

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 141/MP/2016**

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Articles 13 and 17 of the PPA dated 22.4.2007 seeking increase in tariff as a result of increase in capital cost of the Mundra UMPP due to Change in Law events during the Construction period.

Date of hearing : **9.5.2017**

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

Petitioner : Coastal Gujarat Power Limited

Respondents : Gujarat Urja Vikas Nigam Limited & Others

Parties present : Shri Amit Kapur, Advocate, CGPL  
Shri Abhishek Munot, Advocate, CGPL  
Shri Malcolm Desai, Advocate, CGPL  
Shri Bijay Mohanti, CGPL  
Shri M.G.Ramachandran, Advocate, GUVNL & Rajasthan Discoms  
Ms. Ranjitha Ramachandran, Advocate, GUVNL & Rajasthan Discoms  
Ms. Swapna Seshadri, Advocate, PSPCL and Haryana Discoms  
Ms. Taruna Ahuja, Rajasthan Discoms  
Shri S.K. Jain, Rajasthan Discoms

**Record of Proceedings**

During the hearing the learned counsel appearing for the respondent GUVNL & the Rajasthan Discoms made submissions mainly as under:

(i) The land identified for the site is 2750 acres and Article 13 of the PPA covers the change in price of this identified land. Hence, any land acquired in addition to the identified land cannot be considered for change in law.

(ii) There is no change in law with regard to excise duty on civil materials and that there was no law on cut-off date which provided for exemption for goods being supplied to the power project selected under competitive bidding. Also no relevant notification has been furnished by the petitioner. The letter dated 28.10.2010/2011 issued by the DGFT is in response to the petitioner's letter and is merely a clarification of the existing provision and not a change in law or change in interpretation.

(iii) The submission of the petitioner that the supply of goods required for setting up of mega power projects are eligible for deemed export benefits in terms of the foreign trade policy has been raised only in the rejoinder and not in the original petition filed by the petitioner. This new issue raised by the petitioner in the rejoinder cannot be

considered as laid down by the Hon'ble Supreme Court judgment in *State of Rajasthan V. Mohammed Ikbal & Others* (AIR 1999 Raj 169).

(iv) The change in stamp duty with regard to mortgage deeds is not covered under Article 13 of the PPA as it is not related to business of selling electricity. Even as per law existing as on the cut-off date, the stamp duty for different transactions or matters through one document was considered on aggregate basis, hence, there is no change in law.

(v) Changes in service tax on work contract may be considered as change in law, subject to the petitioner establishing that there has been a change. The petitioner is required to disclose the implication of service tax both under 12% of service component and 2%/4% of gross amount as well as the notification under Finance Act, 2006 and any benefit is required to be passed on to procurers/ respondents.

2. The learned counsel appearing for the respondents Haryana Discoms & PSPCL adopted the submissions made by respondent GUVNL. She, however, prayed that it may be permitted to file a formal reply on behalf of the respondent PSPCL and undertook not to raise any new issues. The Commission accepted the prayer and directed the respondent, PSPCL to file its reply within two weeks.

3. In response, the learned counsel for the petitioner, clarified as under:

(i) The proposed land requirement for construction and development of the project was mentioned in the Detailed Project Report (DPR). The proposed project site was only illustrative and was to be finalised by the developer considering the ground realities (DPR/ RFP). The indicative declared price was only the indicative price paid by the developers on handing over the project site by the procurers/ PFC and since the same was not done the petitioner with the help of State Govt./ private individual acquired the additional land in a prudent and justified manner. The Accounting Standards (AS-10) provides that the cost of an item fixed asset comprises of its purchase price, inter alia, including any direct attributable cost of bringing the asset to its working condition for its intended use.

(ii) As on the cut-off date, the practices followed by entities like banks, financial institutes and other developers was to pay stamp duty on an indenture of mortgage/mortgage deed in terms of Articles 6 and 36 of the Schedule 1 of the Bombay Stamp Act. This practice was upheld by the Hon'ble Gujarat High Court and accordingly, the petitioner had at the time of submitting the bid followed the said practice.

(iii) DGFT on 28.10.2010 clarified that deemed export benefits were not available for civil materials like cement and steel for mega power projects and as a result no exemptions were allowed to be availed by the petitioner under Notification dated 14.8.2008 or otherwise, which has resulted in change in law.

(iv) Detailed submissions/ note of arguments made in the matter may be considered.

4. The Commission after hearing the parties directed the petitioner to file the following information, on affidavit, with advance copies to respondents, on or before 1.6.2017:

## **Increase in the area of the acquired land**

- a. Date of procurement of each land, namely,
  - i. 1092 Ha of land procured for the power plant and associated infrastructure facilities at the price of ₹74.37 crore;
  - ii. 268 Ha of land for the Water Outfall Channel at the price of ₹80.52 crore;
  - iii. Lease of 41 Ha of land at an annual fee of ₹4.74 crore for a period of 30 years with 10% increase in the annual fee every 3 years.
- b. Detailed justification alongwith documentary evidence for the variation in price of 1092 Ha of land procured for the power plant and associated infrastructure facilities at the price of ₹74.37 crore (₹6.81lakh/hectare) and 268 Ha of land for the Water Outfall Channel at the price of ₹80.52 crore (₹30.04 lakh/ hectare).
- c. Copy of the agreement executed with MPSEZ for the lease of 41 Ha of land of water intake channel.
- d. Details of actual expenditure incurred on land as on COD as per duly audited books of account.
- e. Copies of report of recommendation by various agencies suggesting extra land to be procured.
- f. Brief note on the change in area and price of the land. Also the reason as to why the actual area of land has increased *vis-à-vis* the land approved in the DPR.

5. The respondents shall file their replies on or before 7.6.2017, with advance copy to the petitioner, who shall file its rejoinder by 14.6.2017. No extension of time shall be granted for any reason whatsoever. In case the additional information/ reply/ rejoinder is not filed within the said due date, the matter shall be decided based on available records.

6. The Commission reserved its order in the petition.

**By order of the Commission**

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