

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 14/MP/2013

- Subject : Petition under section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and articles 13 and 17 of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the Procurers for compensation due to Change in Law during the Construction Period.
- Date of hearing : 16.9.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : Sasan Power Limited
- Respondents : M.P. Power Management Company Limited and others.
- Parties present : Shri J.J.Bhatt, Senior Advocate, SPL
Shri Vishrov Mukherjee, Advocate SPL
Shri Janmali Manikala, Advocate, SPL
Shri N.K. Deo, SPL
Shri M.G. Ramachandran, Advocate, Haryana & Rajasthan Discom
Ms. Poorva Saigal, Advocate, Haryana and Rajasthan Discom
Shri G.Umapathy, Advocate, MPPMC
Ms. R. Mekhala, Advocate, MPPMC
Shri Rahul Dhawan, BRPL and BYPL
Ms. Megha Bajpai, BRPL and BYPL

Record of Proceedings

Learned counsel for the Distribution Companies of Haryana and Rajasthan submitted as under:

- (a) The role of this Commission under Section 63 of the Electricity Act, 2003 is only limited to adoption of tariff discovered through the competitive bidding process. The only exception to this being that the bid tariff can be opened by the

Commission for adjustment of tariff as per the provisions of Articles 12 and 13 of the Power Purchase Agreement for force majeure or change in law, which are specifically provided in the bid document.

(b) Sections 61, 62 and 64 of the Electricity Act read with Section 79 (1) (a) and (b) of the Electricity Act, 2003 constitutes one scheme of things and these provisions apply to where the tariff is determined on the basis of capital cost.

(c) The studies of Luis Guash and Jon Stern have been wrongly understood and quoted without appreciation in the real scope. The said two studies do not recommend re-opening of the concluded contract as concluded by this Commission. The above two studies were done at the instance of the World Bank which have been deliberated in the tool kit for Public Private Partnership in roads and highways by Public Private Infrastructure Advisory Facility (PPIAF) of the World Bank group. In the present case, the relief can be granted only under the provisions of Change in Law or Force Majeure events .

(d) Learned counsel relied upon the Hon`ble Supreme Court judgments in Alopi Prasad Vs Union of India [(1960) 2 SCR 793] and Assistant Excise Commissioner & others Vs Issac Peter and others [(1994) SCC 104] and submitted that the doctrine of fairness and reasonableness certainly cannot be invoked to amend, alter or vary the express terms of the contract between the parties. The change in cost of equipment or in-sufficiency of funds is not an event of force majeure and the risk of such events has to be borne by the petitioner. Therefore, tariff based competitive bidding under Section 63 of the Electricity Act, 2003 should not be interfered with.

(e) The petitioner is claiming service of external commercial borrowing though interest and depreciation, repayment of loan. The petitioner was taking foreign currency loan risk without having a prudent check of the availability of domestic loan. Law does not permit a contracting party to get out of the contract on the basis of onerous situations.

(f) Learned counsel made a presentation pertaining to data submitted by the petitioner vide affidavit dated 1.8.2014.

2. The learned senior counsel for the petitioner requested for a week`s time to submit detailed response to the submission made by the learned counsel for the Distribution Companies of Haryana and Rajasthan.

3. The Commission directed the learned senior counsel of the petitioner to submit the written submission by 26.9.2014.

4. Subject to above, the Commission reserved order in the petition.

By order of the Commission
Sd/-
(T. Rout)
Chief (Law)