

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Subject: In the matter of MPPTCL's Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) Regulations 2016 and Order 47 Rule 1 of the Code of Civil Procedure, 1908, seeking review/ modification of the MPERC's Order dated 12.12.2023 in the Petition No. 55 of 2023.

Petition No. 7 / 2024

Order
(Hearing through Video Conferencing)
(Date of Order: 22nd May 2024)

M. P. Power Transmission Co. Ltd., Jabalpur

- Petitioner

V/s.

- i. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Jabalpur
- ii. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd. Bhopal
- iii. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd. Indore
- iv. M. P. Industrial Development Corporation Ltd. Indore
- v. West Central Railways, Jabalpur

- Respondents

Shri Shubham Arya, Advocate, V. S. Pani, CE, Shri Rajeev Adlakha, EE and Shri Abhinav Anand, AE appeared on behalf of the petitioner.

Petitioner's submissions:

2. In the subject petition, the petitioner broadly submitted as under:

- i. *MP Power Generating Co Ltd. (MPPGCL) has proposed installation of 1 x 660MW new Super Critical Unit at Amarkantak Thermal Power Station, Chachai (Anuppur) in place of Phase-I (2 x 30 MW) and Phase-II (2 x 120 MW) units which is tentatively scheduled to be commissioned by January 2027.*
- ii. *In order to examine and finalize the power evacuation arrangement from the 1 x 660 MW Unit ATPS, Chachai, a Committee comprising of officers from MPPGCL and MPPTCL was constituted and after several meetings, the Committee has finalized the power evacuation arrangement and the scope of works to be executed by MPPGCL and MPPTCL as under:-*

Works to be executed by MPPGCL:

- a. *Construction of 400/220 KV Substation with 1 x 500 MVA, 400/220 KV transformer at ATPS.*
- b. *Construction of 2 Nos. 400 KV feeder bays with 1 No. 1 x 50 MVAR line reactor on ATPS-Katni line section.*
- c. *Provision of 220 KV feeder bays in existing ATPS 220 KV switchyard to terminate 6 Nos. 220 KV existing circuits.*

Works to be executed by MPPTCL:

- a. *LILO of one circuit of Birsinghpur TPS-Katni 400 KV line at ATPS new 400 KV switchyard.*
- b. *Charging of second circuit of Katni-Damoh 400 KV DCDS line (Presently charged on 220 KV between Katni and Damoh 220 KV S/s) on 400 KV level between Katni and Damoh (PGCIL) S/s.*

- c. *LILO of both circuits of ATPS-Shahdol-Sidhi 220 KV line at Amarkantak (Anuppur) 220 KV S/s.*
- d. *Re-routing of ATPS-Anuppur interconnector and RTS feeders from ATPS switchyard to Amarkantak (Anuppur) 220 KV Substation.*
- e. *Re-routing of existing 220 KV lines outside the existing ATPS 220 KV switchyard as per 220 KV bay position / provisions.*
- iii. *The power evacuation arrangement to be executed by MPPTCL has been approved in the 11th Consultation Meeting for Evolving Transmission Scheme in Western Region (CMETS-WR) held on 30.09.2022.*
- iv. *The approval of Board of Director for execution of power evacuation works to be carried out by MPPTCL was obtained. On approval of the Board, the survey of the line work has been completed and based on the detail survey the estimation for LILO of one circuit of Birsinghpur TPS - Katni 400 KV line at ATPS new 400 KV Switchyard has been worked out to **Rs. 368 Crore.***
- v. *The National Tariff Policy, 2016 issued by the Govt. of India at para 7 & 8 stipulates that “While all future Inter State Transmission Project shall ordinarily, be developed through Tariff Based Competitive Bidding process, the Central Government may give exemption from competitive bidding for (a) specific category of project of strategic importance, technical upgradation etc. or (b) works required to be done to cater to an urgent situation on a case to case basis”. It further stipulates that “CERC has specified regulation on framework on the Inter State Transmission. A similar approach should be implemented by SERCs for the Intra State Transmission, duly considering factors like voltage, distance, direction & quantum of flow.”*
- vi. *The Energy Department, Govt. of MP vide letter No. 9009/2023/XIII/04 dated 05.09.2023 accorded in principle approval to carry out aforesaid work through Regulatory Tariff Mechanism and also directed to obtain approval from the Commission for relaxation in threshold limit mentioned under Clause-2 of 1st amendment of MPERC (Terms and Conditions for determination of Transmission Tariff) (Revision-IV), Regulations, 2020 {RG-28(IV) of 2020}” issued by the Commission on dated 23rd January 2023.*
- vii. *In regard to the above, on 26.09.2023, the Petitioner had filed a Petition which was registered as Petition No. 55 of 2023 seeking relaxation in Threshold limit for development of power evacuation system for proposed 1x660 MW super critical unit at ATPS Amarkantak Chachai by MPPGCL through Regulated Tariff Mechanism (RTM). The above power evacuation system has been envisaged to be carried out through Regulatory Tariff Mechanism subject to the approval from the Commission.*
- viii. *On 12.12.2023, the Commission passed an order dismissing the above Petition No. 55 of 2023, inter-alia, holding as under:*

“vi. The MYT Regulations do not have any provision for Relaxation in Threshold limit for TBCB projects. The petitioner has only referred to an Order of the Commission issued on 15th January, 2021 i.e. prior to the Judgment dated 23/11/2022 of Hon’ble Supreme Court in CA No. 1933 of 2022. The petitioner has neither cited any provision of Regulations in its petition while seeking changes in the threshold limit, nor has sought any change in the Regulations.

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viii. With the above citation, it is amply clear that the Order dated 15th January, 2021 of this Commission, which the petitioner is relying upon to seek relaxation in the threshold limit for TBCB projects, cannot overtake the MYT Regulations as amended on 23/01/2023.

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5. In view of aforesaid legal provisions, the Commission observes that the Petitioner has not invoked any provisions of the applicable MYT Regulations, nor do the existing Regulations contain any provision for relaxation in Threshold limit for TBCB projects. Therefore, the Commission is of the considered view that the subject petition is not admissible. As such, the subject petition stands dismissed and disposed of.”

- ix. In terms of the above, the Petition has been primarily dismissed by the Commission observing that the Regulations do not contain any provision for relaxation of the Threshold limit for TBCB Project. It is respectfully submitted that the above finding of the Commission suffers from error apparent on the face of record as contemplated under Order 47, Rule 1 of the Civil Procedure Code, 1908 and even otherwise, there exists sufficient reasons for review of the order dated 12.12.2023.
- x. The Commission has not considered that the Commission has been specifically entrusted with the inherent powers in terms of the MPERC (Conduct of Business) Regulations, 2016 in order to deal with such exigencies and peculiar circumstances as in the present case. Regulation 45 reads as under:

45. Saving of inherent power of the Commission :-

(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting a procedure for dealing with the matters in conformity with the provisions of the Act, which is at variance with any of the provisions of these Regulations, if the Commission, for reasons to be recorded in writing, deems it necessary or expedient.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

- xi. In addition to the above, Regulation 48 of the MPERC (Conduct of Business) Regulations, 2016 provides for the Power to dispense with the requirement of the Regulations in specific case as under:

48. Power to dispense with the requirement of the Regulations. - The Commission shall have the power, for reasons to be recorded in writing and with notice to the affected parties, dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be specified.

xii. The above powers can be exercised by the Commission considering the peculiar circumstances of the case. The Petitioner respectfully submits that the present case merit exercise of Regulation 45 and/or 48 of the MPERC (Conduct of Business) Regulations, 2016.

xiii. The Commission may consider that the proposed evacuation system is required to be developed by MPPTCL through Regulatory Tariff Mechanism for the following reasons:

a. The proposed evacuation system mainly involves modification / upgradation of existing transmission system of MPPTCL by LILO of existing 400kV Katni – Birsingpur 400kV line at Amarkantak Thermal Power Station and LILO of Amarkantak – Shahdol / Sidhi 220kV DCDS at Annuppur 220kV substation of MPPTCL.

b. The proposed arrangement as above involves important 400kV link between Birsingpur TPS and Amarkantak TPS. Hence, it is strategically important therefore the control of this arrangement should be with MPPTCL which is not possible if the work is taken up through TBCB route.

c. Being inter connection line between two major power station Birsinghpur and Amarkantak the availability of transmission line shall have to be ensured nearly 100% so as to avoid any commercial loss consequent to break-down of line and associated generation loss. The MPPTCL is adequately equipped with the resources to handle any crisis borne out of break-down of the line by deployment of expert manpower & machinery to charge the line in minimum possible time. The Intra State Transmission System developer to be selected under TBCB mode may not have deployed such expertise particularly for evacuation scheme of comparatively small magnitude.

d. The route alignment of the proposed LILO of existing 400 KV Birsinghpur-Katni line mainly passes through dense forest and Coal Mines area. The involvement of forest reserved and protected may be around 10 Kms out of about 65 Kms of length of proposed transmission line. The forest clearance process is extensive and time consuming. In case, MPPTCL is permitted for construction of the proposed evacuation scheme under Regulated Tariff Mechanism, then in such case, the process for obtaining forest clearances will be initiated immediately after grant of approval which will avoid further time loss. In case, project is envisaged through TBCB, in such case, the selected developer will only initiate the process for forest clearance after award of Intra State Project and issue of further approvals such as grant of Transmission License and adoption of tariff by the MPERC. The delay in completion of the project is therefore not ruled out in case, the project is awarded through TBCB. Apart from above, the clearances from Mining Departments before initiating any process of construction will have to be obtained which can be initiated well before the schedule if the project is to be taken up by MPPTCL under Regulated Tariff Mechanism.

- e. *The commissioning of proposed 1x660 MW unit and proposed transmission power evacuation scheme is to be matched so that neither the generator nor Transmission Licensee suffers any financial loss due to mismatch in commissioning of their elements as per the mandate of the Regulations. It is submitted that the 1x660 MW unit is proposed for commissioning by January-2027 but in all likelihood it may be further extended looking to the present status of clearances involved in the project. Therefore, flexibility in timeline for commissioning of Generation as well as Transmission elements will have to be ensured which is possible in RTM mode rather than TBCB mode.*
- xiv. *The proposed transmission line (LILO of Amarkantak- Birsinghpur line) passes through the hilly terrain having difficulties in erection of towers which are to comply the level and angles as per the approved alignments. Under these circumstances there may be some difficult segments in which special type DD-type Towers (Quad Moose) will have to be erected for which MPPTCL is having type design and specialization in construction of civil foundations and subsequent stub settings. This will help facilitate in saving of time on account of execution of this special nature work which may not be available with the other Licensee if selected under TBCB mode.*
- xv. *The exercise of fixing the maximum threshold or any other term and condition has been vested in the Commission by the Hon'ble Supreme Court in the decision dated 23.11.2022 in Civil Appeal No. 1933 of 2022 in the matter of TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission.*
- xvi. *In fact, the Hon'ble Supreme Court in Para 131 has clearly observed that "The Regulatory Commission shall curate to the specific needs of the State while framing these regulations".*
- xvii. *In view of the above and the powers being vested in the Commission by virtue of Regulation 45 and 48 MPERC (Conduct of Business) Regulations, 2016, it is respectfully submitted that the present case is a fit case for the Commission to relax the threshold limit of 250 Crores as specified in the First amendment to Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Transmission Tariff) (Revision –IV) Regulations, 2020 and to direct the implementation of the subject Power Evacuation System through Regulatory Tariff Mechanism.*
- xviii. *It is humbly submitted that the non-consideration/non-recording of the above in the instant case falls squarely within the power of review vested with the Commission. Reference in this regard may be made to decision of the Hon'ble Supreme Court in the matter of BCCI v. Netaji Cricket Club [BCCI v. Netaji Cricket Club, (2005) 4 SCC 741] wherein it was held that exercise in review would be justified if there be misconception of fact or law:*

"19. It was urged that the High Court wrongly exercised its jurisdiction in entertaining the review application. Reliance in this regard has been placed on Parsion Devi –v- Sumitri Devi and Lily Thomas v. Union of India.

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88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*."

Prayer:

3. The petitioner prayed as under:

- i. To admit the Review Petition;
- ii. To review and modify the order dated 12.12.2023 passed by the Commission in Petition No. 55 of 2023 to the extent stated in the Review Petition; and consequently,
- iii. To accord approval for relaxation in threshold limit for development of power evacuation system for proposed 1x660 MW Super Critical Unit at Amarkantak Thermal Power Station (ATPS), Chachai by MPPTCL through Regulated Tariff Mechanism (RTM).

Procedural History:

4.
 - i. Motion hearing in the matter was held on 12/03/2024. The petition was admitted and the petitioner was directed to serve a copy of the petition on respondents within a week. The respondents were directed to submit their reply within two weeks thereafter. A copy of the same be served to the petitioner simultaneously. The petitioner may file rejoinder within a week, thereafter. Daily Order dated 12/03/2024 was issued accordingly and the petition was listed for hearing on 30/04/2024.
 - ii. MPPTCL vide letter dated 04/04/2024 submitted that it has served to Respondents on 15/03/2024. No comments received from Respondents.
 - iii. At the hearing held on 30/04/2024, the petitioner was heard at length. No submission was made by the Respondents. The case was reserved for Orders.

Commission's observations and analysis:

5. On perusal of the subject petition and the relevant documents placed on record, the Commission observed the following:
- i. Section 94(1)(f) of the Electricity Act, 2003 provides that the Commission may review its decisions, directions and orders.
 - ii. Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 40 of MPERC (Conduct of Business) Regulations 2016 provides following conditions for Review:
 - (a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;
 - (b) On account of some mistake or error apparent on the face of the record; or
 - (c) Any other sufficient reason.
 - iii. In the present petition, it is observed that the petitioner has laid emphasis on para 131 of the Hon'ble Supreme Court's Judgment dated 23/11/2022 CA No. 1933 of 2022, which mentions that "The Regulatory Commission shall curate to the specific needs of the State while framing these Regulations". However, it is observed by the Commission that such curation to the specific needs was possible only at the time of **framing the Regulations** and not subsequently.
 - iv. It is pertinent to mention that in order to comply with the directions of the Hon'ble Supreme Court in the aforementioned Judgment, MPERC issued public notice No. 2700 dated 22/12/2022 to invite suggestions / comments / objections on the draft of the First Amendment in MPERC (Terms and conditions for determination of Transmission Tariff) (Revision –IV) Regulations, 2020 {(RG – 28(IV)(i)) of 2022} (MYT Regulations). The draft Amendments mentioned about threshold limit of **Rs. 250 Crore** (Rupees Two Hundred & Fifty Crore) for TBCB projects. This limit of Rs. 250 Crore was same as earlier decided by the Commission vide Order dated 15/01/2021 in accordance with Clause 5.3 of the Tariff Policy dated 28/01/2016.
 - v. MPPTCL vide its letter No. 5170 dated 11/01/2023 submitted its comments in response to the Commission's public notice on the aforesaid first Amendment in the MPERC Regulations, 2020. It made many suggestions / comments / observations, however it did not make any request for revision in proposed threshold limit of Rs. 250 Crore at the time of pre-publication and public hearing for framing Regulations.
 - vi. Public hearing in the matter was held on 20/01/2023 and after complying with due Regulatory procedures, the First amendment to "MPERC (Terms and Conditions for determination of Transmission Tariff) (Revision –IV) Regulations, 2020" was notified on 23/01/2023. In these Regulations the threshold limit of Rs 250 Crore was fixed for TBCB projects. There is no provision to relax the threshold limit in principal Regulations.
 - vii. Paragraph No. 4 of the subject review petition mentions that "*the power evacuation arrangement to be executed by MPPTCL has been approved in the 11th Consultation Meeting for Evolving Transmission Scheme in Western Region (CMETS-WR) held on 30/09/2022*". Further paragraph No. 5 of the review petition mentions that "*cost was worked out as Rs 368 Crore*". Annexure – II of the petition shows that the meeting of Board of Directors in which the subject works were approved was held on **28/12/2022**.

- viii. The aforesaid status shows that the subject works were approved in Western Region (CMETS-WR) meeting held on **30/09/2022** and MPPTCL's Board of Directors meeting held on **28/12/2022**. The subject matter was in full knowledge of the petitioner when it submitted comments on the Draft Regulations vide its letter No. 5170 dated **11/01/2023** and attended public hearing held on **20/01/2023**. However, the Petitioner failed to put forth specific needs, if any in this regard before the Commission at the time of framing Regulations.
- ix. Subsequently, it filed petition No. 55 of 2023 seeking relaxation in threshold limit of TBCB projects, so that it may take the proposed work under RTM (Regulated Tariff Mechanism). This petition was dismissed and disposed of by the Commission vide Order dated 12/12/2023 on the grounds mentioned therein.
- x. The Petitioner has submitted that the findings of the Commission in Order dated 12/12/2023 suffer from error apparent on the face of record and even otherwise there exist sufficient reasons for review of the Order dated 12/12/2023. The Petitioner, however, has failed to establish any error apparent on the face of record.
- xi. Section 114 of the Code of Civil Procedure, 1908, provides for power to review Court's own Judgment or Order. The section empowers the Court to review any judgment pronounced by it, for the purpose of correcting any errors or mistakes that may have occurred, either on account of some accidental slip or omission or on account of some mistake or error apparent on the face of record. The powers of review under Section 114 are not unlimited. The Court cannot review its own Judgment or Order merely because the parties are dissatisfied with it or because it has been discovered that another view could have been taken on the same facts and evidence. The power of review can only be exercised where it is found that there was some error or mistake that needs to be rectified.
- xii. On perusal of the reasons / grounds mentioned by Petitioner for review in this matter, the Commission has observed that the grounds put forth do not fall under the circumstances provided for review under Regulation 40.2 of the MPERC (Conduct of Business) (Revision – I), Regulations, 2016 and also articulated under Rule 1 Order 47 of the Code of Civil Procedure (CPC) for review in the instant case. Hence, subject review petition is dismissed and disposed of accordingly.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman