

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of Petition under Clause 46 of MPERC (Conduct of Business) Regulations, 2004 seeking appropriate directions for grant of relief under force majeure Clause and for setting aside the demand dated 28.03.2023, 21.04.2023 and 04.05.2023 of load enhancement charges raised by respondent read with Clause 11.2 of MP Electricity Supply Code 2021.

Daily Order

(Hearing through Video Conferencing)

Date of hearing: 08.08.2023

Date of daily order: 08.08.2023

M/s Bhaskar Industries Pvt. Ltd.,

- Petitioner

V/s

MP Madhya Kshetra Vidyut Vitran Co. Ltd. (Central Discom) -

Respondent

Shri Dheeraj Singh Panwar, advocate appeared on behalf of Petitioner. Shri Manoj Dubey, advocate and Shri Vaibhav Yadav, DGM appeared on behalf of Respondent.

2. At the hearing held on 08.08.2023, the Counsel for the Petitioner informed the Commission that he has received the reply of respondent on 07.08.2023 and therefore, needs two weeks time to file response.
3. The Counsel for the Respondent pleaded that the said petition is not maintainable as the same is filed under the Regulation 46 of MPERC (Conduct of Business) Regulation, 2004, which has now been repealed by the Commission. The Counsel for the Respondent also pleaded that the petitioner has not invoked substantive provision of Regulations. Besides the Petition has been filed for adjudication of a dispute involving a HT consumer and Distribution Licensee and that the Commission is not a proper forum to adjudicate upon a dispute between a HT consumer and distribution licensee. Further the petitioner has not exhausted alternative remedies available to it before approaching the Commission.
4. The Counsel for the Petitioner pleaded that the petition has been filed by invoking Clause 11.2 of MP Electricity Supply Code 2021 which is a substantive provision to file the petition. Further, the respondent has not acted upon the application of the petitioner under force majeure condition which is a clear violation of Supply Code provision and hence the petition.

Commission's Observations: -

5. The Commission heard the arguments of Petitioner as well as Respondent and made the following observations:

- i. Although the petition is filed under the repealed Regulation, however the procedural provision has been continued with analogous provision under Regulation 45 of prevailing MPERC (Conduct of Business) Regulations, 2016. It is well settled that book is to be seen and not the cover. Banner of petition is not a deciding factor.
- ii. However, the Petitioner has also invoked the provision under Regulation 11.2 of MP Electricity Supply Code 2021 (substantive provision) force majeure clause. The issue before the Commission is with regard to compliance of the Supply Code by non-acceptance of the off line request of the petitioner.
- iii. The learned counsel for the respondent Shri Dubey, contended that petition is not maintainable, Petitioner has to approach some other authorities. Though he did not mention as to who is the appropriate authority and what are the provisions?
- iv. No doubt section 86 (1)(f) says that Commission may adjudicate dispute between generator and licensee. Any grievance of the consumer against a discom is to be decided by competent authority i.e. ECGRF. But in this case when consumer, i.e. the Petitioner approached discom, his application was not entertained. Unless discom passes any order upon Petitioner's application, how is the Petitioner expected to challenge the order before ECGRF. To approach the ECGRF it is a condition precedent that there must be an order of discom. Clause 11.18 of the Supply Code empowers the Commission to deal with such a situation. Its runs as under:-

"In case of any dispute in meaning or scope or interpretation of this code, the interpretation of the Commission shall be final and binding on all concerned."

- v. Hence, contention of learned counsel Shri Dubey is devoid of any merit. Consequently, it is over ruled and it is held that petition is maintainable.
- vi. Respondent is directed to furnish their reply on merit and submit the same within two weeks and serve a copy thereof to the petitioner simultaneously. The Petitioner may file rejoinder if any on the same within one week thereafter and serve a copy of same to respondent simultaneously.

The case is listed for final arguments on the **5th September, 2023**.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S. Parihar)
Chairman