

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 194 OF 2022

Dated : 12th August, 2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

POWERGRID Southern Interconnector Transmission System Limited (PSITSL)
(Formerly known as Vemagiri II Transmission Limited)
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016
Email: commercialcc@powergrid.co.in

Address for Correspondence:

C/o ED (TBCB),
Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector -29
Gurgaon 122001

- **Appellant**

VERSUS

1. Central Electricity Regulatory Commission
Through its Secretary,
3rd and 4th Floor, Chandralok Building,
36, Janpath, New Delhi – 110 001
Email I'd: info@cerc.gov.in
2. Southern Power Distribution Company of Andhra Pradesh Limited
(APSPDCL), Through its Managing Director
Srinivasapuram, Thiruchanoor Road,
Tirupati-517503, Andhra Pradesh
Email: cecommercial@rediffmail.com
3. Eastern Power Distribution Company of Andhra Pradesh Limited
(APSPDCL), Through its Managing Director
P&T Colony, Seethammadhara,
Visakhapatnam- 530 013

Andhra Pradesh
Email: serjy@apeasternpower.com

4. Bangalore Electricity Supply Company Limited,
Through its Managing Director
Krishna Rajendra Circle,
Bangalore-560001
Email: gmpp.work@gmail.com
5. Gulbarga Electricity Supply Company Limited,
Through its Managing Director
Main Road, Gulbarga-585102
Email: aeeragescom@gmail.com
6. Hubli Electricity Supply Company Limited,
Through its Managing Director
Corporate Office, P.B. Road,
Navanagar, Hubli- 580025
Email: eera.hescom@gmail.com
7. Mangalore Electricity Supply Company Limited,
Through its Managing Director
Paradigm Plaza, A.B. Shetty Circle,
Pandeshwar, Mangalore – 575001
Email: seecoml@rediffmail.com
8. Chamundeshwari Electricity Supply Corporation Limited
Through its Managing Director
No.29, CESC Corporate Office, Hinkal,
Vijaynagar 2nd Stage, Mysuru – 570017
Email: seccesc@gmail.com
9. Tamil Nadu Generation & Distribution Corporation Limited
Through its Chairman cum Managing Director
NPKRR Malligai, 144 Anna Salai,
Chennai – 600 002

Email: cfcereg@tnebnet.org

- 10.** Kerala State Electricity Board
Through its Chairman cum Managing Director Limited
Vaidyuthi Bhawanam, Pattom,
Thiruvananthapuram – 695004
Email: trac@kseb.in
- 11.** Southern Power Distribution Company of Telangana Limited
Through its Managing Director
6-1-50, Mint Compound,
Hyderabad – 500 063, Telangana
Email: kamaluddinalikhan@gmail.com
- 12.** Northern Power Distribution Company of Telangana Limited
Through its Managing Director
2-5-31/2, Vidyut Bhawan, Nakkalgutta,
Hanamkonda, Warangal – 506 001
Email: cs@tsnpdcl.in
- 13.** Electricity Department,
Government of Puducherry (PED),
Through its Superintending Engineer Cum Head of Department
137, Nethaji Subhash Chandra Bose Salai,
Puducherry – 605 001
Email: se3ped.pon@nic.in
- 14.** Electricity Department,
Government of Goa
Through its Chief Electrical Engineer
Vidhyut Bhawan, Panaji,
Goa – 403001
Email: cee-elec.goa@nic.in
- 15.** REC Power Development and Consultancy Limited,
(Formerly REC Power Distribution Company Limited)
Through its Chief Executive Officer,
REC Corporate Head Quarters,
D Block, Plot No. I – 4, Sec – 29,
Gurugram – 122 001

Email: bhupender_g@yahoo.com

16. Central Electricity Authority
Through its Chief Engineer (PSPM)
PSPM Division, Sewa Bhawan,
Rama Krishna Puram,
New Delhi-110 066
Email: ceapspm@gmail.com
17. Central Transmission Utility of India Limited
Through its Chief Operating Officer
Saudamini, Plot No.2, Sector -29,
Gurgaon 122001
Email: swapnilverma@powergridindia.com

Counsel for the Appellant(s) : M.G. Ramachandran, Sr.
Adv.
Poorva Saigal
Shubham Arya
Ravi Nair
Nipun Dave for App. 1

Counsel on record for the Respondent(s) : Suparna Srivastava for
Res. 17
S. Vallinayagam for Res. 9

JUDGEMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this Appeal, the Appellant PSITSL (Powergrid Southern Interconnector Transmission System Limited) formerly known as Vemagiri II Transmission Limited has assailed the order dated 7th May, 2022 of 1st Respondent i.e. Central Electricity Regulatory Commission (CERC), New Delhi whereby its Petition No. 13 of 2021 has been rejected. The Appellant had claimed following reliefs:-

“(i) Admit and entertain the present petition under Section 63 read with Section 79 of the Electricity Act, 2003 for claim of the Project being affected

by Force Majeure events and Change in Law events and for providing relief under Article 11 and Article 12 respectively of Transmission Service Agreement dated 31.08.2015 as set out in the petition.

(ii) Hold that the Petitioner is entitled for time extension of 289 days on account of Force Majeure conditions.

(iii) Hold that the Petitioner shall be entitled to get the increase in cost of Project amounting to Rs 488.40 crore during execution and completion of the transmission project.

(iv) Hold that the Petitioner shall be entitled to increase in adopted annual non-escalable charges by 7.75% on account increase in aforementioned cost of project due to Change in Law.

(v) Allow recovery of filing fees and legal expenses in regard to the present Petition.”

2. The Appellant Company is a fully owned subsidiary of Power Grid Corporation of India Limited (PGCIL) and was incorporated as a Special Purpose Vehicle (SPV) by Bid Process Coordinator (BPC) namely REC Transmission Projects Company Limited (now known as REC Power Development and Consultancy Limited) (in short RECTPCL) for the purpose of developing and implementing the Transmission Project i.e. “Strengthening of Transmission System beyond Vemagiri” under the Tariff Based Competitive Bidding route. In the bid process conducted by RECTPCL, PGCIL participated and emerged as the successful bidder to establish the project on Build, Own, Operate and Maintain (BOOM) basis. In accordance with the bidding documents, the PGCIL acquired 100% share holding in the Appellant Company by executing the share purchase agreement with RECTPCL on 4th December, 2015. Subsequent to such acquisition, the name of the Appellant Vemagiri II Transmission Limited was changed to Powergrid Southern Interconnector Transmission System Limited i.e. PSITSL.

3. The Appellant is required to provide transmission service to Long-term transmission customers (LTTCs) (who have been arrayed as Respondent Nos. 2 to 14) of the project which requires establishing the transmission system comprising of transmission elements.

Sr. No.	Project Element
1.	<p>Element 1</p> <p>(a) Srikakulam Pooling Station -Garividi 400 (Quad) D/C Line</p> <p>(b) 2 number of 400 line bays at Garividi 400 kV S/s of APTRANSCO</p>
2.	<p>Element 2</p> <p>Cuddapah - Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.</p>
3.	<p>Element 3</p> <p>(a)Chilakaluripeta- Narasaraopeta (Sattenapalli)400 D/C (Quad) line</p> <p>(b) 2 number 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO</p>
4.	<p>Element 4</p> <p>Establishment of 765/400 sub- stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each</p>
5.	<p>Element 5</p> <p>Chilakaluripeta-Cuddapah 765D/C line with 2x240 MVAR switchable line reactor at both ends</p>
6.	<p>Element 6</p> <p>Vemagiri II-Chilakaluripeta 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends</p>

4. As part of the bidding process, the BPC furnished the bidding documents including the pre-signed transmission service agreement dated 31st August, 2015

(TSA) entered between the Appellant and Respondent Nos. 2 to 14 i.e. the LTTCs of the project and the bids were invited on the basis of terms and conditions contained in these bidding documents including the TSA. Under the TSA, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO) i.e. Respondent No. 9, has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations specified therein.

5. It also needs to note here that vide order dated 14th March, 2016 passed by the Learned Commission in Petition No. 300 of 2015 filed by the Appellant, transmission license was granted to it. Vide order dated 9th February, 2016 passed by the Learned Commission in another Petition No. 299 of 2015 filed by the Appellant, the Commission adopted the transmission charges payable to the Appellant.

6. As per the TSA, the project was to be completed and commissioned by February, 2019/April 2019 but the same has got delayed. According to the Appellant, the implementation of the project was affected due to various Force Majeure and Change in Law events encountered during construction of the project and its elements which resulted in delay in achieving the Commercial Operation Date (COD). It would be pertinent to reproduce the detailed table mentioning the Scheduled Commercial Operation Date (SCOD) and actual Commercial Operation Date (COD) as well as the difference between the two in respect of the various elements of the projects;

S. No.	Project Elements	Scheduled Commercial Operation Date (SCOD)	Actual Commercial Operation Date (COD)	Difference in days
1.	(a) Srikakulam Pooling Station – Garividi 400 (Quad) D/C Line (b) 2 nos. of 400 line bays at Garividi 400 kV S/s of APTRANSCO	February 2019 (38 months from effective date)	06.08.2018	Completion before SCOD
2.	Cuddapah – Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.	February 2019 (38 months from effective date)	28.02.2019	The Central Commission has held that there is a delay of 24 days in achieving COD
3.	(a) Chilakaluripeta – Narasaraopeta (Sattenapalli) 400 D/C (Quad) line (b) 2 no. 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO	04.04.2019 (40 months from effective date)	Completed and CEA approval for energisation letter dated 15.10.2018. Charged on 29/30.03.2019 and Trial Operation completed on 30.07.2019. However, Actual COD achieved on 31.07.2019 after power flow from	Completion as per schedule However, delay of 118 days in achieving actual COD after power flow from Cuddapah – C’Peta

			Cuddapah – C’Peta	
4.	Establishment of 765/400 sub-stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each.	04.04.2019 (40 months from effective date)	Completed and CEA approval for energisation letter dated 15.10.2018, 11.03.2019 and 28.03.2019. Charged on 29/30.03.2019 and Trial Operation completed on 30.07.2019 However, Actual COD achieved on 18.01.2020 due to non-readiness of Vemagiri – C’Peta line owing to Force Majeure and Change in Law conditions.	Completion as per schedule. However, delay of 289 days in achieving actual COD due to non-readiness of Vemagiri – C’Peta line owing to Force Majeure and Change in Law conditions.
5.	Chilakaluripeta – Cuddapah 765 D/C line with 2x240 MVAR switchable line	04.04.2019 (40 months from effective date)	Completed and ready for charging (CEA approval for energisation letter dated 28.03.2019. However Actual COD	Completion as per schedule. However, delay of 289 days in achieving actual COD due to non-readiness of Vemagiri

	reactor at both ends		achieved on 18.01.2020 due to non-readiness of Vemagiri – C’Peta line owing to Force majeure and Change in Law conditions.	– C’Peta line owing to Force Majeure and Change in Law conditions.
6.	Vemagiri II-Chilakaluripet a 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends	04.04.2019 (40 months from effective date)	18.01.2020	Delay of 289 days due to Force Majeure and Change in Law conditions.

7. According to the Appellant, the Force Majeure and Change in Law events that had occurred during the construction stage and during the implementation of the project which prevented discharging its obligations as per the TSA with respect to commissioning of the transmission elements in line with the project’s SCOD are as under:-

Sr. No.	Force Majeure/ Change in law Event	Time Period	Delay with overlap	Delay without overlap
1	Delays and Severe Right of Way issues due to the change in Policy regarding land compensation in the State of Andhra Pradesh	1.4.2017 to 1.8.2019	853 days	853 days

2	General Elections	11.3.2019 to 23.5.2019	74 days (overlap with S.No.1)	0 days
3	Heavy Rainfall	August to October, 2019 (Heavy Rain fall in August, September & October 2019 were 20days, 20 days & 17days, respectively)	57 days	57 days
4	Demonetization	8.11.2016 to 31.1.2017	85 days	0 days
5	Wildlife clearance obtained from National Tiger Conservation Authority (NTCA)	14.5.2018 to 15.11.2018	186 days	0 days
6	Delay due to promulgation of Goods and Services Taxes (GST) Act, 2017	1.7.2017 to 28.9.2017	90 days	0 days
Total Impact			1345 days	910 days

8. The Change in Law events that had occurred during the implementation of the project leading to increase in the project cost are stated to be :-

- “(i) Increase in Acquisition price of SPV by BPC.*
- (ii) Notification of Goods and Service Tax Act, 2017 (hereinafter referred to as ‘GST Laws’) by Government of India.*
- (iii) Notification of payment of Land compensation for tower base as well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka.*
- (iv) Additional payment towards Wild life clearance from NTCA.*
- (v) Cost Overrun on account of increase in the Project cost including funding cost and overhead cost due to Change in Law.*

9. The Learned Commission, vide the impugned order dated 7th May, 2022 has held as under :-

- i) *Declined to condone the delay of 289 days in commissioning of the element (1), (2), (3) and (6) and a delay of 24 days in respect of element (4) of the project and also rejected to declare the force majeure events claimed by PSITSL; however the appellant was held entitled to relief for Change in Law on account of increase in acquisition price for an amount of Rs. 12,23,718/-*
- ii) *Any additional expenditure incurred by it (Claimed Rs. 61.44 crore) on account of introduction of GST Laws is admissible only on submission of relevant documents to LTTCs to establish one to one correlation between the items and GST levied thereon, duly supported by invoices and Auditor's certificate.*
- iii) *Regarding payment of Land compensation (base claim of Rs. 181.72 Cr) for tower base as well as corridor of transmission line in the States of Andhra Pradesh and Karnataka, PSITSL will be entitled to claim such amount under Change in Law due to notification of Govt of Andhra Pradesh after deducting the compensation fixed by concerned State authority in similar cases prior to cut-off date. The compensation fixed by the District Collector for the period before the Notification of G.O.RT No. 83 dated 20.6.2017 in accordance with the then prevailing law in Andhra Pradesh cannot be allowed as Change in Law. The claims against compensation paid in the State of Karnataka are declined.*
- iv) *Additional expenditure of Rs. 15.47 crore towards wildlife clearance under change in law is rejected.*
- v) *Funding / financing cost and overhead costs of Rs. 214.14 crore and Rs. 15.51 respectively on account of change in law claimed by PSITSL is disallowed.*
- vi) *M/s PSITSL is liable for the delay as per the provisions of TSA.*
- (vii) *M/s PSITSL is directed to return the transmission charges received from the LTTCs/beneficiary, if any from the date of its declared COD till the COD approved in the instant order. CTU/PGCIL is directed to raise the bills on PSITSL accordingly and adjust such charges from future bills of PSITSL.*

10. Aggrieved by the above noted directions/findings of the Learned Commission in the impugned order, the Appellant Company has approached this Tribunal by way of the instant appeal. We may note that the reply to the grounds of the appeal have been filed only on behalf of Respondent No. 9.

11. We have heard Learned Senior Counsel appearing on behalf of the Appellant and the Learned Counsels appearing on behalf of Respondent Nos. 9 & 17. There has been no representation on behalf of the remaining respondents.

12. It was vehemently argued by the Learned Senior Counsel appearing on behalf of the Appellant Company that the transmission project comprising of 5 elements in all as well as most part of element number 6 except a stretch of 40 kilometers was completed on or before the (COD) and the delay in respect of the said stretch of 40 kilometers of element number 6 in Vemagiri-II Chilakaluripeta 765 D/C transmission line was due to Force Majeure and Change in Law conditions which could not have been anticipated by the Appellant Company and were beyond its control. According to the Learned Senior Counsel, the Force Majeure and/ or Change in Law events which had an impact on the completion of the element number 6 of the transmission project are as under :-

S. No.	Force Majeure / Change in law Event	Time Period	Delay with overlap	Delay without overlap
1.	Change in Policy regarding land compensation in the State of Andhra Pradesh resulting in consequent delays and severe local unrest, and law and order	01.04.2017 – 01.08.2019	853 days	853 days

	and Right of Way issues			
2.	General Elections	11.03.2019 – 23.05.2019	74 days	0 days
3.	Heavy Rainfall	August – October, 2019 (Rain fall in August, September & October 2019 were 20, 20 & 17 days respectively)	57 days	57 days
4.	Wildlife clearance obtained from National Tiger Conservation Authority (NTCA)	14.05.2018 to 15.11.2018	186 days	0 days
5.	Delay due to promulgation of Goods and Services Taxes (GST) Act, 2017	01.07.2017 to 28.09.2017	90 days	0 days
Total Impact			1260 days	910 days

13. Further submissions made by the Learned Senior Counsel can be summarized and categorized under following heads :-

A. Force Majeure/Change in Law events :

(i) The Appellant had arranged and aligned the Project to be commissioned by the SCOD in all respects and had proceeded on right earnest which is evident from the fact that except for the small stretch of 40 kms in Element 6, the

remaining 960 kms of the total Project had been undertaken and completed by the SCOD.

(ii) The balance 40 km of stretch in Vemagiri-II – Chilakaluripeta 765 D/C line (Element No. 6) is in the Krishna District of Andhra Pradesh comprising of 3 Mandals viz, Veerulapadu, Nandigama, and Chandarlapadu, as under:

Activity	Total	Completed	Work Held up
Foundation (Nos)	99	71	28 Nos. (9 in Veerulapadu, 2 in Nandigama and 17 in Chandarlapadu Mandals)
Erection (Nos)	99	41	58 Nos. (12 in Veerulapadu, 10 in Nandigama and 36 in Chandarlapadu Mandals)
Stringing (km)	40	0	40 km. (17 in Veerulapadu, 8 in Nandigama and 15 in Chandarlapadu Mandals)

(iii) The construction works in the above places were obstructed by the local landowners/farmers who were not willing to accept the compensation notified by the District Collectors and inspite of the efforts of the State Administration, they were not ready to allow construction of work and were causing serious law and order problems. The State Government/ Local Administration was also unable to clear the passage in time.

(iv) As on the cut-off date provided for Change in law events under Article 11 of the TSA, there were no guidelines/ notification for payment of land compensation for right of way for laying down the transmission lines in the State.

However, the Ministry of Power, Government of India, issued the Guidelines on 15th October, 2015 making therein provision for payment of additional compensation towards tower base area (between four legs) impacted severely due to installation of tower/pylon structure; as well as towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line in addition to the compensation towards normal crop and tree damages. In pursuance of these guidelines, initially, the District Collectors in the States issued orders, and subsequently, the State Government also notified the guidelines dated 20th June, 2017. With regards to the additional compensation to be paid for Right of Way, the changed process required to be undertaken after introduction of the above Policies/Orders involved the following:-

- (a) Marking of the entire land in the line corridor where transmission line is passing through and identification of individual land pieces and their area;
- (b) the details of land owners to be identified with the help of land records officials of the Government of Andhra Pradesh and Karnataka;
- (c) the area coming under each owner to be calculated and verified by land records officials;
- (d) the details of extent of land & ownership submitted to revenue authorities for certification of ownership and amounts payable; and
- (e) processing the proposals for compensation and disbursement of the same amongst the land owners.
- (v) The above pre-conditions imposed for starting the work in the corridor/tower location made the entire process time consuming and cumbersome. The Appellant, through its prudent practices and constant efforts

managed to complete the entire work in all the six (6) Elements by April, 2019, except for a small part in Element No 6.

(vi) The Appellant was always ready and willing to pay the transmission corridor compensation in terms of the above Guidelines and Orders of the District Collector but the land owners were not allowing the placement of towers in their respective lands and were demanding much higher compensation. This precarious situation ultimately led to an impasse in completing the balance works in the 40 km stretch.

(vii) The Appellant made all efforts to resolve the impasse by holding numerous meetings with the local administration. The matter was taken up at the level of Principal Secretary, and Chief Secretary of the State of Andhra Pradesh.

(viii) The Appellant even sought the assistance from the LTTCs for resolving the issues in the 40 km stretch that was affecting the progress of the line / Project. The Appellant took up the matter with the Southern Regional Power Committee wherein all the LTTCs were also present. The matter was also taken up with highest authority at PRAGATI (Pro-Active Governance and Timely Implementation) which is a three-tier system (PMO, Union Government Secretaries, and Chief Secretaries of the States) to inter-alia monitor /review projects and to resolve issues. Letters dated 23rd September, 2016, 19th May, 2017, 07th July, 2017 written by the Appellant to the LTTCs and letters dated 22nd January, 2018, 23rd January, 2018, 6th February, 2018, 25th May, 2018, 31st May, 2018, 12th June, 2018 and 9th November, 2018 written by the Appellant to Sub-Collector, Vijayawada/ District Magistrate, Krishna District/ Joint Collector,

Krishna District, Chief Secretary, Govt. of Andhra Pradesh have been referred to in this regard.

(ix) In the letter dated 30th April, 2019 whereby the Principal Secretary, Government of Andhra Pradesh forwarded the Minutes of Meeting held by him on 23rd April, 2019 regarding the said Element No. 6, mentions that the work in question has been stopped by the villagers as they have been demanding higher compensation than what is eligible as per the guidelines and due to the stoppage of above work, the entire transmission line is unavailable for flow of power from the Eastern region to the Southern region. It is also stated in the matter that to facilitate early start of work, PGCIL (Appellant herein) has requested for a demand letter so that the compensation could be deposited with district Collector, Krishna who has promised to submit the details with the next three days so that PGCIL would make the necessary payment to district administration.

(x) In the letter dated 3rd September, 2019 from Southern Regional Power Committee (SRPC) contained the Minutes of Meeting of 36th Meeting of the Committee held in Chennai on 12th July, 2019, it is stated that completing the line by paying high compensation would have ramification not only on POWERGRID; within the region but all other utilities would also get affected.

(xi) It is clear that the Appellant has proactively approached every institution/authorities to resolve the impasse and had been running from pillar to post for scheduled commissioning of the project.

(xii) The impact on account of the above force majeure event is 910 days as a result the delay in implementing the project and the delay ought to having been condoned by the Central Commission. However, the Central Commission has erroneously held that the issues relating to ROW and delay has arisen on

account of failure on the part of the Appellant to settle the land compensation with the land owners. The Learned Commission has not considered that the State Government instrumentality has the powers to determine the quantum of land compensation whereas the Appellant has no such authority and is bound to comply with the directions issued by the State Government in this regard.

(xiii) The impossibility of the situation impacting the work is clearly established by the fact that the collector and the Superintendent of Police of Krishna District, Andhra Pradesh have themselves acknowledged and confirmed at the Meeting held by Chief Secretary on 23rd April, 2019 that it would not be possible to lay the Towers even with police protection as it may lead to severe Law and Order problem.

(xiv) The Impugned Order is contrary to the earlier decision of the Central Commission dated 24th January, 2019 in Petition No. 248/MP/2016 in the matter of Kudgi Transmission Limited -v- Bangalore Electricity Supply Company Ltd., wherein the Central Commission had considered and allowed claims in similar circumstances wherein the land owners were seeking higher compensation. Hence, the Learned Commission has failed to maintain consistency and uniformity in its decisions.

(xv) The change in policy regarding land compensation in the State of Andhra Pradesh and Karnataka also qualifies as a change in law event within the meaning of Article 12 of the TSA. The increase in cost of the project cost during the period of delay consequent upon Change in Law events from April 2019 to COD (January 2020) is as under:

Sl. No	Description	Amount (Rs. Crores)
(a) Payment towards land compensation		
a	Payment towards land compensation	171.64
b	Overheads towards (a)	10.11
c	Funding cost towards (a), (b)	23.42
(b) Increase in cost of equipment / services during the period April 2019 to COD		
d	Payment towards cost of equipment / services	10.08
e	Overheads towards (d)	0.59
(c) Cost towards the un-commissioned elements from April 2019 to COD		
f	Funding cost	174.87
g	Overheads	0.53
Total (a) + (b) + (c)		391.24

(xvi) The Learned Commission has wrongly held that requirement of payment of land compensation existed prior to the cut-off date i.e., 2nd October, 2015, primarily, based on the order dated 30th August, 2016 issued by the District Collector, West Godavari, Eluru, Government of Andhra Pradesh in regard to

another project of different utility. These findings of the Learned Commission are absolutely erroneous for the reason that prior to the issuance of the Guidelines dated 15th October, 2015 by the Government of India, the Transmission Licensees were only required to pay compensation towards normal crop and tree damages in terms of Section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of the Indian Telegraph Act, 1885 and there was no provision for award of compensation for the tower base area and towards diminution of the land value due to laying of transmission line.

(xvii) The Learned Commission has failed to consider that the imposition of requirement for obtaining any consents, clearances and permits (which was not the case earlier) is considered as Change in Law under Article 12 of TSA. The definition of the term 'law' in Article 1 of the TSA read with the definition of 'Indian Government Instrumentality' clearly envisaged that any order passed by the District Authorities which are being instrumentality of the State constitutes a change in law event. In this regard, reference has been made to the decision dated 25th February, 2023 of the Learned Commission itself in Petition No. 164/MP/2021 in the matter of Kohima Mariani Transmission Limited -v- Assam Electricity Grid Corporation Limited.

(xviii) The reliance placed by the Learned Commission on the order dated 11th March, 2019 passed in Petition No. 199/MP/2018 in the case of Maheshwaram Transmission Limited -v- Tamil Nadu Generation and Distribution Corporation Limited is erroneous for the reasons that in the said case, the order dated 08th August, 2014 relating to the land compensation and tree/crop compensation was passed by the Collector and District Magistrate, applicable to all transmission licensees laying down the 400 kV Power Transmission lines and was not a

specific order for a particular line or project whereas in the instant case the orders notified by the District authorities were specific to a line / project and were not applicable to all Transmission Licensees in the district.

B. Heavy Rainfall

(i) During the course of arguments, the Appellant's Counsel did not press heavy rainfall as one of the reasons causing delay in the completion of the Project.

C. General Elections

(j) During the course of arguments, the Appellant's Counsel did not press General Elections as one of the reasons causing delay in the completion of the Project.

D. Wildlife clearance obtained from National Tiger Conservation Authority (NTCA)

(i) The element No. 5, Chilakaluripeta - Cuddapah 765 D/C line was traversing through the forest area in Proddatur and Nellore divisions in the State of Andhra Pradesh and accordingly, the Appellant applied on 18th April, 2016 for permission to undertake survey of the forest area in accordance with the established procedure of the forest department. The said permission was granted on 30th April, 2016 and the Differential Global Positioning System survey (**DGPS**) activity was undertaken in association with the District Forest Officer, Proddatur. The survey was accepted by the Principal Chief Conservator of Forests (PCCF), Guntur on 29th May, 2017 and thereafter, the Appellant

submitted the forest proposal through online portal of the Ministry on 31st May, 2017 for diversion of forest land admeasuring 74.486Ha in Proddatur and Nellore divisions. The proposal was accepted and forwarded to the District Forest Officers (DFOs) of Proddatur and Nellore divisions respectively on 5th June, 2017 for further necessary action. The DFO of Nellore division proceeded with approval process but in case of the forest clearance of Proddatur division, it was informed by the DFO that the Wildlife clearance is required since the area falls under the Tiger corridor. However, even upon enquiries about the matter from the DFO, the requisite notification declaring the areas as Tiger corridor, could not be provided to the Appellant. Since there was no notification, Principal Chief Conservator of Forests, Guntur approached National Tiger Conservation Authority (NTCA), New Delhi seeking applicability of wildlife clearance in the absence of any notification. The NTCA directed on 12th March, 2018 that the wildlife clearance is required to be obtained.

(ii) In the meanwhile, to expedite the project timeline, the Appellant had filed an application for wildlife clearance also and the same was intimated to the Respondent Nos. 2 to 14 i.e. the LTTCs vide letter dated 31st January, 2018. They were informed that in case wild life clearance also is to be obtained, the project is likely to get delayed beyond the scheduled completion date and may attract additional financial implications. Thus, the notice under Change in Law was issued’.

(iii) The proposal of the Appellant for wildlife clearance was processed by the NTCA and the recommendations of the NTCA, Delhi were forwarded to National Board for Wildlife on 12th June, 2018. The Board accorded its clearance and subsequently Stage-I forest clearance from Regional Ministry of Environment, Forest and Climate Change (MoEFCC) was issued on 4th October, 2018.

Thereafter, the working permission was granted by DFO on 15th November, 2018.

(iv) In the absence of any notification declaring the area in question as wildlife corridor, it was not possible for the Appellant to ascertain the requirement of wildlife clearance unless and until it is confirmed by the Forest Authorities which would be known only during the detailed survey. On account of the said new requirement, an amount of Rs. 15.47 Crores was paid by the Appellant to the Forest Department in accordance with the invoices raised by the department towards wild-life clearance. This clearly constituted as Change in Law event but has been completely mis-construed by the Learned Commission.

E. Increase in cost to be allowed on account of Change in Law Events and Force Majeure Events

(i) The Learned Commission has erred in holding that the Appellant is not entitled to Interest During Construction (IDC) and carrying cost incurred on account of change in law events and force majeure events. These findings of the Commission are contrary to the judgments passed by this Tribunal in the matter of Bhopal Dhule Transmission Company -v- Central Electricity Regulatory Commission and Ors – Appeal No. 208 of 2019 decided on 20th October, 2020, NRSS XXXI (B) Transmission Limited -v- Central Electricity Regulatory Commission and Ors. in Appeal No. 129 of 2020 decided on 3rd December, 2021 and Darbhanga Motihari Transmission Company Limited -v- Central Electricity Regulatory Commission and Ors. in Appeal No. 276 of 2021 decided on 3rd December, 2021.

14. Learned Counsels appearing on behalf of Respondent Nos. 9 & 17 have denied all contentions and submissions advanced on behalf of the Appellant in entirety and supported the impugned order of the Learned Commission saying that they do not suffer from any infirmity. It is argued that the Force Majeure/Change in Law events, under which the Appellant is taking shelter, were well within its knowledge and could have been easily anticipated as well as avoided by employing prudent practices. It is submitted that the Learned Commission has rightly held that the circumstances leading to delay in the project, as put forward by the appellants do not constitute Force Majeure/Change in Law events and thus, there existed no good ground for condonation of delay. Accordingly, dismissal of the appeal was sought.

15. We have considered the rival submissions made by the Learned Counsel for the parties and have perused the impugned order of the Learned Commission as well as the entire record.

Discussion on “Force Majeure” events :

16. The term “Force Majeure” originates from the Code Napoleon of France that translates to mean “Superior Force’ or ‘Greater Force”. This would indicate a drastic or a fundamental change in the substance of the contract that is brought about by an event which was neither anticipated by the parties nor under their control, resulting in non-performance of the contractual obligations.

17. The term “Force Majeure” has been defined in Blacks Law Dictionary as “an event or effect that can neither be anticipated nor controlled”. Force Majeure is a contractual provision to deal with uncertain situations due to which contractual obligations could not be performed and these situations cannot be

pre-saged at the time of entering into the contract. Generally, a Force Majeure clause provides a temporary reprieve to the parties from performing their obligations under the contract if the events mentioned in the clause are satisfied.

18. Although the term “Force Majeure” does not find mention in any provisions of the Contract Act, 1872, its doctrine can be found embodied in Section 32 of the Act which renders a contract void where an event upon which performance of the contract is contingent, becomes impossible. In order to invoke the doctrine of Force Majeure, the party doing so shall have to establish ;

- (i) There is a valid and subsisting contract between the parties.
- (ii) Some part of the contract is yet to be performed.
- (iii) The contract has become impossible to perform.

19. The consequences of the Force Majeure event will have to be ascertained and determined to find out whether it renders the contract altogether impossible, unlawful or impracticable to perform and thereby frustrates its performance. Whether it is established that the conditions have materially and substantially affected the parties as well as their obligations and where there is no way to perform the contract during the existence of such conditions, the contract is annulled and both the contracting parties are discharged of their subsequent obligations. Under these circumstances, neither party has right to sue the other party for breach of such contracts.

20. In India, the Courts follow the contracts strictly in terms of the Force Majeure clauses. In a case where the contract must be rescinded on account of Force Majeure events, the burden to prove is on the party claiming it. Unless there is compelling evidence that a contract cannot be performed under any

circumstances, the Courts do not favour party resorting to frustration of contract and its termination.

21. The concept of Force Majeure had come up before the Hon'ble Supreme court in **Satyabrata Ghose vs Mugneeram Bangur & Co., 1954 SCR 310** in which it was held that the word "impossible" has not been used in the sense of physical or literal impossibilities. The determination of whether Force Majeure event has actually occurred does not centre around its impossibilities alone. A mere "impracticality of performance" with regards to such matter of the contract will also suffice. It was held that when an untoward event or unprecedented change of circumstances impacts the very foundation of the contract between the parties, this event will be considered as Force Majeure and the contract, therefore, would become impossible to perform.

22. Generally, Force Majeure Clauses are applicable without any restrictions, but at the same time, a party cannot hide its own negligence and malafide intention behind this clause. So where the non-performance is caused by usual and natural consequences and not by uncertain consequences which are beyond the control of the parties, the Force Majeure clause cannot be enforced in those causes. Further, the Force Majeure clause can also not be invoked simply because the contract has become financially and commercially more difficult to perform. The party taking shelter under the Force Majeure clause needs to convince the Court that the Force Majeure event was beyond its control and the event could not be stopped even after ensuring due diligence and taking all possible steps. Broadly speaking, in order to qualify as a Force Majeure event, it must pass following triple test :-

- (i) the event projected as Force Majeure should be unpractical and unforceable (i.e. unpracticality);

- (ii) the event must make the execution of the contractual obligations impossible (i.e. impossibility); and
- (iii) the event must not be created on account of default or negligence of the party claiming it (i.e. externality).

23. In the instant case, the Appellant has claimed relief under Article 11 of the Transmission Service Agreement (TSA) dated 31st August, 2015 which is the Force Majeure clause of the agreement. The same is reproduced hereunder :-

“A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

(a) Natural Force Majeure Events:

act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

(b) Non-Natural Force Majeure Events:

i. Direct Non–Natural Force Majeure Events

- *Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*
- *the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/*

operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or

- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

ii. Indirect Non - Natural Force Majeure Events

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*
- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*
- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

24. Article 11.5 of the TSA envisages that the affected party i.e. the Appellant shall notify the other party of the event of Force Majeure as soon as reasonably practicable but not later than seven days after the date on which such party know or should reasonably have known the commencement of the Force Majeure event. The Learned Commission, vide the impugned judgement has held that the Appellant had complied with the requirement of the said Article 11.5 of the TSA regarding prior notice to the LTTCs about the occurrence of Force Majeure events, before approaching the Commission.

Compensation Issue & Farmers' stir as "Force Majeure" event

25. According to the Appellant, the guidelines issued by the Ministry of Power, Govt. of India dated 15th October, 2015 and the subsequent order dated 20th June, 2017 issued by the Govt. of Andhra Pradesh providing for compensation to the land owners for the tower base area (between four legs) as well as towards diminution of land value in the width of the Right of Way (ROW) corridor due to laying of transmission line in addition to the compensation towards normal crop and tree damages, were the main factors responsible for the delay in completion of the project. It is further stated by the Appellant that the remaining 40 kilometers stretch of Element 6 passing through Krishna District, Andhra Pradesh which has remained to be completed, faced numerous ROW as well as severe law and order issues created by the land owners/local population who were not ready to receive the compensation quantified by the District Administration and demanded higher compensation which contributed towards the delay in its completion. Thus, according to the appellant, this ROW issue created due to unanticipated stir of farmers constitutes a 'Force Majeure' event in terms of Article 11.3 of the TSA thereby entitles it to relief as per Article 11.7 of the Agreement.

26. The Learned Commission has, in the impugned judgement, held that the Appellant ought to have factored in and taken into account the time required in the process for determination/payment of compensation to the land owners which used to be done prior to the issuance of guidelines dated 15th October, 2015, and by following prudent practices it could have timely addressed and resolved the ROW issue relating to the insufficiency of the land compensation claimed by the land owners.

27. It is not in dispute that prior to the guidelines issued by the Ministry of Power, Govt. of India on 15th October, 2015, the compensation used to be

determined and granted to the land owners towards normal crop and tree damages only during the laying of transmission lines. The guidelines dated 15th October, 2015, which were adopted by the State Government vide notification dated 20th June, 2017 provided for further compensation to the land owners for tower base area and towards diminution of land value in the width of the ROW corridor due to laying of transmission line. It also cannot be disputed that the process for determination of further compensation and its payment to the land owners in terms of these guidelines involved further steps i.e. marking of the entire land in the land corridor where transmission line is passing through and identification of the individual land pieces as well as their area, identification of the land owners with the help of land records officials of the Govt. of Andhra Pradesh/Karnataka, calculation of area coming under each tower and its ownership to be verified from the land records officials, the details of the ownership and the amounts payable to the land owners to be submitted to the Revenue Authorities for certification and processing of the proposals for disbursement of compensation to the land owners. We feel in agreement with the contentions of the Appellant in this regard that the said entire process was very time consuming and cumbersome and could not have been anticipated by them at the time of signing the TSA.

28. From the various communications addressed in this regard by the Appellant to various Government Authorities as well as the LTTCs, of which the Learned Commission had also taken note in the impugned order, we find that the construction of the transmission line was stopped by the land owners on 24th February, 2017 who were demanding excess payment towards compensation for the land affected by the transmission line and this created a huge law and order problem for the District Administration also and the Appellant was making all its efforts to resolve the impasse. We feel it appropriate to reproduce

hereunder the relevant extracts of some of the correspondences exchanged between the Appellant and the District Administration/LTTCs:-

“Letter dated 22nd January, 2018 from the Appellant to Collector and District Magistrate, Krishna, Andhra Pradesh

“.....During the construction, the work was stopped by the land owners stopped the work on 24.02.2017, stating that land compensation orders from District collector, Krishna. Accordingly District administration issued land compensation order vide ref no: RT10MIS(PG)/3/2016-JA(H6)-KCO DT 01.04.2017.

After resuming the works on 13.05.2017, again the landowners are stopped the works demanding payment for the corridor and revision of compensation order issued by the District Collector. Govt of AP issued orders vide Go. RT No:83 dt 20.06.2017 towards corridor compensation.

Again we have tried to resume the work, but the land owners are not allowing and demanding more compensation.

Total 111 (107 in Land + 4 in River) locations are situated in the Mylavaram, Veerulpadu, Nandigama & Chandrelapadu Mandals of Krishna District. Out of 111 loc we have completed 76 Locations Foundations and 46 towers erected with smoothly and we have paid crop and tree compensation for the damages for 70 foundations & 42 erected locations. Now we are facing major resistance from the balance 31 loc land owners since March'17. We have tried to convince the land owners but they are reluctant to allow for carrying work.

Hence, it is kindly requested to advise/oblige with necessary orders to the concerned Revenue and Police Authorities to cooperate for resolving ROW and to provide security for our men, materials during execution of the above important and critical project as the project has to be completed by May'18.”

Letter dated 23rd January, 2018 from the Appellant to Sub-Collector, Vijaywada, Andhra Pradesh

“Subsequent to the directions of your good offices, Tahasildars of the respective Mandals have conducted meetings with the land owners on various occasions and appealed the land owners for allowing the construction works of the above line. However, the land owners are insisting to enhance the valuation considered for tower base compensation. However we could complete the foundation at Loc. 80/0, near Peddapuram village, Veerulapadu Mandal by taking the protection

from police in the month of December'17. Barring the above work, we could not advance any progress further.

It is further to inform that the work is progressing well in the other areas of the above line and to enable the commissioning of the line as scheduled to ensure the availability of adequate power in around Amaravathi area, it is necessary to resolve the Right of way issue of the above locations immediately.

In view of the above submissions, we earnestly request you to please arrange to resolve the Right of way issue in the above Mandals to enable us to effectively utilize the ensuing season for completing the line as scheduled.”

Letter dated 6th February, 2018 from the Appellant to Collector & District Magistrate, Krishna District, Andhra Pradesh

“...During the construction, the work was stopped by the land owners stopped the work on 24.2.2017, stating that land compensation orders from District Collector, Krishna. Accordingly, the District administration issued land compensation order vide ref. no. RT10MIS(PG)/3/2016-JA(H6)-KCO DT 01.04.2017. Subsequent to the above order, work has progressed without any much obstruction except in Veerulapadu, Nandigama and Chandralapadu Mandals, POWERGRID is making compensation payments on priority as per the above orders.

After resuming the works in above Mandals, again the landowners are stopped the works demanding payment for the corridor and revision of compensation. Further, Govt. of AP looking into issues has Go. RT. No. 83 dt 20.06.2017 towards corridor compensation.

Again we have tried to resume the work, but the land owners are not allowing and demanding more compensation and threatening with dire consequence if the work started.

At present we are not having any work front in the above Mandals, in view of the tight schedule of completion in May'18 to provide supply to CRDA, it is kindly requested to advise/ oblige with necessary orders to the concerned Revenue and Police authorities to cooperate for resolving ROW and to provide security for our men, materials during execution of the above important and critical project as the project has to be completed by May'18.....”

Letter dated 9th November, 2018 from the Appellant to Chief Secretary, Government of Andhra Pradesh

“Dist. Collector, Krishna Dist. had issued orders for compensation in April'2017 and the compensation is being paid as per the DC orders. With this it was expected that works can be taken up in full swing and completed. However, when

we mobilized to recommence works, works were totally stopped yet again demanding huge revision in compensation.

Since last June to this day several rounds of meetings have been held from Principal Secretary (Energy), DC/JC Krishna Dist. and revenue authorities. The chronology of several meetings and attempts to recommence works are enclosed at Annexure-I. Again in the month of October 18, yet another attempt to recommence works were made, but stopped yet again. It is reliably understood, some leaders are directly/indirectly involved in the stoppage of works. The ROW issue is being brought to the knowledge of higher officials regularly in the monthly reports.

Respected Sir, the works of transmission lines are being executed almost in entire country based on the guidelines of Govt. of India, Ministry of Power, and specific Govt. orders of concerned state. Most of the projects in Andhra Pradesh too are completed/under execution of such orders issued by the District Collectors.

We are losing a very good working season and the executing agency has requested for short closing the contract, since their machinery and manpower is idle since last February. However, without completing this line for Vemagiri-Chilakalurpeta, power flow into Andhra Pradesh, Karnatka and Tamil Nadu is not possible. Further the substation at Chilakalurpeta and line to Narasaraopet (APTRANSCO) is ready and once this line is complete, considerable power flow into AP (CRDA area) and south grid.

Requesting your kind self to use your good offices to kindly intervene and facilitate recommencement of works in Krishna Dist.”

29. These letters addressed by the Appellant to various Government authorities clearly indicate that the land owners whose lands were affected by the construction of the transmission line were demanding higher compensation than what was payable to them as per the Government guidelines and had forcibly stopped the construction of the transmission line as well as had created serious law and order issues for the District Administration also. These issues were acknowledged by the Chief Secretary, Andhra Pradesh also in the meeting held by him on 23rd April, 2019, the minutes of which is as under :-

Minutes of Meeting held by Chief Secretary, Andhra Pradesh on 23.4.2019

“ii) 765 kv Vemagiri - Chilakaluripeta DC line being taken up by PGCIL

It was informed by CGM, PGCIL that PGCIL has taken up 765 kv Inter Regional High Power Transmission Corridor to facilitate flow of power of 4500 MW from Odisha to the Southern States. The above Transmission Line is passing through the State of Andhra Pradesh in which the entire line has been commissioned except for a distance of

40 KM in which 111 Towers are there in the villages of Nandigama, Chadarlapadu and Veerulapadu. The above work has been stopped by the villagers as they have been demanding higher compensation than what is eligible as per G.O.Ms.No.83. Due to the stoppage of above work, the entire transmission line is unavailable for flow of power from the Eastern region to the Southern region. The issue is being regularly reviewed by the PMG constituted by Gol.

The District Collector, Krishna, has informed that the above land comes under the CRDA region and very close to the national highway as well and the value of the land has gone up abnormally due to the proximity to the national highway and the capital city. As such the farmers are not willing to accept the compensation presently paid by PGCIL. Collector, Krishna, further informed that he, along with Sub Collector, Vijayawada, have conducted a number of meetings with the farmers and they have convinced the farmers for a certain reasonable price for Tower Foundations. Similarly, for transmission corridor the rate would be as per G.O.Rt.No.83 and land value as per proceedings dated 1.4.2017 already approved by Collector. Collector and S.P., Krishna, further informed that it would not be possible to lay the Towers even with police protection as it may lead to severe Law and Order problem. Further, they informed that the rate is negotiated by district administration may kindly be considered by PGCIL so that the work can be taken up immediately without any Law and Order problem and also doing justice to the farmers. After detailed discussions, PGCIL have agreed to put up the proposal for the consent of the management in the interest of completing the Project of national importance at the earliest. To facilitate early start of work, PGCIL requested for a demand letter so that the compensation could be deposited with district Collector, Krishna. Collector, Krishna, has promised to submit the details with the next three days and PGCIL would make the necessary payment to district administration. On receipt of the amount, the district administration would convince the farmers and permit the PGCIL to take up the work at the earliest.”

30. We wonder how the Appellant could have timely addressed and resolved the said ROW issue which had become a serious law and order problem even for the District Administration also. The Appellant had all along been willing to pay the compensation to the affected land owners which was to be determined by the District Magistrate. The Appellant had no role at all in the determination of the compensation. It was for the District Administration to either pacify the land owners and persuade them to accept the compensation to which they were eligible as per the Government guidelines and to allow the construction of the transmission line or to enhance the compensation as per their demands to be paid by the Appellant. Perusal of the minutes of the meeting dated 23rd April, 2019 held by the Chief Secretary, Andhra Pradesh, reproduced herein above, would show that the Collector, Krishna District along with Sub-Collector, Vijayawada had conducted the number of the meetings with the farmers and had convinced them for a certain reasonable compensation for tower foundations and the Appellant had agreed to put up the proposal for said enhanced compensation before its management so that the project is completed at the earliest. The minutes further shows that the Appellant had even offered to deposit the compensation amount with the District Collector, Krishna to be disbursed to the farmers. Therefore, it would be highly imprudent as well as unconscionable to say that the Appellant had not employed the prudent utility practices to resolve the ROW issue which had arisen on account of agitation launched by the farmers. To say that the Appellant had failed to settle the land compensation issue would be absolutely incorrect for the reason that it was not for the Appellant to determine the compensation amount, it was the job of District Collector. Further, it also needs to be considered that the Appellant has completed the entire stretch except the small stretch of 40 kms of the transmission system. In case, the Appellant is responsible in delaying the payment of compensation, it should have

been the case for the entire transmission system and not just for a small portion of the transmission system.

31. Hence, we are unable to accept the findings of the Learned Commission on this issue. It is manifest that the delay in completion of the construction of the transmission line had occurred on account of the agitation of the farmers who were not willing to permit the Appellant to carry on the construction of the transmission line, and the situation was neither within the control of the Appellant nor could have been anticipated by it at the time of execution of the TSA. Such law and order situation created by the farmers had made it not only difficult but also impossible for the Appellant to complete the construction of the transmission line and therefore this untoward as well as unprecedented event shall have to be considered as Force Majeure event which prevented the Appellant from fulfilling its obligations under the TSA. It needs to be appreciated that even the highest Government Authorities failed to control the situation. Thus, the Appellant had become entitled to claim relief under Article 11.7 of the TSA and the delay of 289 days occasioned in the completion of the construction of the element 6 of the transmission line on account of said "Force Majeure" event is liable to be contained.

32. We may also note that the Learned Commission has in similar situation condoned the delay in completion of the transmission line in the matter of Kudgi Transmission Ltd. V/s. Bangalore Electricity Supply Company Ltd. to the Petition No. 248/MP/2016 decided on 24th January, 2019. The relevant paragraph of the judgement passed in the said petition is reproduced herein :-

"61. From the sequence of events narrated above, it is evident that the works of Elements 2 and 3 of the Petitioner were affected even after the SCOD (31.12.2015). It is noted that there has been continuous obstruction/resistance

from the landowners in various locations/villages including Bijapur, Bellary district, Hagari Bommanahali Taluk, Tumkur and Ramanagara district which resulted in the stoppage of construction activities in these locations. Despite the Petitioner obtaining approvals of the Railways and National Highway Authorities to enter the private premises for the construction work of the Project and also making compensation payment in terms of the orders of the Deputy Commissioner, it was unable to proceed with the construction work of the transmission lines due to serious law & order and ROW issues. The Petitioner in our view, had taken reasonable efforts to mitigate the delay by seeking help and cooperation of the District authorities to permit the construction work and police protection for its personnel working in these lines. In addition to this, the ex-parte orders of injunction by Court, the hearings before the District authorities (Deputy Commissioner & District Magistrate) for compensation payments to landowners and obtaining clearances for ROW had also contributed to the delay in the completion of the work beyond the SCOD of Elements 2 and 3. These events which resulted in delay in completion of the construction work of Elements 2 and 3 are events of force majeure which have affected the execution of the Project within the SCOD. Therefore, the Petitioner is entitled for relief under force majeure.

33. Thus, the Learned Commission has also failed to maintain the consistency and uniformity in its decisions which is against the principles of equity and natural justice.

34. **Other Force Majeure events agitated by the Appellant**

The other events like heavy rainfall, General Elections, Wild Life Clearance obtained from National Tiger Conservation Authority have not been pressed by the Appellant during the course of the hearing, as such are not considered as reasons for delay.

Delay due to Change in Law event and claim of the Appellant towards increase in adopted non escalable charges by 7.75% on account of increase in cost of project due to Change in Law events.

35. What constitutes Change in Law has been stated in Article 12.1.1 of the TSA which is reproduced hereunder :-

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any income to the TSP:

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- *any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;*
- *any change in the Acquisition Price; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

36. It is crystal clear that the issuance of guidelines dated 15th October, 2015 by the Govt. of India which were adopted by the State Government vide notification dated 20th June, 2017 qualified as a Change in Law event as per Article 12.1.1 of the TSA. It is true that there was requirement of payment of land compensation even prior to the issuance of these guidelines of the year 2015 but it cannot be gainsaid that these guidelines made a significant change in the

parameters for determination of the compensation payable to the farmers upon whose land the towers for the transmission lines were to be erected. As already noted in foregoing paragraphs of the judgement that these guidelines provided for further compensation to the land owners for tower base area and towards diminution of land value in the width of ROW corridor due to laying of transmission line which involved various further steps. Prior to the issuance of these guidelines, the transmission licensees were only required to pay compensation towards normal crop and tree damages in terms of Section 67 & 68 of the Electricity Act, 2003 read with Section 10 & 16 of the Indian Telegraphic Act. There was no provision for award of compensation for the tower base area and towards diminution of the land value due to laying of transmission lines. Therefore, patently there was a notable change in the process for determination of compensation payable to the farmers by way of these fresh guidelines, which tantamount to Change in Law event in terms of the said clause 12.1.1 of the TSA.

37. The Appellant has claimed relief on this ground as envisaged under Article 12.2 of the TSA which is reproduced hereunder :-

“12.2 Relief for Change in Law

12.2.1 During Construction Period :

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

- For every cumulative increase/decrease of each Rupees Nineteen Crore Seventy Two Lakh Only (Rs 19.72 Crore) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.

12.2.2 During the Operation Period:

During the Operation Period, the compensation for any increase/decrease in revenues shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if the increase/decrease in revenues or cost to the TSP is in excess of an amount equivalent to one percent (1%) of Transmission Charges in aggregate for a Contract Year.

12.2.3 *For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long-Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.*

12.2.4 *The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”*

38. Upon taking into consideration, the rival contentions of the parties on this issue, the Learned Commission has observed/held as under :-

“All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each Rupees Nineteen Crore Seventy-Two Lakh Only (Rs.19.72 crore) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be supported by CA certificate, and accordingly, shall be entitled to corresponding increase in Non- Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.”

39. It cannot be disputed that the notification dated 15th October, 2015 by the Govt. of India which was adopted by the State Government vide notification dated 20th June, 2017 is a Change in Law event as per Article 12.1.1 of the TSA, any mandatory direction by Government instrumentality is a change in law event. Thus, the impact of such a change in law event under the TSA has to be

accounted for. The Appellant is entitled to the appropriate compensation in this regard.

Claim of the Appellant towards increase in the cost of Project amounting to Rs. 488.40 crores during execution and completion of the Transmission Project

40. According to the Appellant, there was substantial increase in the cost of the project along with funding cost and overhead cost due to various events as under :-

Sr. No.	Change in Law Event	Basic Amount	Associated increase in Overhead costs	Associated increase in Funding costs	Increase in project cost on account of Change in Law
1.	Increase in Acquisition Price of SPV by BPC	0.12	0.01	0.07	0.20
2.	Notification of GST Laws by Government of India	61.44	3.36	13.35	78.15
3.	Notification of payment of Land compensation for tower baseas well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka.	181.72	11.23	198.29	391.24
4.	Additional payment towards Wild life clearance from NTCA	15.47	0.91	2.43	18.81
	Total impact of Project Cost	258.75	15.51	214.14	488.40

41. The Learned Commission has allowed the claims at Sl. No. 1 & 2 herein above, has partially allowed claim at Sl. No. 3 and has rejected the claim at Sl. No. 4.

42. So far as increase in the project cost on account of payment of additional compensation to the farmers for tower base area etc., the Learned Commission has allowed the same in respect of the land acquired for the transmission line in the State of Andhra Pradesh and has rejected the same with respect to the land

acquired for the said purpose in the State of Karnataka. While declining the relief for increase in the project cost on account of payment of additional compensation for the acquired land for the transmission line in the State of Karnataka, the Learned Commission has explained as under :-

“In case of the State of Karnataka, the Petitioner has claimed the compensation on the basis of the orders passed by the DC, Tumakur District only. The Petitioner has not placed on record any notification or the order of the Government of Karnataka adopting the Guidelines of Ministry of Power dated 15.10.2015 post its cut-off date. As already observed, whether the State authorities were already awarding the land compensation for laying of transmission prior to the cut-off date is a relevant factor as in case such authorities were already awarding such compensation prior to the cut-off date, it was incumbent upon the Petitioner to factor in such compensation while submitting its bid.

We observe from the proceedings of the Committee constituted by the Ministry of Power for preparation of the Guidelines that the District Authority in Tumkur, Karnataka had in fact awarded the land compensation vide its order dated 8.7.2014 in the case of construction of transmission line, which clearly is prior to the cut-off date in the present case. Nothing contrary has been placed on record by the Petitioner to indicate that the District Authorities in Tumkur District, Karnataka were not awarding the land compensation prior to its bid cut-off date. Further, the Petitioner has not submitted any orders of Government of Karnataka regarding change in land compensation policy. The Petitioner has based its claim on the order dated 3.12.2018 of Tumakur District DC and DM passing the compensation payable to farmers relating to 400 kV D/C Cudapa- Madhugiri Power Line project

We observe that the above order dated 3.12.2018 issued by the Tumakur District DC and DM cannot be construed to be a ‘Change in Law’ since such orders are passed by DC under the Act and the Telegraph Authority Act, 1885 and the Petitioner had the recourse as provided in these Acts. Therefore, we are not inclined to grant any relief claimed against compensation paid in the State of Karnataka.

43. We find ourselves in complete disagreement with the above noted findings of the Learned Commission on this aspect. These findings of the Learned Commission appears to be unjustified both on facts and in law. As already observed the District Authority is the Government Instrumentality. Any direction by such an Authority is a change in law event under the Electricity Act, 2003 read with Works of Licensees Rules, 2006 notified under the Electricity Act,

2003. Therefore, the Appellant is entitled to any additional compensation to be paid by him to the land owners as per the directive of the District Authority.

44. As regards the additional payment stated to be made by the Appellant towards wild life clearance from NTCA, the Learned Commission has observed as under :-

“Change in Law can be claimed under TSA only for clear notifications of law which did not exist on the cutoff date. We observe that the requirement of obtaining the wildlife clearance by the Petitioner has not arisen from any notification issued by the Ministry of Forest & Environment after the cut-off date, but has arisen in terms of NTCA, Ministry of Forest & Environment having approved the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve for the period from 2013-14 to 2022-23 vide F.No.1-19/2009- NTCA dated 13.10.2014, whereby certain areas outside the Tiger Reserve had been approved as Tiger Corridor by NTCA. This is evident from the letter dated 1.1.2018 of the PCCF, Guntur addressed to NTCA. The relevant extract of the said letter reads as under:

“Sub: Andhra Pradesh Forest Department – Wildlife - Request for clarification on applicability of Wildlife clearance for projects (transmission lines etc.) passing through Tiger corridor with reference to the guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated 19.12.2012-Reg.

Ref: GM (Project & Comml.), Power Grid Corporation of India Ltd., Secunderabad, Ref. SRTS-I/Engg/ESMD/20117, Dt. 19.12.2017.

It is to submit that, the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change, Government of India have approved the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve for the period from 2013-14 to 2022-23 vide F.no.1-19/2009-NTCA, dated 13.10.2014. In the above plan certain areas outside Tiger Reserve have been proposed as Tiger Corridor and the same has been approved by NTCA.

Recently, Power Grid Corporation of India Ltd., has approached this Office of the clarification on the applicability of the Wildlife clearance for projects (transmission lines) passing through Tiger corridor with reference to guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated: 19.12.2012 stating that Tiger Corridor has not been formally notified.

.....

In view of above, it is requested to issue a clarification on the applicability of Wildlife clearance for projects (transmission lines) passing through approved Tiger Corridor

with reference to the guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated 19.12.2012.

In response, the requirement of the wildlife clearance from NTCA for the projects passing through the tiger corridors of Nagarjunsagar-Srisailam Tiger Reserve was confirmed by the NTCA in terms of Section 38 O (1)(g) of the Wildlife (Protection) Act, 1972. The relevant extract of the letter of NTCA dated 12.3.2018 is as under: "Sub: Request for clarification on applicability of wildlife clearance for projects (transmission lines etc.) passing through tiger corridor with reference to guidelines S. No.

5.2 issued by Government of India, Ministry of Environment, Forest & Climate Change (Wildlife Division) letter dated 19.12.2012 –reg.

.....

With reference to the above subject, I am directed to convey that the projects (Transmission Lines etc.) passing through tiger corridors of Nagarjunasagar-Srisailam Tiger Reserve requires clearance/advice from this Authority in view of the provisions of the section 38 O (1)(g) of the Wild Life (Protection) Act, 1972.

The exact clarification can only be furnished once the shape files of the alignment of transmission lines are furnished along with GPS data in this regard...."

Thus, it is apparent that the approval of the tiger corridor by NTCA through the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve was dated 13.10.2014 and was prior to the cut-off date. Consequently, the requirement of clearance from NTCA in respect of the projects passing through the said corridor under Section 38 O(1)(g) of the Wildlife (Protection) Act, 1972, was also in existence prior to the cut-off date. Therefore, the Petitioner cannot contend that there was an inclusion of new terms or conditions for obtaining consent, clearance or permit. In our view, the Petitioner has failed to exercise necessary prudence and due diligence and to make itself fully informed about the requirement of obtaining the wildlife clearance in terms of the existing provisions as on the cut-off date.

The Petitioner has also submitted that the route in the Survey Report furnished by the BPC for the Element 5 did not indicate the requirement of wildlife clearance, though wildlife clearance was required to be obtained even for the route proposed by BPC. The Petitioner has further submitted that in the absence of any notification declaring the areas as wildlife corridor, it was not possible for the Petitioner to ascertain the requirement of wildlife clearance till the requirement of such clearance was confirmed by the Forest Authorities.

We have considered the submissions of the Petitioner. In our view, the Petitioner's reliance placed on the Survey Report prepared by the BPC is misplaced. We observe that all the three alternate routes proposed in the Survey Report prepared by the BPC for the Element 5 clearly indicated that they pass through forest areas

and thus, requirement of obtaining the forest clearance was within the knowledge of the Petitioner. We also observe that the TSA does not mandate the Petitioner to follow route as provided by BPC, but provides the Petitioner to carry out its own survey which the Petitioner has carried out and followed its own route. Since the route followed is as per the Petitioner's own survey, it was Petitioner's responsibility to ascertain the requirement of obtaining wildlife clearance. We further observe that the requirement of obtaining wildlife clearance for tiger corridor arose from the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve dated 13.10.2014 and as the said plan was prior to the cut-off date, the requirement of the Petitioner to obtain the wildlife clearance along with forest clearance for the tiger corridor area was in existence as on the cut-off date. Thus, in our view, the Petitioner was required to factor in the time and cost requirements for obtaining the wildlife clearance at the time of bidding. In view of the above, the Change in Law claim of the Petitioner for the additional payment toward wildlife clearance deserves to be rejected. "

45. It is manifest from the perusal of the letter dated 1st January, 2018 of the PCCF, Guntur addressed to NTCA that the NTCA had approved the Wild Life Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve for the period from the year 2013-14 to 2022-23 vide notification dated 13th October, 2014 which was much prior to the cut off date in this case. The NTCA also had clarified this position vide its letter dated 12th March, 2018, the relevant extract of which has been reproduced herein above. Hence, it does not lie in the mouth of the Appellant to contend that obtaining wild life clearance from NTCA in respect of the portion of the project passing through Nagarjunsagar Srisailam Tiger Reserve was an additional requirement thrust upon it. It is manifest that had the Appellant made necessary efforts with due diligence in a prudent manner, it would have come to know about the requirement of such a clearance well in advance and, therefore, would have factored the same while computing the time line for completion of the project accordingly. Therefore, it cannot claim increase in the project cost on this Court.

46. We see no reason to interfere in the findings of the Learned Commission on this aspect.

Claim of the Appellant for funding and overhead cost

47. The Appellant has claimed funding and overhead cost towards un-commissioned elements of the project from April, 2019 to actual COD owing to the delay on account of Force Majeure. It is argued by the Appellant's counsel that although all the elements of the project except for 40 kilometers stretch of Vemagiri II-Chilakluripeta 765 kV D/C line which were completed by April, 2019, the project could not be commissioned owing to the Change in Law conditions. He submitted that for the elements which were completed but could not be commissioned owing to Force Majeure and Change in Law events, the Appellant incurred funding cost and overheads from April, 2019 till actual COD. According to the Learned Counsel, the additional cost implication owing to funding and overheads for the said period is Rs.174.87 crore and Rs.0.53 crores respectively to which the Appellant is entitled as per the Article 12 of the TSA.

48. The Learned Commission has rejected the said claim of the Appellant only for the reason that it did not condone the delay in completion of the project owing to Force Majeure event.

49. We find that allowing this claim of the Appellant needs to be re-examined by the Commission in light of our decision to allow an extension of the time upon taking into consideration the Force Majeure events.

Conclusion

50. In the light of the above discussion, we hereby hold the Appellant entitled for time extension of 289 days in completion of the project on account of Force Majeure events. The Commission shall now, after hearing the parties, pass a fresh order in the light of observations made by us hereinabove. Such exercise shall be completed by the Commission within two months from the receipt of copy of this Order.

51. The Appeal stands allowed to the extent indicated above.

Pronounced in the open court on this 12th day of August, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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