IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.130 OF 2019

Dated: 26.05.2025

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

In the matter of:

Maharashtra State Power Generating Company Limited
'Prakashgad'
Plot No. G-9, Bandra (East)
Mumbai – 400 051 … Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**
Through its Secretary
World Trade Centre,
Centre No. 1, 13th Floor,
Cuffe Parade, Mumbai – 400 005

2. **Maharashtra State Electricity Distribution Company Ltd.**
Through its Managing Director
Prakashgad, Plot No. G-9,
Bandra (East), Mumbai – 400 051 … Respondents

Counsel for the Appellant(s) : M.G. Ramachandran, Sr. Adv.
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Sneha Singh
Deepshikha Kumar
Nishtha Goel for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, Maharashtra State Power Generating Company Limited is engaged in business of generation of electricity and operates eight thermal power stations in the State of Maharashtra. It also operates 26 hydel generating stations owned by Water Resources Department, State of Maharashtra on lease basis. It is a generating company as defined under Section 2(8) of the Electricity Act, 2003. It has assailed the order dated 03.12.2018 passed by 1st Respondent – Maharashtra Electricity Regulatory Commission in Petition No.336 of 2018 which was for review of its order dated 12.09.2018 passed in case No.196/2017. Vide the impugned order, the Commission has partly allowed the Review Petition but has disallowed certain claims of the Appellant.

2. The 2nd Respondent – Maharashtra State Electricity Distribution Company Limited (in short "MSEDCL") is the Distribution Licensee in the State of Maharashtra and gets supply of Electricity from the generating stations owned and operated by the Appellant.

3. On 04.02.2011, the Commission framed Maharashtra Electricity Regulatory Commission (Multi-Year Tariff) Regulations, 2011 (hereinafter referred to as "Tariff Regulations, 2011") for determination of tariff. Subsequently, the Commission framed Maharashtra Electricity Regulatory Commission (Multi-Year Tariff) Regulations, 2015 (hereinafter referred to as "Tariff Regulations, 2015") on 08.12.2015 for determination of tariff.

4. In terms of the Tariff Regulations, 2015, the Appellant filed petition No. 196/2017 before the Commission for approval of final true-up for Financial Year (FY) 2015-16 and FY 2016-17, provisional true up for FY 2017-18 and revised Aggregate Revenue Requirement (ARR)/Tariff for FYs 2018-19 and 2019-20. The petition was disposed of by the Commission vide order dated 12.09.2018 thereby disallowing certain expenses claimed by the Appellant.

5. The Appellant felt that the said order dated 12.09.2018 of the Commission suffers from some errors apparent on the face of record and

accordingly filed a Review Petition bearing No.336/2018 on following specific aspects: -

> "
> *(i) Computation of Interest on Working Capital (IoWC) for FY 2016-17 to FY 2019-20;*
> *(ii) Consideration of actual Interest on Working Capital (IoWC) as 'Nil' in True Up of FY 2016-17;*
> *(iii) Non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli TPS (including Units 6&7) in FY 2015-16 and Parli Units 6 & 7 (including Unit 8) in FY 2016-17;*
> *(iv) Double deduction of loss on foreign exchange variance in O&M expenses approved for FY 2015-16;*
> *(v) Double deduction of provision for doubtful advances;*
> *(vi) Non approval of Employee Cost under other comprehensive income;*
> *(vii) Target Availability for Uran GTPS for FY 2018-19 and FY 2019-20;*
> *(viii) Disallowance of additional Capitalization in FY 2015-16, FY 2016-17 and FY 2017-18; and*
> *(ix) Water Shortage at Paras and Chandrapur in FY 2017-18."*

6. The Review Petition was decided by the Commission vide impugned order dated 03.12.2018 whereby the Commission allowed some of the claims

made by the Appellant in the Review Petition and thereby modified its earlier order dated 12.09.2018. However, the Commission either disallowed or did not consider the contentions/claims of the Appellant on following aspects: -

> "
>
> *(i) Computation of Interest on Working Capital (IoWC) for FY 2016-17 to FY 2019-20;*
>
> *(ii) Consideration of actual Interest on Working Capital (IoWC) as 'Nil' in True Up of FY 2016-17;*
>
> *(iii) Non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli TPS (including Units 6&7) in FY 2015-16 and Parli Units 6 & 7 (including Unit 8) in FY 2016-17;*
>
> *(iv) Non approval of Employee Cost under other comprehensive income;*
>
> *(v) Disallowance of additional Capitalization in FY 2015-16, FY 2016-17 and FY 2017-18; and*
>
> *(vi) Water Shortage at Paras and Chandrapur in FY 2017-18."*

7. The Appellant has, thus, challenged the order dated 03.12.2018 of the Commission in this appeal on the above noted points/aspects.

8. We have heard learned senior counsel appearing on behalf of the Appellant and the learned counsels appearing for the Respondents. We have

also perused the impugned order as well as Written Submissions filed by the learned counsels.

Our Discussion and Analysis:

Issue No.(i): Computation of Interest on Working Capital (IoWC) for FY 2016-17 to FY 2019-20.

9. The Commission, while quoting from its earlier order dated 12.09.2018, has observed in the impugned order on this issue as under:-

> *"8.8 The Commission has taken a conscious decision, which has been well-reasoned in the impugned MTR Order. MSPGCL has reiterated the same submissions as submitted in the MTR Petition and has not brought any new fact seeking review on the issue. The MYT Regulation, 2015 provides for deduction of payables for fuel while computing the normative working capital. The Relevant extract of Regulation 31.1stipulates as follows:*
>
> > *31.1 Generation*
> > *(a) In case of coal based/lignite-fired Generating Stations, working capital shall cover:-*
> > *(i) Cost of coal or lignite and limestone towards stock, if applicable, for fifteen days for pit-head Generating Stations and thirty days for non-pit-head Generating Stations, for generation corresponding to target*

availability, or the maximum coal/lignite stock storage capacity, whichever is lower;

(ii) Cost of coal or lignite and limestone for thirty days for generation corresponding to target availability;

(iii) Cost of secondary fuel oil for two months corresponding to target availability;

(iv) Operation and Maintenance expenses for one month;

(v) Maintenance spares at one per cent of the opening Gross Fixed Assets for the Year; and

(vi) Receivables for sale of electricity equivalent to forty-five days of the sum of annual fixed charges and energy charges computed at target availability:

minus

(vi) Payables for fuel to the extent of thirty days of the cost of fuel computed at target availability, depending on the modalities of payment

8.9 Considering the fact that MSPGCL does not get any credit for payables of fuel towards cost of coal and have to make advance payment, the Commission has not reduced any amount towards payables for coal while computing the normative working capital requirements. Regulation 31.1 (a) (i) and (ii) provides for the cost of coal to be considered for computing working capital requirements and the Commission has considered the same.

8.10 As the Commission has worked out the Working Capital in accordance with the provisions of MYT Regulations, 2015, the Commission does not find any merit in MSPGCL's arguments for the review and hence rejects the review."

10. The grievance of the Appellant is that the Commission has erred in not considering the legitimate expenditure towards coal cost and railway freight charges which are paid in advance, in computation of working capital. It is submitted that the period of advance payment ought to have been considered for computing the quantum of working capital. It is contended that terms of payment towards cost of coal are decided by coal supply companies and the railway freight charges are decided by the Railways and therefore, are applicable to all coal users. It is submitted that the Appellant has paid 20 days in advance for the coal cost and 15 days in advance for railway freight charges prior to the delivery and, therefore, it had to arrange the working capital in this regard for the period of 20 days/15 days in addition to 30 days of the month of generation. It is argued that such advance payment to be made by the Appellant increases the working capital requirement and, therefore, this ought to have been added to the working capital in view of Regulation 31(1)(vii) of MYT Regulations, 2015. It is pointed out that as per the Fuel Supply

Agreement, advance payments must be made on 1st, 11th and 21st of each month which results in an average of 20 days of advance payment in addition to the two months period needed for the coal procurement process from the date of initiation of procurement upto the date of billing for power generation using purchase of coal and, therefore, the Appellant is entitled to interest on working capital for the duration of such period of advance payment.

11. On behalf of the Respondents, it is submitted that Regulation 31(1)(a)(i) and (ii) provide for the cost of coal to be considered for computing the working capital requirements and since the Appellant does not get any credit payable towards cost of coal and is to make advance payments, the Commission has not reduced any amount towards payables for coal while computing normative working capital requirements. Hence, the Commission has worked out the working capital for the Appellant in accordance with the said Regulations, which cannot be faulted with.

12. Regulations 31 of MYT Regulations, 2015 is material for adjudicating the claim of the Appellant under this issue and is quoted herein below: -

"31. Interest on Working Capital—

31.1 Generation

(a) In case of coal based/lignite-fired Generating Stations, working capital shall cover: —

(i) Cost of coal or lignite and limestone towards stock, if applicable, for fifteen days for pit-head Generating Stations and thirty days for non-pit-head Generating Stations, for generation corresponding to target availability, or the maximum coal/lignite stock storage capacity, whichever is lower;

(ii) Cost of coal or lignite and limestone for thirty days for generation corresponding to target availability;

(iii) Cost of secondary fuel oil for two months corresponding to target availability;

(iv) Operation and Maintenance expenses for one month;

(v) Maintenance spares at one per cent of the opening Gross Fixed Assets for the Year; and

(vi) Receivables for sale of electricity equivalent to forty-five days of the sum of annual fixed charges and energy charges computed at target availability:

minus

(vii) Payables for fuel (including oil and secondary fuel oil) to the extent of thirty days of the cost of fuel computed at target availability, depending on the modalities of payment"

13. Clause (vii) of Regulation 31.1 (a) clearly provides for consideration of payables for fuel depending on the modalities of the payment. The modalities of payment would definitely include both the advance payment as well as the payments for which credit period is allowed to the generator i.e. advance period as well as credit period. It cannot be disputed that advance payments towards cost of coal and railway freight charges are to be paid by the Appellant in terms of the directions issued in this regard by coal supply companies and the railways, which are binding upon the Appellant as well as all the procurers of coal and users of railway services. It is also true that such advance payments to be made by the Appellant increase its working capital requirement. Therefore, when the credit is extended for fuel cost and the corresponding payables are deducted from the working capital, the advance payment made by the Appellant ought to be added to the working capital.

14. We are in agreement with the contentions of the Appellant that cost of arranging the funds for advance payment to be made towards cost of coal and railway freight charges is a legitimate cost to be necessarily incurred by the Appellant which need to be allowed as legitimate expenses. No doubt, clauses (i) and (ii) of Regulations 31.1(a) provide for consideration of cost of coal for computing working capital requirements, it would be preposterous to say that

the Appellant has not incurred any cost towards procurement of coal and railway freight charges even when it has paid these charges in advance as required by the coal companies and the Railways. We are unable to countenance the Commission's view that in case of non-availability of credit, the payables for fuel to be deducted in the working capital requirement should be considered as zero.

15. Therefore, the impugned findings of the Commission on this issue cannot be sustained. We direct that while computing the interest on working capital for the Appellant for FY 2016-17 to FY 2019-20, the period of advance payment made by the Appellant towards cost of coal and railway freight charges has to be considered apart from considering 25 days payables for secondary fuel oil cost.

16. Accordingly, the issue is decided in favour of the Appellant.

Issue No:(ii): Consideration of actual Interest on Working Capital (IoWC) as 'Nil' in True Up of FY 2016-17.

17. On this issue the Commission has, while quoting its earlier order dated 12.09.2018, held as under: -

"Commission's Analysis and Ruling:

9.22 The Commission has already dealt on this issue in the impugned Order and ruled on this issue as below:

> *"5.21.8 The actual IoWC for FY 2016-17 is Rs. 602.78 Crore. As per the provisions to Regulation 31.6, the contribution of delay in receipt of payment to the actual interest on working capital is to be deducted from the actual interest on working capital. The exact details of contribution of delay in receipt of payment to actual interest on working capital is not available. As per the audited accounts, the receivables as on 31.3.2017 are Rs 7627 Crore and the Delayed Payment Surcharge (DPS) in accounts for FY 2016-17 is Rs 1506.67 Crore. The extent of receivables as on 31.3.2017 and DPS for FY 2016-17 clearly indicates that there has been delay in receipt of payment. In the absence of actual impact of delay in receipt of payment to interest on working capital, the Commission has worked out the impact of delay in receipt of payment to interest on working capital based on the DPS for FY 2016-17. However, as the rate of DPS is higher than the working capital interest rate, the Commission has worked out the impact of delay in receipt of payment to interest on working capital on proportionate basis considering the working capital interest rate and DPS rate. Accordingly, the actual IoWC considered by the Commission in the final true-up for FY 2016-17 in accordance with Regulation 31.6……."*

9.23 The argument of MSPGCL that the Commission has not given the methodology of the computations is not correct. The Commission

has explained the computations in the impugned Order. It is stated in the impugned Order that, as the rate of DPS is higher than the working capital interest rate, the Commission has worked out the impact of delay in receipt of payment to interest on working capital on proportionate basis considering the working capital interest rate and DPS rate.

9.24 The Commission has given the treatment in accordance with the MYT Regulations, 2015. The Commission has taken a conscious decision, which has been well-reasoned in the impugned MTR Order. MSPGCL has reiterated the same submissions as submitted in the MTR Petition and has not brought any new fact seeking review on the issue. Therefore, the Commission does not find any merit in MSPGCL's arguments for the review and hence rejects the review."

18. The grievance of the Appellant is that the Commission has erred in deducting the amount received by the Appellant as Delayed Payment Surcharge (DPS) from the interest on working capital for FY 2016-17 and rendered the same as "NIL". It is argued that the delay in receipt of payment of bills by 2nd Respondent – MSEDCL was met by the Appellant through internal sources and not through any borrowing from external sources and, therefore, no deduction ought to have been made in this regard from the interest on working capital requirement of the Appellant for the relevant period. It is argued that deduction of DPS from the interest on working capital requirement

ultimately reduces the ARR which would cost undue burden upon the Appellant and would incentivize MSEDCL to delay payments. It is also argued that the Commission has erred in holding that interest on working capital is a controllable parameter and accordingly, the exercise carried out by the Commission in sharing of variation in normative interest on working capital and actual interest on working capital in accordance with the MYT Regulations, 2015 is incorrect.

19. It is argued on behalf of the Respondents that the contentions of the Appellant are totally misconceived as the Commission had computed actual working capital for true up of FY 2016-17 as "NIL" in accordance with MYT Regulations, 2015 which is demonstrated from table 5-34 in the order dated 12.09.2018 which is quoted hereinbelow: -

"

PARTICULARS	*UNITS*	*LEGEND*	*VALUE*
Actual IoWC as per the audited accounts	*Rs. Crore*	*A*	*602.78*
Actual Delayed Payment Surcharge (DPS) as per the audited accounts	*Rs. Crore*	*B*	*1506.67*

Annual Rate of DPS as per the MYT Regulations, 2015	*%*	*C*	*15.00%*
Rate of IoWC as per the MYT Regulations, 2015	*%*	*D*	*10.79%*
Impact of Delay in Receipt of Payment to Interest on Working Capital	*Rs. Crore*	*E=(B÷C) x D*	*1083.80*
Actual IoWC for true-up in accordance with Regulation 31.6	*Rs. Crore*	*F=A-E, and if A-E*	*0.00*

"

20. Accordingly, it is argued that there is no merit in the submissions of the Appellants on this issue.

21. Since the submissions of the parties on this issue revolve around the interpretation of Regulation 31.6 of MYT Regulations, 2015, we quote the same hereunder: -

> *"31.6 For the purpose of Truing-up for each year, the variation between the normative interest on working capital computed at the time of Truing-up and the actual*

interest on working capital incurred by the Generating Company or Licensee or MSLDC, substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss, as the case may be, on account of controllable factors, and shared between it and the respective Beneficiary or consumer as the case may be, in accordance with Regulation 11 :

Provided that the contribution of delay in receipt of payment to the actual interest on working capital shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be."

22. Perusal of said Regulation clearly reveals that while calculating the actual interest on working capital incurred by generator, the interest incurred due to delay in payments by the procurers is to be deducted. The proviso attached to the regulation envisages that the impact of delay in receipt of payment by generator upon the actual interest on working capital has to be deducted from the actual interest on working capital before sharing of the efficiency gain or efficiency loss, as the case may be. The expression

"contribution of delay in receipt of payment" used in the proviso undoubtedly refers to the delay in receipt of payment by the generator i.e. appellant from the procurer to which it supplies the electricity. Therefore, the Delayed Payment Surcharge (DPS) received by the appellant from the procurer i.e. 2nd respondent in respect of supply of electricity in the FY 2016-17 needs to be deducted from the interest on working capital of the Appellant for the said FY.

23. An artificial distinction was sought to be created on behalf of the Appellant stating that the DPS applies to the period following the due date of invoices issued by the generator to the procurer and, therefore, do not impact the interest on working capital which is provided to cover the cost incurred by the generator from the start of coal procurement i.e. when payment is due to coal company till the due date of receiving payment from the energy procurers. It was sought to be argued that the interest on working capital accrues due to funding requirements for day-to-day operations and is a liability to external debtors whereas the interest (DPS) is levied on delayed payments and serves a distinct purpose and, therefore, both operate in separate time frames and do not overlap each other. The argument appears to be attractive in the first blush but on closer scrutiny, is found to be devoid of any force. There is nothing in the language of Regulation 31.6 or the proviso attached to it to give rise to

such a distinction. As we have already noted herein above that the proviso uses the expression “contribution of delay in receipt of payment”. Since this Regulation refers to computation of interest on working capital for a generator, said expression used in the proviso naturally refers to the delay in payments to be received by the generator. Undoubtedly, the generator has to receive payments from the procurer only, to whom it supplies electricity. Whenever there is delay in payment of electricity bills of the procurer, the generators receive Delayed Payment Surcharge (DPS). Therefore, in view of the proviso to Regulation 31.6, the contribution/impact of DPS to the actual interest on working capital ought to be deducted from the actual interest on working capital while computing the efficiency gain or efficiency loss.

24. Hence, we do not find any error or infirmity in the findings of the Commission on this issue. The issue is decided against the Appellant.

Issue No.(iii): Non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli TPS (including Units 6&7) in FY 2015-16 and Parli Units 6 & 7 (including Unit 8) in FY 2016-17.

25. The contention of the Appellant is that the Commission, while denying the recovery of full Annual Fixed Cost, has failed to consider the grounds

urged by the Appellant i.e. financial adversity as well as acute water scarcity on account of severe drought and scanty rainfall during the monsoon of year 2012-2013 to 2016-17 as also the restrictions imposed by the Government of Maharashtra on water usage for industrial purposes including the operation of thermal power generating units due to which the Appellant was forced to shut down Parli unit for longer duration.

26. We find these submissions made on behalf of the Appellant correct and borne out from the records. Perusal of the impugned order of the Commission clearly reveals that the Commission had simply decided to rely upon its earlier orders dated 30.08.2016 and 03.07.2017 and rejected the contentions of the Appellant saying that the similar issue related to previous financial years is subjudice before this Tribunal in Appeal No.281 of 2017 filed by the Appellant itself against the orders dated 30.08.2016 and 03.07.2017 with regards to the true-up of financials of the Appellant for the FY 2014-15, provisional true-up of the financials for the FY 2015-16 and determination of multi-year tariff for the third control period from FY 2016-17 to 2019-20.

27. We may note here that the said Appeal No.281 of 2017 has been decided by this Tribunal by way of separate judgement of even date. Issue (b) raised in that appeal related to non-approval of full Annual Fixed Cost for Parli

Thermal Power Station and the same has been discussed and answered in the judgement as under: -

"

23. The Commission has observed in both the orders dated 30th August, 2016 and 3rd July, 2017 that water shortage situation has been there since Financial Year 2012-13 and relaxation in terms of recovery of fixed costs and performance parameters could not be a permanent dispensation. It is further stated by the Commission that relaxation on account of water shortage for Parli Thermal Power Station could not be allowed year after year and the Appellant will have to take concrete steps to mitigate the same.

24. Thus, the Commission, on one hand, had acknowledged the fact that the Appellant has been experiencing scarcity of water for its thermal power station and in fact provided relaxation on account of the same to the Appellant in order dated 26th June, 2015 in case No. 15 of 2015 while truing up for the Financial Year 2012-13 and 2013-14, but has refused relaxation to the Appellant while truing up for the Financial Year 2014-15 in the impugned orders. We are unable to countenance the said approach of the Commission. It is not the case of the Commission that water situation had improved in the Financial Year 2014-15 or that scarcity of water in the said Financial Year

was attributable to the Appellant. It is true that in the order dated 26th June, 2015 passed in case No. 15 of 2015, the Commission had, while, granting relaxation in achieving target availability to the Appellant on account of scarcity of water, stated that the order should not be construed as a principle for the future. This observation of the Commission in the said order cannot be made basis for denying relaxation to the Appellant in the Financial Year 2014-15 also if the Appellant otherwise qualifies for such relaxation.

25. We note that Parli Thermal Power Station of the Appellant is situation in Marathwada region of Maharashtra which have been effected on account of severe droughts due to scanty rainfalls during monsoon from the year 2012-13 continuously upto the year 2016-17. This is also manifest from the report titled "Water Conservation and Saving in Agriculture" issued by water resources department, Government of Maharashtra in January, 2019, a copy of which has been filed by the Appellant along with its written submissions. Consequently, there were restrictions imposed by Government of Maharashtra on water usage for industrial purposes including for operation of the Thermal Power Station as a result of which the Appellant was forced to shut down the units of Parli Thermal Power Station for longer duration, which fact is acknowledged by the Commission also in the impugned orders. It is not the case of the Commission or the 2nd

Respondent that the drought in Marathwada was not in natural calamity or that it was attributable to the Appellant or that the same could have been avoided by the Appellant. On one hand, the Commission itself has appreciated the Appellant in achieving normative AVF for Parli Units 6 & 7 due to optimum efforts of the Appellant but on the other hand, the Commission has denied recovery of fixed charges to the Appellant saying that the Appellant was expected to be diligent enough to take measures so as to reduce the impact of water shortage. The Commission has failed to specify the measures which the Appellant was expected to take in this regard and which were not taken.

26. Undisputably, water is a crucial resource for operation of a Thermal Power Station and water requirement for Thermal Power Station is excessively high. It is very difficult to identify an alternate source of water in case of non-availability of water from the specified source for the project. The scarcity of water cannot be equated with the scarcity of coal for the reason that import of coal is an alternative option but making arrangement of water through alternative sources is neither easy nor viable.

27. So far as the observation of the Commission in order dated 30th August, 2016 that the Appellant has not submitted the status of proposed lift irrigation scheme for which in principle approval had been given by the Commission, is concerned, it is to be noted that status of

said scheme was conveyed to the Commission in the Review Petition filed by the Appellant which we quote herein :-

"a. <u>Submitted Status of Majalgaon lift Irrigation Scheme:</u>

i) The proposed Majalgaon Lift Irrigation scheme consists of lifting 150 mm^3 of flood water in rainy season from Godavari River, upstream of Loni Sawangi Barrage and storing it in Majalgaon dam. Out of this 150 mm^3 of water, which is lifted, 60 mm^3 of water is proposed to be supplied to Parli Thermal Power Station through Majalgaon Right Bank Canal of Majalgaon dam. The quantity is inclusive of all types of losses i.e. evaporation, transit, etc.

ii) The Loni Sawangi scheme is useful only if there is sufficient rainfall.

iii) The Status of the Lift Irrigation Scheme (Loni Sawangi lift irrigation scheme) is as follows:

- *On 25th March 2013, the Appellant and Water Resource Department, Government of Maharashtra (WRD) agreed to enter into a Memorandum of Understanding (MoU) for implementation of this scheme. As per the Memorandum of Understanding, the Appellant was required to deposit an amount of Rs. 199.86 crore to GMIDC, Aurangabad in 3 years.*
- *Accordingly, the Appellant has paid the following amount:*

Installment No.	***Amount Deposited***	***Date***
Installment #1	*Rs. 76 Crores*	*26.06.2013*
Installment #2	*Rs. 33 Crores*	*27.07.2014*

Installment #3	*Rs. 33 Crores*	*30.01.2015*
Total	***Rs. 142 Crores***	

- *In order to lift water from Loni Sawangi barrage, 4 pumps of capacity 1265 x 4 = 5060 H.P. for 1st stage and 4 pumps of capacity 2290 x 4 = 9160 H.P. for 2nd stage will be installed. These pumps have been procured by the contractor of WRD, GoM and are available at site.*

- *Third party inspection has been completed.*

- *Excavation for pump house No.1 and 2 has been completed & pumping machinery & pipes have been procured.*

- *Land acquisition for raising main I is in progress and land acquisition for raising main II is in final stage.*

- *A meeting for suspension review of the Majalgaon Lift irrigation scheme and to form a committee for revaluation of the scheme was chaired by Hon. Minister (Drinking Water & Sanitation), Maharashtra State, Mumbai in presence of Hon. Minister (Energy), Maharashtra State, Hon. Minister (WRD), Maharashtra State, and Hon. Minister (Rural Development), Maharashtra State on 22.09.2015 at Mantralaya, Mumbai.*

- *During the meeting it was directed to form a committee chaired by Principal Secretary of WRD for revaluation of Majalgaon Lift Irrigation Scheme. The composition of the committee is as follows:*

Designation of the Officer	***Role***
Principal Secretary (WRD)	*Chairman*
Principal Secretary (Energy)	*Member*
Principal Secretary (Drinking water &	*Member*

Sanitation)	
Chairman & Managing Director (MSPGCL)	*Member*
Chief Engineer (Hydrology Project), Nashik	*Member Secretary*

- *The Committee has conducted 3 meetings on the revaluation of the Majalgaon Lift Irrigation scheme.*

STATUS AFTER THE FILING OF THE APPEAL:

- *The work on the Majalgaon Lift Irrigation Scheme by the WRD was suspended during the revaluation process conducted by a committee constituted pursuant to the directives issued during a meeting on 22.09.2015 at Mantralaya.*
- *The work on the scheme resumed in January, 2020. As per the site visit report of the Superintending Engineer of Water Resource Department dated 11.11.2024* ***[Pages 46-70, WS dated 13.12.2024]****, the project is now expected to be completed by June 2025.*
- *As is generally observed in the case of major irrigation public works projects, the Majalgaon Lift Irrigation Scheme has faced delays due to various challenges, including issues related to project design and land acquisition. The scheme, initiated in 2012, experienced further delays as the activities at the Water Resources Department (WRD), Government of Maharashtra (GoM), were subsequently subjected to revaluation and reassessment by a committee constituted for this purpose.*
- *The Majalgaon Lift Irrigation Scheme was proposed by the GoM following continuous follow-ups by the Appellant for additional water allocation. The project is to be executed by the WRD, GoM, with the Appellant contributing a portion of the cost. On*

26.06.2013, 27.07.2014 and 30.01.2015 the Appellant has already cumulatively deposited Rs. 142 Crores towards the project. The difficulties faced by the WRD, GoM, in executing the project are beyond the control of the Appellant."

28. The Commission has taken note of these steps and has observed in the Review Order dated 3rd July, 2017 that the Appellant has set out various measures proposed for meeting the water requirement from the proposed lift irrigation scheme but has even then denied any relaxation to the Appellant in terms of recovery of fixed cost. It is evident that the difficulties and road blocks faced by water resources department, Government of Maharashtra, in completing the said scheme cannot be attributed to the Appellant and the Appellant is deprived of reaping any benefits of the said scheme despite having paid Rs.142 crores in this regard.

29. Hence, we are unable to sustain the findings of the Commission on this issue. We hold the Appellant entitled to full AFC at actual availability for Parli Thermal Power Station and consideration of actual performers parameters without sharing the gains and losses for the Financial Year 2014-15 also, and accordingly direct so."

28. Nothing has been brought to our notice on behalf of the Respondents which may persuade us to take a different view than we have taken in Appeal No.281 of 2017. Similar contentions, as were raised by the parties in Appeal

No.281 of 2017, have been raised in this appeal also, and therefore, our judgement in Appeal No.281 of 2017 squarely applies to the instant case also.

29. Hence, we set aside the findings of the Commission on this issue and hold the Appellant entitled to full AFC on actual availability for Parli Thermal Power Station and consideration of actual performance parameters without sharing the gains and losses for the FY 2015-16 also.

30. The issue is decided in favour of the Appellant.

Issue No.(iv): Non approval of Employee Cost under other comprehensive income.

31. The grievance of the Appellant is that the Commission has erred in disallowing Rs.58.11 crores accounted for employee costs but shown separately under Other Comprehensive Income as per the provisions of IND – AS 19.

32. The Commission in the impugned order has observed that this amount of Rs.58.11 crores booked in FY 2016-17 is in the nature of provision only and not actually incurred by the Appellant and, therefore, has not been considered for the purpose of computing the gains/losses in O&M expenses.

33. We find that similar issue relating to the provision having been made by the Appellant with regards to the employee related cost and expenses in its books even though not actually paid for in the FY 2014-15 had come up before this Tribunal in Appeal No.281 of 2017 which has been decided vide judgement of even date. In the said judgement, we have held as under: -

> *"12. It is argued on behalf of the Appellant that employee related costs are legitimate expenditure to be incurred by the Appellant in undertaking its activities for generation and sale of electricity. These costs necessarily include, as an important component, contribution to be made for terminal benefits of the employees to the funds maintained for said purpose. Reliance is placed upon the certificate issued by M/s K. A. Pandit Consultants which shows a short fall of Rs.224.46 crores to be contributed as therein. Learned Senior Counsel for the Appellant further argued that in the mid-term review order passed in Case No. 15 of 2015, the Commission has escalated the approved O&M expenses for Financial Year 2013-14 at only 5.72 per cent to approve the O&M expenses for Financial Year 2014-15 in terms of Regulation 45.1 of the Tariff Regulations 2011 whereas increase as per the actuarial valuation of gratuity and leave has been much above the rate of 5.72 percent. It is submitted that the*

amount claimed by the Appellant is required to be allowed towards the revenue requirement of the Appellant to enable the Appellant to meet the contribution as per the actuarial valuation towards the requisite funds to be recovered in the tariff. Referring to the judgement of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission Vs. CESE Limited 2002 8 SCC 715 and the judgement of this Tribunal in Appeal No. 55 of 2013 and batch BSES Yamuna Power Limited Vs. CERC and others decided on 24th March, 2015, it was argued by Learned Senior Counsel for the Appellant that such contribution cannot be considered in any manner as avoidable or controllable.

13. The submissions made on behalf of the Appellant have been strongly refuted on behalf of both the Respondents. It was argued on behalf of the Respondents that the contentions of the Appellant are wholly mis-conceived and the findings of the Commission on this aspect are absolutely justified.

14. Regulation 45.1 of the Tariff Regulations, 2011 is material and is quoted hereinbelow :-

"45.1 Existing Generating Stations

a) The Operation and Maintenance expenses including insurance shall be derived on the basis of the average of the actual Operation and Maintenance expenses for the three (3) years ending March 31, 2010, based on the audited financial statements , excluding abnormal Operation and Maintenance expenses, if any, subject to prudence check by the Commission.

b) The average of such operation and maintenance expenses shall be considered as operation and maintenance expenses for the financial year ended March 31, 2009 and shall be escalated based on the escalation factor as approved by the Commission for the respective years to arrive at operation and maintenance expenses for the base year commencing April 1, 2011.

c) The O&M expenses for each subsequent year shall be determined by escalating the base expenses determined above for FY 2010-11, at the escalation factor 5.72% to arrive at permissible O&M expenses for each year of the Control Period.

Provided that in case, an existing Generating Station has been in operation for less than three (3) years as at on the date of effectiveness of these Regulations, the O&M Expenses shall be as specified at Regulation 46 for New Generating Stations."

15. There is no gainsaying that employee related costs form part and parcel of the O&M expenses. The Regulations provide for a truing up process to bridge gap between the actual expenses at the end of the year and the expenses which had been initially anticipated. However, the Commission is required to carry out prudence check about the O&M expenses claimed by a

generating station at the time of true up of its financials for a particular Financial Year.

16. In the instant case, we find that the Commission had approved the normative O&M expenses for the Appellant for Financial Year 2014-15 in its MYT order 3rd March, 2014 in accordance with the Tariff Regulations, 2011. It is not the dispute that O&M expenses for previous years on the basis of which normative O&M expenses for Financial Year 2014-15 had been approved, included contributions towards the funds maintained for terminal benefits of the employees. Further, it is also admitted position that impact of actuarial valuation claimed by the Appellant was only a provision made in its account books and not actually incurred. Therefore, the Commission did not find it prudent to approve the impact of actuarial valuation claimed by the Appellant.

17. At the same time, the Commission has directed the Appellant to submit provision for impact of pay revision in each year from Financial Year 2013-14 to Financial Year 2015-16 and the actual payments made till Financial Year 2015-16 in its mid-term review petition for financial true up for Financial Year 2015-16 and the Commission shall take a view regarding the shortfall/surplus as on this account at that time.

18. In view of the same, we do not find any error in the findings of the Commission on the aspect under consideration and the same is hereby affirmed. Let the Appellant submit the requisite particulars/documents as sought by the Commission and the Commission shall, upon analyzing them, take a fresh view accordingly."

34. Our findings in the said judgement in Appeal No.281 of 2017 are squarely applicable to this case also and we do not find any reason to take a contrary view.

35. Hence, we remand the issue back to the Commission to be decided after submission of requisite data/particulars by the Appellant with regards to the impact of pay revision in the FYs 2015-16 and 2016-17 also in terms of the directions issued by us in the judgement in Appeal No.281 of 2017. The Commission shall take a fresh view upon hearing the parties again and upon consideration of the data/particulars to be furnished by the Appellant.

36. The issue stands disposed of accordingly.

Issue No.(v): Disallowance of additional Capitalization in FY 2015-16, FY 2016-17 and FY 2017-18.

37. With regards to this issue regarding disallowance of additional capitalization in FY 2015-16, 2016-17 and 2017-18, the Commission has observed in the impugned order as under: -

> *"15.6 The Commission allows the capital expenditure and IDC based on the prudence check on account of any cost over- run or any time over run. The Commission adopted a consistent approach in line with its earlier Orders.*
>
> *15.7 The Commission has verified the actual capitalization claimed by MSPGCL as against the schemes approved by it. The Commission's rationale for approving the capitalization is as below:*
>
> - *DPR schemes (above Rs. 10 Crore each): 100% capitalization approved for all DPR schemes capitalized in the year (individual schemes with cost above Rs. 10 Crore) and where in-principle approval has been granted by the Commission.*
> - *Non-DPR schemes (schemes less than Rs. 10 Crore each): Where some DPR schemes have been capitalised in the Financial Year, up to 20% cost of capitalized DPR schemes have been considered for capitalization of non-DPR schemes. Where there has been no capitalization of any DPR scheme in*

the Financial Year, 50% cost of capitalized non-DPR schemes has been approved.

15.8 This is not an error and the Capex allowances are based on the DPRs approved by the Commission. The disallowances are on account of various counts such as time over run, cost overrun, and in the case of non DPR items it is beyond the limit of 20% of the DPR expenses or purchase of non essential items.

15.9 The Commission has followed a consistent approach and taken a conscious decision in the impugned MTR Order. MSPGCL has not brought any new fact seeking review on the issue. Therefore, the Commission does not find any merit in MSPGCL's arguments for the review and hence rejects the review."

38. The grievance of the Appellant is that the Commission has erred in dis-allowing the additional capitalization cost to the extent of Rs.3.34 crores, Rs.9.44 crores and Rs.36.98 crores or FYs 2015-16, 2016-17 and 2017-18 respectively only on the basis that the costs exceeded the estimated in-principle amount approved earlier by the Commission.

39. It is argued that the in-principle approved cost were only based on estimates and at that time it would not have been possible to predict with absolute accuracy and precision the exact expenditure to be incurred. It is submitted that there are always some deviations in the in-principle approved project cost and actual capital cost incurred and the Commission should have conducted prudence check to consider whether the expenditure in excess of the in-principle approved amount was reasonable. It is submitted that the actual capital cost exceeded the in-principle approved cost only due to higher loan compensation payments required for Chandrapur Unit in FY 2015-16 in pursuance to the orders passed by the Hon'ble Bombay High Court dated 02.03.2015, 03.03.2015 and 04.03.2015 in FA Stamp Nos.155/2015, 213/2015, 184/2015, 209/2015, and 205/2015, respectively. It is contended that the Commission has disallowed the excess cost without conducting any prudence check and, therefore, the Commission's order in this regard cannot be sustained.

40. On behalf of the Commission, it is pointed out that the fact that actual capital cost exceeded the in-principle approved cost due to higher loan compensation in pursuance to the orders of Hon'ble Bombay High Court was not brought to its notice in the Original Petition and was conveyed for the first

time by way of the Review Petition only, and, therefore the same was not considered while passing the impugned Review Order.

41. No error can be found in the order dated 12.09.2018 of the Commission on this issue for the reason that the Appellant had not contended during the hearing of the original petition that the actual capital cost exceeded the in-principle approval only due to the orders passed by the Hon'ble Bombay High Court. Even though, contentions in this regard were raised by the Appellant before the Commission in the Review Petition, the Commission did not find it appropriate to consider the same in review jurisdiction while observing that the appellant has not pointed out any patent error or mistake in the order dated 12.09.2018.

42. Be that as it may, the fact remains that there were certain orders pass by the Hon'ble Bombay High Court in pursuance to which the appellant was required to pay higher land compensation for the Chandrapur Unit in FY 2015-16. We are of the opinion that demands of justices would be met in case the issue is remanded back to the Commission so that a prudence check is conducted upon the claims of the appellant in this regard and a final decision is rendered accordingly.

43. Hence, we remand the issue back to the Commission with the directions to conduct the prudence check upon the claims of the appellant with regards to this issue as noted hereinabove, and render a fresh decision upon hearing the parties, which shall be done within two months from the dated of this judgment positively.

Issue No.(vi): Water Shortage at Paras and Chandrapur in FY 2017-18.

44. The grievance of the Appellant is that the Commission has not taken into consideration the shortage of water at Chandrapur Thermal Power Station and RS Thermal Power Station during the FY 2017-18 as a *force majeure* event.

45. Perusal of the impugned order of the Commission would reveal that the Commission has taken a view consistent with its previous orders stating that the similar issue for FY 2014-15 is pending adjudication before this Tribunal in Appeal No.281 of 2017.

46. We have already noted in our discussion on Issue No.(iii) hereinabove that Appeal No.281 of 2017 has been decided by way of judgement of even date. The relevant portion of the judgement has already been extracted in the discussion under issue No.(iii) hereinabove.

47. Hence, we find it appropriate and in the interest of justice to remand the issue back to the Commission for fresh consideration in the light of our findings on issue No.(b) in the judgement in Appeal No.281 of 2017. We accordingly, direct so. The Commission shall hear the parties again and render a fresh decision on this issue within two months from the date of the judgement positively.

48. We summarize our findings as under: -

Sl. No.	**Issue No. / Issue**	**Our decision**	**In favour of**
1.	**<u>Issue No.(i):</u>** Computation of Interest on Working Capital (IoWC) for FY 2016-17 to FY 2019-20.	The impugned findings of the Commission on this issue cannot be sustained. We direct that while computing the interest on working capital for the Appellant for FY 2016-17 to FY 2019-20, the period of advance payment made by the Appellant towards cost of coal and railway freight charges has to be	Appellant

		considered apart from considering 25 days payables for secondary fuel oil cost.	
2.	**Issue No:(ii):** Consideration of actual Interest on Working Capital (IoWC) as 'Nil' in True Up of FY 2016-17.	We do not find any error or infirmity in the findings of the Commission on this issue.	Respondents
3.	**Issue No.(iii):** Non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli TPS (including Units 6&7) in FY 2015-16 and Parli Units 6 & 7 (including Unit 8) in FY 2016-17.	We set aside the findings of the Commission on this issue and hold the Appellant entitled to full AFC on actual availability for Parli Thermal Power Station and consideration of actual performance parameters without sharing the gains and losses for the FY 2015-16 also.	Appellant

4.	**Issue No.(iv):** Non approval of Employee Cost under other comprehensive income.	We remand the issue back to the Commission to be decided after submission of requisite data/particulars by the Appellant with regards to the impact of pay revision in the FYs 2015-16 and 2016-17 also in terms of the directions issued by us in the judgement in Appeal No.281 of 2017.	Remanded
5.	**Issue No.(v):** Disallowance of additional Capitalization in FY 2015-16, FY 2016-17 and FY 2017-18.	We remand the issue back to the Commission with the directions to conduct the prudence check upon the claims of the appellant with regards to this issue as noted in here above, and render a fresh decision upon hearing the parties, which shall be done within two months from the dated of this judgment positively.	Remanded

6.	**<u>Issue No.(vi):</u>** Water Shortage at Paras and Chandrapur in FY 2017-18.	We find it appropriate and in the interest of justice to remand the issue back to the Commission for fresh consideration in the light of our findings on issue No.(b) in the judgement in Appeal No.281 of 2017. We accordingly, direct so. The Commission shall hear the parties again and render a fresh decision on this issue within two months from the date of the judgement positively.	Remanded

49. The Appeal stands disposed of accordingly.

Pronounced in the open court on this the 26th day of May, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

✓

REPORTABLE / ~~NON REPORTABLE~~

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