

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : Application under Section 94 (f) of the Electricity Act, 2003 seeking review of the order dated 22.12.2011 passed by the Commission.

Petition No. 22/2012

ORDER

(Date of order 7th July, 2012)

M/s Madhya Pradesh Jaypee Minerals Ltd. - Petitioner
Through Jaiprakash Associates Ltd., Rewa

V/s

M.P.Poorv Kshetra Vidyut Vitaran Co. Ltd., - Respondent
Jabalpur

2. The petitioner, M/s. MP Jaypee Minerals Ltd. filed a petition under Section 94 (f) of the Electricity Act, 2003 seeking review of the order dated 22.12.2011 passed by the Commission.

3. The petitioner filed this review petition on the following grounds :-

- (a) The impugned order suffers from error apparent on the face of the record and deserves to be reviewed.
- (b) The impugned order is without jurisdiction and travels beyond the agreements/supplementary agreements executed between the parties in as much as for the first time vide communication dated 13.8.2010, the applicant was informed that the matter regarding rephasing had been referred to the Commission and its decision on the matter shall be final and binding, whereas prior to this in previous supplementary agreement there was no such clause. Thus the impugned order and the demand are per se illegal and are without jurisdiction.
- (c) That it ought to have been appreciated that the situation was beyond the control of the applicant and thus was covered under the force majeure clause of the agreement.
- (d) That it escaped the attention of the Commission that Clause 11.10 & 11.11 of

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the Madhya Pradesh Electricity Supply code, 2004 deal with unforeseen circumstances and the same provides for consultation between the parties so as to find out the best course possible. The parties herein ought to have been offered the protection of this clause.

- (e) That it ought to have been appreciated that while construing the provisions of Clause 11.2 of the Electricity Supply Code, 2004, and nullifying the supplementary agreements even for 're-phasing' of contract demand, when Clause 11.2 strictly applies only to 'reduction' of contract demand.
- (f) That it ought to have been appreciated that during the initial period of two years, the contract demand was only sought to be re-phased and was never reduced. The quantum of demand remained the same.
- (g) That it ought to have been appreciated that the agreements/supplementary agreements could not have been declared infructuous as that was not even the question involved in the controversy.
- (h) That the provisions of relevant laws have been misinterpreted while passing the impugned order.

4. In light of the above submissions the Petitioner prayed review of the impugned order dated 22.12.2011 and permission to surrender the balance contract demand over and above 1250 KVA on 33 KV without payment of tariff minimum charges including energy and fixed charges for the unexpired period of the agreement as follows;

- (a) Contract Demand 1750 KVA from 18.09.2011 to 17.12.2011
- (b) Contract Demand 2500 KVA from 18.12.2011 to 18.08.2012.

5. The case was listed for hearing on 20.03.2012.

6. The matter was heard and the case was reserved for orders.

7. The petitioner requested the Commission to direct the respondent that recovery on account of revision of bills with effect from the dates as mentioned in Commission's Order dated 22.12.2011 in Petition No. 61/2011 may not be insisted upon till disposal of this petition.

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8. The Commission considered the request of the petitioner and directed that the respondent shall not recover any amount which might have become due pursuant to the impugned order till disposal of this matter by the Commission.

9. Seriatim comments on the grounds raised for the review by the Petitioner are as follows:

(a) The Petitioner could not establish any error apparent on the face of the record which may warrant review.

(b) The contention taken by the Petitioner is not valid. The Commission has as the required authority to set aside the agreements which are inconsistent with law or its duly notified regulations.

(c) The contention does not hold as such situation was not covered by the force-majeure conditions specified in the original agreement and relevant regulation of the Commission.

(d) Protection of section 11.10 and 11.11 at this stage cannot be sought as the voluminous record placed before the Commission and the pleas earlier taken were that all actions heretofore were taken construing non-availability of environmental clearance as a force-majeure. Moreover these sub-section require the licensee to promptly bring to the notice of the Commission if any unforeseen condition is encountered and is not covered by any of the provisions of the Supply Code. The matter was brought to the notice of the Commission more than 2 years after its occurrence.

(e) Pleas taken in (e), (f) and (g) – These issues have come up primarily as the licensee decided to incorporate demand phases way beyond the currency of the agreement, continued to extend the currency of the agreement way beyond the maximum permissible limit of 6 months in terms of the agreement and prevailing regulations. The contention that it was only rephrasing and not reduction is not supported by facts.

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(f) The petitioner could not substantiate the contended misinterpretation of the laws.

10. Based on the above analysis, the review based on the grounds that the Petitioner has brought forth is not sustained. The Commission, however, has observed that setting aside supplementary agreements executed by the parties has given rise to additional demand by the licensee from the petitioner. The Commission, overall, is of the view that in this entire matter of executing an agreement prescribing contract demand way beyond its currency, extending the currency of the agreement beyond the permissible limit of 6 months prescribed in the agreement and regulation of the Commission, recognizing non-availability of environmental clearance as force-majeure rather than an unforeseen condition and abnormal delay in bringing up the matter before the Commission, the licensee is squarely responsible. For these misinterpretations and wrong doings they cannot be allowed to reap pecuniary benefits. Moreover, these actions, though accepted by the petitioner, have deprived him of the right and opportunity to suitably reduce the contract demand after expiry of the agreement period. Thus, in view of the aforementioned observation that in the whole chain of events the licensee was primarily responsible, to meet ends of justice, the Commission modifies its earlier order to the following extent :

(a) The respondent shall afford an opportunity to the petitioner to seek reduction in contract demand on expiry of initial period of agreement i.e. 17.02.2010 and give consequential adjustment towards bill raised thereafter.

(b) The following from para 14 of the order dated 22.12.2011 stands deleted :

“1250 KVA - w.e.f. 18.06.2011 onwards.”

11. While parting with this case, the Commission would like to emphasize that the mistakes observed in this case should not recur. The licensee should strictly adhere to the provisions of the Supply Code as in force and should promptly approach the

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Commission for any deviation wherever felt expedient. A copy of this order be also served to the other two distribution licensees of the State namely the Central Discom and the West Discom.

12. With the above directions, the petition No. 22 of 2012 stands disposed of.

Ordered accordingly,

sd/-

(C.S.Sharma)
Member

sd/-

(Rakesh Sahni)
Chairman