

**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.mercindia.org.in / www. merc.gov.in**

CASE No. 48 of 2018 and CASE No. 76 of 2018

Dated: 9 June, 2018

**CORAM: Shri Anand B. Kulkarni, Chairperson
Shri Mukesh Khullar, Member**

In the matter of
Petition of OPGS Power Gujarat Private Limited for Review of Order dated 29 December, 2017 in Case No. 180 of 2017, and in terms of Judgment dated 09 January, 2018 passed by the Appellate Tribunal for Electricity in Appeal No. 03 of 2018.

(Case No. 48 of 2018)

And
Petition of OPGS Power Gujarat Private Limited for Review of the Order dated 12 January, 2018 in Case No. 27 of 2018, and in terms of the Appellate Tribunal for Electricity's Judgment dated 23 January, 2018 in Appeal No. 20 of 2018.

(Case No. 76 of 2018)

OPGS Power Gujarat Private Ltd. (OPGS).....Petitioner

V/s

Maharashtra State Electricity Distribution Company Limited (MSEDCL) Respondent

Appearance:

For the Petitioner : Adv. Hemant Singh, OPGS

: Adv. Nishant Kumar, OPGS

For the Respondent: Adv. Ashish Singh, MSEDCL

For Authorised Consumer Representatives : Dr. Ashok Pendse, TBIA

Daily Order

Heard the Advocates for the Petitioner and Respondent.

1. OPGS stated that:

- (i) It is seeking the review of Commissions following Orders in present two cases wherein the Commission directed OPGS to approach CERC for seeking appropriate relief:

- a. Order dated 29 December, 2017 in Case No. 180 of 2017 and
 - b. Order dated 12 January, 2018 in Case No. 27 of 2018.
- (ii) It has filed these reviews on the issue of Jurisdiction of the Commission. Section 79 (1) (a) to (d) of Electricity Act, 2003 (EA, 2003) are not applicable to OPGS as the tariff between OPGS and its Captive users is not regulated. The State Commission is having the Jurisdiction for adjudication between the Distribution Licensee and the Generator as per Section 86 (f) of the EA, 2003.
- (iii) It has prayed for interim relief till the final Order is issued by the Commission, as the issue is of jurisdiction and there is no forum available to OPGS to agitate the matter.
2. To a query of the Commission, the Advocate of OPGS stated that there is no dispute in other State on the issue of OPGS's Captive Status and that he was ready to submit related documents of the Open Access captive consumers in other State.
3. MSEDCL stated that:
- (i) OPGS has Generating Plant situated in Gujarat and its consumers are situated in multiple States such as Gujarat, Madhya Pradesh, Maharashtra and Punjab. Some of the consumers are situated in MSEDCL's Distribution area.
 - (ii) The Supreme Court in its Judgment dated 11 April, 2017 in Civil Appeal No. 5399-5400 of 2016 and others (*Prayas (Energy Group) Vs CERC and others*) held that:
"22.
.....
On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act."
 - (iii) In Case of Generator supplying power to consumers situated in more than one State under Open Access, it may happen that One of the State Regulatory Commissions may uphold the Captive status of the Generator, while another State Regulatory Commission may have different view on the Captive Status. Such situation may lead to conflicting status of the same set of consumers of a generating station.
4. The Commission directs that, in terms of Orders of APTEL in Appeal Nos. 03 of 2018 and 20 of 2018, MSEDCL shall not initiate any coercive action till the final disposal of both these Review Cases.

Both the Cases are reserved for Order.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson