

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 171/MP/2016

Subject : Petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003 for adjudication of claims towards compensation arising out of 'Change In Law' and consequential reliefs as per provisions of the PPA dated 26.2.2014 between the Petitioner and Respondents.

Petitioner : KSK Mahanadi Power Company Limited

Respondents : Madhyanchal Vidyut Vitran Nigam Ltd. and Others

Date of hearing : **26.4.2018**

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Parties present : Shri Anand K. Ganeshan, Advocate, KSK Mahanadi
Shri A. Sreekanth, KSK Mahanadi
Ms. Ranjitha Ramachandran, Advocate, Prayas
Shri Rajiv Srivastava, Advocate, UPPCL
Ms. Garima Srivastava, Advocate, UPPCL
Ms. Gargi Srivastava, Advocate, UPPCL

Record of Proceedings

During the hearing the learned counsel for the Petitioner submitted that pleadings in the matter have been completed and relief in respect of Change in Law due to taxes may be considered as per Commission order dated 19.12.2017 in Petition No. 229/MP/2016.

2. The learned counsel for M/s. Prayas submitted as under:

(i) As regards claim towards electricity duty on auxiliary consumption, the Petitioner has submitted that the said duty was 'nil' at the time of cut-off date based on the Industrial Policy of 2004-09. The Industrial Policy for the period 2004-09 is not applicable in the present case as the cut-off date is 2011. It is given to understand that as per orders of the Chhattisgarh State electricity Regulatory Commission levy of electricity duty is 8%. The Petitioner has not submitted any documentary evidence in support of its claim for electricity duty on auxiliary consumption.

(ii) With regard to change in Central Excise Act or Rules or Notifications in relation to assessable value, the petitioner has not submitted any documentary evidence indicating that the excise duty is only on base price of coal, crushing and sizing charges and surface transportation, etc. and not included in the assessable value on the cut-off date.



(iii) Though carrying cost has been made applicable in terms of the judgment of the Tribunal dated 13.4.2018 in Appeal No. 210 of 2017 & IA No. 05 of 2018. However, the same may be considered from the date on which the Petitioner has made compliance/ submitted details with respect to its claim under Change in Law. Accordingly, the Petitioner would be entitled to claim carrying cost from the period when the compliance has been filed vide affidavit dated 13.1.2018 with respect to the claims under Change in Law.

3. The learned counsel for the respondent, UPPCL submitted that the petition is not maintainable and made submissions as under:

(i) The Hon'ble Supreme Court vide judgment dated 11.4.2017 in Energy Watchdog case had decided the issue of jurisdiction in favour of Central Commission. However, the same cannot be given retrospective effect to consider the petition filed by the petitioner.

(ii) The Petition has been filed on 26.8.2016 and accordingly, UP Electricity Regulatory Commission (UPERC) had the jurisdiction, as on date of filing of the petition.

(iii) The Petitioner has entered into PPA with the respondent, UPPCL on 26.2.2014 and the same was approved by UPERC. Accordingly, in terms of Article 14 of the PPA, UPERC only has the jurisdiction in the matter.

(iv) In terms of Section 64 (5) of the Electricity Act, 2003, UPERC only will have the jurisdiction in the matter (as interpreted by the Hon'ble Supreme Court in Energy Watchdog case).

In view of the above, the petition may be dismissed as not maintainable.

4. The Commission after hearing the parties reserved its order in the petition. However, at the request of the parties, Commission granted time to the parties to file their written submissions in the matter, with copy to others, on or before 10.5.2018.

By order of the Commission

**-Sd/-
(B. Sreekumar)
Deputy Chief (Law)**

