

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 402/MP/2014

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2 (b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the procurers for compensation due to change in law impacting revenue and costs during the operating period.

Date of hearing : 5.5.2015

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

Petitioner : Sasan Power Limited

Respondents : MP Power Management Company Limited and others

Parties present : Shri Vishrav mukerjee, Advocate, SPL
Shri Suresh Nagarajan, SPL
Shri Mayank Gupta, SPL
Ms. Swaparna Seshadari, Advocate, PSPCL and Rajasthan
Ms. Poorva Saigal, Advocate, Haryana
Shri Ranjitha Ramachandran, Advocate, Haryana
Shri Alok Shankar, Advocate, TPDDL
Shri Rajiv Srivastava, Advocate, UPPCL
Shri G. Umamathy, Advocate, MPPMCL
Shri Dipender Singh Chauhan, Advocate, BRPL/BYPL
Shri Rahul Dhawan, Advocate, BRPL/BYPL

Record of Proceedings

Learned counsel for the distribution companies of Uttar Pradesh submitted that counter affidavit would be filed by him during the course of the day. He further submitted that distribution companies of Uttar Pradesh are not agreeable to the claim of the petitioner under 'Change in Law' during the operating period.

2. Learned counsel for the petitioner submitted as under:

(a) During the meeting held on 19.9.2014, the procures had agreed that there is 'Change in Law' during the operating period of generating station. Accordingly, the petitioner approached the Commission for seeking compensation of additional expenditure under 'Change in Law' during operation period.

(b) The lead procurer, Madhya Pradesh Power Management Company Limited and other procurers, namely Haryana Power Purchase Centre and Distribution companies of Rajasthan had accepted petitioner's claim in terms of Article 13 of PPA. Therefore, action of lead procurer is binding on all other procurers in terms of the PPA.

(c) The petitioner, at the behest of Office of Collector and District Magistrate, Singaruli, to facilitate acquisition of land for the project by the State Government of MP entered into an agreement ("2008 Agreement") with the Collector which required petitioner to provide additional benefit to PDPs over and above the MP Ideal Rehabilitation Policy, 2002.

(d) The said 2008 Agreement required the petitioner to pay compensation towards pension to eligible PDPs, provide free education up to class 10th, monthly stipend along with school uniforms, books and provide compulsory employment to atleast one member of the PDP's family.

(e) In order to provide quality education, petitioner has engaged DAV Management, which is the largest non-government organization in the field of education in India.

(f) The overall impact of the 'Change in Law' events is approximately ₹ 28 crore per year.

(g) The payments are being directly credited into the bank accounts of eligible PDP's. Chartered Accountant has also certified the statement of expenditure made by the petitioner towards free education, students stipend, old age pension and widow pension for financial year 2013-14 and 2014-15.

(h) The Annuity plan for the payment of sustenance allowance, education stipend, pension for old age etc. is not feasible due to following reasons:

(i) The petitioner has sought offers from many insurance companies to provide an annuity plan for estimated annual expenditure of ₹28 crore. However, only Bajaj Allianz Life Insurance has offered a quote only for a period of 20 years.

(ii) The upfront expenditure to the tune of ₹ 390 crore is not economical as the corresponding annual flow is ₹ 24 crore is discounted at the rate of 13 % p.a. only.

(i) In response to the guidance sought from District Collector for availing annuity plan to make payments of sustenance allowance, learned counsel for the petitioner clarified that annuity plan will fix the amount of payment and will not cover changes due to the reasons that minimum wage rates will keep varying based on Government's directives and will not remain at the current levels and further number of people availing sustenance, other pension or stipend will keep varying due to natural factors, prospective employment, payment to categories below threshold criteria etc. Number of school children will also vary on yearly basis.

(j) The proposal to avail annuity plan will only be feasible if the upfront cost incurred to avail such annuity plan is reimbursed in full to the petitioner in the following month in which the annuity plan had been purchased, through a supplementary invoice.

3. Learned counsel for PSPCL and Rajasthan submitted that the documents filed by the petitioner only reflect that payment of money is in process but not actually paid. Learned counsel for PSPCL and Rajasthan requested for time to file reply.

4. Learned counsel for the lead procurer, MPPMCL submitted that compensation sought by the petitioner would be subject to the PPA entered between the parties and requested for time to file reply to the submission of the petitioner.

5. After hearing the learned counsels for the parties, the Commission directed the respondents to file their replies, if not filed, on affidavit by 29.5.2015 with an advance copy to the petitioner who may file its rejoinder, if any, by 5.6.2015.

6. The Commission directed the petitioner to submit the following information/clarification on affidavit, by 29.5.2015 with an advance copy to the respondents.

(i) The criteria for identification of Project Displaced Persons (PDPs) for sustenance allowance, old age pension, widow/ disabled/ unmarried girl pension and students for free education, study material and stipend.

(ii) Reasons for not providing employment to eligible PDPs in the project. How many were employed and how many are left to whom sustenance allowance is to be given.

(iii) Procedure of actual identification as to who will do the identification, who will certify the names identified by the District Authority, time period/ schedule of identification for each year eligibility. Verification of identified persons and agency verifying and procedure of verification.

(iv) Verification of bank accounts in which amount is to be credited, and the agency responsible for the process of submitting the proof of actual payment. Whether bank statements are supported by auditor certificate or any other process.

(v) Process of review and monitoring of continuation of beneficiaries.

(vi) List of beneficiary students as per the record of District Administration. Payment mechanism adopted and recipients of payments of ₹ 558.819 lakh with documentary evidence.

(vii) The reasons for claiming reimbursement towards providing free education, education stipend, study material, etc. based on the Chartered Accountant certificate only. Documentary evidence of actual payment certified by competent authority / Head of institution may be furnished.

7. The petition shall be listed for hearing, if required.

By order of the Commission

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