

# MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

**Petition No. 02 of 2021**

## **ORDER**

**(Hearing through video conferencing)**

**(Date of Hearing: 15<sup>th</sup> June' 2021)**

**(Date of Order 2<sup>nd</sup> July' 2021)**

**M.P. Power Generating Co. Ltd.**

Block No. 9, Shakti Bhawan,  
Rampur, Jabalpur – 482 008

- **Petitioner**

**Vs.**

**M.P. Power Management Company Ltd.,**

Block No. 15, Shakti Bhawan,  
Rampur, Jabalpur – 482008

- **Respondent**

Shri Sudhir Saxena, CE (CS) and Shri Salil Choudhary, EE (CS) appeared on behalf of petitioner.

Shri Manoj Dubey, Advocate and Shri Prakash Pachori, (GM) appeared on behalf of the Respondent

M.P. Power Generating Company Ltd. (MPPGCL) filed the subject petition in light of the directives issued by Government of India, Ministry of Environment, Forest and Climate Change vide Notification S.O. 254 (E) dated 25.01.2016. In the subject petition, MPPGCL has sought directives under Proviso 68 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 (RG-26 (IV) of 2020) for recovery of expenses towards Fly Ash utilization & transportation.

2. The petitioner broadly submitted the following in this petition:

- i. *MPPGCL entered into Power Purchase Agreements (PPAs) with MP Tradeco (now MPPMCL) on 29.11.2006 for existing power stations and on 04.01.2011 for new Thermal Power Stations. Further, the first amendment to the Power Purchase Agreement (PPA) dated 29.11.2006 towards Purchase of Power from existing and ongoing Thermal and Hydel Units of M. P. Power Generating Company Limited, has been signed on 18.07.2017 at Jabalpur. This First Amendment in Agreement provides term period till retirement/ decommissioning of all Thermal and Hydel Power Stations of MPPGCL listed in the agreement. The PPAs for new power stations have also been amended from time to time. These PPAs provides that the tariff payable by Tradeco to Genco and terms & conditions related thereto shall be as determined by the State Commission. MPPGCL has accordingly been raising the bills of energy sold to Tradeco since 1.6.2005 as per the tariff determined by the Commission from time to time.*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

- ii. *The Commission has notified MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2020 {RG-26 (IV) of 2020} on 28.02.2020. This regulation is based on multiyear tariff principles and incorporated norms of operation for control period FY 2019-20 to FY 2023-24.*
- iii. *MPPGCL would like to draw kind attention of the Commission towards the Extra Ordinary Gazette Notification issued by Government of India, Ministry of Environment and Forest dated 03.11.2009 regarding the amendments made in THE ENVIRONMENT (PROTECTION) ACT, 1986) and THE ENVIRONMENT (PROTECTION) RULES, 1986), wherein mandatory directives were issued for utilization of Fly Ash (all category of Ashes) generated at the Thermal Power Plants.*
- iv. *The Ministry of Environment, Forest and Climate Change issues directives by way of notifications / amendments issued from time to time. MPPGCL has to comply with these notifications.*
- v. *The Ministry of Environment, Forest and Climate Change vide Notification S.O.254(E) dated 25.01.2016 has issued directives to all the Coal or Lignite based thermal power stations under para 2 (b) of its notification, which is reproduced below:-*
- “ (9) *Every coal or lignite based thermal power plants shall install dedicated dry ash silos having separate access road so as to ease delivery of Fly Ash.*
- (10) *The cost of transportation of ash for Road construction projects or for manufacturing ash based products or use as soil conditioner in agriculture activity within a radius of Hundred kilometers from a coal or lignite based thermal power plant shall be borne by such coal or lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared equally between the user and the coal or lignite based thermal power plant.*
- (11) *The coal or lignite-based power plant shall promote, adopt and setup (financial and other associated infrastructure) the ash-based products manufacture facilities within their premises or in the vicinity of their premises so as to reduce the transportation of ash.*
- (12) *The coal or lignite-based power plant in the vicinity of the cities shall promote, support and assist in setting up of ash-based product manufacturing units so as to meet the requirement of bricks and other building construction material and also to reduce transportation.*
- (13) *To ensure that the contractor of road constructions utilizes the ash in road, the Authority concerned for road construction shall link the payment of contractor with the certification of ash supply from the thermal power plants.*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

(14) *The coal or lignite-based power plants shall within a radius of three hundred kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments.”*

- vi. *In view of the above, MPPGCL wish to submit that for compliance of the above directives, MPPGCL is required to incur huge amount in Rs. Crores to meet out these expenses.*
- vii. *Till now in True up Tariff orders, the Commission has been disallowing in tariff of thermal power stations, the revenue earned from Sale of Fly Ash and Interest earned from Fly Ash FDRs and deducting the same as Non-Tariff income. The details of deductions made are as follows:-*

<b>In Rs. Crores</b>			
<b>Year</b>	<b>Income from sale of Fly Ash</b>	<b>Interest on Fly Ash FDRs</b>	<b>Total</b>
<b>True-up FY 18</b>	13.84	6.89	20.73
<b>True-up FY 17</b>	12.94	7.11	20.06
<b>True-up FY 16</b>	9.90	6.78	16.68
<b>True-up FY 15</b>	13.22	5.59	18.81
<b>True-up FY 14</b>	15.32	4.09	19.41
<b>Total</b>	<b>65.22</b>	<b>30.47</b>	<b>95.69</b>

*Therefore, at present there is no fund available in Fly Ash Reserve Fund to meet out the expenses for complying to the directives mentioned in para 12 above. Even the assets created towards infrastructure development for compliance of MoEF&CC directives towards Fly Ash utilization have been disallowed by the Commission in past True-up Tariff orders.*

- viii. *MPPGCL in its comments submitted vide letter dated 23.05.2019 on Draft Regulation for determination of generation tariff for control period FY 2019-20 to FY 2023-24 had specifically raised this issue of Ash transportation in anticipation at para 31 at page 23 and requested Hon'ble Commission to:-*
- Treating income from sale of fly ash as revenue income till achieving 100% utilization (sale) of fly ash is not synchronous to the provisions of MoEF& CC. Thus, the same should not be treated as Non-Tariff Income.*
  - Additional expenditure incurred on transporting the fly ash to the destination need be provided on actual basis considering the same as statutory charges, on year-on-year basis during true up.*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

- ix. *Recently, following companies have requested MPPGCL for supply of Pond Ash:-*
- a) *M/s NANASA PIDGAON Road Private Limited, Ahmedabad, vide letter No. NPRPL/MPPGCL/21092020 dated 21.09.2020 has approached MPPGCL as a concessionaire for NHAI Highway Project “Four laning of Nanasa to Pidgaon section of NH-47 (Old NH-59) (Indore-Harda Pkg-III) and requested for supply of Pond Ash to the tune of 20,00,000 Cum from SSTPP, Khandwa to their Project site starting within 3-4 months, free of cost quoting the Ministry of Environment, Forest and Climate Change notification No. S.O.254(E) dated 25.01.2016. The nearest point is 101 Km and farthest point is 128 Km away from SSTPP, Khandwa. The copy of letter is annexed.*
- b) *M/s Shreeji Infrastructure Pvt. Ltd and PRL Projects Infrastructure Pvt. Ltd. (JV) , 118-University Road, Pachpedi, South Civil Lines Jabalpur, vide Letter No. SHPL-PRL/Katni Bypass/2020-21/415 dated 02.12.2020 has approached MPPGCL on the basis of award of work of “Construction of Four laning of Katni Bypass section of National Highway-30 (old NH-7) from KM359+375 to Km 378+555 having length of 19.230 Km and requested for supply of 4,00,000 cum of Bottom Ash/ Pond Ash from SGTPS, Birsinghpur being nearest Thermal Power Plant about 101 Km from their site. The copy of letter is annexed.*
- c) *M/s Shreeji Infrastructure Pvt. Ltd and Sorathia Velji Ratna & Co. (JV), A-4, Emerald Park City, Near AIIMS Hospital, Baghsewania, Bhopal, vide Letter No. SIPL-VRS/ 2020-21/414 dated 02.12.2020 has approached MPPGCL on the basis of award of work of “Construction of Balance work for Rehabilitation and up-gradation of Satna- Bela section of NH-75 from Km 155+000 to Km 202+040 [Design length 47.04 Km] and requested for supply of 1,50,000 cum of Bottom Ash/ Pond Ash from SGTPS, Birsinghpur being nearest Thermal Power Plant about 190 Km from their site. The copy of the letter is annexed.*
- x. *It is further to inform that Hon’ble Central Electricity Regulatory Commission has been approving the recovery of additional expenditure incurred due to sharing of transportation cost of Fly Ash consequent to Ministry of Environment and Forest, GoI notification dated 25.01.2016 as “Change in Law” Event.*
- xi. *Looking to the urgency, MPPGCL humbly request Hon’ble Commission to kindly issue suitable directives and permit recovery of additional expenditure to be incurred on Utilization and transporting the fly ash to the destination on actual basis considering the same as Statutory Charges under the head of Other Charges, on year-on-year basis during true up of tariff.*
- xii. *MPPGCL also requests the Commission to issue suitable directives/ guidelines/ Formats for maintaining the proper details /records expenses incurred in utilization and transportation of Fly Ash by respective thermal power stations of MPPGCL, which the Hon’ble Commission may deem fit for carrying out prudence check towards its recovery at the time of True-up.*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

3. With the above submission, the petitioner prayed the following:
- a) *Allow recovery of additional expenditure, to be incurred on Utilization and transportation of the fly ash to the destination, on actual basis considering the same as Statutory Charges, under the head Other Charges, on year-on-year basis during true up of tariff.*
  - b) *Issue suitable directives/ guidelines/ Formats for maintaining the proper details /records towards expenses incurred in utilization and transportation of Fly Ash by respective thermal power stations of MPPGCL, which the Hon'ble Commission may deem fit for carrying out prudence check towards its recovery at the time of True-up.*
4. At the motion hearing held on 23<sup>rd</sup> February' 2021, the petition was admitted and the petitioner was directed to serve copy of petition on the Respondent within three days. The Respondent was directed to file reply to the subject petition within ten days.
5. By affidavit dated 16<sup>th</sup> March' 2021, the Respondent M.P. Power Management Company Ltd. (MPPMCL) filed reply to the subject petition broadly mentioning the following:
- “That, the recent emerging issue of fly ash, in view of the aforesaid environmental laws, needs a clear addressing in the regulations governing the tariffs of generating companies. However, the burden of the same ought not to be passed on to the beneficiaries of the respective generating stations. The Respondent respects the concern of the Petitioner in this context but at the same time submits that the burden of the same may not be serviced into the tariffs. Suitable amendments in regulations governing generation tariffs after consideration of the changed circumstances in totality in a way to address the issue may be a necessity. Hence, it is submitted that the Hon'ble Commission may be pleased to issue suitable directives as prayed for by the petitioner.”*
6. At the hearing held on 23<sup>rd</sup> March' 2021, the representative of the petitioner sought one weeks' time for filing rejoinder. The petitioner was directed to file rejoinder within a week. By affidavit dated 31.03.2021, the petitioner filed rejoinder. At the hearing held on 15<sup>th</sup> June' 2021, representatives of both the parties concluded their arguments and the case was reserved for order.
7. By affidavit dated 31.03.2021, the petitioner submitted the following in its rejoinder:
- i. *The Respondent in its reply dated 16.03.2021 has well taken the concern of Petitioner in the subject matter and acknowledged the emerging issue of Fly Ash and Environmental Laws, but at the same time has requested, not to service the expenses of Fly Ash Utilization & transportation related expenses through tariff.*
  - ii. *Meanwhile, MPPGCL has also received additional request from National Highway Authority of India for supply of Pond Ash (20,32,743 MT) for Four laning of Harda to*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

*Temagav Section awarded to M/s Harda Pathways Pvt. Ltd. The pond ash is required to be supplied from SSTPP, Khandwa, the nearest point is approximately 100 Km away.*

- iii. *The proposed expenses to be incurred in utilization and transportation of Fly Ash by respective thermal power stations of MPPGCL are towards compliance of MoEF & CC directives being statutory/mandatory in nature, it is humbly requested that these expenses may kindly be treated as Statutory Charges under the head of Other Charges in tariff.*

**Commission's Observations and findings:**

8. The Commission has observed the following from the petition and submission made by the parties in this matter:

- i. M.P. Power Generating Company Ltd., Jabalpur submitted that huge expenditure is required by MPPGCL in Ash transportation for compliance with the directives issued by Ministry of Environment, Forest and Climate Change vide Notification S.O.254(E) dated 25.01.2016. The petitioner further submitted that the revenue earned from sale of Fly Ash and the interest on the aforesaid revenue is not allowed in the tariff since the same is considered as Non-Tariff Income.

- ii. The Ministry of Environment, Forest and Climate Change under para 2 (b) of its Notification S.O.254(E) dated 25.01.2016 issued following directives to all the Coal or Lignite based thermal power stations: -

*“ (9) Every coal or lignite based thermal power plants shall install dedicated dry ash silos having separate access road so as to ease delivery of Fly Ash.*

*(10) The cost of transportation of ash for Road construction projects or for manufacturing ash based products or use as soil conditioner in agriculture activity within a radius of Hundred kilometers from a coal or lignite based thermal power plant shall be borne by such coal or lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared equally between the user and the coal or lignite based thermal power plant.*

*(11) The coal or lignite-based power plant shall promote, adopt and setup (financial and other associated infrastructure) the ash-based products manufacture facilities within their premises or in the vicinity of their premises so as to reduce the transportation of ash.*

*(12) The coal or lignite-based power plant in the vicinity of the cities shall promote, support and assist in setting up of ash-based product manufacturing units so as to meet the requirement of bricks and other building construction material and also to reduce transportation.*

**Sub: Petition for Seeking directives under proviso 68 of MPERC Regulations 2020 (RG-26 (IV) of 2020) towards recovery of Fly Ash utilization & transportation related expenses.**

*(13) To ensure that the contractor of road constructions utilizes the ash in road, the Authority concerned for road construction shall link the payment of contractor with the certification of ash supply from the thermal power plants.*

*(14) The coal or lignite-based power plants shall within a radius of three hundred kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments.”*

9. The Respondent (MPPMCL) in its reply stated that the issue regarding expenditure incurred towards transportation of fly ash in accordance with the directives issued by Ministry of Environment, Forest and Climate Change needs to be addressed in the MPERC Tariff Regulations, however, the burden of the same be not passed on to the beneficiaries of the respective generating stations.

10. The Commission has noted that the petitioner has to incur substantial expenditure for compliance with the above mentioned directives issued by Ministry of Environment, Forest and Climate Change and that appropriate provisions for treatment of such expenditure while determining generation tariff are required to be provided in MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. Similar situation may arise with other coal based thermal power generators also in the State. Therefore, the Commission shall come up with an appropriate amendment in MPERC (Terms and Conditions for determination of Tariff) Regulations, 2020 after following due process of pre-publication for seeking comments/suggestions from all stake holders. The Commission Secretary is directed to initiate the process for amendment in the aforesaid Regulations

With the aforesaid observations and directions, the subject petition is disposed of.

**(Shashi Bhushan Pathak)**  
Member

**(Mukul Dhariwal)**  
Member

**(S.P.S Parihar)**  
Chairman