

Sub: In the matter of initiating penal proceedings against Madhya Pradesh Audyogik Kendra Vikas Nigam (I) Ltd. (MPAKVN) under Section 142 and 149 of the Electricity Act (P.No 04/2013)

Order

Date of order: 26/10/2021

M/s Pithampur Audyogik Sanghtan , Indore : Petitioner
V/s
MP Industrial Development Corporation Ltd (Erstwhile MPAKVN), Indore : Respondent

1. The petitioner has filed the petition in subject matter, requesting the Commission to initiate proceedings under sections 142 and 149 of the Electricity Act 2003 against Respondent for non-compliance of the directions given at para 7(iv) of the Commission's order dated 21/12/2012 in petition no. 86 of 2012 in respect of refund of excess recovery.
2. The Commission held the hearing on 19/02/2013 and vide daily order dated 20/02/2013 admitted the petition with direction to issue notice to Respondent under section 142 of the Electricity Act 2003 and matter be clubbed with petition number 86 of 2012 for further proceedings .
3. Subsequently, Respondent had preferred appeal (Appeal No.71 of 2013) before Hon'ble Appellate Tribunal for Electricity (APTEL) against the Commission's tariff order dated 20/09/2012 in P.No 16/2012 and order dated 21/12/2012 in P.No. 86/ 2012. Therefore, the Commission adjourned the proceedings in the matter till disposal of appeal number 71 of 2013 by the APTEL. Subsequently, the APTEL had pronounced the judgement on 30/10/2014 in appeal number 71 of 2013 wherein the appeal was dismissed as devoid of merits. In light of aforesaid judgement by the APTEL, the Commission held the hearing on 25/11/2014.

4. At hearing held on 25/11/2014, the respondent's counsel had sought time extension from the Commission mentioning that they had intended to approach the Hon'ble Supreme Court against the APTEL's order dated 30/10/2014 seeking relief in the matter. The Commission vide daily order dated 26/11/2014 had considered the request of respondent and adjourned the hearing.
5. Against the aforesaid judgment of APTEL dated 30.10.2014, the respondent has preferred an appeal before Hon'ble Supreme Court of India. Hon'ble Supreme Court admitted the respondent's appeal (Civil Appeal no. 3074 of 2015) and stayed the APTEL order dated 30.10.2014 in appeal no.71 of 2013). Subsequently, Hon'ble Supreme Court vide its order dated 16.08.2016 (I.A.07/2016) has made following observations in the matter.

“In the circumstances, we do not see any impropriety for the first respondent- Commission carrying on the statutory exercise. The earlier order of this Court is only staying the operation of the order of the first respondent- Commission, impugned in the instant appeal.”

6. Pursuant to aforesaid directions of the Hon'ble Apex Court, the Commission has issued the True up orders of MPAKVN for period FY2010-11 to FY2018-19 on the basis of their final audited balance sheets. Besides, the Commission has been issuing Retail supply Tariff orders regularly in accordance with MYT tariff regulations notified under the provisions of the Electricity Act 2003.
7. While reviewing status of the Petition, the Commission observed that directions were given in its tariff order dated 20.09.2012 to MPAKVN to refund excess recovery to the SEZ consumers pertaining to certain period. Against this tariff order, MPAKVN filed a Review Petition which was dismissed by the Commission. Thereafter, against this tariff order, Respondent MPAKVN appealed before Hon'ble APTEL. The appeal was dismissed by Hon'ble APTEL finding it devoid of merits. Against the order of Hon'ble APTEL, Respondent has approached to Hon'ble Supreme Court. The Hon'ble Court has stayed the order of APTEL and later clarified that it has only stayed operation of impugned

order issued by the Commission. Therefore, effect of directives given by the Commission in tariff order dated 20.09.2012 would depend on the decision by Hon'ble Supreme Court in Civil Appeal No. 3074 of 2015. It is observed that the matter is already in abeyance for more than 8 years, and cannot be processed further unless verdict of Hon'ble Supreme Court is known. Therefore, the Commission is of the view that the case be not heard at this stage and be disposed of with the liberty to both the parties to approach the Commission, if necessary and appropriate at a later stage, once orders of Hon'ble Supreme Court in Civil Appeal No. 3074 of 2015, are available.

(Shashi Bhushan Pathak)

Member (Law)

(Mukul Dhariwal)

Member

(S.P.S. Parihar)

Chairman