

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.215/MP/2021

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2(b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the Procurers for compensation due to Change in Law impacting revenues and costs during the Operating Period.
- Date of Hearing : **11.8.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Sasan Power Limited (SPL)
- Respondents : MP Power Management Co. Ltd. and 13 Ors.
- Parties Present : Shri Venkatesh, Advocate, SPL
Shri Siddharth Joshi, Advocate, SPL
Shri Nikunj Bhatnagar, Advocate, SPL
Ms. Shraddha Deshmukh, Advocate, Rajasthan Discoms
Shri Shubham Arya, Advocate, HPPC & PSPCL
Shri Ravi Nair, Advocate, HPPC & PSPCL
Ms. Reeha Singh, Advocate, HPPC & PSPCL
Ms. Anumeha Smiti, Advocate, HPPC & PSPCL
Shri G. Umopathy, Sr. Advocate, MPPMCL
Ms. Aditya Singh, Advocate, MPPMCL

Record of Proceedings

During the course of the hearing, the learned counsel for the Petitioner made detailed submissions in the matter. The learned counsel, *inter alia*, submitted that the Fly Ash Notification dated 31.12.2021 (' the 2021 Fly Ash Notification') issued by the Ministry of Environment, Forest & Climate Change (MoEF&CC), in supersession of the 1999 Fly Ash Notification, imposing the obligation that all mine owners/operators within 300 kilometres (by road) from coal or lignite based Thermal Power Plant, shall undertake measures to mix at least 25% of ash on a weight-to-weight basis of the material used for external dump of the overburden, backfilling or stowing of mine, constitutes a Change in Law event under Article 13.1.1(i) of the Power Purchase Agreement dated 7.8.2007.

2. The learned counsel for the Respondent Nos.12 &13 pointed out that the plea of declaration of the 2021 Fly Ash Notification as a Change in Law was brought in by the Petitioner only vide amendment to the Petition and contrary to the submissions now advanced, the Petition seeks the declaration of a Change in Law event not only in respect of the 2021 Fly Ash Notification but also for (i) the 2009 Fly Ash Notification, (ii) ECs dated 10.12.2008 read with Revised EC dated 30.6.2015 and (iii) MoEF&CC's OM dated 28.8.2019. The learned counsel further submitted that the obligation to use fly ash was prevalent well before the cut-off date in the present case and referred to the relevant stipulations of the MoEF&CC's 1999 Fly Ash Notification. Learned counsel also submitted that the Petitioner has not issued any Change in Law notice in respect of the 2021 Fly Ash Notification.

3. The learned counsel for the Respondent Nos. 6 to 8, Rajasthan Discoms, adopted the submissions made by the learned counsel for the Respondents No. 12 & 13 and submitted that in terms of the 1999 Fly Ash Notification, the Petitioner always had the responsibility to utilise the Fly Ash, and neither the 2009 Fly Ash Notification nor the 2021 Fly Ash Notification imposed any new condition or obligation upon the Petitioner. The learned counsel submitted that the Petitioner has failed to comply with the mandatory requirement of the issuance of a Change in Law notice in respect of the 2021 Fly Ash Notification.

4. The learned counsel for the Respondent No.1, MPPMCL submitted that the plea of the Petitioner for the declaration of the 2009 Fly Ash Notification, etc. as a change in law, as made in the Petition, suffers from delay and laches. The learned counsel further submitted that the Petitioner has not furnished any details regarding the fly ash utilisation w.e.f. 2009 and revenue generated thereof, if any, and as already pointed out, the Petitioner has not issued any Change in Law notice in respect of the 2021 Fly Ash Notification to the Procurers.

5. In response, the learned counsel for the Petitioner pointed out that under the 1999 Fly Ash Notification, there was no mandatory requirement to use at least 25% of fly ash on a volume-to-volume basis of the total material used for external dumps of overburden and the same percentage in the upper benches of backfilling of captive open cast mine using fly ash. The learned counsel submitted that while the 2009 Fly Ash Notification mandated the minimum of 25% of the material used in back-filling of overburden material to fly ash, it was to be done under the Guidance of the Director General of Mines Safety (DGMS) and there were no Guidelines available for disposal of the fly ash in working coal mines prior to 28.8.2019. The learned counsel further submitted that the purpose of Change in Law notice is to intimate the Procurers about the Change in Law event. Since the 2021 Fly Ash Notification came to be notified during the pendency of the present Petition, IA filed by the Petitioner seeking amendment to Petition to the above effect has to be construed as a notice to the Respondents/Procurers. The learned counsel further submitted that the Petitioner in its rejoinder(s) has already indicated the capital and operation expenditure that it will incur for the Project vis-à-vis carrying out the backfilling of fly ash in mines, and if the

Commission so directs, the Petitioner will place on record the Detailed Project Report on the above.

6. After hearing the learned counsel for the parties, the Commission directed the Petitioner to furnish the following details on an affidavit within three weeks:

a) Petitioner to submit the status of implementation of the MoEFCC Notification dated 3.11.2009 to use 25% of fly-ash for mine filling from COD (16.8.2013) till date.

b) The material envisaged for the backfilling of mines before the occurrence of Change in Law and comparison of the Cost of back filling of mines with fly ash with the alternative methods which were being used till now.

c) Mode of transportation envisaged for back filling the mines with fly ash and justification of selection.

d) Since the MOEF&CC Notification dated 3.11.2009 was prevalent even before the COD of the unit/station, Submit the reason for not complying with the statutory Notification of MOEF&CC dated 3.11.2009.

e) On 10.12.2008, Government of India, through MOEF&CC accorded Environmental Clearance to the Petitioner for its captive mine, namely, Moher & Moher Amlohri Extension Opencast Coal Mine Project. In terms of Clause 2(A)(xii), 1415 HA of de-coaled void was to be backfilled and reclaimed with plantation. Submit the status of back filling and material used and associated cost incurred for back filling.

f) Quantum of fly ash generated, fly ash utilized and fly ash accumulated at generating stations since 16.8.2013.

g) Status of the fly ash utilization of the generating station with details of the year-wise percentage of fly ash utilized / disposed-of and the mode of utilization.

h) Details of percentage of fly ash utilization such as for brick manufacturing, road construction projects, soil conditioner in agricultural activities, and mine filling, etc. since 16.8.2013.

i) Details of expenditure incurred on fly ash utilization, if any, and where it is booked with documentary evidence.

j) Revenue earned from the sale of fly ash/ash products and how it is accounted for with documentary evidence.

k) Expenditure on transportation of fly ash utilization or fly ash transported by the Petitioner to its own brick manufacturing plant or use for road or building, mine filling, etc. and where it was booked in accounts.

7. After the Petitioner has furnished the above details, the Respondents may file their comments thereon, if any, within two weeks with a copy to the Petitioner who may file its response within two weeks thereafter.

8. The matter remained part-heard and will be listed for further hearing, especially for the aspects enumerated in para 6 above, on **20.10.2023**.

By order of the Commission

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