

**Central Electricity Regulatory Commission  
New Delhi**

**Petition No: 91/MP/2013**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K.Singhal, Member**

**Date of Hearing: 24.4.2014**

**Date of Order: 04.7.2014**

**In the matter of**

Petition under Section 79 (1) (c) (k) Read with section 29 (5) & section 29 (142) of the Electricity Act, 2003.

**And**

**In the matter of**

Chhattisgarh State Power Distribution Co. Ltd.  
P.O.Sunder Nagar, Danganiya,  
Raipur, Chhattisgarh-492 013

**Petitioner**

**Vs**

1. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhawan,  
Race Course, Vadodara-390 007

2. Maharashtra State Electricity Distribution Co Ltd.  
Prakashgad, Bandra (East),  
Mumbai-400 051

3. Madhya Pradesh Power Management Co. Ltd.  
Shakti Bhawan, Vidyut Nagar,  
Jabalpur-482 008, Madhya Pradesh

4. Western Region Electricity Board  
F-3, MIDC Area, Marol,  
Andheri (East), Mumbai-400 093

**Respondents**



## Parties Present

### For Petitioner:

Ms. Suparna Srivastava, Advocate  
Shri A.Bhatnagar

### For Respondents:

Shri G.Umapathy, Advocate, MPPMCL  
Shri Dilip Singh, MPPMCL  
Shri Varun Pathak, Advocate, MSEDCL

## ORDER

The petitioner has sought directions to Gujarat Urja Vikas Nigam Ltd (**GUVNL**), Respondent No 1, and Maharashtra State Electricity Distribution Company Ltd (**MSEDCL**), Respondent No 2, on the delayed payment of charges under the Frequency Linked Energy Exchange (**FLEE**) scheme by these respondents. The specific prayers made by the petitioner are as under:

- “(a) Direct respondent no. 1 to pay to the petitioner a sum of Rs. 529,332,112 as on 07.02.2013 together with interest @ 0.04% per day from 08.02.2013 till payment thereof is made to the petitioner.*
- “(b) Direct respondent no. 2 to pay to the petitioner a sum of Rs. 114,459,397 as on 05.02.2013 together with interest @ 0.04% per day from 06.02.2013 till payment thereof is made to the petitioner.*
- “(c) Pass such further order or orders as may be deemed just and proper in the circumstances of the case.”*

2. Consequent to an agreement reached at Western Regional Electricity Board (**WREB**) [Presently named as Western Regional Power Committee (**WRPC**)], the FLEE scheme was introduced in the Western Region on 1.6.1992 and remained in force till 30.6.2002, when FLEE scheme was replaced by the Availability Based Tariff introduced by the Commission. Under the FLEE scheme,



the State drawing power in excess of its allocated quota was to pay penal charges (**the FLEE charges**) to the State whose allocated share was drawn, rate of which was linked to the frequency at the time of over-drawal. In accordance with the FLEE scheme, the Electricity Boards of the concerned States were required to bilaterally settle the FLEE charges on monthly basis as worked out by WREB at the agreed rates.

3. When FLEE scheme was in force in Western Region, the erstwhile State of Madhya Pradesh was reorganized with effect from 1.12.2000 and the present States of Madhya Pradesh and Chhattisgarh were created. As a consequence of the reorganization, Madhya Pradesh State Electricity Board (**MSPEB**) and Chhattisgarh State Electricity Board (**CSEB**) succeeded Madhya Pradesh Electricity Board (**MPEB**) in the newly created States. At the time of reorganization, MPEB had an outstanding liability of the FLEE charges towards other constituents of the Western Region.

4. Ministry of Power issued a notification dated 4.11.2004 apportioning the assets and liabilities of MPEB between MPSEB and CSEB. The notification allocated the entire outstanding liability of MPEB on account of purchase of power to the newly formed MPSEB. The constitutional validity of the said notification dated 4.11.2004 was upheld by the Hon'ble Supreme Court in its judgment dated 13.9.2006 in Writ Petition (Civil) No 675/2004 - Madhya Pradesh State Electricity Board Vs Union of India and others [2006 (10) SCC 736]. In accordance with the judgment of the Hon'ble Supreme Court, MPSEB became liable to pay the outstanding FLEE charges for the period up to 30.11.2000.

5. When the above Writ Petition was pending before the Hon'ble Supreme Court, Maharashtra State Electricity Board (MSEB) filed a petition, being Petition No 43/2005, before the Central Commission praying for a direction to MPSEB to pay ₹114.83 crore on account of the outstanding FLEE charges (after reconciliation of bilateral dues) as on 30.11.2004. In the said petition, MSEB sought directions to Gujarat Electricity Board (GEB) also for payment of outstanding FLEE charges. The Commission in its order dated 2.8.2005 referred the matter to one-Member Bench for its recommendations on the FLEE entitlements/liabilities of the constituents of Western Region in the light of the calculations furnished by WREB in its letter dated 15.7.2005. The one Member Bench in its order dated 13.9.2005, recommended that MPSEB is liable to pay the entire outstanding FLEE charges for the period up to 30.6.2002, that is, for the period prior to introduction of ABT in Western Region, in four equal instalments starting from October 2005, pending resolution of disputes before the Honble Supreme Court and Delhi High Court. The one Member Bench further recommended that after settlement of the pending disputes, dues settled by MPSEB would be suitably reapportioned between CSEB and MPSEB. It is pertinent to bring out that the one Member Bench, while making its recommendations considered CSEB and MPSEB as single entity for settlement of FLEE charges. The one Member Bench also directed payment of interest at the rate of 1% per mensem for delay in payment of instalments. The Commission accepted the recommendations of the one Member Bench and by order dated 6.12.2005 directed that the payment of instalments would commence from December 2005 instead of October 2005 as recommended by the one Member Bench.



6. CSEB filed appeal (Appeal No 21/2006) before the Appellate Tribunal for Electricity (Appellate Tribunal) challenging the order dated 6.12.2005. The substantive grievance of CSEB before the Appellate Tribunal was that the Commission incorrectly imposed FLEE liability on CSEB by treating MPSEB and CSEB as one unit whereas the liabilities for the pre-reorganization period (1.6.1992 to 30.11.2000) and post-reorganization period (1.12.2000 to 30.6.2002) could have been conveniently segregated between the two Boards.

7. When the appeal of CSEB was taken up by the Appellate Tribunal for hearing, the judgment of the Hon'ble Supreme Court upholding the constitutional validity of Ministry of Power notification dated 4.11.2004 was available. In the light of the decision of the Supreme Court, the Appellate Tribunal in its judgment dated 14.11.2006 set aside the Commission's order dated 6.12.2005 and absolved CSEB of the liability for FLEE charges for the pre-reorganization period as the entire liability stood allocated to MPSEB in terms of Ministry of Power notification dated 4.11.2004 whose constitutional validity was upheld by the Hon'ble Supreme Court. As regards, the pre-reorganization period, the Appellate Tribunal held that the liability of CSEB and MPSEB was also to be worked out in accordance with Ministry of Power notification dated 4.11.2004. The Appellate Tribunal noted that some payments had already been made and directed that further payments of the outstanding amounts be made in accordance with its judgment. In accordance with the judgment of the Appellate Tribunal, WRPC recalculated the FLEE accounts and communicated the same to the constituents in Western Region in its letter dated 8.12.2006. In the said letter, it was indicated that CSEB would be

entitled to recover FLEE charges amounting to ₹3,557,097,798 for the post-reorganization period.

8. Aggrieved by the computations made by WRPC, as communicated under letter dated 8.12.2006, MPSEB filed an appeal before the Appellate Tribunal. Appellate Tribunal in its judgment dated 17.5.2007 held that the charges earlier calculated and circulated by WRPC under letter dated 8.12.2006 were not in accordance with the Ministry of Power notification dated 4.11.2004. Consequently, CSEB filed a second appeal against the judgment of the Appellate Tribunal in the Supreme Court which was dismissed at the admission stage. WRPC recalculated entitlement/liability of Western Region constituents and conveyed the recalculated amount vide its letter dated 6.7.2007. As per the revised calculations, CSEB was found entitled to recover ₹956,135,001/- on account of the FLEE charges which was recoverable from MPSEB, GEB and MSEB. MPSEB is stated to have since discharged its liability on account of FLEE charges towards the petitioner but MSEB and GEB delayed settlement of their liabilities despite protracted correspondence between them and CSEB and discussions at WRPC meetings. The consistent stand of MSEB and GEB was that they were entitled to recover FLEE charges from MPSEB and till their FLEE dues were settled by MPSEB, they were not in a position to settle the dues of CSEB, though they agreed to settle the dues of CSEB after their own dues were paid by MPSEB

9. At this stage it may be noticed that the State Electricity Boards in the Western Region were in the mean-time unbundled. The petitioner has succeeded



CSEB, Respondent No 1 (GUVNL), Respondent No 2 (MSEDCL) and Respondent No 3 (MPPMCL) have succeeded GEB, MSEB and MPSEB respectively.

10. In view of the inability of GUVNL and MSEDCL to liquidate their liabilities, the petitioner filed Execution Petition No. 1/2012 before the Appellate Tribunal. During pendency of the Execution Petition, GUVNL and MSEDCL settled their liabilities towards the petitioner after their outstanding dues were cleared by MPPMCL. Consequently, the Execution Petition was disposed of by the Appellate Tribunal vide order dated 6.2.2013.

11. In the present petition, the petitioner has sought directions to GUVNL and MSEDCL for payment of interest for the delay on their part to settle the FLEE dues of the petitioner. The interest claimed against GUVNL as on 7.2.2013 is ₹529,332,112 and against MSEDCL as on 5.2.2013 is ₹ 114,459,397. The petitioner has further claimed interest at the rate of 0.04% per day till the date of payment. It has been submitted that as per the well settled law of restitution as embodied in the Interest Act, 1978, GUVNL and MSEDCL are liable to pay to the petitioner the amounts claimed together with further interest @ 0.04% per day till payment thereof is made to the petitioner.

12. GUVNL in its reply filed vide affidavit dated 13.9.2013 has contended that the petitioner's claim for interest against GUVNL is not maintainable and the relief, if any, can be claimed by the petitioner against MPPMCL and MSEDCL since settlement of the petitioner's claim for FLEE charges by GUVNL was delayed on

account of payment of FLEE charges by MPPMCL and MSEDCL. It has been stated by GUVNL that the petitioner had acknowledged that payments were required to be made by MPPMCL so as to enable GUVNL and MSEDCL to pay their shares to the petitioner. GUVNL has stated that there was no direction from the Appellate Tribunal for payment of interest, and the amounts recoverable as FLEE charges. GUVNL has further contended that in the Execution Petition filed before Appellate Tribunal, the petitioner had claimed interest at the rate of 12% per annum which has not been allowed by the Appellate Tribunal. GUVNL has submitted that, the petitioner cannot claim the same relief from the Commission, after the claim was rejected by the Appellate Tribunal.

13. MSEDCL in its reply-affidavit has opposed the petitioner's claim for interest on the following grounds:

- (a) The claim was raised before the Appellate Tribunal but was not pressed;
- (b) The claim is barred by the principle of *res judicata* since the petitioner had raised the claim in the Execution Petition which was not granted;
- (c) The petitioner's claim for FLEE charges has already been settled through the agreed methodology of 'netting' and 'inter se settlement' and cannot be reopened;
- (d) The claim for interest is barred by limitation, delay and laches;
- (e) MPPMCL who delayed the payment to MSEDCL is liable to pay interest.

14. MPPMCL in its written submissions has submitted that the Commission's order dated 8.12.2005 was set aside by the Appellate Tribunal vide its judgment dated 14.11.2006 in Appeal No. 21/2006. The petitioner filed Execution Petition



No. 1/2012 in Appeal No. 21/2006 before the Appellate Tribunal seeking execution of the order dated 14.11.2006. The petitioner in prayer (i) had prayed for payment of FLEE charges as adjudicated by the Appellate Tribunal and intimated by WBSEB vide letter dated 8.12.2006 read with letter dated 6.7.2007 and in prayer (ii), the Appellant had prayed for interest @12% per annum. The Appellate Tribunal granted prayer (i) and passed no order with regard to prayer (ii). MPPMCL has submitted that in accordance with Section 11 of the CPC read with Explanation VII thereunder, the petitioner is disentitled to file the present petition after its prayer for interest was not granted by the Appellate Tribunal. MPPMCL has further submitted that the order of the Commission dated 8.12.2005 merged with the order dated 14.11.2006 passed by the Appellate Tribunal and the petitioner having sought enforcement of the Appellate order under Section 120 (3) of the Act, the petitioner is not entitled to file the present petition seeking execution of the order dated 8.12.2005 passed by the Commission. MPPMCL has further submitted that the petitioner during the entire process of deliberation before WRPC for realization of FLEE charges did not raise the issue with regard to interest, though the interest was claimed in the Execution Petition filed in the APTEL. MPPMCL has submitted that the petitioner having exclusively waived the rate of interest and also the prayer for interest before APTEL being deemed to have rejected, it is not open to the petitioner to file the present execution petition.

15. The petitioner in its rejoinder affidavit has stated that the nature and scope of proceedings before the Appellate Tribunal was different which have been completely overlooked by the respondents. The petitioner has urged that adjudication of entitlement/liability on account of the FLEE charges by the

Commission and the Appellate Tribunal was absolute and was not conditional upon "receipt of payments from one constituent while paying the charges to other constituent". The petitioner has urged that neither the Commission nor the Appellate Tribunal had directed that payment was to be made by GUVNL and MSEDCL after recovery of the dues from MPSEB. Therefore, the petitioner has contested the correctness of the stand taken by the respondents.

16. We have heard the learned counsel for the parties and have perused the records. In the light of the submissions made by the parties and the documents on record we examine the petitioner's claim for interest.

17. The Commission in its order dated 14.6.2005 in Petition No 43/2005 (Annexure P-2) directed WREB to work out the liability of MPSEB and CSEB individually of FLEE charges for the post-reorganization period. In compliance with the Commission's order, WREB in its letter dated 15.7.2005 (Annexure P-3), conveyed to the Commission the amount of FLEE charges payable by GEB, MSEB and MPSEB to CSEB for the post-reorganization period.

18. CSEB filed appeal (Appeal No 21/2006) (Annexure P-7) before the Appellate Tribunal against the Commission's order dated 8.12.2005. In para 4.13 of the appeal, the petitioner had calculated its entitlement to receive payments towards FLEE charges from MPSEB, GEB and MSEB as under:

"From MPSEB	:	₹2,621,654,715 (subject to adjustments, if any, based on various Government of India orders with respect to inter-change of power between MPSEB and CSEB )
From GEB	:	₹778, 692,028
From MSEB	:	₹156,751,055 (together with credit of

₹26.1 crore towards SR export charges)"

19. CSEB did not make any specific claim for payment of the FLEE charges but only prayed for setting aside the Commission's order dated 6.12.2005. as seen from the following prayers in the appeal:

- "(i) allow the Appeal filed and set aside the impugned orders dated 6.12.2005 of the Respondent No. 1 Commission in Petition No 43 of 2005 accepting and giving effect to the recommendations dated 13.9.2005 of its one-Member Bench.*
- "(ii) Pass such further and other orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the present case."*

20. In its judgment dated 14.11.2006 the Appellate Tribunal set aside the Commission's order impugned therein with further direction to WRPC to calculate the liabilities in accordance with the Ministry of Power notification dated 4.11.2004 for the period 1.6.1992 to 30.11.2010. For the period subsequent to the bifurcation of erstwhile State of Madhya Pradesh, the Appellate Tribunal held as under:

- "19. On the second point, which is subsequent to bifurcation, the liability has to be worked out in terms of Government of India notification dated 3.11.2004, The Government of India Notification dated 3.11.2004 has not been challenged by the contesting second respondent, but it is the subject matter of challenge only by the appellant on file of the Hon'ble Supreme Court. As there is no orders of stay and the grievance if any only is that of the appellant, it follows that the notification dated 3.11.2004 has to be given effect by the parties herein. In the event of the appellant succeeding in the writ petition, it is still upon to the appellant to seek for reopening the matter before the competent forum and work out its remedy. The second point is also answered in favour of the appellant.
- 20. It is brought to our notice that certain payments were already made and hence we direct WREB to give effect to the judgment in this appeal and it is not necessary for parties to move either the first respondent or any other authority. It is also represented by the counsel appearing on either side that once the controversy has been decided the parties will adjust and make the payment without any demur and WREB will give effect to the orders. In the circumstances, we answer the three points in favour of the

appellant.

21. The appeal is allowed. The order of the first respondent is set aside and the second respondent directed to make payments of amounts outstanding in the light of this judgment within a period of eight weeks after communication of this judgment and WREB shall communicate the exact amount to be paid within four weeks from communication of judgment."

It is clear from the judgment of the Appellate Tribunal that there was no direction with regard to payment of interest on the FLEE charges.

21. WRPC carried out the calculations and circulated these among the constituents under WRPC's letter dated 8.12.2006 (Annexure P-9). According to these calculations, the petitioner was entitled to recover a net amount of ₹3,557,097,798/-. In compliance with the further directions of the Appellate Tribunal as per the order dated 17.5.2007, WREB recalculated the petitioner's entitlement as ₹956,135,001/- which was conveyed under its letter dated 6.7.2007 (Annexure P-11). Since the petitioner was unable to recover the recalculated amount from the respondents, it filed the Execution Petition before the Appellate Tribunal, with the following prayers:

- "A. *direct Respondent Nos 1 and 2 to pay to the Petitioner the amounts as adjudicated by this Hon'ble Tribunal in its judgment and order dated 14.11.2006 and intimated by Respondent No. 3 (WRPC) vide its letter dated 8.12.2006 read with letter dated 6.7.2007 towards discharge of their respective FLEE liabilities in favour of CSEB/the Petitioner.*
- B. *direct Respondent Nos 1 and 2 to pay to the Petitioner interest on the amount stated in (i) above @ 12% from the date same has become payable i.e. within a period of 8 weeks from the intimation dated 8.12.2006 received from Respondent No. 3 (WRPC), till payment thereof."*

22. For the first time in the Execution Petition, the petitioner made a prayer for recovery of the amount worked out by WRPC and interest thereon. The Execution



Petition was disposed of by the Appellate Tribunal by its order dated 6.2.2013 after being informed that the petitioner had been paid the amount worked out by WRPC. The Appellate Tribunal did not pass any order for the payment of interest claimed by the petitioner. The order was made in the presence of the counsel for the petitioner but she does not seem to have pressed for payment of interest since the order does not record any such plea raised at the hearing. The Appellate Tribunal's order is extracted below:

<i>"Counsel for the Appellant (s):</i>	<i>Ms. Suparna Srivastava</i>
<i>Counsel for the Respondent(s):</i>	<i>Mr. Anand K. Ganesan Ms. Swapna Seshadri for GUVNL</i>
	<i>Ms. Puja Priyadarshini for R.2 - MSEDCL</i>
	<i>Mr. G. Umapathy for R.4</i>

#### **ORDER**

*An affidavit has been filed by Madhya Pradesh Power Trading Company.*

*It is submitted by the learned counsel for the Respondent No.2, on instructions, that the entire amount has been paid. This statement is hereby recorded.*

*With the above observation, the Application is disposed of."*

23. Thus, the Appellate Tribunal has not granted any relief with regard to the interest payment in the Execution Petition. If the petitioner had any grievance, the petitioner should have approached the Appellate Tribunal for consideration of its claim for interest which the petitioner has not chosen to do. The relief which has not been granted by the Appellate Tribunal cannot be agitated before this Commission.

24. It bears mention that in para 20 of the judgment dated 14.11.2006, the Appellate Tribunal has clearly recorded as under:

"We direct WREB to give effect to the judgment in this appeal and it is not necessary for parties to move either the first respondent or any other authority."

Thus, there is a clear direction of the Appellate Tribunal not to approach the Central Commission with regard to the payment of FLEE. For this reason also, the present petition for payment of interest charges is not maintainable before this Commission.

Sd/-

**(A K Singhal)**  
**Member**

sd/-

**(M Deena Dayalan)**  
**Member**

sd/-

**(Gireesh B Pradhan)**  
**Chairperson**