

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.265/MP/2021**

- Subject : Petition invoking Section 79(1)(c) and (f) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking compensation/ relief for additional expenditure incurred by the Petitioner during the construction of the Project due to certain Change in Law and Force Majeure events, as per the applicable provisions of the Transmission Service Agreement dated 22.9.2015.
- Date of Hearing : **12.7.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Alipurduar Transmission Limited (ATL)
- Respondents : South Bihar Power Distribution Co. Ltd. and 10 Ors.
- Parties Present : Ms. Poonam Sengupta, Advocate, ATL  
Ms. Gayatri Aryan, Advocate, ATL  
Ms. Priyakshi Bhatnagar, Advocate, ATL  
Shri Rajesh Jha, Advocate, ATL  
Shri Yogesh Dalal, ATL  
Shri Anant Shukla, ATL  
Shri Vishrov Mukerjee, Advocate, WBSEDCL  
Shri Janmali Manikala, Advocate, WBSEDCL  
Shri Damodar Solanki, Advocate, WBSEDCL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present petition has been filed seeking compensation for the additional expenditure incurred by the Petitioner on account of a Change in Law and Force Majeure events. Learned counsel further submitted as under:

(a) After the cut-off date for reckoning the Change in Law i.e. 2.10.2015, there had been an increase in the Entry Tax rate from 8% to 12% w.e.f. 20.1.2016 in terms of the Notification issued by the Govt. of Bihar, which constitutes a Change in Law event. Change in rate of Entry Tax has already been held as Change in Law in order date 29.3.2019 in Petition No. 238/MP/2017 (DMTCL. v. BSHPCL & Ors.).

(b) There had also been an increase in the effective tax rate on goods and services due to the enactment of the GST Law after the cut-off date, and the enactment of GST Law has also been held as Change in Law by the Commission in its various orders.



(c) On 15.10.2015, Ministry of Power issued Guidelines stipulating land compensation for the laying of transmission lines ('MoP Guidelines'). Although, there was no separate notification by the Governments of West Bengal and Bihar adopting the said Guidelines, landowners in West Bengal and Bihar, being fully aware of the MoP Guidelines and the compensation being paid in the nearby States as per the MoP Guidelines, started creating stiff resistance and demanding the higher compensation. Due to stiff resistance by the landowners / farmers, there were multiple representations, discussions, and directions from District Authorities from time to time, and the same resulted in Courts Cases for resolving the ROW Issues.

(d) According to the Petitioner, MoP Guidelines, having issued after the cut-off date constitute a Change in Law. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Limited and Anr. v. Adani Power (Mundra) Ltd. and Anr. MOP guidelines in themselves constitute both a Change in Law and a Force Majeure.

(e) The Petitioner is also entitled to the relief of carrying costs as a consequential relief of Change in Law events. In this regard, t reliance was placed on the judgment of the Appellate Tribunal for Electricity (APTEL) dated 15.9.2022 in Appeal No. 256 of 2019 and Ors. ('Parampujya Judgment').

(f) The Commission, by order dated 23.6.2023 in Petition No. 470/MP/2019 has already granted an extension of SCOD based on the force majeure events, and the Petitioner, therefore, ought to be compensated for expenses incurred on account of force majeure events along with carrying costs.

(g) The Commission ought to provide a purposive meaning to the force majeure clause. The principle of business efficacy ought to be invoked, i.e. to read a term of the TSA so as to achieve the result or consequence intended by the parties acting as prudent businessmen. In this regard, reliance was placed upon the judgement of the Hon'ble Supreme Court in the cases of Nabha Power Limited vs. PSPCL & Anr. [(2018) 11 SCC 50] and Adani Power (Mundra) Ltd. v. GECL & Ors. [2019 SCC Online SC 813].

(h) The Petitioner ought to be compensated for the expenses incurred by it due to events beyond its reasonable control, including payments made to landowners/ farmers. Section 70 of the Contract Act states that in the case of enjoyment of the benefit of a non-gratuitous act, the recipient has to compensate the entity performing the said non-gratuitous act. In this regard, reliance was placed on the judgement of the Hon'ble Supreme Court in the case of State of West Bengal v. BK Mondal, [AIR 1962 SC 779].

(i) Article 11.7(b) provides that TSP shall be entitled to claim 'relief' for force majeure events. The definition/meaning of 'relief' as interpreted by the Courts and APTEL in the Parampujya Judgment would also include monetary relief to the Petitioner for additional expenditure incurred due to force majeure. Reliance was also placed on the judgment of APTEL dated 3.12.2021 in Appeal No. 129 of 2020 and Ors. [NRSS XXXI (B) Transmission Limited v. CERC and Ors.] and the order of the Commission dated 11.3.2023 in Petition No. 333/MP/2019 [Power Grid NM Transmission Limited v. IL&FS TNPCL & Ors.]

2. In response to the query of the Commission regarding whether the land compensation (or unit rate thereof) paid to landowners by the Petitioner were pursuant to any order/ direction of local administration, such as the District Magistrate/Commissioner, learned counsel for the Petitioner sought liberty to place on record the relevant supporting details/documents in relation thereto by way of an additional affidavit.

3. Learned counsel for the Respondent, West Bengal State Electricity Distribution Company Limited, submitted as under:

(a) The Petitioner is not entitled to claim an increase in Entry Tax in the State of Bihar as a Change in Law. As per the available record, the Petitioner appears to have issued a Change in Law notice for the concerned Notification dated 20.1.2016 only on 20.04.2020 i.e. after 1552 days from the date of Change in Law event, and such a notice cannot be said to have been issued within the 'reasonably practicable' period as envisaged in the TSA. Reliance was placed on the order of the Commission dated 8.10.2018 in Petition No. 179/MP/2016 (KSK Mahanadi Power Co. Ltd. v. TANGEDCO).

(b) As regards MoP Guidelines dated 15.10.2015, this Commission, in various orders, has already held that the said Guidelines are only recommendatory in nature and cannot be considered as a Change in Law event. The said MoP Guidelines were not adopted by the States of West Bengal or Bihar. Accordingly, the expenditure incurred by the Petitioner on account of RoW/to settle the issues of RoW with landowners cannot be claimed from the Respondents under Change in Law.

(c) For Change in Law events during the Construction Period, the Petitioner is only entitled to relief in terms of Article 12.2.1 of the TSA and there is no provision which entitles the Petitioner to be restored to the same economic position as if the Change in Law had not taken place. Thus, the Petitioner is not entitled to any Carrying Cost with regard to any Change in Law. As regards the reliance on APTEL's Parampujya Judgment, a challenge to the said judgment is already pending before the Hon'ble Supreme Court.

(d) The Petitioner has filed the present petition after a delay of 4-5 years from the date of the Change in Law events and therefore, no carrying cost can be granted for the said period of delays. The Commission, in its order dated 25.1.2021 in Petition No. 404/MP/2019 (CGPL v. GUVNL & Ors.) has held that due to the delay in filing the petition claiming a Change in Law, carrying costs could only be allowed from the date of filing the petition.

(e) The Petitioner has also sought compensation for the additional cost/ expenditure incurred by it on account of the force majeure events. However, TSA does not provide for any monetary relief on account of force majeure. Also, vide order dated 23.6.2023 in Petition No. 470/MP/2019, this Commission disallowed various force majeure claims of the Petitioner. The various compensation claims made by the Petitioner and the auditor certificate produced in support thereof do not take into account the effect of the Commission's order dated 23.6.2023, and the Petitioner ought to be directed to revise its claims, taking into account the findings of the Commission in the said order.

(f) In the event the Petitioner furnishes any additional details/documents with regard to the RoW compensation paid to landowners, Respondent may also be permitted to file its response thereon.

4. Learned counsel for the Respondents, Bihar Discoms, indicated non-availability of the arguing counsel in the matter. Learned counsel also submitted that presently the Respondents have only filed their reply on the maintainability of the petition, and they may be permitted to file their reply on merits as well.

5. Considering the submissions made by the learned counsel, the Commission ordered as under:

(a) The Petitioner to file an additional affidavit furnishing the additional/supporting documents in relation to its land compensation claim within three weeks with copy to the Respondents and the Respondents may furnish their comments, if any, within three weeks thereafter.

(b) The Respondents, Bihar Discoms may also file their reply on merits within two weeks with a copy to the Petitioner, who may file its rejoinder, if any, within two weeks thereafter.

(c) The Petitioner to file the following documents/information within three weeks:

(i) Copy of the order issued by the Government of Bihar in respect of the increase in State Entry Tax.

(ii) Copy of the order/Notification issued by the Government of West Bengal pursuant to MOP Guidelines dated 15.10.2015, if any.

(iii) Copy of CEA clearance certificate for energization in respect of both transmission elements i.e. Element- 1 and Element -2.

(iv) Copy of documents declaring COD of both transmission elements.

6. The matter remained part-heard and will be listed for hearing on **8.9.2023**.

**By order of the Commission**

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