly led to the fire. Learned counsel submits that if the fire had caused the machinery breakdown, the coverage will be available under the self-insurance policy as the proximate cause in such a case would be the fire. In this connection he has placed

reliance on a decision of this Court in *New India Assurance Company Limited Vs. Zuari Industries Limited*[1]. He has also placed reliance on another decision of this Court in *Gujarat Urja Vikas Nigam Limited Vs. Renew Wind Energy (Rajkot) Private Limited*[2] to contend that Appellate Tribunal virtually rubber stamped the decision of CERC.

20. On the other hand, learned counsel for some of the respondents i.e. respondent Nos.2 to 5 and 10, who are the beneficiaries, supported the order of CERC as well as that of the Appellate Tribunal.

20.1. It is submitted that appellant under the statute is under an obligation to maintain a healthy transmission system. For maintenance of the transmission system, the beneficiaries are not required to pay additional amount. The very concept of additional capitalization is based on the premise that in case any additional benefit is given to the beneficiaries, the amount can be capitalized. It is contended that by replacement of the

[1] (2009) 9 SCC 70
[2] 2023 SCC OnLine SC 411

failed transformers no additional benefit is given to the beneficiaries. Hence, the amount claimed for replacement of the transformers cannot be capitalized.

20.2. Appellant had also shown a huge figure as cost of the installed transformers though such transformers were not new ones. Actual cost of the transformers would be much less. The differential amount cannot be capitalized.

20.3. Adverting to Regulation 53 of the Tariff Regulations, it is submitted that additional capitalization can be claimed only in respect of the works in the original scope of the project. That apart, additional capitalization can be claimed due to change in law or on account of any award passed in arbitration, decree of court, etc. Replacement of transformers does not fall in any of such categories. Hence, the amounts claimed in both the appeals cannot be capitalized.

20.4. The self-insurance reserve policy of the appellant covers unsecured risks. The policy does not say that it will not cover the risk regarding failure of transformers. If the appellant

had not secured that risk in the policy, it cannot be allowed to penalise the beneficiaries.

20.5. Learned counsel has also justified the decision of the Appellate Tribunal declining to issue directions to Northern Regional Power Committee (NRPC).

20.6. It is therefore submitted that there is no merit in the appeals which should be dismissed.

21. Submissions made by learned counsel for the parties have received the due consideration of the Court.

22. Upon perusal of the materials on record and after hearing learned counsel for the parties, we are of the view that the following questions arise for our consideration in this case:

1. Whether the Appellate Tribunal and respondent No.1 were justified in rejecting the claim made by the appellant of additional capitalization due to replacement of the damaged ICTs?

2. Whether the self-insurance policy of the appellant covered the cost of replacement of the damaged ICTs?

3. Whether the Member Secretary of NRPC should have been directed by the Appellate Tribunal to issue revised availability certificate for the transmission assets?

23. To consolidate all the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of the electricity industry, promoting competition therein, protecting the interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for such related matters, the Electricity Act has been enacted. Whether it is Appellate Tribunal traceable to Section 110 or the Central Electricity Regulatory Commission (CERC) referred to in Section 76(1) or Central Transmission Utility meaning any government company which the Central Government may notify under sub-section (1) of Section 38,

such as the appellant, all are covered by provisions of the Electricity Act. It also provides for appeal to the Supreme Court, as in the present case, under Section 125 against any decision or order of the Appellate Tribunal on a substantial question of law.

24. In exercise of the powers conferred under Section 178 of the Electricity Act and all other powers enabling in this behalf and after previous publication, CERC has made the Tariff Regulations which came into force on 01.04.2004.

25. The scope and extent of application of the Tariff Regulations is provided in Regulation 2. As per clause (1), where tariff is determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government, CERC shall adopt such tariff in accordance with the provisions of the Electricity Act. Clause (2) says that the Tariff Regulations shall apply in all such cases where tariff is to be determined by the CERC based on capital cost. Ofcourse, the CERC has the authority to prescribe relaxed norms of application for determination of tariff.

26. Chapter - 2 of the Tariff Regulations deals with thermal power generating stations. Regulations 14 and 18 are included in Chapter - 2.

26.1. Regulation 14(xviii) defines 'Operation and Maintenance Expenses' or O&M expenses to mean the expenditure incurred on operation and maintenance of the generating station including part thereof and includes the expenditure on manpower, repairs, spares, consumables, insurance and overhead.

26.2. Regulation 18 deals with additional capitalization. Regulation 18 is extracted hereunder:

> 18. **Additional capitalisation**: (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:
>
> (i) Deferred liabilities;
>
> (ii) Works deferred for execution;
>
> (iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(v) On account of change in law.

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission, subject to prudence check:

(i) Deferred liabilities relating to works/services within the original scope of work;

(ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(iii) On account of change in law;

(iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost; and

(v) Deferred works relating to ash pond or ash handling system in the original scope of work.

(3) Any expenditure on minor items/assets like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machines, heat-convectors, carpets, mattresses etc. brought after the cut off date shall not be considered for additional capitalisation for determination of tariff with effect from 1.4.2004.

Note

The list of items is illustrative and not exhaustive.

(4) Impact of additional capitalisation in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut off date.

Note 1

Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 20.

Note 2

Any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost, except such items as are listed in clause (3) of this regulation.

Note 3

Any expenditure admitted by the Commission for determination of tariff on account of new works not in the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 20.

Note 4

Any expenditure admitted by the Commission for determination of tariff on renovation and modernization and life extension shall be serviced on normative debt-equity ratio specified in regulation 20 after writing off the original amount of the replaced assets from the original project cost.

27. To answer question No.1, it is necessary to advert to Regulation 53 of the Tariff Regulations which is included in Chapter - 4, the heading of which is Inter-State Transmission. Regulation 53 reads thus:

53. **Additional capitalisation:** (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:

(i) Deferred liabilities;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares in the original scope of works subject to the ceiling norm specified in regulation 52;

(iv) Liabilities to meet award of arbitration or compliance of the order or decree of a court; and

(v) On account of change in law.

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the transmission system.

(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission, subject to prudence check:

(i) Deferred liabilities relating to works/services within the original scope of work;

(ii) Liabilities to meet award of arbitration or compliance of the order or decree of a court;

(iii) On account of change in law; and

(iv) Any additional works/services which have become necessary for efficient and successful operation of the project, but not included in the original project cost.

(3) Any expenditure on minor items/assets brought after the cut off date like tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, T.V., washing machine, heat-convectors, mattresses, carpets, etc shall not be considered for additional capitalisation for determination of tariff with effect from 1.4.2004.

Note

The list of items is illustrative and not exhaustive.

(4) Impact of additional capitalisation in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut off date.

Note 1

Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 54.

Note 2

Any expenditure on replacement of old assets shall be considered after writing off the entire value of the original assets from the original capital cost.

28. From a perusal of the above, it is seen that Regulation 53 provides for additional capital expenditure incurred after the commercial operation date. It says that additional capital expenditure incurred after the commercial operation date and upto the cut-off-date may be admitted by the CERC if such expenditure relates to deferred liabilities, deferred works, procurement of initial spares (within specified norms), compliance with arbitral award or court order or change in law subject to submission of necessary documents and a prudent check. Post cut-off date, additional capitalization may still be allowed for similar liabilities and more importantly essential new works or services necessary for efficient project operation but minor assets like furniture, computers or appliances are excluded. It also provides that expenditure on replacement of old assets shall be considered after the full value of the old asset is written off and the impact of additional capitalization on tariff

can be considered by the CERC twice in a tariff period, including revision of tariff after the cut off date.

29. Thus, it is evident that Regulation 53 does not include within its scope replacement of ICTs due to damage or failure. Regulation 53(2)(iv) says that any additional work/services which have become necessary for the efficient and successful operation of the project but not included in the original project cost may be admitted by the CERC as additional capital expenditure. Contention of the appellant that such a provision would apply to it also does not appeal to the Court as all that the appellant had done was diversion and replacement of ICTs. This cannot be construed as doing any additional work/services. On the contrary, we concur with the contention of some of the respondents that as a central transmission utility, it was the duty of the appellant to maintain a healthy transmission system; replacement of damaged equipment(s) is part of operation and maintenance.

30. Insofar Note 2 to Regulation 53 is concerned, it says that any expenditure on replacement of old assets shall be

considered after writing off the entire value of the original assets from the original capital cost. In this case, the transmission systems were in normal operational condition since those were commissioned. Both Rihand I and Rihand II cannot be considered as old assets as these were fairly new. There is nothing on record to show that prior to the breakdown of ICTs, the transmission systems were in bad shape or had started wearing out.

31. That being the position, the answer to question No.1 can only be in the affirmative, in favour of the respondents and against the appellant.

32. This brings us to the second question which is as to whether the self-insurance policy of the appellant covered the cost of replacement of the damaged ICTs.

33. In the fiscal year 1994-1995, appellant opted to adopt a self-insurance reserve policy based on its past experience and in alignment with industry practices. The decision was taken to allocate estimated appropriations in the accounts for future losses potentially arising out of uninsured

risks, such as, machinery breakdown and fire risk of equipments in operational sub-stations. Consequently, a self-insurance account was created. The reserve was created at the rate of 0.1 percent of the gross value of the fixed assets at the close of each year covering potential future losses from uninsured risks with the exception of those related to high voltage direct current valve halls and sub-stations. The insurance reserve covered losses caused by events such as fire including by way of lightning, explosion/implosion, bush fires etc. with such losses being adjusted against the insurance reserve as per CERC's guidelines upon actual occurrence. We thus find that there are no inclusions or exclusions with regard to loss caused by 'fire' nor does it include any exception to loss caused by fire.

34. It is the contention of the appellant that it could not take finance from the self-insurance reserve as the cause of the loss to the ICTs was damage due to machinery breakdown leading to fire. It is not the fire itself which damaged the ICTs. We find such contention of the appellant to be contradictory.

35. Considering the above we are of the view that the loss caused to the appellant by fire, whether by way of implosion or by way of explosion, would be covered by the policy as it covered all fires which caused loss without any exception and as all the three ICTs were operating until those got burnt. Therefore, the loss was caused due to fire because of which the ICTs became damaged beyond immediate repair.

36. In *Zuari Industries Limited* (supra), this Court analyzed the expression 'proximate cause'. In that case there was a short-circuit in the main switchboard installed in the sub-station receiving electricity from the State Electricity Board. This resulted in a flashover producing overcurrents. The flashover and overcurrents generated excessive heat. The paint on the panel board was charred by the excessive heat producing smoke because of which the partition of the adjoining feeder developed a hole. The smoke travelled to the generator compartment where also there was short-circuit because of which the power tripped. As a result, the entire electricity supply to the plant stopped. Due to the stoppage of electric

supply, supply of water/stream to the waste heat boiler by the flue gases at high temperature continued to be fed into the boiler which resulted in damage to the boiler. It was in that context that the court considered the question as to whether the flashover or the fire was the proximate cause of the damage in question. After a thorough analysis of the chain or sequence of events, this Court took the view that the proximate cause is not the cause which is nearest in point of time or place but the active and efficient cause that sets in motion a train or chain of event which brings about the ultimate result without the intervention of any other force working from an independent source. On that basis this Court held that the fire was the efficient and active cause of the damage. Had the fire not occurred, the damage also would not have occurred. There was no intervening agency which was an independent source of the damage. Therefore, this Court did not agree with the conclusion of the Surveyor that the fire was not the cause of the damage to the machinery of the claimant.

37. Applying the above principle to the facts of the present case, it can be seen that the proximate cause for the damage to the ICTs is the implosion/explosion in the internal/external machinery of the ICTs which caused fire. All the three ICTs became unserviceable due to the fire and had to be replaced by the appellant. Appellant has admitted that preventive maintenance and checks were done from time to time prior to the incident and everything was going fine. It was only when the fire broke out and damaged the ICTs did the authorities concerned diverted other transformers for replacement of the damaged transformers. Thus, our answer to question No. 2 would be that the self-insurance policy of the appellant covered the cost of replacement of the damaged ICTs. Therefore, Appellate Tribunal was justified in directing the appellant to finance the net cost from the self-insurance fund reserve as part of the operation and maintenance charges. Accordingly, question No. 2 stands answered in the affirmative and against the appellant.

38. Since we have decided question Nos.1 and 2 against the appellant, question No.3 has become redundant as decapitalization and additional capitalization of the replaced ICTs have not been allowed. Therefore, question of issuing direction to the Member-Secretary, NRPC for issuance of revised availability certificate for the transmission assets does not arise.

39. Before parting with the record, we may refer to the decision of this Court in *Gujarat Ujra Vikas Nigam Limited* (supra) in which case this Court agreed with the appellant that there was not a shred of evidence adduced by the respondent beyond the bare allegation of coercion made against the appellant. It was in that context this Court expressed surprise as to how such a sweeping allegation of coercion was accepted by the Appellate Tribunal *de hors* adequate pleadings. Therefore, this Court opined that Appellate Tribunal had virtually rubber stamped the findings of Gujarat Electricity Regulatory Commission on coercion. Evidently, the above decision would have no application to the facts of the present case. That apart, Appellate Tribunal has given cogent and valid reasons while

rejecting the appeals of the appellant. We, therefore, do not find any ground to interfere with the impugned order.

40. That being the position, we are of the considered opinion that the two appeals are devoid of any merit. Accordingly, the appeals are dismissed. No Cost.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
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