

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of Commission's order dated 29.08.2016 passed in Petition No. 36/2016.**

**Petition No. 58/2016**

**ORDER**

**(Date of Motion Hearing: 24<sup>th</sup> January' 2017)**

**(Date of Order: 30<sup>th</sup> January' 2017)**

**M/s. LANCO Amarkantak Power Ltd.**  
Lanco House, Plot No. 397,  
Udyog Vihar, Phase-III, Gurgaon- 122 016  
Haryana

**Petitioner**

**V/s**

**M/s. PTC India Ltd. & Anr.,**  
2<sup>nd</sup> Floor, NBCC Tower, 15,  
Bhikaji Cama Place, New Delhi – 110 006

**Respondent**

Shri B.da Silva, Sr. Advocate and Shri Deepak Khurana, Advocate appeared on behalf of the petitioner.

M/s. Lanco Amarkantak Power Ltd. has filed the subject petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Commission's Order dated 29.08.2016 in Petition No. 36/2016.

2. The aforementioned order on which the review is sought by the petitioner, was passed by the Commission under the following background:

- (i) M/s. Lanco Amarkantak Power Ltd. had filed petition No. 36 of 2016 under Section 86(1)(f) of the Act for adjudication of dispute between it and M/s. PTC India Ltd. on the issue related to shifting of metering points from the switchyard of Unit-I (300 MW) of its Coal based thermal power station at Pathadi village, Korba Chhattisgarh to 765/400 kV PGCIL's Bilaspur Station in terms of Article 12.1.1(i) of the Power Purchase Agreement executed between M/s. Lanco Amarkantak Power Pvt. Ltd. and PTC India Ltd.
- (ii) In its aforesaid petition, M/s. Lanco Amarkantak Power Ltd. stated that a Power Purchase Agreement (PPA) was entered between M/s. Lanco Amarkantak Power Ltd. and M/s. PTC India Ltd. on 11<sup>th</sup> May' 2005 (as amended on August 2005) for sale of 300 MW power from its power station for a term of 25 years. Thereafter, M/s. PTC India Ltd.

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

entered into Power Sale Agreement (PSA) with the erstwhile MPSEB on 30<sup>th</sup> May' 2005 for sale of aforesaid 300 MW power purchase by M/s. PTC to erstwhile MPSEB. The said PSA has now vested with MPPMCL, Jabalpur.

- (iii) With the aforesaid petition, M/s. Lanco Amarkantak Power Ltd. approached the Commission on the issue of adjustment in tariff payment on account of change in injection point from original LILO point to new PGCIL's Bharari Pooling Station with change in metering point. This change in injection point as well as the metering point was contended by the petitioner as "Change in Law" within the meaning of Article 12.1.1(i) of the PPA. It was also mentioned by the petitioner that the aforesaid change in the metering point was made on the directions given by Western Regional Load Despatch Centre (WRLDC). With the above contention, M/s. Lanco had requested the following to the Commission in its petition No. 36 of 2016:

- (a) *" Declare/ hold that the direction given by the Western Regional Load Despatch Centre (a wholly owned subsidiary of PGCIL) and the government instrumentality, vide its letter dated 19.11.2014, to the Petitioner regarding change of injection point from the original LILO Point to new PGCIL Bharari Pooling Station resulting in the change of metering point (old accounting point) from the Power Station's switchyard to metering point (new accounting point) at PGCIL Bharari Pooling Station is Change in Law within the meaning of Article 12.1.1(i) of the PPA read with Implementation Mechanism for PPA dated 24.11.2012;*
- (b) *Declare that since 08.09.2014, the Petitioner is entitled to adjustment in Tariff payment within the meaning of Article 12.2 of the PPA read with Implementation Mechanism for PPA dated 24.11.2012 on account of decrease in revenue due to loss of additional energy as well as on account of operation and maintenance expenses for 400 kV transmission line connecting the switchyard of the Power Station of the Petitioner to the PGCIL Pooling sub-station as well as that of its bays at PGCIL Pooling sub-Station;*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

(c) *Direct the Respondent No. 1 to pay a sum of approx. Rs. 1.895 crore for FY 2014-15 (from 08.09.2014 to 31.03.2015) and approx. Rs. 3.23 crore for FY 2015-16 respectively towards adjustment in Tariff payment and direct to make future payments based on the above principle/ mechanism within the meaning of Article 12.2 of the PPA read with Implementation Mechanism for PPA dated 24.11.2012.”*

3. On examination of the aforesaid petition No. 36/2016, the Commission passed the order with the following observations:

M/s. Lanco Amarkantak Pvt. Ltd had earlier challenged the order passed by this Commission on 25<sup>th</sup> August, 2008 before the Hon’ble Tribunal for Electricity in Appeal No. 7 of 2009 on the issue under dispute between the same parties i.e. M/s. Lanco Amarkantak Pvt. Ltd. and M/s. PTC (India) Ltd. Hon’ble Tribunal by its judgment dated 06.08.2009 set aside the aforementioned order of the Commission as it was suffering from lack of jurisdiction. Salient observations in the aforesaid judgment passed by the Hon’ble Tribunal for Electricity have been mentioned in the Commission’s order under review in the subject petition. However, those paragraphs are again reproduced as under:

*“31. According to the Learned Counsel for the Respondents, the person who is granted a trading licence by the Central Commission need not obtain a separate licence to undertake intra-state trading from the State Regulatory Commission. There is no dispute over this proposition. But merely because a person who has been given licence for inter-state trading can undertake intra-state trading also without any licence from the State Commission, it does not mean such a licensee who is undertaking both the intra-state trading and inter-state trading can automatically become a licensee of the State Commission. If that principle is accepted then any Regulatory Commission in India would become competent to decide any dispute between any licensee and any generating company anywhere in India. This is not the intention of the Legislature.*

*32. To put it briefly, the conjoint reading of Clause 10(2) and Clause 1.4(t) and Section 86(1)(f) would clearly indicate that the Madhya Pradesh State Commission could deal with the disputes only between the trading licensee who has been granted a trading licence for intra-state trading in Madhya Pradesh and the generator and that person*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*cannot be called to be trading licensee to invoke the jurisdiction of the Commission merely because he has been granted licence either by the Central Commission for inter-state trading or by any other Commission for trading.*

33. *Lastly, it was contended by the Learned Senior Counsel for the Respondent that if this Tribunal comes to the conclusion that Madhya Pradesh State Commission has no jurisdiction, it could be given liberty to approach the Chhattisgarh Commission. Opposing this contention, it is contended by the Learned Senior Counsel for the Appellant that such a protective order by giving liberty to enable the R-2 approach the other Commission will have the effect of perpetuating the illegality of the Order dated 25.8.2008 and as such, such a liberty should not be given to R-2 especially when the Appellant has taken a stand that the dispute in question cannot be decided by any Commission and the R-2 has to seek relief through arbitration only as referred to in the PPA.*

34. *In the light of the said objection, we do not want to give any liberty. As such, the Appeal has to be allowed on the ground that the Order impugned is liable to be set aside as it suffers from the lack of jurisdiction. Accordingly, the order dated 25.8.2008 is quashed and set aside. This Appeal is allowed. No costs."*

4. In view of the above judgment by Hon'ble Tribunal in the Appeal filed by the same party who had filed petition No. 36 of 2016, the aforesaid petition was not found maintainable before this Commission and thus the same was disposed of by the Commission.

5. In the subject review petition, M/s. Lanco Amarkantak Power Ltd. has stated that there are errors apparent on the face of the aforesaid order dated 29.08.2016 passed by the Commission and therefore, the said order needs to be reviewed. The review petitioner has submitted the following grounds for review of Commission's aforesaid order:

- (i) *The parties i.e. the Petitioner and the Respondents resolved their disputes and signed a Settlement Agreement on 16.10.2012. By the said Settlement Agreement certain amendments to the PPA and the PSA originally executed, were also carried out.*
- (ii) *That in terms of the said Settlement Agreement, the Petitioner and the Respondent No. 1 also executed an Implementation Mechanism for PPA on 24.11.2012 and Implementation Mechanism for PSA dated 26.11.2012 containing modified terms and conditions for*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*implementing sale of 300 MW power from Unit-I of the Petitioner to Respondent No. 2 through Respondent No. 1.*

- (iii) *The approval for purchase of power as per the terms and conditions of the said Settlement Agreement and Implementation Mechanism for PPA & Implementation Mechanism for PSA was sought from this Hon'ble Commission in Petition No. 78/2012. The said approval was granted by this Hon'ble Commission vide Order dated 01.12.2012. The relevant portion of the Order dated 01.12.2012 are extracted hereunder:*

*“14. A review of the conditions envisaged in the Settlement Agreement and the Implementation Mechanism resulting in amendment to the PPA entered into in the year 2005 has been done and the amendments proposed are found in order.”*

*It is thus clear that this Hon'ble Commission approved the terms and conditions contained in the above referred agreements executed between the parties vide Order dated 01.12.2012. Therefore, this Hon'ble Commission clearly has the requisite jurisdiction to decide the issues arising from the supply of power from Unit-I of the Petitioner under the aforesaid Agreements. Consequently, this Hon'ble Commission has the jurisdiction to decide the Petition filed by the Petitioner wherein the Petitioner has raised the issue of impact of 'Change in Law' on the tariff at which the power is being supplied.*

- (iv) *The judgement was rendered by the Hon'ble APTEL prior to the execution of the Settlement Agreement, Implementation Mechanism for the PPA & Implementation Mechanism for the PSA and passing of the Order dated 01.12.2012 by this Hon'ble Commission and therefore is not relevant for the purpose of determining the jurisdiction of this Hon'ble Commission. Once this Hon'ble Commission approved the terms and conditions of the settlement Agreement, the PPA and the PSA as amended by the respective Implementation Mechanisms executed between the parties, it follows that any*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*dispute or issue arising therefrom is decided by this Hon'ble Commission under the provisions of the Electricity Act, 2003.*

- (v) *It is respectfully submitted that none of the above referred aspects have been considered by this Hon'ble Commission in the Order dated 29.08.2016 resulting in an error apparent in the Order. Therefore, the said Order, in light of the aspects detailed above, needs to be reviewed.*
- (vi) *Because the Order dated 06.08.2009 in Appeal No. 7/2009, it was held that this Hon'ble Commission does not have jurisdiction to decide the dispute between the Petitioner and the Respondent No. 1 relating to termination of the PPA. The said order is no longer relevant and/or applicable in view of the subsequent events i.e. execution of the Settlement Agreement and Implementation Mechanism for the PPA and Implementation Mechanism for the PSA which clearly provides for supply of power from the Petitioner to the Respondent No. 2 through Respondent No. 1, all of which have been approved by this Hon'ble Commission vide Order dated 01.12.2012. In view of the position that power is being supplied to Respondent No. 2 pursuant to the Order dated 01.12.2012 passed by this Hon'ble Commission under the aforesaid mechanism, this Hon'ble Commission clearly has jurisdiction in relation to deciding any dispute arising out of the terms of the said supply of power. This aspect has not been considered by this Hon'ble Commission while passing the Order dated 29.08.2016, therefore, an error has crept in the said Order, which needs to be reviewed and corrected by this Hon'ble Commission.*
- (vii) *Because the Order dated 06.08.2009 was passed by the Hon'ble Appellate Tribunal on the issue of jurisdiction of this Hon'ble Commission to adjudicate a dispute relating to termination of PPA between the Petitioner and the Respondent No. 1. At that stage, the parties had not signed the Settlement Agreement thereby agreeing that power from Unit-I of the Petitioner shall be supplied to the Respondent No. 2 nor had this Hon'ble Commission approved the terms and conditions for procurement of such power. Therefore, the facts and circumstances under which the Order dated 06.08.2009 was passed were completely different and are no longer in existence. The facts that exist as*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*on the date of filing of the Petition No. 36/2016 including the approval of procurement of power by this Hon'ble Commission as well as the terms, conditions and tariff for such procurement, were not in existence when the Hon'ble Appellate Tribunal passed the Order dated 06.08.2009. This significant aspect of the matter has not been considered by this Hon'ble Commission resulting in an error in the Order dated 29.08.2016.*

- (viii) *Because one of the issues raised by this Hon'ble Commission in Petition No. 78/2012 was the effect of the Order dated 06.08.2009 passed by the Hon'ble Appellate Tribunal on this Hon'ble Commission's jurisdiction to decide the said petition. However, this Hon'ble Commission considered the execution of Settlement Agreement and Implementation Mechanism for PPA & Implementation Mechanism for PSA as well as the fact that this Hon'ble Commission was to examine the generation costs of power from Unit-I of the petitioner, the said issue was taken care of. It is therefore, submitted that the same logic and reasoning would apply when this Hon'ble Commission is exercising jurisdiction to decide the Petition filed by the Petitioner for increase in tariff on account of 'Change in Law', under the same PPA & Implementation Mechanism for PPA which was found to be in order by the Hon'ble Commission in its order dated 01.12.2012.*
- (ix) *Because any impact on tariff on account of the Change in Law provisions contained in the PPA read with Implementation Mechanism for the PPA, would have a direct and corresponding impact on the tariff for supply of power under the PSA & Implementation Mechanism for PSA, which has been approved by this Hon'ble Commission itself. Therefore, any such impact is required to be considered by this Hon'ble Commission alone. There cannot be two fora, one for approving the tariff and the other for approving any change (increase or decrease in the tariff) occasioned on account of 'Change in Law' in the present case or for granting any relief under force majeure events in the PPA or PSA. This aspect has not been considered by this Hon'ble Commission in the Order dated 29.08.2016.*
- (x) *Because in the Order dated 01.12.2012, this Hon'ble Commission fixed the price of the electricity to be procured by the Respondent No. 2 under the aforesaid Agreements i.e.*

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*PPA, PSA, Implementation Mechanism for PPA & Implementation Mechanism for PSA, after detailed examination of capital cost of the Unit-I of the Petitioner and approving the same. This Hon'ble Commission also worked out the Annual Capacity Charges as well as the Energy Charges for the said supply of power from Unit-I of the Petitioner. It is thus clear that any issue which has an impact on the tariff at which the power is being supplied under the aforesaid mechanism duly approved by this Hon'ble Commission is to be necessarily adjudicated by this Hon'ble Commission alone, otherwise it would lead to an absurd situation where tariff for supply of power is being determined by this Hon'ble Commission whereas an issuing having an impact on the tariff resulting in increase or decrease in the tariff due to Change in Law or force majeure events cannot be adjudicated by this Hon'ble Commission.*

- (xi) *Because admittedly, under Section 86(1)(b) this Hon'ble Commission is regulating procurement of the power from Unit-I of the Petitioner. The Petition filed by the Petitioner cannot be viewed as one raising purely a dispute under the PPA executed between the Petitioner and the Respondent No. 1 in isolation. Inasmuch as any issue, especially having an impact on the tariff, which is adjudicated under the PPA which have a direct impact on purchase of power and the tariff on which such purchase is made, by the Respondent No. 2, the same has to be adjudicated holistically by this Hon'ble Commission and therefore Respondent No. 2 is a necessary and proper party to the said Petition. This is clear from the Order dated 01.12.2012 passed by this Hon'ble Commission. Consequently any dispute arising from or in relation to such procurement of power would be decided by this Hon'ble Commission under Section 86(1)(f) of the Act and therefore this Hon'ble Commission has jurisdiction to decide the Petition filed by the petitioner. The Order dated 29.08.2016 does not consider this important aspect and is therefore liable to be reviewed by this Hon'ble Commission.*
- (xii) *It is further submitted that in the alternative, since the Hon'ble Commission of the Act has been approving the price of the electricity procured/ to be procured by the Respondent No. 2 under the aforesaid Agreements i.e. PPA, PSA, Implementation*



**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

*Agreement for PPA & Implementation Mechanism for PSA based on petition filed by the Respondent No. 2 before it from time to time, the Hon'ble Commission may direct the Respondent No. 2 to file the appropriate application/ petition seeking relief(s) under Change in Law or Force Majeure events under the PPA & PSA as well as the Implementation Mechanism for PPA & Implementation Mechanism for PSA. However, the Hon'ble Commission in order to decide the issues raised in such application(s)/ petition(s) filed by the Respondent No. 2 may allow all the parties to the Settlement Agreement dated 16.01.2012 to file their comments on the same and then accordingly the Hon'ble Commission may dispose of such application(s)/ petition(s).*

**6.** Having heard the Ld. Counsel of the petitioner and on examination of the subject review petition, the Commission has observed the following:

- (i) As per Para 13 of the aforesaid Judgment passed by the Hon'ble Tribunal for Electricity, the main question that arose for consideration by the Hon'ble Tribunal in Appeal No. 7 of 2009 was "Whether MPERC has got a jurisdiction to adjudicate upon the disputes between the Appellant (review petitioner herein), a generating company situated outside MP and PTC which has not been granted licence by the MPERC".
- (ii) As per Para 33 of the same Judgment, the review petitioner (Appellant in Appeal No. 7 of 2009) had itself submitted before the Hon'ble Tribunal that **the dispute in that Appeal cannot be decided by any Commission and PTC has to seek relief through arbitration only as referred to in the PPA.** (Emphasis supplied).
- (iii) The subsequent developments (in form of some agreements) to the said Judgment passed by Hon'ble Tribunal (which are now made the basis of review by the petitioner) are not new and important matter or evidence in terms of Rule 1 Order 47 of the Code of Civil Procedure (CPC) for a review petition.
- (iv) The aforesaid Judgment of Hon'ble Tribunal was very clear and it was not subject to any condition including the subsequent developments mentioned by the review petitioner.

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

- (v) The jurisdiction of State Commission under Section 86(1)(b) and Section 86(1)(f) has also been dealt with in detail by the Hon'ble Tribunal in its said Judgment. Therefore, the contention of review petitioner that the Commission's order may be reviewed in light of certain subsequent developments to the said Judgment passed by Hon'ble Tribunal is not tenable.
- (vi) As per Para 20 of the Commission's order dated 01.12.12 in petition no. 78 of 2012, the Commission accorded approval under Section 86(1)(b) of the Act to the process of power procurement by M.P. Power Management Company Ltd, Jabalpur (MPPMCL) for supply to three Distribution Companies in the state under the settlement agreement and implementation mechanism filed by MPPMCL with the Commission. Therefore, the contention of review petitioner that this Commission has determined tariff of its power plant and approved PPA executed between it and PTC (Respondent herein) vide Commission's order dated 01.12.12 in petition No.78 of 2012 is found misplaced in light of the said order and the provisions under settlement agreement placed before the Commission.
- (vii) The arguments now placed by the review petitioner seeking review of Commission's order are in total contradiction to the scheme of law and also its own contention in Appeal no.7 of 2009 that the dispute between it and PTC cannot be decided by any Commission and the relief is to be sought through arbitration only as referred to in the PPA itself.

7. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), 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.

**Subject: - In the matter of petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I), Regulations 2016 seeking review of the Order dated 29.08.2016 passed in Petition No. 36/2016.**

8. In view of the above, the issues raised by the review petitioner in the subject petition do not fall under any circumstances as articulated in Rule 1 Order 47 of CPC for review in the instant case. Therefore, the subject review petition is not maintainable hence, disposed of.

**(Alok Gupta)**  
**Member**

**(A. B. Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**