

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 281 of 2017

Dated : 26th May, 2025

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

In the matter of:

APPEAL No. 281 of 2017

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 Ld. Sr. Adv.

Ranjitha Ramachandran

Poorva Saigal

Anushree Bardhan

Shubham Arya

Arvind Kumar Dubey for App.

Counsel for the Respondent(s) : Pratiti Rungta for Res. 1

Udit Gupta
Anup Jain
Vyom Chaturvedi
Prachi Gupta
Kalyani Jha
Divya Hirawat
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 the business of generation of electricity and operates eight thermal power stations in the State of Maharashtra. It is a generating company as defined under Section 2(8) of the Electricity Act, 2003 and also operates 26 hydel generating stations owned by water Resources Department on these basis.
2. The First Respondent, State Electricity Commission discharging functions under the provisions of Electricity Act, 2003.
3. The Second Respondent is Maharashtra State Electricity Distribution Company Ltd., is the Distribution Licensee in the State of Maharashtra and gets supply of electricity from the generating stations run by the Appellant.
4. The First Respondent i.e. the Commission framed Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter referred to as "Tariff Regulations 2011") on 4th February, 2011

for determination of tariff. This was followed by Tariff Regulations, 2015 issued by the Commission on 8th December, 2015.

5. The Appellant had filed a petition bearing No. 46 of 2016 before the Commission seeking true up of its financials for the Financial Year 2014-15, provisional true up of the financials for the Financial Year 2015-16 and for determination of Multi Year Tariff (MYT) for the 3rd control period from Financial Year 2016-17 and 2019-20. The petition was disposed off by the Commission vide order dated 30th August, 2016 thereby disallowing certain expenditure as claimed by the Appellant.

6. The Appellant felt that the said order dated 30th August, 2016 of the Commission suffers from error apparent on the face of record and accordingly filed a petition bearing No. 138 of 2016 seeking review of the said order. The Review of order dated 30th August, 2016 was sought by the Appellant on following grounds :-

- i. Non-approval of impact of actuarial valuation of Rs. 225.46 crore in regard to the Employee related cost and expenses forming part of the Operation and Maintenance expenses approved for FY 2014-15;
- ii. Non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli Thermal Power Station in FY 2014-15

and for Parli Thermal Power Station and Parli Unit 6 & 7 in FY 2015-16;

- iii. Disallowance of Additional Capitalisation in FY 2014-15;
- iv. Approach followed in approval of normative availability for Annual Fixed Capacity adjustment in MYT 3rd Control Period;
- v. Auxiliary Energy Consumption approved for Koradi Unit 8, Unit 9 and Unit 10 in the MYT 3rd Control Period;
- vi. Gross Station Heat Rate & Auxiliary Energy Consumption approved for units at Koradi station Unit 5 to 7;
- vii. Consideration of 'other generation related costs' for determination of energy charge
- viii. Status of Uran Gas Thermal Power Station as 'Must Run'
- ix. Non approval of carrying cost on recovery of differential amount of Rs. 254.32

7. The Review Petition was disposed off by the Commission on 3rd July, 2017 thereby allowing some of the claims made by the Appellant and accordingly modified its earlier order dated 30th August, 2016. However, the Commission affirmed its order dated 3rd July, 2017 with regards to the following three disallowances :-

- (a) Non-approval of Impact of actuarial valuation of Rs. 225.46 crore in regard to the Employee related cost and expenses forming part of the Operation and Maintenance expenses approved for FY 2014-15;

- (b) Non-approval of full Annual Fixed Cost at actual availability for Parli Thermal Power Station in FY 2014-15 and for Parli Thermal Power Station and Parli Unit 6 & 7 in FY 2015-16;
- (c) Non-approval of carrying cost on recovery of differential amount of Rs. 254.32 crores

8. Accordingly, the Appellant has assailed the said order dated 3rd July, 2017 of the Commission before this Tribunal in this appeal on the above noted three aspects.

9. We have heard Learned Senior Counsel for the Appellant as well as Learned Counsels appearing for 1st Respondent and 2nd Respondent. We have also perused the impugned order as well as the Written Submissions filed by the Learned Counsels.

Issue (a) Non-approval of Impact of actuarial valuation of Rs. 225.46 crore in regard to the Employee related cost and expenses forming part of the Operation and Maintenance expenses approved for FY 2014-15;

10. In the tariff petition filed by the Appellant before the Commission, it had sought actuarial valuation of Rs.225.46 crores being provision for expenditure with regards to the employee related cost and expenses, even though it was not actually paid in the Financial Year 2014-15. It is the

contention of the Appellant that it was required to contribute substantially higher amount in the Financial Year 2014-15 on account of gap in the funded provision as per the actual valuation and the gap was on account of salary increase awarded as a result of pay revision to the employees which had impact, besides higher wages and salaries as well as the increase in the contribution to be made for terminal benefits. In this regard, the Commission had, while rejecting the claim of the Appellant, observed in the tariff order dated 30th August, 2016 as under :-

“4.24.2 The actual O&M expenses for FY 2014-15 are higher than the normative earlier approved by the Commission, only on account of the pay revision and actuarial variation in FY 2014-15.

*4.24.3 The Commission sought the provision made for impact of pay revision, actual payments made and balance provision for FY 2013-14 to FY 2015-16. In reply, MSPGCL stated that, as against the approved impact of pay revision of Rs. 186.01 crore in FY 2013-14, the actual arrears of FY 2013-14 paid in FY 2014-15 and FY 2015-16 are Rs. 133.90 crore and Rs. 72.36 crore, respectively. The arrears of FY 2014-15 paid in FY 2015-16 are Rs. 82.74 crore. The Commission had approved the provision for pay revision to the tune of Rs. 196.65 crore for FY 2014-15 and Rs. 207.90 crore for FY 2015-16. **The Commission directs MSPGCL to submit the provision for impact of pay revision in each year from FY 2013-14 to FY 2015-16 and the actual payments made till FY 2015-16 in its MTR Petition for final true-up for FY 2015-16. The Commission shall take a view regarding the shortfall/surplus on this account at that time.***

4.23.6 MSPGCL has submitted the actuarial valuation report as on 31 March, 2015. The relevant extract reads as follows:

“Below is the table showing Provision as at 31.03.2015 as per actual salary data received as at 31.03.2015 and report issued on same date 08.09.2015. Expected Provision based on expected salary (salary as at 31.03.2014 + 5% increment) for continuing employees, for new employee”s actual salary.

Difference shows Increase in provision due to salary increase more than expected, this is one of the component of Actuarial Loss due to Experience as reported in Disclosures for Gratuity& Leave respectively, on account of higher salary increase awarded to continuing employees as compare to assumed.”

4.23.7 In the light of the above, the Commission does not find it prudent to approve the impact of actuarial variation as claimed by MSPGCL since it has not been actually incurred. Moreover, the O&M expenses approved in the previous years were also based on the actual O&M expenses for the preceding years, which factored in such contributions.

4.23.8 O&M expenses are controllable parameters under the Regulations. Though the actual O&M expenses are higher than the normative, they have been considered by the Commission for true-up. However, the Commission has not carried out any sharing of efficiency losses as the increase is on account of pay revision, in conformity with the approach adopted in its MTR Order while carrying out the truing-up for FY 2013- 14.

4.23.9 The following Table shows the O&M expenses approved in the Tariff Order, approved in provisional true-up, claimed by MSPGCL and that approved by the Commission for true-up purposes:

Table 4-22: O&M Expenses for FY 2014-15 (Rs. crore)

Station/Unit	Tariff Order	Provisional True-up	MSPGCL Petition	Approved in this
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				Order
<i>Bhusawal</i>	157.58	104.78	101.03	101.03
<i>Chandrapur</i>	471.54	464.11	492.33	492.33
<i>Khaperkheda</i>	195.20	198.21	174.15	174.15
<i>Koradi</i>	205.77	210.76	180.95	180.95
<i>Nashik</i>	197.39	201.86	197.11	197.11
<i>Parli</i>	158.42	144.34	137.6	137.60
<i>Uran</i>	59.37	53.81	57.64	57.64
<i>Paras Units 3 and 4</i>	106.11	105.16	147.66	147.66

Station/Unit	Tariff Order	Provisional True-up	MSPGCL Petition	Approved in this Order
<i>Parli Units 6 and 7</i>	106.11	90.32	112.67	112.67
<i>Khaperkheda Unit 5</i>	95.42	78.70	68.51	68.51
<i>Bhusawal Units 4 and 5</i>	186.97	186.97	142.48	142.48
<i>Hydro</i>	136.11	121.03	112.37	112.37
Sub-Total	2075.99	1960.06	1924.50	1924.50
<i>Provision for Pay Revision</i>	0.00	196.65	218.06	218.06
<i>Impact of Actuarial Variation</i>	0.00	0.00	225.46	0.00
Total	2075.99	2156.71	2368.02	2142.56

4.23.10 The Commission approves the O&M expenses of Rs. 2142.56 crore in the true-up for FY 2014-15. As the Commission has taken the actual O&M expenses, considering that the increase is on account of pay revision, sharing of Efficiency Gains/Losses has not been undertaken.”

11. In the impugned review order dated 3rd July, 2017, the Commission has observed as under :-

“The Commission had approved the normative O&M expenses for FY 2014-15 in its MYT Order dated 3 March, 2014 in accordance with the MYT Regulations, 2011. Those Regulations also provided for a truing up process to bridge the gap between the actual expenses at the end of the year and the expenses which had been initially anticipated. However, truing-up does not mean merely that the expenses as recorded in the audited accounts for the corresponding year are to be allowed without applying prudence check.

While carrying out the prudence check of the actual O&M expenses claimed by MSPGCL, the Commission had held that the claimed impact of actuarial variation was not allowable as it was not actually incurred. The Commission had also ruled that the O&M expenses for previous years, based on which the normative O&M expenses for FY 2014-15 had been approved, included such contributions. MSPGCL stated that the actual increase in O&M expenses in FY 2014-15 was more than had been projected in the earlier Tariff Order. In the normal course, the actual may differ from the normative O&M expenses, but MSPGCL is expected to be well within the normative level for its own financial health. The normative level of O&M expenses cannot be completely ignored in the truing up exercise, or else neither the norms nor the Tariff Order would have much purpose.

Considering the above, and as the normative O&M expenses approved in the MYT Order were based on the actual expenses of previous years, which included such contributions, and the claimed impact of actuarial variation was only a provision in the accounts and not actually incurred, the Commission had not allowed it. There is no error apparent on the face of the record such as would qualify for review.”

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.

Issue (b) Non-approval of full Annual Fixed Cost at actual availability for Parli Thermal Power Station in FY 2014-15 and for Parli Thermal Power Station and Parli Unit 6 & 7 in FY 2015-16;

19. The Appellant is aggrieved by non-approval of full Annual Fixed Cost (AFC) at actual availability for Parli Thermal Power Station in Financial Year 2014-15 as well as for Parli Thermal Power Station and Parli units 6 & 7 in Financial Year 2015-16. The Appellant had contended before the Commission as under:-

“4.3.1 There has been a drought situation in the Marathwada region since FY 2012-13. MSPGCL has tried to run an optimum number of Units as per the water availability at Parli from time to time. While Parli Unit 3 was under continuous shut-down since February, 2013, the remaining Units were taken in service intermittently as per the water availability. By the end of July, 2014, the severity of the water shortage severity increased, with no water at any of the regular sources (i.e., Khadka barrage, Majalgaon Dam and Jayakwadi Dam). Further, pursuant to instructions from GoM regarding reservation of water stocks for drinking purposes only, all the Units at Parli were withdrawn from service from 1 August, 2014 till 2 September, 2014. In the remaining period of FY 2014-15, all Units except Unit 3 were taken into service depending on water availability from time to time. The severe water shortage situation at Parli TPS was communicated to the Commission vide letter dated 6 August, 2014. The Commission may consider the water shortage situation at Parli and allow recovery of full Fixed Charges at actual Availability. The Commission may also consider the actual performance parameters for Parli for computing the normative fuel cost.”

20. On this aspect the Commission observed and held in the order dated 30th August, 2016 as under :-

- 4.3.3. *Regarding the operation of Parli in FY 2014-15, as sought by the Commission, MSPGCL submitted the letters dated 20 June, 23 September and 5 October, 2015 written to the District authorities of Aurangabad citing the shortage of water for power generation at Khadka Barrage and for release of water from Majalgaon and Jayakwadi Dams for continued power generation from Parli. It also submitted the month- wise and Unit-wise number of days of operation and corresponding gross generation and net generation for FY 2014-15.*
- 4.3.4 *Parli Unit 3 was under shut-down for the entire year while Parli Unit 4 was under shut-down for 5 months. The Commission notes that MSPGCL had rationed the available water for power generation among the Units because of which the actual Availability of Parli Units 6 and 7 was higher than the Target Availability of 85%.*
- 4.3.5 *MSPGCL stated that the existing allocation of water is for 29.50 MCM from Majalgaon Dam, Jayakwadi Dam and Khadka Barrage. During the TVS, MSPGCL had proposed the use of sewage water for power generation at Parli from the Nanded Municipal Corporation in addition to the existing water sources. After adequate water becomes available from the existing sources, use of waste water from Nanded city would be stopped so that the treatment of waste water would not be required. The Commission notes that capital expenditure for a Lift Irrigation Scheme for securing adequate water for Parli TPS had been approved earlier. The Commission sought the present status, but it has not been furnished by MSPGCL.*
- 4.3.6 *In the final true-up for FY 2012-13 and FY 2013-14, the Commission had approved the recovery of full Fixed Charges and actual performance parameters for Parli (including Units 6 and 7) considering*

*the water shortage as an uncontrollable factor. However, the Commission does not find it appropriate to follow the same approach in the truing-up for FY 2014-15. The water shortage situation had prevailed from FY 2012-13, and the recovery of full Fixed Charges and relaxation in performance parameters cannot be allowed in such a blanket manner continuously year after year. Being well aware of the persistent water shortage, MSPGCL is expected to be diligent enough to take appropriate measures for reducing the adverse impact of such water scarcity. To some extent, such measures have been taken, thanks to which Parli Units 6 and 7 could achieve their Target Availability. However, MSPGCL has not submitted the status of the proposed Lift Irrigation Scheme for which in- principle approval was given by the Commission. Hence, **the Commission is not allowing full AFC at actual Availability for Parli TPS and consideration of actual performance parameters without sharing of gains and losses, as sought by MSPGCL.***

21. In the review order dated 3rd July, 2017, the Commission observed as under :-

“MSPGCL has construed this to mean that the non-submission of the status of the proposed Lift Irrigation Scheme for meeting the water requirement of Parli TPS was the only reason for not allowing the full AFC, and has set out the various measures proposed for meeting this requirement. However, in the truing up for 2013-14, the Commission had clearly stated that the relaxation allowed for Parli TPS in terms of recovery of Fixed Cost and performance parameters could not be a permanent dispensation. The relaxation on account of water shortage could not be allowed year after year, and MSPGCL would have to take concrete steps to mitigate it.

In the light of the above, the Commission finds no error apparent, oversight or other ground on this aspect of the impugned Order that would satisfy the requirements of Regulation of the Conduct of Business Regulations governing review.”

22. It is argued on behalf of the Appellant that the Commission has erred in not considering that the shortfall in the target availability was due to water scarcity which is a Force Majeure event and indisputably qualified as an uncontrollable factor in terms of Regulation 12.1 of the Tariff Regulations, 2011.

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 situated 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. Submitted Status of Majalgaon lift Irrigation Scheme:

- i) The proposed Majalgaon Lift Irrigation scheme consists of lifting 150 mm³ of flood water in rainy season from Godavari River, upstream of Loni Sawangi Barrage and storing it in Majalgaon dam. Out of this 150 mm³ of water, which is lifted, 60 mm³ 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 $1265 \times 4 = 5060$ H.P. for 1st stage and 4 pumps of capacity $2290 \times 4 = 9160$ 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 & Sanitation)	Member
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.

Issue (c) Non-approval of carrying cost on recovery of differential amount of Rs. 254.32 crores

30. In the order dated 30th August, 2016, the Commission has held the Appellant entitled to recover differential amount of Rs.254.32 crores in six monthly installments but did not allow carrying cost on the same stating that the revision was necessitated by inadequacy in the Appellant's earlier submissions. The Commission had referred to inadequacy of Appellant's submissions in case No. 15 of 2015 concerning Appellant's mid-term review regarding truing up of financials for the Financial Year 2012-13 and 2013-14. In the order dated 19.01.2016 in case No. 108/2015 concerning

review of the MTR Order 26.06.2015 in Case No. 15/2015, the Commission had observed :-

“16. The Commission is of the view that it would not be appropriate to approve at this stage the short recovery due to the inadvertent error arising from the sequence of MSPGCL’s submissions since the MSPGCL Tariff has been revised only recently, 7 months ago and its next MYT Petition is expected to be filed shortly. Moreover, once the data of the Petition as admitted goes into the public domain, it is generally not appropriate to revise it, particularly when that would result in an increase in the ARR. MSPGCL may account for it in its ensuing MYT Tariff Petition, when the Commission would consider it after prudence check...”

25. MSPGCL has also admitted that this excess revenue was recovered in FY 2014-15 and was adjusted in audited accounts of FY 2013-14, since accounts of FY 2013-14 were in the process of finalisation. The Commission observes that any excess recovery in FY2014-15 cannot be adjusted retrospectively in previous audited accounts, i.e. of FY 2013-14. Whatever be the case, any revenue recovered in a particular financial year should be limited to that accounting year, and any retrospective adjustment leads to excess revenue gap/surplus. This anomaly is the result of the reply submitted by MSPGCL in response to data gaps raised by the Commission.”

31. In the order dated 30th August, 2016, the Commission has held as under :-

“3.5.2 The Commission in the MTR Order had approved a Revenue Surplus of Rs. 169.46 crore upon final truing-up for FY 2013-14. In this Order, the Commission has approved a revised Revenue Gap of Rs. 84.86 crore. Hence, the Commission allows the recovery of the

differential amount of Rs. 254.32 crore in 6 equal monthly instalments following this Order. However, since this revision is necessitated by the inadequacy in the MSPGCL's earlier submissions, no carrying cost is being allowed on this amount."

32. Thus, the Commission in the MTR order dated 26th June, 2015 in Petition No. 15 of 2015 had approved revenue surplus of 169.46 crores for the Appellant upon final truing up for Financial Year 2014-15. In the Order dated 30th August, 2016, the Commission has approved a revised revenue gap of Rs.84.86 crores making the total differential amount as Rs.254.32 crores. It is evident that the revision of only 84.86 crores was necessitated in the tariff order dated 30th August, 2016 due to inadequacy of submissions/information on the part of the Appellant. Therefore, at behest, the Commission ought to have denied carrying cost only on the revised additional revenue gap of Rs.84.86 crores approved vide tariff order dated 30th August, 2016. The Appellant ought to have allowed carrying cost on the initial amount of Rs.169.46 crores approved in the MTR order dated 26th June, 2015. Further, in the above quoted order dated 19th January, 2016 passed by the Commission in case No. 108 of 2015 for review of the order dated 26th June, 2015 passed in case No. 15 of 2015, the Commission had

itself mentioned that it would consider the claim of the Appellant regarding short recovery due to inadvertent error arising from the sequence of Appellant's submission, in the true up proceedings in the Appellant's ensuing MYT tariff petition.

33. Hence, the findings of the Commission on this issue cannot be sustained. The same are hereby set aside. We hold the Appellant entitled to carrying cost on the same of Rs.169.46 crores approved vide MTR order dated 26th June, 2015. However, the Appellant shall not be entitled to any carrying cost on the revised amount of Rs.84.66 crores approved vide tariff order dated 30th August, 2016.

34. The issues stand decided accordingly.

35. The summary of our findings are as under :-

Sl. No.	Issue	Findings
(a)	Non-approval of Impact of actuarial valuation of Rs. 225.46 crore in regard to the Employee related cost and expenses forming part of the Operation and Maintenance expenses approved for FY 2014-15;	We do not find any error in the findings of the Commission on the aspect under consideration and the same is hereby affirmed.
(b)	Non-approval of full Annual Fixed Cost at actual availability for Parli	We are unable to sustain the findings of the Commission on this issue. We hold the

	Thermal Power Station in FY 2014-15 and for Parli Thermal Power Station and Parli Unit 6 & 7 in FY 2015-16;	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.
(c)	Non-approval of carrying cost on recovery of differential amount of Rs. 254.32 crores	Hence, the findings of the Commission on this issue cannot be sustained. The same are hereby set aside. We hold the Appellant entitled to carrying cost on the same of Rs.169.46 crores approved vide MTR order dated 26 th June, 2015. However, the Appellant shall not be entitled to any carrying cost on the amount of Rs.84.66 crores approved vide tariff order dated 30 th August, 2016.

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

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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