

In the Appellate Tribunal for Electricity
New Delhi
(Appellate Jurisdiction)

R.P. No. 22 of 2016 in
Appeal No. 34 of 2016

Dated: 15th February, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member

In the matter of

- 1. Jaiprakash Power Ventures Limited
(Ertwhile M/S Bina Power Supply Company
Ltd. since merged with Jaiprakash Power
Ventures Limited)
Sector 128, Noida- 201304
Uttar Pradesh**

**... Review Petitioner/
Appellant**

Versus

- 1. Madhya Pradesh Electricity Regulatory
Commission
5th Floor, Metro Plaza,
Arera Colony, Bittan Market,
Bhopal – 462 016
Madhya Pradesh**

.....Respondent No 1

- 2. Madhya Pradesh Power Transmission
Company Limited
Nayagaon, Rampur,
Jabalpur- 482008
Madhya Pradesh**

.....Respondent No 2

- 3. Madhya Pradesh Power Management
Company Ltd.
Shakti Bhawan, Vidyut Nagar,
Rampur,**

**Jabalpur – 482008
Madhya Pradesh**

.....Respondent No 3

- 4. State Load Despatch Centre,
Madhya Pradesh Power Transmission Company Limited
Nayagaon, Rampur,
Jabalpur- 482008
Madhya Pradesh**

.....Respondent No 4

**Counsel for the Appellant(s): Mr. Sanjay Sen, Sr Adv
Mr. S. Venkatesh
Mr. Varun Singh
Mr. Shashank Khurana**

**Counsel for the Respondent(s): Ms. Mandakini Ghosh
Ms. Ritika Singhal for R-1**

Mr Manoj Dubey for R-2 and R-4

**Mr. M. G. Ramachandran
Mr. Purushaindra Kumar
Mr. Nitin Gaur
Mr. Shubham Arya for R-3**

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. This Review Petition is being filed by Jaiprakash Power Ventures Ltd. (hereinafter referred to as the “**Review Petitioner/Appellant**”) under Section 120(2)(f) of the Electricity Act, 2003 for review of the judgment dated 22.08.2016 of this Tribunal passed in Appeal No. 34 of 2016 filed by the Appellant. The Review Petitioner has prayed for the following;

- a) “That the Tribunal be pleased to review and set aside its judgment dated 22.08.2016.
- b) That the Tribunal be pleased to restore the Appeal No. 34 of 2016 filed by the Petitioner to the file/record of this Tribunal and re-hear the same.
- c) For such further or other reliefs as circumstances and nature of the case may require.”

1.1 On, 05.01.2011, a Power Purchase Agreement (“**PPA**”) was executed between the Appellant and the Madhya Pradesh Power Management Company Limited (“**Respondent No. 3**”) and Respondent No. 3 was obligated to purchase a total of 65% capacity of project being developed by the Review Petitioner.

1.2 On 20.07.2011, another PPA was executed between the Appellant and Government of Madhya Pradesh (“**GOMP**”) for procurement of power on variable charges basis and GOMP nominated Respondent No. 3 on behalf of Government of Madhya Pradesh to receive 5% net power at variable charge/cost to be determined by the State Commission.

1.3 From August, 2012 to May, 2015, the Respondent No. 3 through Madhya Pradesh Power Transmission Company Limited (“**Respondent No.2**”) and State Load Despatch Centre, Madhya Pradesh (“**Respondent No.4**”) has been scheduling the minimum of

approximate 140 MW from the respective unit. That means, Respondent Nos. 2 and 4 have been scheduling considerable part of the contracted capacity i.e. both units - 350 MW (65% + 5%). For balance 30% capacity, there is no long term contract.

- 1.4 The technical minimum level of operation for the Appellant's power plant is 55% load i.e. about 140 MW. Therefore, the off take between the above mentioned period was as per the technical minimum generation capacity of the Appellant's power plant.
- 1.5 On 22.05.2015, the Respondent No. 3 issued a letter to the Respondent No. 2 and 4 interalia stating as follows;

"It is worth to mention the installed capacity has achieved upto 15100 MW. The total system demand is being met at present about 7000 MW average. It is expected that the demand may go upto 7500-7700 MW during remaining month May, 15. In view of the new MOD implemented from 22nd May, 2015, it is observed that the variable cost & position of generating units have been changed which may have to be keep in consideration while backing down of power available from the DC on bar of generating units. In case of thermal power generating units the backing down of power is to limited upto 70% in case of capacity below 250 MW and 60% in case of above 250 MW, as intimated from the SLDC and WRLDC in past. As such, it is to clarify that, PMCL would allow scheduling in such circumstances where the back down is required, that unit shall generate 70%-60% of the entitled power to MP on real time".

Subsequently the Respondent No.2/4 issued a letter dated 01.06.2015 which was interalia challenged by the Appellant before the State Commission and the relevant extracts of this letter are being reproduced as follows;

"The Chief General Manager (Power Management), M.P. Power Management Co. Ltd. Jabalpur vide letter No. MPPMCL/ PM/ 224 dated 22.05.2015 (copy enclosed) has intimated that in case of thermal power generating units the backing down of power is to be limited up to 70% of the entitled power to MP in case of capacity below 250 MW and 60% in case of above 250 MW. The above letter of CGM (PM), MPPMCL further clarified that MPPMCL would not permit generation more than above-mentioned limits of technical minimum generation under surrender conditions.

In view of the above, whenever the power surrender instructions to technical minimum quantum of MP is issued the same shall be limited to 60% / 70% (as the case may be) of the contracted ex-bus capacity of MP."

1.6 Thereafter, the Appellant's power plant was forced to have intermittent schedules, remained either closed or in partial operation and this practice of giving lesser schedules than that of the technical minimum of 140 MW continued.

- 1.7 Aggrieved by this precarious situation, the Appellant filed Petition No. 54 of 2015 before the State Commission which was dismissed by the State Commission vide its Order dated 07.01.2016.
- 1.8 Aggrieved by the above Order of the State Commission, the Appellant filed Appeal No. 34 of 2016 before this Tribunal seeking to set aside the Order dated 07.01.2016 of the State Commission.
- 1.9. This Tribunal by its Order dated 22.08.2016 dismissed Appeal No. 34 of 2016 filed by the Appellant.
- 1.10As per the Appellant, subsequent to the judgment of this Tribunal dated 22.08.2016, the Respondent No. 2 and 4 have taken belligerent view contrary to their own previous stance. Since, this Tribunal in passing the judgment has held that the Respondent No.3's liability is only limited to payment of capacity charges under the PPA and as such the said Respondent has now started scheduling power even below its own accepted technical minimum of the contracted capacity between the Appellant and the Respondent No. 3. As a result, the Appellant is now in a worst position than that it was in prior to filing of the Appeal.
2. We have heard at length Mr. Sanjay Sen, learned senior counsel for the Appellant and Mr. M.G. Ramachandran, learned counsel for the Respondents and considered their arguments and written submissions. Gist of the same is discussed hereunder;

The limited question before this Tribunal is “Whether there is any error apparent on the face of the record in the judgment dated 22.08.2016 in Appeal No. 34 of 2016?”

3. The Appellant raised following issues in the Review Petition for our consideration;
- i) After the issuance of the Judgment in Appeal No. 34 of 2016, the Respondent No. 2 to 4 acted in a manner putting the Appellant in a more disadvantageous position than that before issuance of this Judgment since the Respondent No. 3 resorted to scheduling power even much below the technical minimum of the contracted capacity
 - ii) Prior to the judgment, the Respondent No. 3 was scheduling atleast technical minimum of the contracted capacity i.e. 94 MW each unit. This was evident from their letters i.e. letter dated 22.05.2015 issued by Respondent No. 3 and letter dated 01.06.2015 issued by the Respondent No. 2 and 4. The position of maintaining technical minimum of the contracted capacity was maintained by the Respondents throughout in the proceedings before the State Commission as well as this Tribunal. This position has also been confirmed by the Respondent No. 3 at Para 9 and 16 of its reply vide affidavit dated 16.04.2016.
 - iii) On many occasions it is observed that the State Generating Stations which are cheaper than Review Petitioner have been put under Reserved Shutdown and the Appellant is given erratic scheduling. Sometimes the State Generating Stations which were costlier than the Appellant’s station were given round the clock schedule.

However, the Appellant was given erratic schedules making the operations unviable.

- iv) The Respondents have misinterpreted the Judgment of this Tribunal and has put the Appellant in precarious position by giving erratic and dancing schedules even to the extent of zero schedules in some time blocks in a day.
 - v) The Appellant has approached this Tribunal for review of the judgment solely on the account that this kind of approach of the Respondents is making the generating units vulnerable for its safety and life.
 - vi) The concept of technical minimum is based on the operation of the generating units as per its installed capacity and not in respect of the part of the installed capacity.
 - vii) Even as per IEGC 2016, in order to claim compensation because of lower schedule, the Appellant shall have to factor in the provisions of compensation in the PPAs entered into by it for sale of power in order to claim compensations for operating at the technical minimum schedule.
4. The Respondents categorically denied the contentions and allegations of the Appellant and submitted that there is no error apparent in the Judgment dated 22.08.2016 and the issues raised by the Appellant have no merit and do not fall within the scope of Review Jurisdiction.
5. After having a careful examination of all the aspects brought before us in this Review Petition and perusal of our judgment, we are of the considered opinion that there is no error apparent on the face of the

record in the judgment dated 22.08.2016 in Appeal No. 34 of 2016 passed by this Tribunal. But the fact remains that the schedules given by the Respondents have been erratic and definitely warrant unsafe operation which is detrimental to the life of the generating units. The sole aspect involved in the matter is erratic scheduling of the thermal warranting unsafe operation due to the following reasons;

- i) Thermal generating stations are designed and engineered for operation as base load power plants. Cyclic load fluctuation would have an adverse impact on O & M, machine health, life, efficiency & economy.
- ii) Operational & Maintenance issues:
 - a. Increased equipment damages: like faster boiler tube metal degradation resulting in tube leakages etc.
 - b. Increased maintenance requirements
 - c. Higher Repair & Maintenance costs
 - d. Variation in operational parameters
 - e. Continuous partial load operation without oil support increases the likelihood of unit tripping (Unscheduled outages) on flame failure which may also endanger grid security.
 - f. Unit running only on TDBFP becomes highly unstable at lower loading.
 - g. The generation of a unit operating at technical minimum/below technical minimum could get further reduced automatically due to operation of auto controllers.

- h. During monsoon when wet coal received from mine end poses a challenge to proper combustion and flame stability in the furnace. Since safe and stable boiler operation is of paramount importance at all times, the operators may at times choose to operate at a slightly higher level to cater for the uncertainty.
 - i. Higher Emission levels
 - j. Additional safety concerns.
- iii) Actual operating conditions are more complex and different and it would not be possible to achieve the same in real time of prevailing operating conditions. Added to this, there is uncertainty introduced due to the variation in coal quality actually supplied from the design coal specified in the technical specifications.
- iv) In practice some margins are required to have operational flexibility to take care of credible contingencies such as non-availability of continuous elevation mills/feeders, poor quality of coal, tripping of some auxiliaries, operating activities such as soot-blowing.
- v) The normative operational parameters like heat rate, auxiliary power consumption and specific secondary fuel oil consumption are fixed based on actuals when these stations were operating as base load stations.
- vi) Erratic operation particularly at technical minimum or below technical minimum will lead to higher cost of generation due to the following resulting loss to the generator:
- Degradation of heat rate below normative heat rate

- Higher APC than allowed as per norms
- Higher secondary fuel oil consumption over allowed normative consumption.
- Penal provisions of the Regulations e.g. volume limits for deviation from schedule, additional deviation charge etc.

vii) CERC 4th amendment to IEGC dated 06.04.2016 provided as below:

Technical Minimum of Units 55% of MCR loading or installed capacity of the unit of generating station.

Compensation for scheduling between 85% to 55%:

S. No.	Unit loading as a % of Installed Capacity of the Unit	Increase in SHR (for supercritical units) (%)	Increase in SHR (for sub-critical units) (%)	% Degradation in APC admissible
1	85-100	Nil	Nil	Nil
2	75-84.99	1.25	2.25	0.35
3	65-74.99	2	4	0.65
4	55-64.99	3	6	1.00

Where the scheduled generation falls below the technical minimum schedule, the concerned CGS or ISGS shall have the option to go for reserve shut down and in such cases, start-up fuel cost over and above seven (7) start / stop in a year shall be considered as additional compensation based on following norms or actual, whichever is lower:

Unit Size (MW)	Oil Consumption per start up (KI)		
	Hot	Warm	Cold
200/210/250 MW	20	30	50
500 MW	30	50	90
660 MW	40	60	110

6. We are of the considered opinion that the coal generating units should not be subjected to erratic scheduling so as to avoid severe damage to the equipment besides affecting adversely efficiency parameters and the grid security.

7. The Appellant may therefore make an appropriate application to the State Commission for redressal of its grievance about erratic scheduling within two weeks. On receipt of the application, the State Commission shall hear the concerned parties on various aspects relating to scheduling of units as alleged by the parties and decide the matter within two months from the date of receipt of the Application. We make it clear that this order is being passed in the peculiar facts and circumstances of this case.

Review Petition is disposed of.

No order as to costs.

Pronounced in the Open Court on this 15th day of February, 2017.

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE

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