

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: Petition under Section 86 of the Electricity Act, 2003 for the execution of the order dt. 06.09.2023 passed by MPERC in P-16/2023 and initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and conduct of business Regulation 2016 of MPERC against the Respondents for non-compliance of the order dt. 06.09.2023 passed by the Commission in P-16/2023.

ORDER

(Date of Order: 22 March' 2024)

1. M/s. Birla Corporation Ltd, Unit: Satna Cement Works - Petitioner

V/s

**1. Madhya Pradesh Poorv Kshetra
Vidyut Vitaran Company Ltd. (MPPKVVCL)
Shakti Bhawan, PO: Vidyut Nagar, Rampur,
Jabalpur – 482008**

**2. Madhya Pradesh State Load Despatch Centre (MPSLDC)
MP Power Transmission Co. Ltd.
Nayagaon, Rampur, Jabalpur, 482008, MP**

- Respondents

Shri Ajay Porwal and Ms. Bhakti Vyas appeared on behalf of the Petitioner.
Shri Prakash Upadhyay, advocate appeared on behalf of Respondent No. 1
Shri Anurag Mishra, GM appeared on behalf of Respondent No. 2

1. The subject Petition has been filed by Petitioner under Section 86 of the Electricity Act, 2003 for the execution of the order dt. 06.09.2023 passed by this Commission in Petition No. 16/2023 and initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and conduct of business Regulation 2016 of MPERC against the Respondents for non-compliance of the order dt. 06.09.2023 passed by the Commission in Petition No. 16/2023.
2. In the instant petition, the petitioner has made following prayer:-

- i. Admit the Petition
 - ii. Allow Petitioner to submit any additional submission required.
 - iii. Direct Respondent to credit the rebate amount along with Interest at 12% per annum on the outstanding amount effective from 30 days of the Hon'ble commission's order dated 6th September 2023.
 - iv. Impose penalty on the Respondent as per provisions of sections 142 of The Act.
 - v. Any other relief Commission deemed fit.
3. The petitioner has made following broad submission in this petition:
- i. *Petitioner established an ON-SITE Thermal Captive power plant in the year 2005 and same was under operation at full capacity till September 2021. The petitioner is also a 132 KV consumer of the respondent.*
 - ii. *Vide letter dated 06/10/2021, Petitioner informed Respondent that it has **reduced its power generation from its CPP** and has started drawing more power from the grid and requested to give petitioner benefit as per clause(f) of tariff schedule HV-3 from the month of Oct 2021.*
 - iii. *Petitioner submits that since the installation of the thermal power plant, the generating plant has always a CPP with 100 % capital investment by Petitioner and 100 % consumption by Petitioner and it was confirming to the provisions of rule 3 (1) a of the Electricity Rule 2005 and all along the period Respondent never objected to the CPP status of the Petitioner. It is further stated that Petitioner had also submitted CA certificate dated 29/10/2021 regarding 100 % shareholding in the generator and 100 % power consumption.*
 - iv. *Frustrated with the **Intentional non-compliance of the Hon'ble Commission's tariff order provisions in FY21-22 and FY 22-23**, with regard to allowing Rs. 2 rebate for Captive power, Petitioner filed a Petition before the Hon'ble Commission. The petition was admitted on 6th June 2023 and after due process of hearing full opportunity was given to the Respondent for explaining its situation.*
 - v. *Hon'ble Commission passed a speaking order after due process of hearing on dated 6th September 2023, the relevant part is reproduced below:-*

“Commission's Observations and Findings

5. *The Commission has perused the submission made by the parties and observed the following:*

i. The petitioner has been denied the rebate admissible under clause (f) of specific terms and conditions of HV- 3 tariff schedule in the Retail Supply Tariff order for FY 2021-22 and FY 2022-23 by respondent Discom on the premise that respondent was not in a position to process the request of the petitioner as there was no clarity with respect to the verification of the captive status of a particular consumer or class of consumers and jurisdiction of authority for verification of captive status.

ii. The Respondent submitted that the Commission notified the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on 17th March 23 and laid down detailed procedures vide order dated 13th June 2023 for verification of captive generating plants and captive users and accordingly the grievance of the petitioner can be redressed by referring to the matter to “Designated authority” under aforesaid Regulations.

8. In the instant case, the Commission is of the considered view that the Respondent Discom has not exercised the responsibility of collecting and verifying the data for the purpose of verification of CPP status of petitioner in accordance with criteria laid down in prevailing Rules and Regulations, although, the relevant documents were made available to the Discom by petitioner. The details of such documents are referred in petition by the petitioner such as i) “G” form (month-wise details of Generation, Electricity duty paid and in-house(captive) use of generating plant); ii) month wise treasury receipt towards online payment of Electricity duty and, iii) CA certificate certifying petitioner’s ownership and its consumption and other undertakings by competent authority.

9. Further, the Commission has notified the Regulations namely MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on 17.03.23 wherein it specified the methodology for verification of the status of Captive Generating Plants and Captive Users. It is well settled that the change in procedural law operates retrospectively unlike the Law relating to vested right i.e. substantive Law

10. In view of forging observations, the Commission deems it appropriate that the respondent be entrusted with the responsibility to verify the CPP status of the petitioner. Accordingly, the respondent is directed to verify the CPP status of the petitioner and comply with the provisions of the Retail supply tariff order for FY2021-22 and FY2022-23. The compliance be reported within one month from the date of this order.

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

- vi. The Petitioner submits that after the said order, the Petitioner requested the Respondent vide letter dated 15/09/2023 for compliance of Hon’ble Commission order in the stipulated time.
- vii. That Petitioner sent reminders on 26th September, 3rd October 23, and 12th October 2023 and also sent its representative for persuasion however Respondent did not comply with the order of the Hon'ble Commission hence this Petition.

4. At the motion hearing held on 13.12.2023, the Commission admitted the petitions and directed that MP State Load Despatch Centre (MPSLDC) also be made respondent in the petition.
5. Vide affidavit dated 03.01.2024, Respondent No.1 has made following submissions: -

- i. *That the petitioner has filed the contempt petition under section 142 read with Section 149 of the Electricity Act, 2003 and conduct of business Regulation 2016 of MPERC. In this regard it is respectfully submitted that the respondents have filed the review petition on 6th November '2023 against Hon'ble Commission's order dated 06.09.2023.*
- ii. *The submission made by respondent was within the time limits as specified in regulation MPERC (Conduct of Business) (Revision-I) Regulations,2016. The relevant regulation is reproduced hereunder:*

"40. Review of the decisions, directions and orders.- (1) The Commission may on its own motion or on the application of any of the person or parties concerned, within 60 days from the date of making any decision, direction or order, review such decision, direction or order and pass such appropriate order as the Commission thinks fit.

(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations subject to fulfillment of the following conditions, namely:-

(a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;

(b) On account of some mistake or error apparent on the face of the record; or
(c) Any other sufficient reason.

- iii. *The Hon'ble Commission on dated 06.12.2023 admitted the submission made by MPPKVVCL and also directed the respondents (including SLDC) to file the response.*
- iv. *In this regards it is pleaded before the Hon'ble Commission to Dismiss the present petition.*

6. Vide affidavit dated 09.01.2024, Respondent No. 2 has filed the reply whereby following broad submissions were made :-

- A. *That, the contents of the petition are related to allowing rebate of Rs. 2/- to Captive User by the Discom on account of reduced generation from its Captive Generating Plant as per Retail Supply Tariff Order for FY-2021-22 and FY 2022-23. The Petitioner has quoted the relevant extracts of Hon'ble Commission order dated 06.09.2023 in Petition No. 16/2023. The contents of various paras of the petition are commercial and legal in nature, therefore beyond the purview of SLDC.*
- B. *That, it is to submit that Hon'ble Commission vide order dated 24th March 2023 has authorized Chief Engineer (SLDC), MPPTCL, Jabalpur as a Designated Authority under Regulation 5.1 of the Madhya Pradesh Electricity Regulatory Commission*

(Verification of Captive Generating Plants and Captive Users) Regulations 2023 for determination of the Captive Status of Captive Generating Plants and Captive Users. The Hon'ble Commission in its order dated 24.03.2023 has also directed that Designated Authority shall intimate fulfillment of condition in regard to Captive Status or otherwise to the Captive Generating Plant / Captive User and Distribution Licensee by the 15th July of next year. Thus, as per provisions of the above regulation and orders, SLDC shall be responsible for determining Captive Status from the year 2022-23 and onwards.

- C. *In compliance to the Regulatory Provisions, SLDC could determine CPP status only after receipt of certified information / data in prescribed formats from the Captive Generating Plants as well as certified data from the concerned Distribution Licensee. In the instant case, SLDC did not receive the certified data from the Distribution Licensee and the Petitioner also did not submit the certified information / data as per MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023.*
- D. *That, regulation (7.1) of Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations 2023 is reproduced below:*

“7.1 If the CGP or Captive User fails to meet the criterion of ownership and consumption, specified in Rule 3 of Electricity Rule 2005, as amended from time to time, by the end of the Year, such CGP or Captive User shall lose its captive status for that Year only leading to imposition of Cross Subsidy Surcharge and such other charges as applicable on open access consumer and a non-captive Generating Plant for the entire such year.”

The matter in the petition is for getting rebate of Rs. 2/- by determining the CPP Status by the Designated Authority without submitting requisite information / data to the SLDC. Since the regulatory compliances have not been fulfilled till this date, thus the CPP status of the Petitioner is not determined by the SLDC.

- E. *When the requisite information / data shall be submitted by the Petitioner for FY 2022-23 as per Clause-6 of Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations 2023 and Net Generation Data duly certified by the concerned Distribution Licensee, SLDC after due verification of information / data, shall issue the CPP Status within the timeline decided by the Commission.*
- F. *It is to submit that Petitioner vide letter dated 22.06.2023 had applied for verification of Captive Status of their 27MW Thermal Captive Power Plant for FY-2021-22 and FY-2022-23. In response to their letter, SLDC vide letter dated 28.06.2023 had intimated to comply the regulatory requirements for verification of Captive Status for FY-2022-23 and it was also requested to take-up the matter of verification of Captive Status for FY-2021-22 with Discom. No reply from the Petitioner was received so far regarding verification of Captive Status for FY-2022-23.*

- i. *It is to submit that Respondent No. 1 has been finding escape route for not determining Captive status of CPPs prior to FY22-23 by misquoting the regulatory provisions of the Hon'ble Commission. SLDC has already communicated methodology for determining the Captive status of CPPs vide letter dated 1/1/2024 in response to Respondent No 1.*
- ii. *In view of the aforesaid submissions, it is humbly prayed before the Hon'ble Commission that suitable directions may be issued to Respondent No. 1 for determining the Captive Status of CGPs prior to FY 2022-23.*

7. At the hearing held on 23.01.2024, the Commission heard the arguments and reserved the case for order.

Commission's Observations and findings

8. Subject Petition is filed by the Petitioner (M/s Birla Corporation Ltd) against the Respondent No 1 (East Discom) for non-compliance of the Commission's order dated 06.09.2023 in petition No. 16/2023. In the matter, the Commission vide order dated 06/09/2023 has deemed it appropriate that East Discom be entrusted with the responsibility to verify the CPP status of the M/s Birla Corporation Ltd. Accordingly, the East Discom was directed to verify the CPP status of M/s Birla Corporation Ltd. and comply with the provisions of the Retail supply tariff order for FY2021-22 and FY2022-23. In the said order, the Commission has given directions to East Discom to comply with at para 8, 9 and 10 of aforesaid order as reproduced below :-

8. " In the instant case, the Commission is of the considered view that the Respondent Discom has not exercised the responsibility of collecting and verifying the data for the purpose of verification of CPP status of petitioner in accordance with criteria laid down in prevailing Rules and Regulations although, the relevant documents were made available to the Discom by petitioner. The details of such documents are referred in petition by the petitioner such as i) "G" form (month wise details of Generation, Electricity duty paid and in-house(captive) use of generating plant); ii) month wise treasury receipt towards online payment of Electricity duty and, iii) CA certificate certifying petitioner's ownership and its consumption and other undertakings by competent authority.

9. Further, the Commission has notified the Regulations namely MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on 17.03.23 wherein it specified the methodology for verification of status of Captive Generating Plants and Captive Users. It is well settled that the change in procedural law operates retrospectively unlike the Law relating to vested right i.e. substantive Law

10. In view of forging observations, the Commission deems it appropriate that respondent be entrusted with the responsibility to verify the CPP status of the petitioner. Accordingly, respondent is directed to verify the CPP status of petitioner and comply with the provisions of Retail supply tariff order for FY2021-22 and FY2022-23. The compliance be reported within one month from the date of this order.”

9. The Respondent No 1 has submitted in his reply that it has filed a review petition (P.No 60/2023) against the Commission’s aforesaid order dated 06.09.2023 in petition No. 16/2023. The same petition is admitted by the Commission vide daily order dated 06/12/23 for further deliberations.
10. Respondent No. 2 has submitted that Respondent No. 1 has been finding escape route for not determining Captive status of CPPs prior to FY22-23 by misquoting the regulatory provisions of the Hon’ble Commission. SLDC has already communicated methodology for determining the Captive status of CPPs vide letter dated 1/1/2024 in response to Respondent No. 1, mentioning that prior to notification of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023, the certification/ verification of Captive Generating Plants and Users is being done by the Discoms only and the same methodology may be adopted for verification of generation of Captive Generating Plant. Respondent No 2 has also requested the Commission that suitable directions may be issued to Respondent No 1 for determining the Captive Status of CGPs prior to FY 2022-23.
11. The Commission has perused the submissions made by the parties. The Commission observed that Respondent No. 1 has filed a separate review petition against the Commission’s order dated 06.09.2023 in petition No. 16/2023 on premise that he is facing difficulty in execution of Commission’s aforesaid directive due to lack of statutory criteria of verification of auxiliary consumption of CGP of Petitioner.
12. The Commission has partially allowed the Review petition filed by Respondent No.1 and issued appropriate clarification to resolve the difficulties separately in order dated 22.03.2024 in Review petition No. 72 of 2023 filed by Respondent No.1. Respondent No. 1 has been directed to implement

the Commission's order dated 06/09/2023 in Petition No. 16 /2023 in the light of clarification given vide order dated 22.03.2024 in Review petition No. 72/2023. In view of the above, proceedings under Section 142 of the Electricity Act 2003 against Respondent No. 1 are dropped. Accordingly, instant petition stands disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman