

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 172/MP/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 : 7.1.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson  
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 JJ Bhatt, Senior Advocate, JIPL  
Shri Hasan Murtaza, Advocate, JIPL  
Shri Janmesh Kumar, JIPL  
Shri P. Venkatarao, JIPL  
Shri Surendra Khot, JIPL  
Shri Arun Dhillon, JIPL  
Shri N. Balasubramanian, JIPL  
Shri M.G. Ramachandran, Advocate, HPPC, Rajasthan and GUVNL  
Ms Anushree Badhan, Advocate, HPPC and GUVNL  
Ms Apoorve Karol, Advocate, HPPC  
Shri Kirish Gandhi, Advocate, HPPC  
Shri Rahul Dhawan, BRPL and BYPL  
Shri Rahul Dhawan, Advocate, BRPL and BYPL  
Shri Alok Shankar, JSEB  
Shri Himanshu Shekhar, Advocate, JSEB  
Shri G. Umamathy, Advocate, MPPMCL  
Shri Navin Kohli, MPPMCL

## Record of Proceedings

Learned senior counsel for the petitioner submitted that number of respondents have accepted that there have been delays in the implementation of the project to a large extent due to the delay in handing over of land by the procurers. Article 13.2 of the PPA provides that while determining the consequence of 'change in law', the affected party needs to be restored to the same economic position as if the 'change in law' has not occurred. He further submitted that in accordance with Article 13.3 of the PPA, the petitioner was affected by 'change in law' and therefore, notices were given to the respondents to claim reliefs under change in law as soon as it was reasonably known. He further submitted that a meeting was held with procurers on 8.7.2013 to discuss the issues raised in its notice dated 20.6.2013 due to delay in fulfillment of the obligations by the procurers 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.

2. In response to Commission's query as to whether the PPA is enforceable, learned senior counsel submitted that the PPA is in force and all procurers in their replies have submitted that the remedy can be granted only as per the provisions of the PPA.

3. Learned senior counsel further submitted as under:

- (i) The delay on the part of the procurers has caused cost escalation;
- (ii) With the escalated cost and the PPA tariff, the project has become unviable;
- (iii) Financial Institutions refuse to appraise the project as it is unviable;
- (iv) Without financial closure, it is not possible to implement the project; and
- (v) Tariff rationalization is essential to proceed further.

4. Learned counsel for JSEB submitted that JSEB has no objection for admission of the petition. Learned counsel for BYPL and BRPL requested the Commission to admit the petition.

5. Learned counsel for the distribution companies of Rajasthan, Gujarat and Haryana submitted that the claims made by the petitioner are not admissible under the provisions of Article 13 of the PPA. The petitioner is seeking a mere declaration of 'change in law' without being eligible for the same at this stage as the construction period is not yet over and the date of commercial operation is admittedly not expected before 7.5.2015. The 'change in law' occurring from time to time having the effect of increasing or decreasing the charges need to be considered as on the date of commercial operation as per the terms and conditions of the PPA only.

6. Learned counsel for UP Power Corporation Limited submitted that the 'price of land' would be determined only after the land is transferred to the petitioner. The increasing cost of land cannot amount to determining the price of land due to impact of 'change in law' which is an ongoing process. Since the current cost is highly inflated, the amount of ₹ 1100 crore against coal mines land is disputed. He further submitted that the petitioner has not provided the basis on which the figures were estimated. He further submitted that increase in the capital cost has been anticipated by the petitioner. Learned counsel submitted that the impact on the project viability due to delay in handing over of land should be examined by the Commission.

7. Learned counsel for MPPMCL submitted that the scheduled COD of generating station is 7.5.2015 which might further be extended due to other reasons. Therefore, unless the project economics is decided, the petitioner cannot achieve the financial closure. The petitioner has approached the Commission at a premature stage and hence the petition is not maintainable. In case, the Commission admits the petition, the compensation has to be strictly in accordance with Article 13.2 of the PPA.

8. Learned senior counsel for the petitioner submitted that the PPA does not provide that the 'change in law' can be considered post construction or post operation only. Learned senior counsel submitted that the relief under 'change in law' can be claimed at any time if the project is affected by an event covered under 'change in law'.

9. After hearing learned senior counsel for the petitioner and learned counsel for the respondents, the Commission reserved its order on the maintainability of the petition.

By order of the Commission

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