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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.09.2023

+ CM(M) 1571/2023

BSES RAJDHANI POWER LTD & ANR. Petitioners

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Buddy A. Ranganadhan and Mr.
Anupam Varma, Advocates

versus

CENTRAL ELECTRICITY REGULATORY COMMISSION &

ANR. Respondents

Through: Mr. TVS Raghavendra Sreyas and Mr.
Siddharth Vasudev, Advocates for R-
1/CERC
Mr. Tabrez Malmat, Mr. Syed Hamza,
and Mr. Sourajit Sarakar Advocates
for R-2/THDC Ltd.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 49614/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands allowed.

CM(M) 1571/2023 and CM APPL. 49613/2023(for interim relief)

1. This petition has been filed under Article 227 of the Constitution of India seeking a direction to Respondent No.1 i.e., learned Central Electricity Regulatory Commission ('CERC'), to re-hear the submissions of the both the



parties in petition nos. 54/MP/2021, 135/MP/2022 and 239/MP/2019 (collectively referred to as '**petitions**') and to pass its final order in a time bound manner.

2. It is stated that the Petitioners and Respondent No.2 herein i.e., THDC India Ltd., had approached the learned CERC seeking adjudication of the aforesaid petitions under Section 79(1)(f) of the Electricity Act, 2003 ('Electricity Act'). It is stated that on 12.04.2022, learned CERC was pleased to issue an interim order in favour of Petitioner no.1 in its petition no. 54/MP/2021. It is stated that after completion of pleadings, learned CERC had granted a hearing to the parties; and on 10.08.2022 was pleased to reserve orders in the aforesaid three (3) petitions.

2.1. It is stated that since the final orders were not pronounced, the petitions were orally mentioned before the learned CERC on 06.03.2023, 11.04.2023 and lastly on 30.08.2023, with a request to issue final orders in the petitions.

2.2. It is stated in this petition that when the matter was last mentioned on 30.08.2023, the learned CERC had observed that it shall take steps to issue its orders on an urgent basis.

3. In the aforesaid facts, the Petitioners have filed this petition on 21.09.2023 seeking a direction to learned CERC to re-hear the submissions of both the parties in the aforesaid three (3) petitions and pass appropriate final orders. The Petitioners have also filed CM APPL. 49613/2023 in this petition, seeking a restraint against learned CERC from passing any orders and/or directions in the aforesaid three (3) petitions.

4. This petition was first listed before this Court on 22.09.2023 and when the same was called out at 04:30 PM, this Court was apprised by the learned counsel for the CERC i.e., Respondent No.1 that final order has already been



drawn up and shall be pronounced on or before 29.09.2023. The matter was thereafter adjourned and posted for hearing for today i.e., on 25.09.2023.

5. When the matter was called out for hearing today, the learned senior counsel for the Petitioners stated that a common and final order dated 23.09.2023 has been pronounced by the learned CERC on 23.09.2023, disposing of the said petitions.

5.1. He sought leave to file an application under Order VI Rule 17 of Code of Civil Procedure, 1908 ('CPC') to amend this petition and to include a prayer for quashing of the order dated 23.09.2023 and further seek a direction to continue the interim order dated 12.04.2022 passed in favour of the Petitioner No. 1 by learned CERC in petition no. 54/MP/2021.

5.2. He also sought leave to file a second application under Order VI Rule 17 read with Section 151 of CPC, seeking stay of the operation of order dated 23.09.2023, passed by the learned CERC.

5.3. He states at the outset that in this petition they are not seeking to challenge the final order dated 23.09.2023, on merits.

5.4. He states that the sole ground for seeking quashing of the order dated 23.09.2023 is the fact that the said order has been passed thirteen (13) months after it was first reserved and is liable to be set aside on this ground alone.

5.5. In this regard he relies upon the judgment of the Supreme Court in ***Balaji Baliram Mupade and Anr. v. State of Maharashtra and Ors., (2021) 12 SCC 603***, wherein the judgment of the High Court was set aside on the ground of a delay of seven (7) months in pronouncing the reasons for the operative portion of the order, pronounced earlier. He further relies upon the judgment of Supreme Court in ***Anil Rai v. State of Bihar, (2001) 7 SCC 318*** and more specifically in paragraph 45(iv) therein. He states that in terms of



the directions issued in **Anil Rai** (supra), the Petitioners herein had duly mentioned the matter before learned CERC on 06.03.2023, 11.04.2023 and 30.08.2023 for issuance of orders, however to no avail.

5.6. He states since that there was a time gap of thirteen (13) months between reserving the order and passing the final order, the learned CERC ought to have re-heard the matter.

6. This Court has considered the submissions of the counsel for the Petitioners and perused the record.

7. At the outset, it is noted that the Petitioners herein admittedly have available a statutory remedy of appeal under Section 111 of the Electricity Act against the final order dated 23.09.2023 passed by the learned CERC and the ground of delay in pronouncement of the order would be duly available to the Petitioners in the appeal.

8. This Court is not persuaded to exercise its jurisdiction under Article 227 of the Constitution of the India to set aside the final order dated 23.09.2023 simpliciter on the ground that it was passed after thirteen (13) months from the date of reserving the orders i.e., 10.08.2022. No error on the merits of the contentions as adjudicated by the learned CERC has been enumerated in the petition/amended petition for admittedly no challenge has been raised on merits of the order.

9. This Court has perused the judgment in **Balaji Baliram Mupade** (Supra); however, the facts of the said case are distinguishable. In the said case, the High Court had pronounced the operative part of the order on 21.02.2020 and by the said order it has rejected the continuation of the interim order, with a further observation that reasons shall be separately recorded. Thus, the dismissal of the petition though became effective on the date of



passing of the operative order dated 21.01.2020, the reasons were only provided by the High Court on 09.10.2020.

9.1. It was in these circumstances that the Supreme Court at paragraph nos. 10, 11 and 12 of **Balaji Baliram Mupade** (Supra) observed that in case where an oral order has been pronounced in open Court, the judgment should be provided to the parties at the earliest so as to not prejudice and deny an opportunity to avail their legal remedy against the order.

9.2. However, the facts of the present case are distinct as there was no oral order pronounced in this case when the judgment was reserved by the learned CERC on 10.08.2022. The Petitioners right to file an appeal against the said order dated 23.09.2023 has not been prejudiced because of the delay.

10. The Petitioner also placed reliance on the judgment of Supreme Court in **Anil Rai** (supra) and more specifically paragraph 45(iv) therein, which reads as under:

“(iv) Where a judgment is not pronounced within three months from the date of reserving judgment, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.”

10.1. In the facts of this case, no doubt, as is evident from the list of the dates, the Petitioner herein made oral requests before the learned CERC on 06.03.2023, 11.04.2023 and 30.08.2023 to pronounce the order. However, even as per the Petitioners, at no stage the Petitioners filed a written application seeking a re-hearing of the submissions before learned CERC and only reiterated the request for early issuance of final orders. No application or request was made by the Petitioners to learned CERC for re-hearing. The Supreme Court in **Anil Rai** (supra), observed that in the statutory appeal filed by the appellant/convict therein, though the judgment was reserved by the



High Court on 23.08.1995, it was pronounced two (2) years later on 14.08.1997 and in these circumstances, the Supreme Court was of the opinion that the inordinate delay in pronouncing the judgment has negated the right of the appeal as conferred upon the convict.

10.2. The Supreme Court after taking note of the delay in pronouncing the judgment and expressing its disapproval of the said fact, nonetheless, proceeded to deal with the matter on merits and set aside the judgment of the High Court on merits and not on the ground that the judgment has been pronounced after two (2) years.

10.3. As mentioned by the learned senior counsel for the Petitioner, the Petitioner is not inviting any consideration on the merits of the matter and is seeking a simplicitor setting aside the order on the ground of the delay. In the opinion of this Court, the judgment of *Anil Rai* (supra) is not a proposition for setting aside a judgment on merits only on this ground of delay simpliciter.

11. In the opinion of this Court, the order passed by the learned CERC cannot be set aside merely on the ground that the order dated 23.09.2023 has been passed after a passage of thirteen (13) months from the date of reserving the said order.

12. This Court is of the opinion that final order dated 23.09.2023 cannot be set aside only on the ground of delay unless the Petitioner can point that there is an error in law or on merits, in the final order, which deserves to be set aside by this Court in exercise of its supervisory jurisdiction. As mentioned earlier, the Petitioners herein have a statutory remedy of appeal under Section 111 of the Electricity Act and the infirmity, if any, in the order dated 23.09.2023 on account of delay in pronouncement of the order can be urged in the appeal; and it will remain open to the Petitioners to take the ground of delay in the



appeal.

13. In the opinion of this Court, the appellate authority is appropriate forum to appreciate if the delay in pronouncement of the order has resulted in any infirmity in the findings of the learned CERC. In the judgments passed by Supreme Court relied upon by the Petitioners, the Supreme Court as well was exercising its jurisdiction in appeal against the impugned orders therein.

14. Accordingly, the present petition is dismissed. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 25, 2023/hp/aa

Click here to check corrigendum, if any