

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of application under Section 94(F) of the Electricity Act, 2003 for review of orders dated 22.12.2011 and 07.07.2012 passed by the Commission.

Petition No. 67/2012

ORDER

(Date of hearing 25th September, 2012)

(Date of order 25th September, 2012)

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., - Petitioner
Shakti Bhawan, Rampur, Jabalpur - 482008.

V/s

M/s Madhya Pradesh Jaypee Minerals Ltd. - Respondent
Through M/s Jai Prakash Associates Ltd.,
Rewa (MP).

Shri Prakash Upadhyay, Advocate and Shri C.P.Singh, E.E. appeared on behalf of the petitioner.

2. The petitioner, M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. has filed this petition under Section 94 (f) of the Electricity Act, 2003 for review of orders dated 22.12.2011 and 07.07.2012 passed by the Commission.

3. **Facts of the case are as under :**

(a) A load of 5 MVA in phased manner was sanctioned to M/s Madhya Pradesh Jaypee Minerals Ltd. (Respondent) for coal mining on 12.03.2007. Consequently, an HT agreement was executed on 23.06.2007 and the same was amended from time to time with extension of initial period of agreement and re-phasing of the sanctioned contract demand. The last supplementary agreement was executed on 14.09.2010 for reduction of contract demand. Subsequently, the respondent requested for further deferment of the said contract demand on the ground that statutory forest clearance was awaited from the Ministry of Environment and Forests, Government of India and the state government. The petitioner accepted the request of the respondent subject to the condition that they shall pay minimum tariff charges including energy and fixed charges for the unexpired period of

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agreement. However, the respondent filed a petition before the Commission seeking permission to surrender the balance contract demand over and above 1250 MVA without payment of the tariff minimum charges. The Commission after hearing both the parties passed the order on 22.12.2011. Against this order, the respondent filed a review petition which was registered as Review Petition No. 22/2012. By order dated 07.07.2012 the Commission disposed of the said review petition.

- (b) Now, the petitioner has submitted that from a perusal of the order dated 22.12.2011 and 07.07.2012, it is clear that the Commission was of the view that the licensee has no power to execute any supplementary agreement for re-phasing/extension of the agreement under Clause 11.2 of M.P. Electricity Supply Code, 2004. The Commission in its order dated 22.12.2011 has categorically held that the request for re-phasing of contract demand was not within the ambit of force-majeure clause and the extension of initial period of re-phasing contract demand for future supply is not valid. The Petitioner has submitted that the contract demand specified in the impugned order dated 22.12.2011 is not as per the original agreement which was executed between the petitioner and the respondent. Hence, this is an error apparent on the face of the record. The Commission having arrived at the conclusion that the licensee/petitioner does not have any power/authority to execute the supplementary contract, only the contract demand of the original agreement which was executed between the parties on 23.06.2007 would be valid and any subsequent agreement to the said demand by supplementary agreement would not.
- (c) In light of the above submissions, the petitioner has requested a review of the orders dated 22.12.2011 and 07.07.2012 and modification of the second last paragraph of para-14 as per the original agreement executed between the parties.

4. The case was listed for motion hearing on 25.09.2012.

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5. During the motion hearing on 25.09.2012, counsel for the petitioner reiterated the contents of the petition and sought condonation of delay in filing this petition for review of order dated 22.12.2011 passed by the Commission in Petition No. 61/2011. He also submitted that the delay in filing review petition is on account of time taken in getting necessary approval and complying with other formalities of the case. He further submitted a copy of judgment passed by the Hon'ble Supreme Court on 30.01.1996 in Civil Appeal No. 4118-19 of 1996.

6. On hearing counsel for the petitioner and considering the written submissions, the Commission noted that by letter dated 12.01.2012 the petitioner had revised the billing as per order dated 22.12.2011 passed by the Commission and requested the consumer to complete the requisite formalities and execute a supplementary agreement. Thus, this petition for review of order dated 22.12.2011 is not maintainable. The Commission further observed that the order dated 22.12.2011 has already been reviewed vide order dated 07.07.2012. Second review is not permissible under the provisions of the Code of Civil Procedure. Therefore, the Commission is of the view that the petition is not admissible and is liable to be rejected.

7. In view of the above, the review petition No. 67 of 2012 stands dismissed.

Ordered accordingly,

Sd/-
(C.S.Sharma)
Member

Sd/-
(Rakesh Sahni)
Chairman