CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 179/MP/2016

Subject	: Petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003 for adjudication of claims towards compensation arising out of 'Change In Law' and consequential reliefs as per provisions of the PPA dated 27.11.2013 between the Petitioner and Respondent.
Petitioner	: KSK Mahanadi Power Company Limited
Respondent	: Tamil Nadu Generation and Distribution Corporation Ltd.
Date of hearing	: **26.4.2018**
Coram	: Shri P.K. Pujari, Chairperson Shri A.K. Singhal, Member Shri A.S. Bakshi, Member Dr. M.K. Iyer, Member
Parties present	: Shri Anand K. Ganesan, Advocate, KSK Mahanadi Shri A. Sreekanth, KSK Mahanadi Ms. Ranjitha Ramachandran, Advocate, Prayas Shri G. Umapathy, Advocate, TANGEDCO Shri S. Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

Learned Counsel for the Petitioner mainly submitted as under:

(i) Letter of Assurance (LOA) dated 11.6.2009 was issued by South Eastern Coalfields Limited (SECL) for the total quantum of 7.49 MTPA and was sufficient to cater to the total capacity of 1800MW. As per the PPA dated 27.11.2013, the cut-off date was 27.2.2013 which is seven days prior to the bid deadline date i.e. 6.3.2013.

(ii) Subsequently, the Petitioner entered into the Fuel Supply Agreements dated 19.3.2014 and 12.8.2014 with SECL and Eastern Coalfields Limited respectively based on the restrictions under the New Coal Distribution Policy dated 18.10.2007.

(iii) At the time of submission of the bid by the Petitioner, the Petitioner had Coal Supply Agreements with M/s. Goa Industrial Development Corporation (GIDC) and M/s. Gujarat Mineral Development Corporation Limited (GMDC) for sourcing coal from the identical coal blocks allocated.

(iv) The Government of India, through Coal India Limited/ subsidiary had granted to the Petitioner a tapering coal linkage for a total quantum of 7.49 MTPA. The above coal allocation was sufficient to cater to the total capacity of 1800 MW at 80% Plant Load Factor.

(v) After the PPA was signed between the Petitioner and the Respondent, the Government of India by Presidential Directive dated 17.7.2013 amended the policy for supply of coal by the Coal India Limited/subsidiaries including in the cases where the tapering coal linkages had been granted.

(vi) Pursuant to Government of India directive dated 30.6.2015, the supplies under tapering linkage FSA were discontinued and coal supplies were based on MOU.

(vii) The Presidential Directive dated 17.7.2013 restricting the supply of coal to 65%, 67% and 75% is clearly a Change in Law from the position that was existing at the time of the bidding.

(viii) The entire basis of the bids submitted based on availability of domestic coal under the Policy of the Government of India at the domestic regulated coal price has changed by virtue of the Presidential Directive dated 17.7.2013 of the Government of India.

(ix) As per the said Presidential Directive, the Petitioner has not received coal supply from the tapering coal linkage granted and has been constrained to purchase coal from the open market at the market prices as against the Coal India Limited regulated price.

(x) Any Change in Law event after 27.2.2013 (seven days prior to the Bid deadline) resulting in additional recurring or non-recurring expenditure incurred by the Petitioner falls within the ambit of Change in Law.

2. In response, the learned counsel for Prayas submitted as under:

(i) The LOA does not refer to any of the Coal Supply Agreement or the factum of being a tapering linkage.

(ii) The total Power Station capacity is 3600 MW and the coal linkage is only for 1800 MW. The Petitioner is required to specify the PPAs for which the concerned coal linkage/ coal blocks were meant.

(iii) Under the bid filed by the petitioner, the reference to fuel is for 15.47 MTPA for the entire power station of 3600 MW, which includes a LOA of 7.491 MTPA as well as Coal Supply Agreement with GIDC and GMDC which is not provided under the tapering linkage. It is further noticed that petitioner has also committed power of 450 MW to GIDC, 1094 MW to GUVNL and 400 MW to AP discoms which provides that these power supply agreements was not with TANGEDCO. Accordingly, the linkage is not sufficient for the claims towards Change in Law.

(iv) For claiming Change in Law towards change in NCDP it is necessary to have existing Letter of Assurance (LOA) or Fuel Supply Agreement (FSA) which provides for reduced quantity or shortfall in quantity of domestic coal supplied by the Coal India Limited and the assured quantity or quantity indicated in LOA/ FSA.

(v) The Petitioner may be directed to place on record the entire details in regard to coal linkage and availability before the claim of the Petitioner can be considered.

3. The Commission after hearing the parties reserved its order in the petition. However, at the request of the parties, Commission granted time to the parties to file their written submissions in the matter, with copy to others, on or before 18.5.2018.

By order of the Commission

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(B. Sreekumar)
Deputy Chief (Law)