

\$~9

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 15.05.2017

W.P.(C) 4145/2017

GREENKO BUDHIL HYDRO POWER PVT. LTD. Petitioner

versus

**CENTRAL ELECTRICITY REGULATORY
COMMISSION & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Jayant Bhushan, Senior Advocate with Mr Matrugupta
Mishra and Mr Hemant Singh

For the Respondents : Ms Suparna Srivastava for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

%

15.05.2017

SANJEEV SACHDEVA, J. (ORAL)

CM Nos.18156-58 /2017 (all applications for exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4145/2017

1. The petitioner is aggrieved by order dated 11.05.2017 passed by the Central Electricity Regulatory Commission.

2. Learned counsel for the petitioner submits that when the petition was filed, the order dated 11.05.2017 was not available to the parties as the same had not been uploaded by the Commission as is the normal practice.

3. The matter was adjourned to today, i.e. 15.05.2017. Copy of the record of proceedings dated 11.05.2017 has been produced in Court by learned counsel for the respondent. The same is taken on record.

4. Learned counsel for the respondent objects to the very maintainability of the petition and submits that since there is an alternative remedy of appeal under Section 111 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), the petitioner should avail of its remedies before the Appellate Tribunal for Electricity.

5. Learned senior counsel for the petitioner submits that petitioner had filed the subject review petition in the petition filed under Section 94(2) of the Act and by order dated 19.09.2016, the Commission had granted a complete stay of the deposit of the disputed amount. He submits that though order dated 19.09.2016 had said that interim order shall continue till 03.11.2016, however, the hearing did not take place on 03.11.2016 or thereafter. In the interregnum, a letter dated 09.05.2017 was issued by the respondents

directing petitioner to pay the transmission charges by 12.05.2017 failing which the services would be withdrawn. He submits that on account of issuance of the said letter, the petitioners had approached the commission by way of an application, on the mentioning of which the impugned order has been passed.

6. Learned senior counsel for the petitioner submits that the petitioner would avail of his remedies under Section 111 of the Act provided that during the interregnum some protection is granted to the petitioner to approach the Appellate Tribunal.

7. Learned counsel for the respondent No.2 submits that the Northern Region Load Dispatch Centre (NRLDC) has already been instructed by letter dated 12.05.2017 to defer the curtailment of the Short Term Open Access to the petitioner in terms of letter dated 09.05.2017, pending the present petition. Copy of the letter has been produced, the same is taken on record.

8. In view of the above, the petition is disposed of permitting the petitioner to file an appeal under Section 111 of the Act before the Appellate Tribunal for Electricity within a period of three days, i.e. till 18.05.2017. The petitioner shall at liberty to seek an early listing of the appeal before the Appellate Tribunal for Electricity.

9. Subject to the conditions following, it is directed that, till 22.05.2017, the respondents shall not curtail the Short Term Open Access to the petitioner.

10. It is clarified that in case the petitioner does not file the appeal before the Appellate Tribunal for Electricity by the end of 18.05.2017 and have the same listed before 22.05.2017, the interim protection deferring curtailment of Short Term Open Access shall automatically stand vacated.

11. It is further clarified that in case the appeal is filed and the Appellate Tribunal for Electricity either refuses to entertain the appeal before 22.05.2017 or declines grant of interim protection, this order deferring the curtailment shall automatically cease even though that may happen prior to 22.05.2017.

12. It is further clarified that the Appellate Tribunal for Electricity shall be at liberty to consider the appeal in accordance with law without being influenced by anything stated in this order.

13. *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

May 15, 2017

‘Sd’