

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 300/MP/2018

Subject : Petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003 read with Regulation 14 (3) (ii) and Regulation 8 (3) (ii) of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations 2014 and read with statutory framework governing procurement of power through Competitive Bidding and Article 10 and 13 of the respective Power Purchase Agreements, executed between GMR Kamalanga Energy Limited and its beneficiaries, seeking compensation on account of Change in Law events impacting revenues and costs during the Operating Period.

Date of Hearing : 17.1.2019

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioners : GMR Kamalanga Energy Limited and Another (GMRKEL)

Respondents : Bihar State Power (Holding) Company Ltd. and Others

Parties present : Shri Venkatesh, Advocate, GMRKEL
Shri Sandeep Rajpurohit, Advocate, GMRKEL
Shri R.B. Sharma, Advocate, BSP(H)CL
Shri M.G. Ramachandran, Advocate, Haryana Discoms
Ms. Ranjeetha Ramachandran, Advocate, Haryana Discoms
Ms. Anushree Bardhan, Advocate, Haryana Discoms

Record of Proceedings

Learned counsel for the Petitioner submitted that the present petition has been filed for seeking declaration that stipulation imposed by the Ministry of Environment Forest and Climate Change (MoEFCC) through its notification dated 7.12.2015 as Change in Law events. Learned counsel for the Petitioner further submitted that on 9.1.2019, the Petitioner has forwarded the detailed Feasibility Report to CEA for successful implementation of FGD. Learned counsel requested to admit the petition and issue notice to the respondents.

2. Learned counsel for Bihar State Power (Holding) Company Ltd. (BSPHCL) objected to the maintainability of the petition on the following two grounds, namely (i) jurisdictional issue, and (ii) procedural issue and submitted as under:

(a) **Jurisdictional issue:** The Petitioner in the present petition had presumed the jurisdiction of the Commission under Section 79 of the Electricity Act, 2003 being the composite scheme for generation and sale of electricity in more than one State. However, Section 64(5) of the Electricity Act, 2003 was not taken into account which provides that the jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. As per Article 14.1.1 of the PPA, any legal proceedings in respect of any matters, claims or disputes under the agreement shall be under the

jurisdiction of appropriate courts in Patna, Bihar. Therefore, the parties concerned have consented to the jurisdiction of the State Commission in PPA in accordance with Section 64(5) of the Electricity Act, 2003 which is not maintainable before the Commission.

(b) **Procedural issue:** The procedure prescribed under Article 14 of the PPA which was agreed by the parties is mandatory and the same is required to be followed by the Petitioner.

(c) The jurisdictional and procedural issues are the matter of law and it is a settled principle of law that there cannot be estoppels against law. The proposition of law can be questioned and raised at any point of time.

3. In response, learned counsel for the Petitioner submitted that petition is listed for admission and the issue on merits cannot be raised at this stage. Learned counsel referred to the Adani case wherein the tariff was initially adopted by the Gujarat Commission and after Adani supplied power to Haryana Utilities. Learned counsel submitted that the jurisdiction of the Commission has been upheld by the APTEL and the Hon'ble Supreme Court and the Petitioner's case being similar to Adani Case, the jurisdiction vests with the Commission. Learned counsel further submitted that as per the Energy Watchdog judgment, Section 64(5) can be invoked if both parties approach the concerned State Commission which is not the case in the present case. Learned counsel also referred to the definition of "Appropriate Commission" and the use of the terms in Change in Law provisions of the PPA and submitted that CERC being the Appropriate Commission has the jurisdiction to deal with the matter.

4. After hearing the learned counsels for the parties, the Commission permitted the Petitioner to file a written submission on the issue of maintainability by 31.1.2019. The Commission clarified that the learned counsel for the respondent may raise the "procedural issue" after the petition is admitted.

5. Subject to above, the Commission reserved order on 'maintainability' of the petition and the issue of procedure shall be taken up after the decision on jurisdiction.

By order of the Commission

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