



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017

F.11 (1446)/DERC/2016-17/5597

Petition No. 05/2017

Under section 142 of the Electricity Act, 2003

In the matter of:

Tata Power Delhi Distribution Ltd.
Through its M.D

....Petitioner

vs

Delhi Transco Limited

.....Respondent

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Ms. Ranjana Roy Gawai, Counsel for the Petitioner;
2. Ms. Vasudha Sen, Counsel for the Petitioner;
3. Ms. Swapna Seshadri, Advocate for Respondent;
4. Shri Ashwin, Counsel for the Respondent;

INTERIM ORDER

(Date of Hearing: 14.12.2018)

(Date of Order: 09 .01.2019)

1. The instant petition has been filed by TPDDL under Section 142 of the Electricity Act, 2003 read with the DERC Grid Code Regulations, 2008; the CERC (Standards of Performance of inter-State transmission licensees) Regulations, 2012; the National Tariff Policy, 2016; and DERC Conduct of Business Regulations, 2001 seeking directions from the Commission to the Respondent, Delhi Transco Limited. The petitioner has submitted that it being compelled to operate under severe technical constraints imposed in the transmission network due to the non performance of the obligations, duties and insistent delays of DTL in failing to undertake the augmentation of the Transmission network as well as execution, commissioning of new projects in Delhi. Thus, the conduct of non performance of DTL is in effect directly impacting the operations and efficiency of the Petitioner.

2. The petitioner has made following prayers:

- a. to impose severe Penalty on DTL for the intentional delay, negligence in the timely Commissioning of the various projects;
- b. to fix element wise specific timelines for each augmentation;
- c. to form a joint committee comprising of the Hon'ble Commission's officers, Petitioner's nominee and DTL's nominee to oversee the progress of various schemes: and/or
- d. to instruct DTL to ensure the Commissioning of the projects at the earliest in a time bound manner possible.

3. The submissions of Petitioner have been summarised as follows:

- I. The Respondent is liable for the non-compliance of the Statutory Delhi Electricity Regulatory Commission (State Grid Code) Regulations, 2008, hereinafter referred to as the "Delhi Grid Code" (DGC) Regulations, which have been enacted by the Commission.
- II. The Transmission licensee has evidently failed to ensure timely Commissioning of transmission projects e.g. Gopal Grid, Punjabi Bagh, Subzimandi etc. which has an adverse impact over reliability and quality of supply in TPDDL's licensed area.
- III. U/S 39(2)(C) and 40(1)(a), clearly indicates that it is one of the primary duties of the State Transmission Utilities as well as the Licensees to "to build, maintain and operate an efficient, co-ordinated and economical inter State transmission system or intra-State transmission system."
- IV. Respondent has failed to perform its obligation u/s 39 and 40 of the EA, 2003 which states that it is the duty of the state Transmission utilities as well as Licensees to "build, maintain and operate an efficient, co-ordinated and economical inter-state transmission system or intra-state transmission system"
- V. The entire planning of the transmission networks lies in the hands of the Central Electricity Authority (CEA). The CEA is a statutory organization

originally constituted u/s 3(1) of the repealed Electricity (Supply) Act, 1948, since substituted by Section 70 of the Electricity Act, 2003. The Central Electricity is responsible for preparation of perspective generation and transmission plans and for coordinating the activities of planning agencies. The duties and functions of the CEA are provided u/s 73(a) of the Electricity Act, 2003 "advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers"

- VI. DTL has violated its duties u/s 39(2)(C) and 40(1)(a) of the Electricity Act, 2003. Thus, while the Tariff policy acknowledges the fact that development of intra state transmission networks across India has not been uniform and suggests that the same needs to be augmented, DTL in violation of the said policy is rather adopting a dilatory and delaying approach towards mitigating any such shortcoming of the transmission network in Delhi. The Tariff policy also enunciates that intra state transmission may be regulated on lines with the CERC's model on interstate transmission Regulations, which lay down the modalities, obligations of the transmission licensee, which indicate towards increased accountability of DTL. In this light, the objective of the Central Electricity Regulatory Commission (Standard of Performance of Inter-State Transmission licensees) Regulations 2012 highlights the primary obligation on part of inter state transmission licensees and imposes and adverse impact for non-conformance, thus ensuring higher accountability.
- VII. This delay on part of DTL is also in violation of the DGS Regulations, 2008. Certain criteria that are widely accepted thresholds in planning and construction of electricity networks and a compliance of the said criterion is view as a standard for assessing the reliability and strength of the network.

- VIII. That in the pursuit of the discharge of its duties and taking into consideration the existing state of affairs, conditioning of the transmission network in Delhi not fulfilling the requirements of the Transmission system criterion, as provided by the Delhi Grid Code regulation 2008, the requirements for augmentation and the rising demand of electricity in Delhi, the CEA released the **“Report on Transmission System Plan for Delhi, in May 2013”**. In the said report, certain projects were formulated keeping in mind the improvement of transmission system in Delhi and the execution of the same was entrusted upon DTL. The timelines were laid down for the execution of these projects keeping in mind that these projects were aimed at improving the State Transmission System and that any delay in the execution of the same would thus be at the cost of an effective and improved transmission system. Thus the said projects were not a mere empty formality but a necessity in the overall interest of electricity network in Delhi and in larger consumer interest.”
- IX. That, thereafter the Petitioner, on observing that in some of the proposed transmission projects the committed timelines had passed without any commencement of the project on part of DTL, the Petitioner brought the same to the attention of DTL vide letter dated 09.01.2015, bearing no. TPDDL/CEO&ED/2015. The Petitioner also took this opportunity to remind DTL that non-completion of these projects in time would only result in grave inconvenience to the consumers during the summer months as it might lead to blackouts.
- X. That despite following-up with DTL in respect of the pending projects on various occasions, no progress was made in the matter. Thereafter, vide communication made through various letters dated 04.03.2015, 30.03.2015, 22.04.2015 and 12.02.2016, the Petitioner time and again reminded DTL of the projects pending and inordinate delay being caused to the augmentation of transmission capacity of the transmission network on part of DTL. By this time, some of the revised timelines, which DTL had committed earlier, had also lapsed. The Petitioner, in its various communications to DTL, reminded them of the inordinate delay and also urged DTL that any further delay would lead to jeopardizing the existing network of the Petitioner and widespread

load shedding, power cuts and that no more time should be wasted in the commissioning of these projects to ensure relief for consumer. The Hon'ble Commission has imposed a load shedding ceiling of 1% upon the Petitioner which is strictly enforced, but without the requisite co-operation from DTL, there is a strong possibility of threat to the capability of the Petitioner to maintain the said ceiling on load shedding.

- XI. It is the responsibility of DTL to augment the network and increase its capacity, to be able to meet these benchmarks. Failure to conform to these benchmarks would necessarily constitute a serious lapse on part of DTL and thereby, a violation of the Regulations.
- XII. It was only during the first Steering Committee meeting held on 20.10.2015 that the Respondent for the first time asked the petitioner to provide its power evacuation plan for DTL projects which were supposed to be completed by FY 13-14 and 14-15, in line with the 12th plan released by the CEA.
- XIII. Respondent's inability to recover ARR can't be held as reason for delay in essential transmission projects.
- XIV. Respondent has been repeatedly shifting target dates with no projects getting executed at the respective sites.
- XV. For an offence to be established and penalized under Section 142 of the EA, 2003 'mens rea' is not required to be proved. The mere violation of the rules or orders issued by the Commission by any person is sufficient to form an offence u/s 142 of the EA, 2003. (APTEL in its judgment dated 31.07.2009 in BSEB vs. CERC)
- XVI. Furthermore, in yet another Steering Committee Meeting on 14.03.2016, conducted by the GM(Planning) of DTL at the offices of DTL which was attended by the representatives of the DISCOMs, including the Petitioner, the timelines for the projects which were provided for in the 12th Report released by CEA were further extended to FY 18-19 and

FY 20-21. The revision of these timelines was recorded in the Minutes of Meeting of the said meeting, dated 21.03.2016.

4. Per contra the Respondent, DTL has denied all the allegations of the Petitioner and has made the following submissions:

- I. It is denied that the transmission network provided by the DTL in Delhi is not fulfilling the requirements of the transmission system criterion, as provided by the Delhi Grid Code. DTL has always discharged its duties as per the Tariff orders and other directions of the Commission.
- II. It is denied that during the peak summer there is a constraint in the DTL network. There is no constraint in DTL network and any constraint in the Petitioner's network is supposed to be addressed by the Petitioner in its capacity as a distribution Licensee.
- III. It is denied that DTL for the first time on 20.10.2015 had asked the Petitioner to provide its power evacuation plan for the DTL projects. The issues related to power evacuation were previously also discussed before the Steering Committee meeting on 20.10.2015. In Steering Committee meeting on 12.02.2014, the matter regarding evacuation of power from 220kV sub-station was discussed and 2 No. 66kV PP-1 circuits were agreed from 220kV substation.
- IV. The works are capital intensive projects and require huge amount of capital investment for execution. Further, despite the Hon'ble Supreme Court's Order, two of the Distribution Licensees in Delhi have not been paying the transmission charges to DTL from October 2010. Even the Petitioner has also occasionally stops payment on one reason or other. Due to this reason, DTL is not able to even recover its ARR fully, which is also one of the reasons for delaying the new project implementation.
- V. DTL has always ensured development of an efficient Transmission system to match with the growing power demand in coordination with the Discoms through regular steering committee meetings. Despite tight financial position arising out of non-payment of dues by some of the Discoms, DTL has managed to carry out extensive transmission

system strengthening works. Details of transmission strengthening schemes carried out in last two years are attached.

- VI. Certain projects were delayed due to various force majeure events which were not in control of DTL.
- VII. A proceeding u/s 142 of the EA, 2003 cannot be maintained without establishing Mens rea. This has been held by APTEL in the judgment dated 13.09.2007 in the matter of B M Verma vs. UERC.
- VIII. DTL has made efforts for arranging of fund by taking loan for implementation of transmission schemes. However, as the distribution licensees are not paying transmission charges to the DTL, this is affecting over all cash flow of the DTL and DTL finds difficulty in arranging for funds.
- IX. There is no constraints in the distribution network are supposed to be addressed by the Petitioner, the distribution Licensee by fetching the power from lightly loaded 220 kV sub-stations/lines. During this ongoing summer season Delhi could meet the power demand of 6526MW on 06.06.2017 without much hassle.
- X. It has denied that existing transmission network is not augmented by the DTL. It is stated that the DTL has augmented existing transmission network as the 220kV line from Bawana to Rohini-II has been commissioned in June 2016. Further the installation of additional 100MVA transformer at 220kV Peera Garhi has been commissioned on 20.07.2017.
- XI. Each project is individual and some delay is caused due to various Force Majeure events which were not in control of DTL such as establishment of 400kV RPH was envisaged under ISTS by power grid in the standing committee of CEA which got delayed due to issues in location of land.

- XII. that the transmission system/grid facility provided by the Respondent to the Petitioner has always been much more than what has been utilized by the Petitioner. Since the capacity addition to the transmission system/grid is a continuous process, the Respondent goes on adding and strengthening its system. For the last 10 years, namely from FY 2007-08 to FY 2018-19, the transmission system /grid facility provided by the Respondent to the Petitioner has been much higher and severely underutilized by the petitioner;
- XIII. that even during the peak period, the Petitioner has, at the most utilized 64% of the transmission capacity made available by the Petitioner to it.
- XIV. the Respondent has always made adequate transmission system/grid facility available to the Petitioner.
5. In respect of prayer regarding constitution of a Joint Committee, vide Order dated 12.03.2018, the Commission had directed the parties to have a joint meeting with the officers of the Commission to discuss the issues relating to augmentation of the transmission network as well as execution, commissioning of new projects in Delhi.
6. The Petitioner, TPDDL vide their letter dated 24.4.2018 highlighted 5 critical projects of DTL related to TPDDL which are as under:
- a) 220/66KV Sanjay Gandhi Transport Nagar
 - b) 220/66KV 160 MVA Transformer at 220 Kanjhawala
 - c) 220/33 Chandrawal
 - d) 220/66KV Additional 2x160 MVA Transformers along with 66KV GIS Bays at 220Kv Gopalpur Grid
 - e) 400/200/33KV at Karampur
7. The Respondent, DTL vide their letter dated 07.06.2018 submitted the status of various projects giving timelines for approval from Board of Directors, NIT, Expected date of Award, completion schedule.

8. The Respondent has submitted the status of various projects giving timelines for approval from Board of Directors, NIT, Expected date of award, Completion schedule. DTL further stated that no case under section 142 has been made out and by participating in the meetings and giving the information called for will not in any manner distract our stance that the petition itself is not maintainable.
9. The learned counsel for the Respondent controverted the statements of the counsel for the Petitioner and submitted that a proceeding under Section 142 of the Electricity Act, 2003 cannot be maintained without establishing mens rea. The scope of Section 142 of the Electricity Act, 2003 does not create a strict liability offence or contravention without the requisite need for the intention to contravene. The Respondent has referred to the judgment of **Hon'ble APTEL in Appeal No 115 of 2007 dated 13.09.2007, in the matter of B.M. Verma vs. UERC.**
10. The learned counsel for the Respondent further submitted that DTL has always complied with the directions of the Commission and the DTL had done all in its power to implement the provisions of the Delhi Grid Code. The Petitioner is only making vague allegations against the Respondent without specifying the violations of the Regulations on the part of the Respondent. The Respondent further submitted that there is no merit in the present petition and the same is liable to be dismissed.
11. The counsel for the Petitioner submitted that the Respondent has incorrectly interpreted the scope and applicability of Section 142 of The Electricity Act 2003. The Petitioner submitted that for an offence to be established and penalised under Section 142 of The Electricity Act 2003 mens rea is not required to be proved. The mere violation of the rules or orders issued by the Appropriate Commission by any person is sufficient to form an offence under Section 142 of The Electricity Act 2003. The Petitioner has relied on the judgement of the **Hon'ble APTEL in Appeal no. 53 of 2009, in the matter of Bihar State Electricity Board and Shri Swapan Mukherjee, Chairman, Bihar State Electricity Board vs. Central electricity Regulatory Commission dated 31.07.2009.**

12. The learned counsel for the Petitioner referred to the latest report of SLDC released and discussed in Steering Committee meeting dated 04.07.2018, which indicate that out of the 15 Grid Sub-station feeding Tata Power DDL's licensed area, 7 Grids do not have N-1 redundancy upto Transformer level and 6 do not have N-1 redundancy at Line level. It is pertinent to mention that this report is prepared and circulated by an independent body and present true facts about the network adequacy.

13. In view of the forgoing discussions, following two issues have to be determined:

(i) whether the Respondent has violated or contravened any of the provisions of the Electricity Act and the Rules and Regulations made there under, or any directions issued by the Commission so as to initiate action under Section 142 of the Electricity Act, 2003; and

(ii) Whether non-compliance of order of the Commission would be sufficient to impose penalty under Section 142 of the Electricity Act, 2003. Without examining the ingredient of mens rea.

14. The competent authority to assess the technical viability is the Central Electricity Authority (CEA). The technical aspects and requirements are examined by CEA. After undergoing such that exercise in respect of necessary requirements the matter brought up before the Commission for approval and thereafter the Commission approves the schemes providing therein that the such schemes are required to be completed within the stipulated time in respect of each scheme. From the arguments made by the parties, it is evident that the augmentation of schemes for transmission lines after technical examination has been envisaged by the CEA, which were brought before the Commission for approval and the Commission has approved such schemes and the schemes had to be completed/implemented by a certain date as per the own submissions of the Respondent. The Respondent for certain reasons whether technical constraint or non-availability of land, RoW etc. was not in a position to complete some of the schemes which may affect the distribution supply in the area of the Petitioner in the eventuality of any trip or grid failure due to

snapping of transmission lines. The Respondent has admitted that some of the schemes had not been completed due to certain reasons beyond their control. Whether the reasons beyond the control or within is immaterial that affect remains that in case it was difficult to complete scheme within the given time frame it was the duty on part of the Respondent to approach the Commission for extension of timeline for completion of such schemes. Mere, reflecting non-completion in the Tariff Petitions and in the meetings of Steering Committee would not be sufficient and cannot be constrained automatic lawful extension of time frame and therefore, the Respondent has failed to adhere to the directions of the Commission to complete some schemes as per the stipulated timeline under the DERC (State Grid Code) Regulations, 2008.

15. The contention of the Respondent made through written submission that the Respondent has taken the approval of the Commission in each of the cases of delay in execution of the transmission assets/ scheme mentioned in the Supplementary Affidavit of the Petitioner, has also been examined and it is observed that the Respondent, in respect of certain schemes after expiry of the period of completion, had approached the Commission for fresh "in principle" approval. In almost in all the cases there was delay either in tendering process or in awarding contract. In some of the cases/schemes the issues of RoW was raised even after expiry of the initial timeline. In one case even the Respondent took one year from the date of meeting of the Steering Committee to submit revised proposal to the Commission. Therefore, prima-facie it appears that the Respondent has administratively delayed the project for no cogent reasons. It is also observed that even after getting fresh timeline the Respondent took almost for one year to initiate re-tendering process.

16. From the above discussion, it is evident that the Respondent has failed to comply with the directions of the Commission regarding completion of schemes and the timelines have been extended time & again, which has a potential of causing disruption in electricity supply, and is misuse of the process of completion of the schemes to support the uninterrupted electricity supply.

17. As much related to the Issue No. 2, regarding assessing ingredient of mens rea before imposing penalty on the Respondent, the judgement of the Hon'ble APTEL quoted by the Respondent as well as by Petitioner have been considered. Hon'ble APTEL in the matter of B. M. Verma vs Uttrakhand Electricity Regulatory Commission, Appeal No 115/2007 has held that:

"9. We are shocked to see how Commission has totally gone wrong both in the matter of procedure and in the matter of approach. The Commission entirely lost sight of the fact that it was proceeding to take criminal action and accordingly the basic principles of criminal law and procedure should not have been lost sight of. We are not saying that the Commission was required to follow the strict procedure of Criminal Procedure Code. But the basic principles could not have been ignored, a proposition to which the respondent counsel agreed.

10. Firstly, mens rea is the basic ingredient of any offence. Mere non-compliance with an order could not be sufficient to take penal action. It was necessary for the Commission to obtain evidence of mens rea or culpable state of mind before holding the appellant guilty of a punishable offence. A mere failure to meet a deadline in complying with an order cannot be an offence. Section 142 of The Electricity Act 2003 does not create an absolute offence".

18. Whereas in Appeal No 53/2009, in the matter of Bihar State Electricity Board vs. Central Electricity Regulatory Commission Hon'ble APTEL has held that element of mens rea need not be examined for imposing penalty in case of violation under Section 142 of the Electricity Act, 2003. The Hon'ble APTEL has held the following:

"24. In the light of the above facts, let us now come to the question as to whether the Commission can impose penalty whenever there is a contravention under Section 142 of the Act in the absence of the mens rea. Mens rea in the matter of violation means the criminal intent to violate i.e. deliberate intention to violate or dishonest intention to violate. As per Section 142 of the Act, the Commission, if it is satisfied that any person has violated the direction issued by it, shall give opportunity by seeking for explanation from that person regarding the said violation through show cause notice and by giving personal hearing. In spite of the explanation, if the Commission takes the view that the explanation is not satisfactory and forms a definite opinion that the contravention has been committed, it may impose the penalty. Thus, it is evident that the language in Section 142 of the Act does not indicate the need to establish the presence of dishonest intent namely mens rea to commit that contravention or violation as in the prosecution of an offence in the criminal proceedings. Mens rea namely the deliberate, dishonest and wanton violation is one thing. The violation due to lack of diligence and lack of bona fide is entirely a different thing. Therefore, mens rea in these cases is immaterial as this involves civil liability. It is enough to establish the

contravention and there need not be the criminal intent or dishonest intent to commit it. At the same time, we should not lose sight of the ground realities.

25. The very fact that Section 142 of the Act mandates the Commission to issue show cause notice would indicate that even though the Commission finds that there is contravention on the basis of the materials given in the complaint, it has to take final decision only after considering the explanation from the person concerned. If the explanation is satisfactory, it need not impose penalty. The words "may impose" contained in Section 142 convey this. In other words, even when there is some contravention of a direction which warranted the issuance of show cause notice, the Commission is not duty bound to impose penalty in those cases where it is found that such a contravention has been committed bona fide and due to the circumstances beyond his control. If the Commission found that the conduct of the person on whom show cause notice was served was bona fide or if the person has satisfied the Commission that the circumstances were beyond his control due to which he was unable to comply with the direction of the Commission, then the Commission may accept the said explanation and discharge a person without imposing any penalty. It is entirely depending upon the facts and circumstances of the case.

26. In this context, it would be worthwhile to refer to the relevant observation made in the judgment rendered by the Hon'ble Supreme Court in 1969 Vol.2 SCC 627 Hindustan Steel Ltd. Vs. State of Orissa, which are as under:

"Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for the failure to perform the statutory obligation, is a matter of discretion of the authority to be exercised judicially and on consideration of the relevant circumstances."

The above observation and the wordings contained in Section 142 which mandates the Commission to impose penalty only after giving opportunity to the person concerned to explain his stand would reveal that the Commission has to exercise its authority judicially and judiciously by taking into the consideration all the relevant circumstances explained by the person concerned before deciding the necessity to impose penalty."

19. From the discussion and observation made by the Hon'ble APTEL in both cases, it is established that the element of mens rea is required to be examined in case of criminal offence and plain reading of Section 142 does not make violation and contravention of the parties as criminal offence. However, this has to also be seen that eventually a penalty has to be imposed on to the violators and therefore, it has to be seen whether it was a lawful default or due to certain reasons the directions of the Commission were not met. It is no doubt important to find out whether the violation committed by party is due to lack of diligence and lack of bonafide. To see

whether it was due to certain reasons beyond the control of the person concerned that the order or direction of the Commission was not complied with and bonafide efforts have been made, the person should be given opportunity through a show cause notice to explain his stand and in case the Commission find the explanation not satisfactory penalty may be imposed.

20. In view of the foregoing discussion, it is observed that, prima-facie, the Respondent has not completed the schemes required for reliability of the power supply within the time limit stipulated/extended by the Commission. All the more the schemes are required to be completed within stipulated time given by the Commission as there has been recent amendment in Regulations by the Commission wherein on account of outage, the Discoms will have to pay automatic compensation after one hour at the rate of Rs.50 per hour. It is therefore to be considered that if the schemes of proper supply of electricity are not completed within the stipulated time or the extended time then certainly it will affect the supply in the area.

21. The argument advanced by the Counsel for the Respondent that the transmission lines are loaded at 60% only and remaining 40% are available for any other contingency is without basis. Such provision in the transmission lines are made only to overcome emergency situations wherein load of another line has to be shifted on line which is operating at 60% of load. Therefore, this argument is also not tenable.

22. Now, therefore, the Respondent is directed to show cause within four weeks as to why penal action under Section 142 of the Electricity Act, 2003, is not taken against it for not following the timeline for completion of the schemes which were approved by the Commission. The Respondent has to give reasons for non adherence of timeline in respect of schemes as given by the Petitioner in its petition.

23. Ordered accordingly.

Sd/-
(Justice S S Chauhan)
Chairperson