

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

Appeal No. 113 OF 2022

Dated: 28.07.2025

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

In the matter of:

M/s Jaiprakash Powers Ventures Limited

Through its Authorized Representative

Having its registered office at JA House, 63, Basant Lok,
Vasant Vihar, New Delhi- 110057

... Appellant

Versus

- 1. Madhya Pradesh Electricity Regulatory Commission,**
Through its Secretary
5th 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 Poorv Kshetra Vidyut Vitaran Co. Ltd, Jabalpur,**
Through its Managing Director
Shakti Bhawan, Vidyut Nagar, Rampur,
Jabalpur Madhya Pradesh-482008
- 4. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co Ltd,**
Through its Chief General Manager
Bhopal, Bijli Nagar Colony, Nishtha Parisar,
Govindpura, Bhopal, Madhya Pradesh-462023

5. Madhya Pradesh Paschim Kshetra Vidyut Vitaran Ltd, Indore,
Through its Chief General Manager
GPH Campus, Polo Ground, Indore- 452003 **... Respondent(s)**

Counsel for the Appellant(s) : Mr. S. Venkatesh
Mr. Siddharth Joshi
Ms. Simran Saluja
Mr. Vineet Kumar
Mr. Suhael Buttan
Mr. Anant Singh
Mr. Jatin Ghuliani
Ms. Neha Das
Mr. Abhishek Nangia
Ms. Mehak Verma
Mr. Tushar Srivastava
Mr. Ashutosh Kumar Srivastava
Mr. Jayant Bajaj
Mr. Nihal Bhardwaj
Mr. Isnain Muzamil
Mr. V.M. Kannan

Counsel for the Respondent(s) : Ms. Mandakini Ghosh for Res.1

Mr. Ravin Dubey for Res.2

JUDGEMENT

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

1. The Appellant, i.e., M/s Jaiprakash Power Ventures Ltd. (erstwhile M/s. Bina Power Supply Company Limited) (in short "JPVL" or "Appellant") has filed the present Appeal. The Appellant is hereby challenging the Order dated 07.12.2021 (in short "Impugned Order") passed by the Madhya Pradesh Electricity Regulatory Commission (in short "MPERC" or "State Commission")

passed in Petition No. 39 of 2021 filed by Appellant seeking True Up of the Tariff for FY 2019-20 determined vide Multi Year Tariff Order dated 30.04.2021 (in short “MYT Order”) of its 2x250 MW (Phase I) Coal Based Power Project at Bina, District Sagar, Madhya Pradesh (in short “Jaypee Bina Power Plant”).

Description of the Parties

2. The Appellant, i.e., Jaiprakash Power Ventures Limited, is a Generating Company within the meaning of Section 2 (28) of the Electricity Act, 2003 (in short “Act”), and is a Company incorporated under the provisions of the Companies Act, 1956.

3. The Respondent No.1, i.e., State Commission, is a Statutory Authority constituted under the Electricity Regulatory Commissions Act, 1998, with powers vested in it by Sections 86 and 181 of the Act.

4. The Respondent No. 2, i.e., Madhya Pradesh Power Management Company Limited (in short “MPPMCL”), is a government company as defined under Section 6 (17) of the Companies Act, 1956. Respondent No. 2 is an unbundled entity of the erstwhile Madhya Pradesh State Electricity Board. The Respondent No. 2 is a trading licensee, entitled to undertake transactions of sale and purchase of electricity and vide notification dated 10.04.2012. The Respondent No. 2 has been made the Holding Company of all Distribution Licensees within the State of Madhya Pradesh.

5. The Respondent No. 3, i.e., Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (in short “MPPKVVCL”) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Shakti Bhawan, Rampur, Jabalpur.

6. The Respondent No. 4, i.e., Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (in short “MPMKVVCL”) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Nishta Parissar, Govindpura, Bhopal.

7. The Respondent No. 5, i.e., Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (in short “MPPKVVCL”) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Polo ground, Indore.

Factual Matrix of the Case (as submitted in the Appeal)

8. The Appellant was incorporated on 15.11.1994 under the Companies Act, 1956 as Bina Power Supply Company Limited. Another entity, Jaiprakash Hydro-Power Limited, was incorporated on 21.12.1994, and subsequently, on 23.12.2009, the Appellant’s name was changed to Jaiprakash Power Ventures Limited.

9. On 12.08.2008, the Appellant entered into a Memorandum of Understanding with the Government of Madhya Pradesh for setting up and operating a 5x250 MW thermal power project in two phases, subject to coal

availability. This was followed by an Implementation Agreement on 30.01.2009.

10. A meeting held on 17.06.2009 between the Appellant and representatives of the GoMP/MPSEB recorded in its Minutes that the Appellant agreed to supply 42% of the plant's installed capacity to the State or its nominated agencies for 25 years at the tariff to be determined by the State Commission.

11. Additionally, under the Concessional Energy clause of the Implementation Agreement, the Appellant was required to supply 5% of the net generated power annually to the GoMP or its nominated agency at variable charges determined by the Respondent Commission.

12. On 05.01.2011, a Power Purchase Agreement was executed between the Appellant and MPPMCL for the supply of 65% of the installed capacity of Phase I (2x500 MW) of the Project for 25 years. As per Article 4.8 of the PPA, evacuation of power was to be undertaken through a 400 kV Dedicated Transmission Line to be constructed by the Appellant up to the MPPTCL substation at Bina, with its cost shared between the Appellant and the State Government on mutually agreed terms.

13. Subsequently, on 20.07.2011, another PPA was executed between the Appellant and the Government of Madhya Pradesh for the supply of 5% of net power at variable charges, with MPPMCL nominated to receive the said power, benefiting the three State Distribution Licensees. Unit I and Unit II of

the Appellant's generating station achieved Commercial Operation Date on 31.08.2012 and 07.04.2013, respectively.

14. The Appellant filed Petition No. 40 of 2012 on 16.05.2012 seeking provisional tariff determination under the Tariff Regulations, 2009. By order dated 12.12.2012, the Respondent Commission determined the provisional tariff for Unit I, but not for Unit II, due to its non-synchronization at that time.

15. The Appellant sought reinstatement of the petition and tariff determination under Regulation 46 on 21.02.2013. On 29.06.2013, the provisional tariff for Unit II was determined.

16. Subsequently, the Appellant filed a petition for final tariff determination for FY 2012-13 and FY 2013-14 and a provisional tariff for FY 2014-15 and FY 2015-16.

17. During the pendency of the tariff proceedings, the Respondent Commission, by order dated 04.07.2014, directed the Energy Department, Government of Madhya Pradesh, to resolve the issue concerning the cost of the dedicated transmission line associated with the Bina Thermal Power Project.

18. In response, the Deputy Secretary, Energy Department, by letter dated 13.08.2014, recommended inclusion of the total cost of the 400 kV dedicated double circuit transmission line constructed by the Appellant in the project cost for tariff determination. Based on this and in terms of Regulation 8.3 of

the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012, the Commission, vide Tariff Order dated 26.11.2014, determined the final tariff for FY 2012-13 and FY 2013-14 and provisional tariff for FY 2014-15 and FY 2015-16, subject to true-up.

19. The Commission also allowed the capital cost of the transmission line and held that common facility costs, including those of the transmission system, would be apportioned between Phase I and Phase II once any unit under Phase II achieved CoD.

20. Subsequently, from 2015 to FY 2018-19, the Appellant filed several true-up petitions, claiming O&M expenses for the dedicated transmission line as per applicable MPERC Tariff Regulations. These claims were consistently rejected by the Commission, relying on its initial order dated 03.06.2016 in Petition No. 70 of 2015.

21. Thereafter, on 05.07.2021, the Appellant filed a petition under Sections 62 and 86(1)(a) of the Act read with Regulation 9.4 of the MPERC Tariff Regulations, 2020, seeking true-up of tariff for its 2x500 MW Bina Plant for FY 2019-20.

22. The Appellant sought approval for:

- (a) True-up of capacity charges based on additional capital expenditure of ₹8.62 crore;
- (b) Recovery of electricity duty and energy development cess for

power scheduled to MPPMCL and auxiliary consumption;

(c) Recovery of water charges paid to the State Water Resources Department; and

(d) Recovery of filing fees paid to the Commission.

23. However, on 07.12.2021, the Respondent Commission passed the Impugned Order, rejecting the Appellant's claim for O&M expenses related to the dedicated transmission lines and associated bay. The Commission also did not allow the return on equity to be grossed up with Minimum Alternate Tax (MAT), as claimed by the Appellant.

24. Thus, being aggrieved by the Impugned Order dated 07.12.2021 passed by the MPERC in the Petition No. 39 of 2021, the Appellant has preferred the present Appeal.

Our Observations and Analysis

25. The Appellant has assailed the Order dated 07.12.2021 passed by the MPERC in Petition No. 39 of 2021 and has claimed the following relief in the Appeal before us:

“(a) That this Hon’ble Tribunal may graciously be pleased to allow the present Appeal and accordingly, set aside the Impugned Order dated 07.12.2021 passed by the Respondent Commission in Petition No. 39 of 2021 limited to the Findings challenged in the instant Appeal;

(b) Direct the Respondent Commission to allow the O&M Expenses for the Dedicated Transmission Lines and Bays built by the Appellant as part of the Project.

*(c) Direct the Respondent Commission to allow grossing up of the Base Rate with MAT while claiming the Return on Equity by the Appellant; **AND***

(d) Pass such Order(s) or direction(s) as deemed appropriate by this Hon'ble Tribunal, as the facts and circumstances of the present case may require."

26. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

(i) Whether MPERC was justified in disallowing the Appellant's claim for grossing up the base rate of Return on Equity (RoE) with the applicable Minimum Alternate Tax (MAT) rate under Regulation 35 of the MPERC Tariff Regulations, 2020?

(ii) Whether MPERC erred in disallowing the additional Operation and Maintenance (O&M) expenses incurred by the Appellant towards the Dedicated Transmission Line and Bay?

Issue 1

Whether MPERC was justified in disallowing the Appellant's claim for grossing up the base rate of Return on Equity (RoE) with the applicable Minimum Alternate Tax (MAT) rate under Regulation 35 of the MPERC Tariff Regulations, 2020?

27. The Appellant, M/s Jaiprakash Power Ventures Limited, has assailed the disallowance by the Madhya Pradesh Electricity Regulatory Commission (MPERC) of the claim for grossing up the base rate of Return on Equity (RoE) with Minimum Alternate Tax (MAT) under Regulation 35 of the MPERC Tariff Regulations, 2020, for FY 2019-20.

28. It is the Appellant's specific case that the Commission's reliance on the fact that the Annual Audited Accounts of the Bina Thermal Power Plant reflected 'nil' tax payment during FY 2019-20 is wholly erroneous, misplaced, and contrary to law. The Appellant has argued that the Bina Thermal Power Plant is not a separate corporate legal entity, but merely a division of the Appellant company, and therefore cannot have a separate tax identity.

29. The Appellant contends that Regulation 35 of the 2020 Tariff Regulations mandates that the RoE shall be grossed up with the effective tax rate of the respective financial year applicable to the generating company, and not with reference to the tax outgo of a specific generating station or unit. It is submitted that the expression "generating company" used in Regulation 35 is deliberate and consistent with the statutory definition under the Electricity Act, 2003.

30. The Appellant further submits that the nil tax outgo in FY 2019-20 was the result of losses incurred in other generation projects such as the Nigrie Plant. Hence, the actual profitability of the regulated generation business stands unaffected, and the entitlement to gross-up of RoE with the applicable MAT rate cannot be denied on this basis.

31. In support of this position, the Appellant relies extensively on the judgment dated 22.03.2024 passed by this Tribunal in Appeal Nos. 283 of 2017, 131 of 2018, and 231 of 2018 in Jaiprakash Power Ventures Limited vs. MPERC & Ors. (“JPVL Judgment”), which pertained to the same Appellant and the same generating station. In the said judgment, this Tribunal held that:

“70. From the afore-quoted judgment, it is clear that the tax assessment of the regulated business must be done on standalone basis and if, tax as per the regulations is to be considered on applicable basis, it cannot be considered on actual basis.

71. In the instant case Regulation 22.3 provides that the rate of return on equity shall be computed by grossing up the base rate with the normal tax rate applicable to the Generating Company, as such the MAT as applicable based on the profit/loss statement of the generating company, and the not the actual tax paid, has to be considered for grossing up RoE, as also held by this Tribunal vide the aforesaid judgment.

72. Accordingly, the Appellant’s contention has merit and is allowed, the arguments of the Respondents are declined, the issue

is decided in favour of the Appellant.”

32. The Appellant argues that the MPERC has acted in violation of this binding precedent, and the disallowance of MAT gross-up is thus unsustainable. It is further submitted that this Tribunal, in the earlier decision in the Tata Power Judgment (Appeals No. 104, 105 and 106 of 2012), had already held that RoE must be grossed up based on the applicable tax rate, not the actual tax paid, so as to shield electricity consumers from tax liabilities attributable to unrelated businesses of the licensee or generator.

33. The Appellant submits that disallowing grossing up of RoE with MAT adversely affects the tariff recoverable by the Appellant and will result in a significant drop in the Return on Equity allowed under the tariff. It is further contended that such under-recovery would render the project commercially unviable.

34. Accordingly, the Appellant has prayed that the disallowance of MAT gross-up by the MPERC be set aside, and that the Appellant be held entitled to RoE grossed up with the applicable MAT rate for FY 2019-20, subject to the outcome of the Civil Appeal No. 6562 of 2024 pending before the Hon'ble Supreme Court.

35. Respondent No. 1, the Madhya Pradesh Electricity Regulatory Commission (MPERC), submitted that the Appellant's claim for grossing up the base rate of Return on Equity (RoE) with Minimum Alternate Tax (MAT) for FY 2019-20 was rightly disallowed by the Commission in the Impugned

Order dated 07.12.2021, in strict compliance with Regulation 35 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

36. It was contended that Regulation 35.1 clearly provides that the base rate of RoE *“shall be grossed up with the effective tax rate of the respective financial year”* and that such *“effective tax rate”* shall be determined on the basis of the actual tax paid by the generating company in that financial year, as per the relevant provisions of the Finance Act. The Commission emphasized that the regulation unambiguously links the grossing-up entitlement to the actual tax liability incurred during the relevant year.

37. In the present case, it was undisputed that the Appellant's Annual Audited Accounts for FY 2019-20 reflected nil payment towards income tax or MAT. The Appellant itself submitted the true-up petition under the 2020 Tariff Regulations and, despite this, claimed RoE grossed up with the MAT rate of 17.47%, while simultaneously declaring zero tax paid in its filings. Accordingly, the Commission applied Regulation 35 as it stands and determined that there was no basis for grossing up the RoE, given the absence of any tax paid.

38. The Commission submitted that the Appellant's reliance on the judgment of this Tribunal in Appeal No. 283 of 2017 is misplaced, as that judgment pertained to a period when the MPERC Tariff Regulations, 2015, were applicable, whereas the present matter is governed by the 2020 Regulations.

39. It was further submitted that the Regulations framed by the Commission under Section 181 of the Electricity Act, 2003 have the force of law, and as held by the Hon'ble Supreme Court in ***PTC India Ltd. v. CERC***, their validity and interpretation cannot be questioned before this Tribunal but only through a writ petition under Article 226 or 32 of the Constitution.

40. In support of this, the Commission cited the decision in ***Fatehgarh Bhadla Transmission Co. Ltd. v. CERC, 2023 SCC OnLine APTEL 16***, and the Hon'ble Supreme Court's judgment in ***PTC India Ltd. v. CERC [(2010) 4 SCC 603]***, which held that the validity and scope of regulations framed under delegated legislation can only be challenged in writ proceedings, and that this Tribunal's appellate jurisdiction under Section 111 does not extend to striking down, reading down, or ignoring the plain text of a regulation.

41. MPERC also refuted the Appellant's assertion that the audited tax figures of the Bina Plant were irrelevant. It is submitted that the Appellant itself placed the station-level accounts before the Commission, and the claim for gross-up was based on its own assumptions. It is impermissible for the Appellant to now seek to rely on consolidated financial statements when no such pleadings or arguments were raised before the Commission.

42. Further, the Commission asserted that allowing grossing up of RoE on the basis of a notional MAT rate despite there being no actual tax incidence would amount to granting an unearned windfall to the generator at the expense of consumers, which would be in direct contravention of the

principles of tariff regulation and consumer protection under Sections 61 and 62 of the Act.

43. MPERC also noted that Regulation 35.3 already provides a mechanism for truing up based on actual tax paid and any tax refund received by the generator. Therefore, the regulation already incorporates safeguards to adjust RoE based on real tax outcomes, thereby ruling out the Appellant's demand for an assumed normative tax rate.

44. Lastly, it was submitted that the Appellant's argument that the issue is covered by the JPVL Judgment cannot override the plain provisions of the 2020 Regulations, especially when the JPVL Judgment itself is under challenge before the Hon'ble Supreme Court in Civil Appeal No. 6562 of 2024. In the absence of any stay on the operation of the regulation or the judgment, the Commission acted correctly by adhering strictly to the regulations in force and cannot be faulted for its interpretation.

45. Accordingly, Respondent No. 1 submitted that the Impugned Order is in strict compliance with Regulation 35 of the MPERC Tariff Regulations, 2020, and the disallowance of MAT gross-up is lawful, justified, and not liable to be interfered with.

46. The Respondent No. 2, MPPMCL, submits that under Regulation 35.1 of the 2020 Tariff Regulations, grossing up of RoE is permissible only on the basis of actual tax paid, and not merely on the applicable tax rate. Admittedly, in the relevant financial year, the Appellant has paid nil income tax, and

hence, it is not entitled to any grossed-up RoE.

47. The Respondent points out that permitting grossing up on a presumptive basis where no tax has been paid would amount to unjust enrichment of the generator at the cost of consumers, which is impermissible in law. Reliance is placed on this Tribunal's earlier decision in ***M.P. Power Generating Company Ltd. v. MPERC (2011 SCC OnLine APTEL 153)***, wherein it was held that grossing up with MAT is applicable only when actual tax is paid by the generating company as a whole.

48. Additionally, the Respondent has drawn attention to the distinction between a "generating station" and a "generating company" as defined in Sections 2(30) and 2(28) of the Electricity Act, 2003, arguing that the computation of tax and effective tax rate for the purpose of grossing up RoE must be done at the company level, not at the station level.

49. Since the Appellant-company, as a whole, has not paid any tax, the claim for grossing up RoE is without basis. The Respondent has also informed this Tribunal that the judgment dated 22.03.2024, relied upon by the Appellant in this regard (in Appeals No. 283 of 2017, 131 of 2018, and 231 of 2018), is presently under challenge before the Hon'ble Supreme Court in Civil Appeals No. 6562–6564/2024, and thus, sub judice.

50. The Appellant placed heavy reliance on the findings in the JPVL Judgment, wherein this Tribunal observed that the Commission must allow grossing up of RoE based on the applicable tax regime, and not actual tax

paid.

51. The reliance on the JPVL Judgment has been vehemently countered by the Respondents, stating that the JPVL Judgment was based on 2015 Regulations, whereas the 2020 Regulations cover the present case.

52. The Appellant, however, argued that the 2020 Regulations have been made effective with a retrospective date, which is against the settled principle of law.

53. The Appellant argues that the Tariff Regulations, 2020 were notified on 20.02.2020 and subsequently published in the Official Gazette on 27.02.2020, but were made retrospectively applicable from 01.04.2019. Since the Impugned Order pertains to the 2019-20 period, had the MPERC 2020 Tariff Regulations come into effect from the date of its notification, i.e., 20.02.2020, the Appellant's claim would have been dealt with in terms of MPERC 2015 Tariff Regulations and been covered squarely under the principles laid down in the JPVL Judgment.

54. Further, it is argued that the retrospective application of the 2020 Regulations from 01.04.2019, without providing for the grandfathering of legitimate, previously accepted claims, such as the O&M on DTL under a Section 62 cost-plus regime, effectively nullifies the binding precedent laid down by this Tribunal concerning the same project.

55. It is, therefore, important to note extracts of the two Regulations

corresponding to the period of dispute to adjudicate the contrary claims by the contesting parties. The relevant extracts are quoted as under:

A) 2015 Regulations

“Notified on 01.01.2016

Bhopal, the 21st December, 2015

No. 2267-MPERC.2015- Whereas, the first control period of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2005 (G-26 of 2005) expired on 31st March, 2009, -----

Now therefore in exercise of the powers conferred by section 181(2) (zd) read with section 61 of the Electricity Act, 2003 (36 of 2003) thereof and all other powers enabling it in this behalf, and after previous publication, the Madhya Pradesh Electricity Regulatory Commission, hereby, makes the following Regulations:

CHAPTER - 1

PRELIMINARY

1. Short title and commencement:

1.1 These Regulations may be called the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 (RG-26 (III) of 2015).

1.2 These Regulations shall extend to the whole of the State of Madhya Pradesh.

1.3 These Regulations shall come in force with effect from 01.04.2016, and unless reviewed earlier or extended by the Commission, shall remain in force for a period of three years i.e., upto 31.03.2019.”

B) 2015 Regulations (1st Amendment)

“Gazette Notification Date-15-Mar-2019

No. 342/MPERC/2019 - In exercise of power conferred under section 181(2) (zd) read with Section 61 of the Electricity Act 2003 (No. 36 of 2003), the Madhya Pradesh Electricity Regulatory Commission hereby makes the following amendments in the "Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, (Revision-III), [(RG-26(III)) of 2015]" :-

First amendment to Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) (Revision-III) Regulations, 2015.

1.Short title and Commencement:

1.1 These Regulations shall be called the "Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) (Revision-III) Regulations, 2015" (First Amendment) [ARG-26(I1I) (i) of 2019]

1.2 These Regulations shall come in force from the date of their publication in the "Gazette" of the Government of Madhya Pradesh.

1.3 These Regulations shall extend to the whole of State of Madhya Pradesh.

2.Amendment/Addendum: In Regulation 7 of said Regulations, the following is added after proviso of sub regulation 7.11 namely:

"7.12 Till notification of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations for new control period commencing 1' April' 2019 and determination of tariff by the Commission in accordance with aforesaid Regulations, the generating company shall continue to bill provisionally the beneficiary at the tariff approved by the Commission and applicable as on 31st March' 2019."

C) 2020 Regulations

"Bhopal, the 20th February, 2020

No. 300/MPERC/2020. In exercise of powers conferred by section 181(2)(zd) read with section 61 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, the Madhya Pradesh Electricity Regulatory Commission, hereby, makes the following Regulations, namely:-

**MADHYA PRADESH ELECTRICITY REGULATORY
COMMISSION (TERMS AND CONDITIONS FOR**

**DETERMINATION OF GENERATION TARIFF)
REGULATIONS, 2020 {RG-26 (IV) OF 2020}**

PREAMBLE

The Commission notified revision {RG-26(III) of 2015} of these Regulations from FY 2016-17 to FY 2018-19. Now the Commission decides to specify the principles and methodologies for a control period of five years in line with the control period notified by the Central Electricity Regulatory Commission. Therefore, in order to specify the terms and conditions for determination of Generation tariff for the next control period of five years from FY 2019-20 to FY 2023-24, it is necessary to make these Regulations.

CHAPTER - 1

PRELIMINARY

1. Short title, extent and commencement:

1.1 *These Regulations may be called the "**Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 {RG-26 (IV) of 2020}**"*

1.2 *These Regulations shall extend to the whole of the State of Madhya Pradesh.*

1.3 *These Regulations shall come into force with effect from 01.04.2019, and unless reviewed earlier or extended by the Commission, shall remain in force for a period of five years i.e., upto 31.03.2024:"*

56. From the above, it can be seen that the 2020 Regulations were notified on 20th February, 2020; however, made effective backdated, contrary to the settled principle of law.

57. On the other hand, the 2015 Regulations were amended by the 1st Amendment notified on 15th March 2015, clearly indicating the extension of the 2015 Regulations till the notification of the subsequent Regulations, i.e., for the next control period.

58. Further, the 2020 Regulations were notified on 20th February, 2020; till then 2015 Regulations were in force under the 1st amendment to the 2015 Regulations; however, the 2020 Regulations were made applicable retrospectively, contrary to the settled principle of law.

59. The Hon'ble Supreme Court of India in **Kerala State Electricity Board & Ors. vs. Thomas Joseph Alias Thomas M. J. & Ors.**, CIVIL APPEAL NOS. 9252-9253 OF 2022 (arising out of SLP(C) Nos. 7860-7861 of 2018), (dated 16.12.2022), held as under:

“64. 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.

65. *Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. **The doctrine of ultra vires envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect.** Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

74. *In this context, it would be apposite to refer to a passage from State of T.N. and Another v. P. Krishnamurthy and Others reported in (2006) 4 SCC 517 wherein it has been held thus:-*

“16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

80. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details.

60. In ***Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186 : 2017 SCC OnLine SC 1237***, dated 13.10.2017, the Hon'ble Apex Court has held as under:

“26. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject-matter of discussion in several decisions

rendered by this Court and it is not necessary to deal with all of them—indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

- (i) **The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so.** [*Hukam Chand v. Union of India* [*Hukam Chand v. Union of India*, (1972) 2 SCC 601] and *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana* [*Mahabir Vegetable Oils (P) Ltd. v. State of Haryana*, (2006) 3 SCC 620]].
- (ii) *Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect.* (*Panchi Devi v. State of Rajasthan* [*Panchi Devi v. State of Rajasthan*, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408])
- ”

61. In ***Panchi Devi v. State of Rajasthan*, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408 : 2008 SCC OnLine SC 1924**, dated 18.12.2008, it is held as under:

*“28. The legislature has the authority to pass a law both retrospectively and prospectively within the constitutional parameters. **But, where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But, where no such language is to be found in the statutory provision, the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye law which can operate with retrospective effect (See I.T.O v. Poonnoose: AIR 1970 SC 385).**”*

62. Therefore, in the absence of express statutory authorization, delegated legislation in the form of rules or regulations cannot operate retrospectively. In **ITO vs. M.C. Poonnoose, AIR 1970 SC385** this rule was spelt out in the following terms:

“The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made

*by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. **It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.***”

63. We, therefore, find it just and reasonable, under the settled principle of law, to ignore the retrospective applicability of the 2020 Regulations and therefore, the 2015 Regulations shall be applicable during the period of dispute as per the 1st Amendment to 2015 Regulations.

64. Accordingly, the judgment dated 22.03.2024 passed by this Tribunal in Appeal Nos. 283 of 2017, 131 of 2018, and 231 of 2018 in Jaiprakash Power Ventures Limited vs. MPERC & Ors. (“JPVL Judgment”), covers the present case also.

65. **Therefore, the Appellant’s claim finds full support in the binding precedent of this Tribunal in the JPVL Judgment, which also dealt with this exact issue in the context of the same generating station. The Tribunal, after detailed examination, held in favour of the Appellant on**

this very issue and directed that MAT gross-up must be allowed. It is relevant to note that while the said judgment has been challenged before the Hon'ble Supreme Court in Civil Appeal No. 6562 of 2024, there is no stay in operation, and the judgment continues to bind this Tribunal.

Issue 2

Whether MPERC erred in disallowing the additional Operation and Maintenance (O&M) expenses incurred by the Appellant towards the Dedicated Transmission Line and Bay and whether such disallowance is contrary to the cost-plus tariff framework under Section 62 of the Electricity Act, 2003?

66. The Appellant has assailed the disallowance of its claim for Operation and Maintenance (O&M) expenses incurred in respect of the Dedicated Transmission Line (DTL) and bay associated with the Bina Thermal Power Plant for FY 2019-20, as rejected by the Madhya Pradesh Electricity Regulatory Commission (MPERC) in the Impugned Order dated 07.12.2021.

67. The Appellant submits that the disallowance is arbitrary, legally unsustainable, and contrary to the cost-plus tariff framework under Section 62 of the Electricity Act, 2003. It is submitted that the MPERC failed to consider the Appellant's statutory obligation under Section 10 of the Electricity Act, which mandates generating companies to establish, operate, and maintain dedicated transmission systems for evacuation of electricity from the generating station.

68. The Appellant contends that the Dedicated Transmission Line and Bay were not constructed voluntarily but were set up as a necessary and integral part of the generating project, in fulfilment of obligations under the Power Purchase Agreement (PPA) and the applicable regulatory framework. In this regard, the Appellant relied on the settled position that costs incurred on infrastructure which would otherwise have been borne by the procurer must be fully recoverable through tariff, including not just capital cost but also the O&M costs incurred to maintain the asset.

69. The Appellant strongly relies on the judgment dated 22.03.2024 passed by this Hon'ble Tribunal in Appeal Nos. 283 of 2017, 131 of 2018 and 231 of 2018 ("JPVL Judgment"), which pertains to the same Appellant and same generating station, where this Tribunal categorically held that the Appellant is entitled to recover O&M expenses on DTL and bay in the absence of any contrary provision in the applicable Tariff Regulations.

70. In that judgment, this Tribunal observed that MPERC ought to have allowed the Appellant's claim for O&M on DTL as establishing, operating and maintaining the evacuation system was the responsibility of the Respondent, and had such system been set up by the Respondent, the capital cost and O&M would have been allowed.

71. In the present case, however, only the capital cost has been allowed while O&M has been denied, which is discriminatory and irrational. It is well settled law that the absence of a specific regulation does not preclude the Commission from exercising its regulatory powers under Sections 61 and

86 of the Electricity Act.

72. The Appellant submits that the above judgment continues to bind the parties and the Commission, particularly in the absence of any stay by the Hon'ble Supreme Court on the said judgment. The denial of O&M on the DTL and bay, despite categorical directions from this Tribunal in the JPVL Judgment, amounts to wilful disregard of binding precedent, especially when the Tribunal also directed MPERC to pass consequential orders within four months.

73. The Appellant further submits that the MPERC Tariff Regulations, 2020, which were relied upon by the Commission to reject the claim, were notified on 20.02.2020, published on 27.02.2020, and made retrospectively applicable from 01.04.2019. This retrospective application of the 2020 Regulations resulted in the Appellant's legitimate and previously accepted claim for O&M on DTL being denied, despite the fact that the FY 2019-20 period would otherwise have been governed by the 2015 Regulations, which did not preclude such recovery.

74. The Appellant submits that the retrospective application of the 2020 Regulations, without any grandfathering mechanism, has effectively nullified the binding precedent of this Tribunal in the JPVL Judgment and deprived the Appellant of legitimate cost recovery for past years under a cost-plus regime. Such retrospective reversal of a long-standing and judicially affirmed position is violative of the principles of regulatory certainty, non-arbitrariness, and fairness in tariff determination.

75. Accordingly, the Appellant has prayed that the disallowance of O&M expenses on DTL and bay by the Commission be set aside, and that the Appellant be held entitled to recovery of the same for FY 2019-20 in accordance with the findings laid down by this Tribunal in the JPVL Judgment.

76. However, the Appellant's arguments were challenged by the Respondents, stating that the disallowance of separate O&M expenses for the 400 kV dedicated transmission line is without merit. The State Commission, in the Impugned Order, has rightly rejected the claim for additional O&M costs on the ground that such expenses are already covered under the normative O&M expenses stipulated in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 ("2020 Tariff Regulations").

77. As per Regulations 3.1 (40) and (44) of the 2020 Tariff Regulations, the term "Operation and Maintenance Expenses" includes the expenditure for the dedicated transmission line, and the term "Project" itself encompasses such dedicated transmission infrastructure.

78. Further, Regulation 39.1 read with Regulation 40.2 prescribes normative O&M expenses per MW based on the unit size and year of commissioning, with no provision for a separate or additional allowance for transmission lines. The Commission's determination of O&M expenses for the Appellant's 2x250 MW plant for FY 2019-20 was carried out strictly in accordance with the applicable normative values (₹32.96 lakh/MW), resulting

in an admissible O&M expense of ₹164.80 crore. This amount was found to be in excess of the Appellant's actual O&M expenses as per the Audited Accounts, thereby negating any claim of under-recovery.

79. Indeed, in earlier years as well (FY 2014-15 to FY 2017-18), the normative amounts allowed were consistently higher than the actual expenditures incurred by the Appellant. It is also pertinent to note that the capital cost of the dedicated transmission line has already been included by the Commission in the approved capital cost of the project. Hence, allowing additional O&M for the same would amount to a duplication of recovery and unjust enrichment.

80. As regards the Appellant's belated argument that the 2020 Tariff Regulations ought not to apply to FY 2019-20, the Tribunal notes that such a contention is being raised for the first time in the written submissions and does not form part of the pleadings or arguments advanced before the Commission or during the hearing before this Tribunal. The Appellant itself invoked the 2020 Regulations by filing the true-up petition thereunder, and it cannot now resile from that position.

81. This Tribunal is also bound by the well-settled principle that it cannot read down, rewrite, or invalidate a Regulation framed under Section 181 of the Electricity Act, 2003.

82. The date of applicability of the 2020 Tariff Regulations, as prescribed in Regulation 1.3, is a legislative fact, and any challenge to its retrospectivity

must be made through a petition invoking judicial review. In this regard, reference may be made to the judgments in *Fatehgarh Bhadla Transmission Co. Ltd. v. CERC*, 2023 SCC OnLine APTEL 16, and *Tata Steel Ltd. v. OERC*, Appeal No. 337 of 2023, wherein it was categorically held that the Appellate Tribunal does not have jurisdiction to strike down or read down subordinate legislation.

83. Additionally, the absence of a savings clause in the 2020 Regulations implies that the 2015 Tariff Regulations stood repealed in their entirety without preservation of any rights or claims under them. Thus, the argument that the 2015 Regulations continue to apply is unsustainable.

84. Upon a careful consideration of the respective submissions, we find that the central question turns on the interpretation of Regulations 2(40) and 2(44) of the MPERC Tariff Regulations, 2020, and the effect of their retrospective application to the true-up for FY 2019-20.

85. Undisputedly, the MPERC Tariff Regulations, 2020 were notified on 20.02.2020 and applied retrospectively from 01.04.2019.

86. The retrospective application has already been discussed under the first issue and is rejected under the settled principle of law.

87. Therefore, the issue is covered by the JPVL Judgment, wherein this Tribunal, after full consideration of the same factual scenario and project, held that the Commission was required to allow O&M expenses for DTL, and

further directed MPERC to pass consequential orders within four months. That judgment pertained to periods governed by the 2015 Regulations.

88. While we take note that Civil Appeal No. 6562 of 2024 is pending before the Hon'ble Supreme Court, it is undisputed that no stay has been granted on the JPVL Judgment. Therefore, in the absence of a contrary ruling from the Apex Court or a statutory prohibition, the Tribunal's directions continue to bind the parties and the Commission.

89. In ***GI Hydro Private Limited vs. HERC & Anr.***, Appeal No. 85 of 2022, vide judgment dated 26.05.2025, this Tribunal has also held as under:

"OUR CONCLUSION

198. After an exhaustive review of the submissions, documentary evidence, and the applicable legal principles, this Tribunal reaches the following conclusions:

A. On the Regulatory Framework:

199. The retrospective application of the HERC MYT Regulations, 2012 is found to be legally unsustainable given the principles of crystallization of rights and the non-retroactivity of subordinate legislation without explicit statutory authorization.

.....

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 85 of 2022 has merit and

is remanded to HERC to the extent mentioned in the foregoing paragraphs.

It is hereby ordered that:

1. The impugned tariff order dated 23.02.2022 is set aside to the extent that it relied on the retrospective application of the HERC MYT Regulations, 2012.

.....”

90. Reliance is placed on authoritative judgments of the Hon'ble Supreme Court in KSEB v. Thomas Joseph [(2022) SCC OnLine SC 1728], Federation of Indian Mineral Industries v. Union of India [(2017) 16 SCC 186], and ITO v. M.C. Ponnoose [AIR 1970 SC 385], which uniformly hold that subordinate legislation cannot be given retrospective effect unless the parent statute here, the Electricity Act, 2003 expressly or by necessary implication permits such retrospective operation.

91. In the absence of any such express authorization under Sections 61, 62, 86, or 181 of the Electricity Act, the retrospective enforcement of the 2020 Regulations to deny previously allowable entitlements is submitted to be ultra vires.

92. As it is a settled principle that retrospective application of regulations must not override or nullify vested rights and judicial findings unless the retrospective effect is clearly provided and explicitly intended to defeat such entitlements.

Conclusion

On Issue No. 1

93. The interpretation adopted by the Commission is inconsistent with the normative principles of tariff setting under Section 62 of the Electricity Act, 2003, and disregards the jurisprudence laid down in the Tata Power and JPVL cases. The Appellant was entitled to RoE grossed up with the applicable MAT rate for the relevant year.

94. Accordingly, the disallowance of MAT gross-up made by MPERC in the Impugned Order dated 07.12.2021 is set aside. The State Commission is directed to recompute the RoE for FY 2019-20 after grossing up with the applicable MAT rate of the generating company, and to pass appropriate consequential orders.

On Issue No. 2

95. In light of the foregoing discussion, we hold that the MPERC erred in disallowing the Appellant's claim for recovery of O&M expenses incurred in respect of the Dedicated Transmission Line and bay for FY 2019-20. The disallowance is not supported by an express bar under the applicable regulations and is also contrary to the settled law laid down by this Tribunal in the JPVL Judgment, which continues to hold the field.

96. Accordingly, the disallowance of the O&M expenses by the MPERC is set aside. The Commission is directed to re-determine the Appellant's tariff for FY 2019-20 by allowing O&M expenses for the

Dedicated Transmission Line and bay, and to pass consequential orders.

97. However, in view of the pendency of Civil Appeal No. 6562 of 2024 before the Hon'ble Supreme Court, the present finding shall be subject to the outcome of the said appeal.

98. Considering that the tariff Regulations applicable during the period of consideration, i.e., 2019-2020, are Tariff Regulations 2015 (read with 1st Amendment thereunder), the Petition filed by the Appellant should have been considered under the said Regulations and not under Tariff Regulations 2020 as concluded in the foregoing paragraphs.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 113 of 2022 has merit and is allowed, with the following directions:

1. The disallowance of grossing up of Return on Equity (RoE) with the applicable MAT rate for FY 2019-20, as made by the Madhya Pradesh Electricity Regulatory Commission in the Impugned Order dated 07.12.2021, is set aside.
2. The disallowance of O&M expenses incurred in respect of the Dedicated Transmission Line and bay for FY 2019-20 is also set aside.

3. The State Commission is directed to recompute the Appellant's tariff for FY 2019-20 by allowing:
 - (a) Grossing up of RoE with the applicable MAT rate in accordance with MPERC Tariff Regulations, 2015 and amendments thereunder;
 - (b) Recovery of O&M expenses for the Dedicated Transmission Line and bay as a legitimate component of the cost of supply.
4. The MPERC shall pass consequential orders giving effect to this judgment, within three months.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 28th DAY OF JULY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks