

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 351/MP/2018 and IA No. 4/2020

Subject : Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreement dated 19.12.2013 executed between the Petitioner and the Respondent No. 1 and in terms of the directions issued by the Central Government vide its notification dated 27.8.2018 for allowing pass through of additional expenditure incurred by the generator on account of events pertaining to 'Change in Law'.

Petitioner : Coastal Energen Private Limited (CEPL)

Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Anr.

Petition No. 380/MP/2018 and IA No. 8/2020

Subject : Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreement dated 12.12.2013 executed between the Petitioner and the Respondent for claiming compensation on account of events pertaining to 'Change in Law'.

Petitioner : IL&FS Tamil Nadu Power Company Limited (IL&FS)

Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Anr.

Date of Hearing : 8.4.2021

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

Parties present : Shri Hemant Singh, Advocate, CEPL and IL&FS
Shri Lakshyajit Singh Bagdwal, Advocate, CEPL and IL&FS
Shri Janmali Manikala, Advocate, PTC
Shri Girik Bhalla, Advocate, PTC

Record of Proceedings

The matters were heard through video conferencing.



2. Learned senior counsel for the Petitioner submitted that the present Petitions have been filed for seeking compensation on account of Change in Law events as per the provisions of the PPAs dated 12.12.2013 and 19.12.2013 and to restore the Petitioner to the same economic position as it was prior to the occurrence of such Change in Law events. Learned counsel further submitted that the Respondent, TANGEDCO has challenged the present Petitions on account of the issue of jurisdiction of the Commission to decide the dispute. In this regard, learned counsel for the Petitioner submitted as under:

(a) As per Section 79(1)(b) of the Electricity Act, 2003 (in short, 'the Act'), this Commission will have jurisdiction to adjudicate upon any dispute under a PPA with a distribution licensee, which is related to tariff, provided the generating company has entered into or otherwise have a "composite scheme" for generation and sale of electricity in more than one State.

(b) The issue of composite scheme, in the facts and circumstances of the present cases, is covered by the judgment of the Hon'ble Supreme Court dated 11.4.2017 in the matter of *Energy Watchdog and Others v. CERC and Others* [(2017) 14 SCC 80]. As per the said judgment, the expression "composite scheme" means a scheme for generation and sale of electricity in more than one State. Further, the Act does not at all contemplate existence of a long-term PPA to qualify under "composite scheme". If part power is sold within the State and some part is sold outside the State, including through Power Exchange or bilateral transaction, the same will be covered under "composite scheme".

(c) The Commission in its order dated 26.11.2019 in Petition No. 275/MP/2018 had observed that the moment there is a scheme for generation and sale of electricity in more than one State, this Commission will have jurisdiction.

(d) In Petition No. 188/MP/2017 & batch matters ('the ACME case') before the Commission, the distribution licensees specifically argued that the supply of electricity is taking place in only one State, and as such the Commission did not have jurisdiction. The Commission after hearing the parties held in its order dated 9.10.2018 that since it is evident from a reading of the tender documents that it was an inherently inter-State scheme and that power was envisaged to be supplied to more than one State, the actual supply to only one State would have no bearing.

(e) The above decision of the Commission is applicable to the present cases, since apart from the supply of electricity to the Respondent, TANGEDCO, the Petitioner in Petition No. 380/MP/2018 has entered into another arrangement through the Pilot Scheme under Section 63 of the Act. The Pilot Scheme has been issued by the Ministry of Power for the purpose of helping the distribution licensees of various States which have a fluctuating power demand. Therefore, it is evident that the Pilot Scheme is clearly a composite scheme which envisaged supply of electricity in more than one State. The Petitioner participated in the Pilot Scheme and declared successful bidder for 550 MW over a period of three years. Applying the principle of the ACME case (Supra), the execution of an agreement



pursuant to the Pilot Scheme, squarely falls under "composite scheme" provided under Section 79(1)(b) of the Act.

(f) With regard to merits of the case, the change in law claims, as claimed in the Petitions, have already been allowed and covered by the decisions of the Commission and the Appellate Tribunal for Electricity. With regard to one of the component, being wharfage charges, the increase in additional expenditure towards such component is on account of a statutory gazette notification, and as such, similar principle has to be followed under change in law, as followed for any other Government gazette notifications, thereby treating it as a change in law event.

3. None was appeared on behalf of the Respondent, TANGEDCO despite notice. After hearing the learned counsel for the Petitioner, the Commission reserved order in the matters.

By order of the Commission

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

