

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: In the matter of seeking appropriate directions to the non-applicant for raising the bills as per applicable tariff provision for year 2021-22 and to grant the refund/adjustment of excess amount recovered in violation of tariff order of Hon'ble Commission read with clause 1.19 (c), 1.25 and 1.29 of general terms and conditions of High tension (HT) tariff for year 2021-22.

ORDER

(Date of Order : 31st January ' 2023)

M/s JayKayCem (Central) Ltd., - **Petitioner**
V/s
M.P. Poorv Kshetra Vidyut Vitran Company Ltd (East Discom): **Respondent**
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Shri Ashish Asopa, Advocate appeared on behalf of the Petitioner. Shri Prakash Upadhyay, Advocate appeared on behalf of the Respondent.

1. The subject petition is filed by Petitioner in pursuance to the ECGRF, Jabalpur, order dated 28.07.22 whereby, the Forum suggested the Petitioner to approach the MPERC, Bhopal for clarifications/interpretation on the issues involved in the case and further to get the matter decided accordingly at their end. In subject petition, Petitioner stated that it had applied for HT temporary connection in phased manner for different subsequent stages of Contract Demand (CD) ranging from 250 kVA to 2500 kVA. However, when connection was provided by the Respondent Company, its billing was done as per maximum CD i.e. 2500 kVA, instead of stage wise load applied by petitioner. The petitioner has made following prayer in its petition:

- i. That, the action of respondents be set aside and the respondent may kindly be directed to revise the bills and refund the excess amount recovered in the bills of May 2021 to October 2021 in violation of Tariff Order provision made by Hon'ble MPERC.*

- ii. That, the respondent may kindly be directed to pay interest at Bank Rate as per Section 62 (5) of Electricity Act on the excess amount recovered in violation of applicable Tariff Order provisions of Hon'ble MPERC.
- iii. That, in the alternate respondent may kindly be directed to grant adjustment of excess amount against the subsequent monthly bills of the petitioner.

2. The brief facts of the petition are as under :

- a) It is stated that the petitioner for starting their construction activities at project site of Cement Plant has applied for Temporary connection on 33 KV in Phased Manner through online application. The Online platform for applying the temporary connection www.smartbijlee.mpez.co.in is also giving facility by providing an option to select that the connection is required in phased manner or not and accordingly petitioner has selected the option for phased manner during filling online applicant form. The petitioner has requested contract demand in phased manner per following details :

S. No.	Phase	Duration	Contract Demand in KVA
1	Phase-1	01/04/2021 to 31/07/2022	250
2	Phase-2	01/08/2021 to 31/03/2022	800
3	Phase-3	01/04/2022 to 30/09/2022	1200
4	Phase-4	01/10/2022 to 01/03/2023	2000
5	Phase-5	01/04/2023 – up to Disconnection	2500

- b) The petitioner made payment of application fees and Security deposit for obtaining the Temporary HT Connection which was sanctioned by Respondent in phased manner by their letter dated 01/12/2020 and 29/12/2020 respectively.

- c) In subsequent development, the Respondent issued bills from May 2021 to November 21 wherein, the Contract Demand was taken as 2500 KVA instead of considering 250 KVA as per the sanction letter issued by Respondent's office (SE (O&M), Panna.)
 - d) The petitioner made payment of the bills under protest and submitted representation to reimburse /adjust the excess amount recovered contrary to sanction letter.
 - e) Thereafter the petitioner opted for permanent disconnection of the connection and aforesaid connection has been permanently disconnected on 25/10/2021.
 - f) It is stated that the Respondent, has after grant of connection in phased manner illegally recovered excess amount in violation of Agreement and the Tariff Provisions of MPERC and despite there being no prohibition in the M.P. Electricity Supply Code and the Regulations.
 - g) Being aggrieved by the impugned demand raised by the Respondent Discom, the petitioner (applicant consumer), had filed a representation before ECGRF, Jabalpur for resolution of its grievances. The Forum, vide their order 28.07.22 has suggested the petitioner to approach the MPERC, Bhopal for clarifications/interpretation under the provisions of clause 11.13 of applicable MP Electricity Supply Code, 2013 (the provisions now retained as clause 11.18 of revised supply code namely -Madhya Pradesh Electric Supply Code, 2021) which provides that in case of any dispute in meaning or scope or interpretation of this Code, the interpretation of the Commission shall be final and binding on all concerned."
3. At the motion hearing held on 09.11.2022, the Commission admitted the petition and directed to issue notice to Respondent. At the hearing held on 06/12/22, the Commission on request of the Respondent in the interest of justice, allowed 10 days time to Respondent to file reply and 7 days time to petitioner to file rejoinder, thereafter. Case was listed for final arguments on the 10th January, 2023. At the hearing held on 10th January, 2023 the Commission heard the arguments put forth by the parties. Vide daily order dated 11/01/23, the case is reserved for order.
4. The petitioner has made the following broad submission in subject petition:
- i. *That, the applicant has requested contract demand in Phase Manner as during the Greenfield set up of a cement plant. The Electricity load is required in the Phase manner as per the site work progress. At the initial stage / time, the electricity load requirement is only for civil*

construction, thereafter load requirement comes for mechanical work, then for electrical work and finally at the final stage load is required for final Erection, Testing & Commissioning of the plant and accordingly load would increase till last step and accordingly applicant has made request to cater his load requirement in Phase Manner.

- ii. That, the petitioner submitted application dated 03/11/2020 and 23/12/2020 describing the requisition for supply of Electricity by Temporary Connection. That, the petitioner made payment of application fees of Rs.11,800/- and further made payment of Security deposit of Rs. 98,05,667/- on 03/12/2020 for obtaining the Temporary HT Connection in the above Phase Manner as stated in the application.*
- iii. That, the respondent no. 2 accepted the request made by the applicant and sanctioned the temporary connection for supply in Phased Manner by their letter dated 01/12/2020 and 29/12/2020.*
- iv. That, to the utmost surprise of petitioner, the respondent's Billing Cell issued first bill for May'2021 wherein, the Contract Demand was taken as 2500 KVA instead of considering 250 KVA as per the sanction letter issued by SE (O&M), Panna. The petitioner assuming it to be a clerical mistake, approached to respondent no. 2 / SE (O&M), Panna and made request to claim adjustment / reimbursement of the excess amount recovered in the bill. A copy of petitioner's letter dated 18/06/2021 submitting that, the amount has been paid UNDER PROTEST and requested for adjustment of excess amount as per sanction letter dated 29/12/2020.*
- v. That, the respondent again issued the second bill for June'2021 by taking contract demand of 2500 KVA instead of 250 KVA as per the sanction order. The petitioner made payment of the bill under Protest and submitted representation dated 17/07/2021 to reimburse / adjust the excess amount recovered contrary to sanction letter. Petitioner made request to raise the bill by taking the contract demand as per time schedule mentioned in the sanction letter but the respondents continued to raise bill in violation of Tariff provisions.*
- vi. That, the respondent no. 2 (SE, O&M, District Panna) by letter dated 29/07/2021 issued to*

the respondent no. 1 (CGM Commercial), communicated that the petitioner has been granted connection in the phase manner as per sanction letter and the petitioner has made payment of Bills under protest. The respondent no. 2 further recommended to issue bill to the consumer as per contract demand sanctioned in the phase manner and to revise the earlier bills already paid by the petitioner.

- vii. *That, in spite of the communication and recommendation made by the respondent no. 2, the petitioner's bills have not been revised despite several assurances made by respondents from time to time during the request by personal visit of petitioner. The respondent No.1 did not even bother to reply the letters submitted by the petitioner. The delay in not taking any decision in this matter by the respondent No.1 has put huge financial burden on the applicant with no fault of the petitioner and petitioner has suffered a lot and hence filing this petition for getting the justice from the Hon'ble Commission. Thereafter the petitioner having left with no other option and opted for permanent disconnection of the connection as such petitioner's aforesaid connection has been permanently disconnected on 25/10/2021. The petitioner have obtained new temporary connection of 800 KVA to meet out its subsequent existing requirement of electricity.*
- viii. *That, the respondents have on every occasion assured that the excess amount raised in bill would be adjusted from the bill of next month but such assurance has been of no result. That, the petitioner had no option except to bow before respondents and respondents taking advantage their higher position kept on raising bills on higher side without adjusting the excess billing done earlier.*
- ix. *That, the petitioner after all efforts met the Managing Director of the respondent company who after going through the documents relating to petitioner's application for grant of Temporary connection in Phased Manner and billing record had assured that necessary adjustment of the excess amount recovered would be given but the same has not been allowed and the petitioner's excess amount paid for the period from May' 2021 to November 2021 has not been refunded / adjusted against the subsequent bills.*
- x. *That, the petitioner has made several request to grant refund / adjustment of the excess*

amount recovered from petitioner. The respondent no. 1 has thereafter, by letter dated 22/10/2021 informed that the petitioner matter has been referred to the Hon'ble MPERC for clarification.

- xi. That, the petitioner has followed all the prescribed procedure laid by Hon'ble Commission through MP Electricity Supply Code to avail this new HT temporary connection which has been sanctioned by the respondent's competent authority in Phase Manner. The petitioner has suffered huge financial burden as well as mental harassment without any fault on the part of petitioner. That, the petitioner has never exceeded the Billing demand as per the request letter submitted from the date of connection i.e. 17.05.2021 till the disconnection date i.e. 25.10.2021.*
- xii. That, the respondents have after grant of connection in Phase manner illegally recovered excess amount in violation of Agreement and the Tariff Provisions of Hon'ble MPERC and despite there being no prohibition in the M.P. Electricity Supply Code and the Regulations. That the Applicant Consumer approached this Hon'ble Commission by filing Petition seeking redressal of its grievance against arbitrary action of Respondent's.*
- xiii. That the Electricity Forum unfortunately passed Order based on documents and the statements given by the Complainant / Respondent and merits and de-merits thereof, suggesting Applicant to approach Hon'ble MPERC without deciding the grievance of the Petitioner.*

3. The Respondent East Discom has made following broad submission :-

- i. That, the answering respondents most respectfully submit that the petition and the prayer therein are misconceived, misunderstood and bereft of merits. It is respectfully submitted that in view of section 86 of the Electricity Act, 2003 and section 9 and 10 of the Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000, the remedy prayed for by the petitioner in the petition is not within the function/ jurisdiction of the Hon'ble MPERC. Although, Hon'ble MPERC under Rule 11.13 of M.P. Supply Code, 2013 has power to interpret the meaning and scope of provisions of the Code in case of any dispute. In fact, in earlier occasion,*

Hon'ble MPERC has returned the petition holding that the subject matter of petition is adjudication of a billing dispute between petitioner and respondent. Therefore, the present petition deserves to be dismissed in this count alone.

- ii. That, Rule 4.43 to Rule 4.51 of M.P. Electricity Supply Code, 2013 deals with grant of temporary power supply to the consumer. In accordance with these rules, petitioner was granted 2500 KVA Temporary HT Connection as he opted in the online application form dated 27/10/2020. It is worthwhile to note here that there is no provision to grant Temporary HT Connection in phase manner to the TC consumer.*
- iii. That, Rule 7.3 to Rule 7.9 of Supply Code 2013 deals with the procedure for enhancement of contract demand/ connected load of electricity. Evidently, there is no provision herein which makes these provisions applicable for consumers who have taken temporary Connections and these provisions cannot be interpreted as to enable the petitioner to take the temporary connection in phase manner. In such circumstances, prayer of the petitioner is frivolous and therefore, petition deserves to be dismissed*

4. The petitioner in its rejoinder has made following broad submission:-

- i. It is denied that in view of Section 86 of Electricity Act, 2003 and Section 9, 10 of the M.P Vidyut Sudhar Adhinyam, 2000 the remedy prayed by petitioner is not within the jurisdiction of Hon'ble MPERC, as on enactment of Electricity Act, 2003, the provisions of M.P Vidyut Sudhar Adhinyam, 2000 which are not inconsistent with the provisions of Electricity Act, 2003 have been made applicable to the States in which the Adhinyam is applicable by virtue of Section 185 (3) of Electricity Act, 2003. Thus the provision relied by the Respondent do not take away the jurisdiction of Hon'ble Commission under Electricity Act, 2003, the Tariff Orders and MPERC Regulations.*

Commission's Findings and Observations

5. The Commission admitted the petition in accordance with clause 11.18 under "Interpretation" of Madhya Pradesh Electricity Supply Code 2021, which provides that "in case of any dispute in

meaning or scope or interpretation of this Code , the interpretation of the Commission shall be final and binding on all concerned.” In the instant case, The petitioner had applied for HT temporary connection in phased manner for different subsequent stages of Contract demand ranging from 250 kVA to 2500 kVA, under tariff category HV 3.2 at 33kV, which was duly sanctioned by the Respondent vide its letter dated 29/12/20 in response to petitioner’s application dated 23/12/20 , however billing was done by Respondent considering highest CD of 2500 kVA , instead of 250 kVA i.e. stage wise load as applied by petitioner. Hence, the dispute between the petitioner and Respondent is limited to interpretation of provisions of Supply Code 21 whether the consumer can avail temporary connection in phased manner akin to permanent connection under the provisions of Law.

6. Apropos of Clause 2.1 (ss) of Madhya Pradesh Electricity Supply Code 2021, “Temporary Connection” is defined as under :-

“Temporary Connection” means an electricity connection required by a person for meeting his temporary needs such as-

- (i) for construction of residential, commercial and industrial complexes including pumps for dewatering;
- (ii) for illumination during festivals and family functions;
- (iii) for threshers or other such machinery excluding agriculture pump sets;
- (iv) for touring cinemas, theatres, circuses, fairs, exhibitions, melas or congregations.

As regard availing temporary power supply, the Commission has specified the following provision under clause 4.48 of Supply Code 2021 :-

4.48 Any person requiring power supply for the purpose that is temporary in nature, may apply for temporary power supply for a period of less than two years in the Form as required by the Licensee. The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for

loads up to 10kW and 30 days before for higher the said loads. Under no circumstances, permanent connections be allowed for constructions.

7. Further, the Commission has specified the Format as Annexure3 of Madhya Pradesh Electricity Supply Code 21 for various consumer services including new service connection for temporary and permanent connection for EHT/HT/ LT consumers. In aforesaid format, the Commission has provided the facility of phasing of contract demand (CD) for permanent as well as temporary connection. It is pertinent to mention that aforesaid provisions were continued in force in past as well through Madhya Pradesh Electricity Supply Code , 2013 which was repealed through Madhya Pradesh Electricity Supply Code, 2021 with effect from 20/08/21.
8. The Commission observed that aforesaid provisions of the Madhya Pradesh Electricity Supply Code 21, clearly stipulate that as regard phasing of contract demand, there is no distinction between permanent and temporary connection. In light of above observations, the Commission is of the view that petitioner is entitled to avail the temporary connection in phased manner as applied by him and accordingly Respondent is directed to comply with the aforesaid provisions of Madhya Pradesh Electricity Supply Code, 2021, as mentioned in para 6 & 7 of this Order scrupulously and take necessary action. With above directions petition is disposed of.

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman