

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 317/MP/2013**

Subject : Petition for the relinquishment of the long term open access under the Bulk Power Transmission Agreement dated 7.6.2010 and return of bank guarantee.

Date of hearing : 24.7.2014

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K. Singhal, Member

Petitioner : M/s Navbharat Power Private Limited

Respondents : Power Grid Corporation of India Limited  
Central Electricity Authority

Parties present : Shri Sanjey Sen, Senior Advocate, NPPL  
Shri Ruth Elwin, Advocate, NPPL  
Shri Matrugupta Mishra, Advocate, NPPL  
Shri Deepak Rodricks, NPPL  
Shri Vijendra Rangwani, NPPL  
Shri Ramachandra, PGCIL

**Record of Proceedings**

Learned senior counsel for the petitioner submitted as under:

(a) As per the Memorandum of Understanding (MoU) entered into between the petitioner and Energy Department, Govt. of Odisha on 9.6.2006, the petitioner required 1200 acres of land for the purpose of setting up the thermal power plant and associate facilities. The State Government had agreed to acquire the required land and hand over the same to the petitioner free from all encumbrances through Orissa Industrial Infrastructure Development Corporation (IDCO), which was appointed as nodal agency for acquiring land for the petitioner's project.

(b) The petitioner paid ₹ 1,20,00,000 to IDCO towards 10% administrative charges on approximate cost of land acquisition for 1200 acres. In this regard, a notification under sections 4 (1) and 6 (1) of Land Acquisition Act, 1894 was issued on 6.11.2007 and 29.11.2008. The Ministry of Railways granted rail transport clearance on 4.12.2006 for construction of private sliding from

Meramundali railway station of East Coast Railway on account of the project. Airport Authority of India also issued 'No Objection Certificate' to the construction of the proposed two chimneys by the petitioner on 15.3.2007. On 26.4.2007, Department of Energy, Government of Odisha accorded administrative approval for acquisition of private land. The Divisional Forest Officer, Dhenkanal Division vide its letter dated 31.5.2007 informed that no forest land is coming under DLC Report and accordingly, issued NOC on 13.7.2007. Ministry of Coal, Government of India on 17.1.2008 allotted Rampia coal block in the command area of Mahanadi Coalfield Limited to the petitioner along with five other companies. Ministry of Environment and Forest vide its letter dated 8.2.2008 accorded environment clearance.

(c) Pursuant to letter dated 30.7.2009 of the Collector, Dhenkanal, in order to avoid loss of irrigated land falling under Rengali Right Canal irrigation project, the Orissa Industrial Infrastructure Development Corporation vide its letter dated 29.9.2009 asked the petitioner to relocate the project site which adversely affected the timely implementation of it.

(d) Number of letters were sent by Orissa Industrial Infrastructure Development Corporation to Government of Odisha, Water Resources Department to appraise the steps taken by the petitioner in implementation of the project and in obtaining various approvals from the respective authorities for setting up of 1050 MW Thermal Power Plant. The relocation of the proposed project would jeopardize all the obtained required statutory and non statutory clearances.

(e) The MoU was subjected to periodic extension from time to time. However, no extension of MOU was made beyond 31.12.2011. The project suffered due to non-grant of extension of MoU and land issue owing to overlapping of the project area under the proposed irrigation command area of Rengali right canal system and delay in grant of coal block. Looking at the uncertainty of the issues getting resolved, the petitioner vide letter dated 25.6.2013 requested PGCIL for relinquishment of LTA without any liability on either side, exemption from paying any transmission charges applicable and for return of bank guarantee of ₹ 36 crore till the petitioner is able to confirm further course of action pertaining to the project.

(f) PGCIL's inability to compute stranded capacity will be subjective and open to disputes. The learned senior counsel relied upon order of the Commission dated 31.5.2010 in Petition No. 233/2009 wherein the Regulatory Approval of the transmission system was granted and CTU was instructed to phase the implementation of transmission system in accordance with the progress of the generating station.

(g) Due to reasons beyond the control of the petitioner, petitioner is unable to implement the project. Learned senior counsel relied upon APTEL's judgment

dated 4.2.2014 (Gujarat Urja Vikas Nigam Limited Vs. Gujarat Electricity Regulatory Commission) in which non-availability of land was considered as force majeure event. Learned counsel for the petitioner requested the Commission to consider the notification issued by Water Resource Department, Odisha regarding change of land, after receiving all the statutory and non-statutory clearances, as force majeure event.

2. The representative of CTU submitted that as per Regulation 18 (1) (b) of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time, a long term customer may relinquish the long term access rights fully or partly before the expiry of the full term of long term access, by making payment of compensation for stranded capacity. He further submitted that the levy of compensation for relinquishment of LTA should be on the basis of fixed MW in place of stranded capacity.

3. The Commission directed CTU to submit following information on affidavit by 29.8.2014:

(a) Date and time-lines when PGCIL started construction of these lines under HCPTC-I System and when investment approval was given.

(b) Progress of the project as the Commission vide its order dated 31.5.2010 in Petition No. 233/2009, had directed CTU to link the progress of these transmission lines matching with the generation projects.

4. The Commission directed that due date of filing the information should be strictly complied with.

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

**By order of the Commission**

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