

**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 23.04.2019 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 : **6.1.2025**
- 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 Arijeet Shukla, Advocate, LVTPL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Shri Anand K Ganesan, Advocate, DNHDDPCL
Shri Alok Shankar, Advocate, MPPMCL
Shri Anup Jain, Advocate, MSEDCL
Ms. Sneha Sing, Advocate, MSEDCL
Shri Siddharth Sharma, CTUIL
Shri Lashit Sharma, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the Petitioner has filed the compliance affidavit dated 26.12.2024 in reference to the queries raised vide Record of Proceedings for the hearing dated 9.12.2024. Learned senior counsel further referred to the said compliance affidavit and mainly submitted as under:

(a) As per Section 16(1) read with Sections 10(d) and 16(3) of the Telegraph Act, in the first instance, the power to determine the compensation payable to the affected landowners vests with the District Magistrate (DM)/ District Collector (DC). The DM/DC is empowered to 'determine' the valid rate of RoW compensation under Section 16(1) of the Telegraph Act, while the District Judge is empowered to 'adjudicate' a 'dispute' upon the sufficiency of RoW compensation under Section 16(3) of the Telegraph Act.

(b) Language of Section 16(3) of the Telegraph Act uses the term "either of the disputing parties," which indicates that even the Telegraph Authority could be aggrieved by the benchmark RoW compensation determined by the DC/DM. If the DC/DM had no power to issue any orders determining benchmark RoW compensation under Section 16(1) of the Telegraph Act, then the use of the above term would be rendered otiose.

(c) Such power of the District Magistrate to determine compensation has been expressly recognized by the Ministry of Power in its 2015 RoW Guidelines, 2024 RoW Guidelines, as well as para 2(4) of the Government of Gujarat's 2017 Resolution, which was not amended by the 2021 Resolution.

(d) The judgments of the Hon'ble Supreme Court in the case of 'Power Grid Corporation of India Ltd. v. Century Textiles & Industries Ltd.' dated 14.12.2016 in Civil Appeal No. 10951 of 2016 and the Hon'ble Gujarat High Court's Oral Judgment dated 15.2.2023 in Special Civil Application No. 25875 of 2022 titled, 'Torrent Power Limited v. Collector and District Magistrate, Patan' ("Torrent Power"), are not applicable to the facts of the present case.

(e) Under the Telegraph Act, DC/ DM has the authority to determine the RoW compensation payable to the land owners.

(f) Determination of RoW compensation by the DC/DM is a standard practice across States, and up until recently, orders are being passed by the various High Courts directing the DC/DM to determine the RoW compensation.

(g) DC/ DM orders issued in exercising powers under Section 16(1) of the Telegraph Act are quasi-judicial orders and have the force of law. Further, unless set aside, such orders are binding *inter-se* between the parties.

2. *Per contra*, the learned counsel for Respondent GUVNL mainly submitted that the power to decide issues of compensation is with the District Judge and not DC/DM. Learned counsel mainly submitted as under:

(a) The change in Law claim of the Petitioner in respect of the additional expenditure for securing RoW is premised on the Government of Gujarat's 2021 Resolution. By the said 2021 Resolution, the compensation payable for the RoW corridor was increased from 7.5% (as per the 2017 Resolution) to 15% of the value of the land. There was no change in compensation rates for the land for the transmission tower base.

(b) Insofar as the assessment of the value of land is concerned, while the 2017 Resolution provided considering the prevailing online jantri rates, the 2021 Resolution

provided for considering the current jantri rates of the time & place with a maximum increase of 10% per annum (compounding).

(c) Pertinently, consideration for the value of the land of 10% per annum (compounding) of jantri rates, as per 2021 Resolution, is for “maximum increase,” i.e., a ceiling and not a mandatory condition.

(d) The above Govt. of Gujarat Resolutions already provide a specific compensation to be paid for to the landowners, and it is not in the domain of the DC/DMs to determine any compensation in the State of Gujarat. In relation to the assessment of the value of land, the Ministry of Power’s Guidelines, as relied upon by the Petitioner differ from the Government of Gujarat’s Resolutions. In the Govt. of Gujarat Resolutions, the intervention of the competent revenue offices is envisaged only when the online jantri rate is not available for any place. Hence, the claims made by the Petitioner based on the order(s) of the DC/DM cannot be considered as Change in Law.

(e) Without prejudice, even if it were to assume that the DC/DM had the requisite authority, no compensation by fixing the land value beyond the ceilings as provided in the 2021 Resolution could have been awarded by such DC/DM. The Petitioner, having chosen not to seek a prudent recourse against such order(s), cannot be permitted to pass on such expenditure under the Change in Law reliefs.

(f) As per the averments of the Petitioner, the DC/DM always had the authority to fix the value of land higher than jantri rates, even prior to the 2021 Resolution, and therefore, the value of land, as fixed by the DC/DM in the order(s) as relied upon by the Petitioner cannot be considered as Change in Law.

(g) The auditor certificate furnished by the Petitioner does not provide any calculation for the impact of Change in Law and merely provides the total amount of compensation. Also, the said certificate is based on the unaudited /under-reviewed books of account.

(h) There is no provision for carrying costs in the TSA. When the TSA provides for a specific formulation for computing the impact of Change in Law under the Construction Period, there cannot be any further consideration by relying on other terms.

(i) The Petitioner has not complied with the provisions of Rule 3(7) of the CIL Rules, 2021. As per the Petitioner, the Change in Law impact was passed on from 31.7.2023; however, as per NLDC, the Petitioner has passed on such impact from 1.3.2023 onwards.

(j) As per the TSA, the original SCOD of the Project was 31.12.2020, and therefore, any Change in Law impact beyond the SCOD, due to delay on its part, cannot be allowed to be passed on under the Change in Law reliefs.

3. Learned counsel for Respondent, MPPMCL adopted the submissions made by the learned counsel for GUVNL and further submitted that as per Article 12.2.1 of the TSA, the impact of increase/decrease in the cost of the project in transmission charges up to the SCOD of the Project shall be governed by the formula provided thereunder. In the present matter, the SCOD of the Project was 31.12.2020, which has not been revised yet. Therefore, no relief can be granted to the Petitioner under the CIL Rules at this stage, and the Petition is not maintainable.

4. Learned Counsel for the Respondent, MSEDCL also adopted the submissions made by the learned counsel for the Respondents, GUVNL & MPPMCL.

5. In response, learned senior counsel for the Petitioner submitted that insofar as the various objections pertaining to compliance with CIL Rules, Change in Law relief for the "Construction Period," and carrying cost, etc., are concerned, the Petitioner had already addressed them during the course of previous hearings as well as in its rejoinder(s).

6. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the Petitioner to file the following details/ information on an affidavit within three weeks:

(a) Copy of the certificate of the auditor certifying the additional expenditure incurred on account of RoW Compensation and tree compensation subsequent to the issuance of the 2021 GoG Resolution and issuance of the DC/DM orders based on the audited books of Accounts of the Petitioner's Company.

(b) The Petitioner, in its calculations for compensation of trees (at Page No. 677-722 of the Petition), has considered distinct rates for the same type of trees. The Petitioner to clarify the following with respect to its claim for tree compensation:

(i) The Petitioner has claimed additional expenditure for the varieties of trees such as G. Amlī, Jambu, Su Baval, Sadad, Hared, Desi Baval and Bor etc., with rates varying from Rs. 3000 to Rs.12000. However, such variety of trees are not specifically mentioned in the GOG Circular dated 12.01.2021. Further, as per the GOG Circular dated 12.01.2021, the maximum value of other varieties of trees is Rs. 3000. The Petitioner to clarify the basis of considering such higher rates if such trees were covered under "other varieties".

(ii) The Petitioner to provide the sample copies of the certification of the price of the category of trees, which are not specifically covered under the GOG Circular dated 12.01.2021 such as G. Amlī, Jambu, Su Baval, Sadad, Hared, Desi Baval and Bor etc., by the concerned land acquisition officer.

7. The matter remained part-heard and shall be listed for hearing on **18.2.2025**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)