



नईदिल्ली
NEW DELHI

याचिकासंख्या./ Petition No.471/MP/2019

कोरम/ Coram:

श्रीपी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson

श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member

श्रीअरुणगोयल, सदस्य/ Shri Arun Goyal, Member

श्रीपी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेशदिनांक/ Date of Order: 31st of December, 2021

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 28.06.2016 and 04.01.2017, executed between Tata Power Renewable Energy Limited and NTPC Ltd., for seeking compensation on account of Change in Law events viz. introduction/ enactment of Central and State Specific Laws for implementing Goods & Services Tax.

AND IN THE MATTER OF:

Tata Power Renewable Energy Limited,

Corporate Centre A,

34 Sant Tukaram Road,

Carnac Bunder,

Mumbai 400 009, Maharashtra, India

...Petitioner

VERSUS

1. National Thermal Power Corporation Limited,
Core – 7, SCOPE Complex,
7, Institutional Area, Lodi Road,
New Delhi – 110003

2. Hubli Electricity Supply Company Ltd. (HESCOM),
Corporate Office, Navanagar, P.B.Road,
Hubballi-580025, Karnataka
3. Bangalore Electricity Supply Company Ltd. (BESCOM),
BESCOM Corporate office, Nunegundlapalli,
AmbedkarVeedhi, KR circle,
Bengaluru, Karnataka 560001
4. Mangalore Electricity Supply Company Ltd. (MESCOM),
MESCOM Bhavan, Corporate Office,
MESCOM, Kavour Cross Road, Bejai,
Mangalore – 575 004 Karnataka
5. Chamundeshwari Electricity Supply Corporation Ltd. (CESC),
No.29, Vijayanagara 2nd stage, Hinkal,
Mysore-570017, Karnataka
6. Gulbaraga Electricity Supply Company Ltd. (GESCOM)
Corporate Office, Station Road,
Kalaburagi – 585102

...Respondents

Parties present: Shri. AbhishekMunot, Advocate,TPREL
Shri. Kunal Kaul, Advocate,TPREL
Shri. SamikrithRao, Advocate,TPREL
Shri. Shri Venkatesh, Advocate, NTPC
Shri. AbhishekNangia, Advocate, NTPC
Shri. Anant Singh, Advocate, NTPC
Shri. Ashutosh K. Srivastava, Advocate, NTPC
Shri.A.S.Pandey, NTPC

आदेश/ ORDER

The Petitioner, Tata Power Renewable Energy Limited (TPREL), is primarily engaged in the business of setting-up power projects based on renewable energy sources. NTPC is a Public Sector Undertaking, and is engaged in the business of generation of electricity and other allied activities. NVVNL is the trading arm of NTPC. Under the State Specific

Bundling Scheme of the National Solar Mission, NTPC is responsible for implementing the scheme of MNRE for setting up new Solar Power Plants. Respondent No. 2 to Respondent No. 6 are the distribution companies of the State of Karnataka. The Petitioner has made the following prayers:

- (a) *Hold and declare that introduction/ enactment of GST Laws, as specified in Para's 16 and 17 above, amounts to Change in Law, which has resulted in/ increased additional recurring/ non-recurring expenditure of TPREL;*
- (b) *Hold and declare that the Petitioner is entitled to a sum of Rs. 18.60 Crores along with the carrying cost towards compensation for Change in Law during the construction period;*
- (c) *Direct/ Permit the Procurers to make payment the sum of Rs. 2.61 Crores along with the carrying cost towards compensation for Change in Law during the Operating Period; and*
- (d) *Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

2. The case was called out for virtual hearing on 21.12.2021.

3. During the course of hearing, the learned counsel for Petitioner submitted that the instant Petition was filed, inter-alia, seeking declaration that the introduction of GST Law is a Change in Law event and seeking the consequential compensation for additional recurring/non-recurring expenditure incurred by the Petitioner along with carrying cost. The matter was last listed on 04.06.2020 and the Petitioner was directed to amend the 'Memo of Parties' and serve copy of the Petition on the Respondents including the impleaded distribution licensees. The Petitioner has already complied with the directions of the Commission. The Commission also directed the Respondent, NTPC to submit its views/comments on MNRE's letter dated 12.03.2020 read with letter dated 23.03.2020 along with its reply. NTPC has filed the response and the Petitioner has submitted the computation of its claims for reconciliation with NTPC in the month of August, 2021. However, NTPC has not submitted any reply on reconciliation of the claims. Hence, the reconciliation is not finalised as on date.

4. In response to the Commission’s observation that the Ministry of Power, Government of India has notified *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* (hereinafter referred to as ‘Change in Law Rules’), the Petitioner submitted that it will approach NTPC/procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and will approach the Commission in terms of Rule 3(8) of the said Rules. The learned counsel for the Petitioner further submitted that the filing fees deposited by the Petitioner in respect of the present Petition may be adjusted against the Petition to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
5. The Commission observes that the Ministry of Power, Government of India has notified Change in Law Rules, the relevant provisions of which are extracted as under (emphasis is by us):

“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

(i) -----

(ii) -----

(iii) -----

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

*(a) where the agreement lays down any formula, in accordance with such formula;
or*

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

6. The Commission further observes that as per the above quoted provisions, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.
7. Hence, the Petitioner may approach NTPC/procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the Change in Law Rules.
8. As prayed by the Petitioner, the filing fees paid in this Petition shall be adjusted against the Petition to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules in future.

9. Accordingly, the Petition No. 471/MP/2021 is disposed of in terms of the above.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुणगोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष