

Block14, CGO complex, Lodhi Road, New Delhi-110003  
July 30 2024

### Order

Subject: *Speaking order* in compliance with the **Order of the Hon'ble High Court of Madhya Pradesh** dated **04.10.2023** in Writ Petitions No. **12279 of 2022**, Writ Petition No. **12381 of 2022**, Writ Petition No. **11180 of 2022**, Writ Petition No. **13271 of 2022**, Writ Petition No. **10930 of 2022**, Writ Petition No. **16554 of 2022**, Writ Petition No. **123 of 2023**.

#### I. BACKGROUND:

The Honorable High Court of Madhya Pradesh at Jabalpur, in its final order dated 04.10.2023, in the Writ Petitions mentioned in the subject above, was pleased to direct the respondent numbered 1 (i.e., the Department of Public Enterprises, hereinafter referred to as DPE) as follows:

*“34. In the considered opinion of this Court, looking to the peculiar facts and circumstances of the case and involvement of certain questions as well as administrative procedures as referred above, it is apposite that Ministry of Heavy Industries and Public Enterprises/ Department of Enterprises (respondent No. 1) must consider it and decide it by taking rival submissions into account. If the respondent No. 1/Department considers appropriate, then it may appoint any other appropriate authority under its aegis to consider the dispute holistically and pass a reasoned order under due intimation to the parties.*

*35. Vide interim order dated 22.06.2022, this Court stayed the recovery proceedings and directed the petitioners to furnish undertakings before the respondent No. 2 and 3 in respect of fact that if petitions ultimately fail, then they shall pay recovery amount, therefore, in the interest of justice, till the dispute is decided, recovery proceedings shall be kept in abeyance.*

*36. Respondent No. 1 shall decide the dispute in which parties shall be at liberty to represent their case in writing as well as oral submissions and after giving reasonable opportunity of hearing, appropriate order shall be passed in accordance with law.”*

2. And whereas, the DPE considered all the rival submissions presented orally and in writing during meetings held on 05.01.2024, 19.02.2024, 06.03.2024 and final hearing on 15.05.2024. The dispute arises from the impugned circular NHDC/1/F/210-4 dated 29.03.2022 (hereinafter referred to as NHDC's Recovery Order-2022), issued by the Deputy General Manager (Finance) of Narmada Hydroelectric Development Corporation Ltd (hereinafter referred to as NHDC). This circular aimed to initiate recovery from the petitioners due to discrepancies identified in the calculation of Performance Related Pay (hereinafter referred to as PRP) for the financial years 2017-18, 2018-19, 2019-20, and 2020-21. The petitioners in the Writ Petitions mentioned in the subject contested this circular before the Hon'ble High Court of Madhya Pradesh at Jabalpur.

3. And whereas, NHDC, following Office Memorandum No. **W-02/0028/2017-DPE(WC)-GL-XIII/17** (hereinafter referred to as DPE'sOM-2017), initiated a pay revision scheme incorporating Performance Related Pay (referred to as PRP) for Executives and Non-unionized

F. No. W-02/0001/2024-DPE(WC)  
भारत सरकार Government of India  
वित्त मंत्रालय Ministry of Finance  
लोक उद्यम विभाग Department of Public Enterprises

Supervisors. Subsequently, the NHDC Board of Directors, during its 114th meeting on 18.02.2019, endorsed the revised PRP Scheme in line with the guidelines of the Office Memorandum. This approval, recommended by the Nomination and Remuneration Committee, led to the issuance of Office Order No. 02/2019 on 13.03.2019 (No. NHDC/1/HR/0139) (hereinafter referred to as NHDC's Order-2019) for implementation. However, discrepancies arose post the disbursement of PRP for FY 2020-21, particularly regarding the calculation method of PRP between NHDC and NHPC. NHDC's method, unlike NHPC, did not restrict the "Cut-Off Factor" to one, prompting NHDC to initiate recovery proceedings for excess PRP payments made from FY 2017-18 to 2020-21 in terms of NHDC's Recovery Order-2022. This move was contested by a majority of affected Executives and Supervisors in a case presented before the Hon'ble High Court of Madhya Pradesh at Jabalpur, with the Union of India and NHPC also arrayed as respondents. The petitioners argued discrepancies in the interpretation of the "Cut-Off Factor" outlined in the PRP models of the Department of Public Enterprises, effective from FY 2007-08 and FY 2017-18 respectively, emphasizing the absence of a specific restriction on the factor to one in the latter model. Conversely, NHDC and NHPC justified the recovery citing the principle that PRP "Pay Out" must not exceed the "Required Amount," interpreting the "Cut-Off Factor" as  $\leq 1$ , denoting 100%. The matter was subsequently directed for resolution with the Department of Public Enterprises by the NHDC's Board in its 143rd meeting held on 30.10.2023, following the decision of the Hon'ble High Court at Jabalpur on 04.10.2023.

4. And whereas, specific information was requested from the Ministry of Power, the administrative ministry of National Hydroelectric Power Corporation Ltd. (hereinafter referred to as NHPC), which is the holding/parent company of NHDC. The Ministry of Power stated that NHDC initially calculated Performance Related Pay (PRP) without restricting cut-off factors to one (1) or 100%. However, NHPC highlighted that PRP payout cannot surpass the requirement set by the CPSE, asking NHDC to initiate recovery proceedings. The Ministry of Power stated that failure to limit cut-off factors to one (1) could result in PRP payout exceeding requirements, thereby affirming NHPC's stance that the NHDC's calculations of PRP without enforcing the cut-off factor to one (1) or 100% was not correct.

5. And whereas, the Ministry of Power also informed that other CPSEs under their administrative control, including NTPC, PGCIL, REC, and PFC, have interpreted the DPE's OM-2017 in the same manner as NHPC. They have applied a single Cut-Off Factor of one (1) or 100% for both current year's profit (65%) and incremental profit (35%) when computing the PRP payout. The detailed PRP calculations, adhering to the DPE's OM-2017, from fiscal years 2017-18 to 2021-22 for NHPC, NTPC, PGCIL, PFC, REC, NEEPCO, THDC, and Power Grid India Limited, were provided for records.

6. And whereas, Representatives of the NHDC Officer Association (NoA hereinafter) emphasized aspects of the PRP Policy as outlined in DPE's OM-2017, stating that the NHDC Board, based on the recommendation of the Nomination & Remuneration Committee (NRC), sanctioned the adoption of the revised Performance Related Pay (PRP) Scheme in NHDC, effective from 01.01.2017, implementing it entirely in accordance with DPE guidelines outlined

in DPE's OM-2017, as per the recommendations of the 3rd PRC. The Senior Manager (Finance) of NHPC Ltd. highlighted in an email dated March 22, 2022, that NHDC is not constraining "Cut-off Factor (1)" and "Cut-off Factor (2)" to a maximum of "1" in the formula for calculating the "Kitty Factor". Following NHPC Ltd.'s communication, NHDC Management formed a Committee comprising Chief General Managers (CGMs) and General Managers (GMs) to examine the issue. The committee presented its recommendations on 28.03.2022, noting that although DPE Guidelines and examples do not require restricting 'Cut-off factors' to 1 anywhere, NHPC's contention that the Payout Amount cannot exceed the Required Amount seems valid. NHDC then issued a recovery circular dated March 29, 2022, based on the committee's recommendations. According to the circular, the recovery process began from the monthly salaries starting from March 2022 and extended up to May/June 2022, but was halted when the Madhya Pradesh High Court issued a stay against the recovery in the group of Writ Petitions mentioned.

7. Whereas, the NoA challenged the findings of the aforesaid Committee as well as that of NHPC [Holding company of NHDC] on the following grounds:  
(i) *Whether the cut-off factor has to be restricted to 1 or 100%;*  
(ii) *DPE's OM-2017 does not explicitly mention the restriction of the cut-off factor to 1 or 100%.*

## II. FINDINGS:

(i) The PRP provisions are specified in para 11 of DPE's OM-2017, along with illustrative examples in its Appendices:

“11. Performance Related Pay (PRP):- The admissibility, quantum and procedure for determination of PRP has been given in Annexure-IV. The PRP model will be effective from FY 2017-18 and onwards. For the FY 2017-18, the incremental profit will be based on previous FY 2016-17. The PRP model will be applicable only to those CPSEs which sign Memorandum of Understanding (MoU), and have a Remuneration Committee (headed by an Independent Director) in place to decide on the payment of PRP within the prescribed limits and guidelines.

Allocable profits and Kitty factor are defined in Annexure-IV. Kitty factor is defined in sub-para (III) as under:

(III) Kitty factor: After considering the relevant year's profit, incremental profit and the full PRP payout requirement (computed for all executives based on Grade-wise ceilings, CPSEs MoU rating, Team rating & Individual performance rating), there will be two cut-off factors worked out based on the PRP distribution of 65:35. The first cut-off shall be in respect of PRP amount required out of year's profit, and the second cut-off shall be in respect of PRP amount required out of incremental profit, which shall be computable based on the break-up of allocable profit (i.e. year's 5% of profit bifurcated into the ratio of 65:35 towards year's profit and incremental profit).

*The sum of the first cut-off factor applied on 65% of Grade PRP ceiling and the second cut-off factor applied on 35% of Grade PRP ceiling will result in a kitty factor. The kitty factor shall not exceed 100%.* [Emphasis supplied]

(ii) According to DPE's OM-2017 on PRP, the Cut-Off Factor is calculated by dividing the 'amount available' by the 'amount required,' as illustrated in the accompanying examples. The policy intent behind the cut-off factor is to mitigate excessive PRP payout disparities across various grades by specifying grade-wise ceilings of PRP, expressed as a percentage of basic pay, as the maximum PRP for each group of grades. The examples provided in the DPE's OM-2017 and DPE's OM-2020 are illustrative and do not exhaustively cover all scenarios. However, NHDC did not restrict the Cut-Off Factors to one (100%) in their PRP calculations, despite having allocable profits exceeding the PRP requirements.

(iii) Whereas, the omission of the ceiling on the "Cut-Off Factors" are extraneous, since DPE's OM-2017 explicitly restricts the "Kitty Factor" to 100% which is resultant factor of both the "Cut-Off Factors". To overcome this lacunae and to explicitly state the policy intent, the DPE's OM-2020 limits Cut-Off Factor(1) and Cut-Off Factor(2) to one (i.e., 100%), as well as capping the Kitty Factor at one (i.e., 100%) by way of illustrations and examples. Therefore, DPE's OM-2017 read with DPE's OM-2020 makes the policy intent abundantly clear that both the Cut-Off Factors (1) and (2) as well as the "Kitty Factor" should be capped at one (i.e., 100%).

(iv) The DPE's OM-2017 and DPE's OM-2020 are deemed correct. The examples provided in the DPE's OM-2017 and DPE's OM-2020 are illustrative and do not exhaustively cover all scenarios. The interpretations given by most CPSEs, both within and outside the power sector, are largely uniform, establishing it as a normative standard.

(v) The practice has been to cap the cut-off factors at 1 (100%) as highlighted by the Ministry of Power (including NHPC, the holding company of NHDC).

### III. ORDER:

Now therefore in view of findings mentioned at II ibid the undersigned orders as follows:

(i) That NHDC erred in not imposing a restriction on the cut-off factor and therefore it should amend its PRP scheme to provide for a cut-off factor ceiling to be effective on or after 01.04.2023.

(ii) Considering the undue hardship the decision of NHDC in imposing a cut-off factor ceiling, post-facto, would cause to employees, payments already made to NHDC officials, may not be recovered, even if such payments are not exclusively covered by DPE's OM-2017.

(iii) The regularization of excess payments must not be interpreted as a precedent by NHPC, NHDC, or any other CPSEs while redrafting their PRP Schemes. This measure is solely to prevent hardship and should not be used as a precedent to justify future payments of Performance Related Pay.



(Ali R. Rizvi)

Secretary, Department of Public Enterprises

1. The Secretary, Ministry of Power.
2. The Managing Director, NHDC Ltd., Bhopal.
3. Petitioners / President, NHDC Officers Association.
4. Administrative Ministries/Department of all the CPSEs.