

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 538/MP/2020

- Subject : Petition invoking Section 79(1)(d) and (f) of the Electricity Act, 2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.
- Date of Hearing : 15.4.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Chhattisgarh WR Transmission Limited (CWRTL)
- Respondents : Maharashtra State Electricity Distribution Company Limited (MSEDCL) and 9 Ors.
- Parties Present : Shri Amit Kapur, Advocate, CWRTL
Ms. Poonam Verma, Advocate, CWRTL
Ms. Aparajita Upadhyay, Advocate, CWRTL
Ms. Sakshi Kapoor, Advocate, CWRTL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Bhavesh Kundalia, CWRTL
Shri Pinkesh Kumar, CWRTL

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 relief for increase in construction cost of its transmission project due to occurrence of certain change in law events, namely, (i) change in rates and/or introduction of various taxes, duties and cess, (ii) increase in compensation to be paid to landowners for Right of Way of transmission lines in the States of Maharashtra and Chhattisgarh, and (iii) imposition of new requirement by Central Electricity Authority (i.e. erecting 'D-D' type towers) for obtaining power line crossing approval from Power Grid Corporation of India Limited and Chhattisgarh State Power Transmission Company Limited.

3. At the outset, learned counsel for the Respondent No.4, Madhya Pradesh Power Management Company Limited ('MPPMCL') objected to the admissibility of the Petition. Learned counsel referred the effective date of various change in law claims, viz. levies of Swachha Bharat Cess (15.11.2015) and Krishi Kalyan Cess (1.6.2016), increase in Maharashtra VAT (1.4.2016 and 17.9.2016), increase in effective Customs Duty on primary aluminium products (ingots) due to increase in Basic Customs Duty (1.3.2016), increase in Right of Way compensation in

Chhattisgarh (1.6.2016) and imposition of requirement of D-D type tower for obtaining power line crossing approval (16.9.2016) and submitted that these claims are beyond the period of limitation as provided under the Limitation Act, 1963. It was further submitted that as per the decision of Hon'ble Supreme Court in the case of Kerala State Electricity Board vs. T.P Kunhaliumma [(1976) 4 SC 634], Section 137 of the Limitation Act, 1963 is not confined to application contemplated by or under the Code of Civil Procedure but will apply to any Petition or Application filed under any Act. Thus, it is also applicable to the present Petition filed under the Electricity Act, 2003. It was also submitted that there is no application praying for condonation of delay and that the Petition ought to have been bifurcated into two parts (i) for claims beyond the period of limitation, and (ii) for claims within the period of limitation. On the above basis, the learned counsel submitted that the present Petition is not admissible.

4. Learned counsel for the Respondent No.8, Power Grid Corporation of India Limited ('PGCIL'), supported the arguments of learned counsel for MPPMCL. Learned counsel further submitted that the Commission may admit the Petition only after deciding the limitation aspect.

5. In response, the learned senior counsel for the Petitioner requested that the Respondents may be asked to file their objections on record. Learned counsel further submitted that in terms of TSA, the Petitioner had issued the change in law notice to all the Long-Term Transmission Customers (LTTCS) of the project including the lead LTTC, in 2016. However, none of the LTTCS, including MPPMCL responded to such notice. Subsequent to number of reminders, the lead LTTC, MSEDCL vide its letter dated 23.4.2020 informed the Petitioner to approach the Commission for determination of change in law events and consequent compensation. Accordingly, the present Petition has been filed. Learned counsel submitted that the Commission may admit the Petition reserving the Respondents' right to object on limitation.

6. After hearing the learned counsels for the Petitioner and the Respondents, MPPMCL and PGCIL, the Commission admitted the Petition and the issue of limitation raised by the respondents shall be decided as a preliminary issue.

7. The Commission directed the Respondents, MPPMCL and PGCIL to file their respective submissions on limitation and merits within four weeks with advance copy to the Petitioner, who may files its response thereon, within two weeks thereafter.

8. The Petition shall be listed for hearing in due course on the aspect of limitation as well as on merits.

By order of the Commission

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