

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Tel. 22163964/ 65/ 69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 22 of 2008

In the matter of
Petition filed by MSPGCL seeking ‘In-principle’ approval for development of
Machhakata & Mahanadi Coal blocks by Mine Developer-cum-Operator through
Tender Route and supply of coal against the Competitive Coal Mining Fees.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Maharashtra State Power Generation Co. Ltd.
Prakashgad, Plot No. G-9
Bandra (East)
Mumbai – 400 051

... Petitioners

ORDER

Dated: August 22, 2008

Maharashtra State Power Generation Co. Ltd., (“MSPGCL”) vide its letter dated February 1, 2008 submitted a draft bid document for the development and operation of the Machhakata and Mahanadi Coal Block proposed to be issued by Mahaguj Collieries Ltd., for appraisal and approval of the Commission. Under its letter dated February 7, 2008 the Commission’s Secretariat advised MSPGCL to follow the procedures specified in the MERC (Conduct of Business) Regulations, 2004 for filing Petitions. Subsequently, MSPGCL filed a Petition on March 3, 2008 seeking in principle clearance with regard to the above bid document.

2. It is averred in the Petition that Mahaguj Collieries Ltd. has been formed by MSPGCL and Gujarat State Electricity Corporation Ltd. (“GSECL”) as a joint venture company as required by the Ministry of Coal, Government of India while allocating the aforesaid coal blocks to MSPGCL and GSECL jointly for captive mining. In terms of the allotment of the coal blocks, the coal so produced is required to be shared by MSPGCL and GSECL in the ratio of 60:40 respectively. 60% coal produced shall be used by MSPGCL for its expansion projects of Koradi and Chandrapur and replacement projects at Parli, Paras, Bhusaval and Koradi. 40% share shall be used by GSECL for their power plants. The present bid document is for the appointment of Mine Development Operator (to extract coal from the mine) since both MSPGCL and GSECL do not have the experience of mining.



3. In the Petition, MSPGCL has tried to justify the jurisdiction of the Commission by stating that the energy charges of the aforesaid MSPGCL plants sourcing fuel from Mahaguj Collieries Ltd., will depend on the coal mining services fee quoted by the bidders in the tender. The Commission is required to consider the aspect of the price of coal procured by MSPGCL used as an input for power generation. The factor of 'safeguarding of consumers' interest' under Section 61 (d) of the Electricity Act, 2003 ("EA 2003") has been relied upon by MSPGCL for satisfying the Commission regarding its jurisdiction. In the present petition MSPGCL has sought *in principle* approval of the Commission on the methodology of determination of price of coal from Mahaguj Collieries Ltd. MSPGCL has also referred to (though not annexed to the Petition) an order dated April 21, 2005 passed by the Central Electricity Regulatory Commission ("CERC") in Petition No.5/2002 to drive home its point on jurisdiction.

4. MSPGCL has prayed as under:

1. *Petitioner respectfully prays the Hon'ble Commission to accord in-principle approval for development of Machhakata & Mahanadi coal blocks by Mine Developer cum Operator through tender route and supply of coal therefrom against the competitive coal mining fees.*
2. *The petitioner prays the Hon'ble Commission to approve the process of getting the coal procurement cost approved in accordance with the Coal Mining Service competitive coal mining fee quoted by the successful bidder.*
3. *Petitioner intends to apprise the Hon'ble Commission with all developments and details pertaining to procurement of coal from the allocated blocks and prays to the Commission to consider all details to avoid any regulatory uncertainty, which will affect the energy charges of the Petitioner from a few of its plants as mentioned earlier in this petition.*
4. *Petitioner prays to condone any shortcoming/deficiencies and allow MSPGCL to submit additional information/data at a later stage as may be required by the Hon'ble Commission.*

5. An admissibility hearing in the matter was held on June 19, 2008. Heard Shri. Ramandeep Singh, Consultant, appearing on behalf of MSPGCL. Besides reiterating the contents of the Petition, he submitted that the mechanism of deriving fuel cost should also come under the purview of tariff determination by the Commission. He submitted that under Section 62 of the Electricity Act, 2003, the Commission is entitled to ask MSPGCL to furnish separate details in respect of generation while determining tariff under Section 62 for supply of electricity by a generating company to a distribution licensee. He submitted that, therefore, MSPGCL has *suo-motu* approached the Commission to undertake scrutiny of the process by which MSPGCL is determining the price of fuel. By this approach MSPGCL was going for competitive bidding and wanted the Commission to have an over view of the process for determination of the fuel price. He referred to the provisions of Clause 4.2 of the "Guidelines



for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” as issued by the Ministry of Power. He submitted that as per the said provision, if the price of the fuel has not been determined by the Government of India, Government approved mechanism or the Fuel Regulator, the same shall have to be approved by the appropriate Regulatory Commission. He submitted that in one case the CERC has constituted a one-member bench to recommend to CERC after proper study the transfer price of lignite in a case filed by Tamil Nadu Electricity Board (TNEB) where the CERC has intervened in the interest of consumers. Shri. Ramandeep Singh explained the financial criteria for selection of the mine development operator, the technical criteria for the said purpose and various other information in connection therewith. He also submitted that coal linkages are fixed by the Government of India and in case of new mines, Coal India Ltd. fixes the rates and accordingly agreements are signed. He also submitted that the Commission may hold a larger public debate if necessary and inform MSPGCL whether this is the correct methodology to go ahead as this will be the methodology which will determine the fuel cost in times to come. He also submitted that MSPGCL’s joint venture partner, i.e., GSECL is yet to take regulatory approval of Gujarat Electricity Regulatory Commission in this matter.

6. Subsequently, vide letter dated August 6, 2008 MSPGCL submitted that the Commission has the jurisdiction to entertain and decide the Petition in view of the provisions of Section 61 of the EA 2003, and Clause 4.2 of the “*Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees*” as referred to above.

7. After hearing MSPGCL and after considering the materials placed on record, the Commission is of the view that the admissibility of the present petition will need to be tested strictly in accordance with the powers and functions of the Commission as laid down under the EA 2003. The contention that Section 61 enables the Commission to admit the present petition is unsustainable because Section 61 mandates the Commission to specify the terms and conditions for the determination of the tariff for including *inter alia* supply of electricity by a generating company to a distribution licensee. The Commission has already specified the same under its MERC (Terms and Conditions of Tariff) Regulations, 2005 and while doing so has taken into account all factors specified in Section 61. The reliance on Section 62 is also found to be unsustainable because the present petition does not seek the determination of tariff for supply of electricity by MSPGCL to a distribution licensee whereas Section 62 (1)(a) requires the determination of tariff for supply of electricity by a generating company to a distribution licensee. Furthermore, reliance placed by MSPGCL on Section 62 (2) is also unfounded because the said provision enables the Commission to require a generating company to furnish details in respect of generation only for the purposes of determination of electricity tariffs. Therefore, at a time when MSPGCL files a Petition seeking determination of tariff under Section 62 (1) (a) by following the procedure under Section 64 only then will the Commission be entitled to seek such details including as given under the present petition and not *dehors* the said tariff Petition proceedings.



8. As regards the contention relating to the role of the Commission as stipulated under Clause 4.2 of “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” as issued by the Ministry of Power, the Commission is unable to appreciate as to how the giving of *in-principle* approval to draft bid documents to be issued by Mahaguj Collieries Ltd., for selection of mine developer-cum-operator would amount to approval of the price of fuel. In case if the attempt is to secure an advance ruling or some kind of an endorsement from the Commission to the price of coal ultimately to be factored into by MSPGCL in its Tariff Petition, the same cannot be done.

In view of the above, the Commission is not the authority to review and give approval, *in-principle* or otherwise to the draft bid document to be issued by Mahaguj Collieries Ltd., for selecting mine developer-cum-operator. It is also not possible to predict at this stage what the outcome will be, regarding the aspect of coal price at a future date when MSPGCL files any tariff Petition. It is not possible to arrest any regulatory uncertainty by going into the present petition as requested by MSPGCL. The Commission, for these reasons, is not inclined to hold any public debate (as suggested by MSPGCL) to inform MSPGCL whether the methodology proposed in the Petition would be the correct methodology to go ahead for determination of the fuel cost in times to come. Lastly, as regards the reliance placed by MSPGCL on certain orders passed by the CERC, the Commission is of the view that except as provided in Section 61 (a) for the purposes of making tariff regulations, there is no provision in the EA 2003 that mandates the Commission to take a stand similar to or pass orders similar to the orders passed by the CERC.

In view of the above, the present petition is hereby dismissed as not maintainable under any provisions of the EA 2003 or rules, regulations or policies made thereunder.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC