

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 112/MP/2015**

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2 (b) of the Power Purchase Agreement dated 7.8.2007 executed between GMR Kamalanga Energy Limited and Bihar State Power (Holding) Company Limited for compensation due to change in law impacting revenues and costs during the operating period.

Date of hearing : 30.6.2016

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

Petitioner : GMR Kamalanga Energy Limited and GMR Energy Limited

Respondents : Bihar State Power (Holding) Company Limited and others

Parties present : Shri Amit Kapoor, Advocate, GMR  
Shri Vishrov Mukerjee, Advocate, GMR  
Shri Rohit Venkat, Advocate, GMR  
Shri Madhup Singhal, GMR  
Shri R.B. Sharma, Advocate, BSP(H)CL  
Ms. Ranjitha Ramachandran, Advocate, Prayas Energy Group  
Ms. Anushree Bardhan, Advocate, Prayas Energy Group

**Record of Proceedings**

Learned counsel for the petitioner submitted that in terms of the Article 10 of the PPA, a change in law event is any of the events enumerated therein which have occurred after the cut-off date (i.e. 28.03.2011) and which result in recurring/non-recurring expenditure or income to the petitioner. Learned counsel for the petitioner further submitted as under:

- (a) Law has been defined in the PPA to include; (i) all laws in India; (ii) any statute, ordinance, regulation, notification, code and rule; and all applicable rules, regulations, orders, notifications or interpretation of the aforesaid statute, ordinance, regulation, notification, code, rule by any Indian Government Instrumentality.

(b) The definition of “law” is wide and inclusive definition and use of the terms ‘all laws including’ expands the scope of the definition clause which is further expanded by the use of the term ‘and shall further include without limitation’.

(c) The definition of Indian Government Instrumentality includes any ministry department, board, authority, agency, corporation and commission under direct or indirect control of the Government of India. In the present case would include all ministries, the Indian Railways and Coal India and its subsidiaries.

(d) Any event which fulfils the aforesaid conditions is a ‘change in law’. Once a change in law has occurred, the consequence/ compensation for the same have to be ascertained in terms of the PPA.

(e) Paragraph 4.7 of the Competitive Bidding Guidelines as amended on 18.8.2006 to 27.3.2008 provides that any change in law impacting cost or revenue from the business of selling electricity be adjusted separately.

(f) Article 10.1.1 includes all taxes and is not limited to taxes in connection with the supply of power and all provisions of Article 10.1.1 have to be harmoniously construed to give effect to each provision.

(g) In terms of the revised Tariff Policy dated 28.1.2016 issued by the Ministry of Power, Government of India, increase in taxes and levies has been acknowledged as change in law events and allowed as pass-through.

(h) Pass-through of cost of imported coal on account of short supply of domestic coal has been permitted as change in law on a case to case basis in terms of (i) Statutory advice dated 20.5.2013 of this Commission to Ministry of Power, (ii) CCEA Resolution dated 21.6.213., (iii) Office Memorandum dated 26.7.2013 issued by Ministry of Coal, Government of India notifying changes in the NCDP, (iv) Ministry of Power, Government of India, through its letter FU12/2011-1PC dated 31.7.2013 to the Secretary of the Commission, and (v) Paragraph 6.1 of the Revised Tariff Policy dated 28.1.2016

(i) Respondent’s reliance on Paragraph 188 of the Full Bench Judgment regarding the change in policy not being a change in law is misplaced and a passing observation.

(j) The findings in the Full Bench Judgment on the issue of change in law is limited to the facts of those cases. This is evident from the issues framed by the Full Bench in Paragraph 42 of the Judgment which clearly state that the issues are being considered in the facts and circumstances of the present case.

(k) The issue of whether shortfall of domestic coal is a change in law/ force majeure event has been left open by the Full Bench in Appeal No. 42 of 2015

in terms of order dated 11.5.2016 – Jaipur Vidyut Vitaran Nigam Limited vs. Adani Power Rajasthan Limited & Ors.

2. Learned counsel for the Prayas Energy Group referred to written submissions filed by Prayas on 29.2.2016 and submitted that Article 10.1.1 of the PPA provides for 'any change in tax or the introduction of any tax' is circumscribed by the qualification contained in the provision, i.e. 'made applicable for supply of power by the seller as per the terms of the Agreement'. This would indicate that every change in tax or introduction of tax would not be covered by the Change in Law provision and the additional condition that it should be on the supply of power by the seller needs to be satisfied. In this regard, she submitted that various claims of the petitioner are not in pursuance of a statutory levy or tax applicable for supply of power and therefore should be dis-allowed by the Commission.

3. Learned counsel for Bihar Discoms submitted that Bihar Discoms is adopting the submissions of Prayas. Learned counsel referred to the written submissions filed by Bihar Discoms.

4. In its rebuttal, learned counsel for the petitioner submitted that Article 10.1.1 includes all taxes and is not limited to taxes in connection with the supply of power and all provisions of Article 10.1.1 have to be harmoniously construed to give effect to each provision. He further submitted that the definition of "law" is wide and inclusive definition and use of the terms 'all laws including' expands the scope of the definition clause which is further expanded by the use of the term 'and shall further include without limitation'.

5. After hearing the learned counsels for the parties, the Commission reserved order in the petition.

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