

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 256/MP/2023

- Subject : Petition under Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 read with Article 12 of the Transmission Service Agreement dated 23.4.2019 executed between Lakadia-Vadodara Transmission Project Limited/Petitioner and its Long-Term Transmission Customers and Sections 61 and 63 of the Electricity Act, 2003 seeking verification of the calculation of the impact due to change in law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment in the monthly transmission charges.
- Petitioner : Lakadia-Vadodara Transmission Project Limited (LVTPL)
- Respondents : Adani Wind Energy Kutchh One Limited and Ors.
- Date of Hearing : **9.12.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
- Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, LVTPL
Shri Deep Rao, Advocate, LVTPL
Shri Arjun Agarwal, Advocate, LVTPL
Shri Mohd. Munis Siddique, Advocate, LVTPL
Shri Geet Ahuja, Advocate, LVTPL
Shri TAN Reddy, LVTPL
Ms. Anisha Chopra, LVTPL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Shri Aneesh Bajaj, Advocate, GUVNL
Shri Anand K Ganesan, Advocate, GUVNL & DNH
Ms. Ritu Apurva, Advocate, GUVNL & DNH
Shri Utkarsh Singh, Advocate, GUVNL & DNH
Shri Kathikeyan Murugan, GUVNL & DNH
Ms. Pragya Gupta, Advocate, MSEDCL
Shri Dinesh Aggarwal, MSEDCL
Shri Gajendra Sinh, NLDC
Shri Sanny Machal, NLDC
Ms. Priyanshi Jadiya, CTUIL
Shri Siddharth Sharma, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the compliance affidavit dated 18.10.2024 has been filed in response to the directions issued *vide* Record of Proceedings for the hearing dated 30.9.2020. Learned counsel reiterated the submissions made in the compliance affidavit and mainly submitted as under:

(a) The question of whether the DC/DM Order(s) enhancing the RoW compensation payable by the transmission licensee qualifies as Change in Law under the TSA is no longer res-integra. The Commission, in its order dated 17.10.2024 in Petition No. 13/MP/2021 (pursuant to the remand by the APTEL *vide* judgment dated 12.8.2024 in Appeal No. 194 of 2022), has held that the District Authority (DC/DM) is a government instrumentality and as such, any direction by the District Authority is a Change in Law event under Article 12 of the TSA. In its order dated 25.2.2023 in Petition No. 164/MP/2021 (Kohima Mariani Transmission Ltd. v. AEGCL and Ors.) also, the Commission has held the notifications issued by the Deputy Commissioner as Change in Law under the TSA.

(b) Section 16(1) of the Telegraph Act empowers the District Collector (DC)/ District Magistrate (DM) as the authority to intervene when there is resistance or obstruction in the implementation of the Project. In the present case, various DC/ DM Order(s) were passed directing landowners to stop the obstructions in the implementation of the Project under Section 16(1) of the Telegraph Act. In the said DC/ DM Order(s), the Petitioner was directed to pay the stipulated compensation to the affected landowners.

(c) Orders issued by the DC/ DM under Section 16(1) thereof are bound to be complied with by the Petitioner, and the non-compliance of such orders would lead to penal consequences, especially if such disobedience tended to cause risk of obstruction, annoyance or injury.

(d) As to the compensation rates for the trees, the applicable governing document for the determination of tree-related compensation as of the cut-off date was the Revenue Department Circular dated 2.1.1993 and not the 2017 Resolution issued by the Government of Gujarat (GoG). The 2017 Resolution's reference to AMPC rates pertains to the agricultural produce compensation, such as crops and fruits, and the reference to trees appears to be in the sense of tree produce such as fruits. The jurisdiction of the Agricultural Produce Market Committee under the APMC Act extends to the sale, purchase, and trade of agricultural commodities within the designated market areas (market yards and sub-markets). Since trees and timber are not categorized as "agricultural produce" under the APMC Act and since APMC does not notify rates for trees, any reference to APMC rates is irrelevant in the context of trees.

2. In response to the specific query of the Commission regarding the categorical findings of the Hon'ble High Court of Gujarat in *Torrent Power Limited v. Collector and District Magistrate, Patan, and others*, in SCA No. 25785 of 2022 dated 15.2.2023 that it was not in the domain of the DM/DC to enter into the aspect of sufficiency of the compensation, which could only be decided by the District Judge under Section 16(3) of the Telegraph Act, the learned senior counsel sought time to file a brief reply on the above aspect.

3. In response to another query of the Commission with respect to the specific reasons/grounds for approaching the DC/DM by the Petitioner, learned senior counsel submitted that the concerned DC/DMs were approached seeking their assistance under Section 16(1) of the Telegraph Act as the Petitioner was obstructed in exercising of its power under Section 10(d) in laying of the line. However, these communications, although referred to in the DC/DMs Orders, are not on record, and the Petitioner may be permitted to place them on record.

4. Considering the submissions made by learned senior counsel for the Petitioner, the Commission directed the Petitioner to clarify/furnish the following documents/information on an affidavit within two weeks:

(a) Whether the GoG Resolution 2021 or any other guidelines of the Government of Gujarat provides for consideration of the land value for payment of the RoW compensation at the rate higher than the jantri rate (including max. 10% increase per annum compounding on 2011 jantri rates).

(b) Under which provisions of the Indian Telegraph Act, 1885 and the Indian Electricity Act, 2003, the Petitioner approached the concerned District Collector and District Magistrate, and why did the Petitioner approach the concerned District Collector and District Magistrate? What was the reason for approaching the District Collector and District Magistrate? Whether the Petitioner requested the District Collector and District-Magistrate to grant the police protection or to fix the compensation in case of obstruction of work of the transmission line or both? A copy of the communication made to the concerned District Collector and District Magistrate of each district for which the claim has been raised in the present Petition is required to be submitted (sample letters written by the Petitioner to the DM/DC referred to in compensation letter issued by the SDM/DM is as per the details given below):

- i) Application dated 2.8.2021 of the Manager, LVTPL, in respect of Kheda district
- ii) Letter dated 28.8.2020, letter No. MAG/Power Line/Sterlite Power/Vashi. 1072/12/2020 dated 1.12.2020 and letter dated 17.3.2022 in respect of Bhachau district.
- iii) Application dated 26.5.2020 and 13.8.2020, in respect of Morbi district.
- iv) Letter dated 5.12.2020 by the Chief Manager, LVTPL, in respect of Surendranagar district.
- v) Application dated 3.12.2022 in respect of Halvad district.

(c) Under which provisions of the Indian Telegraph Act, 1885 and the Indian Electricity Act 2003, the concerned District Collector/ District-Magistrate/ Additional District-Magistrate/ Sub-Divisional Magistrate had fixed the higher compensation rate than the prevailing jantri rate of the land.

(d) Legal position with regard to the authority of the District Collector cum District Magistrate/ Sub-Divisional Magistrate to fix the compensation value of land for the payment of the RoW compensation under Section 16(1) of the Indian Telegraph Act, 1885 specifically in light of the Hon'ble Supreme Court judgment dated 14.12.2016 in Civil Appeal No. 10951 of 2016 (The Powergrid Corporation of India Limited v. Century Textiles and Industries Limited and others) and Hon'ble High Court of Gujarat judgment dated 15.2.2023 in Civil Application No. 25785 of 2022 (Torrent Power Limited v. Collector and District Magistrate, Patan). Furthermore, the Subdivisional Magistrate is not even recognised as a legal authority empowered by the State Revenue Department to fix the compensation value of land under the abovementioned Act.

5. The Petition will be listed for hearing on **6.1.2025**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)