

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 19/MP/2013

Sub: Petition under section 79 (1) (c) read with section 19 of the Electricity Act, 2003 for revocation of license and for vesting of the project in Central Transmission Utility.

Petitioner : Power Grid Corporation of India Limited.

Respondent : North Karanpura Transmission Company Ltd. and others.

Petition No. 20/MP/2013

Sub: Petition under section 79 (1) (c) read with section 19 of the Electricity Act, 2003 for revocation of license and for vesting of the project in Central Transmission Utility.

Petitioner : Power Grid Corporation of India Limited.

Respondent : Talcher-II Transmission Company Ltd. and others.

Date of hearing : 4.3.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri Neerja Mathur, Member (ex-officio)

Parties present : Shri M.G. Ramachandran, Advocate, PGCIL
Ms. Anushree Bardhan, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Shri J.J. Bhatt, Senior Advocate, NKTCL and TTCL
Shri Apoova Mishra, Advocate, NKTCL and TTCL
Ms. Pallavi Mohan, Advocate, NKTCL and TTCL
Shri L.K. Mishra, NKTCL and TTCL
Shri Aditya Dewal, Advocate, MSEDCL
Shri Naveen Nagpa, RPTL
Shri Rupin Rawat, RPTL

Record of Proceedings

Learned counsel for the petitioner, Power Grid Corporation of India Limited submitted that the effective dates of the transmission projects were May, 2010 and

April, 2010 respectively i.e date of acquisition of Special Purpose Vehicle. The permission under section 164 of the Electricity Act, 2003 was obtained on 12.8.2011. Despite the above, there has been no physical progress in the construction of the transmission line. Learned counsel submitted that the Commission had previously rejected the petitions filed by North Karanpura Transmission Company Limited (NKTCL) and Talcher-II Transmission Company Limited (TTCL) for setting off the alleged adverse effect in time and cost overrun in implementing the transmission project. However, the same had been allowed by Hon`ble Appellate Tribunal for Electricity (ATE). He further submitted that NKTCL and TTCL have failed to initiate any work even after obtaining the permission under Section 164 of the Act. Therefore, the transmission licenses granted to NTKCL and TTCL are liable to be revoked under Section 19 of the Act. CTU in accordance with its responsibility under Section 38 of the Act has brought this fact to the notice of the Commission for issuing appropriate directions in the matter.

2. Learned senior counsel for NKTCL and TTCL submitted as under:

(a) Subsequent to the judgment of ATE dated 2.12.2013, NKTCL have written to all the beneficiaries to discuss the price escalation in implementing the transmission project. However, none of the beneficiaries had responded to the request of NKTCL and in such an event, it had become impossible for NKTCL to execute the project.

(b) None of the ingredients specified in Section 19 (1) (a) to 19 (1) (d) of the Act justifying the grounds for revocation of licence have been made out. Section 19 (1) (a) requires that there be the existence of a willful and prolonged default on the part of the licensee in doing anything required under the Act or the rules or regulations made thereunder. The delay in grant of the permission under Section 164 of the Act, resulting in a force majeure event could not be considered a default on the part of NKTCL and the same had been upheld by ATE.

(c) Since the matter had been pending before CERC, at this stage, it had not been advisable for NKTCL to incur such a huge financial burden while the question of as to whether a force majeure event had occurred was still pending.

(d) None of the provisions of Section 19 of the Act would be applicable to NKTCL as ground of revocation of licence.

(e) Aggrieved by ATE judgment, GUVNL has filed an appeal before Hon`ble Supreme Court which is listed for hearing on 7.3.2014. MSEDCL has also filed an appeal before Hon`ble Supreme Court.

3. In response, learned counsel for the petitioner submitted that the present petition has been filed on the basis of the fact that the permission under section 164 of the Act was obtained on 12.8.2011 and despite the above, the work under TSA has not been commenced so far. Article 11.6 of the TSA provides that the affected party shall

continue to perform its obligations until prevented by force majeure events. Central Electricity Authority has also confirmed that no progress has been made for implementation of the project. Therefore, it is a clear case of willful and prolonged default on the part of licensee.

4. After hearing the learned counsel for the petitioner and learned senior counsel for NKTCL and TTCL, the Commission directed to issue fresh notices to the beneficiaries.

5. The Commission directed the Central Electricity Authority to submit the current status of NKTCL and TTCL by 21.3.2014.

6. The Commission directed the respondents to file their response, if any, by 21.3.2013, with an advance copy to NKTCL and TTCL, who may file their rejoinders, if any, 28.3.2014.

7. The petitions shall be listed for hearing on 3.4.2014.

8. The Commission directed CEA to depute an officer well acquainted with the facts of the case on the next date of hearing to assist the Commission.

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