

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 148 of 2021

Case filed by Maharashtra Industrial Development Corporation seeking a stay on the Disconnection Notices issued by Maharashtra State Electricity Distribution Company Ltd. in view of non-consideration of the Captive Status of the Petitioner's small hydro plant at Barvi Dam and seeking permission for filing of appropriate proceedings qua determination of the captive status of this small hydro plant

Maharashtra Industrial Development Corporation (MIDC)Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Appearance:

For the Petitioner : Smt Deepa Chavan (Adv.)

For MSEDCL : Shri Rahul Sinha (Adv.)

Coram

Sanjay Kumar, Chairperson

I. M. Bohari, Member

Mukesh Khullar, Member

ORDER

Dated: 25 June, 2022

1. Maharashtra Industrial Development Corporation (**Petitioner**) has filed this Petition on 11 November 2021, under Section 9, Section 42(2), Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 (**EA**) seeking a stay on the Disconnection Notices issued by Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) in view of non-consideration of the Petitioner's Captive Status of the small hydro plant (**SHP**) at Barvi

Dam from the year 2016 to year 2021. The Petitioner has also requested that it may be allowed sufficient time for initiating appropriate proceedings qua determination of the captive status of Barvi small hydro plant.

2. **Petitioner's main prayers are as follows:**

- i. *this Hon'ble Commission be pleased to stay the letter of Demand No. 41337 dated 01.11.2021 read with Electricity Bill for the month of August 2021 dated 13.09.2021, SE/KC-II/HTB/3026 dated 13.08.2021, SE/KC-II/HTB/3325 dated 02.09.2021, SE/KC-II/HTB/3895 dated 02.09.2021, Notice of disconnection under Section 56 (1) of the Electricity Act, 2003 dated 27.08.2021 and Notice of disconnection under Section 56 (1) of the Electricity Act, 2003 dated 28.09.2021 (impugned demands and bill of MSEDCL) in view of non-consideration and declaration of the Captive Status of the SHP at Barvi Dam or otherwise, by the Distribution Licensee, MSEDCL from 2016 to 2021 as directed by law and orders passed by this Hon'ble Commission and issue directions for filing of appropriate proceedings qua determination of the captive status of Barvi SHP.*
 - ii. *this Hon'ble Commission be pleased to grant reasonable and sufficient time to the Petitioner, MIDC, to adopt appropriate proceedings for determination of the Captive Status of Barvi SHP, in accordance with the principles and protocols for determination of Captive Status of a generating Station as laid down by this Hon'ble Commission, to enable the Petitioner, MIDC to avail of a mode of redress by approaching this Hon'ble Commission for declaration of its Captive Status for Barvi SHP, for the impugned period November 2016 to June 2021.*
 - iii. *this Hon'ble Commission be pleased to restrain the Respondent, MSEDCL from raising any demands / bill or taking any coercive steps including disconnection of electricity connection on the ground of non-payment of CSS and ASC, till the captive status of the Barvi SHP is decided by this Hon'ble Commission.*
 - iv. *this Hon'ble Commission be pleased to condone any delay and laches on the part of MIDC in approaching this Hon'ble Commission for declaration of its Captive Status for the period November 2016 to June 2021.*
 - v. *urgent ad-interim relief in terms of prayer clause (a) and (c) above*
3. The Petitioner, in its Petition, has stated that it has established a SHP having capacity of 5 MW at its Barvi Dam and the entire power generated in this SHP, is consumed by the Petitioner through the Dedicated Transmission Lines. It is therefore the claim of the Petitioner that its SHP falls under the category of a Captive Power Plant (CPP) as defined under the EA and hence, no Cross Subsidy Surcharge (CSS) can be levied on the consumption of electricity from such CPP. However, MSEDCL disputed the CPP status of the Barvi dam SHP and raised a demand for Rs. 16.45 Cr. towards CSS and Additional Surcharge for the period between November 2016 to June 2021. The Petitioner requested MSEDCL to review the demand and waive off the old recovery. However, on 28 September 2021, MSEDCL issued disconnection notice under Section 56 (1) of the EA to the Petitioner asking it to pay amount of Rs. 8.85 Cr. On 1 November 2021, MSEDCL

issued Final fifteen (15) days' Disconnection Notice under Section 56 (1) of the EA to the Petitioner.

4. In view of aforesaid circumstances, MIDC filed the present Petition before the Commission seeking an interim protection against the demands raised by MSEDCL. The Petitioner also requested that it may be granted sufficient time to file its Petition for consideration of its captive status for adjudication by the Commission on merits, in the interest of justice.
5. At the E-hearing dated 15 November 2021 held through video conferencing, the Petitioner re-iterated its submission as made out in the Petition. It was also informed that the Petitioner had made a partial payment of around Rs. 7 Cr. against MSEDCL's claims of around Rs. 16 Cr. The Petitioner requested the Commission to grant an interim relief. MSEDCL confirmed receipt of partial payment and further stated that they needed fifteen days' time to file their replies on the Petition. The Commission directed MSEDCL not to take any coercive action, till further Order in the matter. MSEDCL was also directed to file its replies to the Petition within two weeks of the Order and rejoinder, if any, may be filed by the Petitioner within a week thereafter.
6. Vide its reply dated 10 January 2022, MSEDCL objected to the Petition stating that there was no merit in the submission of the Petitioner that being CPP, it was exempted from levy of CSS and Additional Surcharge. MSEDCL cited the Application of Open Access filed by the Petitioner and Power Purchase Agreement (**PPA**) executed between M/s Madhav Vasistha Hydro Power Pvt. Ltd. (**MVHPPL**), developer of the SHP and the Petitioner. MSEDCL claimed that vide the aforesaid PPA, the Petitioner had agreed to purchase entire power generated from the SHP generator i.e., MVHPPL @ Rs. 2.52/Kwh. It is the contention of MSEDCL that such arrangement does not fall under the category of CPP as envisaged under the EA.
7. At the E-hearing dated 11 January 2022 held through video conferencing, the Petitioner stated that MSEDCL replies had been received only a day before the date of E-hearing and hence it needed time to file rejoinder. The Petitioner sought adjournment which MSEDCL did not oppose. Accordingly, the hearing was adjourned by the Commission.
8. At the E-hearing dated 6 May 2022 held through video conferencing, the Petitioner stated that vide Order dated 17 January 2018 in Case No. 23 of 2017, the Commission had set out modalities to be followed by the Distribution Licensees and the entities claiming to be CPPs and in accordance with these modalities, the Petitioner had already submitted year-wise applications along with relevant documents to MSEDCL for establishing its CPP status for all these past years and MSEDCL could decide these applications by 30 June 2022 as per the timeframe directed under the Case No. 23 of 2017. The Petitioner further stated that in case the Commission allowed the Parties to follow the process of CPP status determination as laid down under the Order dated 17 January 2018, there would be no need to argue the matter on merit. The Commission opined that since the Petitioner had already taken requisite steps along with MSEDCL for its CPP status determination as per process stipulated in the Commission's Order dated 17 January 2018, the Petitioner could take a view whether to pursue the present Petition or to withdraw and approach the Commission afresh in case, any dispute arose between the

Parties. The Petitioner stated that it would file its submission, however, MSEDCL should be restrained from taking any coercive action against the Petitioner for recovery of balance amount.

9. Subsequently, on 13 May 2022, the Petitioner filed its application seeking withdrawal of its Petition stating that:

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5) During the pendency of the present Petition, in accordance with the directions contained in Clause(c) of the order dated 17.01.2018 (supra) passed by this Hon'ble Commission, MIDC has duly applied for year wise determination of the Captive Status of its Barvi Dam SHP.

6)Therefore, in terms of the aforesaid order dated 17.01.2018 (supra) passed by this Hon'ble Commission the modalities for year wise determination of captive status of Barvi Dam SHIP of MIDC will have to be followed by both MSEDCL, and MIDC.

Having invoked the steps / modalities in accordance with the said order dated 17.01.2018 (supra) passed by this Hon'ble Commission, the Petitioner, MIDC seeks leave of this Hon'ble Commission to withdraw the present Petition with liberty to pursue the modalities as stipulated in the said order dated 17.01.2018 (supra) passed by this Hon'ble Commission. The Petitioner also humbly prays that MSEDCL be directed not to take any coercive steps against MIDC in view of the modalities to be followed under the said order dated 17.01.2018 (supra) passed by this Hon'ble Commission.”

10. From the submission of the Petitioner, it is seen that the Petitioner, does not want to pursue its present Petition since in accordance with the process stipulated by the Commission in its Order dated 17 January, 2018, it has applied, along with relevant documents/data, for year-wise determination of the Captive Status of its Barvi Dam SHP and MSEDCL has to scrutinize the documents submitted by the Petitioner and decide upon the CPP status of the Petitioner within the timeframe directed in the aforesaid Order.
11. The Petitioner has sought to withdraw its Petition with a liberty to pursue the modalities as stipulated in the Order dated 17 January 2018. The Petitioner has also sought direction to MSEDCL not to take any coercive steps against the Petitioner in view of the modalities to be followed under the said Order dated 17 January 2018.
12. The Commission allows the Petitioner to withdraw its Petition with liberty to approach afresh at appropriate time, if needed. MSEDCL is directed not to take any coercive action and the interim protection directed vide Daily Order dated 15 November 2021 would continue for 15 days after MSEDCL decides the Applications filed by the Petitioner, as per the relevant provisions of the EA and Rules/Regulations made thereunder.
13. Hence, the following Order:

ORDER

1. Case No. 148 of 2021 is disposed of as withdrawn with liberty to approach the Commission afresh at the appropriate time, if needed.
2. Maharashtra State Electricity Distribution Company Ltd. is directed not to take any coercive action against the Petitioner for recovery of its balance claim and the interim protection directed vide Daily Order dated 15 November 2021 would continue for 15 days after Maharashtra State Electricity Distribution Company Ltd. decides the Applications filed by the Petitioner, as per the relevant provisions of the EA and Rules/Regulations made thereunder.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary


MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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