

Sub: In the matter of filing of petition seeking appropriate orders of the Commission for non-compliance of directions issued by MPERC in Regulation 7.10 of (Transfer of funds to pension and Terminal Benefit Trust Fund) of Retail Supply Tariff order dated 31.03.2017.

Petition No 13 of 2018

Order

(Hearing through Video Conferencing)

Date of order: 11.05.2021

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| 1. MP Vidyut Mandal Abhiyanta Sangh, (MPVMAS), Jabalpur: | Petitioner |
| 2. MP Vidyut Mandal Pensioners Association, Jabalpur : | Intervener |
| V/s | |
| 1. M.P. Power Management Company Ltd. (MPPMCL), Jabalpur | Respondents |
| 2. M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. (MPPoKVVCL), Jabalpur : | |
| 3. M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. (MPPaKVVCL), Indore | |
| 4. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd. (MPMKVVCL), Bhopal | |
| 5. State Govt. through Principal Secretary (Energy), Vallabh Bhavan, Bhopal: | |
| 6. M.P. Power Transmission Company Ltd. (MPPTCL), Jabalpur | |

Appeared on behalf of Petitioners: Shri VKS Parihar, General Secretary and Shri Rajesh Chowdhary,

Appeared on behalf of Interveners: Shri R.J. Shrivastava and Shri D.K.Kanoongo

Appeared on behalf of Respondents: Shri Aashish Bernard, Advocate, and Shri V.D. Joglekar, GM (RM) on behalf of MPPMCL and the Energy Department, GoMP. Shri Deepak Sood, Jt. Director on behalf of MPMKVVCL. Shri S.K. Somani, Dy. Director on behalf of MPPaKVVCL. Shri Vikram Bhasker, Dy. Director on behalf of MPPoKVVCL. Shri S.G. Hiremath, Jt. Director on behalf of MP Power Transmission Co. Ltd.

1. The subject petition has been filed by the petitioner (MP Vidyut Mandal Abhiyanta Sangh) for seeking appropriate orders of the Commission in non-compliance of directions issued by MPERC in clause 7.10 (Transfer of funds to pension and Terminal Benefit Trust Fund) of Retail Supply Tariff order FY17-18 and implementation of the clause 2.92 of Retail supply tariff order for FY2017-18 issued on 31st March 2017 for contributing pension and Terminal Benefit Trust fund created by all the Govt owned Electricity Company working in the State of Madhya Pradesh. The petitioner has made following prayer:

- I. For issuing direction to Discoms to deposit contribution of Rs.120 Crore as it is mentioned in clause 2.92 of retail tariff order dated 31 march 2017 for FY 2017-18*
- II. To initiate proceeding against distribution licensees of state of MP (Discoms) under section 142 of Electricity act 2003 and imposed penalties to Discoms for their deliberate attempt to defy the Commission's directives.*
- III. The Commission may please pass an order u/s 129 of Electricity Act 2003(as amended) to give effect to deposit Rs. 120 crore as it ordered in Retail Supply Tariff order dated 31 March 2017*

2. The petitioner has made following submission in regard to implementation of clause 2.91 and 2.92 of Retail supply tariff order for FY 2017-18, issued by the Commission on 31st March 2017:

Sub: In the matter of filing of petition seeking appropriate orders of the Commission for non-compliance of directions issued by MPERC in Regulation 7.10 of (Transfer of funds to pension and Terminal Benefit Trust Fund) of Retail Supply Tariff order dated 31.03.2017.

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2.91” *The Commission had allowed the terminal benefits and pension expenses for the FY 2017-18 on provisional basis under the transmission charges on “pay as you go” basis. It has been noted that various stakeholders have been demanding contribution towards fund for the Terminal Benefit (Pension, Gratuity and Leave Encashment) Trust as per Provision 3(6) of the MPERC (Terms and Conditions for allowing pension and terminal benefits liabilities of personnel of Board and successor entities) regulations, 2012(G-38 of 2012), extract of the same is shown below:*

“3(6) The liabilities in regard to the contribution to be made under sub-clause 2(iii) above shall be allowed in the tariff of respective Successor Entities in the relevant year limited to the extent to be decided by the Commission in the relevant tariff order..”

2.92 “ *Considering the long pending demand, the Commission has considered the nominal annual amount of Rs. 120 Crore towards the Pension and Terminal Benefit Trust Fund (liabilities provision) which is to be contributed by the Discoms to the Registered Terminal Benefits Trust. The Commission has directed the Discoms to file the mechanism along with detailed conditions with regards to management of funds within 3 months”*

3. The petitioner has submitted that the Commission has notified Regulations viz. MPERC(Terms & conditions for allowing pension & terminal benefits liabilities of personnel of Board & successor entities)Regulations, 2012 issued on 20 April 2012. The object behind framing of aforesaid Regulations, is at the first instance to provide for implementation of the provisions enshrined in the Transfer Scheme as it is evident from the Preamble of the Regulations,2012 itself. Relevant extract of the preamble of Regulations read as under-

“... NOW THEREFORE the Commission hereby makes the following Regulations, on the matters relating to pension and terminal benefit liabilities and the funding of such liabilities through tariff determined as per the provisions of the Electricity Act, 2003 read with the applicable provisions of the Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000”

4. The Petitioner at para 3 and para 5 of the petition has submitted the facts giving rise to the present petition and grounds for contention as reproduced below -

3.1. *That, on re-organization of the M.P electricity Board (hereinafter referred to as ‘Board’) under the provision of part XIII of the Electricity Act, 2003 the property, rights and liabilities of the Board have been vested in the State Government and re-vested in the successor companies in accordance with the M.P. Electricity Reform First Transfer Scheme Rules 2003 framed by the state Government under the provision of scheme 131 and 133 of Electricity Act, 2003 and Section 23, 24 and 25 of the Madhya Pradesh Vidyut Sandhar Adhiniyam, 2000.*

3.2. *That, the aforesaid transfer scheme which has been framed and published by the State Government is a statutory transfer scheme as provide Under Section 131 (4) of the Electricity Act, 2003. The said provision reads as under:-*

“Section 131 (4). The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission

licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act, ”

Thus a bare reading of above provision reveals that the transfer Scheme as framed and notified by the State Government is statutory and binding on all concerned.

3.3. That, the Transfer Scheme, 2003 has been amended vide notification dated 13/06/2005 issued by State government. The relevant sub rule (10) and (11) of rule 7 which deals with the funding of pension and other personal related funds have been substituted. The said substituted sub-rule (10) and (11) read as under:

“Rule 7 (10):- In regard to the funding of the pension funds and other personal related funds by the transferees to the extent they are not funded on the date of the date of the transfer of the personnel who retire after the date of the transfer, by the respective transferees to which these personnel are transferred following arrangements, but not limited to them, shall be made and till such time such payments shall be duly made by the Board:-

(A) All the personnel of the Board who retire after the date of the transfer shall be the pensioners of the respective transferees to which these personnel are transferred and they shall be paid pension and other terminal benefits regular by the respective transferees. The priority of payment of the terminal benefits to such pensioners shall be at par with the payment of salary and wages to the personnel of the respective transferees. However, the contributions towards the pension and other terminal benefits for the transfer in MPSEB/MPEB, shall be made by Transco and contribution for the part of service rendered under the transferee shall be provided by the respective transferee.

(B) A separate fund shall be created by the transfers for payment of pension and other terminal benefits of the personnel who retire after the date of the transfer through regular subscription of appropriate amount into a Terminal Benefits Trust being created by the State Government.

(C) The amount of pension and other terminal benefits payable each year, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the personnel of the board, who retire after the date of transfer, shall be a charge on the revenues of the respective transferee, till the requisite fund is built up with the Terminal Benefit Trust.

Rule 7 (11) :- In regard to the funding and due payment of the terminal benefits to the existing pensioners of the Board as on the date of the transfer following arrangements, but not limited to them, shall be made and till such time such payment shall be duly made by the Board.

(A) All the existing pensioners of the Board, as on the date of transfer of the personnel, shall be treated as deemed transferred to the Transco and they shall be paid terminal benefits regular

by the Transco. The priority of payment of the pension and other terminal benefits to the existing pensioners shall be at par with the payment of salary and wages to the personnel of the Transco.

(B) A separate fund shall be created by Transco for payment of pension and other terminal benefits of the existing pensioners through regular subscription of appropriate amount into a Terminal Benefits Trust being created by the State Government.

(C) The amount of pension and other terminal benefits payable during each year, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the existing pensioners as on the Transco till the requisite fund is built up with the Terminal Benefits Trust.”

The clause ‘C’ of aforesaid provision under sub-rule (10) and (11) reveal that the amount of pension and other terminal benefits payable and the subscription to the fund to be build up for payment of pension and terminal benefits to the personnel and existing pensions shall be a charge on the revenues of the respective transferees till the fund is built up. Copy of notification date 13/06/2005 is annexed.

3.4. That, thus the State Government while framing the statutory Transfer Scheme Rules, 2003 have made statutory provision in view of the mandate of section 131 and 133 of the Electricity Act. The said statutory scheme partakes the nature of delegated law/rules. The said scheme has been farmed and is final in so far as the provision, status and funding/arrangement of pension and terminal benefits is concerned.

3.5. That the Commission has farmed vide notification dated 20/04/2014 the MPERC (Terms and conditions for allowing pension and terminal benefits liabilities of personnel of the Board and Successor Entities) Regulation, 2012. The provision contained in clause 3(5) and (6) envisaged provisions in relation to funding of pension and other terminal benefits

3.6. That the provisions of clauses 3(5) and 3(6) provides that the said contribution would be charge on the revenues of the transferee companies.

3.7. That, the amendment has notified on 24/02/2012 by the State Government where by new sub-rule (10A) has been inserted in rule 7 of the Transfer Scheme Rules, 2003. The said further amendment by insertion of new clause (10A) made in the scheme also provides that the subscription to the fund for payment of pension and other terminal benefits shall be a charge on the revenue of respective transferees companies.

3.8. That, the Commission has recognized the association’s long pending demand in retail tariff order of FY 2017-18 vide order dated 31 March 2017 for contribution towards funds for the Terminal Benefit (Pension, Gratuity and leave Encashment etc.) as per provisions enshrined in MPERC(Terms and conditions for allowing pension and terminal benefits liabilities of personnel of Board and successor entities). The said provision/order reads as under:-

2.91. The Commission had allowed the terminal benefits and pension expenses for the FY2017-18 on provisional basis under the transmission charges on “pay as you go” basis. It has been noted

that various stakeholders have been demanding contribution towards fund for the Terminal Benefit (Pension, Gratuity and Leave Encashment) Trust as per Provision 3(6) of the MPERC (Terms and Conditions for allowing pension and terminal benefits liabilities of personnel of Board and successor entities) regulations, 2012(G-38 of 2012), extract of the same is shown below:

“3(6) The liabilities in regard to the contribution to be made under sub-clause 2(iii)above shall be allowed in the tariff of respective Successor Entities in the relevant year limited to the extent to be decided by the Commission in the relevant tariff order..”

2.92 Considering the long pending demand, the Commission has considered the nominal annual amount of Rs. 120 Crore towards the Pension and Terminal Benefit Trust Fund (liabilities provision) which is to be contributed by the Discoms to the Registered Terminal Benefits Trust. The Commission has directed the Discoms to file the mechanism along with detailed conditions with regards to management of funds within 3 months.

3.9. That the Discom's along with Power management Co are reluctant and never act whole heartedly to pray before MPERC for demanding some amount towards the provision of terminal benefits in the trust. The Discom's also pass the baton to MPERC for creating such funds. This Discom's view point also reflects from comments of licensee's in response of public suggestion, which can be reads as under (page no 108 retail supply order FY 2017-18)

*“ISSUE No. 24: Terminal Benefits (Pension, Gratuity and Leave Encashment) Provision
Issue Raised by Stakeholders*

The Commission may allow some amount towards the provision of terminal benefit in the Trust to begin with.

Petitioners' Response

The contribution to Trust Fund of terminal benefits was not possible since the Commission has not approved any amount towards the same in the past. The Stakeholder is repeating the voices of Petitioners in this regard and is representing the class of employees who will benefit if proper provisioning and contribution towards terminal benefits trust fund is recognized and allowed by the Commission.

Commission's views

The Commission has appropriately addressed the issue in this order”

In the above averments it is clear that the Discom agreed to contribute for creating of pension and fund if regulator recognized it. But it is on record and information as gathered by the petitioner, that in spite of MPERC's directive/order (clause 2.91 and 2.92) the licensee's not turned up to contribute even a penny in pension and terminal benefit trust.

3.9. that, in view of the position relating legal and statutory provisions submitted herein above the clause 3(5) and (6) of the Regulations, 2012 needs to be patronize in so as to may consonance with statutory provisions and in the interest of justice.

3.11 That, the Commission has the power and jurisdiction to entertain present petition under section 142 of Electricity Act 2003(as amended) which reads as under

“142. In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

3.12 That, there is no delay in filing the present petition. If there is any delay the same may kindly condoned in the interest of justice. Affidavit is annexed in support of this review petition”.

GROUNDS:

The petitioner prefers the present petition on following grounds:-

- 5.1. Because the Discom's act is in contrary to statutory provision of clause no. 3(5) and (6) of the MPERC (Terms and conditions for allowing pension and terminal benefits liabilities of personnel of the Board and Successor Entities) Regulations, 2012.*
 - 5.2. Because the Discom's act is in contrary to directive/order of the commission in clause 2.91 and 2.92 of retail tariff order dated 31 march 2017 for FY 2017-18.*
 - 5.3. Because the Discom's act is contrary to the provisions of Statutory Transfer Scheme, 2003 notified by the State Government.*
 - 5.3 Because the Discom' has no jurisdiction to act against the provisions of Statutory Transfer scheme, 2003 framed by the State Government.*
 - 5.4 Because the Commission has the power and jurisdiction to entertain present petition under section 142 of the Electricity Act 2003*
 - 5.5 Because the Commission is himself duty bound to adhere own regulation in words as well in spirit and there business conduct rules also in accordance with their own promulgate /framed regulations.*
 - 5.6. because the Commission may also acknowledge the profitability of West Discom for year 2016-17.*
5. The Commission held the motion hearing on 05.06.2018 and admitted the subject petition. The Commission directed to issue notice to respondents. Subsequently, the respondent MPPMCL has submitted its reply on 28.08.2018 as below -

- I. *It is submitted at the outset that nothing stated herein shall be deemed to an admission unless the same is expressly admitted. It is further submitted at the outset that the answering Respondents are continuously and regularly meeting the pensionary benefits and terminal benefits of their relevant employees who have retired and committed by law to meet the pensionary benefits of its serving employees who shall retire in the coming future and therefore no cause of action arises in the present petition and the same ought to be dismissed summarily.*
- II. *Without prejudice to the above it is submitted that the Commission in its tariff order dated 31/03/2017 issued for FY 2017-18 had provisioned nominal annual amount of Rs. 120 Crore (Rs 40 Crore for each Discom) towards the Pension and Terminal Benefit Trust Fund (liabilities provision) which is to be contributed by the Discoms to the Registered Terminal Benefits Trust. The Commission had directed the Discoms to file the mechanism along with detailed conditions with regards to management of funds within 3 months.*
- III. *In view of the above directive, each of the Discoms had requested MPPMCL to ascertain the mechanism of management of funds with detailed conditions. As the revenue collected by each of the Discoms is remitted to MPPMCL who is maintaining the overall Cash flow of all the Discoms and releases the funds for their expenses, each of the Discom had requisitioned fund of Rs 40 Crore each from MPPMCL towards their contribution in the registered Terminal benefit Trust so as to comply with the direction of the Commission.*
- IV. *As per the provision of Madhya Pradesh Electricity Reform First Transfer Scheme Rules, 2003 (hereinafter referred to as the Transfer scheme) as amended from time to time, the Govt. of M.P. in consultation with erstwhile MPSEB established a Terminal Benefit Trust for management of trust funds and payment of Pension of retirees of erstwhile MPSEB and employees who shall retire in future. At present the corpus of the trust is of an amount of Rs.16.75 Cr. which has been invested in the form of FDRs.*
- V. *In view of provisions under sub rule (10) and (11) of the transfer scheme the pension and the terminal benefit liabilities of all the retired personnel as well as the serving employees of the erstwhile MPSEB were discharged from the Cash Flow Mechanism under the remaining MPSEB. After the Final Transfer of employee in the successor entities of MPSEB the GoMP vide Gazette notification no. 195 dated 13th April 2012 had transferred and assigned the Cash Flow Mechanism to MP Power Management Co. Ltd. and the liabilities of pension & terminal benefits are met through the same.*
- VI. *As of now, the current Terminal Benefit liabilities of all the Companies i.e. unbundled entities of MPSEB, are being allowed in the ARR of MPPTCL under the Intra state transmission charges. The MP Transmission Co. Ltd. is provisioning these liabilities in its ARR petition and the same is being considered by the Commission on provisional basis on 'pay as you go principle. The Discoms are claiming the Intra state Transmission charges in their ARR and thus the liabilities are being met through as a charge on revenue.*

- VII. *It is pertinent here to mention that the MP Power Transmission Co. Ltd. on the direction of the Commission had conducted an actuarial analysis in the year 2009. According to Actuary-2009 the actuarial liabilities as on 31.03.2009 was mentioned as Rs. 9866.76 Crores for period up to 01.06.2005 and Rs 1736.78 Crores for period after 01.06.2005 making a total of Rs 11603.54 Crores. These actuarial figures are very old now.*
- VIII. *All the unbundled entities of erstwhile MPSEB had filed a petition no. 03/2012 for funding of Pension and other Terminal Benefit Liabilities of the Pensioners/Employees working in the successor entities of MP State Electricity Board. The Commission in its order dated 15th Feb'2012 decided to delink the issue of pension payment and related matters from Tariff Regulations and to frame a separate Regulation.*
- IX. *The Commission notified the MPERC (Terms and Conditions for Allowing Pension & Terminal Benefits Liabilities of Personnel of Board and Successor Entities) Regulations' 2012 (G-38 of 2012) on 13th April'2012. The relevant provision regarding funding of pension and other terminal benefits in respect of personnel including existing pensioners of the Board and the Pensioners of its Successor entities is given in detail in regulation 3 of the aforementioned MPERC Regulations G-38 of 2012.*
- X. *There is an overall revenue deficit at MPPMCL after the payment of all expenses and bills of Generator's and expenses of the Discoms. It is submitted that the total revenue deficit for last 12 years up to 2016-17, of all the Discoms has grown to the tune of Rs. 37,132 Crs. It is submitted that with the given revenue deficit MPPMCL is however trying its best to meet all its payment obligations and expenses through loans and revenue earned, in a timely manner and for the purpose of the instant petition it is submitted and reiterated that all pensionary benefits of all its employee (serving and retired) is being met regularly.*
- XI. *Under the Financial Restructuring Plan (FRP) for financial sustainability of Discoms, the Govt. of MP, on the proposal of MPPMCL, through its order no. F.5-14/2014/thirteen dated 11.11.2014 had extended the currency of FRP ended on 31/03/2014, for a further period of 3 years up to 31/03/2017. The State Govt. decided that-*

“The Capital loans & working capital loans provided by GoMP from 01.04.11 to 31.03. 14 along with the interest payable on such loans were converted into the long-term continuous loan. The interest on this long term continuous loan from FY 2018 onwards, including the moratorium of 3 years after 31.03.2014 has been kept at par with base rate of SBI. The moratorium of amount converted previously into continuous loan was also increased up to 3 years after 31.03.2014. Further the amount of Electricity duty and Cess collected during FY 2015, FY 2016 and FY 2017, in the balance districts where Franchisee system is not applicable, has been converted into long term continuous loan on monthly basis and the interest on this loan, from FY 2018 onwards has been kept at par with base rate of SBI including moratorium of 3 years. Further, the liabilities pertaining to the bills of power purchase from Sardar Sarovar

Project in the FY 2015, FY 2016 and FY 2017 has been converted into long term continuous loan on monthly basis and the Interest from FY 2018 including moratorium of 3 years, has been kept par with base rate of SBI. The moratorium of liabilities of Sardar Sarovar Project converted previously into continuous loan has also been increased up to 3 years after 31. 03.2014. The repayment of the principle amount of Working Capital loan to be provided in FY 2015, FY 2016 & FY 2017 has been made in 12 years quarterly instalments after the moratorium of 3 years and the interest applicable has been kept at par with the base rate of SBI”.

XII. The State Govt. vide order no. F-5-14/2014/thirteen dated 08.09.2017, once again on the proposal of MPPMCL, has further extended the period of FRP from 01.04.2017 for next 3 years i.e. up to 31.03.2020. The State Govt. decided that:

“The capital loans, working capital loans provided by GoMP to the Discoms from 01.04.2014 to 31.03.2017 and the interest payable on such loans may be converted into equity capital/Grant. For absorption of loss under Uday Yojna 75% amount of electricity duty to be collected by the Discoms in FY 2018, FY 2019 & FY 2020 may be converted in the form of grant and balance amount in Equity capital. 25% amount of Duty and CESS being collected by the Discoms may be deposited to State Govt. on monthly basis. Further, the liabilities pertaining to the bills of power purchase from Sardar Sarovar Project in the FY 2018, FY 2019 and FY 2020 may be converted into Equity Capital on monthly basis. The Govt also decided that in the event of any delay in conversion of amounts, due to inevitable reasons, no surcharge will be levied on the Discoms.”

XIII. It may be seen from details of working capital loan taken from GoMP during the last five years that, from FY 2014-15 onwards, the Discoms have already borrowed working capital loans to the tune of Rs 11952 Crore out of which Rs. 1852 Crore has been borrowed from State Govt.

XIV. Each of the Discoms in their compliance to Commission's directives given in Tariff order FY 2017-18, have submitted that the terminal benefits and pension to the existing pensioners of the Board as well as the Pensioners of its Successor entities are provided on "pay as you go" principle” and is being taken care of by the relevant regulation of the Commission and as per the requirement, Discoms and MPPMCL are making full and regular payments of all pensionary benefits of the serving as well as the retired employees of the Discoms.

XV. MPPMCL and all the Discoms in their ARR petition no. 03/2018 had further submitted that:

"since all the three Discoms of MP are in a state of financial loss and the regular terminal benefits of all the employees are met through the retail tariff, it would not be rational to fund the TBT by further burdening the retail consumers. Any additional contribution on this part would be borrowed at higher interest rate and at the same time it would yield nominal interest by investing the funds of TBT. Thus, whenever the

companies will be in a state of financial surplus the aforesaid directive of the Commission shall be complied with by contributing funds to the TBT:"

XVI. Here it is pertinent to reiterate and mention that the DISCOMS collectively are making losses every year. Consequently, MPPMCL is facing deficit under cash flow mechanism and has to resort to borrowings from Financial Institutions at comparatively higher rates. Whereas contribution of fund in TBT would attract low interest rates due to investments in risk free securities like FDs, bonds etc.

XVII. In view of above paras, the respondents once again submit that the liabilities towards pensionary benefits to all the employee (serving and retired) are being discharged as per applicable law and it is evident that benefits to all the employee (serving and retired) are being discharged as per applicable law and it is evident that they have never defaulted in payment of the terminal benefits and pension to the employees of the erstwhile MPSEB as well as its successor entities even-though they are facing revenue deficit.

XVIII. It is submitted, therefore, that in the interest of justice, the consumer or the Company ought not to be immediately burdened with contribution towards or funding of the Terminal Benefit Trust and it is requested that any such direction on the funding of the Terminal Benefit Trust ought to be taken keeping the public interest or consumer interest in mind and the provisions of the Electricity Act, 2003 and also the fact that all pensionary payments are being regularly met for serving and retired employees. Here it is to reiterate that when the Discoms will be in state of operational profit the provisioning and payment of fund to Terminal Benefit Trust shall be made, till then it is a borrowing @9 -10% and keeping the money in TBT would attract interest @6-7%. Thus the eventual burden due to the above shall ultimately increase the tariff.

XIX. In light of the submissions made hereinabove, it is therefore prayed to the Commission to kindly defer the provisioning of the funds allowed in Tariff orders FY 2017-18 and FY 2018-19 for contribution in Terminal Benefit Trust till the DISCOMS start earning profit.

6. During the next hearing held on 25.09.2018, representatives from Vidyut Mandal Pensioners Association appeared and requested the Commission to enlist their organization name as intervener for being a necessary party in the matter of subject petition and deposited the requisite fee as per provisions of relevant regulations. The Counsel informed the Commission that Vidyut Mandal Pensioners Association is an association of retired personnel (pensioners) of erstwhile MPSEB and its six successor companies formed under the Companies Act 1956. The Commission has accepted the prayer made by the Counsel on behalf of Vidyut Mandal Pensioners Association and has directed to enlist their name as intervener in the instant petition. The Commission vide daily order dated 29.09.2018 has directed the Counsel of intervener to serve a copy of intervening application to respondents. Subsequently, Intervener has made written submissions on 19.11.2018 wherein it is stated that Respondents Discoms being the Government Companies are under obligation to act in consonance with the terms & conditions of Transfer Schemes notified by the GoMP in true spirit. It is further stated that

Respondent no. R4 MPPMCL are solely responsible for the cashflow mechanism including payment to various agencies and contribution to terminal benefits funds and obliged to comply with directions as contained in ARR.

7. At the hearing held on 08.01.2019, the Commission has directed the Counsel for the respondents to furnish the reply on behalf of State Govt. in the matter. In response to the Commission's directives, the State Govt. vide letter dated 02/03/2019 has submitted the reply which is reproduced as below –

- I. *The State Government is a formal party in the petition, as the petition is filed with regard to implementation of provisions of Tariff Order of the Commission by MPPMCL and Discoms. No relief is sought from the State Government in the petition filed by MP Vidyut Mandal Ahiyanta Sangh.*
- II. *The role of the State Government is limited to the policy issues and with regard to exercise of the powers delegated to it through legislation, namely Electricity Act, 2003(36 of 2003).*
- III. *It is submitted that consequent upon enactment of Madhya Pradesh Vidyut Sudhar Adhiniyam 2000 and the Electricity Act 2003, the State Government notified Madhya Pradesh Electricity Reform First Transfer Scheme Rules, 2003 vide notification dated 30.09.2003 which was subsequently amended vide notification dated 13.06.2005. As per the provisions of the above rules (as amended), a Terminal Benefit Trust has been created by the State Government for payment of pension and other terminal benefits of the personnel who retired after the date of transfer.*

The following relevant provisions are there in the above rules:-

- (i) *7(10)(c) The amount of pension and other terminal benefits payable each years, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the personnel of the Board, who retire after the date of transfer, shall be a charge on the revenues of the respective transferee, till the requisite fund is built up with the Terminal Benefit Trust.*
 - (ii) *7(11)(c) The amount of pension and other terminal benefits payable during each year, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the existing pensioners as on the date of transfer, shall be a charge on the revenues of the Transco till the requisite fund is built up with the Terminal Benefit Trust.*
- IV. *It is further submitted that Madhya Pradesh Vidyut Sudhar Adhiniyam 2000, the Madhya Pradesh Electricity Regulatory Commission (MPERC) has notified Madhya Pradesh Electricity Regulatory Commission (Terms & Condition for allowing pension and terminal liabilities of personnel of the Board and Successor Entities) Regulation, 2012 vide notification published in the State Gazette on dated 20th April 2012. As per the provisions of the Regulation, the fund for pension and other terminal benefits in respect of personnel of the Board and successor entities shall be allowed in the manner provided in these regulations through tariff to be determined by the Commission for the successor entities from time to time.*

- V. *It is submitted that the State Government has made the enabling provisions regarding payment of pension and terminal benefits of personnel of Board and Successor Companies.*
- VI. *In view of the enabling provisions made by the State Government through Transfer Scheme Rules 2003 (as amended), it is up to the Commission to allow subscription to the Terminal Benefit fund. It is clearly provided by the State Government that till the requisite fund is built-up with the Terminal Benefit Trust, the amount of pension and other terminal benefits payable during each year, as well as subscription to the fund shall be a charge on revenues of the Power Companies as laid down in Rule 7(10)) (C) and 7(11) (C) of the Transfer Scheme rules. This provision ensures that the pension and other terminal benefits are paid each year from the revenues of the Power Companies. Due to the provisions made by the State Government, no default has been occurred in payment of pension to the retired employees, so far.*
- VII. *MPPMCL has already submitted status of financial condition of Discoms. The Commission is requested to take a considered view in light of the financial condition of Discoms.*
8. The Commission held next hearing on 05.03.2019 whereby it directed to enlist the name of M.P. Power Transmission Company (MPPTCL) as respondent and obtain its response on the petition as payment of Terminal benefits are being made by MPPTCL and are being claimed by them through its ARR. Subsequently MPPTCL has filed its response as reproduced below –
- a. *The Commission vide order dated 10-06-2016 in the petition No. 02/2016 filed by the MPPTCL for determination if Multi Year Transmission Tariff for the control period FY 2016-17 to FY 2018-19 had allowed on provisional basis and on ‘pay as you go’ principle the current terminal benefits and pension expenses of Rs. 1047.09 Crore, Rs 1177.90 Crore and Rs. 1282.38 Crore for the FY 2016-17, FY 2017-18 and FY 2018-19 respectively. In compliance to above, the MPPTCL is making disbursement of funds to all the successor entities of the MPSEB and so far no default in making payment of pension to the existing pensioners/retiring personal have taken place.*
- b. *Despite acute financial crunch state DISCOMs are facing, the MPPTCL is managing disbursement of funds towards terminal benefits to the pensioners notwithstanding the fact that the DISCOMs are not able to make full payment of transmission bills raised on them. In the retail tariff order, the Commission has directed the DISCOMs for contributing Rs. 120 Crore and Rs. 210 Crore for FY 2017-18 and FY 2018-19 respectively to the pension fund. An independent Trust has been formed for payment of Terminal benefit of retirees of MPSEB and therefore any amount to be contributed in the pension fund shall go to the Trust and the manner in which the amount shall be invested will be decided by the Investment committee of the Trust. (Copy of Trust deed enclosed)*
- c. *The Commission in its Multi Year Transmission Tariff Order dated 10-06-2016 has observed that “the provision for contribution of pension and terminal benefit liabilities of personnel of the Board and its successor entities is concerned, this can only be made after*

proper and updated actuarial analysis by MPPTCL. This however shall be a separate exercise to be undertaken by the MPPTCL on directions of the Commission.

d. It is most respectfully submitted that the Commission's order in the subject matter have so far been complied with by the MPPTCL.

9. During the next hearing, held on 11.06.2019, the Counsel for petitioner has stated that as per order passed in Retail supply tariff order FY2018-19, the respondent companies had already collected amount with respect to terminal benefit that is required to be deposited in pension and terminal benefit fund. However, the Respondent companies have not deposited the collected amount and non-complied the order of the Commission. The Counsel for the Petitioner has requested the Commission for taking action under Section 142 of the Electricity Act 2003.

During the hearing, the Counsel for respondents has informed the Commission that Respondent Distribution Companies shall duly comply the directives of the Commission and to begin with they are depositing a sum of Rs 15 crore (Rs 5 Crore from each Distribution Companies) towards the pension & terminal benefits trust fund within 2-3 days and accordingly the counsel also requested to schedule a next date for the hearing.

10. During the next hearing held on 15.10.2019, Counsel for the respondents informed the Commission that in order to comply the directives of the Commission, a sum of Rs 15 Crores has already been deposited by Respondent Distribution Companies towards the pension and terminal benefits trust and balance amount shall also be deposited in due course as the management of the respondent companies are in agreement and mulling over the modalities in this regard. The Counsel for the respondents also informed that the companies are timely discharging their liabilities towards monthly pension & terminal benefits. The representative from the petitioner, however, has requested the Commission to direct the respondents for furnishing the firm action plan in regard to compliance of the Commission's directives. The Commission has accepted the request made by the petitioner and vide daily order dated 17.10.2019 directed the respondents to furnish the action plan within 4 weeks' time.
11. During the next hearing held on 23.06.2020 the respondent MPPMCL in pursuance to daily order dated 17.10.2019, has submitted its reply vide letter dated 03.03.2020 and requested the Commission to defer the provisioning of funds allowed in Tariff Orders for FY2017-18, FY2018-19 and FY2019-20 or allow MPPMCL to make payment of monthly instalments of Rs 5 Crores. It is stated by the MPPMCL that Discoms are making losses every year and there is an overall revenue deficit under cash flow mechanism and it has to resort to borrowings from financial institutions at rates as high as 9.90% to meet its entire financial obligations. It is further stated in their submission that respondent MPPMCL has made all pensionary benefits to all its employees (serving and retired) and it has never defaulted in payment of terminal benefits and pension of employees of the erstwhile MPSEB as well as its successor entities. It is further stated in submission that there is no prescribed method to invest such idle

funds with trust even if such funds are deposited and funds can't be parked in Trust without any productive use or earning reasonable return on it in the context of prevailing cash position.

During the hearing, representative of the petitioners submitted before the Commission that contrary to directives of the Commission provided in the Retail Supply Tariff order for FY2017-18, FY2018-19 and FY2019-20, the respondent has deposited only Rs 15 Crore so far, against Rs 540 Crore allowed to the pension and terminal benefits trust which is non-compliance to the directions of the Commission. The amount has been collected by the Discoms through the consumer's electricity bills and the same has not been remitted into the fund.

The petitioner has further stated that nearly two years have passed since filing of this petition and MPPMCL/ Distribution companies have failed in complying the directives of the Commission and requested that the MPPMCL/ Distribution Companies may be penalised under the provisions of Section 142 of the Electricity Act 2003 for non-compliance. The petitioner has also drawn attention of the Commission that contrary to written submissions by the respondents, payment of complete pension and terminal benefits have not been made by the Discoms so far to their officers' who got retired as on November 2019.

The petitioner has further stated that Companies are the state owned companies and hence the State Govt. must take guarantee as per practice being followed by other State Governments, like U.P in regard to protection of pension and terminal benefits in case the Companies default. The petitioner has further requested the Commission to direct the State Govt. in this regard.

12. The Commission vide its daily order dated 01.07.2020 viewed that merely payment of Rs 5 Crore monthly in the fund would serve no purpose. Further, in case of deferring the provisioning made in tariff orders for FY2017-18, FY2018-19 and FY2019-20, in addition to penal provisions under section 142 of the Electricity Act 2003, it would require deduction of this amount at the time of true up for those years. The respondents should furnish their responses on the above matter within 15 days. Under the aforesaid circumstances, the Commission would also like to have responses of the Respondent nos. 1 (MPPMCL) and 5 (State Govt.) on the request made by the petitioner regarding the Govt. guarantee on the protection of due pension and terminal benefits of the employees of the Companies covered in this regard. The next date of hearing was scheduled on 21st July 2020.
13. In response to the Commission's order dated 01.07.2020, Respondent No. 1 (MPPMCL) vide its letter dated 06/08/2020 has submitted that presently Discoms's are facing financial hardship due to which it is difficult to contribute in the Pension & TBT fund . Further, as and when Discom's are in profitable situation, the amount will be transferred to Pension & TBT Fund. Regarding taking of guarantee of protection of pension & TBT Fund by State Govt. MPPMCL has no comments on the same. Further in response to aforesaid Commission's order dated 01.07.2020, Respondent No. 5 (State Govt) has submitted a reply on 05.08.2020 which is reproduced below –

- I. *The State Government is a formal party in the petition, as the petition is filed with regard to implementation of provisions of Tariff Order of the Commission by MPPMCL and Discoms. No relief is sought from the State Government in this regard.*
 - II. *Vide daily order dated 1.07.2020 , the Commission has asked the State Govt. to provide response on the request made by the Petitioner regarding providing Government Guarantee on the protection of due Pension & Terminal Benefits of the Employees of the Companies.*
 - III. *The State Govt has already submitted its response to the petition in April 2019. As submitted, the State Govt. has already made enabling provisions regarding payment of pension & terminal benefits of personnel retired or transferred to the successor companies through Transfer Scheme Rules 2003 (as amended) . It has also been clearly provided by the State Govt. through this provision of the rules that till the requisite fund is built up with the Terminal Benefits Trust the amount of pension and other terminal benefits payable during each year, as well as subscription to fund shall be a charge on revenues of the power Companies as laid down in the relevant rules of the Transfer Scheme Rules. This provision has ensured that the pension and other terminal benefits are paid each year from revenues of power companies.*
 - IV. *The petitioners have demanded that State govt should take guarantee to protect pension and terminal benefits in case of default by the Companies. The objectives of providing the guarantee as sought by the petitioners has already been fulfilled through the enabling provisions made in the MP Electricity Reform First Transfer Scheme Rules 2003 (as amended), and in the opinion of the Government any further guarantee in this regard is not required.*
 - V. *In view of the submission made in above para and department's earlier submission in April 2019 , it is submitted that there appear to be no requirement of providing Government Guarantee , as requested by the petitioners.*
 - VI. *MPPMCL has submitted the status of the financial conditions of Discoms. The Commission is requested to take a considered view in light of the financial conditions of Discoms.*
14. During the hearing held on 04.12.2020, the Commission heard the submission made by the petitioner. The Counsel appeared for respondents sought adjournment for counter arguments as their Principal Counsel could not appear due to health issue. The Commission noted that MPPMCL and State Govt. of MP have already filed their replies. However, in view of request of Counsel for respondents, further time of one week was granted to file additional written submission, if any, by respondents and the case was reserved for final order.
15. In subsequent development, Respondent MPPMCL vide letter dated 16th December 2020 has submitted that in response to the Commission's order dated 05.12.2020, Rs 15 Crore per month (Rs 5 crore for each Discom) will be transferred in TBT (Pension Fund) from December, 2020 regularly. Subsequently, Respondent MPPMCL vide letter dated 28/12/20 has informed the Commission that Rs 15 Crore (Rs 5 Crore each Discoms) has been transferred to TBT Pension Fund on 24.12.2020.

Commission's observations and findings

16. Going through the arguments put forth by the petitioner, Respondents and Intervenor as well as submissions made by them and applicable provisions of the Electricity Act 2003, the Commission observed following:-

- i. Unbundling of erstwhile M.P. State Electricity Board (MPSEB) was carried out by Government of MP under the powers vested to it through Sections 131 and 133 of the Electricity Act 2003 and sections 23 and 24 of the M.P. Vidyut Sudhar Adhiniyam 2000. Assets and liabilities including personnel of MPSEB were transferred to the six newly incorporated Companies under provisions of the Transfer Scheme Rules notified by the State Government utilising power vested to it under provisions of aforesaid Sections of the Acts. Although Transfer Scheme Rules were notified initially in the year 2003, provisions related to Pension and Terminal Benefit liabilities were notified in the year 2005 by the State Govt. through an amendment in the Transfer Scheme Rules. Amendments were made for providing appropriate arrangements to discharge pension & terminal benefits liabilities of the existing pensioners and future retirees of MPSEB. Statutory provisions have been made in the amendment including creation of a separate fund namely Terminal Benefit Trust Fund. This fund has been created to have self-sufficiency in discharge of future pension and terminal benefits liabilities of the existing pensioners and personnel of MPSEB transferred to these Companies. It has also been provided in the Transfer Scheme Rules that till the requisite fund is built up with the Terminal Benefit Trust, payment of Pension & Terminal Benefits shall be a charge on the revenue of the respective transferee companies. The State Government has made these statutory provisions to safeguard future of the erstwhile MPSEB personnel.
- ii. The Commission had acted upon the Transfer Scheme Rules as amended from time to time and notified MPERC (Terms & Conditions for allowing Pension and Terminal benefits liabilities of Personnel of the Board and Successor Entities) Regulation 2012 on 20.04.2012. These Regulations also provide for contribution to the fund through a charge on the revenue of the transferee companies.
- iii. In order to ascertain quantum of requisite pension fund, MP Transco was directed to arrange an actuarial valuation so as not to base yearly funding on budgetary ground. Actuarial valuation was carried out by MP Transco way back in the year 2009, when an amount of about Rs 11,000 Crores was estimated for self-sufficiency of the fund. However, no actuarial valuation has been carried out since then.
- iv. Recognising the above mentioned statutory provisions and to safeguard the future of the pensioners and employees of the power companies transferred from MPSEB, the Commission for the first time allowed Rs 120 Crore for transferring to Terminal Benefit Trust Fund in the ARR & Retail supply Tariff order for the year FY2017-18.

Thereafter, the Commission provided Rs 210 Crore each in the Retail Supply Tariff Orders for the FY 2018-19, 2019-20 & 2020-21, respectively. So far, Rs 750 Crores have been pass through in the ARR & Retail Supply Tariff orders for funding the Terminal Benefit Trust fund.

- v. During the hearing, representative of the petitioner informed that Respondents MPPMCL /Discoms have so far deposited only Rs 15 Crore in the Terminal Benefit Trust fund and utilised the balance amount collected through Electricity Bills from the consumers for some other purposes. Respondents cited the reasons that because of cash deficit, they were unable to transfer the amount to the Trust Fund. The Commission noted that contrary to the statutory provisions made in the Rules notified by the State Govt. and directions given by the Commission in the ARR & Retail supply tariff orders, MPPMCL/Discoms are not depositing the pass through amount in the Terminal Benefit Trust Fund. They are not only violating the statutory provisions under the law and defying the State Government directives but at the same time not complying the directives of the Commission by diverting the pass through amount for the other purposes.
17. The Commission has placed the reliance on State Govt's reply who is Respondent in this case and observed that the role of the State Government is limited to the policy issues and framing appropriate Rules for implementing Transfer Schemes under the Electricity Act 2003 and accordingly, State Govt. has made enabling provisions for discharge of pension and terminal benefits liabilities of personnel of MPSEB transferred to the successor Companies. In light of above Rules, the Commission has notified MPERC (Terms & Condition for allowing pension and terminal liabilities of personnel of the Board and Successor Entities) Regulation, 2012. As per provisions of State Govt. Rules and MPERC Regulations, one of the statutory functions of the Respondents was to fund the Terminal Benefit Trust fund in the manner prescribed by the State Govt. and directed by the Commission through tariff orders.
18. Pension and terminal benefits are the succour for the post retirement period. It is not a bounty payable at will, but a social welfare measure as a post retirement entitlement to maintain the dignity of employees. It is apparent from the records that the Commission allowed total Rs 750 Crore till now, to the Respondents in ARR and Retail Supply Tariff Orders for funding the terminal benefit Trust. It is very painful that aforesaid amount has not been utilised till now for the welfare of employees in Pension & Terminal Benefits.
19. Representatives of the petitioners informed the Commission that Respondents MPPMCL/Discoms, have so far deposited only Rs 15 Crore in the terminal benefit Trust Fund and utilised the balance amount collected through electricity bills from consumers for some other purposes. The aforesaid submission of petitioners has not been rebutted by Respondents, therefore the said contention of petitioners is deemed to be admitted.

20. The Respondents explained the reasons, and submitted that due to cash deficit, they were unable to transfer the amount to the trust fund. This approach of Respondents is extremely unjust and unlawful. To understand the obligation of Respondents to pay pension and other terminal benefits, the following judgment of Honble' Supreme Court of India is relevant:-

Hon'ble Supreme Court of India in its Judgement Davaki Nandan Prasad V/s State of Bihar and others (1971) 2 SCC 330, has held that right of the petitioner to receive pension is property under Article 31(1) of the Constitution. Hon'ble Court has held further that said claim is also property under Article 19(1)(f) and it is not saved by the sub Article (5) of Article 19 of Constitution. Hon'ble Supreme Court has also held in the said judgement that pension is the fundamental right of petitioner under Article 19(1) (F) and 31 (1) of the Constitution of India.

21. Therefore, Hon'ble Supreme Court of India has recognized that right to receive pension is right to property, provided by the Constitution of India.

Hon'ble Supreme Court of India in its another judgement (State of Jharkhand and others Vs. Jitendra Kumar Shrivastava & other Civil appeal No. 6771/2013) arising out of SLP -C No. 1428 of 2009 decided on 14.08.2013 has held that it is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished services. Hon'ble Court further held that these hard earned benefits which accrue to an employee in the nature of property, so this right to property can not be taken away without the due process of Law , as per provisions of Articles 300 A of the Constitutions of India.

22. Aforesaid pronouncements of the Apex Court have now settled the legal position that pension is a right to property, as granted by the Constitution of India , but vide Constitutions (forty fourth amendments) Act 1978 w.e.f. 20th June 1979, the right to property no longer remains a fundamental right. This legal anomaly has been cleared by Hon'ble Supreme Court of India in so far as pension is concerned.

Hon'ble Supreme Court of India in its judgement state of West Bengal Vs. Haresh E. Banerjee and others (2006) 7 SCC651 has recognised that even when, after the repeal of Article 19(1) (f) and Article 31(1) of the Constitution vide Constitutions (Forty fourth) Amendment Act 1978 ,the right to property is still a Constitutional right , as provided in Article 300 A of the Constitution. Hon'ble Supreme Court in this Judgement also held that right to receive pension is a right to property.

23. Scarcity of funds does not appear to be a valid reason for not depositing the requisite amount in the Terminal Benefit Trust Fund. It was the duty of the Respondents that when total Rs 750 Crores was allowed to the Respondents for depositing the same in the terminal benefits trust fund, created for welfare of employees, then they ought to have deposited the said amount in aforesaid fund.

Hon'ble Allahabad High Court, also in a similar case , where the petitioner was deprived from pension and other terminal benefits /Retiral benefits , on the ground of scarcity and non -availability of funds , has decided & held in the case of Samal Chand Tiwari S/o Late Prem Vs. State of Uttar Pradesh through Secretary , Judgement dated 06.12.2005 that the defence of financial crisis on part of the Respondents is neither just nor a valid reason to deny this lawful dues to which an employee is entitled as a matter of right.

Therefore, in the light of aforesaid pronouncements of Hon'ble Superior Courts and observing the settled position of Law, the contention of Respondents that because of scarcity of funds, they were unable to deposit the requisite amount in the terminal benefits Trust fund is not at all sustainable and not a valid , legal and reasonable ground.

24. Continuous violation of the provisions made in the rules, notified by the State Govt, in this regard and a long continuous disobedience and violations of orders and directions issued by the Commission in respect of depositing pass through amount in the terminal benefit trust fund is a serious misconduct done by the Respondents nos 1 to 4. Therefore, we are of considered view that the aforesaid conduct of Respondents nos 1 to 4 is non-excusable and hence, they have made themselves liable for proceeding under Section 142 of the Electricity Act 2003.
25. In view of the above, we hold that Respondents 1 to 4 simultaneously and Respondent no 1 MPPMCL specially, violated and disobeyed the orders & directions issued by the Commission, therefore they are guilty of punishment under section 142 of the Electricity Act 2003. After considering all the facts & circumstances of case, in our opinion, imposing a penalty of Rs One Lakh (Rs 100,000 /-) upon Respondents 1 to 4 jointly and collectively, for each year's contravention in respect of Retail supply tariff order for FY2017-18 , FY2018-19, FY2019-20 and FY2020-21 shall be just and proper to meet ends of justice.
26. Based on the above mentioned facts and circumstance of the case and in view of continuous default and violation of statutory provisions as stated in foregoing, the Commission hereby directs that :-
 - a. A penalty of Rupees one lakh, for contravention during each year in respect of Retail supply tariff order for FY2017-18, FY2018-19, FY2019-20 and FY2020-21 is imposed on Respondent nos 1,2,3 & 4 collectively. The penalty be deposited with the Commission within 30 days of date of issue of this order.
 - b. The said liability shall be in accordance with provisions of Section 149 of the Electricity Act 2003.
 - c. Though, all the above mentioned respondents nos. 1 to 4 are jointly and collectively responsible for the violation of Section 142 of the Electricity Act 2003, yet the Respondent no. 1 MPPMCL is first responsible to deposit the pension & terminal benefit amount into the Terminal Benefit Trust fund, therefore the Respondent no. 1 MPPMCL shall be first of all liable and responsible to pay the imposed fine.

Sub: In the matter of filing of petition seeking appropriate orders of the Commission for non-compliance of directions issued by MPERC in Regulation 7.10 of (Transfer of funds to pension and Terminal Benefit Trust Fund) of Retail Supply Tariff order dated 31.03.2017.

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- d. The Respondents MPPMCL/Discoms to deposit the balance pass through amount of Rs 750 Cr in the terminal benefit trust fund by 31st March 2022 with bank rate of interest for the period that amount became overdue and was not paid.
- e. Within three months of the date of issue of this order, MP Power Transmission Company Limited shall order for an actuarial valuation to determine size of the fund required to make the Terminal Benefit Trust self- sufficient for discharging the Pension and Terminal benefit liabilities in order to secure future of the employees as provided in the Transfer Scheme Rules.
- f. Till such time that actuarial valuation is done, the Commission will continue to provide for a fixed amount towards creating a corpus for meeting pension and terminal benefits related liabilities as was done in the past through the Retail Supply Tariff Orders. However, henceforth the amount that is going to be allowed by the Commission for the aforesaid purpose in Retail Supply Tariff Orders, shall be deposited into an Escrow Account which shall be opened in the name of MP Transco and it shall be the responsibility of MP Transco to transfer such amount in the Terminal Benefit Trust Fund account immediately.
- g. It is reiterated that repeated violation of directions of the Commission in future shall make MPPMCL/Discoms liable for punishment under Section 146 (Punishment for non - compliance of orders or directions) of the Electricity Act, 2003.

With the above directions, the petition is disposed of.

-sd-
(Shashi Bhushan Pathak)
Member (Law)

-sd-
(Mukul Dhariwal)
Member

-sd-
(S.P.S. Parihar)
Chairman