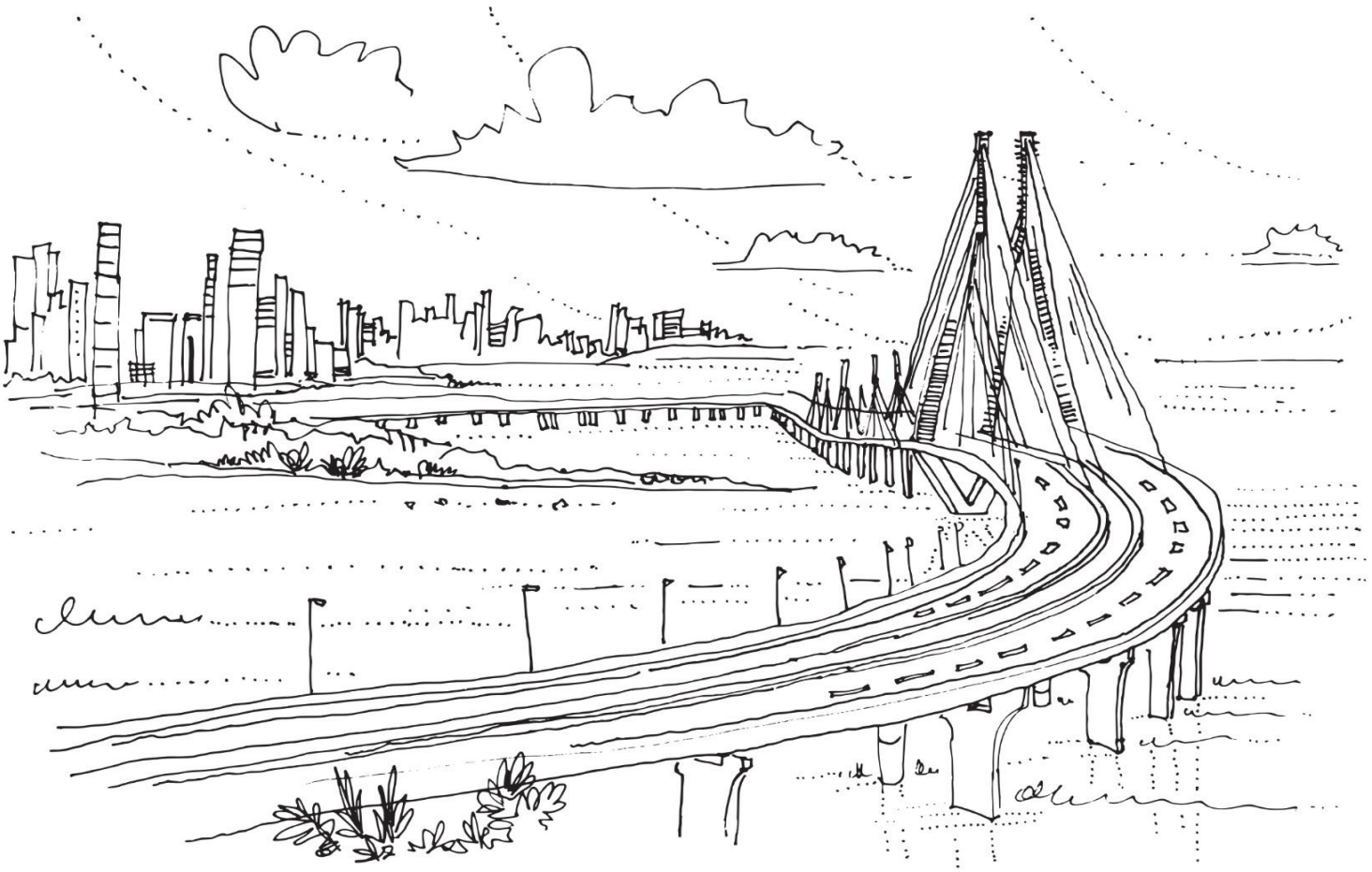
ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS



Infrastructure and Energy Digest

Overview of Legal and Regulatory Developments

January 2021

INFRASTRUCTURE

INFRASTRUCTURE

Iron-ore Policy 2021

Brief Background

On January 16, 2021, the Ministry of Railways introduced a new iron-ore policy (**Iron-ore Policy**) governing allocation of rakes and transportation of iron-ore. The Iron-ore Policy will come into effect from February 10, 2021. The aim of the Iron-ore Policy is to meet the complete requirement of transportation of iron ore customers and provide total logistics support to steel industry to meet the competitive challenges domestically and globally.

Salient Features of the Iron-ore Policy:

- The existing categorization based on customer's profile into central board of trade category/non-central board of trade category customers would be done away with. Old and new plants would be treated similarly as far as allotment/loading of rakes is concerned.
- Categorization of priority of movement of iron ore would be based on the availability of railway infrastructure developed by the customer for loading/unloading and the nature of movement between various types of sidings with a view to maximize iron-ore movement by rail.
- The priority preferences for the customers will be self-generated by the system (Rake allotment scheme) based on customer profile (name of manufacture, consignor name, consignee name, siding/PFT name and code) fed in the system by the concerning zone.
- Higher priority would be given to movement of iron-ore traffic for domestic manufacturing activity.
- Within domestic movement of iron-ore traffic, priority preference would be given to steel/pig iron/ sponge iron/pellet/sinter plant owning customers having their own private sidings at both loading as well as unloading ends (C+), customers with private siding at either loading or unloading end (C), customers without any private siding of their own relying totally on public goodsheds/sidings (C-) in that order.
- The customers would be free to choose the priorities or combination of priorities for moving their traffic as per eligibility and necessity.
- Export traffic would be given priority 'D'. To differentiate rail-cum-sea traffic from export traffic, the former is to be accompanied by a self-declaration that such traffic is meant for domestic consumption and the Railways will not be held responsible for any wrong declaration submitted by the manufacturer.
- Any type of customer can move traffic under priority D as per their requirements.
- Dispatch of 'low grade fines or iron ore rejects' generated during the process of manufacturing would be freely allowed under priority D to any location.
- Under contractual traffic, customer will be free to place indents as per their requirements.
- Scrutiny of documentation by Railways will no longer be done. EDRM office, Kolkata which has been a sanctioning program for movement of iron-ore traffic, will have no regulatory role in the Iron-ore Policy. The said office will be undertaking analysis of various iron-ore traffic for further improvement of Railway freight loading.
- Customers desirous of moving their traffic under any priority will have to give undertaking that they have procured, transported and utilized materials as per the rules and regulations of Central and State Governments.

Our view: Iron-ore is the second most important stream of traffic of the Railways and along with steel accounts for nearly 17% of total freight loading of the Railways in 2019-20. The Iron-ore Policy appears to be a win-win for all the stakeholders involved. If implemented effectively, it should have a positive impact to increase business for the railways and people involved in iron-ore production. It will also greatly assist the steel industry due to a faster supply chain set up.

Segmentation of National Highway over 100 km as strategy to avoid green clearances cannot be adopted.

Brief Background

In an order pronounced on January 19, 2021, the Supreme Court of India (**Supreme Court**) in the case of *the National Highways Authority of India vs. Pandarinathan Govindarajulu and Another*[1] stated that the segmentation of a national highway project having total length of over 100 kilometers to smaller packages of less than hundred kilometers cannot be adopted as a strategy to avoid environmental clearances.

What are the facts of the case?

- The project of widening and improvement of the existing 4-laning carriage way in Tamil Nadu and Puducherry from Villuppuram to Nagapattinam was bifurcated into four packages, which are as follows:
  - Villuppuram to Puducherry (29.000 kms)— Package I.
  - Puducherry to Poondiankuppam (38.00 kms)— Package II.
  - Poondiankuppam to Sattanathapuram (56.800 kms) —Package III.
  - Sattanathapuram to Nagapattinam (55.755 kms)— Package IV.
- An approval was granted by the Special District Revenue Officer (Land Acquisition), National Highways No. 45-A in March 2018 and agreements were entered into between the National Highways Authority of India and the concessionaires. The process was initiated for acquisition of lands required for the said project.
- Subsequent to that, several petitions were filed with the Madras High Court (**Madras HC**) questioning the commencement of the project without obtaining environmental clearance.
- The project under consideration pertains to the expansion of NH-45A between Villuppuram to Nagapattinam for a distance of 179.555 kms as a part of the Bharatmala Pariyojana project. Admittedly, no environmental impact assessment was undertaken.
- The Madras HC allowed the writ petitions, and the project was stayed after issuing various directions to the NHAI.

What were the contentions?

- It was contended by the appellant that environmental clearance was not required as the additional right of way or land acquisition was not greater than the limits specified in the notification issued by the Ministry of Environment and Forests, Government of India dated September 14, 2006 (**Notification**) even if the expansion of the national highways was beyond 100 km.
- It was further contended that an environmental clearance under the Notification, as amended vide notification dated August 22, 2013 was required only if the additional right of way or land acquisition was greater than 40 meters on existing alignments and 60 meters on realignments or bypasses.

What did the Supreme Court observe?

- The Supreme Court observed that it is a cardinal principle of interpretation that full effect should be given to every word of the Notification. Interpreting the Notification to mean that every expansion of national highway which is greater than 100 km requires prior environmental clearance would be making the other words in Item 7 (f) of the Notification redundant and otiose.
- There was no ambiguity in Item 7(f) of the Schedule to the Notification that prior environmental clearance was required for expansion of a national highway project only if: (a) The national highway is greater than 100 kms; (b) The additional right of way or land acquisition is greater than 40 meters on

[1] Civil Appeal Nos. 4035-4037 of 2020

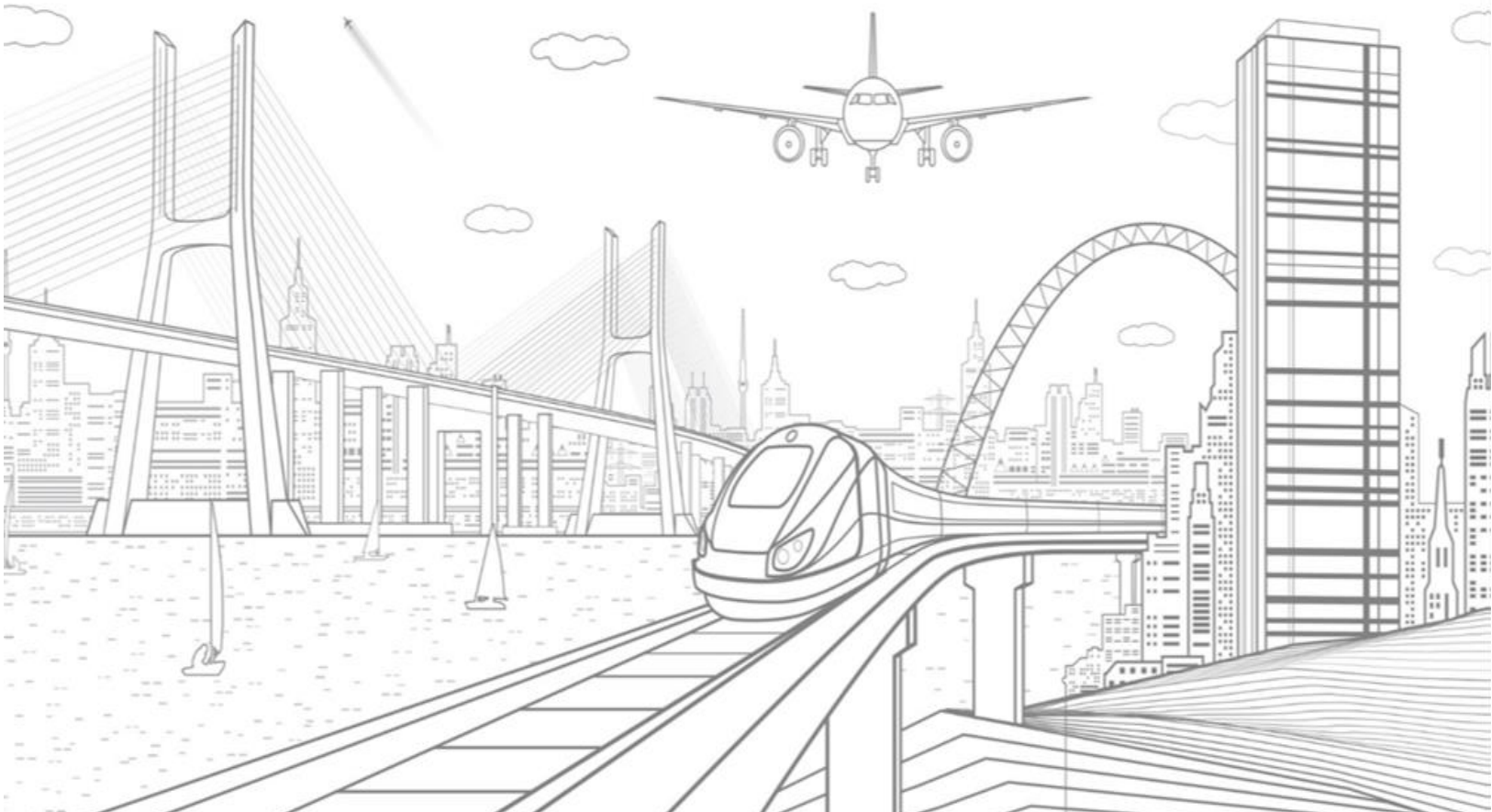
existing alignments and 60 meters on realignments and by passes.

- The Supreme Court laid emphasis on protection of environment. The Supreme Court observed that if every project proponent is permitted to divide projects having a distance beyond 100 km into packages which are less than 100 km, the Notification would be rendered redundant. In such cases, administrative exigencies and speedy completion would be grounds taken for justifying the segmentation of every project. Therefore, segmentation as a strategy was not permissible for evading environmental clearance as per the Notification.
- Lastly, the Supreme Court stated that the question whether segmentation of a national highway beyond 100 kms is impermissible under any circumstance must be considered by an expert committee as the Supreme Court lacks the expertise in the subject.

What was the Supreme Court judgement?

- The Supreme Court while observing that considering the nature of the issue involved, there was no requirement for obtaining environmental clearances for NH 45-A Villuppuram - Nagapattinam Highway as land acquisition was not more than 40 meters on existing alignments and 60 meters on realignments or by passes. However, the appellant was directed to conform to the Notification in the matter of acquisition of land being restricted to 40 meters on the existing alignments and 60 meters on realignments.
- The Ministry of Environment, Forest and Climate Change, Government of India was ordered to constitute an expert committee to examine whether segmentation is permissible for national highway projects beyond a distance of 100 kms and, if permissible, under what circumstances.

Our view: The aforesaid decision emphasizes according protection of the environment while acknowledging that impediments should not be created in the matter of national highways, which provide the much-needed transportation infrastructure. As regards the segmentation of a national highway beyond 100 kms, it would be interesting to see the expert committee's opinion on the same in order to strike a balance between infrastructural requirements and environmental protection.



ENERGY

RENEWABLE ENERGY

Advisory on rooftop solar scheme

Background:

- In order to generate solar power by installing solar panels on the roof of the houses, the Ministry of New and Renewable Energy (**MNRE**) had implemented the Grid-connected Rooftop Solar Scheme (Phase-II) (**Scheme**).
- As per the Scheme, MNRE is providing 40% (forty percent) subsidy for the first 3 kW (three kilo watt) and 20% (twenty percent) subsidy beyond 3 kW (three kilo watt) and upto 10 kW (ten kilo watt). The scheme is being implemented in states by local Electricity Distribution Companies (**DISCOMs**).
- On January 17, 2021 the MNRE issued an advisory pertaining to the rooftop solar Scheme.

Advisory:

- Certain rooftop solar companies or vendors were setting up rooftop solar plants by claiming that they had been authorized vendors by the MNRE. However, MNRE has clarified that no such vendor has been authorized.
- The MNRE clarified that the Scheme is being implemented in states only by DISCOMs. The DISCOMs have empaneled vendors through the bidding process and have decided rates for setting up a rooftop solar plant. As such, almost all the DISCOMs have issued online process for this purpose, which can be found on the online portal of the DISCOMs.
- Residential consumers that are willing to set-up a rooftop solar plant under the Scheme can apply online and get rooftop solar plants installed by listed vendors. The residential consumers must pay the cost of rooftop solar plant by reducing the subsidy amount given by the MNRE as per the prescribed rate to the vendor.
- The subsidy amount as mentioned above, will be provided to the vendors by the MNRE through the DISCOMs.
- Further, MNRE stipulated that in order to get subsidy under the Scheme, the domestic consumers must install rooftop solar plants only from the empaneled vendors of the DISCOMs following due process of approval by DISCOMs.
- The solar panels and other equipment to be installed by the empaneled vendors must be as per the standard and specifications of the MNRE and also includes 5 (five) year maintenance of the rooftop solar plant by the vendor.
- As some vendors were charging higher prices than the rates decided by DISCOMs from domestic consumers, consumers are advised to pay only according to the rates decided by DISCOMs. Further, DISCOMs have been instructed to identify and punish such vendors.

Our view: The advisory from MNRE should help streamline the issues being faced in effectively implementing the Scheme. Further, this would also protect the interests of the domestic consumers and ensure that they are not over charges and are able to avail the subsidies as per the Scheme.

Waiver of Inter-State Transmission charges and losses on transmission of electricity generated from solar and wind sources of energy

Background:

- On August 5, 2020, the Government had issued orders which provided that inter-state transmission (**ISTS**) charges and losses would not be levied on the transmission of electricity generated from power plants using solar and wind sources of energy including solar-wind hybrid power plant with or without storage which were commissioned on or before the June 30, 2023. Further, it was provided that (i) the sale of power was to be made to entities that had renewable purchase obligations (**RPO**), irrespective of whether the power was within RPO or not; and (ii) in case of distribution licensees, the power had to have been procured competitively in accordance with the guidelines issued by the Central Government.
- However, it was seen that there may have been renewable power projects which were eligible for waiver of ISTS charges and losses. Those projects where the scheduled commissioning date was on or before the June 30, 2023, were granted extension of the scheduled commissioning date by the Solar Energy Corporation of India/NTPC Limited or other Project Implementing Agencies on behalf of Government of India for reasons of Force Majeure or delays on the part of the transmission provider or inaction or delays on the part of Government Agency. In such cases, representations were received that the eligible renewable power projects should not be deprived of the waiver of ISTS charges and losses.
- After examining the above issue, the Government, in supersession of Ministry of Power's (**MoP**) earlier orders dated February 13, 2018, November 6, 2019 and August 5, 2020, passed an order dated January 21, 2021 (2021 Order) wherein it was stated that no ISTS transmission charges would be levied on transmission of the electricity generated from power plants meeting the following criteria for a period of 25 (twenty five) years from the date of commissioning of the power plants.
- It has been clarified the 2021 Order will be applied prospectively.

Criteria:

- Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned up to June 30, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government.
  - Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants.
  - Any renewable power project which is eligible for a waiver of ISTS charges and has its scheduled date of commissioning on or before June 30, 2023 is granted extension of time from the commissioning on account of Force Majeure/for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time/on account of delays on the part of any Government Agency. If the power plant is commissioned before the extended date, it will get the benefit of waiver of ISTS charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before June 30, 2023.
  - Where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA will also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

- Solar PV power plants commissioned under "MNRE's Central Public Sector Undertaking (**CPSU**) Scheme Phase-II (Government Producer Scheme) dated March 5, 2019.
- Solar PV power plants commissioned under SECI Tender for manufacturing linked capacity scheme dated June 25, 2019 for sale to entities having RPO, irrespective of whether this power is within RPO or not.

Our view: On account of the pandemic, several projects would have sought extensions for the schedule date of commissioning. In this backdrop, the 2021 Order comes as a huge relief for power developers as it clarifies that such developers would not have to pay ISTS charges if they meet the criteria stipulated therein. The 2021 Order should bring some much-needed relief to the stress in the sector.

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