

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 161/MP/2020

- Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of events pertaining to Change in Law as per Article 10 of the Power Purchase Agreement dated 23.8.2013 and Article 10 of the Addendum PPA dated 10.12.2013.
- Date of Hearing : 4.6.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri P. K. Singh, Member
- Petitioner : Bharat Aluminium Company Limited (BALCO)
- Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and 2 Ors.
- Parties Present : Shri Buddy Ranganadhan, Advocate, BALCO
Shri Hemant Singh, Advocate, BALCO
Shri Chetan Garg, Advocate, BALCO
Shri Lakshyajit Bagdwal, Advocate, BALCO
Shri B. Vinodh Kanna, Advocate, TANGEDCO
Ms. M. Hemalatha, TANGEDCO
Shri S. Poonkodi, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking compensation on account of occurrence of Change in Law events, namely, (i) introduction of Evacuation Facility Charges, (ii) additional cost towards fly ash transportation, (iii) increase in consent fee, (iv) increase/change in levy of royalty, (v) increase in cost on account of Environment (Amendment) Rules, 2015 along with carrying cost thereon, in terms of Article 10 of Power Purchase Agreement ('the PPA') dated 23.8.2013 read with Addendum dated 10.12.2013 entered into with Respondent No.1, TANGEDCO. Learned counsel submitted that Change in Law events claimed in the present Petition are covered by the various orders of the Commission. Learned counsel mainly submitted the following:

- (a) The Petitioner is not pressing for increase in cost due to change in levy of royalty.
- (b) The Petitioner has also sought an in-principle approval for incurring additional expenditure for installation of various emission control systems in order to meet the revised emission norms introduced by Ministry of Environment, Forest and Climate Change, Government of India (MoEF) vide its Notification dated 7.12.2015. The Commission in catena of decisions has held that the MoEF Notification dated 7.12.2015 constitutes a Change in Law event and has approved

the costs to be incurred by the generators towards installation of emission control system. The reliance placed by the Respondent, TANGEDCO on the decision of the Appellate Tribunal for Electricity (APTEL) dated 21.1.2013 in Appeal No. 105/2011 is misplaced.

(c) The Petitioner is entitled to carrying cost in terms of the decision of Hon'ble Supreme Court in the case of Uttar Haryana Bijli Vitran Nigam Ltd. and Anr. v. Adani Power Limited and Ors.

3. Learned counsel for Respondent No.1, TANGEDCO reiterated the submissions made in the reply and submitted as under:

(a) As per the direction of Ministry of Power issued in 2018 under Section 107 of the Electricity, Act 2003, MoEF Notification dated 7.12.2015 cannot be a Change in Law for the power projects where such requirement of pollution control system was mandated under the Environment Clearance (EC) of the plant or envisaged otherwise before the aforesaid Notification. In the Petitioner's case, EC clearly states that space provision shall be made for FGD unit and that the separate funds shall be allocated for implementation of environment measures along with item-wise break-up and that these costs shall be included in the Project cost. Thus, the Petitioner cannot claim additional expenditure under Change in Law. Reliance was placed on the decision of APTEL dated 21.1.2013 in Appeal No. 105/2011.

(b) Even if it was mandatory on the part of the Petitioner to comply with the directions as required under MoEF Notification, the Petitioner has failed to take necessary steps in time and has filed the present Petition only on 9.1.2020. There is no explanation for not taking any action in this regard.

(c) The cost to be incurred in complying with the MoEF Notification dated 7.12.2015 in the year 2020 is exponentially high. Since the Petitioner has failed to comply with the said Notification in time, in the event the claim is allowed, it can only be at the price prevalent in financial year 2015-16.

4. In rebuttal, learned counsel for the Petitioner relied upon the decision of APTEL dated 28.8.2020 in Appeal No. 21/2019 (Talwandi Sabo Power Ltd. v. PSERC and Ors.) and Appeal No. 73/2019 (Nabha Power Ltd. v. PSERC and Ors.) and submitted that in the aforesaid judgment, APTEL after examining the provisions contained in the EC of the Appellant, which are identical to the EC of the Petitioner, has distinguished its earlier decision dated 21.1.2013 in Appeal No. 105/2011 (in matter of JSW Energy Ltd.).

5. Based on the request of learned counsels for the Petitioner and the Respondent, TANGEDCO, the Commission directed the parties to file their respective written submissions within two weeks with copy to each other.

6. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**