

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

IA NO. 201 OF 2019 IN APPEAL NO. 200 OF 2015

AND

APPEAL NO. 201 OF 2015

Dated: 7th February, 2019

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member**

APPEAL NO. 200 OF 2015

In the matter of:

North Karanpura Transmission Company Ltd.Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors.Respondent(s)

Counsel for the Appellant (s) : Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza
Ms. Divya Anand

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan for R-2

Mr. Paritosh Goel
Ms. Shruti Awasthi for R-4

Mr. Alok Shankar for R-30

APPEAL NO. 201 OF 2015

In the matter of:

Talcher II Transmission Company Ltd.Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors.Respondent(s)

Counsel for the Appellant (s) : Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza
Ms. Divya Anand

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan for R-2

Mr. S. Vallinayagam
Ms. S. Amali for R-4

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

The Applicants/Appellants have filed this instant Application praying that this Tribunal may be graciously pleased to:-

- a) Restrain the Respondents, their officers agents other persons claiming through or under them from invoking , encashing or otherwise taking any steps as against the Bank Guarantees (Schedule I) till the Appellants are able to move the CERC as permitted in the Order dated 1-2-2019; and
- b) Pass such further or other orders as may be deemed just, fit and necessary in the circumstances of the case.

We have heard the learned counsel appearing for the Applicants/Appellants and the learned counsel appearing for the Respondent No. 2, Respondent No.4 and Respondent No. 30 in Appeal No. 200 of 2015 and Respondent No. 2 and Respondent No.4 in Appeal No. 201 of 2015.

The learned counsel for the Applicants/Appellants Mr. Buddy A. Ranganadhan submitted that the above Appeals were disposed of by this Tribunal by Order dated February 1st, 2019 reserving liberty to the Appellants to file appropriate Application before the CERC and further granted liberty to the Appellants to approach this Tribunal against the Impugned Order in the Appeals and also any Order that may be passed by the CERC in such Application. While disposing of the Appeals, two weeks time, from the date of receiving the Order was granted to the Appellants to file such Application before the CERC and this Tribunal was graciously pleased to orally direct the Respondents not to encash the Bank Guarantees as mentioned in Schedule I annexed to this Application till the Applicants/Appellants are able to move the CERC for necessary Orders.

Further, he submitted that the Appellants received the Order passed by this Tribunal on 04.02.2019. Hence things thus stood. The Appellants came to know today on February 7th, 2019 in the Afternoon, it is transpired that some of the Respondents have approached the IDBI Bank for the encashment of the said Guarantees. Therefore, he submitted that this move by the Respondents is entirely undesirable and in the teeth of the directions of this Tribunal not to encash Bank Guarantees till the Appellants file necessary Application before the CERC. The Applicants/Appellants finding no other option move to this Court by presenting the instant Application. The Application filed by the Appellants is bonafide and in the interests of justice and if the Appellants are not protected

they will be put in financial hardship. Therefore, in the interest of justice, he submitted that to restrain the Respondents, their officers, agents other persons claiming through or under them from invoking, encashing or otherwise taking any steps as against the Bank Guarantees (Schedule I) as it is in the Appeal No. 200 of 2015 (Respondent Nos. 4 to 45) and in Appeal No. 201 of 2015 (Respondent Nos. 4 to 21) for two weeks from today to enable them to comply with the Order dated February 1st, 2019 passed by this Tribunal in the interest of justice and equity.

As against the learned counsel appearing for the Respondent No. 4 in Appeal No. 201 of 2015 submitted that he is not aware that the party has moved the matter for encashing Bank Guarantee to IDBI Bank. When he came to know about this intimation that the Appellants are moving this instant Application, he verified from the party and he has been informed that there is no directions to us to take any conceive steps to encash Bank Guarantee. Further, he submitted that once the Appeal has been disposed of reserving liberty to file the Application before the CERC there is no impediment for the Respondent No.4 to move for encashing Bank Guarantee. Further, he fairly submitted that this Court observed orally that the Respondents should not encash the Bank Guarantee for a period of two weeks till Application moved to CERC by the Appellants.

After careful consideration of the submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent

No.4 and after perusal of the statements made in the Application what emerged that the Appeal No. 200 of 2015 and Appeal No. 201 of 2015 have been disposed of by this Tribunal on February 1st, 2019 reserving liberty to the Appellants to file necessary application for redressal of their grievances before the 1st Respondent/CERC, New Delhi within a period of two weeks from the date of receipt of copy of this Order. It is significant to note that in fact we orally observed that the Respondents should not encash Bank Guarantee as it is in the Appeal No. 200 of 2015 (Respondent Nos. 4 to 45) and in Appeal No. 201 of 2015 (Respondent Nos. 4 to 21) as it is mentioned in Schedule – I annexed to this Application till the Applicants/Appellants file the Application and move the 1st respondent/CERC for necessary Orders. As rightly pointed out by the learned counsel Mr.Buddy A. Ranganadhan today i.e. February 7th, 2019 in the afternoon it transpired that some of the Respondents have approached the IDBI Bank for encashment of the Bank Guarantees inspite of orally observing by this Tribunal that the Respondents not to make any attempt for encashing Bank Guarantee. Thus, the question would arise for our consideration would it be appropriate to direct the Respondents not to take any coercive action for a period of two weeks.

In the present case, in our view, in the interest of equity and justice do warrant passing the appropriate Order directing the Respondent Nos. 4 to 45 in Appeal No. 200 of 2015 and Respondent Nos. 4 to 21 in Appeal No. 201 of 2015 as it is (Schedule-I) annexed to this Application to meet the ends of justice.

In view of the foregoing reasons, we hereby direct the Respondent Nos. 4 to 45 in Appeal No. 200 of 2015 and Respondent Nos. 4 to 21 in Appeal No. 201 of 2015 as it is (Schedule-I) annexed to this Application for a period of two weeks from today not to take any coercive action to enable the Applicants/Appellants to redress their grievances in compliance of the Order dated February 1st, 2019 passed in Appeal No. 200 of 2015 and Appeal No. 201 of 2015 respectively.

With these observations the IA No. 201 of 2019 in Appeal No. 200 of 2015 and Appeal No. 201 of 2015 stands disposed of.

Order accordingly.

(S.D. Dubey)
Technical Member

mk/bn

(Justice N.K. Patil)
Judicial Member