



- (d) Petitioner vide letter dated 07.05.2021 requested DM Azamgarh to guide and support the Petitioner for donating and installing a PSA-Oxygen Plant in a hospital to take care of oxygen requirement of around 75-100 Beds.
- (e) Petitioner during peak of pandemic installed and successfully commissioned two Oxygen Generator Plant in a government hospital in Azamgarh and Kanpur to strengthen the medical requirements during the pandemic. The same was also published in the local newspaper.
9. Vide letter dated 11.10.2022, Petitioner informed UPPTCL that Petitioner had been facing issues in acquiring the Land for the Project due to which Petitioner had not been able to start the execution of the Project. Accordingly, it has identified an alternate land in the same Tehsil for development of the Project. It also demonstrated its keenness to develop the Project and stated that the delay in executing the Project is only due to events, which were beyond the control of the Petitioner.
10. UPPTCL had also issued a letter dated 04.11.2022 to UPNEDA wherein UPPTCL has acknowledged that few developers including the Petitioner have been facing issues in acquiring the land for the Project.
11. Vide letter dated 01.12.2022, UPNEDA issued a communication to DM Azamgarh intimating that Petitioner has been facing hurdles and hindrances in obtaining 300 acres of land on purchase/lease for the development of Project. Further, UPNEDA requested to pass directions regarding providing the said land efficiently for Petitioner to meet time schedules for the development of the Project. Even after Government Authorities intervention, acquisition of the land could not see any progress and Force Majeure events continues till today.
12. The Petitioner, on 17.01.2023, participated in a meeting chaired by Additional Secretary, Energy and Renewable Energy Department, Government of U.P. The Petitioner explained to Additional Secretary about problems being faced by it at Project's site. The Petitioner also informed about the progress made in the Project and also informed about investments made by Petitioner in the Project. Additional Secretary appreciated Petitioner's concern and directed to approach UPPTCL for change in the location.

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13. Petitioner issued letter dated 20.02.2023 to UPNEDA seeking its assistance in change in the location of the Project from the current site to the new less density location. UPPTCL did not revert to the above correspondence, however as per petitioner's contention the Project can be built at different location provided UPPTCL provided its consent to change the location.
14. The Petitioner has submitted judgement dated 27.02.1964 in the matter of *Dhanrajamal Gobindram v. Shamji Kalidas and Co.*, AIR 1961 SC 1285 in regard to force majeure.
15. In view of above, direction may be issued to UPPTCL to change the location of the Project, without any penal liability or allow termination of the Connection Agreement for impossibility of the construction of the power project from the existing location due to prolong continuation of the Force Majeure Event.

UPPTCL Reply dated 02.09.2023

16. The Commission in the Connectivity Regulations has defined the Force Majeure. The averment made by the Petitioner in the para under the Force Majeure Conditions is misleading. It is not covered under any of the clauses of the Force Majeure conditions. The Petitioner is trying to take the undue benefit of Force Majeure Conditions.
17. Petitioner under the same para has also requested the Commission to direct UPPTCL for change of connectivity location from 132 kV S/S Lalganj to any other location. Further, as per Regulation 6.3 of Connectivity Regulations change of location is not possible in the eyes of the law.
18. UPPTCL had published a list of sub-stations on which connectivity margin was available at that point of time. The Petitioner had himself chosen the said substation and there was no compulsion on him to go to any specific location.
19. Petitioner is mentioning that he has issued a letter dated 11.10.2022 to UPPTCL for facing issues in acquiring the land due to which Petitioner was not able to start the work as stated is wrong and denied. UPPTCL, in order to review the progress of solar power projects has conducted various meetings wherein Petitioner has also submitted its version. The chronological order of events and the averments made by the Petitioner in various review meeting is reproduced as under:

(a) Meeting dated 26.08.2021- Petitioner intimated that lease deed should be completed by 30.09.2021 and financial closure by 05.10.2021.





- (b) Meeting dated 30.10.2021- Petitioner intimated that they had acquired the complete land and they had also deposited the estimate cost of bay. They will start the installation of the plant post crop cutting.
- (c) Meeting dated 30.12.2021- Petitioner intimated that they had acquired the complete land and they had also deposited the estimate cost of bay. Further, they have placed the order of transformer and transmission line will be completed by March' 2022 and commissioned by June' 2022.
- (d) Meeting dated 05.03.2022- Petitioner intimated that they had acquired land and they had deposited the estimated cost of bay. Modules for 15 MW capacity have been delivered at site and delivery of remaining modules is delayed due to recent office memorandum issued by MNRE in January 2022 whereby Open Access Projects have to procure panels from manufactures as listed in ALMM. Petitioner assured to commission the plant by July 2022.
- (e) Dated 26.03.2022- Petitioner vide letter dated 26.03.2022 requested for time extension upto 31.12.2022 citing the reasons of change of rules regarding Solar Modules by MNRE.
- (f) Meeting dated 23.07.2022- Petitioner stated that it had signed MOU for Modules with M/s Gold Solar Gujrat. Work of 8.9 Km transmission line has started and will be completed by January 2023.
- (g) Dated 29.09.2022- UPPTCL gave notice to the Petitioner to complete the Project latest by January 2023
- (h) Dated 11.10.2022- Petitioner in response to UPPTCL's letter dated 29.09.2022 requested for time extension till September 2023 and assured to complete the work in the given time period.
- (i) Dated 01.02.2023- Petitioner out of nowhere requested to change of location of connectivity.
- (j) Dated 16.02.2023- UPPTCL informed Petitioner that as per clause 6.2 and 6.4 of Connectivity Procedure, change of location is not permissible and it shall lead to termination of connection agreement.

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20. The Petitioner is misleading the Commission as he has misled UPPTCL in various meetings that it has acquired the complete land and going to commission the Project very soon.

Petitioner's Rejoinder dated 27.10.2023

21. The construction of the Project requires a land area of 270 acres. The Petitioner had entered into a Consent to Lease agreement with landowners for acquisition of land and had also executed registered lease deeds for around 140 acres of land. However, due to large numbers of landowners per plot, consent/agreement of all the owners of that particular land could not be obtained.

22. The following are the series of events whereby UPPTCL acknowledged difficulty in completion of the Project:

(a) Vide letter dated 11.10.2022, Petitioner communicated to UPPTCL regarding the issues faced by Petitioner in acquiring the land for the Project and difficulty in initiating the execution of the Project.

(b) Subsequently, vide letter dated 04.11.2022, UPPTCL issued a communication to UPNEDA acknowledging the fact that few project developers, including Petitioner, have been facing issues in acquiring the land for the Project.

Therefore, both the parties to the Connection Agreement acknowledged and hence, agreed that there were issues with respect to acquisition of land for development of power projects in the concerned area of land. Therefore, there was consensus-ad-idem between the parties regarding the issue around acquisition of land.

23. Para 12 of the Connection Agreement states that parties may agree to amend the connection agreement as long as the intent and basic structure of connection agreement is not altered. Considering both parties share the same understanding regarding land acquisition issues, it is only logical that the Connection Agreement be amended for change of location.

24. The Hon'ble Supreme Court of India in *Satya Pal Anand v. State of M.P.*, (2016) 10 SCC 767, has held that any alternation to a contract can be made bilaterally and with consent of both the parties.

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