

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 35/RP/2018
in Petition No. 261/TT/2015
and Petition No. 232/MP/2018**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order : 28.01.2020

Petition No. 35/RP/2018

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 27.5.2016 in Petition No. 261/TT/2015.

And in the matter of:

MB Power (Madhya Pradesh) Ltd.
239, Okhla Industrial Estate
Phase III, New Delhi-110020

.... Review Petitioner

Vs

Power Grid Corporation of India Ltd.
"SAUDAMINI", Plot No-2,
Sector-29, Gurgaon-122 001 (Haryana)

...Respondent

For Review Petitioner : Shri Gopal Jain, Sr. Advocate, MB Power
Ms. Molshree Bhatnagar, Advocate, MB Power
Shri Rohit Kr. Gururani, MB Power
Shri Abhishek Gupta, MB Power

For Respondents : Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Nehul Sharma, Advocate, PGCIL



In the matter of

Petition under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 seeking adjudication of dispute arising out of the letters issued by PGCIL dated 2.5.2018, 23.7.2018 and 6.8.2018 which have been issued illegally and arbitrarily and are patently against the scheme of the regulatory framework issued by the Commission.

And in the matter of

MB Power (Madhya Pradesh) Limited,
239, Okhla Industrial Estate
Phase III, New delhi-110020

.....**Petitioner**

Vs

Power Grid Corporation of India Limited
Registered Office:
'SAUDAMINI', Plot no. 2, Sector 29,
Near IFFCO Chowk, Gurugram
Haryana- 122001

....**Respondent**

For Petitioner: Ms. Molshree Bhatnagar, Advocate, MB Power
Shri Rohit Kr. Gurupani, MB Power

For Respondent: Ms. Suparna Srivastava, Advocate, PGCIL
Shri V. Srinivas, PGCIL

ORDER

MB Power (Madhya Pradesh) Ltd. (hereinafter referred to as “MBPMPL”) has filed Petition No.232/MP/2018 under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 for quashing the bills dated 2.5.2018, 23.7.2018 and 6.8.2018 raised by PGCIL on the basis of the Commission’s order dated 27.5.2016 in Petition No.261/TT/2015 and for adjudication of the dispute arising out the said bills. MBPMPL has made following prayers.



- “(a) To allow the present petition in terms of the submissions and grounds;
- (b) To quash the letters/invoices dated 2.5.2018, 23.7.2018 and 6.8.2018 issued by Power Grid Corporation of India Limited;
- (c) To pass such other Order/(s) as deem fit in the interest of justice and equity by this Hon’ble Commission.”

2. MBPMPL later filed Petition No.35/RP/2018 seeking review of the order dated 27.5.2016 in Petition No.261/TT/2015 under Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, wherein the Commission held that the transmission charges for the line bays and the reactors of the 765 kV S/C Jabalpur-Bina Circuit-III ends at Jabalpur Pooling Sub-station and Bina Sub-station shall be borne by the Long Term Transmission Customers (LTTCs) including MBPMPL. MBPMPL has made the following prayers.

- “(a) Allow the present Review Petition in terms of the grounds and submissions made hereinabove at Para Nos. A to H above;
- (b) Modify and/or correct the irregularities in the order dated 27.5.2016 in Petition No.261/TT/2015 to the extent pleaded by the Review Petitioner herein at Para Nos. A to H above;
- (c) Pass such order Order/(s) as deem fit in the interest of justice and equity by this Hon’ble Commission”

Background

3. MBPMPL has established a 1200 MW coal based Thermal Power Project in the district of Annupur in Madhya Pradesh and for the purpose of evacuation of power from its generating station to its target beneficiaries, MBPMPL had entered into a Long Term Access Agreement (“LTA Agreement”) dated 17.6.2011 with PGCIL and a Transmission Service Agreement (“TSA”) dated 1.12.2010 was signed with Jabalpur Transmission Company Limited (hereinafter referred to as “JTCL”) which was constructing the 765 kV S/C Jabalpur-Bina ckt.-III (hereinafter referred to as “J-B Line”) under the Tariff Based Competitive Bidding (TBCB) route. The associated



bays and line reactors at both ends of the J-B Line at Jabalpur Pooling Station and Bina Pooling Station were executed under the scope of PGCIL.

4. PGCIL filed Petition No. 261/TT/2015 for determination of transmission tariff from COD to 31.3.2019 in respect of (a) Asset-1: 765 kV line bay and 240 MVAR Switchable Line Reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur-Bina Circuit III (IPTC); (b) Asset-2: 765 kV Line Bay and 240 MVAR Line Reactor(Non-switchable) at Bina Sub-station for 765 kV S/C Jabalpur-Bina Circuit III (IPTC); (c) Asset-3: 765 kV line bay and 240 MVAR Line Reactor at Jabalpur PS and 765 line bay and 330 MVAR Switchable Line Reactor at Dharmjaygarh Sub-station for Circuit III of 765 kV D/C (Circuit III and IV) Dharmjaygarh-Jabalpur PS Transmission Line (IPTC); and (d) Asset-4: 765 kV Line Bay and 240 MVAR Line Reactor at Jabalpur PS and 765 Line Bay and 330 MVAR Switchable Line Reactor at Dharamjaygarh Sub-station for Circuit IV of 765 kV D/C (Circuit III and IV) Dharmjaygarh-Jabalpur PS Transmission Line (IPTC) under line bays and reactor provisions at POWERGRID Sub-stations associated with System Strengthening Common for Western Region and Northern Region in Western Region under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations").

5. JTCL commissioned the J-B Line on 1.7.2015 i.e. after a time over-run of 15 months. This time over-run of 15 months in the case of J-B Line was condoned by the Commission vide order dated 16.10.2015 in Petition No.73/MP/2014. The associated Bays and Line Reactors at J-B Line ends (at Jabalpur Pooling Sub-station and Bina Sub-station) i.e. Assets 1 and 2 under the scope of PGCIL were put into commercial operation on 5.10.2014 and 13.11.2014 respectively. PGCL filed



Petition No.261/TT/2015 for determination of tariff of Asset 1 and 2. Taking into consideration the mismatch between the bays and reactors of PGCIL and the transmission line of JTCL, the Commission vide order dated 27.5.2016 held that the transmission charges for Assets 1 and 2 shall be borne by the LTTCs of JCTL. The relevant portion of the order dated 27.5.2016 is extracted hereunder.

"53. The transmission charges for the instant assets shall be borne by Long Term Transmission Customer (LTTC) of the Transmission Service Agreement (TSA) executed by Jabalpur Transmission Company Ltd. (JTCL) under Tariff Based Competitive Bidding line, till the commissioning of the transmission lines. Once the associated system is commissioned, the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time as provided in Regulation 43 of the 2014 Tariff Regulations."

6. On the basis of the order dated 27.5.2016, PGCIL raised invoices on MBPMPL in 2018. MBPMPL has filed Petition No.232/MP/2018 for quashing the bills raised by PGCIL against MBPMPL contending that it is not liable to bear the transmission charges for the period of mismatch between transmission assets of PGCIL and JTCL. Further, MBPMPL has filed Petition No.35/RP/2018 for setting aside the impugned order dated 27.5.2016 directing MBPMPL to bear the transmission charges of Assets 1 and 2 for the period of mismatch between the COD of the bays and reactors of PGCIL and the transmission line of JTCL as it was not a party to the proceedings in Petition No.261/TT/2015.

7. The grounds for review in Petition No.35/RP/2018 and the issues raised by MBPMPL in Petition No.232/MP/2018 emanate out of the order dated 27.5.2016 in Petition No.261/TT/2015. As the prayers made in the said petitions are inter-linked and related, hence they are being taken together for disposal in the instant order.



Submissions made by MBPMPL in Petition No.232/MP/2018

8. MBPMPL has submitted that Petition No. 232/MP/12018 has been mainly filed for quashing the bills raised by PGCIL for ₹2.87 crore on MBPMPL on 2.5.2018 and 23.7.2018 and the dispute arising out of the said bilateral non-PoC bill on the basis of order dated 27.5.2016 in Petition No.261/TT/2015. MBPMPL has submitted that the delay in COD of the transmission line of JTCL leading to delay in COD of PGCIL's transmission assets cannot be attributed to MBPMPL and hence, the transmission charges for the period of mismatch of transmission elements of PGCIL and JTCL has to be borne by JTCL and any dispute with respect to mismatch in COD of the transmission assets of PGCIL and JTCL and the consequent financial liability should be settled between PGCIL and JTCL. MBPMPL has further submitted that as per the BPTA, MBPMPL is required to share the transmission charges only from the date when power from its generating station is evacuated through the transmission assets. As power was not evacuated during the period of mismatch in the COD of Assets 1 and 2 of PGCIL and JTCL's transmission line, it is not liable to bear the transmission charges. MBPMPL has further submitted that PGCIL has used the line reactors as bus reactors during the period of mismatch to control the voltage profile at Jabalpur Pooling Station and Bina Sub-station and therefore, the transmission charges for the said period should be recovered through the PoC mechanism. MBPMPL has also averred that despite not being arrayed as a party in Petition No.261/TT/2015, liability of transmission charges has been imposed on MBPMPL without affording any opportunity of being heard.

9. MBPMPL has submitted that on 1.8.2018, it received an email from PGCIL intimating that the Bilateral Non-PoC Bill dated 2.5.2018 was pending over 60 days' period and that in case MBPMPL does not make payment of the said pending bill by



3.8.2018, PGCIL would undertake regulatory measures for recovery of the same. On 6.8.2018, PGCIL issued “Notice of Regulation of Power” to MBPMPL for non-payment of the transmission charges. MBPMPL has submitted that the bills raised by PGCIL are not enforceable as they are based on an erroneous decision.

Reply of PGCIL

10. PGCIL has raised the following issues in its reply:

(a) As per the order dated 27.5.2016 in Petition No.261/TT/2015, the transmission charges are to be shared by the LTTCs and accordingly, a bilateral bill was raised upon the MBPMPL. However, MBPMPL failed to make any payment against the bill within the due date and thereafter, another letter dated 23.7.2018 was issued to the MBPMPL as a reminder to make the requisite payment by 3.8.2018. Despite reminders, MBPMPL failed to pay the transmission charges and therefore, PGCIL had to initiate regulatory action against the MBPMPL under the provision of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010.

(b) Under the regulated scheme of coordinated transmission planning, transmission assets are created and/or made available by PGCIL as CTU for use by the generators/beneficiaries. Any non-payment of transmission charges may result in non-servicing of transmission assets. PGCIL’s claim for transmission charges arises out of the unequivocal commitments made by MBPMPL under the BPTA dated 17.6.2011, the TSA dated 14.10.2010 and the order dated 27.5.2016 in Petition No.261/TT/2015.

(c) The common transmission system built by PGCIL together with JTCL is being utilized by all the LTTCs of the said transmission system and they have



agreed to service the same through payment of transmission charges. After having agreed to service the transmission system, MBPMPL cannot be allowed to hide behind the plea that it is a third party to the issues between PGCIL and JTCL for payment of transmission charges. A conjoint reading of the TSA along with the directions of the Commission in order dated 27.5.2016 makes MBPMPL liable to bear the transmission charges and PGCIL is bound to raise the bills on MBPMPL on the basis of the order dated 27.5.2016.

Rejoinder of MBPMPL to the reply of PGCIL

11. MBPMPL in its rejoinder dated 5.4.2019 to PGCIL's reply, while reiterating the submissions made in the petition has submitted that the order dated 27.5.2016 is bad in law and against the principles of natural justice as MBPMPL was not a party to the proceedings in Petition No.261/TT/2015. Assets 1 and 2 were used as bus reactors to maintain the voltage profile at Jabalpur Pooling Station and Bina Sub-stations and they were never kept idle and hence, they should be included in the PoC computation and cannot be recovered from MBPMPL. MBPMPL has submitted that the time over-run in case of the transmission lines of JTCL had delayed the operationalisation of the LTA granted by PGCIL to MBPMPL and the issue was considered by the Commission in Petition No.141/TT/2015 wherein it was held that PGCIL was required to make alternative arrangement for dispatch of power to MBPMPL and in case of any delay in COD of transmission system, PGCIL is liable to pay the transmission charges proportionate to the LTA granted. MBPMPL has submitted that Commission in a similar case vide order dated 25.6.2018 in Petition No. 216/MP/2016 (Bhopal Dhule Transmission Company Limited v. Chhattisgarh State Power Trading Company Limited & Ors.), where the transmission line of BDTCL was ready to be put to regular service by BDTCL but could not achieve COD



due to non-readiness of sub-station to be developed by PGCIL, held that BDTCL is eligible to recover the transmission charges for the period of mismatch. MBPMPL has submitted that on similar lines, the entity that was responsible for causing the delay in putting the transmission asset to regular service should be liable to bear the transmission charges. Accordingly, PGCIL and JTCL should settle the issue among themselves and MBPMPL should not be saddled with the liability of transmission charges for Assets 1 and 2.

Submissions of MBPMPL in Petition No. 35/RP/2018

12. The grounds on which MBPMPL has sought review of the order dated 27.5.2016 are as follows:

(a) The finding that the transmission charges for Assets 1 and 2 for the period corresponding to the mismatch period between COD of Assets 1 and Asset 2 of PGCIL and COD of J-B Line by JTCL are payable by MBPMPL without considering that the delay in COD of the J-B Line vis-à-vis COD of Assets 1 and 2 of PGCIL is for the reasons not attributable to MBPMPL.

(b) MBPMPL is liable to pay the transmission charges in accordance with the TSA executed between MBPMPL and JTCL only on actual evacuation of power i.e. when the 'transmission service' is actually provided under the TSA. The financial implications arising out of such mismatch between the COD of the transmission assets of PGCIL and JTCL are essentially required to be settled between PGCIL and JTCL and cannot be imposed upon MBPMPL. The damages suffered by PGCIL, if any, can only be recovered from JTCL and not from the LTTCs.



(c) During the period of mismatch, Assets 1 and 2, which were constructed as Line Reactors at either end of J-B Line, were charged by PGCIL as Bus Reactors to maintain the voltage profile at Jabalpur Pooling Station and Bina Sub-station. As such these assets never remained idle and were put to use for controlling voltage in the ISTS. Therefore, the transmission charges allowed for the Assets 1 and 2 should be recovered through POC mechanism from the respective dates of COD of these assets and cannot be recovered from MBPMPL.

(d) MBPMPL was a necessary party and it should have been made a party to the proceedings in Petition No.261/TT/2015. Due to non-impleadment of MBPMPL in the proceedings, its right to be heard and contest reliefs has been violated. Therefore, the order dated 27.5.2016 needs to be modified appropriately.

Reply of PGCIL in Petition No.35/RP/2018

13. The submissions of PGCIL in Petition No.35/RP/2018 is as follows:

(a) The Review Petition is not maintainable as MBPMPL has already filed Petition No.232/MP/2018 seeking remedies sought in the Review Petition.

(b) As regards the contention of MBPMPL that it has no knowledge of the PGCIL's Petition No.261/TT/2015 and consequent order dated 27.5.2016 as it was not made a party to the said proceedings, PGCIL has submitted that it had issued Public Notice and followed the due procedure specified in the Central Electricity Regulatory Commission (Procedure for making application for determination of tariff, publication of the application and other related matters)



Regulations, 2004 and hence, MBPMPL's contention that it was not aware of the proceedings before the Commission is misplaced.

(c) The order dated 27.5.2016 was in public domain and in the knowledge of MBPMPL. However, MBPMPL chose not to challenge the order dated 27.5.2016 for alleged violation of principles of natural justice till PGCIL raised bills against MBPMPL.

(d) There is mismatch in COD of transmission assets of PGCIL and JTCL and it cannot be attributed to MBPMPL. As such, the transmission charges are to be paid for the mismatch and it has to be borne by the LTTCs of the TBCB licensees for whose benefit the assets were built.

(e) As per the TSA between LTTCs and JTCL, the transmission charges determined by the Commission are to be borne by the LTTCs including MBPMPL, from the COD of the transmission assets irrespective of actual flow of electricity.

Rejoinder of MBPMPL to the reply of PGCIL

14. MBPMPL has reiterated the submissions made in the Review Petition. The clarifications given by MBPMPL to the reply of PGCIL are as follows;

(a) MBPMPL has been made liable to pay for the transmission charges for the period of mismatch when Assets 1 and 2 of PGCIL were not put to regular use due to non-readiness of transmission line of JTCL, over which MBPMPL has no control. The impugned order was passed in the proceedings where MBPMPL was not a party, and, therefore is against the principles of natural justice.



(b) As Assets 1 and 2 were put into use as bus reactors to control the voltage profile in Jabalpur Pooling Station and Bina Sub-station, the transmission charges should be recovered through the PoC mechanism.

(c) MBPMPL is liable to pay the transmission charges only when the transmission assets are put to use and JTCL, which was responsible for causing the delay in putting the assets into regular use should bear the transmission charges.

Analysis and decision

15. We have considered the submissions of MBPMPL and PGCIL and perused the documents on record and the impugned order dated 27.5.2016 in Petition No.261/TT/2015.

16. The Commission vide order dated 27.5.2016 in Petition No.261/TT/2015 condoned the time over-run and approved the COD of Asset-1: 765 kV line bay and 240 MVAR Switchable Line Reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur-Bina Circuit III (IPTC) and Asset-2: 765 kV Line Bay and 240 MVAR Line Reactor (Non-switchable) at Bina Sub-station for 765 kV S/C Jabalpur-Bina Circuit III (IPTC) of PGCIL as 5.10.2014 and 13.11.2014 respectively. Further, the time over-run of 15 months in case of the associated J-B Transmission Line executed by JTCL under the TBCB route was condoned and the scheduled COD of the said transmission line was extended and approved as 1.7.2015 vide order dated 16.10.2015 in Petition No.73/MP/2014. The Commission in the impugned order dated 27.5.2016 held that the transmission charges for the period of mismatch between the COD of the bays and the line reactors at Jabalpur Sub-station and Bina



Sub-station of PGCIL and the J-B Transmission Line of JTCL would be borne by the LTTCs including MBPMPL.

17. On the basis of the order dated 27.5.2016, PGCIL raised a Bilateral Non-PoC Bill of Rs.2,87,85,400/- (Rupees Two Crore Eighty Seven Lakh Eighty Five Thousand Four Hundred) on MBPMPL towards transmission charges for Asset 1 and Asset 2 for the period of mismatch. MBPMPL has filed Petition No.232/MP/2018 for quashing the said bills. MBPMPL has also filed Petition No.35/RP/2018 seeking review of the order dated 27.5.2016 imposing the liability of transmission charges on MBPMPL for the period of mismatch. The contentions of MBPMPL in both the petitions are related and are more or less similar. MBPMPL has contended that it is not liable to pay the transmission charges for the period of mismatch between the transmission assets of PGCIL and JTCL as it does not have any control over PGCIL or JTCL and that it is not responsible for the mismatch. MBPMPL has contended that JTCL which is responsible for the time over-run in case of the transmission line is liable to pay the transmission charges for the period of mismatch as held by the Commission in the case of BDTCL. MBPMPL has also contended that during the period of mismatch, PGCIL had used the line reactors as bus reactors to control the voltage profile at Jabalpur Pooling Station and Bina Sub-station and therefore the transmission charges for the period of mismatch should be included in the PoC computation and it cannot be held liable for the same. MBPMPL has further contended that it was not a party to the proceedings in Petition No.261/TT/2015 and liability was imposed on it without having been given an opportunity of being heard which is against the principles of natural justice and, therefore, the order dated 27.5.2016 requires to be modified on the aspect of sharing of transmission charges for the period of mismatch. In response, PGCIL has submitted that Petition



No.261/TT/2016 was filed as per the procedure specified by the Commission and Public Notice was also issued as per the procedure and as such MBPMPL's contention that order dated 27.5.2016 is against the principles of natural justice is misplaced. PGCIL referring to the LTA and the TSA has submitted that MBPMPL is liable to pay the transmission charges from the COD of the transmission assets irrespective of whether the power was flowing through the transmission assets.

18. We are of the view that all LTTCs including MBPL are necessary parties to the proceedings in Petition No. 261/TT/2015 as civil liability in the form of payment of transmission charges for the period of mismatch was created against them. However, the LTTCs including MBPMPL were not impleaded as parties in Petition No.261/TT/2015 by PGCIL. Making MBPMPL liable for payment of the transmission charges for the period of mismatch in COD of transmission assets of PGCIL and JTCL without an opportunity to MBPMPL to place its views/objections on record is an apparent error. Further, PGCIL did not implead the other LTTCs of the transmissions assets in Petition No.261/TT/2015.It is further observed that MBPMPL has not impleaded JTCL, which as per MBPMPL is liable to bear the transmission charges, as a party to the present proceedings in Petition Nos.232/MP/2018 and 35/RP/2018. Without going into the merits of the issues raised by MBPMPL in the instant petitions, we are of the view that the issue of sharing of the transmission charges needs to be decided after hearing all the necessary parties. Accordingly, we allow the review to the limited extent of reconsideration of the sharing of transmission charges of the instant transmission assets and set down the main petition for hearing on the aspect of sharing of transmission charges. PGCIL is directed to file an amended "Memo of Parties" in Petition No.261/TT/2016 making all the LTTCs including MBPMPL as respondents and any other beneficiary(ies) for whom the



instant transmission assets were envisaged and serve a copy of the petition on them within 15 days of issue of this order. Further, PGCIL is directed to clarify whether the transmission charges for the instant assets for the period of mismatch was recovered through PoC mechanism and also the reasons for delay of two years in raising the bills on MBPMPL after the issue of order dated 27.5.2016. The respondents are directed to submit their replies on the limited issue of sharing of transmission charges within three weeks of receipt of the amended Petition No.261/TT/2015 and PGCIL to file the rejoinder, if any, within two weeks thereafter.

19. MBPMPL during the hearing on 8.8.2018 offered to furnish a Bank Guarantee for ₹2.87 crore in favor of PGCIL and requested to restrain PGCIL from taking any coercive measures against the MBPMPL. Taking into consideration the submissions of learned senior counsel for the MBPMPL, the Commission directed MBPMPL to furnish the Bank Guarantee of ₹2.87 crore in the format acceptable to PGCIL and directed PGCIL not to take any coercive measures till the next date of hearing which was extended by the Commission on the subsequent hearings.

20. As we have decided to dispose of the Review Petition by allowing to reopen Petition No.261/TT/2015 to decide the issue of sharing of the transmission charges of the assets of PGCIL, we are of the view that MBPMPL is at liberty to raise all issues related to sharing of transmission charges including those raised in Petition No.232/MP/2018. Petition No.232/MP/2018 has become infructuous and is accordingly, disposed of. PGCIL is directed not to take any coercive action against MBPMPL for recovery of the transmission charges as per the bills raised pursuant to the order dated 27.5.2016 in Petition No. 261/TT/2015 till the issue of sharing of transmission charges is decided. Further, MBPMPL is directed to keep alive the BG



given by it to PGCIL till the liability for payment of the transmission charges of the assets of PGCIL is decided by the Commission.

21. Petition No. 35/RP/2018 and Petition No. 232/MP/2018 are accordingly disposed of. Petition No.261/TT/2015 shall be listed for hearing in March 2020 and exact date shall be notified in due course.

sd/-

(Dr. M.K. Iyer)
Member

sd/-

(P.K. Pujari)
Chairperson

