

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
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Case No. 81 of 2011

In the matter of
Petition filed by Maharashtra State Power Generation Company Limited seeking review of Order dated 13th April 2011 (Case No. 107 of 2009) of the Commission in the matter of Approval of Truing up for FY 2007-08 and FY 2008-09 for Parli Unit 6 and Truing up of Paras Unit 3, Annual Performance Review for FY 2009-10 and Determination of Tariff for FY 2010-11 for Parli Unit-6 and Paras Unit-3.

Shri V.P. Raja, Chairman

ORDER

Dated: June 30, 2011

The Maharashtra State Power Generation Company Ltd (MSPGCL) submitted a Petition under affidavit on 30.05.2011, under Section 94 of the EA 2003 & Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, framed under Section 181 of EA 2003, seeking review of the order dated 13th April 2011 of the Commission in the matter of (Case 107 of 2009), “Approval of Truing up for FY 2007-08 and FY 2008-09 for Parli Unit 6 and Truing up of Paras Unit 3, Annual Performance Review for FY 2009-10 and Determination of Tariff for FY 2010-11 for Parli Unit-6 and Paras Unit-3”. The main prayers of the Petitioner are as follows:

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- a) *Admit this petition*
- b) *Review the disallowance in actual fuel cost on account of the technical constraints faced by the units;*
- c) *Review the disallowance in recovery of fixed cost on account of lower availability of the units;*
- d) *Condone any shortcomings in the petition and allow MSPGCL to submit additional information during the course of proceedings on this petition before this Hon'ble Commission; and*
- e) *Pass such further order(s) as it deems just, fit and proper in the facts and circumstances of the case.”*

2. Notice was issued by the Commission on 7th June 2011 intimating the Petitioner that admissibility hearing in the matter would be held on June 29th 2011 at 12:30 hrs in the presence of the Consumer representatives authorised under Section 94(3) of the Act.

3. Accordingly hearing in the above matter was held on 29th June, 2011 at 12.30 hrs. at the Commission's office. Shri C.S. Thotwe, Director (Project), MSPGCL and Shri Ramandeep Singh, Consultant, appeared on behalf of the Petitioner

4. The Petitioner stated that the current review Petition is filed against order dated 13th April 2011 of the Commission in the matter of (Case 107 of 2009) "Approval of Truing up for FY 2007-08 and FY 2008-09 for Parli Unit 6 and Truing up of Paras Unit 3, Annual Performance Review for FY 2009-10 and Determination of Tariff for FY 2010-11 for Parli Unit-6 and Paras Unit-3" under Section 94 of the EA 2003 & Regulation 85 of the MERC (Conduct of Business) Regulations, 2004.

5. The Petitioner submitted that the scope of this review Petition is primarily based on the disallowances made by the Commission in its above mentioned order in Case 107 of 2009, on recovery of actual fuel cost incurred by the Petitioner and non-recovery of fixed costs of the plant on account of non-availability / low PLF due to forced outages.

The Petitioner explained the technical details and evidences to elaborate the root causes and reasons for deviation in the performance parameters of the plant and the factors contributing to its lower availability. Further, the Petitioner explained the action taken by him with the help of the manufacturer / supplier / erector of the said equipment for rectification of the faults and shortcomings, over the course of time subsequent to commissioning of the plant and the factors which adversely affected the operational parameters.

6. After hearing the Petitioner, the Commission referred to Regulation 85 of the MERC (Conduct of Business) Regulations, 2004. The relevant extract of the same is as follows,

“
85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the

exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.

(b) An application for such review shall be filed in the same manner as a Petition under these Regulations.

(c) The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

(d) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.....”

The ground to seek review by the Petitioner is the recovery of fuel cost on actual basis and non-recovery of fixed costs of the plant on account of non-availability / low PLF due to forced outages. These subsequent events cannot be the basis to seek review of the disallowances made by the Commission in its above mentioned order in Case 107 of 2009. It is not that the Petitioner is now placing on record some relevant material which the Commission had not considered while passing the impugned order. There is a serious issue of maintainability of the present review Petition. The review Petition filed by MSPGCL does not fulfil any requirement for the grant of review under the law relating to review proceedings. The Commission is of the view that in the present matter the Petitioner has not brought out any “error apparent on the face of record” nor has it brought any new evidence in the said matter and therefore, the Commission finds that there is no ground for review of its order issued in the matter of Case 107 of 2009. The review Petition has sought to challenge the consciously taken decisions of this Commission. Such decisions can never be corrected in review proceedings. Article 141 of the Constitution of India specifically provides that “the law declared by the Supreme Court shall be binding on all courts within the territory of India”. Hon’ble Supreme Court has held in a catena of judgements that the scope of review proceedings are limited. That decisions cannot be re-heard and corrected by review proceedings. Review cannot be an appeal in disguise. Errors must be such that they stare at the face and should not need detection through detailed and complicated reasoning. Any decision must be corrected in appeal and not in review proceedings. Scope of an application for review is much more restricted than that of an appeal. No such ground for taking a review of the earlier

decision of the Commission has at all been made out by the present review Petitioner. Contentions raised and decided in main proceedings cannot be reopened / re-agitated under the guise of review Petition.

Hence, the review Petition as filed deserves to be dismissed and is hereby dismissed as not maintainable.

Sd/-
(V.P. Raja)
Chairman