

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 172/MP/2013
with I.A. No. 29/2013**

- Subject : Petition under section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13 and 17 of the Power Purchase Agreement dated 10.9.2008 executed between Jharkhand Integrated power Limited and Jharkhand State Electricity Board and 17 others for compensation due to Change in Law during the construction period.
- Date of hearing : 15.10.2013
- Coram : Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
- Petitioner : Jharkhand Integrated Power Limited (JIPL)
- Respondents : Jharkhand State Electricity Board and others
- Parties present : Shri J.J.Bhatt, Senior Advocate, JIPL
Shri Hasan Murtaza, Advocate, JIPL
M/s Anjali Chandarkar, Advocate, JIPL
Shri Surendra Khot, JIPL
Shri N. Balasubramanian, JIPL
Shri Sandeep Somisetty, JIPL
Shri Raju Sharma, JIPL
Shri R.S. Johri, JIPL
Shri Arun Dhillon, JIPL
Shri Himanshu Shekhar, Advocate for JSEB
Shri M.G. Ramachandran, Advocate, HPPC and GUVNL
Shri Avinash Menon, Advocate for Haryana and GUVNL
Shri Apoorve Karol, Advocate, Uttar Haryana/ HPPC/HPGCL
Shri P.J Jani, GUVNL
Shri Alok Shankar, Advocate for TPDCL

Record of Proceedings

Learned senior counsel for the petitioner submitted that the present petition has been filed under Section 79 (1) of the Electricity Act, 2003 read with Article 13.2 of the Power Purchase Agreement for compensation on account of changes in law during the

construction period which have financial impact on the cost and revenue of Tilaiya UMPP. Learned senior counsel submitted that compensation on account of change in law has been claimed on respect of the following :

- (i) Increase in the declared price of land;
- (ii) Increase in cost of implementation of Resettlement and rehabilitation packages;
- (iii) Withdrawal of exemption in respect of excise duty on cement/ steel;
- (iv) Withdrawal of exemption in respect of customs, additional, auxiliary and exercise duty on mining and fuel transportation system required for the project;
- (v) Increase in the price of diesel;
- (vi) Increase in the cost of geological report;
- (vii) Increase in the cost of EPC contracts, coal mining and fuel transportation system by reason of increase in the input cost and foreign exchange rate variation;

2. Learned senior counsel for the petitioner submitted that Article 3.1.2 A of the PPA does not restore petitioner to the same economic position as if the such change in law has not occurred and therefore is faulty and needs reconsideration. He further submitted that Article 3.1.2 (A) of the PPA provides that the procurers shall ensure handing over the possession of the land for the power station and water intake pipeline within 6 months from the effective date (7.8.2009), which has been delayed. Therefore, the petitioner is entitled to be compensated for increase in the cost of land subsequently which has resulted in increase in the cost of the project.

3. In response to the Commission's query regarding maintainability of the petition at this stage when the scheduled COD of generating station is 7.5.2015 and it could get further postponed due to other reasons, learned senior counsel submitted that unless the project economics is decided, the petitioner would not be able to achieve the financial closure. Learned senior counsel further submitted that a meeting was held with procurers on 8.7.2013 to discuss issues raised by the petitioner in its notice dated 20.6.2013 due to delay in fulfillment of the obligations by procurers under Article 3.1.2 of the PPA and it was decided in the said meeting that the petitioner may approach the Appropriate Commission for dispute resolution as per Article 17.3.1 of the PPA. Learned senior counsel submitted that in accordance with the said decision, the petitioner has approached the Commission for reliefs under change in law and therefore the petition is not premature at this stage.

4. The Commission observed that the petitioner should first make the project bankable and thereafter approach the Commission for any relief under change in law at the appropriate stage.

5. Learned counsel for HPPC and GUVNL sought time to file reply on maintainability of the petition. He further submitted that some of the prayers made in the petition are outside the scope of 'change in law'.

6. Learned counsel for the TPDCL submitted that the reliefs under change in law is admissible after the COD of the generating station and therefore, the petition is premature and not maintainable at this stage.

7. After hearing learned senior counsel for the petitioner and learned counsel for HPPC, GUVNL and TPDCL, the Commission directed the respondents to file their replies on the maintainability of the petition by 10.11.2013 with an advance copy to the petitioner. The petitioner may file its rejoinder, if any, on or before 25.11.2013.

8. The petition along with the I.A. shall be listed for hearing on 5.12.2013 on maintainability.

By Order of the Commission

SD/-
(T. Rout)
Chief (Law)