

**Central Electricity Regulatory Commission
New Delhi**

**Coram:
Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member**

Petition No. 45/2010

**Date of Hearing: 26.4.2011
Date of Order : 21.8.2012**

In the matter of

Petition under Section 79 of the Electricity Act, 2003, seeking directions to M.P. Power Generating Company Ltd (Respondent No.3) for filing of ARR and petition for determination of tariff in respect of Rajghat Hydro Power Project by the Commission.

And In the matter of

Uttar Pradesh Power Corporation Ltd, Lucknow

Petitioner

Vs

1. Secretary Energy Dept, Madhya Pradesh Government, Bhopal
2. Madhya Pradesh State Electricity Board, Jabalpur
3. MP Power Generation Company Ltd, Jabalpur
4. MP Power Trading Company Ltd, Jabalpur

Respondents

Present:

1. Shri S.N.Mitra, Advocate, UPPCL
2. Shri Jagdish Agarwal, UPPCL
3. Shri G.Umapathy, Advocate, MPPTCL
4. Ms. Sudha Umapathy, Advocate, MPPTCL

ORDER

The petition has been filed under Section 79 of the Electricity Act with the following prayers, namely :-

- “(i) The Hon’ble Commission may kindly direct the Respondents to release the legitimate share of 22.5 MW of power from Rajghat Hydel Power Project to the Petitioner;

- (ii) The Hon'ble Commission may kindly direct the Respondent No 3 to file ARR and Tariff Petition in respect of Rajghat Power Project (45 MW) for ascertaining its cost and determination of tariff from the date of commissioning;
- (iii) Adjudicate and arbitrate the claim of the petitioner and/or refer the matter for adjudication and arbitration of the claim of the petitioner for determination and award of compensation payable to it by the respondents for the loss suffered by it due to the purchase of electricity at higher rate and incurring UI charges under ABT regime, for want of supply of share from the project;
- (iv) Pass any other order which the Hon'ble Commission deems appropriate in the interest of justice."

2. By way of interim relief, the petitioner has prayed for a direction for release of 22.5 MW of power from the generating station immediately.

3. The petitioner is one of the successors of the erstwhile Uttar Pradesh State Electricity Board (UPSEB) and is engaged in the business of bulk procurement of electricity and its bulk supply within the State of Uttar Pradesh under a statutory scheme formulated by the State Government. All properties, rights and liabilities of UPSEB, other than those assigned to Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd (UPRVUNL) and Uttar Pradesh Jal Vidyut Utpadan Nigam Ltd (UPJVNL), also successors of UPSEB, have been assigned to the petitioner by the State Government. Similarly, all contracts, agreements, interest and arrangements, other than those transferred to UPRVUNL and UPJVNL under the transfer scheme stand transferred to the petitioner.

4. The second respondent succeeded MPEB consequent to re-organization of the erstwhile State of Madhya Pradesh in 2000. The second respondent was further re-organized under the statutory scheme notified by the State of Madhya Pradesh, the first respondent, in 2005. The undertakings of the second respondent engaged in generation of electricity were assigned to the third respondent. The function of bulk purchase of electricity from the generating companies and bulk supply thereof to the distribution

companies within the State of Madhya Pradesh is assigned by the State Government to the fourth respondent under the transfer scheme notified by the first respondent in March 2006.

5. The parties are *ad idem* on the basic facts. In a meeting held on 3.3.1993, UPSEB and MPEB agreed to jointly develop Rajghat Hydro Power Project (the generating station) in the State of Madhya Pradesh on river Betwa, with a total capacity of 45 MW (3 x 15 MW). In the said meeting MPEB agreed to fund the total cost of developing the generating station, but the completion cost was agreed to be equally shared by UPSEB and MPEB. It was also agreed that funding of share of UPSEB was to be treated as loan from MPEB, to be repaid by UPSEB along with interest on the outstanding amount at the rate at which MPEB borrowed funds for this purpose, in not more than 10 installments. UPSEB made a total payment of `65.5 crore; `10.0 crore in July 1997, `26.5 crore in October 1998 and `29.0 crore in October 1999. The first unit of the generating station was commissioned on 29.9.1999, second unit on .15.10.1999 and third unit on 3.11.1999. The State of Uttar Pradesh was supplied power from the generating station for a brief spell during July to September 2001, stated to be total of 15.56 Million Units. The further supply was discontinued because the petitioner did not open letter of credit for payment of monthly installments of capital expenditure as undertaken by it vide its letters dated 19.10.1993 and 28.5.1994.

6. There is no formal agreement between the parties governing terms and conditions, except what is recorded in the minutes of the meetings held from time to time. It was decided at the meetings held on 8th and 9th September 2005 that the formal agreement

was to be drawn by the petitioner. The petitioner has explained that the agreement could not be finalized since the completion cost of the generating station was not reconciled. As recorded in the minutes of the meeting, there has been an understanding between the parties that power generated was to be equally shared as may be noticed from the following extracts from the minutes of the meetings of 8th and 9th September 2005:

“7. **Sharing of Power from Rajghat HPS to UPPCL**

It was intimated by MPSEB that 50% of share of power from Rajghat HPS could be considered to be due to UPPCL from the date of commencement of generation after clearance of outstanding dues of its cost and interest. The UPPCL agreed to make payment of reconciled amount to get their share of power from Rajghat HPS.”

7. We may briefly take notice of the differences between the parties regarding the cost of completion of the generating station. The fourth respondent by its letter dated 1.5.2008 informed the petitioner that against the estimated completion cost of `131.26 crore, the total expenditure of Rs 194.66 crore as on 31.3.2005 was incurred. Thus an amount of Rs 97.33 crore (50% of the completion cost) was payable by the petitioner as the principal amount. Against this , UPSEB had paid an amount of Rs 65.50 crore up to October 1999. The petitioner was further informed that its share of expenditure as on 31.3.2005 was Rs 118.78 crore. The fourth respondent informed the petitioner that the amount receivable from UPSEB (the petitioner) was `101.94 crore. The petitioner constituted its own committee to investigate the completion cost of the generating station. The committee in its report dated 3.7.2008 concluded that the capital cost as on 31.3.2000, the year closing after commissioning of the generating station, payable by the petitioner was `7327.54 lakh as per the audited balance sheet. UPSEB had already paid the sum of `6550.0 lakh. Therefore, only a sum of `777.54 lakh was payable by the petitioner as on 31.3.2000. After

factoring the interest payable, the committee concluded that outstanding dues added up to `949.51 lakh as on 31.5.2005.

8. Thus the completion cost is not yet reconciled. The consequences are that neither the outstanding dues have been paid by the petitioner nor the supply of power to the petitioner has been resumed. The petitioner resents the pre-condition of payment of outstanding dues for resumption of power supply of its share of power supply.

9. The petition has been filed against the above background.

10. The respondents have opposed the petition. According to the respondents, this Commission does not have jurisdiction to entertain the present petition. It has been averred that the third respondent as a generating company is neither owned nor controlled by the Central Government nor does it have a composite scheme of generation and sale of electricity in more than one State. Accordingly, the respondents have submitted that adjudication by this Commission under clause (f) of sub-section (1) of Section 79 of the Electricity Act is outside its purview. It has been contended that only the Madhya Pradesh Electricity Regulatory Commission has the jurisdiction since entire electricity generated is being sold to the fourth respondent within the State of Madhya Pradesh.

11. We heard the learned counsel for the parties on the question of jurisdiction. We have given our thoughtful consideration to the respective submissions made by the learned counsel for the parties on either side.

12. Sub-section (1) of Section 79 of the Electricity Act, so far as it is relevant, provides as under:

79. Functions of Central Commission: --- (1) *The Central Commission shall discharge the following functions, namely:-*

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

13. Thus, under clause (f) of sub-section (1) of Section 79 of the Electricity Act, this Commission has jurisdiction to adjudicate the disputes on the matters falling under any of the clauses (a) to (d). Therefore, for the purpose of examination of the issue of jurisdiction of the Commission to adjudicate the dispute raised in the petition, it is to be examined whether the dispute is of the nature falling under any of the clauses (a) to (d) of sub-section (1) of Section 79.

14. The petitioner has firstly sought direction to the third respondent for supply of power. This relief it is not related to determination of tariff. Therefore, the question that arises is whether the relief is in any manner relatable to inter-State transmission of electricity. The expression "inter-State transmission" though extensively used has not been defined in the Electricity Act. However, the term "inter-State transmission system" has been defined under sub-section (36) of Section 2 of the Electricity Act as hereunder:

"(36) "inter-State transmission system" includes –

- (i) *any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;*
- (ii) *the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;*
- (iii) *the transmission of electricity within the territory of a State on a system built, operated, maintained or controlled by Central Transmission Utility.”*

15. From clause (i) of sub-section (36) of Section 2 of the Electricity Act it is apparent that any system used for conveyance of electricity by means of main transmission line from the territory of one State to another State qualifies to be categorized as the inter-State transmission system. As a corollary, it follows that conveyance of electricity from the territory of one State to the territory of another State amounts to inter-State transmission of electricity. The present case raises a dispute regarding supply and thereby conveyance of electricity across two states, from the generating station located in the State of Madhya Pradesh to the State of Uttar Pradesh. This dispute relates to inter-State transmission of electricity. The regulation of inter-state transmission of electricity is a function of this Commission under clause (c) of sub-section (1) of Section 79. Therefore, by virtue of clause (f) of sub-section (1) of Section 79 the dispute falls within the jurisdiction of this Commission.

16. In Petition No. 107/2007 (Madhya Pradesh Power Trading Corporation Ltd vs. Principal Secretary, Energy Department, Government of Uttar Pradesh & others) filed by the fourth respondent herein, it was complained that the present petitioner was not supplying the share of power generated at Rihand and Matatila Hydrel Power Stations located within the State of Uttar Pradesh to the State of Madhya Pradesh. The fourth respondent herein sought directions to the present petitioner for supply of power and also

claimed compensation for non-supply of electricity in the past. In that case, the present petitioner who was one of the contesting respondents raised preliminary objection to this Commission's jurisdiction to adjudicate the dispute. This Commission in its order dated 27.2.2008 considered the preliminary issue of jurisdiction and held that

"20. In the light of the foregoing, we have no hesitation to hold that the dispute in the instant case is in regard to a matter connected with regulation of inter-State transmission of electricity as prescribed in clause 79(1) (c) and therefore adjudication of any dispute related thereto is within the jurisdiction of this Commission under clause 79(1) (f) of the Act."

17. The present petitioner filed appeal (Appeal No. 35/2008) against this Commission's order dated 27.2.2008. While dismissing the appeal, the Appellate Tribunal in its judgment dated 9.1.2009 upheld this Commission's jurisdiction. The Appellate Tribunal held that:

"37. As pointed out above, this is not the case of mere sale of electricity, but this is a case of share of supply of power on cost, as per the agreement between the States of U.P. and M.P. If there is no supply of power by U.P. to M.P. of its legitimate share from the Rihand and Matatila Hydel Power Stations as per the agreement entered into between the two States, the flow of expected quantum of power through the Inter-State Transmission system will be affected.

38. Under those circumstances, it has to be safely concluded that the finding rendered by the Central Commission to the effect that the issue falls under Clause 79(1)(c), which attracts Section 79(1)(f) and as such the Central Commission alone has got jurisdiction to deal with the case is, in our view, perfectly justified and as such, no interference is called for."

18. Petition No 107/2007 was finally disposed of by this Commission by its order dated 12.11.2008. The respondents in that case (which included the petitioner herein) were directed to continue supply power to the State of Madhya Pradesh from the generating stations in question. This Commission gave further directions for computation of the amount of compensation to the petitioner therein (the fourth respondent herein). The present petitioner again filed appeal (Appeal No 151/2008). Again, by the judgment dated 21.7.2011, the Appellate Tribunal upheld the order of this Commission.

19. From the orders of this Commission and the judgments of the Appellate Tribunal it emerges that supply of share electricity by one State to the other State in accordance with the agreement between them involves the inter-State transmission and adjudication of any dispute in such cases is within the purview of this Commission. As already noted the primary dispute in the present case is regarding supply of power to the State of Uttar Pradesh from a generating station located in the State of Madhya Pradesh. The facts of the case at hand are exactly similar to the case earlier decided by this Commission and the Appellate Tribunal. The main parties are also the same but their roles have been reversed. Therefore, the present case falls with all fours of the case already decided. In view of the judgments of the Appellate Tribunal in the earlier appeals, it is accordingly concluded that this Commission has jurisdiction to adjudicate the primary dispute of supply of power raised in the present petition and also adjudicate upon the claim for compensation. We, therefore, admit the petition.

20. As the petition has been admitted, it is not necessary at this stage to examine the question of jurisdiction of this Commission to regulate the tariff of the generating station. The question is left open for the present and will be gone into at the time of adjudicating the main dispute regarding supply of electricity by the respondents to the petitioner.

21. The respondents have linked the question of supply of the petitioner's share of power with payment of share of capital cost. The petitioner has disputed the completion cost arrived at by the respondents. Therefore, examination of the completion cost of the generating station will be pre-requisite for deciding the dispute relating to supply of electricity. Accordingly, the third and fourth respondents are directed to file the audited

details of the capital cost, funds borrowed by MPEB and also computation of the interest payable by the petitioner, latest by 30.9.2012, with copy to the petitioner who may thereafter file its reply latest by 25.10.2012.

22. The respondents have pointed out that the petitioner has not made payment of its share of the completion cost and as such supply of electricity was discontinued. After accounting for payment of `65.5 crore by UPSEB, it cannot be disputed that the petitioner had paid not less than 25% of the completion cost. Therefore, the respondents are directed to supply to the petitioner with immediate effect, 25% of the power generated as an interim measure. The petitioner shall, however, be liable for payment of corresponding proportion of O&M expenses, to be billed by the respondents on monthly basis.

23. The petition shall be set down for hearing on 6.11.2012.

sd/-
(V.S.Verma)
Member

sd-
(S.Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson