

**MADHYA PRADESH ELECTRICITY REGULATORY  
COMMISSION  
BHOPAL**

**Sub: Petition Under Section 142 of the Electricity Act read with Section 28 of MP Vidyut Sudhar Adhiniyam, 2000 and Regulation 6.6 (I) & (III) of MPERC (Recovery of Expenses and Other Charges for Providing Electric Line or Plant Used for the Purpose of Giving Supply) Regulations, (Revision-I), 2016 and in the matter of Contravention of the Provisions of the Electricity Act, 2003 and the Regulations made there under by the MP Madhya Kshetra Vidyut Vitaran Co. Ltd.**

**ORDER**

**(Hearing through video conferencing)**

**(Date of Order: 22.03.2024)**

**M/s Girija Colonisers & Developers,  
Hotel Surendra Vilas, 240 Zone-I  
MP Nagar, Zone-I, Bhopal  
462011 (M.P)**

**- Petitioner**

**Vs**

**- Respondent**

**Managing Director,  
MP Madhya Kshetra Vidyut Vitaran, Co. Ltd.,  
Bijli Nagar Colony, Govindpura, Bhopal**

Shri Anurag Bisaria, Advocate, appeared on behalf of the petitioner.

Shri Zahid Khan, GM, City Circle, Bhopal appeared on behalf of the Respondent.

M/s Girija Colonisers & Developers filed a petition under section 142 of the Electricity Act read with Section 28 of MP Vidyut Sudhar Adhiniyam, 2000 and Regulation 6.6 (I) & (III) of MPERC (Recovery of Expenses and Other Charges for Providing Electric Line or Plant Used for the Purpose of Giving Supply) Regulations, (Revision-I), 2016 and in the matter of Contravention of the Provisions of the Electricity Act, 2003 and the Regulations made there under by the MP Madhya Kshetra Vidyut Vitaran Co. Ltd.

**2. By affidavit dated 29.08. 2023, the petitioner broadly submitted the following:**

- 2.1 That the Applicant is constrained to file this application for seeking the refund of **Rs 39,62,517/-**(the “**Principal Sum**”) together with accrued interest thereon from the date of payment (31-03-2017) till its refund in full to the Applicant calculated at the rate of 14% p.a. compounded at annual rests, that has illegally been collected by the Respondent and who, in wilful defiance of the order dated 08-05-2023 of this Hon’ble Commission, has failed to pay the said sums to the Applicant.
- 2.2 That the Applicant, M/s Girija Colonizers & Developers, is a developer and builder and had constructed a colony named “Surendra Manik” situated in Bhopal.
- 2.3 That the Applicant had applied for external electrification of the colony under 100% deposit scheme with the Respondent, M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd. who, on 30-03-2017, raised a demand note for Rs 39,62,517/- on the Applicant.
- 2.4 That, since there was an urgency, respondent under duress deposited the sums so demanded on the same day (30-03-2017), but under protest.

- 2.5 That, on 16-03-2018, upon completion of the work, the Applicant preferred an application before the Electricity Consumers Grievances Redressal Forum, Bhopal (the “ECGRF”) seeking refund of the charges that were illegally collected by the Respondent from the Applicant (Case No. BT 41/2018). That the Ld. ECGRF vide order dated 16-07-2018 found in favour of the Applicants, and directed the Respondent to refund a sum of Rs 39,62,517 to the Applicants. Further, the Respondent was directed to submit a compliance report within 15 days of receiving the said order of the Ld. ECGRF. The Respondent admittedly failed, omitted, and ignored to comply with the said directions.
- 2.6 That the Applicant, aggrieved by the Respondent’s failure to refund the sums that he had illegally collected from them, preferred a writ petition before the Hon’ble High Court of Madhya Pradesh (WP 27244 of 2018) seeking issue of appropriate writ/ order/ direction against the Respondent for refunding the Principal Sum as directed by the Ld. ECGRF, along with interest of 14% p.a. in a timely manner.
- 2.7 That meanwhile, the Respondent moved this Hon’ble Commission. The said representation, however, was returned by this Hon’ble Commission vide order dated 10-01-2019 inter alia on the ground that the Applicant’s petition for appropriate directions in relation to the ECGRF Order (i.e., WP 27244/2018) is pending adjudication before the Hon’ble High Court.
- 2.8 That the Respondent, aggrieved by the return of his aforesaid representation (which he erroneously characterized as an ‘appeal’ against the ECGRF Order), moved the Hon’ble High Court of Madhya Pradesh seeking disposal of his representation in Case No. 58/MPERC/2019 before this Hon’ble Commission on merits (WP 16854/2022).
- 2.9 That on 26-09-2022, the Hon’ble High Court of Madhya Pradesh was pleased to dispose of Respondent’s WP 16854/2022 by relegating the matter back to this Hon’ble Commission for deciding the Respondent’s representation in Case No. 58/MPERC/2019 by passing a reasoned and speaking order in accordance with law. Further, in light of the said directions, the Hon’ble High Court was pleased to dispose of Applicant’s WP 27244/2018 with the liberty to seek redressal of grievance after decision of the appeal (i.e., the Respondent’s representation before this Hon’ble Commission) in accordance with law.
- 2.10 That this Hon’ble Commission vide its order dated 08-05-2023 held as under :

Para 13 ix.

*[...] Commission thus holds that the Applicant [the Respondent herein] misinterpreted the provisions of clause 4.3 of the Supply Code, 2013 while recovering cost of augmentation of 33 kV sub-station.*

Para 13 x.

*The Applicant [the Respondent herein] grossly erred while recovering cost of augmentation of existing 33 kV sub-station from 5 MVA to 8 MVA from the Respondent [the Applicant herein] in contravention to the provisions of the sub-clause (iii) of clause 4.1.3 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009 prevailing at that time.*

Para 14.

*[...] In light of the above observations, Commission does not find any irregularity in the order dated 16.07.2018 of ECGRF passed in*

*BT No. 41/2018 with regard to charges payable by the Respondent[the Applicant herein].*

- 2.11 That in light of the aforesaid order of this Hon'ble Commission, the Applicants vide letter dated 16-05-2023 requested the Respondent to forthwith refund the Principal Sum along with payment of accumulated interest thereon to the Applicant, which was ignored by the Respondent.
- 2.12 That on 21-06-2023, the Applicant again sent a reminder to the Respondent to forthwith refund the sums due to the Applicant, which also has not yet been complied with by the Respondent.
- 2.13 That as on 31-08-2023, a sum of Rs 65,38,446/- has accrued as interest on the Principal Sum that was illegally and forcibly taken by the Respondent from the Applicant. The calculation for amount of interest shall be updated in the course of instant proceedings based on the actual date of realizing, in full, the Principal Sum and interest by the Applicant.

Petitioner submitted following grounds, among others:

- 2.14 *Because* the Respondent has illegally collected an extortionate sum of money from the Applicant on the pretext of recovering the cost of augmentation of 33 kV.
- 2.15 *Because* the Respondent has contravened the provisions of The Electricity Act, 2003 and regulations made there under in wrongfully forcing the Applicant to deposit sum of Rs 39,62,517/- toward augmentation of 33kV substation (albeit purportedly).
- 2.16 *Because* the Respondent has contravened the directions of this Hon'ble Commission inter alia in the form of MPERC (Recovery of Expenses and other charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations, (Revision-I), 2009.
- 2.17 *Because* the Respondent has contravened the directions of this Hon'ble Commission by ignoring to refund the sums due to the Applicant in light of order dated 08-05-2023 of this Hon'ble Commission.
- 2.18 *Because*, the Respondent has deprived the Applicant of the lawful use of latter's money and it is settled law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation.
- 2.19 *Because* the Respondent is liable to refund the Principal Sum to the Applicant along with payment of accrued interest thereon from the date of illegally forced deposit (i.e., 30-03-2017) till the date of its refund in full to the Applicant.
- 2.20 *Because* the Responding has failed, omitted, and ignored to refund the said sums to the Applicant in wilful contravention of the law and in brazen defiance of the orders and directions of this Hon'ble Commission.

In view of the foregoing facts and circumstances and for the aforesaid grounds and reasons, petitioner prayed to allow the application and:

- A. Direct the Respondent to refund and pay the following sums to the Applicant:
  - (i) a sum of Rs 39,62,517/- being the Principal Sum that was illegally taken by the Respondent from the Applicant; and
  - (ii) interest at the rate of 14% p.a., compounded at annual rests, calculated from the date of payment of the Principal Sum to the Respondent (i.e., 30-03-2017) till its refund in full to the Applicants (or such other sum that this Hon'ble Commission may determine in this regard);

- B. Pending the hearing and final disposal of the present application, direct the Respondent to deposit the sums set forth in prayer A above with this Hon'ble Commission as an interim measure of protection.
- C. Pass any other or further orders or directions that this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case and in the interest of justice and equity.
3. At the motion hearing held on 31.10.2023, petitioner reiterated the prayer made in the petition. Petition was admitted and the petitioner was directed to serve copy of petition to the respondents within 1 week. Respondent was directed to file their response in 15 days thereafter. Petitioner was allowed to file rejoinder, if any, within 7 day of receipt of response from respondent. The case fixed for hearing on 05.12.2023.
4. At the hearing held on 05.12.2023 respondent sought adjournment of the hearing on the grounds that they have filed an appeal before Hon'ble APTEL. Commission observed that respondent was free to avail legal recourse in the matter but the proceedings in this case could not be deferred on this ground. Commission directed Secretary of the Commission to issue notice to respondent under section 142 of the Electricity Act, 2003. Matter was listed for hearing on 23<sup>rd</sup> January 2023.
5. Notice under section 142 of the Electricity Act 2003 was issued to the respondent on 15.12.2023 to show cause for non-compliance of the provisions of MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) Regulations 2009 and order dated 08.05.2023 of the Commission as to why penal action under section 142 of the Electricity Act 2003 be not taken. Case was listed for hearing on 23.01.2024 on notice served under section 142 of the Electricity Act 2003.
6. At the hearing held on 23.01.2024, petitioner reiterated that direction of Hon'ble Commission in the matter has not been complied with by the respondent. Respondent informed that they will refund the excess amount recovered from petitioner as per order of ECGRF, Bhopal along with interest within 15 days from the day of hearing. Commission directed that the excess amount recovered from petitioner along with interest be refunded to petitioner within 15 days from the date of hearing and intimation be given to Commission immediately thereafter. Case was listed for hearing on notice served to respondent under section 142 on 27.02.2024.
7. The respondent vide his letter dated 30.01.2024 raised an issue of rate of interest and the date from which the interest to be computed for refund to the petitioner.
8. The Commission after considering the matter, clarified the issues raised by respondent vide communication dated 09.02.2024 as under: -

*“Commission is in receipt of a letter of dt. 30.01.2024 from General Manager (City Circle) MPMKVCL Bhopal seeking clarification regarding the rate of interest on amount to be refunded to the petitioner and the date from which the interest is to be made applicable, in compliance of daily order dated 23.01.2024 passed by the Commission in Petition No. 47/2023.*

*As directed, it is hereby clarified that the interest on the refund amount as directed in daily order dt. 23.01.2024 shall be applicable from the date of receipt of disputed amount from M/s. Girija Colonizer till the date of actual refund of amount. The rate of interest for the period from the date of receipt of payment by Discom till the date of order passed by the Commission i.e. till 08.05.2023 shall be the bank rate and from 09.05.2023 till actual*

*refund of amount, the rate of interest shall be 1% higher than the bank rate. The compliance of Daily Order dt. 23.01.2024 may be submitted to Commission promptly.”*

9. At the hearing held on 27.02.2024, petitioner informed that they have not received any refund of money from respondent as directed by this Commission. Respondent informed that due to some administrative difficulties, payment to petitioner could not be processed timely. Respondent assured to refund the amount with interest by 4<sup>th</sup> of March 2024. Commission noted that the respondent has also not filed reply to notice served under section 142 of the Electricity Act, 2003. Commission granted last chance to respondent to refund the amount to petitioner as directed, latest by 4<sup>th</sup> of March 2024 and to file response on notice served under section 142 of the Electricity Act, 2003 within 3 days from today. The case was listed for 12.03.2024.

10. The respondent vide response dated 07.03.2024 submitted as under: -

“यह कि याचिका क्रमांक 47/2023 मेसर्स गिरिजा कॉलोनाईजर एण्ड डेवलपर्स बनाम कंपनी में दिनांक 27.02.2024 को ऑनलाईन सुनवाई के दौरान याचिकाकर्ता मेसर्स गिरिजा कॉलोनाईजर एण्ड डेवलपर्स के पक्ष में मूलधन राशि रूपये 3962517/- एवं ब्याज राशि का भुगतान किये जाने हेतु आदेशित किया गया था। उक्त आदेश के पारिपालन में इस कार्यालय के पत्र क्रमांक 11439-40 दिनांक 07.02.2024 के माध्यम से मूलधन राशि रूपये 3962517/- चेक क्रमांक 399367 दिनांक 07.03.2024 एवं ब्याज राशि रु. 1568549/- चेक क्रमांक 399368 दिनांक 07.03.2024 कुल राशि रु. 5531033/- का भुगतान याचिकाकर्ता मेसर्स गिरिजा कॉलोनाईजर एण्ड डेवलपर्स के पक्ष में किये जाने हेतु जारी कर दिया गया है।

यह कि उक्त प्रकरण क्रमांक 47/2023 में विद्युत वितरण कंपनी द्वारा माननीय नियामक आयोग द्वारा जारी आदेश का पूर्ण रूप से परिपालन कर लिया गया है। अतः उक्त प्रकरण में विद्युत अधिनियम 2003 की धारा 142 के अंतर्गत विद्युत वितरण कंपनी को जारी नोटिस पर कार्यवाही नहीं किये जाते हुए निरस्त किये जाने का अनुरोध किया गया है।”

11. At the hearing held on 12.03.2024 both parties were heard. Respondent submitted that the amount due had been fully paid along with interest to the petitioner. The petitioner confirmed receipt of cheques. However, the petitioner considered it as part payment as no calculation sheet had been furnished by the respondent towards interest calculations. Commission directed both the parties to reconcile the amount that was due on account of interest on principal and to resolve the matter at their end. The respondent also submitted that the reply to notice under section 142 of the Act had been filed to the commission and tendered an apology for consideration. The case was reserved for order.

### **Conclusion**

12. Commission observes that there was delay in refund of excess amount recovered from the petitioner, due to some administrative issues. The respondent has finally refunded a sum of Rs 3962517/- towards principal and Rs 1568549/- towards interest on 07.03.2024 as directed in order dated 23.01.2024 read with communication dated 09.02.2024 from Secretary, Commission to the respondent.
13. Commission further noted that since the respondent in compliance of orders passed by the Commission has refunded the amount to the petitioner, the grievance of the petitioner stand settled. The delay in making refund is not appreciated by the Commission and the respondent Distribution Licensee is advised to ensure timely compliance of the orders of the Commission in future.

14. Since the orders of the Commission have finally been complied with by the respondent and that the petitioner has also tendered an apology for delayed compliance in the matter, the Commission decides to drop further proceedings on notice served to the respondent under section 142 of the Electricity Act, 2003.
15. With aforesaid observations and directions, petition stands disposed of.

**(Prashant Chaturvedi)**  
Member

**(Gopal Srivastava)**  
Member(Law)

**(S.P.S. Parihar)**  
Chairman