

Court-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO.400 OF 2022 & IA NO.1590 OF 2026

Dated: 22.10.2026

Present: Hon'ble Mr. Virender Bhat, Judicial Member
Hon'ble Mr. Ajay Talegaonkar, Technical Member

In the matter of:

NTPC Renewable Energy Limited

Through its Additional General Manger (Commercial)

Having Registered office at :

Engineering Office Complex (EOC),

Sector-24, Noida, Uttar Pradesh – 201301

Email: sunitkumar@ntpc.co.in

... Appellant

Versus

1. Rajasthan Electricity Regulatory Commission

Through its Secretary

Vidhyut Viniyamak Bhawan,

Sahakar Marg, Near State Motor Garage,

Jaipur, Rajasthan – 302001

Email: recjpr@yahoo.co.in

2. Rajasthan Urja Vikas Nigam Limited

Through its Chief Engineer

Vidyut Bhawan, Janpath, Jyothi Nagar,

Jaipur, Rajasthan – 302005

Email: ce.ruvnl@rajasthan.gov.in, md.ruvnl@rajasthan.gov.in

3. Solar Energy Corporation of India Limited

Through its General Manager (C&P)

6th Floor, Plate-B, NBCC Office Block Tower-2,

East Kidwai Nagar, New Delhi – 110023

Email: sanjaysharma@seci.co.in, corporate@seci.co.in

4. AEW India North One Private Limited

Through its Director

3393, 3rd Floor, Ranjet Nagar, South Patel Nagar,
Central Delhi – 110008

Email: salqahtani@jenwa.com

5. Green Infra Wind Energy Limited

Through its Director/Board Member

5th Floor, Tower C, Building No. 8, DLF Cybercity,
Gurugram Haryana – 122002

Email: sgil.complianceofficer@sembcorp.com

... Respondent (s)

Counsel on record for the Appellant(s):

Shri Venkatesh
Suhael Buttan
Siddharth Joshi
Abhishek Nangia
Vineet Kumar
Punyam Bhutani
Simran Saluja
Ashutosh Kumar Srivastava
Bharath Gangadharan
Jayant Bajaj
Nihal Bhardwaj
Siddharth Nigotia
Kartikay Trivedi
Shivam Kumar
V.M. Kannan
Jatin Ghuliani
Anant Singh Ubeja
Mohit Mansharamani
Rishabh Sehgal
Kunal Veer Chopra for App. 1

Counsel on record for the Respondent(s):

Anand K. Ganesan
Swapna Seshadri
Amal Nair
Sugandh Khanna
Kritika Khanna
For Res. 2

Anushree Bardhan

Tanya Sareen
Srishti Khindaria
Surbhi Kapoor
Aneesh Bajaj
For Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Assail, in this appeal, is to the order dated 31.08.2022 passed by the 1st respondent Rajasthan Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in petition no.1905/2021 whereby the Commission has refused to recognize (i) directions issued by the Hon'ble Supreme Court in Order dated 19.04.2021 (Great Indian Bustard case) requiring the power generators to install bird flight diverters, and (ii) the enhancement of Grid Connectivity Charges under the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources) Regulations, 2020 (hereinafter referred to as the “RERC Renewable Energy Regulations, 2020”), as Change in Law events affecting the power generators including the appellant herein.

2. The appellant had initially raised both these pleas in the appeal. However, on 21.07.2026, when the appeal had come up for hearing, learned counsel for the appellant restricted the scope of the appeal to the claim of

the appellant with regards to entitlement for compensation on account of increase in Grid Connectivity Charges as a Change in Law event alone.

3. Undisputedly, the bid deadline in the instant case was 28.10.2020. At that time RERC Renewable Energy Regulations, 2015 were in force. Regulation 48 of these regulations prescribed Grid Connectivity Charges @ Rs.2 lakh per MW. Subsequently, RERC Renewable Energy Regulations, 2020 were notified on 02.11.2020. Vide Regulation 89.1 read with Regulation 48 of these regulations, the Grid Connectivity Charges were enhanced to Rs.2.5 lakh per MW. Accordingly, the appellant has paid Rs.11.75 crores towards enhanced Grid Connectivity Charges instead of Rs.9.40 crores as would have been payable in terms of RERC Renewable Energy Regulations, 2015.

4. The Commission, in the impugned order, has refused to acknowledge the increase in Grid Connectivity Charges as a Change in Law event on the ground that as per the Power Purchase Agreement (PPA) executed between the appellant and the respondent no.3 Solar Energy Corporation of India Limited (in short "SECI"), it is the responsibility of the solar power developer i.e. the appellant to obtain grid connectivity and to bear the risks as well as costs incidental to it.

5. We have heard Mr. Shri Venkatesh, learned counsel for the appellant, Mr. Amal Nair, learned counsel for the 2nd respondent and Ms. Anushree Bardhan, learned counsel for the 3rd respondent. We have also perused the written submissions filed by the learned counsels.

6. learned counsel for the appellant would argue that merely because obtaining grid connectivity was contractually the responsibility of the appellant does not mean that the statutory enhancement in the Grid Connectivity Charges would not constitute Change in Law event in terms of the PPA provisions in this regard. He submitted that RERC Renewable Energy Regulations, 2020 were notified after the bid deadline and these squarely fall within the definition of the term “law” under the PPA, which expressly includes any statute, ordinance, regulation, notification, rule or other instrument having the force of law. To buttress his submissions on this aspect, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in GMR Warora Energy Limited v. CERC and Ors. (2023) 10 SCC 401.

7. On behalf of the respondents, it is argued that the claim of the appellant with regards to increase in Grid Connectivity Charges as Change in Law event is not maintainable at all for the reason that the appellant had not raised any such claim during the proceedings before the Commission. It is

pointed out that the impugned order has been passed by the Commission qua three different power generators, one of which was the appellant and the claim with respect to enhancement of Grid Connectivity Charges constituting a Change in Law event under the PPAs was raised by the other two generators on which the Commission had returned its findings in the impugned order. It is argued that the appellant cannot be permitted to raise such a claim for the first time in its appeal before this Tribunal. On merits it is argued that the Commission has rightly held that since the grid connectivity was the responsibility of the appellant and the associated risks/costs incidental to the grid connectivity were to be borne by the appellant, the increase in Grid Connectivity Charges cannot be recognized as a Change in Law event affecting the power generators. It is further pointed out that even otherwise also, the claim of the appellant is not maintainable for the reason that no notice, as required under Article 12.3 of the PPA, was served by the appellant upon the respondents. On these submissions, the learned counsels for the respondents urged us to dismiss the appeal.

8. In rejoinder, learned counsel for the appellant submitted that Article 12 of the PPA does not prescribe issuance of notice as a condition precedent for claiming relief for the Change in Law event. He would further submit that having resisted the claim of respondent nos.2 and 3 in this regard before the

Commission, they are precluded from contesting the entitlement of appellant under the said Change in Law event on the technical plea of absence of notice. On this aspect, the learned counsel as relied upon the judgment of this Tribunal dated 15.09.2022 in appeal no.256/2019 & Batch M/s Parampujya Solar Energy Pvt. Ltd & Anr v. CERC & Ors. The learned counsel would also dispute the contention agitated on behalf of the respondents that the appellant had not specifically claimed the assessment of impact of Grid Connectivity Charges before the Commission.

Our Analysis: -

9. In order to analyze and appreciate the rival contentions and submissions advanced on behalf of the parties, it is necessary to advert briefly to the events and circumstances in which the instant appeal has been filed by the appellant.

10. The respondent no.3 SECI issued Request for Selection (RFS) on 16.07.2020 for selection of solar power developers for setting up of 1070MW Grid Connected Solar PV Power Project in the State of Rajasthan (Tranche-III) under Tariff Based Competitive Bidding (TBCB). In terms of the RFS, 28.10.2020 was declared as last date for bid submission.

11. The appellant was declared successful bidder on 28.12.2020 by SECI and a Letter of Award (LOA) was issued to it for development of 470MW solar power project.

12. Meanwhile, the Commission notified RERC Renewable Energy Regulations, 2020 on 02.11.2020.

13. Respondent no.3 SECI entered into two PPAs, both dated 03.06.2021 with the appellant for 320MW and 150MW respectively pursuant to the competitive bidding process. Thereafter, SECI entered into back-to-back Power Sale Agreements (PSAs) dated 13.07.2021 with respondent no.2 RUVNL for resale of 1070MW solar power including 470MW procured from the appellant.

14. The 2nd respondent Rajasthan Urja Vikas Nigam Limited filed petition no.1905/2021 before the Commission on 24.09.2021 under Section 53 of the Electricity Act, 2003 for adoption of tariff for 1070MW Solar PV Power to be charged by the three discoms operating in the State of Rajasthan, for which bidding was conducted by the 3rd respondent SECI.

15. It appears that during the pendency of the petition, one of the solar power developers namely M/s Green Infra Wind Energy Pvt. Ltd (5th respondent) filed an application before the Commission for its impleadment

as a respondent. Vide order dated 23.07.2021, the Commission directed impleadment of all successful generators as respondents to the petition. Accordingly, the appellant also, being a successful bidder, was impleaded as a respondent to the petition before the Commission.

16. Upon impleadment as respondents to the petition, the power generators urged the Commission to declare some events, as mentioned in the replies filed by them, as Change in Law events in terms of the PPAs executed by them with SECI. Prayer was also made for extension of timelines for the period of pendency of the petition before the Commission. However, vide order dated 23.07.2021, the Commission adopted the tariff while deeming it not appropriate to look into the merits of the Change in Law claims raised by the generators. The generators were given liberty to file fresh petitions to raise such claims at appropriate time.

17. The said order dated 23.07.2021 was challenged by the 5th respondent Green Infra Wind Energy Ltd before this Tribunal by way of appeal no.251/2021. The appeal was disposed of vide order dated 12.10.2021 directing the Commission to hear the parties in relation to the Change in Law events also as agitated by them in their replies and to render a fresh decision. The relevant portion of the said order of this Tribunal is extracted hereinbelow: -

“16.....it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage.

17. For the forgoing reasons, we allow the appeal finding the impugned Order to be an adjudication that is incomplete and proceedings wherein the appellant had sought the abovementioned declarations having remained inchoate. The State Commission is directed to hear the parties further in the light of the above observations and pass further orders specifically in relation to the three change in law event claims presented by the appellant, rendering its decision as expeditiously as possible, preferably within two months from today.”

18. Upon such remand by this Tribunal, the Commission conducted a fresh hearing in the petition. It is pertinent to note here that M/s AEW India North One Private Limited (4th respondent) also filed a separate petition bearing no.1933/2021 for recognition of Change in Law events agitated therein. The petition was clubbed with the main petition no.1905/2021. Following Change in Law claims were agitated b the generators before the Commission: -

- (a) declaration that the increase in rates of Basic Custom Duty (BCD) on the import of solar invertors pursuant to Ministry of Finance notification dated 01.02.2021, whereby the exemption notification dated 06.01.2011 has been rescinded, as a Change in Law event under the PPA;
- (b) declaration that Ministry of Finance GST notification as a Change in Law event under the PPA;
- (c) declaration that the order of the Hon'ble Supreme Court in Great Indian Bustard case qualifies as a Change in Law event under the PPA; and
- (d) declaration that increase in Grid Connectivity Charges from Rs.2 lakh per MW to Rs.2.5 lakh per MW in terms of RERC Renewable Energy Regulations, 2020 as a Change in Law event.

19. In terms of the remand order dated 12.10.2021 of this Tribunal, the Commission restricted the claims of the power generators to following three Change in Law events only: -

“(i) Increase in rates of Basic Customs Duty on import of Solar Inverters pursuant to the MoF Notification No. 07 dated 01.02.2021, whereby Customs duty exemption notification No. 01 dated 06.01.2011 has been rescinded.

(ii) Levy of Basic Customs Duty on import of Solar Cells, Modules/Panels pursuant to MNRE Office Memorandum dated 09.03.2021.

(iii) The direction issued by Hon'ble Supreme Court of India by its Order dated 19.04.2021 in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. vs. Union of India & Ors. in terms of which all existing and future overhead low and high voltage power lines in the Priority and Potential habitats of Great- Indian Bustard are necessarily required to be laid under- ground.”

20. Vide order dated 13.12.2021, the Commission acknowledged the events at (i) and (ii) above Change in Law events. With regards to the event at (iii) hereinabove, the Commission held that the prayer of the solar power developers was not justified as the bid for procurement of solar power was not location specific and accordingly disallowed their claim in this regard.

21. Aggrieved by the said order dated 13.12.2021 of the Commission in so far as it disallowed the claim of the solar power developers to recognize the order dated 19.04.2021 of the Hon'ble Supreme Court in Great Indian Bustard case as a Change in Law event and did not consider the other Change in Law events agitated by them, the solar power developers approached this Tribunal by way of appeal no.344/2021 and appeal no.9/2022. Both these appeals were disposed of vide judgment dated 28.01.2022 directing the Commission to pass further orders on the remaining Change in Law claims of the power generators while reserving their right to challenge the denial to the relief vis-à-vis the judgment of Hon'ble Supreme Court in Great Indian Bustard case.

22. Accordingly, a fresh hearing was conducted by the Commission. We may note her that initially only the respondent no.4 AEW India had raised the issue of enhancement of Grid Connectivity Charges in its petition

no.1933/2021 which had been clubbed along with the main petition 1905/2021. Upon remand by this Tribunal vide judgment dated 28.01.2022, the 5th respondent Green Infra also filed an application seeking fresh hearing for consideration of the claim of enhancement of Grid Connectivity Charges as a Change in Law event.

23. It is, therefore, evident that only the respondent nos. 4 and 5 had agitated the claim for recognizing the enhancement of Grid Connectivity Charges as a Change in Law event before the Commission and no such claim had been raised by the appellant herein. This is indicated by the perusal of Paragraph no.51 of the impugned order also which is extracted hereinbelow: -

“51. It is submitted by AEW India that the increase in the Grid Connectivity charges from Rs 2.0 Lakh/MW to Rs 2.5 Lakh/MW as per regulation 89 of the RERC RE Tariff Regulations,2020 issued on 02.11.2020 after the cut-off date 28.10.2020. Therefore, this increase may be treated as change in law and additional expense incurred by them be compensated. In addition, GIRPL through their IA has also prayed that they are also entitled to compensation on account of the change in law and prayed to grant in principle approval

for increase in grid connectivity charges from Rs 2.0 Lakh to Rs.2.5 Lakh/MW pursuant to RERC RE Tariff Regulations as change in law event under the PPA.”

24. Such claim of the respondent no.4 and 5 has been rejected by the Commission in the impugned order on the following reasoning: -

“55. In the above proceedings RVPN has requested to increase the Grid connectivity charges from Rs. 2 Lakh to Rs. 3 Lakhs per MW or actual bay cost, whichever is higher considering the prevailing cost trends. The cost for grid connectivity varies with change in cost of material and equipment used for this purpose. Further, from the provisions of the PPAs, it is evident that the grid connectivity is the responsibility of the SPDs and risks and cost incidental to it have to be borne by them as rightly submitted by SECI.

56. In light of the above, we are of the view that in terms of the PPA and foregoing discussion the increase in Grid connectivity charges have to be borne by the SPDs and their claim for declaration of increase in Grid Connectivity Charges as change in law is not accepted.”

25. Considering the said situation where the appellant, despite having knowledge about the increase in Grid Connectivity Charges by virtue of RERC Renewable Energy Regulations, 2020, did not raise any claim for compensation on account of such Change in Law event before the Commission either in its reply to petition of 2nd respondent RUVNL or by way of an application as was done by the two other Solar Power Generators i.e. respondent nos.4 and 5 herein, the appellant is precluded from raising any such claim in the instant appeal for the first time. Manifestly, the appellant had enough opportunity to agitate such claim before the Commission but failed/neglected to do so. Nothing has been contended on behalf of the appellant in this regard as to what prevented it from raising the claim before the Commission despite having knowledge as well as the opportunity. It is a trite law that any substantive claim can not be raised for the first time in an appeal when no such claim was raised before the court/forum of original jurisdiction.

26. In order to maintain the instant appeal before this Tribunal, the appellant was required to demonstrate that he was aggrieved by the relevant portion of the impugned order. Since, concededly, the appellant had not agitated claim for compensation on account of increase in the Grid Connectivity Charges as a Change in Law event, the appellant cannot claim

to be aggrieved by the relevant portion of the impugned order whereby such claim raised by respondent nos.4 and 5 has been rejected. The fact that the appellant did not raise any such claim before the Commission would indicate that it was not interested in claiming benefit of the increase in Grid Connectivity Charges as Change in Law event, and therefore, the appellant cannot be heard to say that it has been prejudicially affected by the impugned order on this aspect.

27. Therefore, the claim of the appellant for compensation due to increase in Grid Connectivity Charges as a Change in Law event having been raised for the first time in the appeal does not merit any consideration and must fail on this score alone.

28. Even otherwise also, we do not find appellant entitled to claim relief for the Change in Law event in question as per Article 12 of the PPA as, concededly, no notice has been served by it upon the respondents SECI or RUVNL with regards to such claim. Article 12.3 of the PPA is very categorical in this regard and is extracted herein below: -

“12.3 Notification of Change in Law

*12.3.1 If the SPD is affected by Change in Law in accordance
with Article 12 and wishes to claim a Change in Law*

under this Article, it shall give notice to the SECI and Buying Utility (s) of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).

12.3.2 Any notice service pursuant to this Article 12.3.1 and 12.1.3, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.”

(Emphasis supplied)

29. This contractual provision makes it mandatory for an affected party to serve a Change in Law notice upon the SECI and the buying utility (RUVNL in this case) as soon as practicable but not later than 60 days from the date of occurrence of the Change in Law event. The word used is “shall” which indicates that SECI and RUVNL were necessarily to be put to notice before claiming relief under the Change in Law event. Article 12.3.2 even specifies the details to be provided in the notice. This contractual requirement cannot be waived for the reason that the waiver, if done, would tantamount to

disregarding an important clause of the PPA upon which the parties had agreed at the time of execution of the PPA. In view of this specific clause in the PPA, the argument on behalf of the appellant that issuance of notice is not a condition precedent for claiming relief under Change in Law and that the respondent nos.2 and 3 are precluded from contesting the claim of appellant on this technical ground, does not appear to have any force or merit.

30. On this aspect, heavy reliance has been placed on behalf of the appellant in the previous judgment of this Tribunal dated 15.12.2022 in appeal no.256/2019 and batch titled Parampujya Solar Energy Pvt. Ltd and Anr. v. CERC and Ors. Upon perusal of the said judgment, we find the facts of that case clearly distinguishable from the facts involved in this case. In that case, the power generator had not claimed any relief under Change in Law event against the Chhattisgarh discom, and therefore, had not made the discom a party in the petition. It is vide order dated 20.09.2018 passed by the Commission during the proceedings of the petition that the Chhattisgarh discom was impleaded as a necessary party to the petition. It is, in these circumstances that this Tribunal held that impleadment of Chhattisgarh discom as a party to the petition tantamounted to putting it at notice, and therefore, the contention of the discom that in the absence of prior notice, as

required under PPA, claim for Change in Law is not maintainable against it, was repelled. In the instant case, the petition before the Commission was filed by the discom itself for adoption of tariff, during the course of which the solar power developers including the appellant were impleaded as respondents to the petition. Being a respondent along with the other two power generators namely AEW India North One Pvt. Ltd. (4th respondent herein) and Green Infra Wind Energy Ltd. (5th respondent herein), the appellant was aware that these two generators have raised claim for compensation on account of increase in Grid Connectivity Charges as a Change in Law event. Initially, vide order dated 13.12.2021, the Commission did not consider the said Change in Law claim of the respondent nos.4 and 5. However, a fresh hearing on this aspect was conducted by the Commission upon remand by this Tribunal vide judgment dated 28.01.2022 in appeal no.344/2021 and appeal no.9/2022 filed by these two power generators in this regard. All these proceedings were taking place in the presence of the appellant but still the appellant remained in deep slumber and did not file any claim on this aspect.

31. Therefore, the observation of this Tribunal in the above referred Parampujya judgment are totally inapplicable to the facts of the instant case.

32. It is also argued on behalf of the appellant that merely because obtaining grid connectivity was contractually the responsibility of the appellant does not mean that the statutory enhancement in these charges would not constitute Change in Law. These arguments have been advanced for the reason that the Commission has, in the impugned order, held that in terms of the PPA, the increase in Grid Connectivity Charges has to be borne by the solar power developers and their claim for declaration of increase in such charges as Change in Law cannot be accepted. Pertinently, these observations have been made by Commission on the claim made by respondent nos.4 and 5 in this regard. As already noted hereinabove, no such claim was made by the appellant before the Commission. While *prima facie* finding no fault in these observations of the Commission, we are of the opinion that a detailed discussion in this regard would be appropriate in the appeals, if any, filed by the respondent nos.4 and 5 against the impugned order.

33. Bearing in mind the above discussion, we do not find any merit in the appeal and accordingly dismiss the same as such.

Pronounced in the open court on this the 22nd day of October, 2026.

(Ajay Talegaonkar)
Technical Member (Electricity)
REPORTABLE / NON-REPORTABLE
tp

(Virender Bhat)
Judicial Member