

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 177 of 2020 and MA No. 50 of 2020

Case of Orange Maha Wind Energy Pvt. Ltd seeking Review of the Order dated 11 July 2020 in Case No.100 of 2020 under Section 94(1)(f) of the Electricity Act, 2003 and Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

M/s. Orange Maha Wind Energy Pvt. LtdPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.
Maharashtra State Load Despatch Centre
Maharashtra Energy Development Agency Respondent

Appearance

For the Petitioner	:Shri. J.J. Bhatt (Sr. Counsel) :Shri Sakhya Chaudhari (Adv.)
For the Respondent No.1	: Shri Harinder Toor (Adv.)
For the Respondent No.2	: Shri. P.S. Sharma (Rep)
For the Respondent No.3	: Dr. Shri J V Torne (Rep.) : Shri. Manoj Pise (Rep.)

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 5 October 2020

1. M/s Orange Maha Wind Energy Pvt. Ltd (**OMWEPL**) has filed this Case dated 28 August 2020 seeking Review of the Order dated 11 July 2020 in Case No.100 of 2020 under Section 94(1) (f) of the Electricity Act, 2003 (**EA**) and Regulation 85 of the

Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

2. Main Prayers of OMWEPL are as follows:

a) Admit the present review petition;

b) Review the Impugned Order dated 11.07.2020 passed in Case No. 100 of 2020;

3. OMWEPL in its Petition has stated as under:

3.1 OMWEPL seeking review of the Order dated 11 July 2020 in Case No. 100 of 2020 and M.A. No. 42 of 2020 in view of the liberty granted by the Appellate Tribunal for Electricity (APTEL) in Appeal No 127 of 2020, wherein the said Impugned Order had been challenged by the OMWEPL. The liberty was granted by the APTEL with the following observations:

“It is indeed a matter for shock and surprise to us that project set up seemingly within four corners of the renewable energy policy of the State Government and in which respect all authorities including the respondents appear to have given approvals for commissioning, which to their knowledge means commencement of generation of power, the infrastructure thereby created is being made to suffer on account of mere fact that registration is held up at the end of MEDA for the last five years. The fact, however, remains that for EPA, the registration is mandatory.

After some hearing, the learned senior counsel for the Appellant, upon instructions, submitted that he may be allowed to withdraw the present Appeal and take back the matter for review to the State Commission particularly because MEDA’s stand has been taken into consideration without the version of the Appellant being called for. The Appellant also intends to move an interlocutory application before the State Commission during the hearing of the review petition for re-connectivity. The learned senior counsel further submitted that the Appellant has been advised to also pursue the pending matter before Bombay High Court for early adjudication in as much as that might have a bearing on the present controversy.

We grant the liberty to the Appellant to withdraw the present appeal, reserving its contentions to be agitated in light of what has been recorded above before the State Commission invoking its review jurisdiction. The petition for review may be filed not later than within two weeks hereof. We clarify, for removal of doubts, if any, that the time for submitting a review petition stands extended accordingly by the grant of liberty as recorded above. We are confident that if such interlocutory application as mentioned above is moved, it would receive appropriate consideration by the State Commission. We hope and trust that the State Commission will bear in mind the fact that it is high wind season and that the matter concerning wind energy deserves to be decided expeditiously”.

- 3.2 Case No. 100 of 2020 was filed before the Commission to challenge the legality and validity of the communication / e-mail dated 5 June 2020 issued by Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) whereby the MSEDCL has abruptly directed 'disconnection' of the OMWEPL's 2 MW WTG out of 34 MW capacity on the reasoning that OMWEPL did not have a valid PPA with MSEDCL. In spite of pending proceeding before the Commission the WTC was disconnected. Hence OMWEPL had filed MA No 42 of 2020 seeking re-connection of said WTG.
- 3.3 Maharashtra Energy Development Agency (**MEDA**) neither filed its reply nor represented the matter during the course of the hearing before the Commission. While passing the Impugned Order and determining the rights of OMWEPL the Commission has erred in taking into consideration reply filed by MEDA on 30 June 2020 i.e. after the Impugned Order was reserved for Order. Such consideration by the Commission of MEDA's reply especially in view of the fact that the same was neither served upon OMWEPL nor was an opportunity provided to OMWEPL to deal with the factual averments in such reply regarding the compliance of the subject WTG with the micro-siting guidelines.
- 3.4 The facts and communication that had transpired between OMWEPL and MEDA, which would clearly demonstrate the frivolousness of submissions made by MEDA. Details are as under:
- 3.4.1 After commissioning of the Project including the subject 2MW WTG on 31 October 2015, OMWEPL received letter dated 25 February 2016 from MEDA regarding proceedings pending in PIL No. 129 of 2013 and the Order dated 9 July 2014 passed by the Hon'ble Bombay High Court restraining MEDA from implementing the amended Micro siting Guidelines. MEDA claimed that OMWEPL had not complied with the Order of the Hon'ble High Court.
- 3.4.2 MEDA had granted clearance for the same WTG in October 2015 i.e. much after the Order of the Hon'ble High Court, for commissioning after joint inspection of the WTG. Therefore, the letter dated 25 February 2016 was clearly issued without any application of mind.
- 3.4.3 M/s Maruti Wind Park Developers i.e. the developer of the concerned wind park responded to such letter on 18 March 2016, wherein it was explained that the WTG was at a distance of 330 meters from the road as per village map. It was also pointed out that the road that was referred in the subsequent inspection report of MEDA was a road constructed by farmers, which did not find any place in the Village Map. It is in fact clear that this road was built after the installation of the WTG since the same was not mentioned in the earlier joint inspection carried out by MEDA for giving permission to commission the WTG.
- 3.4.4 The same position was reiterated by OMWEPL in letter dated 21 March 2016 indicating that the WTG was installed at a distance of 330 m from the PWD road (Narsewadi to Kacharewadi) which is marked in the Kacharewadi Village Map.

- 3.4.5 Despite the explanation provided by OMWEPL, MEDA issued another letter dated 9 May 2016 claiming the subject WTG to have been installed in violation of micro-siting guidelines, without referring to or dealing with OMWEPL's letter.
- 3.4.6 OMWEPL replied to MEDA vide letter dated 8 December 2016, stating that the Project of OMWEPL was developed in accordance with law including in accordance with the existing Micro siting Guidelines. OMWEPL also forwarded to MEDA, the Order of the Civil Judge, Tasgaon in Regular Civil Suit No.166/2014 which clearly held that there was no road between Kacharewadi to Kindarwadi from the Village Map of Kacharewadi produced by the defendants i.e. landowners in the concerned area.
- 3.4.7 The PIL had been filed challenging certain amendments to the micro-siting guidelines issued by MEDA. However, as and by way of an abundant caution, OMWEPL filed an application for impleading itself in the said PIL proceedings and the matter is sub-judice before the Hon'ble Bombay High Court. Further there has been no Order passed by the Hon'ble High Court which directs the Respondents to cancel the arrangement for procurement of power from the WTGs which have been established, commissioned, and generating electricity.
- 3.4.8 In addition to the above, with respect to the subject WTG, OMWEPL has been supplying power since its commissioning i.e. 31 October 2015 and the MSEDCL has been accepting such power without any complaint, which is clear from the fact that MSEDCL has issued credit notes in favour of OMWEPL in respect of the energy supplied from the subject WTG up to November 2019 from the date of commissioning and in the credit notes issued up to December 2018, there is a clear mention of energy exported from the subject WTG. Since the date of commissioning i.e. since 31 October 2015, MSEDCL has acknowledged receipt of energy amounting to 20.17 MU from the subject WTG.
- 3.4.9 The Commission erred in taking a view of the absence of EPA based on the submissions of MEDA. It is clear that MEDA has been acting in abdication of its function to register the subject WTG after having clearance of its commissioning. The Commission has failed to consider the fact that the contention of MEDA is without any basis and in fact, contrary to a judicial Order related particularly to the location of the road in Kacharewadi village. The Commission has failed to appreciate that any makeshift road by the farmers after the installation work of the WTGs cannot render such installation as illegal or contrary to micro-siting guidelines, especially when such road is not included in the Village Map.
- 3.4.10 The power from the subject WTG is being supplied in compliance with the provisions of F&S Regulations, therefore, the subject WTG is also in compliance with the scheduling process prescribed under the F&S Regulations and that it abides by the grid discipline in the interest of grid safety and stability.
- 3.5 OMWEPL has filed the present Petition seeking review of the Impugned Order on the following grounds which are independent and without prejudice to one another.

- 3.5.1 The Impugned Order suffers from errors that are apparent on the face of it, in view of the fact that, prior to making observations/directions based on the pleadings of MEDA, the Commission failed to consider that MEDA's Reply was filed after the Impugned Order was reserved in the matter at the hearing held on 26 May 2020. The Impugned Order has been passed in a non-transparent manner in violation of the principles of natural justice by (i) taking on record and relying on the pleadings of MEDA filed after Order was reserved in the matter without providing copy to OMWEPL and without providing an opportunity to OMWEPL to respond to the same; and (ii) giving a finding on compliance of micro-siting guidelines by the subject WTG based on the unilateral submissions of MEDA, even though this issue was not the subject matter of the Petition and no relief in this regard had been sought by OMWEPL.
- 3.5.2 The Commission failed to appreciate that OMWEPL being the Petitioner was the dominus litis, and it was not open to the Commission to enter into issues and give findings on matters not raised by OMWEPL.
- 3.5.3 The Commission has failed to note that the interim Order of the Hon'ble High Court related to implementation of the amendment to the Micro siting Guidelines sought to be applied from 8 March 2013 and not to the Micro siting Guidelines as was in existence then. The operative part of the interim order 9 July 2014 passed by the Hon'ble High Court read as under:
- “8) As it is admitted position that modification to the existing guidelines proposed on 8th March 2013 was never approved by the Governing Council of the said Agency. Hence, we restrain 3rd to 5th respondents from acting upon the guidelines allegedly modified on 8th March 2013 till further orders. This ad interim order will operate from today till further orders. It will not apply to the permissions already granted.”*
- 3.5.4 The Commission has failed to note that the above interim Order was never construed as restraining the commissioning of the wind power project and generation and supply of power from the projects to MSEDCL.
- 3.5.5 The observations / findings made on merits by the Commission in the Impugned Order regarding the right of OMWEPL to enter into PPA with MSEDCL or OMWEPL's compliance with the micro-siting guidelines for the subject WTG, without considering the facts of the case and merely relying on MEDA's submissions has caused undue and irreparable damage to the Petitioner.
- 3.5.6 The Commission has erred in holding that F&S Regulations would be applicable to the subject WTG since it forms part of the entire project capacity of 34 MW. This approach is clearly inconsistent with the Impugned Order in general, where the Commission has examined the status of the subject WTG de hors the rest of the capacity. The compliance of the subject WTG has to be examined separately, since the issue of grid safety has been raised only in relation to the subject WTG. There has been no issue of grid security in respect of the balance capacity of 32 MW.

- 3.5.7 The Commission has wrongly relied upon various judgments in the Impugned Order whereas, the present case was clearly distinguishable from the various judgments cited by MSEDCL and relied upon by the Commission, where power had been injected into the grid by the generators without the knowledge of the distribution company or the SLDC. In the present case, MSEDCL has been aware of the injection from the subject WTG into the grid for five years.
- 3.5.8 The Commission has failed to note that OMWEPL is in fact supporting the Grid and not affecting Grid safety.
- 3.5.9 The Commission has erred in proceeding on the basis as if there was no arrangement between OMWEPL and MSEDCL. The Commission has failed to appreciate that the subject WTG was commissioned on 31 October 2015 with the consent of MEDA, MSEDCL and MSLDC.
- 3.5.10 The Commission has failed to consider that there has been a clear ad-hoc agreement between MSEDCL and OMWEPL. Thus, there was no basis for the MSLDC to not recognize the arrangement that too unilaterally, without hearing OMWEPL. The long-standing scheduling and dispatch in terms of the above constitute an agreement for procurement of power even pending the formal execution of the PPA and could not have been arbitrarily done away without following the due process of law on the basis of the fact that the project has not been registered by MEDA. The Commission has failed to appreciate that the inaction of MEDA, though wrongfully, on account of Petitioner's WTG which is not covered by the PIL and the High Court order, cannot be a basis for depriving OMWEPL the right to be connected to the grid.
- 3.5.11 It is also trite law that in a case where an order is passed by a court in judicial proceedings in violation of natural justice either because entire facts have not been stated before the court or the court has been misled or that the court has committed an error, it is the duty of the court to correct itself by exercising its inherent power and technicalities ought not to be allowed to transcend justice. As in the present case, the relevant facts in support of OMWEPL's case pursuant to MEDA's Reply were not brought to the notice of the Court as no opportunity was granted to OMWEPL, and therefore it is in the interest of justice that the relevant directions in the Impugned Order are reviewed and/or recalled by the Commission.

4. OMWEPL in its Miscellaneous Application (MA) No 50 of 2020 dated 28 August 2020 submitted with Petition has stated as under:

- 4.1 OMWEPL is scheduling the total wind energy generated from the entire project of 34 MW including the Project in terms of the F&S Regulations since 31 October 2015 till the subject WTG was illegally disconnected, and MSEDCL accepting the power. MSEDCL has received 20.17 MU of wind energy generated from the subject WTG but has not been issuing credit notes in respect of the said energy supplied to it from the subject WTG since December 2019 onwards. Further, in terms of the recent amendments to the F&S Regulations the Applicant has not only submitted its Consent Letter to QCA for 34 MW

but also regularly and till date continues to submit forecaster schedules for the entire project to their QCA, who in turn shares the same with MSLDC to ensure grid safety and stability.

- 4.2 The charges under the Deviation Settlement Mechanism are also being raised by MSLDC for the 2 MW subject WTG clearly indicating that the power being generated and injected from the subject WTG was being taken into account.
- 4.3 The rationale provided by MSLDC for disconnection namely, the threat to grid safety on account of no PPA, is ex facie arbitrary and without any basis. OMWEPL has been supplying power from the subject WTG in compliance with the F&S Regulations. As long as OMWEPL is compliant with the F&S Regulations in respect of forecasting and scheduling requirements, there was no concern about grid safety and security to disconnect the WTG.
- 4.4 There has been a clear and ongoing arrangement between OMWEPL and MSEDCL in regard to supply of electricity from the subject 2 MW WTG and there has been no impact with the stability and/or instability of the grid as has sought to be made out in the communication dated 5 June 2020.
- 4.5 MSEDCL has disconnected the subject WTG which is an operational asset. The disconnection of the subject WTG at this time of the year, which is high wind season will not only adversely affect OMWEPL but also result in wastage of renewable energy.
- 4.6 OMWEPL in its MA has made following prayers:

a) Allow the present Application;

(b) Pending the hearing and final disposal of the Petition, direct MSEDCL to reconnect the 2MW subject WTG of the Applicant situated at Loc. no. HC-09 situated at Gut No. 187, Village – Kacharewadi, Taluka – Tasgaon, District – Sangli, Maharashtra and allow for power to be supplied from the Project;

(c) Ex-parte ad-interim order in terms of prayer (a) and (b) above;

5. MEDA in its Reply dated 4 September 2020 has stated as under:

5.1 Point No 8 of the submission dated 30.6.2020 shall be read as under:

Point no. 8	Files received from office of Hon. Chairman, MEDA & Hon. Minister (New & Renewable Energy)	25/01/2016	File received with remark that “महासंचालक, महाऊर्जा यांनी तपासून सादर केल्याप्रमाणे मान्य” the file received without signature of Hon Chairman, MEDA wherein DG MEDA further ordered inspection as per micro siting guidelines, as per
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		08/02/2016	the Hon. Mumbai High court Order dated 09.07.2014 in PIL No. 129 of 2013.
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- 5.2 The PIL No 129 of 2013, made by Arvind Machindra Sable against M/s Suzlon Energy Ltd wherein Hon'ble High Court Mumbai had restrained acting on amendments made in Micro siting Guidelines in March 2013. Therefore, earlier Micro siting amendment dated 16 February 2008 were applicable for all wind projects. The wind Project of OMWEPL was not following Micro siting Guidelines dated 16 February 2008 and therefore as per the Hon'ble Mumbai High court's Order dated 9 July 2014, said WTG could not be registered under GoM Policy.
- 5.3 The Civil court suit No 166/2014 Order on which OMWEPL rely upon, is simply an Order on temporary injunction application. The Civil court has not declared the road to be a private/public road; and therefore, the same cannot be in anyway help the case of OMWEPL.
6. **MSEDCL in its reply dated 7 September 2020 has stated as under:**
- 6.1 There is no valid PPA between MSEDCL or OMWEPL. Also, till date OMWEPL has not complied with the provisions the Comprehensive Policy for Grid connected Power Projects based on New and Renewable (Nonconventional) Energy Sources – 2015 issued by the Industries, Energy and Labour Department of the Government of Maharashtra on 20 July 2015 and also with Methodology for the installation of projects, 2015 and not received the registration from MEDA.
- 6.2 OMWEPL is not fulfilling the criteria or make out any case as per the provisions under Regulation 85 of MERC (conduct of business) Regulations, 2004 for review of the Order.
- 6.3 OMWEPL's WTG was disconnected on 11 June 2020 and there is no change in the status of disconnection. MSEDCL cannot be forced to purchase power from any specific generator when various other options such as sale to Open Access consumer, sale to Other Distribution Licensee in the State or opt for REC mechanism, and option provided under MERC RE Tariff Regulations, 2019 etc are available with OMWEPL.
- 6.4 It is a settled position of law that generator doesn't have any right to pump the power into the grid without any valid PPA or Open Access Permission and the same has been referred and relied upon by the Commission in its Order dated 11 April 2018 in Case No.86 of 2016, Order dated 25 July 2018 in Case No. 120 of 2018 and Order dated 23 July 2018 in Case No 121 of 2018 etc. Hon'ble APTEL in its catena of judgments has held that injection of energy without any contractual agreement could lead to damaging consequences and, therefore, the same should be discouraged.

6.5 MSEDCL under Section 33 (1) (2) and (4) is duty bound to comply with the instructions issued by the SLDC. The illegality cannot be allowed in perpetuity, accordingly, the action taken by the SLDC and MSEDCL is in conformity with the law.

6.6 The Commission has categorically held that in absence of any valid EPA or agreement, even though generator provides forecast / schedule as per RE F&S Regulations, said schedule cannot be accepted as there is no identified counter party to use such energy injected into the Grid.

7. **MSETCL in its reply dated 7 September 2020 has stated as under:**

7.1 The prayers under Petition and MA do not come under the purview of MSLDC.

7.2 As per Section 32 of EA, MSLDC is obliged to perform its functions.

7.3 MSLDC being the system operator for Maharashtra, it has to ensure adherence to Regulations and Orders issued by the Commission. MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 notified by the Commission on 20 July 2018 and commercially implemented from 6 January 2020 is applicable to OMWEPL and it should abide by the Scheduling and Dispatch Code and DSM procedure approved by the Commission.

8. During the e- Hearing held on 8 September 2020, OMWEPL requested the Commission to grant 3-4 days' time to file its reply on the submission received from the Respondents and list the matter thereafter. At the request of OMWEPL, the Commission adjourned the hearing and accordingly issued Daily Order on 8 September 2020. The observation made in Daily Order dated 8 September 2020 is reproduced as under:

1. *Advocate of the Petitioner requested the Commission to grant 3-4 days' time to file its reply on the submission received from the Respondents and list the matter thereafter. To the query of the Commission regarding the request made by the Petitioner for urgent hearing in the matter as per the observation made by the APTEL in Appeal no 127 of 2020, the Petitioner stated that unless it examines the documents referred by MEDA in its reply, matter cannot be pleaded in entirety*
2. *Advocate of MSEDCL stated that MSEDCL is ready to continue with the hearing but has no objection in granting few days for Petitioner to submit the reply. MSEDCL stated that the Petitioner should restrict itself to the limited domain of the review Petition. Petitioner cannot keep adding new documents and still invoke the review jurisdiction.*
3. *The Representative of MEDA stated that the documents such as joint inspection report and letter of Panchayat Samithi Tasgaon which the Petitioner was referring and has sought from MEDA are already available with the Petitioner, rather it was submitted by Petitioner itself to MEDA. Hence MEDA need not be required to provide these*

documents afresh to the Petitioner. MEDA informed the Commission that they are ready for the hearing and will limit their arguments to the submissions made in the reply.

4. The Commission categorically brought to the notice of the Petitioner that though the Commission listed the matter for urgent hearing as per the request made by the Petitioner, it is requesting for another date of hearing so that Sr Counsel appointed for pleading the matter will be available. In the interim it can file its rejoinder to the replies of the Respondents. Petitioner also indicated that it will not have any problem if the matter gets listed after 2-3 weeks. However, Petitioner requested for the earliest possible date within the existing hearing schedules of the Commission. At the request of the Petitioner, the Commission adjourns the hearing.

9. OMWEPL submitted its Rejoinders dated 21 September 2020 in reply to the submission of MEDA, MSEDCL and MSLDC. OMWEPL in its Rejoinder in reply to MEDA's submission has stated as under:

9.1 The reply filed by MEDA on 30 June 2020 is not in accordance with the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 and could not have been taken note of by the Commission. As per Regulation 61, the party to whom notice is issued has to file a reply and documents relied upon. Further, the reply is required to be filed supported by an affidavit. Further as per Regulation 62, the Respondent is required to serve a copy of the reply alongwith the documents in support thereof, on the Petitioner.

9.2 MEDA has filed its reply in the form of a letter and relied upon certain communications and documents, to submit that the subject WTG was not in compliance with the Micro siting Guidelines without providing a copy of the said communications and documents to the OMWEPL. Further, the letter filed by MEDA is not supported by any affidavit. Therefore, these submissions cannot be given any credence, not having been stated on oath.

9.3 MEDA has been taking inconsistent and contradictory stand with regard to the establishment of subject WTG by OMWEPL. OMWEPL had established and commissioned the subject WTG in October 2015 in accordance with the applicable laws and rules including extant Micro siting Guidelines. Despite this unequivocal admission by MEDA in granting 16 marks to the WTG, it had made a complete U-turn subsequently in February 2016 and arbitrarily put on hold the registration of the subject WTG. Thereby OMWEPL, has been wrongly and arbitrarily prevented from entering into a PPA with MSEDCL as provided under the RE Policy, which resulted in disconnection of the subject WTG.

9.4 In the interim Order dated 9 July 2014 on PIL No 129 of 2013, the Hon'ble High Court restrained implementation of the 2013 amendment to the Micro siting Guidelines by MEDA.

- 9.5 OMWEPL had made an application on 19 January 2015 to MEDA i.e. after the interim Order dated 9 July 2014 for infrastructure clearance for the subject WTG, which was granted to OMWEPL. Thereafter, applied for registration on 23 September 2015. A joint inspection was undertaken on 15 October 2015. In the Joint Inspection Report the representatives of MEDA, MSEDCL and MSETCL have acknowledged that (i) project/erection of WTG was complete in all respects and (ii) evacuation system from WTG to pooling station was also complete. In the said joint inspection report, 16 marks were granted to the subject WTG thereby certifying that the subject WTG was complete in all respects.
- 9.6 MEDA on 31 October 2015 granted clearance for commissioning of the subject WTG and MSEDCL granted a commissioning certificate on 7 November 2015 certifying the subject WTG was commissioned on 31 October 2015. subject WTG was developed as per applicable rules and Micro siting Guidelines, 2008.
- 9.7 MEDA vide its letter dated 25 February 2016 has alleged without any basis that the commissioning of the subject WTG was in violation of the Order of the Hon'ble High Court. It was alleged in the said letter that a unilateral inspection was carried out on 6 February 2016 and based on the same stated that the subject WTG is not in compliance with the Micro siting Guidelines as per Hon'ble High Court. However, in its submissions before the Commission dated 30 June 2020 and also in its reply dated 4 September 2020, MEDA has submitted that the subject WTG has not complied with the Micro siting Guidelines, 2008. Admittedly, since the Micro siting Guidelines, 2008 have been applied to the subject WTG, there could have been no violation of the Hon'ble High Court's Order which stayed the 2013 amendments to the Micro siting Guidelines.
- 9.8 MEDA on one hand had given clearance to the subject WTG under Micro siting Guidelines, 2008 and thereafter contended that the same WTG is not in accordance with the interim Order of the High Court, even though the 2013 guidelines were not applied to the WTG. As per the Methodology prescribed in G.R. dated 9 September 2015, there is no provision for doing unilateral inspection of the WTG which was already approved by the joint inspection report on 15 October 2015.
- 9.9 MEDA had sent letter on 9 May 2016 to Maruti Wind Park Developers directing to give an explanation and letters / notices dated 25 February 2016 issued to OMWEPL. In response OMWEPL and Maruti Wind Park Developers submitted several replies vide letters dated 18 March 2016, 21 March 2016, 19 May 2016, 8 December 2016 and 23 January 2017 refuting the allegations of non-compliance of Micro siting Guidelines. OMWEPL and its wind developer have categorically stated that they are in compliance of the Micro siting Guidelines, 2008 and it was stated that no road was in existence as claimed by MEDA.
- 9.10 The reply filed by MEDA does not disclose the Order of the Civil Judge, Tasgaon in Regular Civil Suit No.166/2014 submitted by OMWEPL with its letter dated 8 December 2016, which clearly held that there was no road between Kacharewadi to Kindarwadi

from the Village Map of Kacharewadi produced by the defendants i.e. landowners in the concerned area.

9.11 No documentary evidence of alleged inspection has been provided by MEDA. Therefore, OMWEPL denies and disputes that any inspection was carried out on 6 February 2016. The clearances and commissioning certificate issued to the subject WTG was on account of the same being in compliance with the Micro siting Guidelines, 2008 and MEDA cannot belatedly make contrary submissions.

9.12 OMWEPL is being made to suffer on account of the unlawful and capricious actions of MEDA. Because of such actions of MEDA the registration of the subject WTG was put on hold and such a registration is mandatory for signing PPA with MSEDCL as per RE policy dated 20.07.2015 of the Govt. of Maharashtra. Hence the Commission may kindly review its Order dated 11 July 2020 and restore connection to subject WTG to the Grid so that the wind power generation can be resumed.

10. OMWEPL in its Rejoinder dated 21 September in reply to MSEDCL's submission has stated as under:

10.1 OMWEPL has been supplying power to MSEDCL since the date of commissioning and the MSEDCL has been accepting said power and issuing joint meter readings.

10.2 The issue of registration of WTG is pending with MEDA, the subject WTG has been developed in accordance and compliance with the Micro siting Guidelines. Since, the subject WTG was developed and commissioned pursuant to RE policy 2015, which mandates registration of WTG by MEDA and as a natural corollary signing of PPA by MSEDCL thereafter. In fact, the consistent sale and purchase of power from the subject 2 MW WTG since the commissioning on 31 October 2015 for about 5 years establish a clear agreement to procure electricity from 2 MW WTG. The attempt by MSEDCL is clearly an after-thought and untenable, in as much as MSEDCL has been enjoying the wind energy without paying for the same for the last 6 years and clearly coming up with an arbitrary excuse that there is no agreement.

10.3 MSEDCL illegally disconnected the subject WTG during the pendency of the Petition before the Commission with the intention to overreach the jurisdiction of the Commission. MSEDCL has disconnected the subject WTG which is an operational asset. The disconnection of the subject WTG at this time of the year, which is high wind season will not only adversely affect OMWEPL, but also result in wastage of renewable energy.

10.4 Further, the reason cited by MSEDCL for disconnection namely, grid safety, is not tenable in the facts of the present case and hence, has been disputed under Section 33(4) in the present Petition. It is denied that there is any illegality in the manner in which the subject WTG is functioning, especially since 2015 neither SLDC nor MSEDCL seemed to have a problem with it. There is no question of illegality in injecting power under a given schedule in compliance with the MERC F&S Regulations. The Petitioner has a

“legitimate expectation” of continuing with injection since 2015, especially when the registration of its turbine has been wrongfully withheld by MEDA.

11. OMWEPL in its Rejoinder dated 21 September in reply to MSLDC’s submission has stated as under:

11.1 MSLDC does not have any power under the Electricity Act or the Maharashtra Grid Code to direct disconnection of a generating station. The direction issued by MSLDC is without the authority of law. The Impugned Order is per incuriam in as much as it has not considered the statutory provisions relating to disconnection of generating stations.

11.2 MSLDC has failed to point out or make any submissions establishing the subject WTG to be affecting the grid safety. OMWEPL had been duly declaring the scheduling of the subject WTG to MSLDC. Further, MSLDC has imposed deviation settlement charges on OMWEPL for the subject WTG for deviation from the scheduled generation. MSLDC has never raised any grievance in relation to non-adherence to F&S Regulations by OMWEPL for supply from the subject WTG.

12. At the e-hearing through video conferencing held on 22 September 2020, the Advocate of OMWEPL reiterated its submissions in the Petition, MA and its Rejoinder to MEDA, MSEDCL and MSLDC’s reply. The Advocate of MSEDCL reiterated its submissions in its reply and stated that OMWEPL in review case has indirectly challenged the denial of registration by MEDA which was not the issue agitated in main matter, hence it has expanded the scope of main matter which is not permissible in review jurisdiction. The representative of MEDA and MSLDC reiterated their submission made in their respective replies.

Commission’s Analysis and Ruling:

13. Present Petition has been filed by OMWEPL seeking review of Commission’s Order dated 11 July 2020 in Case No. 100 of 2020 and MA No. 42 of 2020. In Case No 100 of 2020, OMWEPL had approached the Commission seeking stay on the communication dated 5 June 2020 issued by MSEDCL for disconnection of OMWEPL’s 2 MW WTG. MSEDCL disconnected said WTG on 11 June 2020, OMWEPL filed MA 42 of 2020 on 12 June 2020 seeking reconnection of its 2 MW WTG. The Commission vide its Order dated 11 July 2020 did not grant the relief sought by OMWEPL.

14. Aggrieved by the Order of the Commission, OMWEPL challenged the impugned Order dated 11 July 2020 before the APTEL by filing Appeal No. 127 of 2020. The APTEL by its Order dated 14 August 2020 granted liberty to OMWEPL to withdraw the appeal and allowed OMWEPL to take back the matter for review before the Commission. The relevant portion of the APTEL’s Order dated 14 August 2020 is reproduced as under:

After some hearing, the learned senior counsel for the Appellant, upon instructions, submitted that he may be allowed to withdraw the present Appeal and take back the matter for review to the State Commission particularly because MEDA’s stand has

been taken into consideration without the version of the Appellant being called for. The Appellant also intends to move an interlocutory application before the State Commission during the hearing of the review petition for re-connectivity. The learned senior counsel further submitted that the Appellant has been advised to also pursue the pending matter before Bombay High Court for early adjudication in as much as that might have a bearing on the present controversy.

We grant the liberty to the Appellant to withdraw the present appeal, reserving its contentions to be agitated in light of what has been recorded above before the State Commission invoking its review jurisdiction. The petition for review may be filed not later than within two weeks hereof. We clarify, for removal of doubts, if any, that the time for submitting a review petition stands extended accordingly by the grant of liberty as recorded above. We are confident that if such interlocutory application as mentioned above is moved, it would receive appropriate consideration by the State Commission. We hope and trust that the State Commission will bear in mind the fact that it is high wind season and that the matter concerning wind energy deserves to be decided expeditiously”.

15. Considering Hon’ble APTEL’s remark that ‘*it is high wind season and matter concerning wind energy deserves to be decided expeditiously*’, post filing of this review Petition on 28 August 2020 (14 days from APTEL’s Order), the Commission expeditiously scheduled hearing in the matter on 8 September, 2020. However, during the hearing on that date, OMWEPL sought three more days for filing rejoinder on replies filed by other parties and accordingly sought adjournment. OMWEPL could file such Rejoinders only on 21 September 2020. This case was heard finally on 22 September 2020.
16. OMWEPL has sought review of the impugned Order under Regulation 85 of MERC (Conduct of Business) Regulations, 2004 which is reproduced below:

Review of decisions, directions, and orders:

“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.”

Thus, the ambit of review is limited, and OMWEPL’s review Petition has to be evaluated accordingly.

17. OMWEPL has sought review of the impugned Order mainly on following issues:
 - a. Review Point No.1: MEDA’s submission filed post final hearing was not served on OMWEPL which is against the principle of natural justice.

- b. Review Point No. 2: The Commission erred in stating that energy injected from 2 MW WTG would affect Grid Security.
- c. Review Point No. 3: The Commission failed to recognize that there was persistence contract between OMWEPL and MSEDCL for sale of electricity from disputed WTGs.
- d. Review Point No. 4: SLDC does not have authority to direct disconnection of WTGs.

As the ambit of the review jurisdiction is limited, accordingly, the Commission is dealing with above issues on which review has been sought in following paragraphs:

18. Review Point No-1 MEDA's submission filed post final hearing was not served on OMWEPL which is against the principle of natural justice.

18.1 The Commission notes that during the proceeding in Original matter on 26 June 2020 the Commission had asked MEDA a specific query as to what were the reasons for not granting registration to OMWEPL's WTG. The representative of MEDA had sought one-week's time to submit its reply. Accordingly, MEDA filed its reply on 30 June 2020 bringing on record the chronological events (submission of MEDA was captured in the impugned Order at para 10). As per MERC (Conduct of Business) Regulations 2004, it was MEDA's responsibility to serve such submission to all the parties. However, MEDA did not do so. Therefore, in the opinion of the Commission, considering principle of natural justice, OMWEPL deserved to file and make its submission on MEDA's submission dated 30 June 2020. The Commission directs MEDA to ensure that in future it serves copy of its submission to all parties in the proceeding. The Commission further notes that OMWEPL in present review Petition has also objected on MEDA's filing submission through a letter without an affidavit and that too without enclosing documents relied upon in its submission. In this regard, the Commission notes that its Conduct of Business Regulations requires filing of Reply or any submission with all supporting documents along with affidavit. Here also MEDA has not filed its reply as specified under the Regulations. However, without going into these procedural technicalities, the Commission is proceeding with the material available on record so as to dispose of this matter expeditiously.

18.2 OMWEPL in the present review Petition contended that Interim Order dated 9 July 2014 in PIL No 129 of 2013 of Hon'ble Bombay High Court is not applicable to the subject WTG. Said interim order has restrained implementation of the 2013 amendment to the Micro siting Guidelines, while OMWEPL's WTG is governed by 2008 guidelines. OMWEPL had made an application on 19 January 2015 to MEDA i.e. after the interim Order dated 9 July 2014 for infrastructure clearance of the subject WTG, which was granted to OMWEPL. Thereafter, it applied for registration on 23 September 2015. A joint inspection was undertaken on 15 October 2015. In the Joint Inspection Report, 16 marks were granted to the subject WTG thereby certifying that the subject WTG was complete in all respects. Accordingly, on 31 October 2015, MEDA granted clearance for commissioning of the subject WTG and MSEDCL granted a commissioning certificate on 7 November 2015 certifying that the subject WTG was commissioned on 31 October 2015. However, vide its letter dated 25 February 2016, MEDA has alleged that the

commissioning of the subject WTG was in violation of micro siting guidelines. In reply, Wind Park Developer vide its various letter informed MEDA that said WTG was complying with micro siting guidelines. OMWEPL has further stated that issue of dispute relates to distance from the alleged road, which as per OMWEPL does not exist on village map. For this purpose, OMWEPL has relied upon Order of the Civil Judge, Tasgaon in Regular Civil Suit No.166/2014. OMWEPL has contended that it is being made to suffer on account of the unlawful and capricious actions of MEDA. Therefore, it requested the Commission to review its Order dated 11 July 2020 and restore connection to subject WTG to the Grid so that the wind power generation can be resumed.

18.3 During the hearing MEDA has denied the contentions of OMWEPL and stated that registration is delayed because the said WTG does not comply with micro siting guidelines of 2008. It further contended that the said road does exist and WTG is not complying with the requirement of distance from such road. MSEDCL in its reply stated that original petition was filed only for restraining disconnection of WTG without any relief against MEDA, therefore in review Petition new relief cannot be sought.

18.4 In this regard, the Commission notes that in original Petition in Case No. 100 of 2020, OMWEPL has requested for following relief:

“a) Declare that the Impugned Communication dated 05.06.2020 issued by the Respondent No. 1 is arbitrary, illegal and without any authority of law and consequently be pleased to quash and set aside the same;

b) Direct the MSEDCL to issue Credit Notes to the Petitioner for the energy supplied from the subject WTG till date and for the future period as well towards supply of wind energy by the Petitioners;

c) Grant ex-parte ad-interim relief against the Respondents by staying the operation of the Impugned Communication dated 05.06.2020 and restraining the Respondents, their servant or agents from taking any coercive steps against the Petitioner, including disconnecting the subject WTG, during the pendency of the present proceedings;”

MSEDCL was Respondent No. 1 in original matter. Thus, all the relief sought in original Order was against MSEDCL and no relief was sought against MEDA. In fact, OMWEPL had not made MEDA as a party while filing the original Petition. But on instructions of the Commission it had impleaded MEDA in the matter. However, it did not amend the prayer clauses to seek any relief against MEDA.

18.5 Knowing this fact, the Commission in the impugned Order has categorically cited its observation as under:

20. OMWEPL also contended that it had applied for registration for its WTG on 23 September 2015 and despite complying all technical requirements and formalities prescribed under the GoM RE Policy 2015, its Methodology as well as pre-2013 Micro-siting Guidelines, registration certificate has not been issued by MEDA till

date. However, MEDA in its reply has stated that the registration is kept on hold because OMWEPL's WTG is erected near the village road hence is not complying with the Micro-siting guidelines dated 16 February 2008. As per Panchayat Samittee, Tasgaon's letter the distance between WTG and village road is 185 meters as against the 330 meters claimed by OMWEPL. According to OMWEPL the registration is pending in view of Order dated 9 July 2014 passed by the Hon'ble Bombay High Court in PIL No. 129 of 2013 for which it has also filed Civil Application CA No. 31880/2017 and has requested for vacation of interim orders/or to clarify that Orders. The Commission notes that Hon'ble Bombay High Court in its Ad-interim Order dated 9 July 2014 has directed to restrain from acting upon the modified Micro-siting guidelines dated 8 March 2013 which was not approved by the Governing Council of MEDA. But in present case, registration is not yet issued by MEDA because OMWEPL's WTG is not complying with the Micro-siting guidelines dated 16 February 2008. As OMWEPL has not sought any specific relief against MEDA and as matter is pending with Hon'ble Bombay High Court, the Commission is not dealing with issue of delay in issuing WTG registration.

Thus, as can be seen from above dispensation, though MEDA submitted its reply dated 30 June 2020, the Commission has not dealt with the issue of delay in registration of said WTG in the impugned Order.

18.6 The Commission notes that OMWEPL in the review Petition has raised new issue which was never the part of original Petition nor did the Commission in impugned order has ruled on it. Therefore, such new issue cannot be allowed as ground for review of the impugned Order. Hence, review on this issue deserves to be rejected.

18.7 At the same time, OMWEPL is at liberty to take appropriate legal recourse on its contention that MEDA has wrongly delayed registration of its WTGs. In fact, in the order of Hon'ble ATE, it was committed by the review petitioner that it would pursue the pending matter before Bombay High Court for early adjudication in as much as that might have a bearing on the present controversy..

19. Review Point No-2: The Commission erred in stating that energy injected from 2 MW WTG would affect Grid Security.

19.1 OMWEPL has contended that the said WTG of 2 MW would not be affecting the grid safety. OMWEPL had been duly declaring the schedule of the subject WTG to MSLDC. Further, MSLDC has imposed deviation settlement charges on OMWEPL for the subject WTG for deviation from the scheduled generation. MSLDC has never raised any grievance in relation to non-adherence to F&S Regulations by OMWEPL for supply from the subject WTG. On this ground OMWEPL has contended that the Commission has erred in its findings that its 2 MW WTG would affect Grid Security. Hence, OMWEPL seeks review of impugned Order.

19.2 The Commission notes that in the impugned Order, it has already dealt with this issue in detail as under:

“15. The Commission notes that main contention of OMWEPL is that as it is scheduling power from its 34 MW project including disputed 2 MW WTG based on RE F&S Regulations, that its 2 MW WTG does not pose any harm to the Grid and that it should be allowed to continue to be connected and injecting power into the Grid. In this regard, the Commission notes, that for safe and secure operation of power system, any power flow must have identified generator who injects power into the Grid and Consumers (Distribution Licensee, OA consumers or self-consumption) who draws such power from the Grid. Without having these two important parties to power flow / transaction, it would be impossible to run the power systems in safe and secure manner.

.....

19. In absence of any valid EPA or agreement, even though generator provides forecast / schedule as per RE F&S Regulations, said schedule cannot be accepted as there is no identified counter party to use such energy injected into the Grid. Under such circumstances, when SLDC in its role as system operator issues instructions to MSEDCL to disconnect those WTGs from Grid that do not have valid contract, MSEDCL is duty bound to follow such instructions. Hence, the Commission does not find anything wrong in disconnection of OMWEPL’s 2 MW WTG which does not have valid EPA. As regards non applicability of F&S regulations for projects having capacity less than 5 MW, Commission notes that the Petitioner has installed total capacity of 34 MW wherein 2 MW disputed WTG is also a part. As per regulations, capacity of the entire project is considered for applicability, and not in parts thereof. Besides, Petitioner has duly appointed under the regulations, a QCA for the entire project including the disputed WTGs of 2 MW capacity for scheduling and forecasting of the electricity generated. Clearly, such arguments of Petitioners on applicability of the regulations are not tenable.”

Thus, the Commission notes that OMWEPL is reiterating the same issue through this Review Petition, which is not tenable. Review Petition cannot be appeal in disguise. Therefore, the Commission rejects review of impugned Order on this issue.

20. Review Point No. 3: The Commission failed to recognize that there was contract between OMWEPL and MSEDCL for sale of electricity from disputed WTGs

20.1 OMWEPL has contended that it has been scheduling power from its 34 MW project including disputed 2 MW WTG since its commissioning i.e. for almost 5 past years. Therefore, there is clearly a contract between OMWEPL and MSEDCL, and the Commission has erred in denying the same. MSEDCL has opposed such contention of OMWEPL.

20.2 The Commission notes that in the impugned Order, it has ruled on this issue as follows:

“18. In present matter, as agreed by OMWEPL, EPA for disputed 2 MW WTG has not been signed on account of non-registration of WTG with MEDA. However, OMWEPL has contended that MSEDCL has been accepting such power since commissioning of

the project. In this regard, the Commission notes that MSEDCL in its PTC dated 30 October 2015 issued few days prior to commissioning of the disputed WTG has clearly communicated to OMWEPL that MSEDCL does not guarantee purchase of this power. Thus, it would be incorrect to state that MSEDCL was in agreement with OMWEPL for purchase of power from disputed 2 MW WTG.”

Thus, the Commission notes that OMWEPL is reiterating the same issue under this Review Petition, which is not tenable. Review Petition cannot be appeal in disguise. Therefore, the Commission reject review of impugned Order on this issue.

21. Review Point No. 4: SLDC does not have authority to direct disconnection of WTGs

21.1 OMWEPL has contended that MSLDC does not have any power under the Electricity Act or the Maharashtra Grid Code to direct disconnection of a generating station. The Impugned Order is per incuriam in as much as it has not considered the statutory provisions relating to disconnection of generating stations.

21.2 The Commission notes that Electricity Act, 2003 mandates MSLDC to schedule and dispatch electricity only as per contract entered between generating company and licensee. Relevant provision of the Act, is reproduced below:

*“32 (2) The State Load Despatch Centre shall –
(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;”*

Therefore, if MSLDC finds that energy is being injected into the Grid without any valid contract, it can use its statutory power under the EA, 2003 and direct concerned entity to take measures to stop such unauthorized injection of electricity into the Grid. When such instructions are issued by SLDC, every Distribution Licensee and Generating company is mandated under Section 33 (2) to comply with these directions of MSLDC.

21.3 Accordingly, the Commission in the impugned Order has ruled as follows:

“19. In absence of any valid EPA or agreement, even though generator provides forecast / schedule as per RE F&S Regulations, said schedule cannot be accepted as there is no identified counter party to use such energy injected into the Grid. Under such circumstances, when SLDC in its role as system operator issues instructions to MSEDCL to disconnect those WTGs from Grid that do not have valid contract, MSEDCL is duty bound to follow such instructions. Hence, the Commission does not find anything wrong in disconnection of OMWEPL’s 2 MW WTG which does not have valid EPA.”

Thus, the Commission has provided detailed reasons for its decision in the impugned Order. Such reasoned decision of the Commission cannot be ground for review of

impugned Order. Review Petition cannot be appeal in disguise. Therefore, the Commission rejects review of impugned Order on this issue.

22. In view of the forgoing, the Commission does not find any merit in OMWEPL's argument on the ground of error apparent in the impugned Order. Arguing on the earlier issues in the original matter or mere disagreement with the dispensation already provided by the Commission cannot be the ground for invoking review jurisdiction. None of the grounds stated in this review case can be said to fall within the ambit and scope of Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 (Review of decisions, directions, and orders). Review case has a limited purpose and cannot be allowed to be "an appeal in disguise". Accordingly, the Commission rules that the review sought is devoid of merit.

23. Hence the following Order:

ORDER

The Case No.177 of 2020 is dismissed

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**

