

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION,
BHOPAL**

Subject: Review Petition against Hon'ble Commission order dated 06.09.2023 in petition no. 16/2023 filed under section 45, 61, 62, 86 (1) (a) section 181 of the Act.

ORDER

(Date of Order: 22 March'2024)

MP Poorv Kshetra Vidyut Vitaran Company Ltd. (East Discom) :

Petitioner

V/s

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

2. Madhya Pradesh State Load Despatch Centre (MPSLDC)

Respondents

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

1. Subject Petition is filed by the Petitioner East Discom seeking review of the Commission's order dated 06.09.2023 in petition no. 16/2023 filed by M/s Birla Corporation Ltd. In the matter, the Commission vide order dated 06/09/2023 has deemed it appropriate that the East Discom be entrusted with the responsibility to verify the CPP status of the M/s Birla Corporation Ltd. Accordingly, the East Discom is directed to verify the CPP status of M/s Birla Corporation Ltd. and comply with the provisions of the Retail supply tariff order for FY 2021-22 and FY 2022-23. 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.”

2. Aggrieved with the aforesaid order, the petitioner has filed this review petition whereby following prayer is made :-
- i. Consider petitioner’s submission seeking the review of Hon’ble Commission’s order dated 06.09.2023 in petition no. 16/2023;
 - ii. to suggest credible/authentic sources for gross energy generation, auxiliary consumption & net energy of CPP for verification of CPP status/user for generating plants.
 - iii. to direct the Chief Engineer, SLDC, MPPTCL, the Designated Authority appointed by Hon’ble Commission’s order dated 24.03.2023 for verification of the Captive Status/user for generating plant of M/s Birla Corporation Ltd;
 - iv. Condone any inadvertent omissions/errors/shortcomings and permit the petitioner to add / change / modify/alter portion (s) of this filing and make further submission as may be required at a later stage; and

- v. Pass such an order as the Hon'ble Commission deems fit and proper as per the facts and circumstances of the case.
3. The grounds on which review sought by the Petitioner are as under :-
- i.* that the petitioner was directed to verify the CPP status of respondent however, there is no statutory or regulatory mechanism which is in vogue to carryout said exercise. It is submitted that for the purpose of rebate the Net Generation of CPP is required to calculate which can't be done unless suitable guidance is provided to calculate or verify auxiliary consumption of a CPP.
 - ii.* that in para 8 of impugned order, it was suggested to use the statutory form 'G' which CPP submits for the purpose of payment of electricity duty under M.P. Electricity Duty Rules, 1949. However, by passing the said order the Commission has ignored the fact that under statutory form 'G' there is no provision for verification/authentication of the auxiliary consumption of CPP.
 - iii.* that the method suggested by the Commission does not guide the petitioner to arrive at Net Generation (Gross Generation – Auxiliary Consumption) form 'G' is having data only with respect to the gross generation.
 - iv.* that the Commission having jurisdiction for interpretation of existing laws relating to electricity and also have statutory authority to prescribe for procedure/regulation for calculation of auxiliary consumption of a CPP, the rebate under tariff order is to be given to the Net Generation of CPP and if the petitioner does not have statutory guidelines for calculation of same formula prescribed would be of no use. Thus, the observation made in para 8 of the impugned order is an error apparent on face of record warranting interference in review jurisdiction.
 - v.* that prior to the notification of 2023, the petitioner does not have any authority to install the metering device to monitor the gross generation and auxiliary consumption of CPP. The case of respondent is for financial year 2021-2022 and 2022-2023 for which petitioner does not have a statutory guidelines/regulation to calculate Net Generation. The criteria has huge revenue impact and the Commission as Apex Authority in the State of M.P. having jurisdiction to guide the petitioner so that interest of all be protected. The observation made in para 8 does not guide the petitioner to arrive at the Net Generation of CPP thus, the same is an error apparent on face of record.

vi. that, the Commission in paragraph 9 has held that regulation 2023 is a procedural law and will have retrospective application. However, has failed to appreciate that under regulation 2023 the designated authority for verification of CPP status would be SLDC. Thus, the direction to the petitioner to verify the CPP status is an oversight apparent on face of record.

4. The Petitioner has broadly made the following submissions: -

i. The Hon'ble Commission has omitted the submission of MPPKVVCL in hearing dated 08.08.2023 regarding retrospective applicability of procedural law held by Hon'ble Supreme Court in Misc. Application No. 2680 of 2019 (TATA SONS PRIVATE LTD. Vs SIVA INDUSTRIES AND HOLDING LIMITED AND OTHERS). The bench of Justice Dr. D.Y. Chandrachud, CJI and Justice P. S. Narasimha of Hon'ble Supreme Court held that: -

“Procedural law establishes a mechanism for determining rights and liabilities of a party and a machinery for enforcing them- Thus, generally procedural laws are presumed to be retrospective, unless there is a clear indication that such was not the intention of the legislature -Or, the procedural law imposes new obligation qua transactions already concluded or creates new rights or liabilities”
..para 33

ii. The Hon'ble Commission in para 9 has considered that change in procedural law operates retrospective. Therefore, Regulation namely MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (G-45 of 2023) will have retrospective effect. In view of that Hon'ble Commission has directed to verify the captive status retrospectively for FY 2021-22 & FY 2022-23.

Accordingly, if the provisions of regulation G-45 of 2023 are retrospectively applicable then “Designated Authority” provisioned in regulation shall verify the “Captive Status” of petitioner, however on contrary the Hon'ble Commission has directed the respondent (i.e. MPPKVVCL) to verify the Captive Status of CPP.

For one provision retrospective effect has been considered however for another provision retrospective applicability has not been considered.

iii. The Hon'ble Commission in para 8 has considered that the relevant documents have been made available by the petitioner for verification of CPP status like (i) “G” Form (month wise details of Generation, Electricity duty paid and in-house (captive use of generating plant).

In this regard it is submitted before the Hon'ble Commission that "G" form submitted by the petitioner contains the Gross Generation of the plant. However as per detailed procedure issued by Hon'ble Commission in accordance with provisions under regulation 8 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (G-45 of 2023) the net energy generated from the unit identified for captive use shall be considered for Verification of CGP status. The relevant part of the procedure is reproduced here below:

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"3.2 Verification of condition of not less than net 51% consumption by Captive User:

3.2.1 The net energy generated from the unit identified for captive use shall be the gross energy generated from the unit less aggregate auxiliary consumption during the 15 minutes time block. The net energy generation in all the time blocks of the Year shall be grossed up for determining gross net generation of the CGP unit."

From the aforesaid para, it has been desired from the Discom to verify the actual gross generation, auxiliary consumption & net generation by the Generating plants. In this regard there was no express regulation authorizing the Discoms to install the metering device to monitor the generation and consumption of CPP. Therefore, no access for credible/authentic energy generated & auxiliary consumption is available with the Discom for previous years. However, for future detailed procedure for verification of status of CPP issued vide Hon'ble Commission order dated 13.06.2023, Clause 4, every CGP shall install a separate energy meter for recording energy generation & auxiliary consumption which shall be used for verification.

In view of above, it is pleaded before Hon'ble Commission to suggest credible/authentic sources for gross energy generation, auxiliary consumption & net energy of CPP for verification of CPP status.

- iv. The Auxiliary consumption of the generator may vary to an extent of 10-15 % **and will eventually affect the consumer claim accordingly.** At present the Discom is not having any credible/authentic source for verification of the Auxiliary consumption of CPP.*
- v. The Hon'ble Commission in petition no. 73/2012 has directed the M.P. Power Transmission Co. Ltd for levy of parallel operation charges at rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting the load pertaining to auxiliary consumption) connected to the grid. The operative part of the order dated 31.12.2012 is reproduced here below: -*

"6. The Commission also finds that the object of the Electricity Act, 2003 is to delicense generation and to freely permit CPPs. In order to promote CPPs and looking to the facility being availed by CPPs from the grid, the Commission has come to the conclusion that it would be appropriate that parallel operation

charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting load pertaining to auxiliary consumption) connected to the grid.”

At present the MPPTCL is issuing the bill of parallel operation charges in which the demand with respect to auxiliary consumption is being computed for issuing the bills to CPP generators. Thus, MPPTCL itself is keeping account for Auxiliary Consumption. In this regard the Designated Authority i.e. The Chief Engineer, SLDC, MPPTCL be issued direction to verify the CPP Status of Consumer.

3. At the motion hearing held on 13.12.2023, the Commission admitted the petition and directed that MP State Load Despatch Centre (MPSLDC) be made respondent in the petition.
4. Subsequently, Respondent No. 1, has filed its reply whereby following broad submissions were made:-
 - i. *The Respondent at the outset raises a preliminary objection as regards maintainability of the review petition it is submitted that the present review application has been filed in abuse of the process of law and in order to deprive the Respondents from enjoying the fruits of litigation/order.*
 - ii. *That the Review Petition is required to be heard in accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC) r/w Section 94 (1) (f) of the Electricity Act, 2003, which provides that a person aggrieved by an order may apply for a review under the following circumstances:*
 - (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;*
 - (b) An error apparent on the face of the record;*
 - (c) For any other sufficient reason.*

That the present review petition does not fall within the parameters as set out under Order 47 rule 1 of CPC and therefore deserves to be dismissed.

- iii. *That the Hon'ble Apex Court has in catena of judgements laid down that a review petition cannot be filed as an appeal in disguise. Hon'ble Supreme Court in Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715], wherein it was held as under:*

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of

the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

iv. *The Hon'ble Court in Lily Thomas vs. Union of India, (2000) 6 SC 224, observed and held that:*

"the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule"

v. *The Hon'ble Madhya Pradesh High Court in Sharda Begam v. Kallu, [2020 SCC OnLine MP 2419], decided on 23/10/20 held that: "it is well settled that in the guise of review, a rehearing is not permissible.*

vi. *In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The Court while deciding the application for review cannot sit in appeal over the judgment or decree passed by it. The review petitioner cannot be given liberty to readdress the Court on merits because it is not an appeal in disguise where the judgment/order is to be considered on merits."*

The Misc. Application No. 2680 of 2019 (TATA SONS PRIVATE LTD. Vs SIVA INDUSTRIES AND HOLDING LIMITED AND OTHERS) quoted by the Petitioner also directs regarding procedure law to be retrospective however it does not say so for substantive law.

*"Procedural law establishes a mechanism for determining rights and liabilities of a party and a machinery for enforcing them- Thus, **generally procedural laws are presumed to be retrospective unless there is a clear indication that such was not the intention of the legislature** -Or, the procedural law imposes new obligation qua transactions already concluded or creates new rights or liabilities"*

***Petitioner has misconceived Procedure law and substantive law defined below :- Procedural law and substantive law** are two fundamental branches of law that serve different purposes in the legal system. Procedural law regulates the procedures and rules that govern the conduct of legal proceedings, while substantive law defines the rights and obligations of individuals and entities.*

- vii. *Said review Petition is also not maintainable due to wrong information mentioned under para 3 of the Petition that the G Form submitted by this respondent mentions only GROSS GENERATION OF THE PLANT AND DOES NOT MENTION NET GENERATION.*

As clear from Annexure R-1, the said G form mentions GROSS GENERATION UNITS as 10014000 (metered) and also auxiliary consumption of 969479 (metered) which means the net generation is 9044521.

These readings are taken from the main generation meter and auxiliary meters installed at the time of CPP installation bearing seal no. 10644 and R024350. Copy of SLD (Single Line Diagram) approved by GOMP – Chief Electrical Inspector, photos of generator meter seal, photo of auxiliary meter seal, and electrical inspector inspection report enclosed.

*It is important to mention here that electrical inspector is the authority to collect **electricity duty** on power generation.*

5. Respondent No. 2 has made following broad submission in its reply:

- i. *That, SLDC has to perform functions & responsibilities as per the provisions of the Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations 2023 and Detailed Procedure of the Commission for Verification of Status of CGP and Captive Users. Hon'ble Commission has clearly defined the role of SLDC in determining the Captive Status of Captive Generating Plants and its users.*
- ii. *Para-wise reply to Petition no. 72/2023 filed by MP Poorv Kshetra Vidyut Vitran Co. Ltd is submitted hereunder:*

A. Para (1):

That, the content of this para is matter of record and needs no reply.

B. Para (2):

Contents of this para are not true interpretation of provisions contained in the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023. This Regulation was notified by the Commission on 17th March, 2023. Thus, the responsibility of SLDC to determine the Captive Status is to be from the FY 2022-23 as per provisions of the Detailed Procedure issued by the Commission at a later date vide order dated 13.06.2023.

Discoms shall determine the Captive Status of CPPs prior to FY 2022-23 as per the practice adopted by them earlier i.e. prior to notification of the regulation by the Commission in this regard. Therefore, the Captive Status of M/s Birla Corporation for the FY 2021-22 shall be determined by the M.P. Poorv Kshetra Vidyut Vitran Co. Ltd.

C. Para (3):

That, it is to submit that Hon'ble Commission vide order dated 13th June 2023 has issued a Detailed Procedure for verification of status of Captive Generating Plants and Captive Users in accordance with the provisions under Regulations 8 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023. This procedure is an extension of the above-mentioned regulation; thus the provisions of the procedure can only be made applicable for determining the Captive Status for the year 2022-23 only.

The Hon'ble Commission has not assigned the responsibility for determining the Captive Status to the Designated Authority i.e. SLDC prior to FY 2022-23 in the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023.

D. Para (4):

Special Energy Meters could be installed at the points where auxiliary consumption is being drawn by the CPP. The Hon'ble Commission has already made provision in Regulation-4.1 of the Detailed Procedure.

E. Para (5):

It is to submit that in response to petitioner letter dated 18.07.2023, it was intimated by SLDC vide letter dated 01.08.2023 (annexed with petition as Annexure-3) that prior to notification of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations 2023, the certification / verification of Captive Status is being done by Discoms only and the same methodology / procedure could be adopted by the MP Poorv Kshetra Vidyut Vitaran Co. Ltd. for verification of Captive Status prior to FY-2022-23. Thus, certification / verification of Captive Generating Plants and Users for the period prior to FY 2022-23 is to be done by the concerned Distribution Licensee as per prevailing regulations at that time, in this regard.

F. Para (6):

It is to submit that parallel operation charges are levied by the MP Power Transmission Co. Ltd. for running any Generator of the industrial consumer with STU Grid, whether it has Captive status or not. All the regulatory compliances (including installed capacity and auxiliary consumption) are ensured by the MPPTCL only once before giving permission for parallel operation. Daily data in 15 minutes time block is not maintained by the MPPTCL as it is not required by them for claiming parallel operation charges.

It is to submit that Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. has been finding escape route for not determining Captive Status of CPPs prior to FY 2022-23 by misquoting the regulatory provisions of the Hon'ble Commission. SLDC has already communicated

methodology for determining the Captive Status of CPPs vide letter No. 07-05/SG-11/CPP/Orient/02 dated 01.01.2024) in response to CGM (Comml.), MPPKVVCL letter No. EZ/CGM/Comm./HT-(42-III)/1483 dated 30.11.2023

- iii. *In view of the aforesaid submissions, it is humbly prayed before the Hon'ble Commission that suitable directions may be issued to MP Poorv Kshetra Vidyut Vitran Co. Ltd. for determining the Captive Status of CGPs prior to FY 2022-23.*
6. At the hearing held on 23.01.2024, the Commission heard the arguments put forth by the parties and reserved the case for order. On request of the parties, the Commission granted three days time to file written submission, if any.
7. Subsequently, Petitioner and Respondent No. 1 have filed their written submissions vide letter dated 25/01/2024 and 29/01/2024 respectively, whereby they have reiterated their earlier submissions.

Commission's Observations and findings :

8. The petitioner has filed the subject petition for review of the Commission's order dated 06/09/2023 in P. NO 16/2023, whereby the Commission gave following directions to the petitioner to comply with at para 8, 9 and 10 of the 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 (herein after referred as Regulations, 2023) 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 petitioner has submitted 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 Respondent No 1 and sought review on following grounds :
- i.* For the purpose of rebate, the Net Generation of CPP is required to be calculated which can’t be done unless suitable guidance is provided to calculate or verify auxiliary consumption of a CPP.
 - ii.* that, in para 8 of impugned order, it was suggested to use the statutory form ‘G’ which CPP submits for the purpose of payment of electricity duty under M.P. Electricity Duty Rules, 1949. However, by passing the said order the Commission has ignored the fact that under statutory form ‘G’ there is no provision for verification/authenticated of the auxiliary consumption of CPP.
 - iii.* that the method suggested by the Commission does not guide the petitioner to arrive at Net Generation (Gross Generation – Auxiliary Consumption) form ‘G’ is having data only with respect to the gross generation.
 - iv.* that the Commission having jurisdiction for interpretation of existing laws relating to electricity and also have statutory authority to prescribe for procedure/regulation for calculation of auxiliary consumption of a CPP, the rebate under tariff order is to be given to the Net Generation of CPP and if the petitioner does not have statutory guidelines for calculation of same formula prescribed would be of no use. Thus, the observation made in para 8 of the impugned order is an error apparent on face of record warranting interference in review jurisdiction.
 - v.* that prior to the notification of 2023, the petitioner does not have any authority to install the metering device to monitor the gross generation and auxiliary consumption of CPP. The case of respondent is for financial year 2021-2022 and 2022-23 for which petitioner does not have a statutory guidelines/regulation to calculate Net Generation. The criteria has huge revenue impact and the Commission as Apex Authority in the State of M.P. having jurisdiction to guide the petitioner so that interest of all be protected. The observation made in para 8 does not guide the petitioner to arrive at the Net Generation of CPP thus, the same is an error apparent on face of record.

- vi. that, the Commission in paragraph 9 has held that regulation 2023 is a procedural law and will have retrospective application. However, has failed to appreciate that under regulation 2023 the designated authority for verification of CPP status would be SLDC. Thus, the direction to the petitioner to verify the CPP status is an oversight apparent on face of record.
10. The Commission has examined the subject review petition in accordance with Rule 1 Order 47 of the Code of Civil Procedure, which provides that a person aggrieved by an order may apply for a review under the following circumstances:
- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
 - (b) An error apparent on the face of the record; and
 - (c) For any other sufficient reason
11. The Commission has observed that the designated authority under Regulations, 2023 has to only verify Captive status of CPPs. It has nothing to do with operationalisation of tariff rebates, which in any case are within functional domain of Petitioner in this case. It is understood that rebates are subject to Captive status of CPP. In this case, the Petitioner is raising question on Captive status of Respondent no. 1, which is supposedly 100% CPP in terms of ownership and use.
12. It is made out by the Petitioner that prior to Notification of Regulations, 2023 and issue of detailed procedure vide Commission's order dated 13/06/2023 for verification of status of Captive Generating Plants and Captive users in accordance with the aforesaid Regulations, clarity was not available to the Discom for verification of CGP status. The Petitioner has prayed to suggest credible/authentic source for gross energy generation, auxiliary consumption and net energy of CPP. The Petitioner being a Distribution Licensee must be aware of CEA (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. Meters are installed at Generating Stations at locations specified in these Regulations. Electrical Inspectorate collects electricity duty on main consumption and auxiliary consumption based on readings of these meters.
13. The Commission has recognized the need for clarity in calculation of net energy consumption for CPP consumer as sufficient reason to review the order dated 06.09.2023, to enable Discom to decide matters pertaining to CPPs. Review petition of the Petitioner is partially allowed and the order dated 06.09.2023 shall now be read with the following clarification: -

In order to arrive at norm of auxiliary consumption for Petitioner's captive power plant of 27MW, we should look at the relevant Regulations, namely MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. In these Regulations, it is observed that auxiliary consumption norms are given for 45MW series, 200MW series and for power plants of 300MW and above. Since 45 MW series is closest to the capacity of Petitioner's captive generating plant of 27MW, therefore, it is appropriate that the normative auxiliary consumption applicable for 45MW series is also applied to Petitioner's captive generating plant. In case metered auxiliary consumption data is available and can be verified by the Discom or SLDC, then the actual auxiliary consumption should be considered for verification of CGP status. In case of non-availability of actual data of auxiliary consumption, normative auxiliary consumption as per above mentioned Regulations shall be considered by the Distribution Licensee. The Commission makes it clear that for the period FY 2023-24 and onwards, SLDC shall verify the Captive status of CGPs and Captive users as designated authority. For the period prior to FY2023-24, as in instant case, Captive status of CGPs shall be verified by the Distribution Licensee. However, in cases where SLDC has already verified the Captive status for FY 2022-23, the same shall not be subject to review by Distribution Licensees. The Commission further clarifies that in case Gross energy generation cannot be verified by the Discom, the gross energy generation reported by the Captive Generating plant in Format "G" shall be considered for verification of captive status. The Petitioner is directed to implement the order dated 06.09.2023 in Petition no. 16/2023 in the light of this clarification.

Accordingly, the Review Petition stands disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman