

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 19/MP/2013**

**Sub:** Petition under section 79 (1) (c) read with section 19 of the Electricity Act, 2003 for revocation of license and for vesting of the project in Central Transmission Utility.

Petitioner : Power Grid Corporation of India Limited.

Respondent : North Karanpura Transmission Company Ltd. and others.

**Petition No. 20/MP/2013**

**Sub:** Petition under section 79 (1) (c) read with section 19 of the Electricity Act, 2003 for revocation of license and for vesting of the project in Central Transmission Utility.

Petitioner : Power Grid Corporation of India Limited.

Respondent : Talcher-II Transmission Company Ltd. and others.

Date of hearing : 9.12.2014

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member

Parties present : Shri M.G. Ramachandran, Advocate, PGCIL  
Ms. Anushree Bardhan, Advocate, PGCIL  
Shri Ramji Srinivasan, Senior Advocate, NKTCL & TTCL  
Shri Buddy A. Ranganathan, Advocate, NKTCL & TTCL  
Shri Hasan Murtaza, Advocate, NKTCL & TTCL  
Shri Malavika Prasad, Advocate, NKTCL & TTCL  
Shri Aditya Panda, Advocate, NKTCL  
Shri L.N. Mishra, NKTCL and TTCL  
Shri Naveen Nagpal, NKTCL & TTCL  
Shri Shikhai Bhardwaj, NKTCL & TTCL  
Ms Rupin Rawat, NKTCL & TTCL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Rajiv Srivastava, Advocate, UPPCL  
Shri Alok Shankar, Advocate, TPDDL  
Shri K. Thenmozhi, TPDDL  
Shri V.T. Patel, GUVNL

## Record of Proceedings

Learned counsel for the petitioner, Power Grid Corporation of India Limited submitted that the letter of intent was issued to North Karanpura Transmission Company Ltd. (NKTCL) and Talcher-II Transmission Company Ltd. (TTCL) on 18.12.2009 pursuant to a competitive bid process and on 3.6.2010 petitions for grant of transmission licenses and adoption of transmission charges were made by the NKTCL and TTCL. The permission under Section 164 of the Electricity Act, 2003 was obtained on 12.8.2011. Despite the above, there has been no physical progress in the construction of the transmission line. CEA in its report dated 17.11.2014 has opined that the scheme needs to be implemented without any further delay and should be completed as early as possible. He further submitted that NKTCL and TTCL have failed to initiate any work even after obtaining the permission under Section 164 of the Act. Therefore, the transmission licenses granted to NTKCL and TTCL are liable to be revoked under Section 19 of the Act.

2. Learned senior counsel for the NKTCL and TTCL submitted as under:

(a) The delay in grant of the permission under Section 164 of the Act resulting in a force majeure event could not be considered a default on the part of NKTCL and the same has been upheld by ATE judgment dated 2.12.2013.

(b) Aggrieved by ATE judgment, GUVNL and MSEDCL have filed an appeal before Hon`ble Supreme Court which are still pending for disposal. There is no stay on the operation of the judgment of the Appellate Tribunal.

(c) The bankers withdrew the financial sanction after the Section 164 authorization was received by NKTCL and TTCL due to delay in implementation of the project. Therefore, the question of undertaking any part of the implementation of the project at ground level could not have arisen and NKTCL and TTCL are facing difficulties to achieve financial closure.

(d) None of the provisions of the Act justifying the grounds for revocation of licence have been made out. Section 19 (1) (a) of the Act requires that there be the existence of a willful and prolonged default on the part of the licensee in doing anything required under the Act or the rules or regulations made thereunder. The delay in grant of the permission under Section 164 of the Act, resulting in a force majeure event could not be considered a default on the part of NKTCL and TTCL which had been upheld by ATE .

(e) Since, the judgment is in the favour of NKTCL and TTCL, the implementation of the project may be allowed to be carried out under revised cost and extension of time line.

(f) After the judgment of Appellate Tribunal of Electricity treating the delay in Section 164 as force majeure, NKTCL and TTCL approached LTTCs for extension of the time for execution of the projects and enhancement of the tariff of the transmission system. However, the LTTCs have rejected the proposal of NKTCL and TTCL.

(g) The information sought by MOP was furnished vide letter dated 21.3.2014. No further communication has been received from MoP regarding extension of approval under Section 68 of the Act.

(h) Under Clause 11.7 of the Transmission Service Agreement, NKTCL and TTCL are not to be held responsible for the non implementation of the transmission line since the performance of their obligation was prevented and hindered due to force majeure events.

3. Learned counsel for UPPCL submitted that UPPCL had not received any communication from NKTCL and TTCL with regard to meetings. He submitted that the transmission project is essential and may not be discontinued. Considering the bad power situation being faced by the State of Uttar Pradesh, it is necessary that PGCIL may be allowed to take over the project in the interest of beneficiaries.

4. Learned counsel for the Maharashtra State Electricity Distribution Company Limited submitted that the transmission charges should not be increased.

5. Learned counsel for TANGEDCO submitted that there is no issue with regard to the extension of time for execution of the project. However, as regards the cost, the additional burden of increase in cost on the beneficiaries is not agreeable.

6. Learned counsel for PGCIL submitted as under:

(a) NKTCL and TTCL are still not working in a definitive manner in regard to the implementation of the transmission projects. The LOIs of the transmission projects were issued on 18.12.2009 and the Commission granted licence to NKTCL and TTCL on 22.12.2010 and 8.11.2010, respectively. The permission under Section 164 of the Act was also obtained on 12.8.2011. The effective dates of the transmission project were May 2010 and April, 2010, respectively i.e. date of acquisition of Special Purpose Vehicle. Despite the above, there has been no physical progress in the construction of the transmission lines.

(b) The TSA provides for the scheduled COD for the commissioning of the transmission elements. Therefore, from the date of obtaining shares in the Special Purpose Vehicle i.e. 20.5.2010, the respondents were under an obligation to obtain all clearances.

(c) NKTCL and TTCL served notice of force majeure on 14.6.2011. In terms of Article 11.5 of the PPA, the notice of force majeure needs to be given within 7 days as a pre-condition. Accordingly, even as per NKTCL and TTCL's force majeure condition could commence only on 7.6.2011. The authorization under Section 164 was issued on 11.8.2011. The period from 7.6.2011 till 11.8.2011 could alone at the most be a period to be considered as to whether there was a force majeure event or not. Events prior to the issue of notice on 14.6.2011 of the existence for force majeure and after 11.8.2011 when the permission under Section 164 was granted cannot be counted for determination of the impact of force majeure.

(d) Section 68 permission requires NKTCL and TTCL to commence work of overhead line. NKTCL and TTCL could have commenced the work immediately after the grant of Section 164 authorization and thereby avoiding the need for any extension. In any event, NKTCL and TTCL did not apply of Section 68 authorization till January, 2014.

(e) The contention of NKTCL and TTCL that in view of the non-grant of Section 164, the lenders withdrew the financing facilities cannot be a defence. NKTCL and TTCL should have approached the lenders with Section 164 authorization. In any event, the non-availability of funds because of lender's withdrawal is a clear case for revocation under Section 19 of the Act.

(f) The ingredients specified in Section 19 of the Act for revocation of licence clearly exists in the present. In any event, there is a case of initiation of proceedings under Section 19 (3) of the Act and issue of show cause notice to NKTCL and TTCL as to why the licence should not be revoked.

7. After hearing the learned counsels for the parties, the Commission directed the petitioner and respondents to file their written submissions by 5.1.2015.

8. The Commission directed that due date of filing the written submissions should be strictly complied with. Written submissions filed after due date shall not be considered.

9. Subject to the above, order in the petitions was reserved.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Law)**