

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Clause 11.14 of MP Electricity Supply Code' 2013 as amended from time to time read with Section 86(1)(f) of the Electricity Act' 2003.

Petition No. 34 of 2019

ORDER

(Date of Order: 22nd January' 2021)

The Managing Director

M.P. Power Generating Company Ltd.
Block No. 9, Shakti Bhawan, Vidyut Nagar,
Rampur, Jabalpur – 482 008

- **Petitioner**

Vs.

(1) The Managing Director

M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore – 452001

- **Respondents**

(2) The Managing Director

M.P. Power Management Company Ltd.,
Block No. 15, Shakti Bhawan, Rampur, Jabalpur – 482008

Shri Aashish Bernard, Advocate, Shri Sudhir Saxena, CE (CS), Shri Khalid Nafees, SE(CS) and Shri Salil Choudhari, EE (CS) appeared on behalf of the petitioner.

Shri Shailendra Jain, Dy. Director, appeared on behalf the Respondent No. 1

The petitioner, M.P. Power Generating Company Ltd., Jabalpur filed the subject petition under Clause 11.14 of MP Electricity Supply Code' 2013 as amended from time to time read with Section 86(1)(f) of the Electricity Act' 2003.

2. The petitioner submitted the following in the subject petition:

“(i) In accordance with GoMP decision the name of MP Power Trading Company Ltd. has been changed to MP Power Management Company Limited, the Respondent No. 2. The MP Power Management Company Ltd. has been made holding company for all the three DISCOMS of MP. The Registrar of Companies, MP has issued the Certificate of Incorporation consequent upon change of name on 10.04.2012. The MPPMCL has been vested with several functions and power that were earlier vested with the erstwhile M.P. State Electricity Board.

(ii) The MP Power Management Company Limited and the three DISCOMS of MP have entered into a Management and Corporate functions agreement on 05.06.2012, whereby the three DISCOMS have engaged MPPMCL to represent them in all the proceedings relating to power procurement and tariff petitions filed or to be

defended before CERC, MPERC and other Regulatory Authorities, Hon'ble Appellate Tribunals, Hon'ble High Courts, Hon'ble Supreme Court and CEA etc.. However, the said petition directly refers to issue of Permanent HT Connection for Construction power for SSTPP Stage-1 Khandwa, therefore, the M.P. Paschim Kshetra Vidyut Vitaran Company Ltd., Indore has been made Respondent No. 1 and the MP Power Management Company Limited, Jabalpur the Respondent No. 2.

- (iii) *Section 50 of the Electricity Act 2003 (herein after referred as 'Act 2003') empowered the Hon'ble Madhya Pradesh Electricity Regulatory Commission (hereinafter referred 'the Commission') to specify an '**Electricity Supply Code**'. Exercising such power conferred by the Act 2003 Hon'ble MPERC vide notification No. 861-MPERC/04 has issued the '**Madhya Pradesh Electricity Supply Code 2004**' (Herein after referred as 'Supply Code 2004').*
- (iv) *MPPGCL, for initiating the construction of 2x600MW Shri Singaji Thermal Power Project, Stage-1, Khandwa obtained Permanent HT Connection towards Construction Power from M.P. Paschim Kshetra Vidyut Vitaran Company Limited. The connection so obtained vide agreement dated 05.10.2010 with M.P. Paschim Kshetra Vidyut Vitaran Company Limited was in line with and governed by the provisions of '**Madhya Pradesh Electricity Supply Code 2004**' and its subsequent amendments notified from time to time as applicable on the date of agreement. The payments were also made by MPPGCL to M.P. Paschim Kshetra Vidyut Vitaran Company Limited in accordance with the year wise tariff determined by Hon'ble Commission for Discoms for such connection.*
- (v) *Hon'ble Commission vide No. 2164/ MPERC/ 2013 dated 07.08.2013, and Notification dated 30.08.2013 has reframed and issued the '**Madhya Pradesh Electricity Supply Code, 2013**' (here in after referred as 'Supply Code 2013') by repealing the Supply Code 2004. Subsequently, one amendment has also been issued on dated 15.10.2015 vide notification No. 1875/MPERC/2015 and notified on 23.10.2015.*
- (vi) *Recently, the Respondent No. 1 vide letter No. MD/WZ/05/Commercial/14465 Indore dated 24.07.2019 (**Annexure-1**), has communicated to MPPGCL that under billing of Rs. 4.35 Crores has been incurred due to granting of Permanent Connection to MPPGCL for construction of 2x600MW Shri Singaji Thermal Power Project (SSTPP) Stage-I of petitioner. This amount said to have been payable by MPPGCL, has been pointed out in the audit inspection report of M.P. Paschim Kshetra Vidyut Vitaran Company Limited for the period 2012-2018 issued by Audit Authorities. The Audit Authorities have pointed out that Permanent connection given for Construction power should have been treated as Temporary Connection, accordingly, the difference amount works out to Rs. 4.35 Crores.*
- (vii) *The Respondent No. 1 had represented before the Audit Authorities, that the contract period of Construction power was for more than one year and therefore, as per the prevailing provisions of Madhya Pradesh Electricity Supply Code, 2004 and*

subsequent amendments, the Construction power supply was given on permanent connection basis.

- (viii) Hon'ble Commission in its 1st amendment to Madhya Pradesh Electricity Supply Code, 2013 vide notification No. 1875/MPERC/2015 and notified on 23.10.2015, has amended the clause 4.43 and the same is reproduced below: -

Quote

"4.43 Any person requiring power supply for the purpose that is temporary in nature, may apply for temporary power supply for a period of less than two years in the Form as required by the Licensee. The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10kW and 30 days before for higher the said loads. **Under no circumstances, permanent connection be allowed for construction purposes.**"

Un-Quote

- (ix) The Audit Authorities have not accepted the submissions made by M.P. Paschim Kshetra Vidyut Vitaran Company Limited and retained its stand, directing to recover Rs. 4.35 Crores from MPPGCL from the period 2012 to 2018, considering MPERC's 1st Amendment to Supply Code, 2013 applicable from retrospective date of April 2012.
- (x) The Petitioner humbly submits that restriction on granting of permanent connection could be made applicable since the date of applicability of its notification of first amendment to the Supply Code 2013 that is w.e.f 23.10.2015. Prior to notification of this amendment there was no embargo on granting of the permanent connection for construction purpose. Therefore any demand for the period prior to 23.10.2015, raised by the Respondent No.1 now (in compliance to the Audit observations) is not justified and will be in the contravention of the explicit provision of Supply Code.
- (xi) In this regard kind attention of the Hon'ble Commission is drawn towards the fact that the connection to SSTPP Stage-I was granted on 6.10.2010, when Supply Code, 2004 was in force. The relevant provisions of the Supply Code clause 4.54 regarding grant of Temporary Connection are as under-

Quote

"Any person requiring power supply for purpose that is temporary in nature, **for a period of less than one year** may apply for temporary power supply in the prescribed form (Annex- 1 or 2). Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."

Un-Quote

From perusal of above clause it is fairly clear that the provision for granting the temporary connection was only for the consumers who require supply for less than 1 year.

- (xii) *Later, the Supply Code was amended in the year 2013, and the amended provisions of Supply Code (effective from 30.08.2013), relating to Temporary Supply (clause 4.43), are as under-*

Quote

*“Any person requiring power supply for purpose that is temporary in nature, **for a period of less than two years may apply** for temporary power supply in the specified form (Annex- 1 or 2). The period of **temporary connection can be extended up to five years** for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads.”*

Un-Quote

It is again clear from perusal of above clause that Temporary Connection is to be granted for a period less than two years, which may be extended upto five years for construction of building/ power plants and for the purpose of setting up industrial units. Here also, nothing is mentioned about grant of Temporary Connection for a period exceeding 5 years.

- (xiii) *Thus, it may be seen that the condition forbidding Temporary Connection for construction purposes was first time introduced vide aforesaid first amendment only, and prior to this amendment, no condition, what so ever, was mentioned in Supply Code which restricted grant of permanent connection for any long duration construction project. In fact, as per the provisions of Supply Code 2004 (which was in force at the time of grant of connection to SSTPP) Temporary Connection be granted for a period less than 1 year only, and the purpose of Supply (whether construction or not) was not relevant at all for grant of connection. As such, request for grant of Permanent Connection could not be declined to any consumer in the absence of any enabling provisions in the Supply Code at the time of application/ agreement and grant of connection.*
- (xiv) *As mentioned above, the condition forbidding Temporary Connection for construction purposes was first time introduced vide 1st amendment in the Supply Code 2013 notified on 23.10.2015. The relevant clause of the notification dated 23.10.2015 is reproduced as under:*

Quote

1. *Short Title and Commencement-*
- 1.1 *This Code shall be called Madhya Pradesh Electricity Supply Code, 2013 (First Amendment) [ARG-1(I)(i) of 2015].*
- 1.2 *It shall extend to the whole of the State Madhya Pradesh.*
- 1.3 ***It shall be effective from the date of their publications in the Official***

Gazette of the Government of Madhya Pradesh.***Un-Quote***

From the perusal of the aforesaid provision of the notification, it is clear that this amended provision has become effective from the date of publication in the official Gazette that is w.e.f 23.10.2015. Therefore, the view of audit, that billing with tariff for temporary connection is to be done with effect from 30.08.2013 or before, does not seems to be correct.

It is re-iterated that as prior to amendment dated 23.10.2015, there was no embargo on grant of permanent connection for construction purposes. If such condition had existed in the Supply Code 2013, no need or situation would have arisen for insertion of the condition forbidding grant of Permanent Connection for construction purposes.

- (xv) *MPPGCL wishes to submit that this petition does in no manner hurt the feelings of any party whom so ever it may be and may like to further submit that the issue of effective date of applicability of regulation came before consideration of Hon'ble Appellate Tribunal of Electricity in Appeal No. 179 of 2009 in the matter of North Eastern Electric Power Corporation Ltd. Vs Tripura State Electricity Corporation Ltd. Vide order dated 12.07.2017 (Annexure-2) Hon'ble Tribunal observed as under:*

Quote

- "15. *The dispute which has arisen in this Appeal involves the adjudication about the date of applicability of Regulation 5A. While considering the merits of the matter it would be appropriate to refer to the principle which has been laid down by the Hon'ble Supreme Court in regard to retrospective effect. It is held in the case of State of Madhya Pradesh V/s Tikamdas (1975) 2 SCC 100 that subordinate legislation cannot be given retrospective effect unless specifically so authorized under the parent statute. The relevant observation made by the Hon'ble Supreme Court is as follows:*

"There is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the Rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf"

16. *In the light of the dictum laid by the Hon'ble Supreme Court, if we look at the Electricity Act, 2003, it is evident that this Act, under which the Regulations on the terms of conditions of tariff are notified, does not authorize the Commission to make the Regulations which may apply retrospectively. Keeping in view of the above, let us discuss the relevant facts to analyse the issue."*

Un-Quote

(xvi) *MPPGCL humbly requests Hon'ble Commission to provide directives exercising its power as per clause 11.14 Power to remove difficulties of MP Electricity Supply code, 2013 towards date of applicability of 1st amendment to MP Electricity Supply code, 2013. So that the issue of additional recovery by M.P. Paschim Kshetra Vidyut Vitaran Company Limited could be settled.*

(xvii) *Apart from above Hon'ble Commission has exclusive jurisdiction to adjudicate the dispute between generating companies and licensees under section 86(1)(f) of the Act 2003."*

3. With the above submissions, the petitioner prayed the following:

- (a) Clarify that the condition forbidding Temporary Connection for construction purposes is applicable only after first amendment to Supply Code 2013 with effective from 23.10.2015.
- (b) Direct the Respondent No. 1 to restrict the recovery of under billing with effective from 23.10.2015 only.

4. The petition was admitted on 15.10.2019. The petitioner was directed to serve a copy of the petition to the Respondents in this matter. The Respondents were directed to file their replies to the subject petition in hard and soft copy by 11.11.2019. The Respondents were also directed to serve a copy of their replies to the petitioner simultaneously.

5. At the hearing held in this matter on 26.11.2019, the representatives who appeared for the petitioner had sought adjournment in this matter. By affidavit dated 16th November' 2019, the Respondent No. 1 filed reply to the subject petition. The Respondent No. 2 (MPPMCL) was directed to file reply to the subject petition by 16th December' 2019. At the next hearing held on 03.01.2020, the Respondent No. 2 (MPPMCL) was again directed to file reply to the subject petition by 25th January' 2020. The Respondent No. 2 filed reply to the subject petition on 10.02.2020. Due to outbreak of COVID-19 and Nation-wide lockdown, all hearings were adjourned and this case was heard through video conferencing on 29.09.2020 and the petition was closed for order.

Submissions by the Respondents:

6. By affidavit dated 16.11.2019, the Respondent No.1 broadly submitted the following:

(i) *That, from perusal of averment made in the petition along with relief claimed, it is apparent that the primary relief sought by the petitioner vide instant petition is the clarification with respect to the date of applicability of 1st amendment to MP Supply Code 2013, as second relief solely depends upon the decision of the Hon'ble Commission on the first relief sought by the petitioner.*

(ii) *In this regard kind attention of the Hon'ble Commission is drawn to the fact following facts-*

(a) *The connection to M/s SSTPS was granted on 5.10.2010, when Supply Code, 2004 was in force. The relevant provisions of the Supply Code clause 4.54 regarding grant of Temporary Connection are as under-*

"Any person requiring power supply for purpose that is temporary in nature, for a period of less than one year may apply for temporary power supply in the prescribed form (Annex- 1 or 2). Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."

(b) *It is clear from perusal of above that temporary connection can be granted to only those consumers who require supply for less than 1 year. Accordingly considering the requirement of connection for the longer period, Discom has granted permanent connection for construction of petitioner's power plant.*

(c) *Later, the Supply Code was amended in the year 2013, and the amended provisions of Supply Code (effective from 30.08.2013), relating to Temporary Supply (clause 4.43), are as under-*

"Any person requiring power supply for purpose that is temporary in nature, for a period of less than two years may apply for temporary power supply in the specified form (Annex- 1 or 2). The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."

(d) *It is again clear from perusal of above clause that Temporary Connection is to be granted for a period less than two years, which may be extended upto five years for construction of building/ power plants and for the purpose of setting up industrial*

units. Here again, nothing is mentioned about grant of Temporary Connection for a period exceeding 5 years.

(e) Finally, vide First Amendment in Supply Code 2013, following line was appended to Clause 4.43 of the Code-

‘Under no circumstances, permanent connection be allowed for construction purpose.’

(iii) Thus, it may be seen that the condition forbidding Temporary Connection for construction purposes was first time introduced vide aforesaid amendment only, and prior to this amendment, no condition, what so ever, was mentioned in Supply Code which restricted grant of permanent connection for any long duration construction project. In fact, as per the provisions of Supply Code 2004 (which was in force at the time of grant of connection to SSTPS) Temporary Connection could be granted for a period less than 1 year only, and the purpose of Supply (whether construction or not) was not relevant at all for grant of connection. As such, request for grant of Permanent Connection could not be declined to any consumer in the absence of any enabling provisions in the Supply Code. Even the amended clause 4.43 of the Supply Code is silent about the nature of connection i.e temporary or permanent if period of construction is more than 5 year.

(iv) That, in view of above factual circumstance, answering respondent support the prayer of the clarification regarding applicability of 1st amendment to MP Supply Code 2013 in the present circumstances of the case.

7. The Respondent No. 2 (MPPMCL) in its written submission dated 10.02.2020 broadly submitted the following:

“(i) That, by way of present petition, the petitioner has assailed that it was provided a permanent connection for supply of electricity to it by the Respondent No. 1 vide agreement dated 05.01.2010 for the construction of 2x600 MW Shri Singaji Thermal Power Project (SSTPP) Stage-1. The said supply of electricity was governed by the provisions of the Madhya Pradesh Electricity Supply Code, 2004, which was effective from 16th April, 2004. The said Supply Code of 2004, after witnessing several amendments, was ultimately reframed and replaced by the Madhya Pradesh Electricity Supply Code, 2013 with effect from 30th August, 2013. This Supply Code of 2013 also suffered an amendment in its Section 4.43 and for the first time on 23.10.2015, restricted granting of a permanent connection for construction purposes. Since the petitioner’s plant was granted a permanent electricity connection right from inception for construction purpose, the Audit of the Respondent No. 1 raised an objection, perhaps

in view of the amendment to the Supply Code of 2013 restricting grant of a permanent connection and requested for the bills raised on the petitioner to be revised to a Tariff applicable for a Temporary connection instead of a permanent connection right from the date the said connection was granted. Accordingly, the Respondent No. 1 raised a demand notice on the petitioner claiming an amount of Rs. 4.35 crores, being the difference amount for the period from the year 2012 to 2018. The petitioner has challenged the said demand and has assailed that the amendment to the Supply code would not be applicable retrospectively and at the best the Respondent No. 1 can claim the difference amount from the date of notification i.e., from 23.10.2015, of the amendment to the Supply Code of 2013 restricting grant of a permanent connection.

- (ii) *That, the answering Respondent has been supplied with a copy of the reply filed by Respondent No. 1 – MP Paschim Kshetra Vidyut Vitaran Company Ltd.*
- (iii) *That, the answering Respondent adopts and supports the contents under the reply and submissions made by the Respondent No. 1 in above referred petition and does not wish to make any separate reply and submissions.”*

8. The Commission’s observations on the petition and submissions made by the Petitioner and Respondents in this matter are as under: -

- (i) The petitioner (MPPGCL) applied for a HT Connection to the Respondent No. 1 (West Discom) in the year 2010 for construction of 2x600 MW Shri Singaji Thermal Power Project, Stage-1, Khandwa.
- (ii) The connection was served in accordance with the relevant clause 4.54 of the Supply Code 2004 applicable at that time. Clause 4.54 of the Supply Code is as under: -

*“Any person requiring power supply for purpose that is temporary in nature, **for a period of less than one year may apply** for temporary power supply in the prescribed form (Annex- 1 or 2). Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads.”*

As the construction of thermal power project requires 4 to 5 years, a permanent electricity connection for construction of the abovementioned power project, was served by the Respondent no. 1 through an agreement executed on 05.10.2010.

- (iii) The petitioner was making payments to the Respondent No. 1 as per the bills issued by the Respondent no.1. The bills were in accordance with the applicable tariff for the connection, under Retail Supply Tariff orders issued from time to time. The Respondent No.1 had never objected the tariff category and payments made by the petitioner to the Respondent No.1.
- (iv) Later on, M.P. Electricity Supply Code was revised and notified on 30th August' 2013 namely M.P. Electricity Supply Code, 2013. Clause 4.43 of the Supply Code 2013 had the following provisions with regard to the temporary connection: -

*"Any person requiring power supply for purpose that is temporary in nature, **for a period of less than two years may apply** for temporary power supply in the specified form (Annex- 1 or 2). The period of **temporary connection can be extended up to five years** for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."*

- (v) M.P. Electricity Supply Code, 2013 notified on 30th August' 2013 provided that the temporary connection may be availed for such connections which would be temporary in nature for less than two years. It also provided that the period of such temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. This clause did not provide any direction for the existing connections. As the permanent connection for the power project was already existing through an agreement on 05.10.2010, the same tariff was continued for the aforesaid connection. Subsequently, first amendment to the Madhya Pradesh Electricity Supply Code, 2013 was notified on 23.10.2015, in which it has been specifically provided under Clause 4.43 for the first time that "Under no circumstances, permanent connection be allowed for construction purposes".

The amended clause 4.43 is reproduced as under: -

"4.43 Any person requiring power supply for the purpose that is temporary in nature, may apply for temporary power supply for a period of less than two

*years in the Form as required by the Licensee. The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10kW and 30 days before for higher the said loads. **Under no circumstances, permanent connection be allowed for construction purposes."***

After this amendment, the Respondent No. 1, should have allowed temporary connection only for the construction work of the power project, as the First Amendment disallowed use of permanent connection for construction purpose.

9. In view of the foregoing, it is clarified that the permanent connection in the subject petition which was earlier provided for construction purposes should no longer be allowed/considered as permanent connection from the date of notification of First amendment to Madhya Pradesh Electricity Supply Code, 2013 i.e., 23.10.2015. Accordingly, the demand raised by Respondent No.1 be revised and temporary tariff be made applicable only from the effective date of notification of the First Amendment to Madhya Pradesh Electricity Supply Code, 2013.

With the aforesaid observations and clarification, the subject petition is disposed of.

-Sd/-
(Shashi Bhushan Pathak)
Member

-Sd/-
(Mukul Dhariwal)
Member

-Sd/-
(S.P.S Parihar)
Chairman