

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.303/MP/2024

- Subject : Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework and Articles 11 and 12 of the Transmission Service Agreement dated 28.02.2019 executed between Udupi Kasargode Transmission Limited and its Long-Term Transmission Customers inter alia seeking in-principle approval/declaration recognizing the Change in Law and Force Majeure events that impacted the implementation of the Project and the Petitioner's right to consequential relief.
- Petitioner : Udupi Kasargode Transmission Limited (UKTL)
- Respondents : Bangalore Electricity Supply Co. Ltd. and Ors.
- Date of Hearing : **13.1.2025**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
- Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, UKTL
Shri Deep Rao Palepu, Advocate, UKTL
Shri Arjun Agarwal, Advocate, UKTL
Shri Mohd. Munis Siddique, Advocate, UKTL
Shri Geet Ahuja, Advocate, UKTL
Shri Arijeet Shukla, Advocate, UKTL
Ms. Shikha Sood, Advocate, UKTL
Shri TAN Reddy, UKTL
Shri Sandeep Rajpurohit, UKTL
Shri Prabhas Bajaj, Advocate, KSEBL
Shri Rithvik Mathur, Advocate, KSEBL
Shri Harsh Chachan, Advocate, KSEBL
Shri Anand Ganesan, Advocate, Karnataka ESCOMs
Ms. Ritu Apurva, Advocate, Karnataka ESCOMs
Shri Karthikeyan Murugan, Advocate, Karnataka ESCOMs

Record of Proceedings

During the course of the hearing, the learned senior counsel for the Petitioner made detailed submissions on the aspect of maintainability of the present Petition. While arguing that the present case is squarely maintainable, learned senior counsel mainly submitted as under:

- (a) There is no bar or prohibition upon the Petitioner seeking in-principle declaratory relief qua occurrence of Force Majeure and Change in Law events prior to the commissioning of its Project. In this regard, the reliance was placed on the provisions of Articles 11 (Force Majeure) and 12 (Change in Law) of the TSA. Also, as indicated in the Petition, the original SCOD of the Project, as specified in the TSA, has already lapsed.

(b) There is already a significant cost overrun owing to the various Changes in Law and Force Majeure events, and the lender of the Petitioner, i.e., REC Limited, by its letter dated 5.8.2024, has indicated that it may not be in a position to consider any financial assistance towards the additional fund requirement unless the events faced by the Petitioner are declared to be Force Majeure and/or Change in Law events under the TSA by the Commission.

(c) The Commission has the power to grant in-principle/ declaratory relief with respect to Changes in Law and Force Majeure events that have impacted the implementation of the Project. Also, the Commission has, in its various orders, considered such relief(s) even in respect of the Projects, which were under implementation. In this regard, the reliance was placed on the (i) Record of Proceedings for the hearing dated 11.11.2021 in Petition No. 158/MP/2021 (Lakadia Vadodara Transmission Project Ltd. v. Adani Green Energy MP Limited and Ors.), (ii) Order of the APTEL dated 1.5.2023 in Appeal No. 134 of 2022 (Goa Tamnar Transmission Ltd. v. CERC and Ors.), (iii) order dated 8.1.2020 of the Commission in Petition No. 126/MP/2019 (Fatehgarh Bhadla Transmission Ltd v. AREPRL and Ors.), (iv) order dated 20.3.2019 in Petition No. 194/MP/2017 (North Karanapura Transco Ltd. v. JBVNL), (v) judgment of the APTEL dated 5.4.2022 in OP No. 1 of 2022 (NRSS XXIX Transmission Ltd. v. CERC and Ors.), (vi) Suo-Motu order dated 17.12.2018 passed by the Commission in Petition No.1/SM/2018, (vii) Judgment of the APTEL dated 12.10.2021 in Appeal No. 251 of 2021 (Green Infra Renewable Energy Ltd. v. RERC and Ors.) (viii) Suo-Motu order dated 29.11.2024 passed by the Commission in Petition No. 4/SM/2024, and (ix) Order dated 23.4.2020 in Petition No.446/MP/2019 (Sasan Power Ltd. v. MPPMCL and Ors.)

(d) The Petition is not barred in terms of proviso to Section 34 of the Specific Relief Act, 1963. The Petitioner has not omitted to seek further/consequential reliefs to the declaratory relief(s) but has prayed for liberty to approach the Commission after such reliefs can be completely quantified upon the commissioning of the Project.

2. Learned counsel for Respondent Nos.1 to 6, Karnataka ESCOMS, opposed the maintainability of the Petition on the grounds of it being pre-mature. Learned counsel submitted that on the basis of the letter issued by its lender, the Petitioner cannot seek a prior positive declaration of the various events as Change in Law and/or Force Majeure at this stage in order to discharge its obligations under the TSA. Learned counsel further submitted that the instant Petition squarely falls within the ambit of the proviso to Section 34 of the Specific Relief Act. Learned counsel sought to distinguish the various orders and judgments relied upon by the Petitioner from the instant case.

3. Learned counsel for Respondent No.7, KSEBL adopted the submissions made by the learned counsel for Karnataka ESCOMs and further placed the reliance on the order of the Commission dated 14.3.2023 in Petition Nos. 274/MP/2021 and Ors. in the matter of SB Energy Three Pvt. Ltd. v. SECI to buttress his argument that the instant Petition is not maintainable.

4. In response, learned senior counsel for the Petitioner added that the attempts of the Respondents to distinguish the orders/judgments as relied upon by the Petitioner are misconceived.

5. Considering the submissions made by the learned senior counsel and learned counsels for the parties, the Commission permitted the Respondents to file their written submissions along with the chart distinguishing the cases relied upon by the Petitioner,

if any, within a week with a copy to the Petitioner, who may file its written submissions within a week thereafter.

6. Subject to the above, the Commission reserved the matter for order on 'maintainability' of the Petition.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)