

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 562/MP/2020 along with IA No.79/2021

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Clause 4.7 of the Competitive Bidding Guidelines and Article 13 of the Power Purchase Agreements dated 7.8.2008 and 20.1.2009 entered into by Jhajjar Power Limited with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited respectively in relation to seeking compensation for decrease in revenues and increase in the costs as a result of Change in Law events.

Date of Hearing : 24.1.2022

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

Petitioner : Jhajjar Power Limited (JPL)

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and 3 Ors.

Parties Present : Shri Sajan Poovayya, Sr. Advocate, PL
Shri Shashwat Kumar, Advocate, JPL
Shri Pratibhanu Kharola, Advocate, JPL
Shri Rahul Chouhan, Advocate, JPL
Ms. Raksha Agarwal, Advocate, JPL
Shri Deepto Roy, Advocate, JPL
Shri Dnyanraj Desa, Advocate, JPL
Ms. Disha Adhikary, Advocate, JPL
Shri Venkatesh, Advocate, TPTCL
Shri Rishub Kapoor, Advocate, TPTCL
Ms. Simran Saluja, Advocate, TPTCL
Shri Abhay Kumar, TPTCL
Shri M. G. Ramachandran, Sr. Advocate, Haryana Utilities
Shri Shubham Arya, Advocate, Haryana Utilities
Ms. Poorva Saigal, Advocate, Haryana Utilities
Ms. Shikha Sood, Advocate, Haryana Utilities
Shri Hemant Sahai, Advocate, TPDDL
Shri Nitish Gupta, Advocate, TPDDL
Shri Avdesh Mandloi, TPDDL
Shri Nishant Talwar, Advocate, TPDDL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking compensation on account of additional cost

incurred/ to be incurred by the Petitioner due to occurrence of certain Change in Law events, namely, (i) electrification of Railway sidings in terms of Railway Electrification Notifications, and (ii) increase in water rates in terms of Notification of Irrigation and Water Resources Department, Government of Haryana, along with carrying cost thereon. The learned senior counsel mainly submitted the following:

(a) The Petitioner had issued the notices regarding occurrence of aforesaid Change in Law events to the Respondents. However, there is no agreement/ admission between the parties regarding aforesaid events being Change in Law. In fact, the Respondents in their replies to the Petition have already contested the Change in Law claims made by the Petitioner. Thus, the entire matrix of the dispute is already before the Commission in the present case.

(b) At the time of filing of the present Petition on 22.6.2020, the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') were not in existence. The Change in Law Rules have been notified only on 22.10.2021. However, the Commission, in its various recent decisions, has taken a view that the Change in Law Rules are only procedural and, therefore, apply retrospectively.

(c) However, the Petitioner having invoked the jurisdiction of the Commission by way of filing of the present Petition on 22.6.2020, the law applicable for the adjudication of the Petitioner's claims is that prevailing as on the date of institution of the Petition. It is well settled that law applicable on the date of institution of the suit alone governs the suit. In this regard, the reliance was placed on the decision of the Hon'ble Supreme Court in Ramesh Chandra v. Additional District Judge and Ors., (1992) 1 SCC 751.

(d) Even assuming that the Change in Law Rules are merely procedural in nature, the Petitioner's right to sue for declaration of Change in Law, which is a substantive right, cannot be affected by the Change in Law Rules. In support of the plea that the 'right to sue' is a substantive right, the reliance was placed on the decision of the Hon'ble Supreme Court in Manish Kumar v. Union of India and Anr., [(2021) 5 SCC 1].

(e) Rather than disposing of the matter in view of the Change in Law Rules, the Commission may consider adjourning the matter for 60 days or *sine die*, while directing the parties to comply with the procedure prescribed in the Change in Law Rules. Pursuant thereto, if the parties are able to reconcile the claims and resolve the issues, matter may be disposed of by way of an appropriate order. In the event, parties are not able resolve the issues, the Petitioner may be permitted to place on record the notice issued under the Change in Law Rules and response of the Respondents and thereafter, the Commission can pass an effective order in the matter.

(f) It is also a well settled principle of law that all rules of procedure are nothing but handmaids of justice.

3. Learned senior counsel for the Respondents, Haryana Utilities submitted that the Change in Law Rules only provide a process for expeditious recovery of Change in Law claims of the affected parties and the substantive law remains unaltered. It cannot be argued that the said Rules, in any way, affect the jurisdiction of the Commission under Section 79 of the Electricity Act, 2003 or for that matter take away the right to sue. The learned senior counsel further submitted that the

Respondents have no objection towards keeping the present Petition pending while the Petitioner approaches the Respondents under the Change in Law Rules. Learned senior counsel submitted that the Respondents will timely respond to the notice issued by the Petitioner and the Change in Law Rules and, thereafter, the instant matter can be taken up together with the application under the Change in Law Rules. Learned senior counsel also pointed out that the Petitioner has also filed IA No. 79/2021 seeking amendments to the pleadings/ prayers, which is yet to be considered.

4. Learned counsel for the Respondents, TPDDL and TPTCL adopted to the submissions made by the learned senior counsel for the Haryana Utilities.

5. After hearing the learned senior counsels and learned counsel for the parties, the Commission reserved the order in the matter.

By order of the Commission

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