

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL**

**Subject: In the matter of petition under Sections 61, 62 & 86 of the Electricity Act, 2003 read with Article 16 of the Transmission Service Agreement (TSA) dated 05.02.2021.**

**Petition No. 13 / 2023**

**ORDER**

**(Date of Order: 14<sup>th</sup> July, 2023)**

**M.P. Power Transmission Package-II Limited**

C/o Adani Transmission Limited,  
Adani Corporate House, Adani Shantigram,  
Near Vaishno Devi, Ahmedabad - 382421

- **Petitioner**

V/s

- 1) **Managing Director**  
M.P. Power Management Company limited  
Shakti Bhawan, Jabalpur, MP – 482008
- 2) **Managing Director**  
M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.  
Shakti Bhawan, Jabalpur – 482008
- 3) **Managing Director**  
M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.  
Nistha parisar, Govindpura, Bhopal – 462023
- 4) **Managing Director**  
M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.  
Polo Ground, Indore – 452003
- 5) **Managing Director**  
M.P. Power Transmission Company Limited  
Shakti Bhawan, Jabalpur, MP – 482008
- 6) **Chief Executive Officer**  
REC Transmission Projects Company Limited  
D - Block, Plot 1 – 4, Sector – 29, Gurugram - 122001

- **Respondents**

Shri Sanjay Sen, Senior Advocate, Shri Alchit Thapaliyal, Advocate and Shri Hemant Singh, Advocate appeared on behalf of the Petitioner.

Shri Alok Shanker, Advocate and Shri Vishvat Chouhan, Manager appeared on behalf of Respondent No. 1.

Shri Anand Dubey, SE, Shri Rajeev Adlakha, EE and Shri Hitesh Tiwari, EE appeared on behalf of Respondent No. 5.

Shri P. S. Hariharan, CGM, Shri Anil Yadav, Manager and Shri Amit Chatterjee, Executive appeared on behalf of Respondent No. 6.

The subject petition was filed by M. P. Power Transmission Package – II Limited under sections 61, 62 & 86 of the Electricity Act, 2003 read with Article 16 of the Transmission Service Agreement (TSA) dated 05.02.2021. The petitioner has broadly prayed as under:

- i. Set aside/quash the impugned letter dated 09.02.2023 issued by the Respondent No. 1 (MPPMCL) and the impugned letters dated 20.07.2022 and 23.09.2022 issued by the Respondent No. 5 (STU / MPPTCL).
- ii. Permit the Petitioner to undertake appropriate steps for construction of two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kV ICT at Bargawan Sub-station under the Regulated Tariff Mechanism in terms of Sections 61 & 62 read with Section 86 of the Electricity Act, 2003, including permitting the Petitioner to file a separate petition under Sections 14 and 15 of the Electricity Act, 2003 for grant of transmission license for the above elements.

The petitioner broadly prayed as under in the IA No. 02/2023 filed with the petition:

- iii. Grant in-principle approval to the Petitioner to proceed with the implementation/ construction of two (2) nos. of 132KV transformer bays associated with 2x160MVA, 220/132KV ICT at Bargawan sub-station, during the pendency of the captioned petition before this Hon'ble Commission.

## 2. **Brief of the petition:**

The Petitioner has broadly submitted as under:-

- i. *M.P. Power Transmission Package-II Limited is seeking quashing/ setting aside of the letter dated 09.02.2023 issued by the Respondent No.1 (MPPMCL) and the letters dated 20.07.2022 and 23.09.2022 issued by the Respondent No. 5 (MPPTCL / STU) whereby the said Respondents arbitrarily alleged that the construction of two (2) nos. of 132 KV transformer bays associated with 2x160MVA, 220/132KV ICT at the Baragawan substation is part of the scope of work under the Request for proposal (RFP) issued by the REC Transmission Projects Company Limited [Bid process Coordinator (BPC)/ R. No. 6] and the consequent TSA.*
- ii. *Petitioner says that Respondents reply is completely frivolous as, the above works were neither mentioned under the RfP nor the TSA. The requirement of additional work has resulted in a 'change in scope of work' with reference to scope of work provided under the TSA, for which, the Petitioner is entitled to additional tariff based on the principles enshrined under Sections 61 and 62 of the EA, 2003.*
- iii. *As a consequence, the Petitioner vide the present petition is also seeking liberty/ permission from this Hon'ble Commission to undertake appropriate steps for construction of two (2) nos. of 132kV transformer Bays associated with 2x160MVA, 220/132kv ICT at Bargawan Sub-station under the Regulated Tariff Mechanism in terms of Sections 61 & 62 read with Section 86 of the Electricity Act, 2003, including permitting the Petitioner to file a separate petition under Sections 14 and 15 of the Electricity Act, 2003 for grant of transmission license for the above elements.*
- iv. *The Commission vide order dated 17.05.2022 in Petition No. 59 of 2021 granted the Transmission License in favour of the Petitioner.*
- v. *The Commission vide order dated 19.05.2022 in Petition No. 58 of 2021, adopted the tariff in terms of the TSA.*

- vi. *In the scope of work prescribed under the RfP documents and the TSA, the construction of two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kv ICT was not mentioned.*
- vii. *MPPTCL vide letter dated 20/07/2022 stated that “the construction of 2 nos. 132 KV feeder bays for 2 nos. 160 MVA 220/132 KV ICT is the part of ICT’s installation and shall have to be constructed by the petitioner, although it is not separately mentioned in Clause 1.2 of RFP documents”.*
- viii. *Pertinently, STU itself admitted that the construction of aforesaid additional works is not mentioned in the RFP documents, however still it sought an implementation of the same from the petitioner by unilaterally including it under the scope of RfP / TSA.*
- ix. *As per the 2<sup>nd</sup> Empowered Committee on Transmission (“ECT”) meeting dated 06.08.2018, the National Committee on Transmission had recommended that augmentation/ modification at existing ISTS may be done by the owner of the substation. CEA as well as ECT concurred with the view that the augmentation work be implemented under RTM. Considering the same, it was proposed that the development of these bays be taken up by the Petitioner under the Regulated Tariff Mechanism (RTM).*
- x. *Without giving any due regard to the above submission, STU vide letter dated 23.09.2022 stated the said elements have to be constructed by the Petitioner “for which no additional tariff would be considered.”*
- xi. *In the present case, since the construction of the 2 nos.. of 132kv feeder bays for 2 nos. 160 MVA 220/132kv ICT was not part of the RFP and TSA, the same amounts to a change in scope of work, for which the Petitioner is entitled to additional tariff, which is to be determined in terms of the tariff principles enshrined under Section 62 and 63 of the EA, 2003.*
- xii. *The construction of two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kv ICT at Bargawan Sub-station is necessary, as without the same there cannot be any flow of power in the transmission system, which requires a separate license as the same is not part of the existing license granted to the Petitioner for execution of the transmission system under Section 63 of the EA, 2003.*
- xiii. *For enabling the Petitioner to construct two additional transformer bays at Bargawan Sub-station, a separate license is required by the Petitioner for construction of two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kv ICT at Bargawan Sub-station, for which a license is required to be granted in terms of Sections 14 and 15 of the EA, 2003.*

**Procedural History:**

3.
  - i. At the motion hearing held on 9<sup>th</sup> May, 2023 the petitioner was heard on the issue of admissibility of the subject petition and also on the relief sought through the IA.
  - ii. Petitioner submitted that there has been an error on part of the Respondents in so far as the scope of work is concerned and that essential works for evacuation of power have not been included in the scope of work contained in the RfP and TSA. The petitioner submitted that scope of work is redefined to include the essential works as aforesaid and that this will require a change in License, for which separate petition shall be filed. The petitioner requested that the petition may be admitted and relief sought through IA may be granted.
  - iii. The Commission observed that in the present circumstances, where Transmission License has already been granted and Tariff discovered through TBCB has been adopted under

section 63 of the Electricity Act, 2003, it would be necessary to hear both parties (Petitioner & Respondents) together on the issue of admissibility of the petition and the relief sought through IA.

- iv. The Commission also desired that during the next date of hearing on admissibility, arguments may also be presented on the scope of section 62, 63 and 86(1)(f) of the Electricity Act, 2003. Therefore, the Commission directed the petitioner to serve copy of the subject petition and IA to all Respondents within three days and the Respondents were directed to file their replies, in soft & hard copies, to the subject petition and IA within two weeks, thereafter. The case was listed for hearing on the 6<sup>th</sup> June, 2023.

**Response of Respondents:**

4. Respondent No. 1 MPPMCL by letter No. 76 dated 31/05/2023 on Affidavit broadly submitted as under:
  - i. *It is submitted that the present petition is not just without merits but also is not maintainable. The present reply is filed on both the admissibility of the present petition and on merits.*

**Objections on admissibility of the petition:**

- ii. *The scope of work under the Request for Proposal (“RFP”) issued by REC Transmission Projects Company Limited (“BPC / Respondent No. 6”) included construction of two 132kV Transformer Bays associated with 2x160MVA 220/132kV ICT. The Petitioner vide the instant petition is trying to derive undue advantage of an inadvertent typographical error under the RFP.*
- iii. *Another sub-station was to be constructed for 220/132/33kV at Ajaygarh in Panna District which had identical specifications in terms of the transmission elements. Furthermore, the tariff percentage of both the Ajaygarh and Baragawan substation is also identical. Accordingly, it is only logical that the quantification in terms of the number and voltage of bays to be constructed required for building the sub-stations are also likely to be identical. The completion target of both the Ajaygarh and Baragawan substation was also identical i.e., twenty-four (24) months.*
- iv. *Evidently, the mismatch in the number of bays mentioned in the RFP is an inadvertent error and the Petitioner herein is knowingly trying to derive undue advantage of the same. It is pertinent to state that the Petitioner being in the business of developing transmission networks for several years in India would reasonably be aware of the technical requirements relating to development of Intra-State Transmission System.*

**The Petitioner would not incur any losses for construction of two 132kV Transformer Bays associated with 2x160MVA 220/132kV ICT.**

- v. *Pertinently, in terms of the RFP, Clause 2.12 of the RFP provided a specific provision pertaining to clarifications and pre-bid meeting wherein the Bidders (in the instant case the Petitioner) could have sought clarifications or suggested amendments to the RFP in case the bidder was of the opinion that the same are necessary to be made. The Petitioner being in the business of developing transmission network systems for several years in India would have been aware that the construction of two 132kV Transformer Bays associated with 2x160MVA 220/132kV ICT for Baragawan would have to be done. It is submitted that Petitioner’s failure to seek clarification, despite being provided an opportunity in terms of the RFP cannot be glanced towards the Respondent.*

- vi. *It is submitted that considering that the two projects for Ajaygarh and Baragawan were identical to each other, it is even more evident that error under the RFP and the TSA was inadvertent in nature.*

*The terms of the RFP and TSA should be interpreted harmoniously*

- vii. *It is submitted that considering the 220kV switchyard is constructed with two Transformer Bays, the corresponding 132kV switchyard would also require 132kV Transformer Bays. Thus, the only harmonious interpretation of the inadvertent error that can be read is to mean that the construction of two 132kV Transformer Bays was part of the scope of work.*
- viii. *It is a trite law that a contract should be interpreted in a manner which serves and fulfils the purpose of such contract. The position has also been upheld by the Hon'ble Supreme Court in the case of DLF Universal Limited v. Director, Town and Country Planning Department, Haryana, (2010) 14 SCC 1 wherein it was observed that a contract is interpreted according to its purpose, the interests, objectives, values, policy that the contract is designed to actualise. Further, in the case of Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508 the Hon'ble Supreme Court observed that Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge. The relevant paragraph of the judgment in DLF Universal Limited v. Director, Town and Country Planning Department, Haryana, (2010) 14 SCC 1 is extracted below for ease of reference:*

*“It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation”.*

*It is therefore submitted that the harmonious reading of the terms of the RFP and TSA as a whole would mean that the scope of work included the construction of two 132kV Transformer Bays associated with 2x160MVA 220/132kV ICT.*

*Courts cannot modify the terms of the contract*

- ix. *It is submitted that while the courts have jurisdiction to interpret the terms of the contract, the same cannot lead to modification of the intent and terms of the contract. The Petitioners vide the instant petition seek to incorporate and derive benefit by modifying the terms of the contract in order to claim additional cost. However, the same is not permissible under law. Further, as stated above, the interpretation of a contract by courts should be in a manner which regards the intent of the parties.*
- x. *It is submitted that if the instant petition is allowed, the same would lead to modification of the terms of the contract since the alleged additional cost to be incurred by the Petitioner was already contemplated within the terms of the RFP and the TSA. Further, the legal position that the court cannot modify the terms of the contract is already settled. The Hon'ble Supreme Court in the case of Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission, (2022) 4 SCC 657 while*

*upholding the said position held that the courts through interpretation of contracts cannot modify or rewrite the terms and conditions of a contract mutually entered between the parties.*

*“178. The proposition that courts cannot rewrite a contract mutually executed between the parties, is well settled. The Court cannot, through its interpretative process, rewrite or create a new contract between the parties. The Court has to simply apply the terms and conditions of the agreement as agreed between the parties”.*

- xi. In view of the aforesaid, it is submitted that considering that the errors under the RFP and TSA were merely inadvertent in nature, this Ld. Commission cannot modify the terms of contract to allow additional cost to the Petitioners. Further, mere inadvertent error cannot mean that the construction of two additional 132kV Transformer Bays was not contemplated under the RFP and the TSA more so in the event when the reasonable interpretation would mean that the terms and conditions of the project in relation to the development of the transmission system could not have been met without the two 132kV Transformer Bays being constructed. Therefore, for the aforesaid reasons, the instant petition is not admissible, and the contentions and averments raised by the Petitioner are devoid of merits.*
- xii. It is submitted that the present petition has been filed seeking additional cost for the construction of two additional transformer bays at the 220kV sub-station in Baragawan, which was in its true meaning covered under the scope of RFP issued and the TSA entered between the parties. Pertinently, the additional cost for construction of two additional transformer bays calculated as per the schedule of rates would be around Rs. 1.25 Crore which is less than 1 percent of the levelized transmission charges i.e., Rs. 132.645 Crore as approved by this Ld. Commission vide order dated 19.05.2022 in Petition No. 58 of 2021. Also the change in law during construction period entitlement of the Petitioner would not be triggered for a claim of less than Rs. 3.44 Crore.*
- xiii. It is submitted that considering the additional cost to be incurred by the Petitioner (even assuming that the bay are not part of the original scope) is less than one percent of the YTC and thus trivial.*
- xiv. In any event, as stated above, the scope of work for both Ajaygarh and Bagarwan are same in terms of the transmission system to be developed by the Petitioner. Further, in terms of Schedule 6 of the TSA, the recoverable transmission charges of the Petitioner for both Ajaygarh and Bagarwan are same i.e., 10%, only to mean that there will be no additional burden of cost on the Petitioner.*
5. Respondent No. 5 MPPTCL by letter No. 1424 dated 01/06/2023 on Affidavit broadly submitted that MPPMCL (Respondent No. 1) has submitted the detailed reply to the petition vide its letter No. 76 dated 31.05.2023. It is submitted that MPPTCL / STU (Respondent No. 5) supports the said reply and contentions & averments made therein. It further submitted as under:
- i. The prayer of petitioner MP Power Transmission Package-II Ltd. to set aside / quash the letter dated 20.07.2022 & 23.09.2022 of MPPTCL is inappropriate and doesn't hold any legal ground.*

- ii. *That, construction of 2Nos. 132kV feeder bays associated with 2Nos. 160MVA, 220/132kV transformers is the inherent responsibility of the TSP in order to complete and commission the substation alongwith associated transmission lines.*
- iii. *That, construction of 2 Nos. 132 KV ICT bays at 220 KV S/s Bargawan are essential part of the project under implementation and a pre-requisite for commercial operation of the element i.e. 220/132 KV S/s Bargawan.*
- iv. *That, as a big Commercial Entity doing business in the Transmission Sector for quite a long time, the petitioner should have ascertained the left-out works of 2 Nos. 132 KV ICT bays at 220 KV S/s Bargawan much earlier during the process of award and this inadvertent error could have been brought to the knowledge of concerned Entities / BPC for rectification / modification in RFP document before bidding for the project.*

*That, the prayer of petitioner MP Power Transmission Package-II Ltd. is not acceptable as per the terms of the contract and should be rejected by the Hon'ble Commission.*

- v. *That, petitioner vide IA No. 2/2023 have prayed to grant in-principle approval to proceed with the implementation / construction of 2 Nos. 132 KV ICT bays at Bargawan Sub-station during the pendency of the captioned petition before the Hon'ble Commission and sought liberty / permission from the Hon'ble Commission for taking appropriate steps for construction of these bays under Regulated Tariff Mechanism in terms of Sections 61 & 62 read with Section-86 of the Electricity Act, 2003 including permitting the petitioner to file a separate petition under Section 14 & 15 of the Electricity Act, 2003 for grant of Transmission License for the above elements. However, the require land for construction of entire 220/132kV S/s at Bargawan have still not been finalized by the petitioner.*
- vi. *That, the aforesaid IA No. 2/2023 during pendency of the petition No. 13/2023 can not be entertained as the very basis of the petition in which IA has been filed is questionable, therefore, MPPTCL (Respondent No. 5) most respectfully prays to this Hon'ble Commission that aforesaid IA should not be entertained and must be rejected which is devoid of merits.*

*That, in view of the submissions made above, the Petition No. 13/2023 as well as IA No. 2/2023 may kindly not be considered by the Hon'ble Commission and it is prayed that the same be rejected.*

- 6. i. The Petitioner filed rejoinder dated 02/06/2023 to the reply dated 31/05/2023 filed by Respondent No. 1 MPPMCL in which it broadly submitted that the reply filed by MPPMCL ought to be dismissed by the Commission.
- ii. The Petitioner also filed rejoinder dated 02/06/2023 to the reply dated 01/06/2023 filed by Respondent No. 5 MPPTCL / STU in which it broadly submitted that there is no merit in the contentions of MPPTCL and the same deserves to be rejected by the Commission.
- iii. The Petitioner filed note dated 05/06/2023 on maintainability / admissibility of the subject petition along with a compilation of some Judgments. It broadly stated that the subject petition is maintainable and deserves to be decided on merits by this Hon'ble Commission. It broadly submitted as under:
  - a. *The issue as to whether the State Commissions have jurisdiction to entertain a dispute between 'Licensees' is no more res-integra on account of the following judgments of the Hon'ble Appellate Tribunal for Electricity (APTEL):*

Judgment dated 01.10.2012 passed in Appeal No. 31 of 2012, titled as PTC India Limited v. Gujarat Electricity Regulatory Commission & Anr., wherein the following was laid down:

“61. The scheme of Electricity Act, 2003 would clearly show that the provisions of 86(1)(f) would be applicable even to the disputes between two licensees. In other words, on a plain reading of the provision, it is noticed that the expressions “licensees”(plural) generating companies(plural) have been used and this would show that the provisions would be applicable in the event of disputes not only between (a) generating company and licensee but also (b) between two generating companies and (c) between two licensees. There is no rationale whatsoever to limit or restrict the application of section 86(1)(f) of the Act, only to those mentioned in clause (a) as referred to above as contended by the Appellant. Similarly, there is no rationale whatsoever to exclude the dispute between two licensees from the adjudication under section 86(1)(f) of Electricity Act, 2003.

... ..

85. In view of the above, we find that State Commission has got jurisdiction to adjudicate upon the disputes not only between the licensees and generating companies but also between two licensees. We have already held while answering the first question that there is a nexus between the PPA entered into between Gujarat Urja and PTC and the distribution licensees and therefore the dispute raised in the PPA will be construed as a dispute between the two licensees.”

b. The present petition is filed under section 86 of the EA 2003. For ready reference, the aforesaid provision is set out herein below:

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely  
(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

c. This Hon'ble Commission is been vested with wide ranging regulatory and adjudicatory powers. In fact, the Hon'ble Supreme Court in its judgment passed in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., reported in (2008) 4 SCC 755, held as under:

“60. In the present case, it is true that there is a provision for arbitration in the agreement between the parties dated 30-5-1996. Had the Electricity Act, 2003 not been enacted, there could be no doubt that the arbitration would have to be done in accordance with the Arbitration and Conciliation Act, 1996. However, since the Electricity Act, 2003 has come into force w.e.f. 10-6-2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10-6-2003 there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. We further clarify that all disputes, and not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is



*because there is no restriction in Section 86(1)(f) about the nature of the dispute.”*

*From a perusal of the above judgment, it is absolutely clear that all the disputes, which also not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in Section 86(1), have to necessarily be resolved by the Hon'ble Commission only, or an arbitrator appointed by it. In the present case, since there is no issue qua appointment of arbitrator, the subject matter involved in the present case, has to necessarily be adjudicated and decided by this Hon'ble Commission in terms of the aforesaid dicta laid down by the Hon'ble Supreme Court. On this count alone, the present petition stands maintainable before this Hon'ble Commission.*

*d. Many other cases were cited and it was submitted that once a “jurisdictional fact” is in existence, a court is bound to exercise jurisdiction. The jurisdictional fact is the dispute alleged by the Petitioner, against an entity which is amenable to the jurisdiction of this Hon'ble Commission. Both the Petitioner and MPPMCL are licensees falling within section 86(1)(f).*

*e. The issue in the present case arose on account of the issuance of the impugned letters whereby MPPMCL/MPPTCL arbitrarily alleged that construction of two (2) nos. of 132 kV transformer bays associated with 2x160MVA, 220/132kV ICT at the Bargawan substation is part of the scope of work under the Request for Proposal (“RfP”) documents(s) issued by the BPC, thereby creating a “jurisdictional fact”/ cause of action for exercise of jurisdiction under section 86 of the EA 2003.*

*f. In view of the submissions made hereinabove, the present petition is clearly maintainable and deserves to be decided on merits by this Hon'ble Commissions. Hence, prayed accordingly.*

7. At the hearing held on 6<sup>th</sup> June, 2023, the petitioner sought time to file rejoinder. The petitioner was allowed 3 days' time file rejoinder and Respondents were allowed one week thereafter to file their replies. However, no such rejoinder was received at the Commission.
8. By Affidavit dated 16/06/2023, Respondent No. 6 RECPDCL submitted that Petition is liable to be dismissed against the Respondent No. 6. The petitioner has not claimed any relief against it and broadly submitted of the following:
  - i. *RfP was prepared by it as per information provided by R5 (MPPTCL / STU).*
  - ii. *Letters sought to be set aside are letters between Petitioner and Respondent No. 1 & 5. So, Respondent No. 6 is not privy to such letters*
9. At the hearing held on 4<sup>th</sup> July, 2023 the Petitioner and the Respondent No. 1 completed their arguments and stated that they have nothing further to argue. They requested the Commission to pass final order. At the same time, they sought time to file written submission in respect of the arguments made. This request was granted and the Commission directed parties to file written submissions within a week, after exchanging the same with each other. The case was reserved for order.

10. The petitioner vide letter dated 10/07/2023 filed its written submissions mentioning its prayers and referred to its earlier filings in the petition and rejoinders, which are not repeated here for brevity. It has broadly submitted as under:
- i. *Based on the submissions of parties in the present lis, and the hearings in the present petition, the following issues arise for consideration of this Hon'ble Commission:*
    - a. *Whether this Hon'ble Commission has the jurisdiction to adjudicate a dispute between licensees?*
    - b. *Whether the construction of two (2) nos. of 132 kV transformer bays associated with 2x160MVA, 220/132kV ICT at the Bargawan substation, was enumerated as a scope of work under the RfP dated 02.11.2020 and the TSA dated 05.02.2021? If, not, then whether the 3 Petitioner is entitled to separate tariff qua the said additional work based on regulated tariff mechanism?*
  - ii. *It cited section 86 of the Electricity Act, 2003 and Article 16 of the TSA dated 05/02/2001 and APTEL's Judgment dated 01.10.2012 passed in Appeal No. 31 of 2012, titled as PTC India Limited v. Gujarat Electricity Regulatory Commission & Anr and Judgment dated 07.08.2015 passed in Appeal No. 77 of 2015, titled as Global Energy Private Limited v. Maharashtra Electricity Regulatory Commission & Ors., Judgment dated 05.04.2022 in O.P. No. 1 of 2022 passed by the Hon'ble APTEL, titled as NRSS-XXIS Transmission Limited v. Central Electricity Regulatory Commission & Ors and the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., reported in (2008) 4 SCC 755 and some other judgments and submitted that in terms of the aforesaid judgments, it is absolutely clear that under Section 86 of the EA, 2003, the State Commissions have the powers to adjudicate the dispute between 'Licensees'. As such, this Hon'ble Commission has jurisdiction.*
  - iii. *Construction of the two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kV ICT has neither been explicitly prescribed nor any reference whatsoever has been made in the RfP and TSA towards the construction of the said elements in terms of the Bargawan sub-station.*
  - iv. *When the State Transmission Utility itself has accepted the fact that the above elements were not mentioned within the scope of work under the RfP, then the Petitioner fails to understand as to how the said Utility (as well as MPPMCL) can insist the Petitioner to construct the said elements, as part of the bid project. Therefore, in the event the Petitioner is required to construct the subject transformer bays, then it has to be allowed additional tariff under cost-plus principles in terms of Sections 61 & 62 of the EA, 2003. It cited judgments of the Hon'ble Supreme Court in Agmatel India (P) Ltd. v. ResourSYS Telecom, reported in (2022) 5 SCC 362, and Tata Cellular v. Union of India, reported in (1994) 6 SCC 651 and Ssangyong Engineering and Construction Co. Ltd. V National Highways Authority of India reported in (2019) 15 SCC 131.*
  - v. *A combined reading of Sections 12, 14 of EA, 2003 and the transmission license order 17.05.2022, it is quite clear that the Petitioner has not been authorized/ granted license towards the construction of two (2) nos. of 132kV transformer bays associated with 2x160MVA, 220/132kV ICT at Bargawan Sub-station.*
  - vi. *Since the bidding guidelines are silent qua the additional scope of work, then the additional tariff is required to be determined by this Hon'ble Commission in terms of Sections 61, 62 and 86 of the EA, 2003.*
  - vii. *Reference may also be made to the 2 nd Empowered Committee on Transmission dated 06.08.2018, wherein, any augmentation/modification to an existing ISTS substations was discussed.*

viii. *Thus, in light of the above submissions, since the additional scope of work in dispute is not contemplated under the bidding documents as well as the TSA, this Hon'ble Commission ought to invoke its tariff determination powers under Section 62 of EA 2003, for compensating the Petitioner towards undertaking additional scope of work qua construction of the 2 nos. of 132kV feeder bays for 2 nos. 160 MVA 220/132kV ICT at Bargawan substation (falling outside the scope of the RFP and the TSA). As such, the present petition deserves to be allowed by this Hon'ble Commission. Hence, prayed accordingly.*

11. The Respondent No. 1 (MPPMCL) vide letter dated 11/07/2023 filed its written submission in compliance of Commission's daily Order dated 04/07/2023. It referred to its earlier reply dated 31/05/2023 in this petition and broadly submitted as under:

i. The present petition is not maintainable before the Commission as the Article 16.2 which provides for amicable settlement has not been followed by the petitioner. It cited Judgment of Supreme Court in *M. K Shah Engineers & Contractors v. State of MP (1999) 2 SCC 594* and some other Judgments.

ii. Threshold for invoking Jurisdiction: The present claim is comparable to claim for compensation for a change in law in terms of the TSA. As per Article 12.2 of TSA provides for relief for change in law event during construction period can only be claimed if the additional cost incurred is Rs 3.44 Cr.

The cost of 2 Bays as per Schedule of Rates is approximately Rs 1.25 Cr which is trivial compared to the total project cost. As the additional cost, if any, is less than the aforesaid threshold limit, the issue does not warrant any indulgence of this Ld. Commission.

iii. Scope of work under RfP & TSA included construction of two 132 KV Bays associated with 2\*160 MVA 220/132 KC ICT. The mismatch in the number of bays mentioned in the RfP and the TSA for Bargawan substation is an inadvertent typographical error, and the petitioner herein is trying to derive undue advantage of its own failure to seek clarification during the bidding stage.

iv. The terms of the TSA and RfP should be read harmoniously. A contract should be interpreted in a manner which serves and fulfills the purpose of such contract. The position has been upheld by the Hon'ble Supreme Court in case of *DLF Universal Ltd. V. Director Town and Country Planning Department, Haryana, (2010) 14 SCC 1* and in *Nabha Power Ltd vs. Punjab SPCL, (2018) 11 SCC 508*.

v. A party cannot approbate and reprobate at the same time to gain unnecessary benefit out of any instrument. The same has been upheld by Hon'ble Supreme Court in case of *Union of India vs. N Murugesan (2022) 2 SCC*.

vi. **Neither by consent of the answering respondent and / or the STU nor this Hon'ble Commission through a judicial Order can expand the scope of a project awarded through Competitive Bidding.** The consent of MPPMCL for setting up additional bays shall be distributing largess of state without following the competitive bidding process and would thus be illegal. The present petition is a lame attempt to enhance the Yearly Transmission Charges quoted by the petitioner and is an abuse of process of law, accordingly, the present petition is liable to be dismissed with costs.

12. The following questions arise in the present petition before this Commission:
- i. Whether the Petition is maintainable and this Commission has jurisdiction to adjudicate present dispute between Transmission Service Provider (TSP), namely M.P. Power Transmission Package-II Limited and Long Term Transmission Customer(LTTC), namely MPPMCL (on behalf of 3 Distribution Licensees)?
  - ii. Whether omission of 2 numbers 132 kV ICT bays in RFP was typographical error on the part of LTTC?
  - iii. If there was an inadvertent error, whether it has a cost implication on the Transmission Service Provider and should Transmission Service Provider bear such cost, if any?
  - iv. Should Transmission Provider's prayer to quash impugned letters of Respondent no. 1 and Respondent no. 6, to permit construction of two 132 kV bays at Bargawan sub-station on RTM (Regulated Tariff Mechanism) and to issue a separate License for these elements be allowed?

**Commission's Observations:**

13. The Commission has observed the following from the petition and the submissions of the parties in this matter:
- i. In the notification dated 08/05/2020 issued by Government of MP, the Bargawan substation work is mentioned at S. No. 20. The notification broadly mentions the projects, it doesnot contain details of each element of the project.
  - ii. In Petition No. 58/2021 (for adoption of tariff) & 59/2021 (for grant of license), the Discoms were not made the Respondents. The Transmission Service Agreement (TSA) dated 05/02/2021 itself mentioned that MPPMCL / R1 signed on behalf of R. No. 2, 3 & 4 i.e. Discoms/ Long Term Transmission Customers. In the present case, the Discoms have not made any submission before the Commission.
  - iii. The TSA was part of RfP document. The RfP was issued by RECPDCL/ R6 (Bid Process Coordinator) on the basis of the information submitted by MPPTCL/ STU/ R5.
  - iv. The Commission granted License dated 17/05/2022 in accordance with Order dated 04/05/2022 in P. No. 59/2021 & Adopted Tariff vide Order dated 19/05/2022 in P. No. 58/2021 based on the TSA dated 05/02/2021 signed between Petitioner & R1 (MPPMCL). The Bargawan substation is mentioned at S. No. 3 of the License. It broadly mentions the substations and works but not the individual elements of substation. Therefore, the Petitioner's prayer regarding amendment in License is devoid of merits.
  - v. The petitioner has mentioned Article 16 of TSA dated 05/02/2021. Article 16 (Governing Law & Dispute Resolution) mentions at 16.3.1: "Dispute shall be submitted to adjudication by the Appropriate Commission".

- vi. Normally any claim mentions the likely financial impact on the claimant supported by some documents. The petitioner is claiming that an additional cost implication would be there for construction of 2 nos. 132 kV bays and not yet mentioning its likely cost or its effect on quoted transmission charges. The petitioner has thus nowhere mentioned the estimated amount / cost of 2 Bays, for which cost implication is claimed by the Petitioner.

However, Respondent No. 1 in its Affidavit dated 31/05/2023 mentioned that the *additional cost for construction of two additional transformer bays calculated as per the schedule of rates would be around Rs. 1.25 Crore which is less than 1 percent of the levelized transmission charges i.e., Rs. 132.645 Crore.*

Article 12.2.1 of the TSA has been cited by the Respondent No. 1 (MPPMCL) which states that the change in law during construction period entitlement of the Petitioner would not be triggered for a claim of less than Rs. 3.44 Crore.

- vii. It is observed that Schedule – I of the License issued to the petitioner in petition No. 59/2021 mentions about 19 works. S. No. 1, 2 & 3 mention about works at Ajaygarh, Begamganj & Bargawan sub-stations respectively.

Schedule 3 & 6 of the TSA mention “percentage of Quoted Transmission charges recoverable on Scheduled COP of the element of the project: as 10%, 20% & 10%.

The petitioner has compared works of S. No. 3 (Bargawan) with that of S. No. 2 (Begamganj) while the Respondent No. 1 (MPPMCL) has submitted that works of S. No. 3 (Bargawan) be compared to that of S. No. 1 (Ajaygarh), as the works are almost similar and have same weightage as 10% of quoted Transmission charges recoverable. The petitioner has cited works at S. No. 2 & 3 which carry different weightage of 20% & 10% respectively.

The citation of Respondent appears more appropriate as these works have same weightage of 10%. **The Commission observes that the scope of work of Ajaygarh Sub-station is more than that of Bargawan Sub-station even after including two 132 kV bays, which are supposedly left out as an error. As per transmission elements mentioned at schedule 2, 132 kV ICT bay and Line bay put together are 5 (1+4) numbers at Bargawan sub-station as against 7 (4+3) at Ajaygarh sub-station. After adding 2 number 132 kV bays both will have same number of 132 kV bays. On the other hand apart from additional line work for 132 kV; one no. 50 MVA 132/33 kV transformer, 2 no. 33 kV bays and one number 12 MVAR capacitor bank are also additional for Ajaygarh, when compared with Bargawan sub-station. Even then Bargwan sub-station will get the same percentage of quoted tariff as that of Ajaygarh.**

- viii. Analysis of some of the relevant provisions of the TSA describing transmission elements is shown in detail as under:

**Comparative chart of Transmission Elements at Bargawan with that at Ajaygarh & Begamganj (as per Schedule 2 of TSA)**

*(\*Sub totals done for analysis purpose only)*

Transmission Elements	Construction of 220/132/33 kV Substation at Bargawan		Construction of 220/132/33KV Substation at Ajaygarh		Construction of 220/132/33KV Substation at Begamganj	
<b>220 kV</b>						
ICT (160 MVA, 220/132/33 kV)	2 Nos.		2 Nos.		2 Nos.	
ICT bays	2 Nos.	<i>*Sub-total</i>	2 Nos.	<i>Sub-total</i>	2 Nos.	<i>Sub-total</i>
Line bays (4 for LILO)	4 Nos.	6	4 Nos.	6	2 Nos.	4
Transfer Bus Coupler	1 No.		1 No.		1 No.	
Bus Tie	1 No.		1 No.		1 No.	
Space for 220/132 kV ICT (Future)	2 Nos.		2 Nos.		2 Nos.	
Space for ICT bays (Future)	2 Nos.		2 Nos.		2 Nos.	
Space for Line bays (Future)	4 Nos.		4 Nos.		4 Nos.	
<b>132 kV</b>						
ICT (50 MVA, 132/33 kV)	1 No.		2 Nos.		2 Nos.	
<b>ICT bays</b>	<b>1 No.</b>	<i>Sub-total</i>	<b>4 Nos.</b>	<i>Sub-total</i>	<b>4 Nos.</b>	<i>Sub-total</i>
Line bays	4 Nos.	5	3 Nos.	7	5 Nos.	9
Transfer Bus Coupler	1 No.		1 No.		1 No.	
Space for 132/33 kV ICT (Future)	2 Nos.		2 Nos.		2 Nos.	
Space for ICT bays (Future)	4 Nos.		4 Nos.		4 Nos.	
Space for Line bays (Future)	6 Nos.		6 Nos.		6 Nos.	
<b>33 kV</b>						
ICT bays	1 No.	<i>Sub-total</i>	2 Nos.	<i>Sub-total</i>	2 Nos.	<i>Sub-total</i>
Line bays	6 Nos.	7	7 Nos.	9	7 Nos.	9
Transfer Bus Coupler	1 No.		1 No.		1 No.	
HT Shunt Capacitor Bank (12 MVAR)	1 No.		2 Nos.		2 Nos.	
HT Shunt Capacitor Bank bays	1 No.		2 Nos.		2 Nos.	
Station Transformer	2 Nos.		2 Nos.		2 Nos.	
Space for ICT bays (Future)	2 Nos.		2 Nos.		2 Nos.	
Space for Line bays (Future)	8 Nos.		8 Nos.		8 Nos.	

**Schedule 6**

<b>S. No.</b>	<b>Name of the Transmission Element</b>	<b>Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project</b>
<b>1</b>	<b>220/132/33 KV substation at Ajaygarh (District - Panna)</b>	10%
i	Construction of 220/132/33 KV Substation at Ajaygarh	
ii	LILO of both circuits of Satna-Chhatarpur 220 KV line at Ajaygarh 220 KV S/s	
iii	Ajaygarh- Panna 132 kV DCDS line	
iv	Ajaygarh- Luvkushnagar (Laundi) 132KV DCSS line	
<b>2</b>	<b>220/132/33 KV substation at Begamganj (District - Raisen)</b>	20%
i	Construction of 220/132/33 KV Substation at Begamganj	
ii	Sagar- Begamganj 220 kV DCDS line	
iii	Begamganj- Rahatgarh 132 kV DCSS line	
iv	Begamganj- Sliwani 132 kV DCSS line	
v	Begamganj- Gyaraspur 132 kV DCSS line	
vi	Begamganj- Gairatganj 132 kV DCDS line	
<b>3</b>	<b>220/132/33 KV substation at Bargawan (District - Singrauli)</b>	10%
i	Construction of 220/132 kV substation at Bargawan (district-Singrauli)	
ii	LILO of both circuits of Sidhi-Hindalco 220 KV line at Bargawan 220 KV S/s	
iii	LILO of both circuits of Rajmilan-Morwal/Waidhan 132kV line at Bargawan 220kV S/s	

The above comparative charts show an error in terms of number of 132 kV bays at Bargawan sub station. For Bargawan substation 2 numbers of 132 kV 160 MVA ICT Bays are clearly missing. Petitioner has submitted that 2 more Bays would be needed. The Respondents have also stated that 2 more Bays would be required. However, Respondents have submitted that TSA and Projects as a whole have to be read and understood harmoniously.

Respondent MPPMCL has also submitted that Bargawan project is comparable to Ajaygarh project as both have equal weightage of 10% in quoted transmission charges and the petitioner's comparison of Bargawan project with Begamganj project is not proper because Begamganj project has 20% weightage.

ix. The petitioner has submitted that “As per the 2<sup>nd</sup> Empowered Committee on Transmission (“ECT”) meeting dated 06.08.2018, the National Committee on Transmission had recommended that augmentation/ modification at existing ISTS may be done by the owner of the substation. CEA as well as ECT concurred with the view that the augmentation work be implemented under RTM. Considering the same, it was proposed that the development of these bays be taken up by the Petitioner under the Regulated Tariff Mechanism (RTM)”.

However, it is observed that Ministry of Power issued Office Order dated 28<sup>th</sup> October 2021 regarding “re-constitution of the National Committee on Transmission (NCT)”. The Para 2(viii) of the order states that “...the RTM project shall be allocated to CTU”. Any recommendations of the Committee adopted by Ministry of Power and incorporated in the bidding guidelines can only be mandatory for State Commission. The minutes of meeting submitted by the Petitioner do not help him in getting the relief sought in terms of allotting the remaining works on RTM basis.

The Bid Process Coordinator (Respondent No. 6 RECTPCL) issued Letter of Intent dated 13/09/2021 to the successful bidder M/s Adani Transmission Ltd. The aforesaid LOI was signed by M/s Adani Transmission Ltd. on 15/09/2021 with the remarks “Accepted Unconditionally” on all pages. Thereafter, M/s Adani Transmission Ltd. acquired the Petitioner M. P. Power Transmission Package – II Ltd. from Respondent No. 3 after completing the required processes, without raising any objections or grievances.

x. It is observed that Clause 5.2 of the Tariff based Competitive-bidding Guidelines for Transmission Service provides as under:

“5.2. *The TSP would take-up execution of the Transmission Project so as to complete commission and operationalise the transmission line as per specified schedule in TSA*”. Accordingly, time lines specified for completion of different transmission elements specified in schedule - 6 of the TSA should be followed.

xi. Vide Order dated 19/05/2022, in Petition No. 58/2021, the Commission has allowed the petition for adoption of the tariff filed by the petitioner. Para 9 (xii) of that Order mentions as under:

*9(xii) BPC sought clarifications from all the four (4) bidders. The clarifications submitted by all the bidders were evaluated by BPC and were found to be in order. Accordingly, based on the recommendation of the Bid Evaluation Committee, the Initial Offer of all the four (4) Bidders were opened on 15.03.2021 in the presence of the Bid Evaluation Committee. After opening of Initial Price Offer following situation emerged:*

S. No.	Name of the Bidder	Levelised Transmission charges from Initial Offer (Rs in millions)	Rank
1.	Adani Transmission Ltd	1700.11	L1
2.	Sterlite Grid 28 Limited	1701.21	L2
3.	Dilip Buildcon Limited	1940.59	L3
4.	Power Grid Corp. of India Limited	1990.50	L4

This shows that the process of seeking Clarifications was undertaken during bidding. The petitioner could also have sought clarification regarding the 2 Bays which are subject matter of the petition.



xii. Further, Para 9 (xiv) of that Order mentions as under:

*“9(xiv) Based on the lowest quoted IPO price, the e- Reverse Auction was initiated on 16.03.2021 at 1000 Hrs (IST). After 76 rounds of bidding following Levelised Transmission Charges for each bidder (in ascending order) emerged:*

<i>S. No.</i>	<i>Name of the Bidder</i>	<i>Levelised Transmission charges from Initial Offer (Rs in millions)</i>	<i>Levelised Transmission charges from Final Offer (Rs in millions)</i>	<i>Rank</i>
<i>1.</i>	<i>Adani Transmission Ltd</i>	<i>1700.11 (L1)</i>	<i>1326.45</i>	<i>L1</i>
<i>2.</i>	<i>Dilip Buildcon Limited</i>	<i>1940.59 (L3)</i>	<i>1329.78</i>	<i>L2</i>
<i>3.</i>	<i>Sterlite Grid 28 Limited</i>	<i>1701.21 (L2)</i>	<i>1396.74</i>	<i>L3</i>
<i>4.</i>	<i>PGCIL</i>	<i>1990.50 (L4)</i>	<i>1463.04</i>	<i>L4</i>

xiii. It is pertinent to mention that this is a case of Tariff Based Competitive Bidding and the Commission has only adopted the Tariff under section 63 of the Electricity Act, 2003 in petition No. 58 of 2021.

**Summary of major issues and Commission’s findings thereon:**

14. The Commission deliberated on the issues raised by the petitioner & the respondents. **The detailed submissions of the Petitioner & Respondents and Commission’s observations have been mentioned in the previous part of this Order and have not been repeated here for sake of brevity.** The summary of Commissions observations on the major issues and findings are as under:

**Issue No. 1: Whether the Petition is maintainable and this Commission has jurisdiction to adjudicate present dispute between Transmission Service Provider (TSP), namely M.P. Power Transmission Package-II Limited and Long Term Transmission Customer(LTTC), namely MPPMCL (on behalf of 3 Distribution Licensees)?:**

Findings: The petition has been filed under Sections 61, 62 & 86 of the Electricity Act, 2003 read with Article 16 of the Transmission Service Agreement (TSA) dated 05.02.2021. The petitioner submitted information to show that MPERC has Jurisdiction in the matter and the petition was maintainable / admissible for hearing on merits. The respondents submitted that petition is not maintainable for the reasons mentioned by them. As per Respondent, Petitioner has skipped the prerequisite to invoke arbitration directly and thus the Petition is not maintainable. However, both Petitioner and Respondents requested the Commission to decide the petition on maintainability and merits both and also not to refer it for arbitration.

In terms of the Commission’s Daily Order dated 04/07/2023, both Petitioner and Respondent No. 1 (MPPMCL) vide their letters dated 10/07/2023 & 11/07/2023 respectively filed their final submission on maintainability and merits for final decision of the Commission.

The Commission observed that the Electricity Act, 2003 and the TSA dated 05/02/2021 provides for adjudication of disputes by the Commission. The letters dated 13/07/2022, 20/07/2022, 19/09/2022, 23/09/2022, 03/01/2023 and 09/02/2023 attached as Annexure P - 20, 21, 22, 23, 24 and 25 respectively of the petition and also referred in prayers show that matter is being dealt with by them but the dispute remains unresolved. As such the objection of Respondent on the ground of skipping the prerequisite stipulated in Article 16 by the Petitioner, does not hold.

**The Commission thus observes that it in terms of Section 86 (1) (f) and Article 16 of TSA it has Jurisdiction and the petition is maintainable before it. The Commission considered the request of both the parties and has decided herein the matter on merits in this Order.**

**Issue No. 2: Whether omission of 2 numbers 132 kV ICT bays in RFP was typographical error on the part of Respondents?**

Findings: The petitioner has submitted that the two number 132 KV Transformer Bays were not mentioned in the scope of work. The respondents have also admitted this error as inadvertent typographical error. Both the parties agree that construction of 2 number 132 kV ICT Bays at 220 kV S/s Bargawan is essential part of the project under implementation and a pre-requisite for commercial operation of the said sub-station. The contention of Petitioner is that due to inadvertent error, the construction of 2 nos. 132 kV bays is out of scope of the bid and subsequent TSA. As per Petitioner even an additional license would be required to carry out this work. The respondents submitted that scope of work under RfP & TSA included construction of two 132 KV Bays associated with 2\*160 MVA 220/132 KC ICT. The mismatch in the number of bays mentioned in the RfP and the TSA for Bargawan substation is an inadvertent typographical error and the petitioner is trying to derive undue advantage of its own failure to seek clarification during the bidding stage.

The Commission upon analysis found that as agreed by both the parties construction of 2 no. 132 kV bays was essential part of project. If for the sake of argument, it is presumed that the present scope given in Rfp and TSA is considered as the final design of project, electricity shall be stepped down from 220 kV level to 132 kV level through 2 nos. 160 MVA ICTs. However, 2 nos. 132 kV bays for 2 nos. 160 MVA transformer not being available, it will neither flow towards 132 kV Rajmilan – Morwa / Waidhan lines nor it will flow towards 50 MVA, 132/33 kV transformer. Unless the transmission takes place by conveyance of electricity, the whole purpose of transmission license and transmission project is defeated.

In this regard the definition of “transmit” given in the Electricity Act, 2003 is relevant and is as under:

“Transmit” means conveyance of electricity by means of transmission lines and the expression transmission shall be construed accordingly.

Once it is ascertained that construction and commissioning of Sub-station at Bargawan cannot be conceived without 2 nos. 132 kV bays, it is obvious that such mistake has taken place as a typographical error.

**Therefore, the Commission concludes that cause of dispute i.e. omission of two 132 kV bays at Bargawan sub-station was an inadvertent typographical error and the 2 nos. 132 kV bays are to be read to be as part of scope of work.**

**Issue No. 3: If there was an inadvertent error, whether construction of such left out bays has a cost implication on the Transmission Service Provider and should Transmission Service Provider bear such cost, if any?**

Findings: Once it is settled that the error is an inadvertent typographical error, let us move on to the next question of its cost implication. If there is any typographical error in any document it is likely that other factors would have been taken into account in the design of the project including the cost. For this purpose, Commission has closely analysed the transmission elements of two sub-stations, which were assigned same weightage as percentage of overall quoted transmission charges, namely the Sub-station under dispute i.e. Bargawan and Ajaygarh. The Transmission service provider will get 10 % each for both these sub-stations in terms of Transmission charges. Considering that the original design of Bargawan sub-station included 2 Nos. 132 kV bays (which were omitted as a typographical error subsequently), all the 220 kV transmission elements and number of total 132 kV bays for both the sub-stations are the same. On further analysis, it is observed that Ajaygarh sub-station involves additional work of one no. 50 MVA 132/33 kV transformer, 2 no. 33 kV bays and one number 12 MVAR capacitor bank, which is over and above Bargawan work after including 2 nos. 132 kV bays under dispute.

In Writ Petition (C) No.273/2020 before Hon'ble Tripura High Court in the matter of Smt. Soma Debbarma vs The State of Tripura, Hon'ble Court on 23 March, 2021 observed that:

“Counsel for the petitioner may be correct in pointing out that the defendant cannot resile from a clear admission made on oath. However, an oversight or typographical error or misunderstanding cannot form the basis for a judicial decision if the error is properly explained. The crux of the matter is, is there a structure in the nature of a bathing ghat Page - 7 of 7 within a distance of less than 100 meters from the proposed shop? If the answer is, as in the present case in the negative, the petition must fail. In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.”

In the present case we have already concluded that the error was typographical in nature. Further when weightage of 10 % of quoted transmission charges are adequate for the work of Ajaygarh sub-station, the same 10 % weightage should be sufficient to carry out the works of Bargawan, whose scope of work is slightly less than that of Ajaygarh even after including 2 bays. All along the proceedings before this Commission, the Petitioner never came up with the estimate of additional cost involved and likely resultant increase

in transmission charges in any of its submission or pleadings. Thus the Petitioner has also not been able to provide any details of estimated cost implication in certain terms.

The Commission observed that the details of transmission elements are so many, that even the Petitioner made a typographical error in his affidavit submitted before the Commission. On page 15 of the Petition, the Petitioner mentioned space for 220 kV line bays as 2 against 4 mentioned in TSA. Thus by way of typographical error 2 line bays were omitted in the petition of the Petitioner submitted on affidavit.

**The Commission concludes that no cost implication arises out of a typographical error, which can be assigned to the Respondents.**

**Issue No. 4: Should Transmission Provider's prayer to quash impugned letters of Respondent no. 1 and Respondent no. 6, to permit construction of two 132 kV bays at Bargawan sub-station on RTM (Regulated Tariff Mechanism) and to issue a separate License for these elements be allowed?**

The prayers are mentioned in the earlier part of this Order and are not repeated for brevity.

Findings: In view of the conclusions made above, no case is made out to quash impugned letters of Respondent no. 1 and Respondent no. 6. The Commission can only interpret the contract and has precisely done the same as above. Permitting the petitioner to go ahead for construction of 2 no. 132 kV bays on RTM basis is like rewriting the contract, which the Commission cannot do. So far as License is concerned the Transmission License is granted to transmit electricity by the Licensee. Such license is already granted to the Petitioner on 17/05/2022 in Petition No. 59/2021 The relevant transmission elements described in the Schedule - I attached to the license are as follows:

**Works Covered under the Scheme: -**

<b>S. No.</b>	<b>Name of Work</b>
<b>3</b>	<b>220/132kV Substation at Bargawan (District-Singrauli)</b>
i	Construction of 220/132/33kV substation at Bargawan
ii	LILO of both circuits of Sidhi - Hindalco 220kV line at Bargawan 220kV S/s
iii	LILO of both circuits of Rajmilan - Morwa/ Waidhan 132kV line at Bargawan 220kV S/s

In the above License individual transmission elements are not mentioned. As concluded earlier 220/132/33 kV sub-station at Bargawan can be operative only when 2 Nos. 132 kV 160 MVA transformer ICT bays are within the scope of work. The Commission thus concludes that the prayers of the Petitioner to permit construction on RTM basis and issue another license are devoid of the merit.

15. With the above observations, findings and directions, the petition is dismissed and IA stands disposed-of.

16. Before parting with this, we would like to caution the Respondent No. 5 (MPPTCL), who prepared the original plan and submitted the same. MPPTCL should put mechanism in place whereby such typographical errors, if any may be detected and rectified before Bid Process Coordinator proceeds further in Tariff Based Competitive Bidding. Small typographical errors may lead to unnecessary and long litigations, which are not good for any stake holder.

Ordered accordingly.

**(Prashant Chaturvedi)**  
**Member**

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