

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 247 OF 2023**

**Dated: 23.10.2024**

**Present: Hon'ble Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**IN THE MATTER OF:**

**M/s Jaiprakash Power Ventures Limited**  
(Unit: Jaypee Bina Thermal Power Plant)  
Through its Joint President Mr. Ashok Shukla  
JA House, 63, Basant Lok, Vasant Vihar,  
New Delhi-110057

**...Appellant**

**Versus**

1. **Madhya Pradesh Electricity Regulatory Commission**  
Through its Secretary,  
5<sup>th</sup> Floor, Metro Plaza, Bittan Market,  
Bhopal, Madhya Pradesh-462016

2. **Madhya Pradesh Power Management Company Limited**  
Through its Managing Director  
Shakti Bhawan, Vidyut Nagar, Rampur,  
Jabalpur, Madhya Pradesh-482008

3. **Madhya Pradesh State Load Despatch Centre**  
(Madhya Pradesh Power Transmission Company Limited)  
Through its Superintending Engineer,  
Nayagaon, Rampur, Jabalpur,  
Madhya Pradesh-482008

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. S. Venkatesh  
Mr. Suhael Buttan  
Mr. Siddharth Joshi

Mr. Abhishek Nangia  
Ms. Simran Saluja  
Mr. Vineet Kumar  
Mr. Punyam Bhutani  
Mr. Ashutosh Kumar Shrivastava  
Mr. Bharat Gangadharan  
Mr. Jayant Bajaj  
Mr. Nihal Bhardwaj  
Mr. Siddharth Nigotia  
Mr. Kartikay Trivedi  
Mr. Shivam Kumar  
Mr. V.M. Kannan  
Mr. Jatin Ghuliani  
Mr. Anant Singh  
Mr. Mohit Mansharamani  
Mr. Rishabh Sehgal  
Mr. Kunal Veer Chopra

Counsel for the Respondent(s) : Ms. Preeti Goel for Res.1  
  
Mr. Alok Shankar  
Mr. Kumarjeet Ray for Res.2  
  
Mr. Ravin Dubey for Res.3

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The Appeal has been filed by Jaiprakash Power Ventures Limited (in short "JPVL" or "Appellant") challenging the legality of the Order dated 25.08.2022 (in short "Impugned Order") passed by Madhya Pradesh Electricity Regulatory Commission (in short "MPERC" of "State Commission") in Petition No. 28 of

2022 filed by the Appellant seeking release of payment due against the invoice raised for June to October 2020 by the Appellant in accordance with the Power Purchase Agreement (in short “PPA”) dated 05.11.2011 executed between the parties.

2. The MPERC by way of the Impugned Order has proceeded to hold that the provisions of Madhya Pradesh Electricity Grid Code, 2019 (in short “MPEGC 2019”) do not apply to the Appellant, therefore, the right to take unit under Reserve Shut Down (in short “RSD”) cannot be availed by the Appellant.

**Description of parties**

3. The Appellant, Jaiprakash Power Ventures Limited is a company incorporated under the provisions of the Companies Act, 1956, *inter-alia*, a Generating Company within the meaning of Section 2(28) of the Act and is engaged in the business of planning, developing and operating power projects in India.

4. Respondent No. 1, MPERC is a Statutory Authority constituted under the Electricity Regulatory Commissions Act, 1998 and Section 82 of the Act.

5. Respondent No. 2, i.e., Madhya Pradesh Power Management Company Limited (“MPPMCL”) is a Government Company as defined under the provisions of Section 617 of the Companies Act, 1956, and is a Trading Licensee entitled to undertake transactions of sale and purchase of electricity in the State of Madhya Pradesh.

6. Respondent No.3 is the Madhya Pradesh State Load Despatch Centre (“MPSLDC”), a statutory body incorporated under the Act.

**Factual Matrix of the Case**

7. On 28.04.2010, the Central Electricity Regulatory Commission (“CERC”) notified the CERC (Indian Electricity Grid Code) Regulations, 2010 (“IEGC Regulations”).

8. On 05.01.2011, the Appellant and MPPMCL executed a PPA for the supply of 65% of the installed capacity of the power station for a period of 25 years at the rate determined by MPERC, the relevant terms of the PPA as agreed between the parties are as under:

- a. As per **Article 4.3.3**, in the event MPPMCL does not schedule the whole or part of the Available Capacity, the Appellant shall not lose its right to receive Capacity Charge for such unscheduled Available Capacity.
- b. As per **Article 10.2**, the Tariff under this PPA shall be billed on the basis of Availability and Energy account for the relevant month as per SEA/REA for monthly bill.
- c. As per **Article 10.3.1**, MPPMCL shall pay the amount payable under the Monthly bill by the Due Date.
- d. As per **Article 10.5.1**, MPPMCL shall provide to the Appellant an unconditional, revolving and irrevocable Letter of Credit (“LC”) in accordance with Article 10.5.2.

e. As per **Article 10.7.1** if a party does not dispute a Monthly Bill or Supplementary Bill raised by the other party within 10 days of receiving it, such bill shall be taken as conclusive for payment of the Bill amount and any dispute concerning the same shall be raised as per Article 13 of the PPA.

9. On 31.08.2012, Unit I of Appellant's Thermal Power Station achieved its Commercial Operation Date ("CoD") and on 07.04.2013, Unit – II achieved CoD.

10. On 06.04.2016, CERC notified the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 ("IEGC Fourth Amendment"), it is pertinent to mention that Regulation 6.3(B) of IEGC Fourth Amendment provided for Technical Minimum criteria for operating a Thermal Power Plant ("TPP") and entrusted responsibilities upon National Load Dispatch Centre ("NLDC") *qua* RSD of Thermal Generating Station in case the scheduling issued by the procurer is below the Technical Minimum Criteria, the Relevant extracts of Regulation 6.3 B are reproduced below:

*"Where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be compensated **depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy***

*consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be.”*

**[Emphasis Added]**

11. On 12.06.2019, MPERC, in the exercise of its power under Section 86 (1) (h) of the Act, notified MPEGC 2019, the key provisions as envisaged under MPEGC 2019 are as under:

- a. The Regulations 1 (3) read with 1.4.4 mandates that MPEGC 2019 shall apply upon every user who is connected to the intra-State Transmission System of Madhya Pradesh.
- b. Regulation 8.8.1 mandates the Technical Minimum Schedule for operation in respect of a unit or units of Generating Stations and whose tariff has been determined by MPERC as 55% of MCR Loading or installed capacity of the units of Generating station.
- c. Regulation 8.8.6 mandates that State Load Despatch Centre ("**SLDC**") shall prepare a DoP in consultation with the generators and beneficiaries at OCC forums within 3 months' time and submit to MPERC for approval.

12. In compliance of Regulation 8.8.6 of MPEGC 2019, MPSSLDC vide its letter dated 26.09.2019 submitted the DoP for the approval before the MPERC, on examination of the DoP, on 29.01.2020, MPERC granted its approval.

13. The Appellant submitted that on account of less schedule of power from MPPMCL, the Appellant during the period June 2020 to October 2020 was compelled to keep its units under the RSD, the action of the Appellant was strictly in terms of the MPEGC, 2019 and DoP Order dated 29.01.2020 passed by MPERC, it is relevant to mention that during the aforesaid period, the Declared Capacity (“DC”) of the Bina TPP was at 100%.

14. The capacity declared by Appellant was duly accepted by MPSDLC, accordingly, State Electricity Account (“SEA”) was prepared and issued by MPSLDC, it is submitted that on the basis of the SEA, Appellant raised Invoices which forms the subject matter of dispute, the details of the invoices raised for the Period June 2020 to October 2020 are as under:

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>AMOUNT (Capacity Charges only)</b>
1.	Bill No. JBTPP/2020-21/MPPMCL/PPA-JAN-11/3 dated 08.07.2020 for energy supplied during period 01.06.2020 to 30.06.2020	39,05,79,583/-
2.	Bill No. JBTPP/2020-21/MPPMCL/PPA-JAN-11/4 dated 07.08.2020 for energy supplied during period 01.07.2020 to 31.07.2020	39,05,75,000/-
3.	Bill No. JBTPP/2020-21/MPPMCL/PPA-JAN-11/5 dated 08.09.2020 for energy supplied during period 01.08.2020 to	39,05,75,000/-

	31.08.2020	
4.	Bill No. JBTPP/2020-21/MPPMCL/PPA-JAN-11/6 dated 08.10.2020 for energy supplied during period 01.09.2020 to 30.09.2020	39,05,75,000/-
5.	Bill No. JBTPP/2020-21/MPPMCL/PPA-JAN-11/7 dated 09.11.2020 for energy supplied during period 01.10.2020 to 31.10.2020	39,05,75,000/-

15. After a lapse of four months from the date of submission of Invoices, on 06.10.2020, MPPMCL issued a Bill Dispute Notice under Clause 10.7 of the PPA for the Bills raised for June, July, and August 2020 stating as under: -

- a. On examination of SEA reports submitted by MPSLDC, it was observed that one Unit of the Plant was off-bar from June to August 2020 while the other unit was off-bar in August 2020 and operated for only 2 days in July 2020.
- b. As per DoP approved by MPERC, MPPMCL has not entered into a Supplementary Agreement with Appellant for acceptance of RSD, therefore, the provisions of RSD and compensation mechanism are not applicable to Appellant.
- c. To claim fixed charges under the PPA, the Appellant's plant had to be 'On Bar', therefore, MPPMCL is not liable to pay Fixed Charges for June to August 2020 as claimed by the Appellant.



16. On 15.10.2020, Appellant responded to the Bill Dispute Notice dated 06.10.2020 issued by MPPMCL stating that:

- a. MPEGC, 2019 is squarely applicable to the Appellant, therefore, it is entitled under Regulation 8 to take its Unit under RSD in case of inadequate schedule of power by the procurer.
- b. Signing of Supplementary PPA as per MPEGC 2019 is limited to the mechanism as to how the generator (Appellant) would be compensated for operating the plant at Technical Minimum, therefore, it is incorrect for MPPMCL to contend that until the signing of Supplementary PPA, Appellant is not entitled to take its unit under RSD.
- c. Regulation 42.2 of MPERC Tarif Regulations, 2020 relied upon by MPPMCL is of no consequence as the same pertains to generating stations going under shutdown due to renovation or modernization.
- d. MPPMCL has failed to raise a dispute against the bill raised by the Appellant within the time prescribed (i.e. 10 days from the date of the bill) under Article 10.7 of the PPA.

17. Subsequently, on 15.10.2020, MPPMCL issued another Bill Dispute Notice for the bill raised for the month of September 2020 on the grounds that Plant of Appellant was Off-Bar during the period from 01.09.2020 to 06.09.2020 and that Appellant has failed to provide Unit wise details of On-Bar and Off-Bar status of the units as requested by the MPPMCL.

18. On 17.10.2020, the Appellant responded to the Bill Dispute Notice dated 15.10.2020 issued by MPPMCL and reiterated its contentions.

19. Thereafter, on 28.10.2020, the Appellant issued another letter requesting MPPMCL to release payment against the bills raised for August and September 2020 considering that the Energy Bill was prepared as per the provision of Regulations and the relevant documents as per the terms of the PPA were duly submitted by the Appellant.

20. On the same date MPPMCL issued an email to the Appellant with the intent to resolve the dispute concerning the Bills raised by the Appellant in terms of Article 10.7.5 of the PPA and proposed to convene a meeting on 02.11.2020 between the representatives of parties.

21. In furtherance to the email referred to above, on 29.10.2020, the Appellant addressed another email to MPPMCL clarifying that there is no dispute under the PPA, however, to resolve the matter, the Appellant requested MPPMCL to invite MPSLDC to participate in the proposed meeting.

22. On 30.10.2020, the Appellant issued another email to MPPMCL reiterating its contention on participation in the meeting as well as the fact that as of date no dispute existed *qua* the terms of the PPA.

23. On 31.10.2020 MPPMCL issued an email to the Appellant denying the request to consider convening a general meeting between the representative of the parties.

24. Being aggrieved by the actions of MPPMCL, on 24.03.2022, the Appellant filed the Subject Petition before MPERC seeking the following reliefs:

- a. Quash the Bill Dispute Notice dated 06.10.2020 and 15.10.2020 issued by MPPMCL.
- b. Direct MPPMCL to make payment of Rs 117.24 Cr on account of capacity charges outstanding against the invoices raised for the period June to October 2020 along with a Late Payment Surcharge.

25. At this stage, it is relevant to mention that the dispute *regarding* the applicability of the provisions of MPEGC 2019 arose between the parties, on 04.05.2022, MPSLDC filed a Petition No. 33 of 2022 (“Amendment Petition”) under Regulation 45 of MPERC Regulations seeking modification of title, clause 1.3, and clause 3 of Appendix-I of DoP for being inconsistent with the DoP notified by CERC.

26. On 24.05.2022, the Subject Petition was listed for hearing, after considering the submissions made by the Appellant, MPERC was pleased to direct the Appellant to serve a copy upon Respondent and rescheduled the hearing on 12.07.2022 for arguments on maintainability of the Subject Petition.

27. On 31.05.2022, the Amendment Petition filed by MPSLDC was taken up for motion hearing and after hearing the submissions addressed by counsel for MPSLDC, MPERC was pleased to issue notice and directed the Respondents (including Appellant) to file their replies to the Petition.

28. Thereafter, on 13.06.2022, MPPMCL filed its reply objecting to the maintainability of the Subject Petition on the following grounds:

- a. The provision of technical minimum does not apply to the case of the Appellant as MPPMCL had contracted only 65% of the power of the installed capacity of the Appellant.
  - b. Appellant has failed to initiate an amicable settlement of the dispute in terms of the procedure envisaged under 13.5.3 of the PPA.
29. On 27.06.2022, the Appellant in compliance with the directions passed by MPERC filed its reply to the Amendment Petition and made the following submissions:
- a. The Amendments sought by MPSTDC are necessary to bring out uniformity in the Grid Code and for the safety of the Grid system.
  - b. The accrual of compensation for Gross Station Heat Rate, Aux consumption, and Secondary Fuel Consumption due to part load operation must be recognized from the date of approval of DoP.
  - c. It should be clarified that no amendment in the PPA is required for the purpose of taking the units under RSD and the signing of supplemental PPA is limited to the mechanism for compensation of degradation of GSHR, Aux consumption, and Secondary fuel consumption due to part load operation.
30. Subsequently, on 30.06.2022, MPSTDC filed its reply stating that the relief sought by the Appellant is subjudice in Petition No. 33 of 2022 pending consideration before MPERC, therefore, the Subject Petition is premature.
31. On 06.07.2022, the Appellant responded to the response filed by MPPMCL and MPSTDC challenging the maintainability of the Subject Petition.

32. On 14.07.2022, the Subject Petition was listed for hearing and after hearing the submissions addressed by the respective counsel for the parties, the Commission reserved the Subject Petition for order on admissibility.

33. On 16.08.2022, the Amended Petition filed by MPSLDC was listed for hearing, and after considering the submissions made by the counsel for respective parties, MPERC reserved the Amended Petition for order.

34. However, while the Amended Petition seeking modification of the DoP was pending consideration before MPERC, on 25.08.2022, MPERC passed the Impugned Order dismissing the Subject Petition for being premature and not maintainable.

35. On 12.10.2022, MPERC was pleased to dispose of the Amended Petition and observed that in terms of Section 86(1)(h) read with Section 79(1)(h) of the Act, the State Electricity Grid Code should be consistent with the Grid Code specified by the Central Commission, accordingly amended the DoP in MPEGC 2019, the first amendment to DoP as carried out by MPERC are as under:

***“First Amendment to Detailed Operating Procedure (Appendix-I):***

***I. Title of the Detailed Operating Procedure Appendix-I is replaced as under:***

*Detailed Operation Procedure for Backing down/ RSD for the State Generating Stations / IPPs having 100% / partial tied up capacity with MPPMCL/Discoms”*

**II. Clause 1.3 of the Detailed Operating Procedure - Appendix I is replaced as under:**

*“The first amendment to DOP (Appendix-I) shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission”*

**III. Clause 3 of the Detailed Operating Procedure Appendix-I is replaced as under**

***This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensees in the state, State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and IPPs wherein 100% / partial installed capacity is tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial / contracted capacity is determined/adopted by the Commission.”***

**a) [Emphasis Added]**

36. Being aggrieved thereof, the present Appeal is being filed.

**Submissions of the Appellant**

37. The Appellant argued that the Madhya Pradesh Electricity Grid Code (MPEGC) 2019, issued by the Madhya Pradesh Electricity Regulatory Commission (MPERC), aligns with the Central Electricity Regulatory Commission’s (CERC) IEGC Fourth Amendment Regulations, 2016, these regulations outline provisions for Reserve Shutdown (RSD) and compensation mechanisms for generating companies.

38. The Appellant's right to implement RSD stems from this delegated legislation, furthermore, MPEGC 2019 applies to the entire state of Madhya Pradesh, including the Madhya Pradesh State Load Despatch Centre (MPSLDC) and all users of the state's transmission system, allowing the Appellant to benefit from the regulations.

39. The MPERC failed to address Regulation 8.8 of the MPEGC 2019, which provides guidelines for State Sector Generating Stations (SSGS) tied to long-term PPAs with MPPMCL, the regulation allows SLDC to mandate a minimum technical operation level for grid security, additionally, Regulation 8.8.3(iii) permits SSGS units to go under Reserve Shutdown (RSD) when operating below the technical minimum, without affecting their right to claim Capacity Charges.

40. The SLDC, under Regulation 8.8.6, is required to draft a detailed procedure (DoP) for RSD, including compensation mechanisms, a Supplemental Agreement is necessary only for claiming compensation related to Station Heat Rate (SHR) and Auxiliary Energy Consumption (AUX), but not for taking units under RSD.

41. Further, argued that the MPERC-approved Detailed Operating Procedure (DoP), dated 29.01.2020, outlines the process for taking generating units under Reserve Shutdown (RSD) and the mechanism for compensation, Clause 5.7 of the DoP allows generating stations to opt for RSD if grid conditions do not necessitate maintaining the technical minimum.

42. Under Clause 6, if power is surrendered by MPPMCL and the schedule falls below the technical minimum, generating stations may take units under RSD

without requiring any amendments to the Power Purchase Agreement (PPA), thus, the Appellant has a clear right to implement RSD without modifying the PPA.

43. However, on 04.05.2022, MPSLDC (Respondent No. 3) filed Petition No. 33 of 2022 under Regulation 45 of MPERC Regulations, seeking amendments to the DoP for consistency with CERC's DoP.

44. On 12.10.2022, MPERC disposed of the petition and, in accordance with Sections 86(1)(h) and 79(1)(h) of the Electricity Act, amended the DoP in MPEGC 2019 to align the state grid code with the Central Grid Code through a "Clarificatory Amendment Order", the relevant extracts of the said Order is as follows:

***“32. From the aforesaid, it is observed that Section 86(1)(h) read with Section 79(1)(h) of the Electricity Act 2003, mandates that State Electricity Grid Code should be consistent with the Grid specified by the Central Commission. Further, Indian Electricity Grid Code (IEGC) provides for methodology for a generator to go for reserve shut down (RSD) and that provision of amendment in PPA before resorting to RSD has not been provided in IEGC. Whereas, MP Electricity Grid Code provides for amendment in PPA before a generator can resort to RSD. Therefore, it is to be inferred that the aforesaid provision in MP Electricity Grid Code is not consistent with the provision in IEGC and that there is a need to align the provision related to RSD in MP Electricity Grid Code with that in IEGC. Accordingly, the Commission is of the view that Appendix-I DoP in MP Electricity Grid***



*Code should be suitably amended which is annexed with this order as Appendix I (i). The provisions as amended shall become effective from the from the date of this order.”*

45. The key issues for consideration arise from the analysis of Section 86(1)(h) and Section 79(1)(h) of the Electricity Act, which mandate that the State Electricity Grid Code (MPEGC) must be consistent with the Central Commission’s Grid Code (IEGC).

46. The IEGC allows for a generator to undergo a Reserve Shutdown (RSD) without requiring an amendment to the Power Purchase Agreement (PPA), the Madhya Pradesh Electricity Regulatory Commission (MPERC) acknowledged an inconsistency in the MPEGC and amended its Appendix-I on 12.10.2022.

47. However, while MPERC identified that the previous Declaration of Parameters (DoP) was incorrect, it erroneously held that the amended provisions should apply only from the date of its order (12.10.2022).

48. Moreover, in dismissing the Appellant's petition on maintainability, MPERC incorrectly ruled that MPEGC, 2019 does not apply to the Appellant, thereby preventing recourse to RSD.

49. The Supreme Court in *Bhupinder Singh v. Unitech (2023) SCC Online SC 321* has held that no one should suffer harm due to a court's actions and in such situations, the court has a duty to correct any wrongs caused to a party by its own decisions or actions, the relevant extract is as follows:

*“9. As per the settled position of law, the act of the Court shall prejudice no one and in such a fact situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. The maxim actus curiae neminem gravabit shall be applicable. As per the settled law, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the Court.”*

50. The DoP framed by MPERC is statutory and must be enforced as part of statutory contracts, as confirmed by Article 16.21 of the PPA, MPERC, in its Amendment Order, has acknowledged that the provisions of MPEGC, 2019 must align with the IEGC, the Supreme Court, in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India and Ors.* 2019 8 SCC 416, emphasized that statutory legal fiction must be given full effect and carried to their logical conclusion.

*“95. In Hindustan Cooperative Housing Building Society Limited v. Registrar, Cooperative Societies and Anr. (2009) 14 SCC 302, this Court in dealing with legal fictions generally quoted a large number of authorities thus at paragraph 17:*

*“17. “13. ... It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in Levy, Re, ex p Walton [(1881) 17 Ch D 746: (1881-85) All ER Rep 548 (CA)]: (Ch D p. 756)*

*‘... When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.’ After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate...”*

51. The Appellant further argued that no Supplemental PPA is required for placing units under Reserve Shutdown (RSD), and MPERC overlooked the fact that MPPMCL delayed signing the Supplemental PPA, key points for consideration include:

- a) MPEGC 2019 Notification: Issued on 12.06.2019, with the DoP approved on 29.01.2020.
- b) Initial Legal Steps: The Appellant filed I.A. No. 244 of 2020 seeking directions for MPPMCL to incorporate DoP provisions in the PPA, which was affirmed by this Tribunal.
- c) Delayed Supplemental PPA: Between 25.09.2019 and 03.03.2022, the Appellant issued multiple communications urging MPPMCL to sign the Supplemental PPA.
- d) MPPMCL's Stance: MPPMCL initially sought approval for an amended PPA but later withdrew, citing its challenge to the IEGC Fourth Amendment in the Delhi High Court. MPERC, on 07.09.2020, dismissed MPPMCL's petition.
- e) Subsequent Petition: The Appellant filed Petition No. 26 of 2022 to compel MPPMCL to execute the Supplemental PPA, align the PPA

with MPEGC 2019 and DoP, and seek compensation for scheduling delays.

- f) MPERC's Order (25.08.2022): MPERC directed MPPMCL to draft the Supplemental PPA, but despite numerous requests by the Appellant, MPPMCL failed to comply between August 2022 and January 2023.

52. The delay in signing the Supplemental Power Purchase Agreement (PPA) is solely attributed to MPPMCL, and the Appellant should not be prejudiced by MPPMCL's arbitrary actions, legally, a party cannot benefit from its own wrongdoing.

53. The Supplementary PPA was signed in November 2023, only after the Appellant initiated legal proceedings under Sections 142 and 146 of the Electricity Act, the MPERC, in its order dated 08.06.2023 in Petition No. 9 of 2023, had already directed MPPMCL to sign the agreement with the Appellant.

54. It is a settled law that no one can benefit from their own wrongdoing, this principle is supported by various judgments of the Supreme Court, in *Nirmala Anand v. Advent Corporation (P) Ltd.*, (2002) 5 SCC 481, the Court has ruled that individuals cannot exploit situations created by their own misconduct for personal advantage.

*“45. The appellant has always been ready and willing to perform her part of the contract at all stages. She has not taken any advantage of her own wrong. The appellant is in no way responsible for the delay at any stage of the proceeding. It is the respondents who have*

*always been and are trying to wriggle out of the contract. The respondents cannot take advantage of their own wrong and then plead that the grant of decree of specific performance would amount to an unfair advantage to the appellant.”*

55. Further, in *Union of India & Ors. v. Major General Madan Lal Yadav (Retd.)*, (1996) 4 SCC 127, the Supreme Court has held as under:

*“28. Even if narrow interpretation is plausible, on the facts in this case, we have no hesitation to conclude that the trial began on 25-2-1987 on which date the court martial assembled, considered the charge and the prosecution undertook to produce the respondent who was found escaped from the open detention, before the Court.*

*...*

*In this behalf, the maxim nullus commodum capere potest de injuria sua propria — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:*

*“... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”*

*The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain*

*the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757: 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that “it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned”. At p. 195, it is further stated that “a wrong doer ought not to be permitted to make a profit out of his own wrong”. At p. 199 it is observed that “the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed”.*

*29. The Division Bench of the High Court has recorded the finding that the respondent has absconded from open military detention. From the narration of the facts, it is clear that the respondent was bent upon protracting preliminary investigation. Ultimately, when the GCM was constituted, he had challenged his detention order. When he was unsuccessful, and the trial was to begin he escaped the detention to frustrate the commencement of the trial and pleaded bar of limitation on and from 1-3-1987. The respondent having escaped from lawful military custody and prevented the trial from being proceeded with in accordance with law, the maxim nullus commodum capere potest de injuria sua propria squarely applies to the case and he having done the wrong, cannot take advantage of his own wrong and plead bar of limitation to frustrate the lawful trial*

*by a competent GCM. Therefore, even on the narrow interpretation, we hold that continuation of trial from 2-3-1987 which commenced on 25-2-1987 is not a bar and it is a valid trial.”*

56. Further, the Supreme Court in *Ashok Kapil v. Sana Ullah (Dead) & Ors.* (1996) 6 SCC 342 has held as under:

*“7. If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim “Nullus commodum capere potest de injuria sua propria” (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.*

...

*12. The upshot is, if the District Magistrate has commenced exercising jurisdiction under Section 16 of the Act, in respect of a building which answered the description given in the definition in Section 3(i), he would well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. We are inclined to afford such a liberal interpretation to prevent a wrongdoer from taking advantage of his own wrong.”*

57. The counsel submitted that it is clear from the above that MPPMCL has delayed the signing of the Supplementary PPA and cannot be allowed to take advantage of its own wrong.

58. The counsel further argued that the consideration of the maintainability of a petition at a preliminary stage is limited to three key aspects:

- (i) jurisdiction,
- (ii) the bar of any law (including limitation), and
- (iii) the disclosure of a cause of action.

59. The Respondents, however, raised no objections concerning these aspects, the Supreme Court in *Rajendra Bajoria & Ors. v. Hemand Kumar Jalan & Ors. (2022) 12 SCC 641*, has held that if cause of action exists, the court must review the petition in its entirety without isolating parts of the pleadings, the Respondent Commission (MPERC) was obligated to examine the Subject Petition to ascertain whether it disclosed a cause of action, which it allegedly failed to do, contrary to the Supreme Court's ruling in *Dahiben v. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366*.

60. Furthermore, it is contended that the Electricity Act is comprehensive legislation intended to regulate the generation, transmission, and distribution of electricity and encourage private participation, the Act mandates prompt adjudication of disputes without prolonged hearings on interlocutory objections, the Respondent Commission, however, dismissed the Petition based on maintainability grounds rather than addressing the merits of the case and support for this argument is drawn from the Supreme Court's decision in *PTC India v. GERC & Anr., Appeal No. 7524 of 2012*.

61. The counsel submitted that the Appellant claims entitlement to Capacity Charges under Article 4.3.3 of the Power Purchase Agreement (PPA) when MPPMCL does not schedule the full Available Capacity, MPPMCL did not



schedule the required capacity during the relevant period, and under the Madhya Pradesh Electricity Grid Code (MPEGC) 2019 and the MPERC-approved Department of Power (DoP), the Appellant is entitled to place its unit under Reserve Shutdown (RSD) and claim tariff with availability certified by the State Energy Accounts (SEA).

62. In accordance with Article 10.1.4 of the PPA, the Appellant raised monthly invoices to MPPMCL, supported by SEA data, since MPPMCL did not dispute the bills within the required 10-day period, the dispute resolution process in Article 13 is directory, not mandatory, as per Article 13.5.2, any claims, disputes, or differences may be raised, and by failing to timely dispute the invoices, MPPMCL effectively accepted them.

63. Efforts to amicably resolve the issue are documented, beginning with an Energy Bill from the Appellant on 08.07.2020, MPPMCL raised a Bill Dispute Notice on 06.10.2020 for invoices from June to August 2020, over three months later, the Appellant responded on 15.10.2020, asserting that MPPMCL's failure to dispute the invoices earlier rendered them conclusive.

64. MPPMCL requested a meeting on 28.10.2020, which the Appellant countered by involving SLDC, citing its role as the regulatory nodal agency, MPPMCL rejected this on 31.10.2020, maintaining its dispute stance under the PPA.

65. The Appellant was compelled to initiate legal proceedings after these resolution attempts failed, maintaining that the dispute resolution mechanism in the PPA is directory and not mandatory.

66. The Appellant argued that the dispute resolution procedure under Article 13 of the PPA is directory, not mandatory, and therefore MPPMCL's objection, alleging the Appellant failed to exhaust the prescribed remedy, should be rejected, to support this position, the following judgments were referred:

- a) In *Visa International v. Continental Resources (USA)* (2015) 13 SCC 610, the Supreme Court held that parties' intention to settle disputes through arbitration, as outlined in the agreement, is paramount, even if an amicable settlement is a precondition, where parties have rigidly opposed each other, this precondition is deemed exhausted.
- b) In *Ravindra Kumar Verma v. BPTP Ltd.* 2014 SCC OnLine Del 6602, the Delhi High Court ruled that while mutual discussion or conciliation is encouraged, it is not a bar to initiating arbitration proceedings, the procedure should be followed within a reasonable, time-bound period, after which arbitration may proceed.
- c) In *Union of India v. Baga Brothers* 2017 SCC OnLine Del 8989, the court reaffirmed that conciliation is directory, not mandatory. Delay in following conciliation procedures cannot prevent arbitration from proceeding if it risks time-bar issues.
- d) In *Sarvesh Security Services v. Managing Director, DSIIDC* 2018 SCC OnLine Del 7996, the court found that a clause requiring joint discussions before arbitration was merely directory, especially when attempts to resolve the dispute amicably had already been made.

67. In light of these precedents, the Appellant asserted that the dispute resolution process under the PPA does not need to be strictly followed, and the objection raised by MPPMCL should be dismissed.

**Submissions of the Respondent No. 1 (MPERC)**

68. Respondent No. 1 submitted that in 2011, the Appellant entered into a long-term Power Purchase Agreement (PPA) with Respondent No. 2 to supply 65% of its installed capacity for 25 years, the Appellant is an Independent Power Producer (IPP) and not a State-Specific Generating Station (SSGS), meaning it does not rely on Respondent No. 2 for 100% of its demand.

69. In 2019 and 2020, the Grid Code and the DOP were notified and approved, these regulations required that IPPs factor in provisions related to the Technical Minimum Schedule and Reserve Shutdown (RSD) in their PPAs in order to claim compensation for operating at part load or taking units under RSD.

70. The Appellant and Respondent No. 2 did not amend their PPA to include these provisions, despite this, the Appellant claimed Capacity Charges from June to October 2020, citing RSD due to low demand and billing Respondent No. 2 accordingly.

71. However, Respondent No. 2 disputed the charges and did not pay.

72. In 2022, the Appellant filed Petition 28 of 2022, seeking payment for these charges under the Grid Code and DOP, after hearing both parties, the Commission ruled that, since the Appellant is an IPP and had not amended its PPA to include the necessary provisions, it was not entitled to the claimed compensation under the DOP and Grid Code, the Appellant challenged this decision in the current proceedings.

73. Respondent No. 2 submitted that the order is lawful, well-reasoned, and requires no interference and relied on the Supreme Court's ruling in *PTC India Ltd. v. CERC (2010) 4 SCC 603*, which holds that while commissions need not rely on regulations to make decisions, once regulations are framed, their decisions must comply with them.

74. The Appellant's reliance on an amended DOP from a later Commission's order in Petition No. 33 of 2022 is misplaced, as this amendment was only effective from 12.10.2022, and does not apply retrospectively to 2020.

75. Respondent No. 2 also cited *Kusumam Hotels (P) Ltd. v. Kerala SEB (2008) 13 SCC 213* and *Lohia Machines v. UOI (1985) 2 scc 197*, to emphasize that regulations and administrative decisions are generally prospective, and cannot disturb settled rights retroactively unless expressly stated.

76. Additionally, the counsel pointed out that the Appellant, being an Independent Power Producer (IPP) and not a State-Specific Generating Station (SSGS), did not amend its PPA with the procurer as required to claim compensation under the DOP, therefore, there is no merit in the Appellant's claim, and the appeal should be dismissed.

### **Submissions of the Respondent No. 2 (MPPMCL)**

77. Respondent No. 2, MPPMCL submitted that the scope of a first appeal allows a full re-hearing of facts and law, the Appellant cited judgments, including *UPSRTC v. Mamta 2016 (4) SCC 172* and *B.V. Nagesh v. Sreenivasa Murthy (2010) 13 SCC 530*, to emphasize that Appellate Courts must address all issues,

evidence, and arguments, they argued that the Tribunal should adjudicate the case fully rather than summarily disposing of it.

78. Additionally, the claims in this case stem from 2018, and the Appellant suggested that instead of remanding the case back to MPERC, this Tribunal should resolve it in the current proceedings, MPERC has already considered the matter on merits in its impugned order, thus, a complete adjudication by this Tribunal would be more efficient.

79. The counsel submitted that the Appellant's appeal disregards the multi-level dispute resolution process stipulated in the PPA, specifically under Articles 10.7.5 and 13.5, which require parties to attempt an amicable resolution before approaching MPERC, citing *Haldiram Manufacturing Company Pvt. Ltd. v. M/s DLF Commercial Complexes Ltd. 2012 SCC OnLine Del 2139* and *Simpark Infrastructure v. Jaipur Municipal Corp 2012 SCC OnLine Raj 3833*, the Respondent argued that the dispute resolution process is mandatory and cannot be skipped, in these cases, courts ruled that parties must follow the prescribed steps before arbitration or legal proceedings.

80. In this current case, the Respondent attempted to resolve the issue through a meeting on 28.10.2020, which the Appellant refused, insisting on the involvement of MPSLDC.

81. However, the dispute clearly arose from the PPA, as acknowledged by the Appellant in their appeal, the Respondent contended that by bypassing the proper procedure, the Appellant abused the legal process to seek unwarranted gains through the courts, thus, the Respondent claims the appeal should be

dismissed due to the Appellant's failure to comply with the dispute resolution mechanisms provided in the PPA, the relevant articles from the PPA are as follows:

*“10.7.5. Upon receipt of such notice of disagreement to the Bill Dispute Notice, authorized representative(s) or a director of the board of each Party shall meet and make best endeavours to amicably resolve the dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.”*

*“13.5.2. Amicable Settlement*

*(a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:*

- (i.) a description of the Dispute;*
- (ii.) the grounds for such Dispute; and*
- (iii.) all written material in support of its claim.*

*(b) The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.5.2.(a), furnish:*

- (i) counter-claim and defences, if any, regarding the Dispute; and*
- (ii) all written material in support of its defences and counter-claim.*

*(c) Within thirty (30) days of issue of notice by any Party pursuant to Article 13.5.2(a), or Article 13.5.2(b), both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the*

*notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.5.3.”*

82. The current dispute revolves around bills raised under the PPA, making it a PPA-related issue, the Appellant's insistence on involving MPSTDC was unwarranted since MPSTDC is not a party to the PPA, the Appellant also failed to follow the agreed-upon dispute resolution procedure outlined in the PPA.

83. The MPERC correctly dismissed the petition for non-compliance with the established procedure for resolving disputes, as shown by several legal precedents, failure to adhere to the dispute resolution steps is valid grounds for dismissing a petition, thus, the MPERC's decision was proper and justified.

84. The technical minimum schedule for operation under Regulation 8.8 of the MPEGC, 2019 is set at 55%, however, this regulation applies only to State Sector Generating Stations (SSGS) that have 100% of their installed capacity tied up with MPPMCL or Madhya Pradesh Discoms, in contrast, the Appellant's Power Purchase Agreement (PPA) with MPPMCL only covers 65% of the Power Station's installed capacity, therefore, the regulation related to technical minimum does not apply to the Appellant, the relevant regulation of the MPEGC, 2019 is as follows:

*“1. The technical minimum for operation in respect of a unit or units of a State Sector Generating Station having 100% installed capacity tied up/contracted with M.P. Power Management Co. Ltd./ Discoms of MP through long term PPA and whose tariff is determined by*

*MPERC, shall be 55% of MCR loading or installed capacity of the unit/(s) of such generating station.”*

85. For the technical minimum schedule under Regulation 8.8 of the MPEGC, 2019 to apply, two conditions must be met:

- a) the State Sector Generating Station (SSGS) must have 100% of its installed capacity tied with MPPMCL, and
- b) the tariff must be determined by MPERC.

86. These conditions must be satisfied together, as clarified by the Supreme Court in *Hyderabad Asbestos Cement Products v. Union of India (2000) 1 SCC 426*, where the conjunction "and" was interpreted to mean both conditions must be met, since MPPMCL contracted only 65% of the Appellant's capacity, the technical minimum schedule provision does not apply to this case.

87. Regulation 8.8.4 of the MPEGC applies to generating stations where less than 100% of the installed capacity is tied up with MPPMCL or Discoms in Madhya Pradesh, for these stations, the regulation requires that provisions must be incorporated into the power purchase agreement (PPA) to claim the benefits of the technical minimum schedule and the right to seek compensation under Reserve Shutdown (RSD), in the absence of such provisions in the PPA, these benefits cannot be claimed, Regulation 8.8.4 is as follows:

*“4. In case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/ Discerns of MP through a long term power purchase agreement or whose tariff*



*for only partial/contracted capacity is determined by the Commission, such generating station/ company may have to appropriately factor in the above provisions in the PPAs entered into by it with M.P. Power Management Company/ Discoms for sale of power, in order to claim compensations for operating at the technical minimum schedule.”*

88. The Detailed Operating Procedure (DOP) applies only to State Sector Generating Stations (SSGS) that have 100% of their installed capacity tied up with MPPMCL or Discoms in Madhya Pradesh, the amendment to the DOP, made through Petition No. 33 of 2022, is effective prospectively from the date of that order, since the disputed bills in this case pertain to a period before this amendment, the DOP in its amended form does not apply to the present dispute, the relevant paragraph of the DOP is as follows:

*“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensee in state and State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and for IPPs as per provisions in PPA with MPPMCL, whose tariff is determined/adopted by the MPERC. In case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such generating station/company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL/Discoms for sale of*

*power, in order to claim compensations for operating at part load or taking unit under RSD.”*

89. The Appellant's claim for capacity charges lacks legal grounds as the PPA between the parties neither includes an enabling provision to claim such charges, nor is 100% of the plant's capacity tied up with MPPMCL, the disputed bills were raised before any PPA amendment or relevant application of the MPEGC 2019, which does not automatically apply to the Appellant.

90. The MPEGC 2019 provision regarding the technical minimum of 55% capacity applies only to State Sector Generating Stations (SSGS) with 100% capacity tied to MPPMCL, since MPPMCL had only contracted for 65% of the Appellant's capacity, the regulation does not apply.

91. Furthermore, enforcing such a rule would create an unfair burden on MPPMCL to pay capacity charges for uncontracted power, which was clearly not the intent of the regulatory framework. thus, the Appellant's cause of action under the PPA or the MPEGC 2019 lacks basis, and their claim for relief on these grounds is unjustified.

92. The Appellant had previously written to the Central Electricity Authority (CEA) regarding difficulties in operating below the technical minimum, in response, CEA, vide letter dated 18.04.2018, clarified that the PPA between the Appellant and MPPMCL lacked any provision regarding technical minimum.

93. The CEA also stated that ensuring the optimal operation of a thermal power station at the technical minimum is the responsibility of the State Load Dispatch Centre (SLDC), not MPPMCL.

94. Furthermore, the technical minimum refers to the machine's capacity, not the contracted capacity, thus, the Appellant's attempt to blame MPPMCL for scheduling issues below the technical minimum is unfounded, the relevant extract of the letter issued by the CEA to the Appellant is as follows:

*"It is therefore opined that while the PPA between MPPMCL and JPVL is silent on the issue of 'Technical Minimum', however, in terms of the 4th Amendment of IEGC, OOP read with the function prescribed for SLDC under Section 32(2) (a) of the Electricity Act, 2003, it is the sole responsibility of SLDC to ensure that Thermal Power Station (TPS) operated in an optimum manner while maintaining its 'Technical Minimum' of the plant and ensuring discipline while scheduling power from the plant. In our view, SLDC (in this case MPSLDC) has to comply with the condition of Technical Minimum in giving schedules to the TPS as against the schedules which are below the Technical Minimum of the Units and have been even zero during the day, irrespective of the fact that MPPMCL has requisitioned a lower schedule as it is the prime responsibility of any SLDC to ensure safety and efficiency of participants within the Grid including the TPS in question. SLDC should have ensured that the real time schedule of JPVL remains above the Technical Minimum levels of the on-Bar Units and in case MPPMCL's requisition was not sufficient, the Units should have been given RSD."*

95. In the current situation, the Madhya Pradesh Electricity Grid Code (MPEGC), 2019, could only have applied if a supplementary agreement had been signed between the Appellant and the Madhya Pradesh Power Management Company Ltd. (MPPMCL), this agreement would have enabled the Appellant to claim capacity charges.

96. However, no such agreement was reached, and as a result, MPPMCL is not liable to pay capacity charges for the Appellant's plant, which was placed under Reserve Shutdown (RSD) due to scheduling below the technical minimum.

97. The Appellant also failed to resolve the dispute regarding the bills raised by not adhering to the dispute resolution mechanism in the Power Purchase Agreement (PPA), the Appellant sought to include the Madhya Pradesh State Load Despatch Centre (MPSLDC) in the resolution process, but this was untenable, as MPSLDC was not a party to the PPA.

**Submissions of the Respondent No. 3 (MPPTCL)**

98. The counsel submitted that the DOP of the Madhya Pradesh Electricity Grid Code (MPEGC), 2019, lacked a specific provision for Reserve Shut Down (RSD) of Independent Power Producers (IPPs) with part capacity tied to beneficiaries, the answering Respondent complied with the DOP's requirements by providing feedback to the Regulatory Commission and subsequently filing Petition No. 33 of 2022, seeking modifications to the MPEGC 2019 DOP to align it with the provisions of the Indian Electricity Grid Code (IEGC).

99. Respondent Commission has disposed of the Petition No. 33/2022 vide order dated 12.10.2022 with following directions in Para 32:

*“ 32. From the aforesaid, it is observed that Section 86(1)(h) read with Section 79(1)(h) of the Electricity Act 2003, mandates that State Electricity Grid Code should be consistent with the Grid Code specified by the Central Commission. Further, Indian Electricity Grid Code (IEGC) provides for methodology for a generator to go for reserve shut down (RSD) and that provision of amendment in PPA before resorting to RSD has not been provided in the IEGC. Whereas, MP Electricity Grid Code provides for amendment in PPA before a generator can resort to RSD. Therefore, it is to be inferred that the aforesaid provision in MP Electricity Grid Code is not consistent with the provision in IEGC and that there is a need to align the provision related to RSD in MP Electricity Grid Code with that in IEGC. Accordingly, the Commission is of the view that Appendix-I of DoP in MP Electricity Grid Code should be suitably amended which is annexed with this order as Appendix I (i). The provisions as amended shall become effective from the date of this order.*

*With the above observations and directions, the subject petition is disposed of.*

***First Amendment to Detailed Operating Procedure (Appendix-I):***

***I. Title of the Detailed Operating Procedure Appendix-I is replaced as under:***

*“Detailed Operating Procedure for Backing Down / RSD for the State Generating Stations / IPPs having 100% / partial tied up capacity with MPPMCL/Discoms.”*

**II. Clause 1.3 of the Detailed Operating Procedure - Appendix I is replaced as under:**

*“The first amendment to DOP (Appendix-I) shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission”*

**III. Clause 3 of the Detailed Operating Procedure Appendix-I is replaced as under:**

*“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensees in the state, State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and IPPs wherein 100% / partial installed capacity is tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial / contracted capacity is determined / adopted by the Commission.”*

100. Following the amendments, Independent Power Producers (IPPs) with part capacity tied to MPPMCL are allowed to place their units under Reserve Shut Down (RSD) if power is scheduled below the technical minimum, however, this provision is only applicable from the date of the order, i.e., 12.10.2022.

101. The counsel submitted that the Respondent No. 2 accepted the Declared Capacity (DC) of Independent Power Producers (IPPs) from June 2020 to October 2020 based on the Detailed Operating Procedure (DOP) of the Indian Electricity Grid Code (IEGC), 2010.

102. However, IPPs with part capacity tied to MPPMCL became eligible to place units under Reserve Shut Down (RSD) due to power scheduling below the technical minimum only after the order dated 12.10.2022, Billing and payment between the Appellant and the beneficiary are commercial matters governed by existing rules, regulations, and the Power Purchase Agreement (PPA), in which the Answering Respondent has no involvement.

103. The issue of applying Reserve Shut Down (RSD) provisions under the Detailed Operating Procedure (DOP) of MPEGC 2019 has already been adjudicated by the Regulatory Commission in Petition No. 33 of 2022, filed by the Answering Respondent.

104. The Commission, in its order dated 12.10.2022, provided appropriate directions, Independent Power Producers (IPPs) with part capacity tied to Respondent No. 1 are eligible to place their units under RSD due to scheduling below the technical minimum, effective from the date of the order—12.10.2022, there is no longer any ambiguity regarding the DOP's applicability from this date onward.

### **Analysis and Conclusion**

105. After hearing all the parties at length and examining the documents in detail, the Issue that has emerged is the scheduling of power below the

Technical Minimum as against the contracted capacity declared by MPPMCL, the Appellant claims that during the period June 2020 to October 2020, it had kept its units under the Reserve Shut Down (in short “RSD”) in terms of the provisions under MPEGC, 2019 and DOP issued on 29.01.2020.

106. During the aforesaid period, the Declared Capacity (in short “DC”) of the Bina TPP was 100%, and the same was accepted by MPSLDC, despite this, MPPMCL has not provided even the Technical Minimum schedule to it.

107. Accordingly, the Appellant claimed Capacity Charges for the Period of June 2020 to October 2020 which have formed a dispute in this matter.

108. The submission of the MPPMCL was that as per DOP approved by the Commission, MPPMCL had not entered into a Supplementary Agreement with the Appellant for the acceptance of RSD, therefore, the provisions of RSD and compensation mechanism did not apply to the Appellant.

109. On the contrary, the Appellant argued that that MPPMCL delayed signing the Supplemental PPA, and this delay was ignored by the MPERC in its impugned order, it is a settled principle of law that a party cannot benefit from its own wrongdoing.

110. It is, therefore, important to note certain dates having relevance to this issue, as under:

- a. MPEGC 2019 Notification: Issued on 12.06.2019, with the DoP approved on 29.01.2020.



- b. Initial Legal Steps: The Appellant filed I.A. No. 244 of 2020 seeking directions for MPPMCL to incorporate DoP provisions in the PPA, which was affirmed by this Tribunal.
- c. Delayed Supplemental PPA: Between 25.09.2019 and 03.03.2022, the Appellant issued multiple communications urging MPPMCL to sign the Supplemental PPA.
- d. MPPMCL's Stance: MPPMCL initially sought approval for an amended PPA but later withdrew, citing its challenge to the IEGC Fourth Amendment in the Delhi High Court. MPERC, on 07.09.2020, dismissed MPPMCL's petition.
- e. Subsequent Petition: The Appellant filed Petition No. 26 of 2022 to compel MPPMCL to execute the Supplemental PPA, align the PPA with MPEGC 2019 and DoP, and seek compensation for scheduling delays.
- f. MPERC's Order (25.08.2022): MPERC directed MPPMCL to draft the Supplemental PPA, but despite numerous requests by the Appellant, MPPMCL failed to comply between August 2022 and January 2023.

111. None of the above facts were denied by the Respondents.

112. The Appellant submitted that the Supplementary PPA was signed in November 2023, only after the Appellant initiated legal proceedings under Sections 142 and 146 of the Electricity Act, the MPERC, in its order dated 08.06.2023 in Petition No. 9 of 2023, had already directed MPPMCL to sign the agreement with the Appellant.

113. We are satisfied that the delay in signing the Supplementary PPA rests with the MPPMCL and therefore, MPPMCL cannot be allowed to gain benefit from its own wrongdoing, this principle is supported by various judgments of the Supreme Court, in *Nirmala Anand v. Advent Corporation (P) Ltd.*, (2002) 5 SCC 481, the Court has ruled that individuals cannot exploit situations created by their own misconduct for personal advantage.

*“45. The appellant has always been ready and willing to perform her part of the contract at all stages. She has not taken any advantage of her own wrong. The appellant is in no way responsible for the delay at any stage of the proceeding. It is the respondents who have always been and are trying to wriggle out of the contract. The respondents cannot take advantage of their own wrong and then plead that the grant of decree of specific performance would amount to an unfair advantage to the appellant.”*

114. Further, the MPPMCL raised the issue of amicable resolution of the dispute under the terms of the PPA, the Appellant argued that efforts to amicably resolve the issues are documented, beginning with an Energy Bill from the Appellant on 08.07.2020, MPPMCL raised a Bill Dispute Notice on 06.10.2020 for invoices from June to August 2020, over three months later, the Appellant responded on 15.10.2020, asserting that MPPMCL's failure to dispute the invoices earlier rendered them conclusive.

115. Also argued that the dispute resolution procedure under Article 13 of the PPA is directory, not mandatory, and therefore MPPMCL's objection, alleging the

Appellant failed to exhaust the prescribed remedy, should be rejected, to support this position, the following judgments were referred:

- i. *Visa International v. Continental Resources (USA) (2015) 13 SCC 610,*
- ii. *Ravindra Kumar Verma v. BPTP Ltd. 2014 SCC OnLine Del 6602,*
- iii. *Union of India v. Baga Brothers 2017 SCC OnLine Del 8989*
- iv. *Sarvesh Security Services v. Managing Director, DSIIDC 2018 SCC OnLine Del 7996*

116. We agree with the submissions of the Appellant, the MPPMCL has also failed to initiate the dispute resolution process within the time prescribed in the PPA, as per **Article 10.7.1** if a party does not dispute a Monthly Bill or Supplementary Bill raised by the other party within 10 days of receiving it, such bill shall be taken as conclusive for payment of the Bill amount and any dispute concerning the same shall be raised as per Article 13 of the PPA.

117. Being aggrieved due to non-payment, the Appellant filed Petition No. 28 of 2022 before the State Commission seeking the release of payment due against the invoice raised for June to October 2020 by the Appellant in terms of the Power Purchase Agreement (in short "PPA") dated 05.11.2011 executed between the parties.

118. The State Commission vide its order dated 25.8.2022 passed the Impugned Order deciding that:

*"16. In view of the above provisions under DOP, for the IPP to take a unit under RSD wherein 100% installed capacity is not tied up with*

*MPPMCL, they have to appropriately factor in the appropriate provisions in the PPA and obtain its approval by the Commission. However, this amendment in the PPA has yet to be done in the present case.*

*17. With all observations above, the subject petition is not found maintainable hence, disposed of and dismissed.”*

119. Considering that the Petition of the Appellant was rejected on maintainability, it is important to note the background of the case for examining the case:

- i. On 12.06.2019, the Commission notified MPEGC, 2019.
- ii. Regulations 1(3) read with 1.4.4 mandate that MPEGC 2019 shall apply to every **User** who is connected to the Intra-State Transmission System of Madhya Pradesh.
- iii. Regarding Technical Minimum Schedule for the operation of thermal power stations, Regulation 8.8 of the MPEGC, 2019 provides as under:

**8.8 Technical Minimum Schedule for operation of Thermal Generating Stations:**

- 1) The technical minimum for operation in respect of a unit or units of a State Sector Generating Station having 100% installed capacity tied up/contracted with M.P. Power Management Co. Ltd./Discoms of MP through long term PPA and whose tariff is determined by MPERC, shall be 55% of

MCR loading or installed capacity of the unit/(s) of such generating station.

- 2) The generating stations like SSGS which are having 100% installed capacity tied up/contracted with M.P. Power Management Co. Ltd./Discoms of MP through long term PPA and whose tariff is determined by MPERC may be directed by SLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries.
- 3) Where the SSGS having 100% installed capacity tied up/contracted with M.P. Power Management Co. Ltd./Discoms of MP through long term PPA and whose tariff is determined by the MPERC, is directed by the SLDC to operate below normative plant availability factor but at or above technical minimum; the SSGS may be compensated depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by SLDC.

**Provided that:**

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4) In case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined by the Commission, **such generating station/company may have to appropriately factor in the above provisions in the PPAs** entered into by it with M.P. Power Management Company/Discoms for sale of power, in order to claim compensations for operating at the technical minimum schedule.

- iv. Hence for a category of generating stations which are having partial capacity tied up with MPPCL/distribution companies of MP this separate provision was carved out.

#### **Detailed Operating Procedure (DOP)**

- v. This regulation was to become effective from the approval of detailed operating procedure to be put up by MP SLDC after consultation with stakeholders.
- vi. Vide order dated 29.01.2020, the Commission approved and issued Detailed Operating Procedure (DOP) **for backing down of coal based Generating Units and mechanism for compensation due to part load operation and multiple start/ stop of units.** Regarding the applicability of DOP, clause-1.3 of Appendix-I of DOP provides as under:

“The DOP shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and **Reserve Shutdown (RSD)** are made by way of amendment, whichever is later”.

- vii. Clause 2 of the Appendix-I of DOP provides objective as under:  
“Objective: The objective of this DOP is to lay down (i) the methodology for identifying the generating stations or units thereof to be backed down in specific grid conditions such as low system demand, during regulation of power supply, incidence of high renewables etc.; (ii) the procedure for taking generating units under RSD; (iii) the role of different agencies; and (iv) the data requirements, etc.”
- viii. Clause 3 of Appendix-I of the DOP provides Scope of the DOP as under:  
*“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensee in state and State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and for IPPs as per provisions in PPA with MPPMCL, whose tariff is determined/adopted by the MPERC. In case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall*

*have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or **taking unit under RSD**".*

- ix. In accordance to clause 1.3 of Appendix-I of DOP, the DOP shall come into force with effect from the date of its approval by the Commission or date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and Reserve Shutdown (RSD) are made by way of amendment, whichever is later. Further, clause 3 of the aforesaid Appendix-I stated that in case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or **taking unit under RSD**".

120. MP SLDC filed a separate petition No. 33 of 2022 on 04.05.2022, seeking modifications to certain clauses in the Madhya Pradesh Electricity Grid Code (MPEGC) to align it with the Central Electricity Regulatory Commission's (CERC) Grid Code.



121. Respondent No.1, MPERC acknowledged the inconsistencies in its order dated 12.10.2022 and amended the MPEGC to align with the Indian Electricity Grid Code (IEGC), particularly regarding the process for a generator to initiate a reserve shutdown (RSD).

122. It is also important to note the views of the SLDC, M.P. State Load Despatch Center i.e. Respondent No. 3, filed through an affidavit dated 29.06.2022, as part of its Reply on the admissibility of the subject petition mentioning the following:

- a) MPSLDC has filed Petition No. 33 of 2022 before this Commission for clarification/modification in Clause-1.3 & Clause 3 of Appendix-1 of the Detailed Operating Procedure ("DoP") of MPEGC in order to bring forth the clarity with respect to the applicability of Reserve Shut Down ("RSD").
- b) In absence of clarity with respect to the applicability of RSD as per DoP of MPEGC 2019, MPSLDC had to resort to the procedure laid down as per DoP of Indian Electricity Grid Code ("IEGC").
- c) MPPMCL has not considered the DC JP Bina Thermal Power Station in the monthly State Energy Account issued by SLDC during the period of dispute.
- d) **The reliefs sought by the Petitioner under the provisions/rules/regulations are sub-judice in Petition No. 33 of 2022** thereby rendering the instant Petition premature.

123. As the issue/relief sought by the Appellant in this case is linked with the petition No. 33/2022 which was filed by MPSLDC seeking a review of Regulation

and DOP in regards to Reserve Shutdown, it is necessary that this Tribunal examine the issue in context of petition No. 33/2022 and order passed by the Commission in that case, the relevant extract of the order 33/2022 is as under:

*“The petitioner State Load Dispatch Centre (SLDC) filed subject Petition for amendment in Clause 1.3 and Clause 3 of Detailed Operating Procedure (Appendix I) for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Aux. Energy Consumption and Secondary Fuel Oil Consumption issued by the Commission vide order dated 29th January’ 2020.*

*2. Earlier, the petitioner had filed a petition No. 10/2022 before the Commission seeking some modification / clarifications in some of the provisions of Detailed Operating Procedure (DOP) for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Auxiliary Energy Consumption and Secondary Fuel Oil Consumption.*

*3. During the proceeding of aforesaid petition No. 10/2022, the Commission had observed that the clause 8 of the DOP (Appendix-I) provide ‘Review of the Procedure’ which stated that “the Detailed Operating Procedure shall be reviewed in Operation & Coordination Committee of MP after one year of its approval and Recommendations of the Operation & Coordination Committee, if any, shall be submitted to the Commission for needful.”*

*4. In view of the above, vide order dated 30.03.2022, the Commission had disposed of the Petition No. 10/2022 with the following observations and directions:*

*“Petitioner was asked if detailed Operating Procedure (DOP) has been reviewed by the Operation and Coordination Committee (OCC) as stipulated in Clause 8 of the DOP. Petitioner informed that Operation and Coordination Committee has not been approached yet in this matter. Therefore, petitioner was advised to approach first to OCC and ensure comprehensive review of the DOP so that all necessary amendments in DOP are placed together before the Commission for consideration. Petitioner agreed to approach the Operating and Coordination Committee for review of DOP and thereafter, if necessary, to approach the Commission for consideration and directions in this matter. Accordingly, this petition stands dispose of. However, the fees deposited with this petition shall be adjusted against a fresh petition if any, filed by the petitioner in this matter.”*

*5. In compliance to the above directives of the Commission, the matter of amendment / clarification in some of the provisions of DOP of MPEGC had been discussed in the 81<sup>st</sup> Operating and Coordination Committee (OCC) Meeting of MP held on 4th April' 2022.”*

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*“Comments of SLDC –*

*As per Section-86 (h) of Electricity Act-2003, State Grid Code shall be consistent with the Central Grid Code i.e. IEGC. All the provisions of Grid Code and Detailed Operating Procedures for implementation of various provisions of Grid Code are for secure operation of the Integrated Grid.*

*The Indian Electricity Grid Code and M.P. Electricity Grid Code have been specified only to ensure the safe and secure operation of the Integrated Grid and impartial treatment has been given to all the users of the Grid. The safe, secure & reliable operation of the Integrated Grid is at top most priority in Electrical Sector.*

*In case of any discrepancy in regulations of State Grid Code and Central Grid Code / CEA Regulations, the provisions of Central Grid Code / CEA Regulations shall be applicable for ensuring safety of National Grid, as per chronology of applicability of provisions of Grid Codes.*

*MP SLDC has made Appendix-I of DOP of MPEGC applicable w.e.f. the date of notification of DOP of MPEGC i.e. 29<sup>th</sup> January, 2020. The monthly State Energy Accounts (SEAs) have been prepared considering the applicability of Appendix-I from the date of notification of DOP by the State Commission.*

***It is gathered that MPPMCL has obtained the legal advice from the Advocate General of MP on the applicability of provision of taking Generating Unit (s) under RSD of Appendix-I of DOP of MPEGC. The Commission may kindly take into cognizance the legal opinion of Advocate General of MP and directives of CEA vide letter dated 18.04.2018, while deciding the instant petition.***

*The MPPMCL while submitting comments on the Supplementary Agenda-1, has ignored the legal opinion of the Advocate General of MP and directives of CEA.*

*The proposal of SLDC is to align the DOP of MPERC consistent with the DOP of IEGC and to avoid mis-interpretation of the provisions by the State Grid users for their commercial benefits.”*

124. From the above, it is seen that MPSLDC informed the Commission that it has gathered that MPPMCL has obtained legal advice from the Advocate General of MP on the applicability of the provision of taking Generating Unit (s) under RSD of Appendix-I of DOP of MPEGC, the Commission may kindly take into cognizance the legal opinion of the Advocate General of MP and directives of CEA vide letter dated 18.04.2018 while deciding the instant petition.

125. MPSLDC also informed the Commission that the MPPMCL while submitting comments on the Supplementary Agenda-1, has ignored the legal opinion of the Advocate General of MP and directives of CEA, SLDC proposes to align the DOP of MPERC consistent with the DOP of IEGC and to avoid misinterpretation of the provisions by the State Grid users for their commercial benefits.

126. The Central Electricity Authority vide letter No. CEA/Thermal/TPM-1/Misc/709 dated 18.04.2018 has opined as follows:

“It is therefore opined that while the PPA between MPPMCL and JPVL is silent on the issue of ‘Technical Minimum’, however, in terms of the 4th Amendment of IEGC, DOP read with the function prescribed for SLDC under Section 32(2) (a) of the Electricity Act, 2003, it is the sole responsibility of SLDC to ensure that Thermal Power Station (TPS) operated in an optimum manner while maintaining its ‘Technical Minimum’ of the plant and ensuring discipline while scheduling power from the plant. In our view, SLDC (in this case MPSLDC) has to comply with the condition of Technical

Minimum in giving schedules to the TPS as against the schedules which are below the Technical Minimum of the Units and have been even zero during the day, irrespective of the fact that MPPMCL has requisitioned a lower schedule as it is the prime responsibility of any SLDC to ensure safety and efficiency of participants within the Grid including the TPS in question. **SLDC should have ensured that the real time schedule of JPVL remains above the Technical Minimum levels of the on Bar Units and in case MPPMCL's requisition was not sufficient, the Units should have been given RSD."**

127. Additionally, the State System Operator, SLDC mentioned that all the provisions of MPEGC and IEGC are consistent, but there is some inconsistency in the DOP of both the Grid Codes due to oversight by SLDC while preparing the DOP.

128. It is important to note here the relevant provisions of the principal Act i.e. the Electricity Act, 2003:

*Section-79 (1)(h) of Electricity Act, 2003 specifies that the Central Commission shall specify Grid Code having regard to Grid Standards. **Section-86 (1) (h) of Electricity Act, 2003 specifies that the State Commission shall specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of Section-79.***

129. Thus, all the provisions of the DOP of MPEGC should be consistent with the provisions of the DOP of IEGC, the submissions of the SLDC are noted in the above-referred order of the State Commission as:

*“21) All the provisions of MPEGC and IEGC are consistent, **but there is some inconsistency in the DOP of the both the Grid Codes due to oversight by SLDC while preparing the DOP.***

*Section-79 (1) (h) of Electricity Act, 2003 specifies that the Central Commission shall specify Grid Code having regard to Grid Standards. Section-86 (1) (h) of Electricity Act, 2003 specifies that the State Commission shall specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of Section-79.*

***Thus, all the provisions of DOP of MPEGC should be consistent with the provisions of DOP of IEGC.”***

130. The State Commission also noted as under:

*22) It is to submit that now there is only one Integrated Grid in the country i.e. National Grid. All the provisions of Grid Code such as Planning Code, System Operation Code, Protection Code, Metering Code, security aspects, data exchange, Schedule & Despatch etc. are for safe, secure & reliable operation of the Integrated Grid. The Grid security is always considered on top most priority in the Electrical Sector. If the provisions of State Grid Code are inconsistent with the provisions of Central Grid Code, there would always be threat to the Grid security of the Integrated Grid of the*

*nation. Any inconsistency between the provisions of DOP of State Grid Code and Central Grid Code may cause complications in commercial settlement between State Load Despatch Centre and Western Regional Load Despatch Centre.*

*If different Codes are followed for Protection settings, Metering, planning of transmission network, Schedule & Despatch Procedure, Compensation Mechanism etc. at State and Central level, the smooth operation of the Integrated Grid can never be ensured. **Consistency in DOP of both the Grid Codes is essential for commercial settlement and also ensuring impartial and equal treatment with the Grid entities located within and outside the State.***

131. The MPERC vide its decision in petition No 33/2022, thereafter, concluded:

*From the aforesaid, it is observed that Section 86(1)(h) read with Section 79(1)(h) of the Electricity Act 2003, mandates that State Electricity Grid Code should be consistent with the Grid Code specified by the Central Commission. Further, Indian Electricity Grid Code (IEGC) provides for methodology for a generator to go for reserve shut down (RSD) and that provision of amendment in PPA before resorting to RSD has not been provided in the IEGC. Whereas, MP Electricity Grid Code provides for amendment in PPA before a generator can resort to RSD. **Therefore, it is to be inferred that the aforesaid provision in MP Electricity Grid Code is not consistent with the provision in IEGC and that there is a need to align the provision related to RSD in MP Electricity Grid***



***Code with that in IEGC. Accordingly, the Commission is of the view that Appendix-I of DoP in MP Electricity Grid Code should be suitably amended which is annexed with this order as Appendix I (i). The provisions as amended shall become effective from the date of this order.***

132. Undisputedly, the provision of the State DOP read with the State Grid Code was inconsistent with the IEGC notified under section 79 of the Act, as also observed by the State Commission and the MPSLDC.

133. Hence the question of law before us is whether the State Commission is right in rejecting the petition of the Appellant after admitting in its order dated 12.10.2022 that provisions in regards to the Reserve Shutdown (RSD) in MPEGC were not consistent with the IEGC, also whether the Appellant is entitled to the compensation during the intervening period of 29.1.2020 to the 12.10.2022 due to the Reserve shutdown as the Appellant placed its machine under RSD during the intervening period with the concurrence of MPSLDC.

134. It is a settled principle of jurisprudence that there should not be any gap in law or a judgment, for the intervening period, considering the Commission's decision vide its order dated 12.10.2022 in Petition No. 33 of 2022, the separate proviso regarding RSD for generating stations having partial capacity tied up mentioned in Regulation 8.8 of MEGC was bad in law.

135. Thus, there is clearly a gap in the regulation and the subsequent decision of the State Commission vide the Impugned Order dated 25.08.2022 and further, its failure to rectify this also vide Order dated 12.10.2022 passed in 33 of 2022.

136. The decision to place its machine on RSD from June to Oct 2020 was taken by the Appellant as MPPMCL was not giving a schedule corresponding to technical minimum and this decision was taken in consultation and concurrence of MPSLDC, a statutory body having the role and functions as per the Electricity Act, 2003.

137. As per Section 32 of the Electricity Act, 2003, the State Load Despatch Centre **shall be the Apex Body** to ensure integrated operation of the power system in a State, inter-alia, vested *with the responsibilities as below-*

*“The State Load Despatch Centre shall-*

*(a) Be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State.*

*(b) Monitor grid operations.*

*(c) Keep accounts of the quantity of electricity transmitted through the State grid.*

*(d) Exercise supervision and control over the intra-State transmission system.*

*(e) Be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.”*

138. As part of its functions, MPSLDC in its submission in petition no 33 of 2022 stated that **“23) The standard practice adopted all over the country that in case of any inconsistency in the provisions of Indian Electricity Grid Code and State Electricity Grid Code, the provisions of the Indian Electricity Grid Code shall be adhered to, else it would be the violation of Section-86 (1) (h) of the Electricity Act, 2003.”**

139. The Commission has also mentioned at some of the places in the State Grid Code /Balancing & Settlement Code etc. that in case of any inconsistency the provisions of CERC and CEA shall be followed. (para 23 of the Order dated 12.10.2022)

140. It is also observed by the State Commission that:

*“The SLDC has been considering the provisions of DOP of IEGC since date of notification of DOP of MPEGC for Scheduling and Despatch for day ahead and real time of operation. **As per Section-86(h) of Electricity Act 2003, State Grid Code should be consistent with the Central Grid Code. This is the chronology of applicability of provisions of Grid Codes, in case of any discrepancy provisions of Central Grid Code shall be followed for security of Integrated Grid of the Nation which is also as per regulation 8.8 (6) of MPEGC.**”*

141. MPSLDC also submitted before the State Commission that the last line of clause 1.3 of DOP regarding RSD for the partially capacity generator is being mis- interpreted:

*“In the last sentence of the above clause, “Reserve Shutdown (RSD)” means compensation due to multiple stop/start of unit(s). Some of the State Grid entities are mis-interpreting this clause for their benefit.*

*This mis-interpretation has been causing dispute between Buyer and Seller (IPPs). In the absence of absolute clarity as per the provision of Electricity Act-2003, sometimes MPPMCL has been submitting requisition for a few hours only to the IPPs having part capacity tied up with the beneficiary.*

*There is no regulatory provision existing except provision in DOP of MPEGC (Clause-7.2) for minimum 8 hours’ technical minimum schedule to the Generator on revival of Generator after RSD. The MPPMCL has been requisitioning power for a few hours to revive Generator from RSD and Generators do not agree for intermittent schedule that too for 1 or 2 hours on the ground of threat to the safety of the machines.*

*Buyer and Seller have to arrive at a consensus considering the difficulties of each other for minimum run time, technical minimum schedule and safety of the Generator, else MPPMCL has to ensure technical minimum schedule for minimum 8 hours after revival of unit (s) from RSD, allowing the HOT, WARM and COLD start up time as per declaration of the Thermal Generator, in line with Clause-7.2 of DOP of MPEGC. **SLDC in compliance to the provisions of Electricity Act-2003 and Grid Codes, has to function impartially and judiciously and cannot act as per will of one of the State Grid entity.***

***This is causing problems for smooth Scheduling & Despatch under day ahead as well as real time of operation. It is to submit that NTPC never revive their unit from RSD unless technical minimum schedule is ensured by beneficiaries of that particular generating unit.***

142. MPSLDC allowed Reserved shutdown to such generators including the Appellant's generating stations, the same view has also been taken by Central Electricity Authority in its advice dated 18.4.2018:

*"It is therefore opined that while the PPA between MPPMCL and JPVL is silent on the issue of 'Technical Minimum', however, in terms of the 4th Amendment of IEGC, DOP read with the function prescribed for SLDC under Section 32(2) (a) of the Electricity Act, 2003, it is the sole responsibility of SLDC to ensure that Thermal Power Station (TPS) operated in an optimum manner while maintaining its "Technical Minimum" of the plant and ensuring discipline while scheduling power from the plant. In our view, SLDC (in this case MPSLDC) has to comply with the condition of Technical Minimum in giving schedules to the TPS as against the schedules which are below the Technical Minimum of the Units and have been even zero during the day, irrespective of the fact that MPPMCL has requisitioned a lower schedule as it is the prime responsibility of any SLDC to ensure safety and efficiency of participants within the Grid including the TPS in question. SLDC should have ensured that the real time schedule of JPVL remains above the Technical Minimum*

*levels of the on Bar Units and in case MPPMCL's requisition was not sufficient, the Units should have been given RSD.*

***As the condition of Technical Minimum is globally accepted and followed in the operation of a Thermal Generating Unit for operational efficiency, economy and avoiding the machine from stressed conditions, the same need to be complied in this case also.***

***Therefore, in accordance with Section-73 of the Electricity Act, 2003, CEA placed this advice for the stakeholders including Appropriate Government and the Appropriate Commission to comply with the provisions of the Indian Electricity Grid Code for efficient safe, secure and economic operation of the Thermal Units."***

143. It is clear that the original DOP approved by the State Commission was bad in law as it was inconsistent with the IEGC, even the Operating & Coordination Committee Forum of MP has agreed that the DOP of MPERC should be consistent with the DOP of IEGC for safe, secure & reliable operation of the Integrated Grid of the nation.

144. Thus, the State DOP read with the State Grid Code is inconsistent with the principal law i.e. the Electricity Act, 2003 (Sections 79 and 86 of the Act), it is a settled principle of law that ***"In case of conflict between Act and Regulations, the provisions of Act prevail"***.

145. The Supreme Court in *State of T.N. v. P. Krishnamurthy*, (2006) 4 SCC 517: 2006 SCC OnLine SC 339 has held that:

“**20.** In *St. John's Teachers Training Institute v. Regional Director, NCTE* [(2003) 3 SCC 321] this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10)

“10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. ***The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it.***”

146. Further, in *Kerala SEB v. Thomas Joseph*, (2023) 11 SCC 700 : 2022 SCC OnLine SC 1737, the Supreme Court has ruled as under:

“**70.** At this stage, it is apposite to state about the rule-making powers of a delegating authority. **If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared *invalid*. If a rule supplants any provision for which power has not been conferred, it becomes *invalid*.** The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, a rule must be in accord with the parent statute, as it cannot travel beyond it.”

147. Although MPERC acknowledged that the previous DOP was incorrect as it is not aligned with the IEGC as per the principal law, the Electricity Act, 2003, and amended its Appendix-I on 12.10.2022, it erroneously held that the amended provisions should apply only from the date of its order (12.10.2022).

148. The IEGC allows a generator to undergo a Reserve Shutdown (RSD) without requiring an amendment to the Power Purchase Agreement (PPA), a provision which shall prevail over the State MPEGC without any amendment to the PPA, the State Commission should have corrected the inconsistency from the date the inconsistency has occurred.

149. The Supreme Court in *Bhupinder Singh v. Unitech (2023) SCC Online SC 321* has held that no one should suffer harm due to a court's actions and in such situations, the court has a duty to correct any wrongs caused to a party by its own decisions or actions, the relevant extract is as follows:

*“9. As per the settled position of law, the act of the Court shall prejudice no one and in such a fact situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. The maxim actus curiae neminem gravabit shall be applicable. As per the settled law, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the Court.”*



150. The Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India and Ors.* 2019 8 SCC 416, emphasized that statutory legal fiction must be given full effect and carried to their logical conclusion:

*“95. In Hindustan Cooperative Housing Building Society Limited v. Registrar, Cooperative Societies and Anr. (2009) 14 SCC 302, this Court in dealing with legal fictions generally quoted a large number of authorities thus at paragraph 17:*

*“17. “13. ... It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in Levy, Re, ex p Walton [(1881) 17 Ch D 746: (1881-85) All ER Rep 548 (CA)]: (Ch D p. 756)*

*‘... When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.’ After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate...”*

151. We are satisfied that the DoP framed by MPERC is statutory and must be enforced as part of statutory contracts, as confirmed by Article 16.21 of the PPA, MPERC, in its Amendment Order, has acknowledged that the provisions of MPEGC, 2019 must align with the IEGC, accordingly,

it should have been aligned from the date the provision in the IEGC was notified or the notification of the said DOP, whichever is later.

152. As also admitted by MPSLDC that ***“in case of any discrepancy provisions of Central Grid Code shall be followed for security of Integrated Grid of the Nation which is also as per regulation 8.8 (6) of MPEGC”***, it allowed the subject generating station to operate in accordance with the IEGC.

153. Although, MPSLDC requested the Commission that as the previous approved DOP was not consistent with the IEGC and procedure issued there under, the modification proposed now may be implemented retrospectively as during the intervening period MPSLDC allowed generator to avail RSD in cases where MPPMCL has not provided schedule consistent with technical minimum.

154. The State Commission rejected the prayer ignoring the express provisions of the Act and the IEGC which have an over-riding effect over the MPEGC.

155. We are satisfied that the Impugned Order passed by the State Commission is unjust and irrational, and deserves to be set aside.

156. The Appellant has taken the decision to avail RSD so as to ensure the safety and useful life of the generating station, in consultation and concurrence of the statutory body i.e. MPSLDC which acts in accordance with functions assigned to it as per the Electricity Act, 2003 to ensure grid security, and as per the law.

157. Therefore, the Appellant is entitled to its claim and the Impugned Order is set aside.

**ORDER**

For the foregoing reasons as stated above, the Appeal No. 247 of 2023 has merit and is allowed.

The Impugned Order dated 25.08.2022 is set aside and the Bill Dispute Notice dated 06.10.2020 and 15.10.2020 issued by MPPMCL are quashed.

MPPMCL is directed to make payment of Rs 117.24 Cr on account of capacity charges outstanding against the invoices raised for the period June to October 2020 along with Late Payment Surcharge within three months from the date of this judgment.

Pending IAs, if any, shall stand disposed of.

**PRONOUNCED IN THE OPEN COURT ON THIS 23rd DAY OF OCTOBER, 2024.**

**(Virender Bhat)**  
**Judicial Member**

pr/mkj

**(Sandesh Kumar Sharma)**  
**Technical Member**