

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

ORDER

(Date of hearing 24th November, 2012)

(Date of order 10th December, 2012)

M/s Birla Corporation Ltd. - Petitioner
Unit Satna Cement Works,
PO Birla Vikas, Satna – 485005 (MP).

V/s

MP Poorv Kshetra Vidyut Vitaran Co. Ltd., - Respondent
Block No. 8, Shakti Bhawan,
Rampur, Jabalpur.

Shri R. Kakkar, VP (E&W), Shri Ajay Porwal, Consultant and Shri M.N.Khan, Consultant appeared on behalf of the petitioner.

Smt. S.Dixit, EE appeared on behalf of the respondent.

2. The petitioner, M/s Birla Corporation Ltd. has filed this petition for clarifications and directions for treating villages Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under clause 2.1 (z) for "installation" and clause 2.1 (z)(ii) for "premises" under the M.P. Electricity Supply Code, 2004.

3. **Facts of the case:**

- (a) The petitioner was availing two connections at 132 KV supply voltage for their separate cement manufacturing plants namely M/s Satna Cement Works with contract demand of 6500 KVA and M/s Birla Vikas Cement Ltd. with contract demand of 10000 KVA under separate factory licenses and separate HT agreements.
- (b) M/s Birla Vikas Cement Ltd. had installed a thermal captive power plant of 27 MW and 2 X 7.5 MW Waste Heat Recovery System in its premises and intend to extend the power to M/s Satna Cement Works and to synchronize their supply with the grid for import under open access or export from CPP.

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

- (c) The respondent referred the case to the Commission for seeking relaxation for submission of single factory license for the sanction of a single HT connection. The Commission had directed the respondent that the consumer is required to apply for clubbing of two existing connections along with necessary documents including single factory license and to execute a fresh agreement with total requisitioned contract demand. Accordingly, the petitioner applied to the GoMP for license and requested the respondent for surrender of existing connections and applied for new HT connection for a contract demand of 16500 KVA and subsequently for 21500 KVA. The agreement was finalized on 12.07.2010 for contract demand of 21500 KVA and commenced on 15.08.2010.
- (d) The connection was checked by a vigilance team on 12.02.2011 and a case of unauthorized use of power was made on account of extension of premises in respect of captive mines situated at village Naina/Sagmania about 4 Kms. away from the plant premises. This area was considered as non-continuous as it was divided by a railway line separating the mines area from the plant area.
- (e) The petitioner represented to the respondent against the aforesaid provisional assessment stating that the said mines were part of the old HT connection of M/s Birla Vikas Cement and that the Railway line was pre-existing since 1991-92. The power supply was being used in the said mines prior to the merger of load of earlier HT connections. The land was acquired by the Government of India for laying of railway line in terms of the directions issued by Hon'ble High Court on 15.2.88 and 28.3.89 that the construction of the railway line will not disturb the existing ropeway and it shall be constructed in such a way so as to go over the rope-way.
- (f) In light of the above submissions, the petitioner has prayed that the respondent may be directed to take on record that premises of the petitioner are contiguous/continuous in terms of the agreement dated 12.07.2010 for power procurement of 21500 KVA and include the Ghurdang, Sagmania (Captive mine area) and the area connecting the two in District Satna for the purpose of utilizing power connection as per the provisions under the Supply Code, respondent's circular dated 07.03.2011 with regard to the extended definition of the premises and in view of the Hon'ble High Court orders.

4. The case was listed for hearing on 24.11.2012.

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

5. During the hearing on 24.11.2012, the petitioner reiterated the contents of the petition and submitted a rejoinder as under:

(i) The petitioner is not challenging the assessment under Section 126 of the Electricity Act, 2003 in the present petition. This petition is filed for declaration that the premises situated at village Ghurdang and Sagmania, Distt. Satna are continuous and contiguous premises as existing from 1963.

(ii) Vide order dated 1.5.2010 the Commission had, while recognizing the existing status of the premises and after considering all the relevant aspects directed the respondent to take necessary action for clubbing of the two existing connections. Pursuant to the above directions, the respondent asked the petitioner to file an application for merger/clubbing of the two existing connections.

(iii) There is no change in the premises from the date of entering into the first agreement dated 30th December, 1963 till the last agreement entered on 12th July, 2010.

(iv) The petitioner had applied for clubbing of the two EHT connections and not for surrender.

(v) The Commission was aware that there existed Right Of Way (ROW) and that the Hon'ble High Court had also directed that construction of Railway Over Bridge (ROB) will not affect the ROW and the Rope way of the petitioner. The directions of the Commission were given after duly examining all the facts and circumstances as they existed at the time of giving the directions dated 01.05.2010.

(vi) No map was attached to the agreement dated 12.07.2010 as there was no change in the premises and only two EHT connections were merged into one. The map that is alleged to have been submitted was filed only to show the point of supply.

(vii) The petitioner had applied for disconnection of existing connections to facilitate the merger of the two EHT connections.

(viii) There was no new connection availed.

(ix) The supplementary agreement dated 12.07.2010 for availing 21500 KVA after merger and load enhancement of previous two connections is valid for the entire premises as the Hon'ble High Court order clearly directed that construction of ROB will not affect the ROW and Roap Way of the petitioner.

6. During the hearing on 24.11.2012, the respondent sought adjournment and the Commission allowed time up to 27.11.2012 to the respondent to submit its reply.

7. The respondent submitted the reply on 27.11.2012 as under:

(i) It is incorrect to say that the Commission had directed merger of the existing premises with prior knowledge that the premises of M/s Birla Vikas Cement were bifurcated by a Railway line.

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

- (ii) Since a new service connection was applied for by the petitioner, it was its prime responsibility to disclose all the facts and correct map of the premises within which the power was to be used.
- (iii) The case of extended premises was registered under Section 126 of the Electricity Act, 2003 when it was observed that the area of mines where supply was being extended were not shown in the map submitted for the new HT agreement dated 12.07.2010 of the new premises.
- (iv) The petitioner had applied for a new service connection for revised load requirement/connected load and in the new premises for which all the formalities were required to be completed afresh as applicable to new HT connection and therefore the contention of the consumer that the map was not required to be submitted is baseless. Since it was a new connection, it was the responsibility of the petitioner to correctly show the boundary within which supply was intended to be availed. In absence of such disclosure by the consumer, it is always presumed that the supply is intended to be used within the boundaries shown by the consumer in the map of the premises submitted by him.
- (v) On 12.07.2010 a fresh HT agreement was executed for contract demand of 21500 KVA. The contention of the petitioner that it was supplementary agreement is not correct.
- (vi) The Commission may take a view and issue clarification whether in light of the directives of the Hon'ble High Court, the premises of the petitioner can be considered as continuous despite it being divided by a railway track.

8. On hearing the petitioner and the respondent and considering the written submissions, the Commission has noted that:

- (i) There is no documentary evidence made available by the petitioner from which it can be established that while passing the directions under letter dated 01.05.2010, the Commission was aware of the fact that a continuous structure of rope way from mines to factory was existing before the railway line came into existence.
- (ii) Although the HT agreement dated 12.07.2010 was a fresh agreement for a contract demand of 21500 KVA, the respondent was fully aware that it was effectively a case of merger of two existing EHT connections with total contract demand of 16500 KVA.
- (iii) Para 2 of page 1 of the agreement dated 12.07.2010 provides:
"WHEREAS the consumer.....to supply him with electrical energy in bulk at the consumer's premises situated at village Ghurdang & Sagmania, Distt. Satna, MP and which for greater clearness is delineated on the plan hereto annexed and thereon

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

colored, for the purpose of Cement Plant and the East Discom has agreed to supply to the consumer such energy upon the terms and conditions hereinafter contained." But the location of mine is not shown inside the earmarked area of premises in the copy of the map submitted by the respondent, which is duly signed by the representatives of the petitioner/respondent.

(iv) On perusal of the Hon'ble High Court's order dated 15.2.1988, it is gathered that the interim stay granted by the Hon'ble Court on 7.9.1987 was vacated. The Hon'ble Court had also observed that there was an agreement between the Railways and the petitioner not to disturb the rope way and to construct the railway line in such a way so as to go over the rope way.

(v) From the documents submitted by the petitioner, it appears that the loads of earlier existing two connections were combined and with enhancement of load of 5000 KVA the petitioner had requested the respondent to provide one EHT connection. The mines were also existing and the petitioner was using the load of mines through the then existing EHT connection. There appears no change in the structure of rope way etc. in terms of orders of the Hon'ble High Court. However, while executing the agreement, the location of the mine was not shown inside the premises (within which the power supply was to be utilized) shown in the map and annexed to the HT agreement dated 12.07.2010. Also while executing agreement for combined premises formed out of the existing premises, the respondent did not point out the mistake to the petitioner in marking the complete premises including location of mines in the map annexed to the agreement. The respondent is thus shown to be equally responsible for this mistake in the map.

9. In light of the aforesaid it is established beyond doubt that the mining area remains contiguous to the remaining area notwithstanding the erection of the Railway line. This position remains so for over two decades. The error in documentation only occurred at the time that the two separate connections were sought to be merged by the petitioner. At that point the respondent had sought guidance from the Commission and unfortunately the Commission's own directions were ambivalent. The Commission's directions were misconstrued to lead the petitioner into making a fresh application which fact has now been abused by the respondent to the petitioner's detriment. The argument extended by the respondent that a wrong map was submitted by the present petitioner along with the new application does not, in any way, absolve the respondent or its officers of their own responsibility under the law. It is incumbent on the licensee, through its officers, to check the provenance of documentation

Sub : In the matter of clarifications and directions for treating area in village Ghurdang and Sagmania as the premises of the petitioner as per para 2 of the supplementary agreement dated 12.07.2010 for power procurement of 21500 KVA and in view of the fact that in past agreements also the same premises included these areas and in view of the definition under Clause 2.1(z) for 'installation' and Clause 2.1(z)(ii) for 'premises' under the MP Electricity Supply Code, 2004.

submitted by any applicant for the grant of connections. That this was not done is a serious reflection on the manner in which the respondent and its officers function. The Commission hopes that such major lapses shall not be repeated by the respondent company in future.

10. Notwithstanding the aforementioned conclusions, the Commission refrains from passing any orders against the respondent at this stage. The reason is that the case against the petitioner has been initiated under Section 126 of the Electricity Act, 2003 and only a provisional assessment has been made. The case has not yet been finally decided by the assessing officer. The Commission expects that before finally making the assessment under Section 126 the assessing officer shall physically verify the situation on the ground, the contiguity of the mining area with the rest of the premises and satisfy himself fully of the facts that have emerged so far. The assessing officer will also do well to remember that the merger of the earlier two connections could not have been permitted by the respondent had the premises not been contiguous. In this regard, the assessing officer shall keep the Hon'ble High Court's directions of dated 15.2.1988 in mind.

11. With the above directions, the petition no. 69 of 2012 stands disposed of.

**(Rakesh Sahni)
Chairman**