

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 14/RP/2020
in
Petition No. 305/MP/2015**

**Coram:
Shri P.K. Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member**

Date of order: 14th August, 2020

In the matter of

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of the order dated 29.1.2020 passed by the Commission in Petition No. 305/MP/2015 with IA No. 24 of 2019.

**And
In the matter of**

Adhunik Power and Natural Resources Limited
9B, 9th Floor,
Hanssalaya Building,
15, Barakhamba Road, Connaught Place,
New Delhi - 110 001

....Review Petitioner

Vs.

1. West Bengal State Electricity Distribution Company Limited (WBSEDCL)
Vidyut Bhavan, 7th Floor, DJ- Block,
Sector-11 Salt Lake,
Kolkata- 700091, West Bengal

2. PTC India Limited,
2 nd Floor, NBCC Tower,
15 Bhikaji Cama Place, New Delhi- 110066

...Respondents



Parties Present:

Shri M.G. Ramachandran, Sr. Advocate, APNRL
Shri Deepak Khurana, Advocate, APNRL
Shri Tejasv Anand, Advocate, APNRL
Shri Amit Griwan, APNRL

ORDER

Adhunik Power and Natural Resources Limited (hereinafter referred to as “APNRL” or “the Review Petitioner”) has filed the present Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for review of the order dated 29.1.2020 in Petition No. 305/MP/2015 (hereinafter referred to as “Impugned order”) on the ground that non-consideration of the event of cancellation of the Ganeshpur coal block by the order and judgement of the Hon’ble Supreme Court as a ‘Change in Law’ event in terms of Article 10 of the Power Purchase Agreement dated 25.3.2011 is an error apparent on the face of the order.

2. The brief background of the case is that the Review Petitioner has set-up a 540 MW (2x270 MW) Thermal Power Project (in short, ‘the Project’) at Saraikela-Kharsawan District in the State of Jharkhand. The Review Petitioner and the Respondent No.1, West Bengal State Electricity Distribution Company Limited (WBSEDCL) have entered into the following power procurement arrangement on negotiated basis:

- (i) Power Supply Agreement (PSA) dated 5.1.2011 between PTC India Limited (PTC) and WBSEDCL for sale of 100 MW power from the Project,
- (ii) Power Purchase Agreement (PPA) dated 25.3.2011 between PTC India Limited and APNRL for sale of 100 MW from the Project.



3. The Review Petitioner was allocated a captive coal block at Ganeshpur in the State of Jharkhand jointly with Tata Steel. The coal from the captive coal block was to be used for generation and sale of electricity from the project. The Review Petitioner was also granted tapering coal linkage during the interim period of development of the captive coal block till production of coal. Due to various reasons, the coal block could not be developed. Hon'ble Supreme Court vide its judgment dated 25.8.2014 read with order dated 24.9.2014 in Writ Petition (Criminal) No. 120/2012, in the matter of Manohar Lal Sharma v. The Principal Secretary & Ors. (hereinafter "coal block cancellation case") *inter-alia*, held that the allotment of coal blocks made by the Government of India were arbitrary and illegal and accordingly, cancelled the allotment of such coal blocks which included Ganeshpur coal block allotted to the Petitioner. The Review Petitioner was generating and supplying electricity from the project based on the tapering linkage and meeting the shortfall through procurement from alternative sources. After cancellation of the captive coal block and expiry of the tapering linkage, the Review Petitioner participated in the auction of coal block made pursuant to the Coal Mines (special Provisions) Act, 2015 but did not succeed in allocation of coal blocks. The Review Petitioner was supplying electricity by procuring coal from the market including imported coal. Since the coal cost was not being admitted by the Respondent, WBSEDCL, the Petitioner filed the Petition No.305/MP/2015 with the following prayers:

"(a) Declare that the Petitioner is entitled to actual landed cost of coal with respect to the PSA dated 5.1.2011 and PPA dated 25.3.2011;

(b) Direct that the Respondent No. 2 / WBSEDCL to make a payment of Rs. 257.09 crore to the Petitioner, which amount has accrued on account of the Change in Law events claimed in the present petition with respect to base price of coal, till March 2017; and



(c) Direct the Respondent No. 1/ WBSEDCL to continue to make payment accrued in favour of the Petitioner, post March- 2017 in terms stated in the present petition."

4. The Review Petitioner filed IA No.24/2019 to place on record the judgement dated 21.12.2018 passed by Appellate Tribunal for Electricity (ATE) in Appeal No. 193 of 2017 (GMR Kamalanga Energy Limited Vs. Central Electricity Regulatory Commission and Others) (hereinafter referred to as "GMR Kamalanga Case") and prayed that the Review Petitioner was entitled for relief under Change in Law on account of cancellation of coal block in terms of the said judgement.

5. The Commission after hearing the Review Petitioner, PTC and Respondent WBSEDCL disposed of the Petition No.305/MP/2015 vide order dated 29.1.2020 with the following directions:

(a) The tariff in the PPA/PSA has been agreed on the basis of captive coal.

(b) Article 2.5 of the PPA/PSA does not create any embargo for the Review Petitioner to procure coal under tapering linkage and to meet the shortfall in the tapering linkage by sourcing coal from import/e-auction coal till the captive mines commence production and supply of coal.

(c) The judgment of the Hon'ble Supreme Court resulting in cancellation of the coal block allocated to the Review Petitioner cannot be considered as change in interpretation of the provisions of CMN Act {Coal Mines (Nationalisation) Act, 1973} and MMDR Act {Mines and Minerals (Development and Regulation) Act, 1957} and hence will not be covered under Article 10.1.1(b) of the PPA/PSA.

(d) Since the judgment of the Hon'ble Supreme Court did not impose any new requirement nor changed the terms and conditions for obtaining consents,



clearances and permits for allocation of coal block, the case of the Review Petitioner cannot be covered under Article 10.1(c) and (d) of the PPA/PSA.

(e) The enactment of Coal Mines (Special Provisions) Act, 2015 prescribing the auction route for allocation of coal block amounts to Change in Law under Article 10.1.1(f) of the PPA/PSA as it affects the input cost of the Review Petitioner. Since the Review Petitioner did not become successful in the auction process, it cannot take the benefit of Article 10.1.1(f) of the PPA/PSA.

(f) In the light of the judgment of ATE dated 21.12.2018 in Appeal No.193 of 2017, it was held that the Review Petitioner would be entitled for compensation to the extent of shortfall in tapering linkage granted to it pending operationalisation of the captive coal block which are met through e-auction or imported coal for generation and supply of electricity to WBSEDCL.

6. The Review Petitioner in the Review Petition has submitted that the cancellation of coal blocks under the orders of the Hon'ble Supreme Court which is the highest court in the country, promulgation of the Coal Mines (Special Provisions) Ordinance, 2014 and enactment of Coal Mines (Special Provisions) Act, 2015 are events squarely covered under Articles 10.1.1(b), (c), (d), and (f) of the PPA and, therefore, there is error apparent on the face of the record in regard to the interpretation and application of the provisions of Article 10 of the PPA. The Review Petitioner has submitted that ATE in its judgment in GMR Kamalanga Case has clearly held that cancellation of coal block by judgment of the Hon'ble Supreme Court amounts to Change in Law. The Review Petitioner has submitted that the impugned order to the extent it does not take into consideration the aforementioned settled position of law and holds that cancellation of Ganeshpur coal block is not a Change in Law event in terms of Article 10 of the PPA is an error apparent on the face of the order and to the said extent the impugned order deserves to be reviewed.



7. During the hearing of the Review Petition on admission on 16.7.2020, the learned senior counsel for the Review Petitioner submitted that the cancellation of coal block on account of the judgment of Hon'ble Supreme Court is a Change in Law event as held by the ATE in GMR Kamalanga Case. However, despite the settled legal position, the Commission in the impugned order has held that the cancellation of coal block on account of the judgment of Hon'ble Supreme Court is not a Change in Law event which is an error apparent in the impugned order and needs to be rectified in review.

Analysis and Decision

8. We have considered the submissions of the learned senior counsel for the Review Petitioner and perused the documents on record. Now, we proceed to consider whether any case for review has been made out by the Review Petitioner in terms of Order 47 Rule 1 of the CPC read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations"). Under Regulation 103 of the Conduct of Business Regulations, the Review Petition seeking review of any order of the Commission shall be filed within 45 days from the date of issue of the order. The impugned order was passed on 29.1.2020 and the Review Petition has been filed on 13.3.2020. Hence the Review Petition has been filed within the period of limitation. Section 94(1)(f) of the Act provides that the Commission has the same power as that of a civil court to review its decisions, directions or orders. Under Order 47 Rule 1 of CPC, a person aggrieved by order of a Court can file review on the following grounds, if no appeal against the said order has been filed:



(a) Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

(b) On account of some mistake or error apparent on the face of record; and

(c) For any other sufficient reason.

9. Learned counsel for the Review Petitioner confirmed during the hearing that after the Review Petition was filed before the Commission, the Review Petitioner has filed an appeal against the impugned order in order to meet the limitation period for appeal under Section 111(2) of the Act. Since no appeal was filed at the time of filing the review, the Review Petition does not suffer from the bar under Order 47 Rule 1 of the CPC. The Review Petitioner has invoked only the ground of error apparent on the face of record for review of the impugned order. Therefore, our analysis is confined to whether the Review Petition is maintainable on this ground.

10. In paragraph 6 of the Review Petition, the Review Petitioner has submitted that a bare reading of the provisions of Article 10.1 of the PPA, dealing with Change in Law events, the cancellation of coal block under the orders of the Hon'ble Supreme Court, the Coal Mines (Special Provisions) Ordinance, 2014, Coal Mines (Special Provisions) Act, 2015 are events squarely falling under Articles 10.1.1(b), (c), (d) and (f) of the PPA. Therefore, there is an error on the face of the record with regard to the interpretation and application of the provisions of Article 10 of the PPA. Further, the Review Petitioner has referred to the ATE judgment in GMR Kamalanga case in which the Review Petitioner has contended that ATE held that cancellation of the coal blocks by the order and judgment of the Supreme Court was an event of Change in Law. To the extent the impugned order did not take into consideration the



said judgment of ATE, the Review Petitioner has contended that it is an error on the face of the record.

11. Issues of interpretation and application of Article 10.1 of the PPA cannot be construed as an error apparent on the face of the record in terms of Order 47 Rule 1 of CPC. The Review Petitioner by questioning the interpretation and application of Article 10 of the PPA/PSA is entering into the realm of merit of the case, which can only be a subject matter of appeal and cannot be agitated in review. In the case of Lily Thomas & others Vs. Union of India & Others {(2000) 6 SCC 224}, Hon'ble Supreme Court has held as under:

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review....”

Further, in the case of Union of India Vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}, the Hon'ble Supreme Court held as under:

“23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

“9. Under Order 47 Rule 1 of CPC, a judgement may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has limited purpose and cannot be allowed to be “an appeal in disguise.”

In the light of the principles of law enunciated in the above judgments, we are of the view that the contention of the Review Petitioner with regard to interpretation



and application of Article 10 of the PPA/PSA cannot be covered under review in terms of Order 47 Rule 1 of the CPC.

12. Now we consider whether there was any error apparent on face of record in the findings of the Commission in the impugned order with regard to the case of the Petitioner with reference to Article 10.1.1(b), (c), (d) and (f) of the PPA/PSA. Clauses (b), (c), (d) and (f) of Article 10.1.1 of the PPA dated 25.3.2011 between the Review Petitioner and PTC provide as under:

"I. Change in law means occurrence of any of the following events:

a)

b) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

(c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;

(d) change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;

(e)

(f) any change in law relating to Mining laws and Environment Laws or tax or duty affecting input cost or raw material."

The PSA between PTC and WBSEDCL has similar provisions except Article 10.1.1(f) which provides as under:

"(f): Any changes in law related to mining laws or environmental laws or tax or cess or duty affecting APRNL's input cost of coal."

13. The Commission in the impugned order considered the event of cancellation of coal block by the order and judgment of the Hon'ble Supreme Court and the subsequent developments in the light of the above provisions of the PPA/PSA.



14. Article 10.1.1(b) of the PPA/PSA relates to change in the interpretation or application of any law by any Government of India Instrumentality. After considering the judgment of the Hon'ble Supreme Court in coal block cancellation case, the Commission came to the following conclusion in the impugned order:

“38. The Hon'ble Supreme Court held in the above judgement that the power of the Central Government to allocate coal block is neither traceable to CMN Act nor to MMDR Act. Hon'ble Supreme Court has come to the conclusion that the implementation of the provisions of CMN Act and MMDR Act by the Government for allocation of coal blocks through Screening Committees and Government Dispensation was arbitrary, non-transparent, and unfair and accordingly cancelled the allocation. Therefore, the judgment of the Supreme Court resulting in cancellation of the coal block allocated to the Petitioner cannot be considered as change in interpretation of the provisions of CMN Act and MMDR Act and hence it will not be covered under Article 10.1.1 (b) of the PPA/PSA.”

15. Article 10.1.1(c) and (d) of the PPA/PSA deal with (i) imposition of any requirement, (ii) change in terms and conditions, and (iii) inclusion of any new terms and conditions for obtaining consents, clearances or permits. The Commission in the impugned order held that the cancellation of coal blocks is not covered under these clauses. Relevant excerpt of the impugned order is as under:

“39.....The judgement of the Hon'ble Supreme Court found that allocation of coal blocks through Screening Committees and Government Dispensation was arbitrary, non-transparent, and unfair and accordingly cancelled the allocation. The judgment did not impose any new requirement nor changed the terms and conditions for obtaining consents, clearances and permits for allocation of coal block. Therefore, the case of the Petitioner cannot be covered under Article 10.1.(c) and (d) of the PPA/PSA.”

16. Article 10.1.1(f) of the PPA/PSA pertains to Change in Law relating to Environmental Laws or Mining Laws or taxes or duties affecting the input cost of raw materials/coal. The Commission after examining the developments subsequent to the cancellation of coal blocks held as under:

“40. The Petitioner has also submitted that its case is covered under Article 10.1.1 (f) of the PPA/PSA, i.e. any change in the law relating to Mining Laws or Environmental Laws or Tax or Cess or Duties affecting the input cost of raw material. We have considered the submission of the Petitioner. The Govt. of India previously allocated the coal blocks within the framework of Coal Mines Nationalization Act, 1957 and Mines and Minerals (Development and Regulation) Act, 1957. Subsequent to the cancellation



of coal block allocation by the Supreme Court, Parliament enacted Coal Mines (Special Provisions) Act, 2015. Therefore, enactment of the Coal Mines (Special Provisions) Act, 2015 changing the process of allocation of coal block through auction from the earlier practice of Screening Committee Route and Government Dispensation Route is a change in mining law which affects the Input cost of the Petitioner.

41. In view of the above, we hold that enactment of Coal Mines (Special Provisions) Act, 2015 prescribing the auction route for allocation of coal block amounts to change in law if it affects the input cost of the Petitioner. However, in the present case, though the Petitioner participated in the auction process, it did not become successful and therefore the Petitioner cannot take the benefit of Article 10.1.1 (f) of the PPA.”

17. Thus, the Commission held that the change in methodology for allocation of coal block by auction route through Coal Mines (Special Provisions) Act, 2015 is Change in Law under Article 10.1.1(f) of the PPA/PSA. The Commission in the impugned order held that case of Review Petitioner cannot take benefit of Article 10.1.1(f) of the PPA/PSA and no relief could be granted to the Review Petitioner since it was not a successful bidder in allocation of coal block under auction route in accordance with provisions of the Coal Mines (Special Provisions) Act, 2015.

18. The Review Petitioner has also contended that ATE in GMR Kamalanga Case has clearly held that the cancellation of coal block on account of the order and judgment of Hon'ble Supreme Court in coal block cancellation case is a Change in Law event and despite this position, the Commission in the impugned order has not granted relief to the Review Petitioner under change in law. Contrary to the submissions of the Review Petitioner, the Commission considered the judgment of ATE in GMR Kamalanga case and granted relief in the light of the said judgment till the Review Petitioner was having tapering linkage. In this connection, Para 42 and Para 43 are extracted as under:

“42. The Petitioner has filed IA No. 24/2019 to place on record the judgment of APTEL dated 21.12.2018 in Appeal No. 193 of 2017 (GMR Kamalanga Energy Limited (GKEL) vs. Central Electricity Regulatory Commission and Ors.). The Petitioner has submitted that APTEL in the said judgment has held the cancellation of coal blocks by the Hon'ble Supreme Court amounts as Change in Law event and the said judgment squarely applies to the Petitioner's case. The Petitioner in the IA has prayed for direction to the Respondents to make payment of 75% of



outstanding dues towards change in law along with carrying cost. WBSEDCL has refuted the claims of the Petitioner.

43. We have considered the submissions of the Petitioner and the Respondent, WBSEDCL. The Appellate Tribunal in its judgement dated 21.12.2018 in Appeal No.193 of 2017 and IA No.449 of 2018 (GMR Kamalanga Energy Limited & another Vs. Central Electricity regulatory Commission & Others) dealt with the issue of cancellation of coal block by the Hon'ble Supreme Court as under:

“65. Add on premium price on the notified price of coal supplied to tapering linkage holders

Central Commission opined that the add on premium price over and above the notified price of coal under tapering linkage is not change in law in terms of Bihar PPA. The Commission opined as under in the impugned order:

“52. We have considered the submissions of the Petitioners and Prayas. The Petitioners have not placed on record any document with regard to add on procurers price on the notified price of coal for supplies under tapering linkage holders nor have explained as to how the said event can be considered under Change in Law in terms of Article 10.1.1 of the Bihar PPA. In any case, it appears that the premium charged by the coal company for the add-on price on the notified price of coal is the result of contractual arrangement between the Petitioners and MCL and therefore cannot be recovered under Change in Law.”

66. According to Appellants, this opinion of Commission is wrong since FSA pertaining to tapering linkage signed between the parties on 28-8-2013 for capacity of 2.384 MTPA as several Clauses envisages with reference to add on price under what circumstances such add on price should be levied. Clause 9 of the FSA refers to price of coal as under:

“9.1(a) Add-on Price: For coal supplies after the Normative Date of Production, additional 40% of the Base Price shall be payable by the Purchasers as 'Add-on price' for coals of GCV of 5800 kCal/Kg and below.”

Even in the FSA entered into between ECL and the Appellant on 29-5-2014 after transferring certain quantum of coal supply from MCL to ECL (tapering linkage), such clauses pertaining to price of coal and add on price were noted which defines price of coal similar to the above mentioned meaning but additional percentage of the price is reduced from 40% to 20%. Except this, all other contents of Clauses 9, 9.1(a) are exactly the same.

67. Tapering linkage was granted till operationalization of captive coal blocks. Captive coal block had to be developed on or before 17-10-2013. As already stated above, for the reasons beyond the control of GKEL, delay in operationizing the coal block had occurred on account of Go-No-Go policy of MOEF. Therefore, it had to rely on the tapering coal linkage. This fact is not denied.

68. Meanwhile, on 25-8-2014 by virtue of judgment of the Hon'ble Apex Court in the case of Manohar Lal Sharma vs. The Principal Secretary & Ors, entire allocation of coal block made by Screening Committee from 14-7-1993 onwards in 36 meetings and allocations made through the Govt. dispensation route were held to be illegal. As a consequence, de-allocation order came to be passed on 24-9-2014 which cancelled allocation of 204 coal blocks including Rampia etc. with immediate effect. Therefore, Captive Coal Block came to be cancelled. Prior to this, the delay between October 2013 till date of judgment, it was on account of Go-No-Go policy of MOEF which was beyond the control of Appellant. Additional 40% or 20% of the base price was payable by the purchasers as “add on price” for coals after the normative date of production. On account of reasons mentioned above between the scheduled date of coal block and the judgment in



Manohar Lal Sharma, it was a case of force majeure and from the date of judgment, it was on account of change in law (due to NCDP of 2013).

69. According to the Appellants, if Captive Coal Block had not been cancelled and if development of coal block was not delayed because of Go-No-Go policy, GKEL would not have to pay add on premium. For the reasons stated above, since the delay in development of Captive Coal Block and subsequent cancellation of the Block by virtue of judgment of Hon'ble Apex Court, the consequential financial impact on account thereof in respect of add on premium is also covered as change in law.

70. Apparently, add on premium was not part of LOA and tapering linkage policy. Therefore, we are of the opinion, Appellant GKEL is entitled for compensation for increase in cost due to continued use of tapering linkage coal on account of delay in development of coal block as well as eventual cancellation of blocks by judgment."

It is observed from the judgement of the Appellate Tribunal as quoted above that the issue was considered in the context of the add on premium price on the notified price of coal supplied to tapering linkage holders. The Appellate Tribunal has taken note of the fact that tapering linkage was granted to GMR Kamalanga till operationalisation of captive coal blocks. Though the captive coal block was to be developed on or before 17.10.2013, delay in operationalising the coal block had occurred on account of Go-No-Go policy of MoEF. Consequently, GMR Kamalanga had to rely on tapering coal linkage. The Hon'ble Supreme Court passed the judgment on 24.9.2014 cancelling the allocation of coal blocks. The Appellate Tribunal has held that it was a case of force majeure between the schedule date of operationalisation of coal block and the judgment in Manohar Lal Sharma and from the date of judgment, it was on account of change in law due to NCDP, 2013. The Appellate Tribunal has held that the consequential financial impact on account of the delay in development of the captive coal block and consequent cancellation by virtue of the judgment of the Hon'ble Supreme Court in respect of the add on premium is covered under Change in Law. The Appellate Tribunal has opined that GMR was entitled for compensation for increase in cost due to continued use of tapering linkage on account of delay in development of coal block as well as cancellation of blocks by the judgement of the Hon'ble Supreme Court.

44. In the light of the judgment of the Appellate Tribunal in GMR case, the Petitioner shall be entitled for compensation to the extent of shortfall in tapering linkage granted to it pending operationalisation of the captive coal block which are met through e-auction coal or imported coal, etc. for generation and supply of electricity to the Respondent WBSEDCL. Accordingly, we direct the Petitioner to approach the Commission through a fresh petition giving a details of the tapering linkage granted to it, the reasons for the delay in development and operationalisation of captive coal block, the coal requirement met through e-auction/imported coal to meet the shortfall in supply under tapering linkage."

19. The Commission in the impugned order has analysed the judgment of the ATE in the case of GMR Kamalanga case and applied the said judgment in case of the Petitioner after taking into account the commonality of facts in both cases. It is pertinent to note that in paragraph 68 of the judgment in GMR Kamalanga case, ATE after taking note of the cancellation of the coal block by the order of the Hon'ble Supreme Court has held that "from the date of the judgment, it is a case of Change



in Law (due to NCDP of 2013).” Therefore, cancellation of coal block was held as Change in Law in the light of the provisions of NCDP 2013. Under NCDP 2013 which was held by the Hon’ble Supreme Court as Change in Law in Energy Watchdog case, shortage in supply of coal under firm linkage or tapering linkage was to be met through alternative sources such as e-auction coal or imported coal and their cost was to be admitted under Change in Law. Accordingly, the Commission decided the case of the Review petitioner as under:

“In the light of the judgment of the Appellate Tribunal in GMR case, the Petitioner shall be entitled for compensation to the extent of shortfall in tapering linkage granted to it pending operationalisation of the captive coal block which are met through e-auction coal or imported coal, etc. for generation and supply of electricity to the Respondent WBSEDCL.....”

20. In our view, the judgment of the ATE in GMR Kamalanga case has been correctly applied in the case of the Review Petitioner after taking into account the facts of both cases and the ratio of the judgment of the ATE in GMR Kamalanga case. Since there was no direction in the GMR Kamalanga case that even after the expiry of the tapering linkage, the affected party was entitled to relief under Change in Law on account of cancellation of coal block, the Review Petitioner could not have been granted the relief after the expiry of its tapering linkage.

21. In the light of the above discussion, the Commission is of the view that there is no error apparent in the impugned order and accordingly, no case for review of the impugned order has been made out by the Review Petitioner.

22. Review Petition No. 14/RP/2020 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson

