



सत्यमेव जयते

# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

(महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, २००५ चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण)

## Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005)



No. MWRRRA/2019/Case No.11 of 2019/223

Date : 06/03/2020

### Case No. 11 of 2019

A Petition filed by Maharashtra State Power Generation Company Ltd. Nashik Thermal Power Station, Eklahare in the matter arising out of Fixation of Tariff for supply of contaminated water for the applicant company for its Nashik Thermal Power Plant at Eklahare and claim of parity as per the rationale based on this Authority's Order No. 12 of 2017 passed on October 13, 2017.

Please find enclosed herewith a copy of MWRRRA Order No. 03/2020 dated 05/03/2020 in the above matter.

Encl : As above



*(Dr. Ramnath Sonawane)*  
(Dr. Ramnath Sonawane)  
Secretary, MWRRRA

To;

1. Chief Engineer, Maharashtra State Power Generation Company Ltd. Nashik Thermal Power Station Eklahare, District- Nashik- 422105.
2. State of Maharashtra, Water Resources Department, Through its Secretary (WRM & CAD), Water Resources Department, Mantralaya, Madam Kama Road, Mumbai - 400 032.
3. Chief Engineer, Water Resources Department, Sinchan Bhavan, Trimbak Road, Nashik- 422 002
4. Superintending Engineer and Administrator, Command Area Development, Water Resources Department, 2<sup>nd</sup> Floor, Sinchan Bhawan, Trimbak Road, Nashik- 422 002
5. Executive Engineer, Water Resources Department, Nashik Irrigation Division, Trimbak Road, Nashik- 422 002





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ORDER NO. 03 / 2020

(In Case No. 11 of 2019)

In the Matter of

A Petition filed by Maharashtra State Power Generation Company Ltd. Nashik Thermal Power Station, Eklahare in the matter arising out of Fixation of Tariff for supply of contaminated water for the applicant company for its Nashik Thermal Power Plant at Eklahare and claim of parity as per the rationale based on this Authority's Order No. 12 of 2017 passed on October 13, 2017.

Chief Engineer,  
Maharashtra State Power Generation Company Ltd.  
Nashik Thermal Power Station Eklahare,  
District- Nashik- 422105.

Petitioner

----Vs-----

- 1) State of Maharashtra, Water Resources Department, Through its Secretary, Mantralaya, Mumbai-32.
- 2) Chief Engineer, Water Resources Department, Sinchan Bhavan, Trimbak Road, Nashik- 422 002.
- 3) Superintending Engineer and Administrator, Command Area Development, Water Resources Department, 2<sup>nd</sup> Floor, Sinchan Bhawan, Trimbak Road, Nashik- 422 002.

Executive Engineer, Water Resources Department, Nashik Irrigation Division, Trimbak Road, Nashik- 422 002.

Respondents



Coram: Shri. K. P. Bakshi, Chairman  
Shri. V. M. Kulkarni, Member (WRE)  
Shri. Vinod J. Tiwari, Member (Law)

Finally Heard on : October 16, 2019

Judgement Delivered on : March 05, 2020

## BACKGROUND

1. Maharashtra State Power Generation Company Limited (MSPGCL) had constructed Nashik Thermal Power Station (NTPS) near village Eklahare, District Nashik, Maharashtra, in the Year 1977. The NTPS had constructed a barrage with storage capacity of 69 Million Cubic Feet (Mcft) across river Godavari near village Eklahare downstream of Gangapur Dam and Nashik City. The NTPS has two Stages viz. Stage - I was 2 X 140 MW (Total 280 MW) and Stage - II was 3 X 210 MW (Total 630 MW).
2. The Water Resources Department (WRD) had granted permission in the Year 1977 to NTPS for lifting 1200 Mcft from river Godavari near village Eklahare. At present, Stage - I have been decommissioned and Stage - II is generating 630 MW power. After decommissioning of Stage - I, the NTPS has surrendered the 500 Mcft water to WRD. Now, the NTPS is in agreement with Executive Engineer, Nashik Irrigation Division, WRD, Nashik for supply of 700 Mcft water. The period of this Agreement is from April 01, 2018 to March 31, 2024.
3. M/s Rattanindia Nashik Power Ltd (RNPL) was granted to use 190 Million Liters per Day recycled water released by Nashik Municipal Corporation ("NMC" for short) from existing MSPGCL's Eklahare Barrage. The RNPL had filed a Petition (Case No. 8/2016) before this Authority for fixing tariff for treated sewage. The Maharashtra Water Resources Regulatory Authority (MWRRA) vide Order No. 12/2017 dated October 13, 2017 had granted 25% reduction in tariff for RNPL. This Order was case specific based upon the peculiar facts and circumstances prevailing therein.



4. As the water lifting source of RNPL & NTPS is same i.e. Eklahare Barrage, the NTPS, on the grounds of parity, has preferred the present Petition before this Authority for granting 25% concession in water tariff on May 06, 2019.
5. Similar Petition was filed by the same Petitioner earlier. However, the same was rejected and disposed off on the grounds of *locus standii* as the Petitioner did not have valid Agreement with WRD at that time.

### GIST OF THE PRAYERS

6. The Petitioner, through its Petition has prayed for following reliefs:
  - i) This petition may please be considered in continuation to case no.1/2018 as per order no. 05/2018 of the Hon'ble Authority. And, Fix up the concessional tariff for contaminated water supply to NTPS, Mahagenco for its Nashik Thermal Power Station Eklahare with retrospective effect up to 27<sup>th</sup> February, 2018.
  - ii) Fix up the same water tariff for lifting of same water by RNPL and NTPS two entities from one source for one purpose of power generation only and apply the revised tariff by granting 25% concession in the water tariff to MAHAGENCO NTPS Eklahare as per this Hon'ble Authority (MWRRA) order dated 13th April, 2012 in Case no.5 of 2011 and Order no.12/2017 dated 13th October, 2017 for use of contaminated Godavari River water lifted from Eklahare Barrage for Power Generation as in the case of RNPL.
  - iii) Any other relief which this Hon'ble Authority deems fit in the interest of justice.

### THE PROCEEDINGS BEFORE THIS AUTHORITY

After filing of the Petition, the Authority vide its letter dated August 16, 2019 directed all the Respondents to file their Parawise Affidavit in Reply. Accordingly, EE, NID Nashik - the Respondent No. 4 herein, has filed an Affidavit in Reply on behalf of Respondent No. 2 to 4 on



September 30, 2019. Thereafter, this Authority conducted one hearing in the matter i.e. on October 16, 2019 and gave fair & equal opportunities to the parties to present their case on merit and with the consent of parties finally heard the matter for disposal in the interest of justice.

#### GIST OF THE FIRST & FINAL HEARING ON OCTOBER 16, 2019

8. This hearing was attended by Shri. V. A. More, Executive Engineer, Nashik Thermal Power Station, Eklahare, Shri. R. C. Dashore, Consultant to the Petitioner, Shri. R. M. More, Superintending Engineer & Admin, CADA, Nashik for Respondent No. 2 & 3 and Smt. Vaishali Kurne, Under Secretary, WRD, Mumbai on behalf of Respondent No. 1.
9. Shri. R. C. Dashore on behalf of the Petitioner submitted that the Petitioner had earlier approached to this Authority through Petition (Case No. 1/2018) on January 23, 2018. However, this Authority vide its Order No. 05/2018 dated March 26, 2018 disposed the Petition on the issue of *locus standi* as there was no valid agreement between parties and gave liberty to file fresh Petition with necessary testimonials in support of *locus standi*. Accordingly, the Petitioner is now in agreement with EE, NID, Nashik for supply of 700 Mcft water which is valid from April 01, 2018 to March 31, 2024.
10. He further submitted that the Eklahare Barrage is on downstream side of Nashik city and all the untreated water from Sewage Treatment Plants ("STPs" for short) comes to Eklahare Barrage. The issue of Godavari River pollution was also raised through PIL 173/2012 before Hon'ble High Court at Mumbai. On enquiry of this Authority, he submitted that there is no order of the Hon'ble High Court regarding water tariff as the PIL was mainly on the issue of Godavari River pollution.
11. He further submitted that RNPL (formerly, Indiabulls Realtech Ltd) has constructed Thermal Power Plant in the same vicinity with permission to lift water from Eklahare Barrage on Godavari River. The RNPL approached to this Authority through Case No. 5 of 2011 for seeking



waiver in tariff on recycled sewage water. The Authority vide its Order dated April 13, 2012 has granted 25% concession in water tariff. The Authority pointed out that the Bulk Water Tariff Order, 2011 of this Authority has no provision for treated sewage water but as per the MWRRRA (Fixing Criteria for & Issuance of Tariff Order for Bulk Water) Regulations 2010, the Authority granted waiver to RNPL. On inquiry of this Authority, Shri Dashore submitted that they did not approach to this Authority in 2011 but approached to the State Government for waiver.

12. The Authority pointed out that if the location of NTPS is 11 Km from Nashik City ULB's STPs, then they should have laid direct pipeline from STPs as per the Tariff Policy notified by Government of India and the State Government Policy for Thermal Power Plant. Shri. Dashore submitted that the STP water is an unsure source and as per the Government of India's Tariff Policy of 2016, they have to make an alternate arrangement for assured source of water.
13. Shri. R. M. More - Respondent No. 3 submitted that the RNPL was given water reservation from STPs whereas the NTPS has water reservation from the Gangapur dam. The water was regularly released from Gangapur Dam except in year 2016 due to drought.
14. On inquiry of the Authority, Shri. Dashore submitted that they want concession prior to February 27, 2018 and the concession amount would be about Rs. 30.00 crore per year for six year. Shri More also submitted that they have not even paid the balance penal charges of Rs. 72.81 crore. In response, Shri. Dashore clarified that only Rs. 15.82 crore is pending, for which proper reconciliation of account is needed.
15. At the time of hearing, the Authority asked the Counsel for the Petitioner that whether they have considered the impact of so claimed concessional tariff rate while submitting the electricity energy tariff proposal to Maharashtra Electricity Regulatory Commission (MERC)? And if not, then how the Petitioner is claiming such concessional water rates for which electricity tariff is already fixed and recovered / charged to the electricity consumers? The Counsel for the Petitioner



could not give satisfactory answer to this query pertaining to the period from April 13, 2012 to October 15, 2018 for which the Petitioner is claiming for concessional water tariff though the electricity charges have already been collected and recovered from the consumers at large on the basis of the bills raised by Respondents - WRD for supply of fresh water to the Petitioner from Gangapur dam. Thus, in the opinion of the Authority, such retrospective concession for said past period from April 13, 2012 from October 15, 2018, if at all hypothetically considered, will amount to unjust enrichment of the Petitioner as the said amount has already been indirectly collected from the consumers on the basis of electricity energy tariff approved by the MERC, in which no such concessional tariff was considered. Hence, in the opinion of this Authority such unjust enrichment cannot be permitted.

16. After hearing parties to the litigation, the Authority directed parties to submit written notes of arguments, if they want so and the matter was closed for the Final Order.
17. Accordingly, the Petitioner submitted its written statement on October 19, 2019.

#### FRAMING OF ISSUES

18. This Authority, having considered the contentions made in the Petition & submissions of the parties, the documents placed on record, following relevant issues are drawn for consideration and adjudication:

- (i) *Whether the Petitioner has locus to file this Petition?*
- (ii) *Whether the Authority has jurisdiction to adjudicate the present matter?*
- (iii) *Whether the Petitioner is entitled to get 25% concessional tariff on the grounds of parity with retrospective effect? If yes, for which period?*
- (iv) *Is there any relevant aspect which needs to be addressed along with this matter? If yes, how?*



*[Handwritten signature]*





## FINDINGS OF THE AUTHORITY

19. This Authority, after reviewing the pleadings, submissions and evidences on record has adjudicated the above issues. The findings of this Authority are:

(i) Whether the Petitioner has locus to file this Petition?

- a) Earlier, the Petitioner had approached this Authority on January 23, 2018 (Case No. 1 of 2018). At that time, the Petitioner could not establish it's *locus standi* even after giving an opportunity. On the contrary, the Petitioner had agreed the fact that the Agreement with WRD for supply of water was lapsed on October 31, 2016. Thus, on the grounds of the *locus standi*, the earlier Petition was disposed with a liberty to file fresh Petition with necessary testimonials.
- b) Thereafter, the Petitioner entered into an agreement with WRD on April 1, 2018 which is valid upto March 31, 2024.
- c) Now, therefore, the Petitioner vide Clause 11 (2) of the MWRRA (Conduct of Business) Regulations, 2013 ("Regulation" for short) has locus to file this Petition.

Thus, the answer to the issue is in the affirmative.

(ii) Whether the Authority has jurisdiction to adjudicate the present matter?

The matter is regarding fixing concessional tariff for contaminated water supply to NTPS on the lines of RNPL for which this Authority has allowed 25% tariff concession in Case No. 12/2017 vide Order dated October 13, 2017, based upon the peculiar facts and circumstances prevailing therein. The issue involved is of deciding parity as regards to concession earlier offered by this Authority. Hence, the Authority has jurisdiction to adjudicate the present matter.

Thus, the answer to the issue is in the affirmative.



(iii) Whether the Petitioner is entitled to get 25% concessional tariff on the grounds of parity with retrospective effect? If yes, for which period?

- a) The Petitioner has fully relied on parity issue. Accordingly, to him:
- a1) Eklahare barrage is situated at downstream of Nashik city. All the treated/untreated sewage water is discharged by Nashik Municipal Corporation ("NMC" for short), through its STPs and open drains into the River Godavari and is stored in Eklahare Barrage. The Petitioner has kept on record photos and News paper cutting in support of pollution in River Godavari.
- a2) Both RNPL, to whom concessional tariff is granted by this Authority and the NTPS, MAHAGENCO are lifting the water from the same source, the Eklahare barrage.
- a3) The Petitioner has also kept on record test reports of water.
- a4) The Petitioner said to be required to incur extra expenditure on treatment. Average expenditure on treatment in the year 2018-19 is Rs.14.81/cum.
- b) The Respondents argued that:
- b1) WRD has allocated treated sewage water of STPs of NMC to RNPL, whereas source of water allocated to the Petitioner is Gangapur dam. The fresh water in Gangapur dam is reserved for the Petitioner which is released regularly. Thus, the sources for RNPL & NTPS are different. Hence, concessional tariff made applicable to the RNPL can't be made applicable to the Petitioner in light of the peculiar facts and the circumstances distinct and separate.
- b2) The Petitioner has constructed barrage near Eklahare on River Godavari for availing the water released from Gangapur dam. The water is released by WRD from Gangapur dam into the River Godavari as per the requirement of the Petitioner which is lifted by them from the Eklahare barrage.
- b3) The water testing reports for the year 2015, 2016, 2017 as received from the Petitioner vide Letter dated August 21, 2017 indicated that the results are within permissible limits set by IS



2296: 1992 and IS 10500:1991. Further, as per the manual for design of Thermal Power Plant, it is obligatory for the Petitioner to install suitable treatment Plant to meet their requirements.

b4) The photos submitted by the Petitioner do not attract any evidential value as they are not supported by any proof of source.

b5) The Petitioner has lifted the water during November 1, 2016 to March 31, 2018 without any agreement.

### Inference of this Authority

c) From the arguments made by the parties and documents on record, this Authority has observed that:

c1) The source of water allocated to the Petitioner is the Gangapur dam where as the source of water allocated to RNPL is the treated water released by NMC from their STPs. Thus, the natures of sources allotted to the two entities are different and distinct.

WRD has sanctioned water from Gangapur dam to the Petitioner. The Petitioner had an option to draw water directly from the dam in that case question of contamination of water would not have arisen. However, the Petitioner has opted for drawing water from River Godavari, by constructing the barrage on River Godavari at Eklahare located downstream of Gangapur dam, may be from overall economy and convenience.

c2) As per the clause 11 of the Agreement signed between NTPS, Eklahare and WRD on May 16, 2011, the Petitioner has agreed to pay water charges at the rate of Rs. 2.64 per 10,000 liters for domestic purpose and Rs. 64 per 10,000 liters for industrial purpose.

Whereas as per the clause 11 of the two separate agreements between RNPL and WRD on January 16, 2012 & February 08, 2012, respectively and as per the provisions in these agreements RNPL has agreed to pay water charges at prevailing rates fixed by the Government from time to time for industrial purpose or as may be as decided by the MWRRA.



Thus, there is a difference in the tariff related provisions in the agreements signed and executed separately by both the entities and this difference is distinct in nature also. The Petitioner has agreed to pay water charges for industrial purpose at the rate of Rs. 64 per 10,000 liters.

c3) This Authority, after duly considering the said common features as well as distinguishing features of NTPS (Petitioner in this Case) and RNPL, has issued specific order (Order No. 12/2017) dated October 13, 2017, in Case no. 8/2016 based upon the facts and circumstances therein, the relevant portion reads as:

*"We accept the Petitioner's plea for fixation of tariff. The Petitioner Company, by virtue of nature of source of supply of water falls under Sub-category-2 of the Authority's Tariff Order dated May 30, 2011. The applicable tariff to this Sub-category is Rs.64/10 cum. However, the Petitioner having been allocated effluent of Sewage Treatment Plant of NMC after secondary treatment, is entitled for 25% reduction in tariff as observed by the Authority in its earlier Order in Case No.5 of 2011 viz. April 13, 2012. Thus, the applicable tariff shall be Rs.48/10 cum. This tariff shall be applicable from April 13, 2012 to October 31, 2017. The tariff Order is case specific.*

*The Respondent's letter dated June 13, 2016 is set aside. Respondents shall issue fresh demand on the basis of this Order".*

Further, in Case No. 5 of 2011, this Authority has granted 25% tariff reduction on the ground that RNPL by using treated sewage effluent, indirectly reduces the burden on the fresh water. Para 28 of the Order dated April 13, 2012 reads as follow;

*"Regulation 10 of the MWRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2010 allows this Authority to take such action as might be necessary to remove difficulties which arise while giving effect to the regulations. Regulation 10 provides as follows:*

*"10. Power to remove difficulties*

*If any difficulty arises in giving effect to the provisions of these Regulations, the Authority may, by general or specific order, do*



*[Handwritten signature]*



*anything not being inconsistent with the provisions of the Act, which appears to be necessary or expedient for the purpose of removing the difficulty."*

*In the present case, for the reasons mentioned earlier there exists a difficulty in giving effect to Regulation 3, namely going through the public consultation process before introducing new criteria. However, the power of Regulation 10 of the MWRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2010 cannot be exercised in respect of the first two options at Para 26 (i) and (ii) above as that would be inconsistent with section 11 (d) of the Act. On the other hand, it would be possible to exercise the power to remove the difficulty of Regulation 3 by extending the existing dispensation of Para 13.3.2 of the Criteria to industries using treated sewage effluent and thus indirectly reducing the burden on fresh water sources in the system. If this criterion is extended to the Petitioner's case it would not be inconsistent with any provision in the Act and the consequential reduction in the tariff would be to the extent of 25%."*

In the present case, for the Petitioner, water is released from Gangapur dam. Thus, there is no direct or indirect saving of fresh water.

This Authority having examined the peculiar set of facts and circumstances as mentioned above is of the considered opinion that the Petitioner is not entitled to get the benefits granted to the RNPL on the grounds of the parity.

Thus, the answers to both the parts of the issue under consideration are in the negative.

**(iv) Is there any relevant aspect which needs to be addressed along with this matter? If yes, how?**

- a) In the present case, it is an established fact that the WRD has granted permission to lift 1200 Mcft of water from Gangapur dam to the Maharashtra State Electricity Board, the holding company of the Petitioner for NTPS in Year 1977. This water requirement is now reduced to 700 Mcft due to decommissioning of one unit of NTPS.



The said Gangapur dam is in Upper Godavari sub-basin, which is water stressed sub-basin. The Gangapur dam also supplies drinking water to Nashik Municipal Corporation. The domestic demand of Nashik City has gone up. The live storage capacity and annual utilisation of Gangapur dam is 203.88 MCM & 231.82 MCM respectively. Further, out of total annual utilisation of 231.82 MCM, the domestic reservation is 77.36 MCM & industrial reservation including that of NTPS is 73.52 MCM. This has resulted into reduction of water quota of the agriculture sector. Sectoral Allocation granted by the State Cabinet under Section 16A of the MWRRRA Act, 2005 to the domestic & industrial sector is 15% and 10% respectively. As against this, actual domestic & industrial use is 33% and 32% respectively. Making fresh water available for domestic sector is inevitable; however treated sewage can be used for industrial sector which in turn can reduce burden on the fresh water.

- b) It is also a fact to be appreciated that the Government of India has notified new Tariff Policy on January 28, 2016 wherein it is mandated that the Thermal Power Plant(s) including the existing plants located within 50 km radius of STP of Municipality/Local bodies/similar organization shall, being in their closeness to STP, mandatorily use treated sewage water produced by these Urban Local Bodies or other entities having STPs and the associated cost on this account be allowed as pass through in the tariff. The Petitioners plant is within the radius of 50 Km from STP of NMC.
- c) Subsequently, Government of Maharashtra's Urban Development Department in concurrence with Energy Department & WRD has issued G.R. on November 30, 2017 which has also mandated the Thermal Power Plants within 50 Km radius of STPs of ULBs to use treated water from said STPs so as to reduce the burden on fresh water.
- d) The mandate given to this Authority is to regulate water resources within the State, facilitate and ensure judicious, equitable management, allocation and utilisation of water resources. This Authority under provision of Section 11(a) of the MWRRRA



*[Handwritten signature]*



(Amendment & Continuance) Act, 2011 has determined the Criteria for distribution of water Entitlements on September 22, 2017. In this Criteria, this Authority has mandated Thermal Power Plants in the State to switch to treated water as provided in the National Tariff Policy and further mandated River Basin Agencies to ensure that Thermal Power Plants switches over to treated sewage.

- e) The State Water Policy, 2019 with an intention to reduce the burden on fresh water, has also mandated all Thermal Power Plants within radius of 50Km from STPs to switch over to use treated water of STPs.
- f) Considering the acute water shortage in Upper Godavari sub-basin and in particular in Gangapur dam, this Authority is of considered view that both the Petitioner & Respondent must implement the above mandate of the statutory provisions in time bound manner & therefore, this Authority finds imperative to give necessary directions in this regard in order to reduce the burden on fresh water.

The issue is answered accordingly and relevant directions are being issued in the operating part of this order in the overall interest of the stakeholders in the State.

### DIRECTIONS

20. Having heard the parties to the litigation, and after giving due consideration to the documents on record, submissions made by the parties and having adjudicated the issues framed as above, this Authority, hereby directs:

- (i) The Petitioner is not entitled for any tariff concession. Hence, the prayer made by the Petitioner is hereby rejected.
- (ii) In view of the facts & statutory provisions mentioned in Para 19(iv) above, Petitioner shall switch over to the use of treated water in time bound manner before expiry of the existing agreement, for that matter they have sufficient time till March 31, 2024 so as to reduce the burden on the fresh water.



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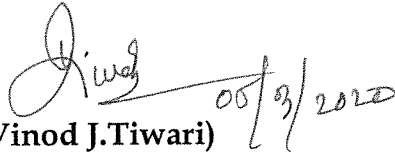


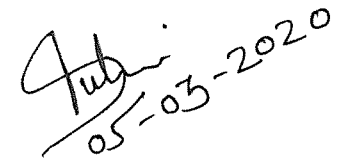
(iii) The Petitioner should file an undertaking on Affidavit duly signed by the responsible authorised officer of the Petitioner company giving definite plan to switch over to the use of treated water in time bound manner before expiry of the existing agreement, for that matter they have sufficient time till March 31, 2024. Such undertaking should be filed with this Authority within sixty days from this Order.

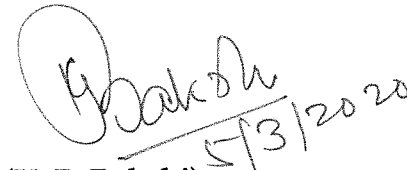
(iv) The Respondents are hereby directed to ensure that the Petitioner is implementing the time bound program for switching to treated water and accordingly there should not be any need to renew the Agreement for supply of fresh water beyond March 31, 2024.

The Petition is accordingly disposed off in terms above directions with no order as to the costs.

Delivered on March 05, 2020.

  
(Vinod J. Tiwari)  
Member (Law)

  
(V.M. Kulkarni)  
Member (W.R. E.)

  
(K. P. Bakshi)  
Chairman

