

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 73/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Shri A.S. Bakshi, Member

Date of Hearing: 7.8.2014

Date of Order : 16.10.2015

In the matter of

Petition under Sections 61, 63 and 79 (1) (f) of the Electricity Act, 2003 read with the Statutory framework for tariff-based competitive bidding for transmission service and in the matter of 765 kV 1X D/C transmission line from Dharamjaygarh-Jabalpur and 765 kV S/C transmission line from Jabalpur pool-Bina being implemented by Jabalpur Transmission Company Ltd.

And

In the matter of

Jabalpur Transmission Company Limited
C-2, Mira Corporate Suites,
Ishwar Nagar, New Delhi-110 025

....Petitioner

Vs

1. Adhunik Power and Natural Resources Limited
3rd Floor, Crescent Towers,
229 AJC Bose Road, Kolkata-700 020
2. Corporate Power Limited
8th and 9th Floor, Mahabir Tower,
Main Road, Ranchi-834 001
3. Essar Power (Jharkhand) Ltd.
Essar House, 11 KK Road,
Mahalaxmi, Mumbai-400 034
4. West Bengal State Electricity Distribution Company Limited
7th Floor, Bidyut Bhawan,
DJ Block, Sector-II, Salt Lake City,
Kolkata-700 091



5. MB Power (Madhya Pradesh) Limited
213 B, Okhla Industrial Area, Phase-III
New Delhi-110 020

....Respondents

Parties present:

For Petitioner: Shri Amit Kapur, Advocate for the petitioner
Ms. Poonam Verma, Advocate for the petitioner
Ms. Rimali Batra, Advocate for the petitioner
Shri Harshit Gupta, JTCL
Shri Harsh Shah, JTCL
Shri Pulkit Sharma, JTCL

For Respondents: Shri Hemant Sahai, Advocate for M.B. Power Limited
Shri Abhishek Gupta, M.B. Power
Shri Y.K. Sehgal, CTU

ORDER

The petitioner, Jabalpur Transmission Company Limited, has filed the present petition under Sections 61, 63 and 79 of the Electricity Act, 2003 (the Act) read with the TSA provisions and regulatory power of this Commission, with the following prayers:

- (a) Allow the Petition and declare that the event factors/events, namely, the non-grant of Forest Clearance and the delay in Section 164 Authorization that have occurred subsequent to the submission of the bid and award of the Project constitute Force Majeure as per the TSA.
- (b) Declare that the amendment to the Forest Guidelines by notification dated 13.02.2012 issued by MoEF is a Change in Law as per the TSA.
- (c) Grant a 12 month extension in the Scheduled Date of Commercial Operation of the Project to enable the Petitioner to implement the Project as per the TSA and waive any penalties or any other consequences thereof under the TSA.
- (d) Grant an increase of ₹80 crore in the levelized transmission charges to offset the additional cost incurred on account of the unforeseen and uncontrollable events that have occurred subsequent to the submission of the bid and award of the Project;
- (e) Pass any other order as this Hon`ble Commission may deem fit in the facts and circumstances of the present case.”



Background of the case:

2. Jabalpur Transmission Company Limited (JTCL) was incorporated on 8.9.2009 by PFC Consulting Ltd. (PFCCL) as its wholly owned subsidiary to develop and implement the Transmission System on Build, Own, Operate and Maintain basis for system strengthening common for Western and Northern Regions, comprising the following elements:

(a) Dharamjaygarh-Jabalpur (DJ) pool 765 kV D/C transmission line (DJ line)

(b) Jabalpur pool-Bina (JB) 765kV Quad S/C transmission line (JB Line)

3. PFC Consulting Ltd. (PFCCL) was appointed as the Bid Process Coordinator by notification dated 1.7.2009 in accordance with “Tariff Based Competitive Bidding Guidelines for Transmission Service” issued by the Central Government on 17.4.2006. PFCCL initiated the competitive bidding process for selection of a successful bidder to build, own, operate and maintain the project and to provide transmission service to the Long term Transmission Customers (LTTCs). On the basis of the competitive bidding, Sterlite Transmission Projects Pvt. Ltd (hereinafter “Sterlite”) was selected as the successful bidder having quoted the levelised tariff of ₹1421.28 million per annum for a period of 35 years. The Letter of Intent was issued in favour of Sterlite on 19.1.2011. Sterlite acquired JTCL as its wholly owned subsidiary on 31.3.2011 in accordance with the stipulation in the Lol and RfP. JTCL and LTTCs had signed the Transmission Service Agreement on 1.12.2010 and after acquiring JTCL, Sterlite became a party to the TSA. The petitioner approached the Commission for grant of transmission licence in Petition No. 107/2011 and for adoption of tariff of the transmission system in Petition



No.109/2011. The Commission in its order dated 12.10.2011 in Petition No. 107/2011 adopted the transmission tariff of the transmission system of ₹1421.28 million per annum and in order dated 28.10.2011 in Petition No.109/2011 granted transmission licence to the petitioner for undertaking inter-State transmission of electricity for 25 years.

Submission of the petitioner:

4. The petitioner has submitted that following unforeseen and uncontrollable events have taken place subsequent to the award of the project which have altered the commercial dynamics of the project and has rendered it commercially impracticable and unviable for the petitioner to implement the project:

(a) Non-grant of forest clearance

(b) Delay in grant of Section 164 authorization

(A) Non-grant of Forest Clearance

5. The petitioner has submitted that the transmission project traverses through 537 Ha. of forest land across the States of Madhya Pradesh (423 Ha.) and Chhattisgarh (113.7 Ha.) which affects over 35% of the total line length. The petitioner has submitted that in line with its obligations under clause 1.5 (c) of the RfP, PFCCL initiated the process for obtaining forest clearance through JTCL (then wholly owned subsidiary of PFCCL) by sending letters to respective District Forest Officers in Madhya Pradesh and Chhattisgarh seeking forest clearance. There was discrepancy between the forest areas covered in these letters and the forest areas covered under the survey report issued by



PFCCL. Moreover, no letters were sent in respect of districts of Korba, Champa and Bilaspur in the State of Chhattisgarh even though forest areas were encountered in these districts.

6. The petitioner has submitted that consequent to the acquisition of JTCL by Sterlite, the petitioner has taken necessary steps for securing grant of forest clearance in accordance with the procedure prescribed in the Forest (Conservation) Rules, 2003 and Forest Guidelines. The petitioner initiated a survey of the transmission line in March 2011 to determine the line-length falling in forest areas. Thereafter, the petitioner submitted applications to the designated nodal officers seeking forest clearance as per Rule 6 of the Forest Conservation Rules, 2003 in June 2012 for Madhya Pradesh and in July 2012 for Chhattisgarh. The petitioner obtained due no-objection certificates from the district collectors under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in January 2013 for Madhya Pradesh and in September 2013 for Chhattisgarh.

7. The petitioner has submitted that its application for forest clearance was at a standstill on the date of filing the application at the stage of compensatory afforestation.

Paragraph 3.2(iv) and 3.2(v) of the Forest Guidelines originally read as follows:

“3.2 Land for Compensatory Afforestation

(iv) Where non-forest lands are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation may be carried out over degraded forest land being diverted and available non-forest land, as the case may be.

(v) The non-availability of suitable non-forest land for compensatory afforestation in the entire State/Union Territory would be accepted by the Central Government only on the Certificate from the Chief Secretary to the State/Union Territory Government to that effect.”



8. The petitioner has submitted that Ministry of Forest & Environment issued Notification No. 11-423/2011-FC dated 13.2.2012 consequent to which para 3(iv) of the Forest Guidelines was amended to the effect that a certificate of non-availability of non-forest land can be issued only when the area of forest land in the State is more than 50%. The petitioner has submitted that since the forest cover in both Madhya Pradesh and Chhattisgarh is below the threshold of 50%, the petitioner can no longer avail the dispensation permitted in paragraphs 3(iv) and 3(v) of Forest Guidelines. The petitioner has submitted that the above amendment to the Forest Guidelines constitute Change in Law within the meaning of Article 12 of the TSA.

9. The petitioner has submitted that the requirement of obtaining a certificate from the Chief Secretary of the State for non-availability of land is not applicable for Central Government project under para 3.2(ix) of the Forest Guidelines. The petitioner has submitted that Central Electricity Authority sent letters dated 10.4.2013 requesting Principal Chief Conservator of Forests, Chhattisgarh and Principal Secretary, Forest Department, Government of Madhya Pradesh to consider the project as a "Central Government Project" for the purpose of Forest Clearance. The petitioner has submitted that the petitioner has no choice but to continue with its efforts to identify non-forest land for undertaking compensatory afforestation. The petitioner has submitted that the petitioner approached several district collectors seeking non-forest land for compensatory afforestation. It made application to Collector Jabalpur for allotment of revenue land for the purpose of compensatory afforestation for the project. Though the Additional Collector Jabalpur by order dated 16.7.2012 allotted 485 Ha. of government land for the purpose of compensatory afforestation, the land has not been handed over



to the petitioner for the purpose of compensatory afforestation. The petitioner has submitted that as on the date of filing of the petition, forest clearance is still awaited for the project and as a result, the petitioner has been unable to undertake construction of any part of the project which is affected by forest area which is over 35% of the total line length. The petitioner has submitted that as a result of the non-grant of forest clearance, the petitioner's ability to implement the project within the timeframe specified in the TSA has been adversely affected.

10. As regards the steps taken by the petitioner to expedite forest clearance, the petitioner has submitted that the petitioner approached Project Monitoring Group of Cabinet Committee on Investment to expedite the resolution of the issue. This Committee was constituted by Government of India vide Notification dated 2.1.2013 with the objective to consider and decide the measures required for expeditiously granting/refusing approvals/clearances in identified sectors including simplification of rules/procedures followed by respective Ministries/Departments in decision making. In the meetings dated 30.7.2013 and 9.9.2013, the Cabinet Committee of Investment decided that the allotment of land for compensatory afforestation was to be expedited; the issue of MoEF notification dated 13.2.2012 was to be taken up; and a note was to be moved to consider the project a Central Government Project' for the purpose of para 3.2 (ix) of the Forest Guidelines. The petitioner approached Association of Power Producers to request Government of India to facilitate grant of forest clearance and highlight importance of the project. The Association took up the matter with Ministry of Power vide its letter dated 27.12.2013 whereupon MoP called meetings dated 23.1.2014 and 13.2.2014 of the officials from MoEF, PGCIL, CEA, APP and the



petitioner to discuss the issue of non-grant of forest clearance. The petitioner is stated to have taken up the matter with Managing Director, MP State Industrial Development Corporation Ltd requesting for expediting the forest clearance and necessary intervention to enable timely completion of the project.

(B) Delay in Section 164 approval

11. The petitioner has submitted that on 20.10.2011, Ministry of Power notified the “Modified Procedure for obtaining the authorization under Section 164 of the Electricity Act, 2003 from the Ministry of Power” vide Notification No.11/4/2007-PG dated 20.10.2011. In accordance with the said Procedure, the petitioner published the inter-State transmission scheme in Central Chronicle (Bhopal Edition) and Central Chronicle (Raipur Edition) on 2.11.2011 and Nava Bharat (Jabalpur Edition), Haribhoomi (Raipur Edition) and Haribhoomi (Bilaspur Edition) on 3.11.2011. The petitioner got the notice published in Gazette of India on 10.3.2012 where notice was given to general public inviting observations/representations on the proposed transmission scheme within two months of the date of publication. On 11.5.2012, the petitioner submitted to CEA with copy to MoP copies of the newspaper publication of the scheme, authenticated maps showing the route alignment of the project and justification of the route alignment which was acknowledged by CEA vide letter dated 30.5.2012. The petitioner also sent a notice to MoP enclosing a duly notarized undertaking stating that no objection has been received from any individuals to the transmission scheme published in the newspapers and Government of India Gazette. The Section 164 approval was notified in the Gazette of India on 12.7.2013. However, the MoP intimated to the petitioner about the Section 164 approval on 20.1.2014.



12. The petitioner has submitted that the petitioner wrote letters to MoP on 21.8.2012, 19.9.2012, 20.12.2012 and 27.2.2013 requesting for expeditious issue of Section 164 approval. Further, the petitioner wrote a letter dated 10.11.2012 to the lead LTTC, MB Power (MP) Ltd seeking assistance for expediting Section 164 authorisation. MB Power wrote a letter to MoP on 3.12.2012 seeking immediate intervention for issue of Section 164 authorisation. The petitioner also sent a letter to the lenders on 14.3.2013 seeking waiver of pre-disbursement condition of obtaining Section 164 authorisation.

13. The petitioner has submitted that in the absence of requisite authorization under Section 164 of the Act, the petitioner was unable to erect towers and had difficulties in commencing construction as land owners could not be convinced that the petitioner had authority under law to construct the towers on their land. Moreover, the petitioner faced severe problems in settling right-of-way issues and had to pay compensation in excess of applicable norms. Moreover, lenders of the project did not agree to disburse funds as obtaining Section 164 authorisation is a pre-disbursement condition. The petitioner has also stated that it could not award the EPC contracts to firm up prices leading to increase in the cost of execution and cost of raw materials such as steel and aluminums etc.

14. The petitioner has relied upon the judgement of the Appellate Tribunal for Electricity dated 2.12.2013 in Appeal No. 139 of 2013 (North Karanpura Transmission Company Ltd. Vs. Central Electricity Regulatory Commission and Others) in which it has been held that delay in obtaining the Central Government's approval in conferring



the power of Telegraph Authority under Section 164 of the Act is to be construed as force majeure.

(C) Notice to the LTTCs

15. The petitioner has submitted that it has periodically intimated CEA in terms of Article 4.1(g) of the TSA the progress of the project including the delay in grant of Section 164 authorisation and delay in grant of forest clearance which is published on the website of CEA. The petitioner has further submitted that on 12.11.2013, the petitioner in terms of Article 11 of the TSA notified the LTTCs about the delay in grant of Section 164 authorisation and non-grant of forest clearance. In response to the notice dated 12.11.2013, Essar Power (Jharkhand) Ltd., Corporate Power Ltd. and MB Power (Madhya Pradesh) Ltd have advised the petitioner to approach the Commission to seek relief.

(D) Financial Impact

16. The petitioner has submitted that the financial impact of the uncontrollable events has necessitated an increase in ₹80 crore in the levelised transmission charges considering the expected commissioning date of March 2015 for DJ line and November 2014 for the JB line. The petitioner has further submitted that as a result of delay, there has been a loss of revenue of ₹166 crore, being the tariff that the petitioner would have earned had the project been commissioned by the scheduled date of commercial operation in the absence of uncontrollable events.



(E) Petitioner's submission on Jurisdiction of the Commission

17. The petitioner has submitted that the petitioner is a transmission licensee engaged in the inter-State transmission of electricity and the issues raised in the present petition relate to redetermination of tariff and regulation of inter-State transmission. The petitioner has submitted that the Commission is empowered to take into consideration the impact of the increase in the cost of the project by force majeure events and determine the tariff in such a manner that this increase in cost is absorbed in the transmission charges and the petitioner is restored to the same economic position as existed prior to the unforeseen and uncontrollable escalation in cost. The petitioner has submitted that in terms of Article 16.3.1 and Article 18.17.1 of the TSA and Clause 10.1 of the Competitive Bidding Guidelines, the disputes arising under the TSA are subject to adjudication by the Commission.

18. The petitioner has relied upon the order of this Commission dated 2.4.2013 in Petition No.155/MP/2012 (Adani Power Ltd Vs Uttar Haryana Bijli Vitaran Nigam Limited and Others), order dated 2.4.2013 in Petition No. 24/TT/2011 (Power Grid Corporation of India Ltd Vs Madhya Pradesh Power Trading Company Limited and others) and the judgement of the Appellate Tribunal for Electricity dated 27.4.2011 in Appeal No.72 of 2010 (Maharashtra State Power Generation Company Limited Vs MERC and Others) and dated 24.5.2011 in Appeal No. 99 of 2010 (Maharashtra State Power Generation Company Limited Vs Maharashtra Electricity Regulatory Commission and Others) in support of its contention that the petitioner as the affected party should be given the benefits of the additional cost incurred due to time overrun.



Reply of Respondents

19. MBPL has filed reply to the petition. In its reply, MBPL has submitted that its Phase-1, 1200 MW (2x600 MW) Anuppur Thermal Power Project in Madhya Pradesh is under advanced stages of completion and is expected to be completed by September/October, 2014. Since, JB line is one of the elements of the ISTS for the Long Term Access granted by CTU for transmission of power from its project, any delay in commissioning of this line would lead to bottling up of power, thereby causing severe financial repercussions on its project. MBPL has requested CTU to make adequate alternate arrangements to channelize its power from Jabalpur Pooling Point onwards to Northern Region (NR), pending the commissioning of the Jabalpur-Bina transmission line.

Proceedings before the Commission

20. The matter was heard after notice to the respondents. During the course of hearing, learned counsel for the petitioner submitted that as per the amendment in the 2004 Forest Guidelines in 2012, the availability of compensatory afforestation was restricted to States that have 50% forest cover of their total geographical area. Considering the forest areas in Madhya Pradesh and Chhattisgarh is not more than 50%, the notification dated 13.2.2012 disentitled the petitioner from obtaining compensatory afforestation land in Madhya Pradesh and Chhattisgarh. Learned counsel submitted that following the notification, the petitioner was constrained to renew the process of identifying non-forest land for compensatory afforestation leading to an additional capital outlay on account of price increase in the input materials, such as conductor, steel, cement, labour, etc. This amendment therefore, is 'Change in Law' in



terms of Article 12 of the TSA. Learned counsel further submitted that there was delay of approximately 18 months in grant of Right of Way authorisation under Section 164 of the Electricity Act, 2003. The said delay was beyond the control of the petitioner. The petitioner submitted its application for seeking the authorisation under Section 164 on 11.5.2012 whereas the Ministry of Power intimated the Section 164 authorisation to the petitioner on 20.1.2014. Therefore, the petitioner is not liable for the delay in grant of the authorisation under Section 164 of the Act. Learned counsel for MB Power (Madhya Pradesh) Ltd. submitted that its only concern was evacuation of power from the Power Plant, which was likely to be commissioned in the months October or November 2014.

Analysis and Decision

21. We have considered the submissions of the petitioner and the respondents. The following issues arise for our consideration:

- (a) Whether adjudication of the dispute falls within the jurisdiction of this Commission?
- (b) Whether the petitioner has complied with the provisions of the TSA before approaching the Commission?
- (c) Whether the petitioner's case for non-grant/delay in grant of forest clearance is covered under force majeure and change in law provisions of the TSA?
- (d) Whether the delay in grant of Section 164 authorisation is covered under the provisions of force majeure of the TSA?



(e) What reliefs should be granted to the petitioner in the light of the answer to the above issues?

Issue No1: Whether adjudication of the disputes raised in the petition falls within the jurisdiction of the Commission?

22. The petition has been filed under Sections 62, 63 and 79 of the Act seeking a declaration that non-grant of forest clearance and delay in Section 164 approval are events of force majeure, amendment to the Forest Guidelines by Notification dated 13.2.2012 is an event of change in law, extension of schedule commercial operation date of the project and compensation for the events of change in law and force majeure through increase in levelised transmission charges.

23. The petitioner has submitted that Section 79 of the Act inter alia empowers the Commission to regulate inter-State transmission of electricity, determine tariff of inter-State transmission of electricity and adjudicate the disputes involving transmission licensees with regard to these matters. Since the petitioner is an inter-State transmission licensee engaged in inter-State transmission of electricity and the issues raised relate to redetermination of tariff and regulation of inter-State transmission, the Commission is empowered to take into consideration the impact of increase in the cost of the project by the events of force majeure and determine tariff in such a manner that this increase in cost is absorbed in the transmission charges and the petitioner is restored to same economic condition. The petitioner has also submitted that under Article 16.3.1 of the TSA, the disputes arising out of TSA are subject to adjudication by the Commission, Article 18.17.1 requires regulatory approval for amendment of the TSA

and Clause 10.1 of the Competitive Guidelines provides that any dispute regarding the TSA or tariff is subject to jurisdiction of the Commission.

24. This is a competitively bid inter-State transmission project whose tariff has been adopted by the Commission under Section 63 read with Section 79 of the Act. Under Section 79(1) (f) of the Act, the Commission is empowered to adjudicate the dispute involving inter-State transmission licensee. Further, the Competitive Bidding Guidelines issued under Section 63 of the Act provides that any dispute regarding the TSA or tariff will be subject to adjudication by the Commission. Moreover, Article 16.3.1 of the TSA envisages adjudication of all disputes under TSA by the Commission. The disputes raised in the petition relate to adjustment of tariff arising on account of the events of force majeure and change in law and extension of scheduled commercial operation date for which the transmission licensee is entitled for relief under the TSA if its case satisfies the conditions of relevant provisions of the TSA.

25. In our view, the role of Commission as regulator continues throughout the term of the TSA in terms of Sections 63 and 79 of the Electricity Act read with articles 11, 12 and 16 of the TSA. The dispute between the petitioner and the Long Term Transmission Customers has arisen on account of the delay in grant of authorization by Ministry of Power and non-grant of forest clearance which has implication on tariff of the transmission system. Since the dispute is between the petitioner which is a transmission licensee and the Long Term Transmission Customers with regard to the transmission tariff which was adopted under Section 63 read with Section 79(1)(c) of the Act, the petition is maintainable under Section 79 (1) (f) read with Section 63 of the Act.



Issue No. 2: Whether the petitioner has complied with the provisions of the TSA before approaching the Commission?

26. The petitioner has claimed relief under Article 11(Force Majeure) and Article 12 (Change in Law) of the TSA. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of Force Majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of force majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA. Under Article 12.2.1 of the TSA, the affected party is required to give notice to the other party about the occurrence of change in law.

27. The petitioner gave a notice dated 12.11.2013 to the LTTCs under Article 11 of the TSA regarding the delay in grant of Section 164 authorization and non-grant of forest clearance. In response, Essar Power (Jharkhand) Ltd., Corporate Power Ltd. and MB Power (Madhya Pradesh) have responded by advising the petitioner to approach the Commission for appropriate relief. MB Power (Madhya Pradesh) Ltd which is the lead LTTC in its letter dated 3.4.2014 while acknowledging that delay in Section 164 authorisation and forest clearance are beyond the control of the petitioner advised the petitioner to approach the Commission for any compensation and relief for time overrun and cost overrun. Thereafter, the petitioner has approached the Commission by filing the present petition. In our view, the petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs before approaching the Commission.

Issue No.3 Whether the petitioner's case for non-grant/delay in grant of forest clearance is covered under force majeure and change in law provisions of the TSA?

28. The petitioner has submitted that non-grant of forest clearance/delay in grant of forest clearance are covered under both force majeure and change in law provisions of the TSA. According to the petitioner, the project traverses through 537 Ha of forest land across Madhya Pradesh and Chhattisgarh which affect over 35% of the total line length. According to the petitioner, consequent to the acquisition of JTCL by Sterlite, the petitioner has taken necessary steps for securing grant of forest clearance in accordance with the procedure prescribed in the Forest (Conservation) Rules, 2003 and Forest Guidelines. The petitioner initiated a survey of the transmission line in March 2011 to determine the line-length falling in forest areas. Thereafter, the petitioner submitted applications to the designated nodal officers seeking forest clearance as per Rule 6 of the Forest (Conservation) Rules, 2003 in June 2012 for Madhya Pradesh and in July 2012 for Chhattisgarh. The petitioner obtained due no-objection certificates from the district collectors under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in January 2013 for Madhya Pradesh and in September 2013 for Chhattisgarh. The petitioner has submitted that due to change in the forest guidelines by MoEF, the petitioner could not obtain forest clearance in time and as a result, it was unable to commence work in the forest and associated areas.

29. The petitioner has submitted that its project was delayed at the stage of compensatory afforestation on account of the change in the Forest Guidelines for forest clearance by MoEF. The petitioner has submitted that as per the Forest Guidelines, 2004, where the non-forest lands were not available or non-forest land is available in



less extent to the forest area being diverted, then compensatory afforestation may be carried out over degraded forest land being diverted or available non-forest land. Non-availability of suitable non-forest land for compulsory afforestation in the same State or Union Territory would be accepted by the Central Government only on the basis of a certificate from Chief Secretary of the State. According to the petitioner, this stipulation of certificate by Chief Secretary was modified by notification of MoEF dated 13.2.2012 by providing that certificate of non-availability of non-forest land shall be accepted only for those States having area of forest land more than 50% of their geographical area. According to the petitioner, considering the forest areas in Madhya Pradesh and Chhattisgarh is not more than 50%, the notification dated 13.2.2012 disentitled the petitioner to obtain compensatory afforestation land in Madhya Pradesh and Chhattisgarh. As a result, JTCL was constrained to renew the process of identifying the non-forest land for compensatory afforestation. The petitioner has submitted that the above amendment to the Forest Guidelines of 2004 constituted change in law within the meaning of Article 12 of the TSA impacting the development of the project.

30. Under Section 2 of the Forest (Conservation) Act, 1980, forest land can be diverted for non-forest purposes with the approval of the Central Government on the proposal of the Forest Advisory Committee and after furnishing of compliance report by the State Government with regard to the conditions for such compliance. Under Rule 6 of the Forest (Conservation) Rules, 2003, every user agency which wants to use forest land for non-forest purposes shall make a proposal to the nodal officer designated for the purpose by the State Government, complete in all respects. The State Government after being satisfied that the proposal requires prior approval under Section 2 of the



Forest Conservation Act will send the proposal to the Central Government. The Central Government after receipt of the proposal shall send the same to the Forest Advisory Committee for its advice thereon. The Forest Advisory Committee after considering the proposal may advise the Central Government on the proposal and may suggest any conditions or restriction for use of any forest land for non-forest purposes which in its opinion would minimise the adverse environmental impact. The Central Government after considering the advice of the Committee and after making such enquiry as may be considered appropriate may grant approval to the proposal with or without conditions or reject the proposal.

31. The petitioner conducted a survey in March 2011 to determine the line length in forest areas. The petitioner made applications to the designated nodal officer in Madhya Pradesh in June 2012 and Chhattisgarh in July 2012 for forest clearance under Rule 6 of the Forest (Conservation) Rules, 2003. The petitioner also obtained No Objection Certificates from the Gram Shabha under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in January 2013 in case of Madhya Pradesh and September 2013 in case of Chhattisgarh. According to the petitioner, as per the Forest Guidelines in operation as on the date of the bid, the petitioner was eligible for compensatory afforestation on the degraded forest land and available non-forest land after obtaining a certificate of the Chief Secretary of the concerned State to the effect that non-forest land is not available or available in less extent to the forest land being diverted. The Forest Guidelines as updated upto June 2004 provides as under:



“3.2 Land for Compensatory Afforestation:-

- (i) Compensatory afforestation will be done over equivalent area of non-forest land.
- (ii) As far as possible, the non-forest land for compensatory afforestation should be identified contiguous to or in the proximity of Reserved Forest or Protected Forest to enable the Forest Department to effectively manage the newly planted area.
- (iii) In the event that non-forest land of compensatory afforestation is not available in the same district, non-forest land for compensatory afforestation may be identified anywhere else in the State/Union Territory as near as possible to the site of diversion, so as to minimise adverse impact on the micro-ecology of the area.
- (iv) Where non-forest lands are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation may be carried out over degraded forest land being diverted and available non-forest land, as the case may be.
- (v) The non-availability of suitable non-forest land for compensatory afforestation in the entire State/Union Territory would be accepted by the Central Government only on the Certificate from the Chief Secretary to the State/Union Territory Government to that effect.
- (vi) An exception to 3.2(i) above, compensatory afforestation may be raised over degraded forest land twice in extent of the forest area being diverted/deserved in respect of following types of proposals:
 - (a).....
 - (b).....
 - (c) For laying transmission lines upto 220 kV.”

MoEF in order to ensure that such certificates are issued after thorough scrutiny, vide letter No. F No.11-423/2011-FC dated 13.2.2012 added provisos under para 3(v) of the Guidelines as under:

“Provided that no such certificate shall be issued by the Chief Secretary, unless he/she obtains joint certificates to this effect from each district collector and Division Forest Officer in respect of area under their jurisdiction.

Provided further that in case it is found by the Central Government that after issue of such certificate by the Chief Secretary, non-forest land has been made available for plantation of forestry and/or commercial or horticulture tree species by Government departments, the Central Government may issue such direction to the State or UT Government concerned, to transfer and mutate such land in favour of State or UT Forest



Department and notify such non-forest land as Reserved Forests/Protected Forests in accordance with the provisions of Indian Forest Act, 1927 or the concerned local Act.

Provided further that certificate of non-availability of non-forest land shall be accepted only from those States having area of forest land more than 50% of their geographical area.”

According to the petitioner, since the forest areas in Madhya Pradesh and Chhattisgarh is less than 50% of the geographical areas of these States, the petitioner could not obtained the certificate from Chief Secretary and therefore, was rendered ineligible to develop compulsory afforestation on the degraded forest land. In support, the petitioner has relied upon the Report No.21 of 2013 of CAG in which it is observed that no forest land has been received for compulsory afforestation for the forest land diverted for non-forest use in Madhya Pradesh and Chhattisgarh. The petitioner has further submitted that Chief Secretaries of Madhya Pradesh and Chhattisgarh as recently as 2010 have issued certificates of non-availability of non-forest land for compulsory afforestation. It is noticed from the India State of Forest Report, 2011, the forest areas in Madhya Pradesh constitute 28.27% of the total geographical area of the State. According to India State of Forest Report, 2009, the total forest area in the State of Chhattisgarh is 44.21% of the total geographical area. Therefore, the certificate of the Chief Secretary regarding non-availability of forest land is not acceptable for diversion of degraded forest land for compulsory afforestation. It is further noted that clause (vi) of para 3.2 of the Forest Guidelines makes an exception to para 3.2(i) by permitting compensatory afforestation over degraded forest land twice in extent of forest area being diverted if the proposal is for laying of transmission lines upto 220kV. Since the petitioner has been granted licence for Dharmajayagarh-Jabalpur (DJ) pool 765 kV D/C transmission line and Jabalpur Pool – Bina (JB) 765 kV Quad S/C transmission line, the



petitioner cannot take advantage of this provision. In view of the above, it is apparent that the change in the Forest Guidelines in February 2012 which is after the project was awarded to the petitioner has significantly affected the petitioner's capacity to arrange degraded forest land for compulsory afforestation and has affected the pace of implementation of the project by the petitioner.

32. The petitioner by its affidavit dated 1.10.2015 has placed on record certain relevant documents with regard to Forest Clearances. The petitioner has submitted a MoEF letter No. F.No.11-68/2014-FC (pt.) dated 11.7.2014 addressed to Principal Secretary (Forest) of all States/Union Territory Governments under which an amendment has been issued to Para 3.2 (vi)(c) of the Forest Guidelines. Relevant paras of the said letter are extracted below:

"I am directed to say that Ministry of Power has drawn attention of this Ministry to clause (c) of sub-para (vi) of para 3.1 of the guidelines for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 provides that as an exception to para 3.2 (i) of the said guidelines, compensatory afforestation may be raised over degraded forest land twice in extent of the forest area being diverted/de-reserved in respect of the proposals for laying of transmission lines upto 220 kV. The Ministry of Power has requested this Ministry that the said provisions may be extended to all transmission lines.

The matter has been examined in this Ministry and after careful consideration this Ministry hereby decides that provisions of the said clause (c) of sub-para (vi) of para 3.1 of the guidelines for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 shall be extended to all proposals for laying of transmission lines. The said clause which reads as "For laying of transmission lines upto 220 kV" shall therefore be read as "For laying of transmission lines".

I am further directed to say that provisions of the said clause (c) of sub-para (vi) of the para 3.1 of the guidelines for decision of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 shall not be applicable in respect of the forest land required for sub-stations, switching stations, and other components of the HVDC terminal or invertors etc."



It is, therefore, evident that as per the amendment issued to the guidelines vide letter dated 11.7.2014, all transmission lines irrespective of voltage have been eligible for diversion of degraded forest lands for the purpose of compensatory afforestation. In accordance with this provision, the petitioner has processed the case for diversion of forest land for construction of the transmission lines. The petitioner received the forest clearance as per the details given below:

Ser No	Name of the element	Area in Ha. (Forest Diversion)	State	Stage-I approval	Stage –II Approval
1	Jabalpur-Dharmajaygarh 765 kV D/C Transmission Line	113.678	Chhattisgarh	23.12.2014	16.6.2015
2	Jabalpur-Dharmajaygarh 765 kV D/C transmission line	283.818	Madhya Pradesh	31.12.2014	10.3.2015
3	Jabalpur-Bina 765 kV S/C Transmission Line	138.31	Madhya Pradesh	15.1.2015	16.3.2015

33. After receipt of the Forest Clearance as above, the petitioner has commissioned Jabalpur-Dharmajaygarh 765 kV D/C transmission line on 19.9.2015 and Jabalpur-Bina 765 kV S/C Transmission Line on 1.7.2015. As per the Transmission Service Agreement, the Scheduled Commercial Operation Date (SCOD) is 36 months from the effective date. The term 'effective date' has been defined under Article 2.1 of the TSA which is later of the three dates namely, date of execution and delivery of the TSA by the parties, the date of acquiring of the JTCL by the successful bidder, date of providing contract performance guarantee by the successful bidder. The TSA was pre-signed between the JTCL and LTTC on 1.12.2010, the Contract Performance Guarantee was

provided on 30.3.2011 and JTCL was acquired on 31.3.2011. Therefore, the effective date is 31.3.2011 and the project was to be completed within 36 months from effective date. In other words, both the lines were to be commissioned by 31.3.2014. As against the SCOD, the actual delay in commissioning of Jabalpur-Dharmajaygarh 765 kV D/C transmission line on 19.9.2015 and Jabalpur-Bina 765 kV S/C Transmission Line on 1.7.2015 which resulted in delay of 17 months 19 days and 15 months respectively. In our view, the delay is attributable to the time taken for forest clearance.

34. The question arises whether the MoEF Notification dated 13.2.2012 and 11.7.2014 amending the guidelines for diversion of forest land are covered under Change in Law provisions of the TSA. Law has been defined in the TSA as under:

“Law or Laws in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Government Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission.”

The Guidelines issued by the MoEF are in the nature of Code of procedure issued by the Government of India to give effect to the Forest (Conservation) Act, 1980 which are required to be complied with by all persons or agencies seeking forest clearance. In our view, the guidelines are covered under law as per the provisions of the TSA. Change in Law under the TSA covers certain events or circumstances after the date which is 7 days prior to the Bid Deadline resulting in additional recurring or non-recurring expenditure. Article 12.1.1 of the TSA reads as under:



“12.1 Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:

- The enactment coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such law;
- A change in the interpretation or applicable of any Law by any Indian Governmental Instrumentally having the legal power to interpret or apply such Law, or any Competent Court of Law;
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such consents, clearances and Permits;
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP.
- Any change in the Acquisition Price; or
- Any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.”

In our view, the letter dated 13.2.2012 issued by MoEF disentitling the persons to utilize degraded forest land on the basis of certificate from the Chief Secretary regarding non-availability of non-forest land for the purpose of compensatory afforestation where the forest cover in the State is less than 50% is covered under “a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such consents, clearances and Permits”. The petitioner explored the alternative of acquiring non-forest land but could not secure the possession of such land. The petitioner has submitted that though on 16.7.2012, Govt. of Madhya Pradesh allotted 485 hectare land for the purpose of afforestation, the possession of the said land was not handed over till the date of filing



of the petition. The petitioner took up the matter with Government of India and other authorities like CEA and the Government of Madhya Pradesh and Chhattisgarh. Government of India after considering similar requests made amendment to the guidelines vide letter dated 11.7.2014 by permitting all persons laying transmission lines irrespective of the voltage level to utilize degraded forest land for the purpose of compensatory afforestation. After the issue of the said amendment, the petitioner has taken up the matter with the concerned authorities and obtained forest clearances on 10.3.2015, 16.3.2015 and 16.6.2015. Thereafter, the petitioner has carried out the works on the forest portion and balance portion of the transmission lines and commissioned them on 1.7.2015 and 14.9.2015. In our view, the process of obtaining forest clearance which involved time and cost are covered under change in law.

35. The petitioner has also claimed that delay in obtaining forest clearance is covered under force majeure provisions of the TSA. The petitioner has submitted that as 35% of the project was affected by forest areas and on account of delay in grant of forest clearance, it was unable to commission the project by SCOD. Force Majeure has been defined in the TSA as under:

“11.3 Force Majeure

A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.”

Thus force majeure means any event or circumstance or combination of events and circumstances which wholly or partly prevents or unavoidably delays an affected



party in the performance of its obligations under the TSA. An Affected Party has been defined in the TSA as “any of the Long Term Transmission Customers or the TSP whose performance has been affected by an event of Force Majeure”. In the present case, the execution of the transmission lines was affected on account of delay in grant of forest clearance. It is pertinent to note that as per para 4.4 of the guidelines issued by MoEF, “if a project involves forest as well as non-forest land, it is advisable that work should not be started on non-forest land till approval of the Central Government for release of forest land under the Act has been given.” Therefore, without obtaining forest clearance, the petitioner could not execute the work. In our view, the petitioner was prevented from discharging its obligations under the TSA on account of delay in grant of forest clearance and therefore, the delay in grant of forest clearance is covered under force majeure in the TSA.

Issue No.4: Whether the delay in grant of Section 164 authorization is covered under the provisions of force majeure of the TSA?

36. The petitioner has submitted that Section 164 of the Act provides that the government may, for the purpose of placing electric lights or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the work, confer upon a transmission licensee any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of Telegraph lines and posts. The petitioner has submitted that Section 164 authorization empowers a transmission licensee to lay transmission lines without having to first obtain the consent of the owner and occupier of the land. The petitioner had further submitted that the importance of Section 164



authorization has been recognized by the Regulatory Authorities from time to time and delay in Section 164 authorization has been held to amount to force majeure. In this connection the petitioner has relied upon the order of the Commission dated 31.12.2010 in Petition No. 296/2010 titled Western Region Transmission (Gujarat) Pvt. Ltd. & Anr. V. Power Grid Corporation of India Ltd. and judgement dated 02.12.2013 of Appellate Tribunal for Electricity in Appeal No. 139 of 2013 titled North Karanpura Transmission Co. Ltd. v. Central Electricity Regulatory Commission and Ors.

37. We have considered the submission of the petitioner. The law regarding Section 164 authorization is now well settled in the light of the decision of the Appellate Tribunal for Electricity in its judgement dated 2.12.2013 in Appeal No. 139/2013. The relevant portion of the said judgment is extracted as under:

“37. In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government’s approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.”

38. The petitioner has placed on record a copy of the modified procedure issued by Ministry of Power obtaining Section 164 authorisation vide Letter No. 11/4/2007-PG dated 20.10.2011. The said procedures provides as under:-

“In order to process the request from private transmission companies as well as generating companies who are required to construct, maintain and operate dedicated transmission lines, the following procedure has been prescribed:

(a) The licensee/applicant shall cause such inter-State transmission scheme to be published in Government of India Gazette and in at least two local daily newspapers along with a notice of the date, not being less than two months after the date of such publication, before which any interested person may make a representation on such scheme. The licensee/applicant shall take into consideration the objections/representations, before finalizing the optimal route alignment. Thereafter



licensee/applicant shall submit a certificate along with application under Section 164 of this effect.

- (b) The licensee/applicant will submit to the Central Electricity Authority the following documents:
- (i) Newspaper publications of Scheme
 - (ii) Authenticated maps showing the details of selected route alignment of the transmission lines.
 - (iii) Justification of the selection of the route alignment. CEA will issue an acknowledgment in the prescribed format for receipt of copies of documents which the licensee will attach along with the application to the Ministry.
- (c) The licensee/applicant should separately send a copy of the application as also a Notarized Affidavit duly signed by the authorised signatory to the Ministry of Power after the expiry of the notice period of 60 days indicated in the Gazette Notification and newspaper publications, regarding receipt or otherwise of objections on the route alignment selected for the proposed transmission line, clearly indicating how the objections were resolved.”

39. In accordance with the above procedure, the petitioner has published the inter-State transmission scheme in Central Chronicle (Bhopal Edition and Raipur Edition) on 2.12.2011 and in Navbharat (Bhopal, Indore and Jabalpur Edition) and Haribhumi (Raipur and Bilaspur Edition) on 3.11.2011 and in the Gazette of India on 10.3.2012. The petitioner on 11.5.2012 has submitted the relevant documents to the Central Electricity Authority for 164 authorisation which included copies of the newspaper publication of the scheme, authenticated maps showing the route alignment of the project and a justification of the route alignment. The petitioner has sent a letter on 28.6.2012 to MOP enclosing a duly notarised undertaking stating that no objection had been received of any individuals to the transmission scheme published in the newspapers and the Government of India Gazette. However, Section 164 authorisation was notified in the Gazette of India only on 12.7.2013 and was communicated to the petitioner by MOP on 20.1.2014. Though there is no time limit laid down in the modified procedure for publication of the final Gazette notification by Ministry of Power, it is



expected that the scheme should be notified within a reasonable period of say one month. There is no explanation as to why MoP took almost more than one year to get the Section 164 authorization published in the Gazette of India. It is further noted that MoP has officially sent the copy of the notification to the Chief Secretaries of the Government of Chhattisgarh and Madhya Pradesh, Chairperson, CEA, CMD, PGCIL and the petitioner vide its letter dated 20.1.2014. Since the copy of the Gazette has been officially communicated to Chhattisgarh and Madhya Pradesh Government only vide letter dated 20.1.2014 and the State Governments are required to facilitate the process of laying of the transmission lines based on the 164 authorisation, we are of the view that the force majeure condition operated from 1.8.2012 (after allowing one month period from the date of submission of letter to MoP by the petitioner on 28.6.2012) till 20.1.2014. Therefore, the project was affected by force majeure conditions on account of delay in issue of Section 164 authorisation for a period of 17 months and 20 days.

Issue No.5: What reliefs should be granted to the petitioner in the light of the answer to the above issues?

40. The petitioner has sought extension in the scheduled COD of the project by period of 12 months subject to the forest clearance being received in September, 2014 and an increase in the levelised transmission charges to the tune of ₹80 crores to offset the additional cost incurred in account of the unforeseen and uncontrollable events in the form of delay in forest clearance and delay in grant of Section 164 authorization which have occurred subsequent to the submission of the bid and award of the project.

41. We have already held in this order that delay in grant of forest clearance is covered under change in law as well as force majeure and delay in grant of Section 164



authorization is covered under force majeure. The TSA provides that the affected party shall continue to perform its obligations under the TSA to the extent it is not prevented by the condition of force majeure and shall use its reasonable efforts to mitigate the effects of the events of force majeure as soon as possible. Article 11.7 of the TSA provides for relief for force majeure events which is extracted as under:-

“11.7 Available Relief for a Force Majeure Event

Subject to this Article 11

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent TSA for Selection of Transmission Service Provider for that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.”

42. Further, Article 4.4 provides for extension of time.

“4.4. Extension of time

4.4.2 In the event that an Element or the Project cannot be commissioned by its scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a ‘day for day’ basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5.”

43. Though Article 4.4.2 provides for extension of SCOD upto a maximum period of six months, the Commission after considering the circumstances for delay in grant of forest clearance and Section 164 authorisation and the efforts made by the petitioner to mitigate the force majeure events, we allow extension of SCOD from 31.3.2014 till the respective dates of commercial operation of the transmission lines.



44. The petitioner has claimed relief for the force majeure events and change in law seeking an increase of ₹80 crores in the levelised transmission charges to offset the additional cost incurred. The provision in the TSA regarding relief for increase in the cost of the project on account of change in law is extracted as under:-

“12.2.1 During Construction Period:

During the Constriction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees Five Crores Fifty Lakhs (₹5,50,00, 000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32) of the Non-Escalable Transmission Charges.

12.2.2. During the operation period

12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2 and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable law.”

As per the above provision, the party affected by change in law and claiming increase in the cost of the project in the transmission charges is required to give the documentary proof of such increase/decrease in the cost of the project/revenue established in the impact of such change in law. Moreover, the decision of the Commission with regard to the quantum of compensation and the date of effectiveness of such compensation is final.

45. At the time of filing the petition, the project was still under execution. Jabalpur Dharmajaygarh 765 kV D/C line and Jabalpur-Bina 765 kV S/C line have been



commissioned on 14.9.2015 and 1.7.2015 respectively. Therefore, the petitioner is required to quantify the increase in expenditure on account of change in law as on the COD of the transmission lines after accounting for the expenditure assumed in the bid towards forest clearance and provide the documentary proof to the LTTCs and the Commission in terms of Article 12.2.3. The petitioner is granted liberty to approach the Commission with quantification of the increase in transmission charges on account of change in law and force majeure supported by documentary evidence which shall be considered in accordance with Law.

46. The petition is disposed of in terms of the above.

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

