

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 19/RP/2019**

Subject : Review of the order dated 8.7.2019 in Petition No. 269/MP/2018.

Petitioners : Uttar Haryana Bijli Vitaran Nigam Limited  
Dakshin Haryana Bijli Vitaran Nigam Limited

Respondent : Adani Power (Mundra) Limited

Date of hearing : 6.11.2019

Coram : Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I.S. Jha, Member

Parties present : Shri M.G. Ramachandran, Senior Advocate, UHBVNL, DHBVNL  
Ms. Ranjitha Ramachandran, Advocate, UHBVNL, DHBVNL  
Shri Shubham Arya, Advocate, UHBVNL, DHBVNL  
Ms. Tanya Sareen, Advocate, UHBVNL, DHBVNL  
Ms Poonam Verma, Advocate, APMUL  
Shri Sidhant, Advocate, APMUL  
Shri Saunak Rajguru, Advocate, APMUL

**Record of Proceedings**

At the outset, learned senior counsel for the Review Petitioners, Uttar Haryana Bijli Vitaran Nigam Limited and Dakshin Haryana Bijli Vitaran Nigam Limited, submitted that the Commission's order dated 8.7.2019 in Petition No. 269/MP/2019 contains fundamental errors in law. Learned senior counsel argued at length and mainly submitted as under:

- a) New Coal Distribution Policy, 2013 (NCDP) does not deal with the issue of the availability or non-availability of railway wagons for transportation of coal to the power project site and therefore, the Commission erred in considering the said aspect relating to Indian Railways as a change in law event under Article 13 of the PPAs.
- b) The Respondent, Adani Power (Mundra) Limited, never produced any evidence that the shortage in coal was due to non-availability of railway wagons and neither the Respondent had pleaded that NCDP applies to non-availability of railway wagons.
- c) Clauses 4 and 7 of the FSA specifically envisage other means of transport other than railways. Therefore, the Commission was erred in considering non-availability of wagons for transportation of coal under NCDP.
- d) The Commission has wrongly placed the burden on Adani to show that the Respondent had not given the programme that it was entitled to. In terms of Sections 101 and 106 of the Evidence Act, 1872, the burden of proving that the programme given to Railways being to the Annual Contracted Quantity (ACQ) is on the Respondent. In support of its contention, learned senior counsel relied on the judgements of the Hon'ble Supreme Court in the cases of Rangammal vs. Kuppuswani [(2011) 12 SCC 220] and Thiruvengadam Pillai vs. Navaneethammal & Anr. [(2008) 4 SCC 530].

e) The compensation under NCDP can be claimed for shortfall of the quantum of coal which MCL/SECL has failed to make available in terms of the FSA. The compensation cannot be claimed for the quantum of coal which MCL/SECL was duly making available to the Respondent but which was not taken delivery of by the Respondent for any reason.

f) In terms of Article 13 of the PPA, both increases and decreases in the cost on account of the Change in Law has to be cumulatively considered. However, the Commission without any justification has deferred the consideration of the adjustments of the benefits of Inter-Plant Transfer Policy to be given in favour of the Review Petitioners.

g) If the Respondent has taken advantage of IPT to consume imported coal instead of domestic coal, it cannot then claim taxes and duties of domestic coal even if they are higher than imported coal. Therefore, the Respondent cannot claim taxes and duties from the Review Petitioners which it has not paid for. Therefore, the Commission has erred in holding that the payment of taxes and duties for IPT coal would be on deemed consumption basis.

h) Since, the Commission decided not to pursue the proceedings under 269/MP/2018 under Section 142 of the Electricity Act, 2009 and considered it for the adjudication of the disputes between the parties, the Commission has wrongly deferred part of the claim and has adjudicated all other claims.

2. Learned counsel for the Respondent, Adani Power (Mundra) Limited submitted as under:

a) The Review Petitioners have again raised the issues of IPT and shortage of domestic coal under change in law which were argued in Petition No. 269/MP/2018 and dealt with in detail by the Commission in its order dated 8.7.2019. The Review Petitioners have failed to point out any error apparent in the order of the Commission. The attempt of the Review Petitioner to re-argue the case on merit cannot be allowed in a Review Petition.

b) It is settled position of law that Courts cannot re-appreciate evidence in a review proceeding.

c) The Commission has rightly considered the shortfall as ACQ minus coal actually supplied by the coal companies. The Commission had considered the certificates submitted by both the parties and observed in the impugned order that the actual coal supplied in the certificates submitted by both the parties is same. If the Review Petitioners have any objection with the interpretations of the Commission, then it cannot be adjudicated again through a review petition.

d) The Review Petitioners are seeking re-adjudication of the matter by again considering the documents placed on records. There is a clear finding of the Commission with regards to the issue of IPT and the Review Petitioners cannot raise the same issue in the review petition.

3. After hearing the learned senior counsel for the Petitioners and learned counsel for the Respondent, the Commission reserved the order on maintainability of the Review Petition.

**By order of the Commission**  
**Sd/-**  
**(T. D Pant)**  
**Dy. Chief (Law)**