

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2016

Subject : Petition under Section 79 of the Electricity Act, 2003 seeking direction to U.P. Jal Vidyut Nigam Limited (UPJVNL) for filing ARR and petition for determination of O & M charges in respect of Rihand Hydel Power Station (Rihand HPS) and Matatila Hydel Power Station (Matatila HPS) from 1.4.2008.

Date of hearing : 14.2.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : M.P. Power Management Company Limited (MPPMCL).

Respondents : U.P. Jal Vidyut Nigam Limited and Others

Parties present : Shri G. Umapathy, Advocate, MPPMCL
Shri Dilip Singh, MPPMCL
Shri Sanjay Singh, Advocate, UPJVNL
Shri Ritudeep Maurya, UPJVNL
Shri Atul Kumar, UPJVNL

Record of Proceedings

At the outset, learned counsel for the petitioner referred to the Commission's orders in Petition Nos. 107/2014, 45/2010 and 13/RP/2014 and submitted as under:

(a). UPJVNL in its counter affidavit has raised the issue of jurisdiction of this Commission and has contended that a tariff petition cannot be filed before more than one Commission and thus the disputes as raised by the petitioner in the instant petition are barred on the principles of constructive res-judicata. In this regard, it is clarified that the Commission in the order dated 27.2.2008 in Petition No. 107/2007 had observed that jurisdiction to determine the tariff for supply of MP's share of power from Rihand and Matatila HPS by respondent No.1 is still open and is yet to be decided by CERC.

(b). The supply of power from Rihand and Matatila was not a sale of power but the supply of share to MP which arose due to submergence of huge agricultural land, forest, etc. in the State of MP. Since, the submergence of land, R&R, etc. are the part of capital expenditure, the Commission is the appropriate Commission to decide the expenditure incurred by UPJVNL to generate MP's share of power from Rihand and Matatila HPS.

UPERC has jurisdiction to determine the tariff of UP's share of power in Rihand HPS (255MW) and Matatila HPS (20MW) for supply to DISCOMs and it has no jurisdiction to decide the same with regard to MP's share.

(c). The Commission's order dated 12.11.2008 in Petition No. 107 of 2008 stood merged with the judgment of the Tribunal dated 21.7.2011. In view of the merger, the sentence 'adjustment of cost of generation based on audited accounts of the generating stations or those taken into account by UPERC from the year 1999 onwards shall be considered' as appeared in order dated 12.11.2008 in Petition No. 107/2007 becomes null and void. Thus, the instant petition is in no way barred by constructive res-judicata.

(d). The petitioner, vide its letters dated 20.12.2007 and 10.9.2008 informed the Secretary, UPERC with copy to UPJVNL that determination of generation tariff by UPERC would not be applicable to the share of MP in Rihand and Matatila HPS. The tariff determination by UPERC would only be applicable to Discoms of UP up to the share of UP i.e 255 MW power in Rihand HPS and 20 MW power in Matatila HPS.

(e). The petitioner has always been objecting to the unilateral billing towards supply of MP's share of power from these hydel projects as per UPERC tariff and has been admitting the claims of UPJVNL for payment of O& M charges subject to adjudication by the Commission.

2. In its rebuttal, learned counsel for UPJVNL submitted as under:

(a). The petitioner has sought direction to UPJVNL for filing ARR petition and Petition for determination of O&M charges in respect of Rihand HPS and Matatila HPS from 1st April, 2008 before this Commission despite the fact that since 1.4.2008, UPERC has determined the tariff for Hydro Power Stations of UPJVNL which includes Rihand HPS and Matatila HPS and MYT for Financial Year 2014-15 to 2018-19 is pending before UPERC. Therefore, the tariff which includes O&M charges, has already been determined by UPERC and it cannot be re-determined or annulled by this Commission.

(b). The dispute raised by the petitioner in the petition has been set at rest by the Commission in its orders dated 12.11.2008 and 27.2.2008 in Petition No. 107/2007. The Commission in its order dated 12.11.2008 had directed that for giving credit to the second respondent, the cost of generation based on audited accounts of the generating stations or those taken into account by UPERC from the year 1999 onwards shall be considered implying that from 1999 onwards tariff determined by UPERC will be taken into account in respect of Rihand HPS and Matatila HPS. Aggrieved by the said order dated 12.11.2008, UPPCL preferred an Appeal bearing No. 151 of 2008 before APTEL which was dismissed by APTEL vide order dated 21.7.2011. Against the aforesaid order of APTEL, UPPCL has preferred a Civil Appeal bearing No. 38082 of 2011 before the Supreme Court which is still pending.

(c). Subsequently, UPPCL filed an appeal bearing No. 35 of 2008 before the APTEL against the Commission's order dated 27.2.2008 in Petition No. 107/2007 and the said appeal was dismissed by the APTEL vide order dated 9.1.2009. UPPCL preferred an appeal before the Supreme Court against order dated 9.1.2009 of APTEL and the

same was also dismissed vide order dated 13.2.2009 on the ground that final order had been passed by the Commission on 12.11.2008 in Petition No. 107/2007.

(d). UPJVNL has been raising bills for the bills for electricity supplied to the petitioner since 1.4.2008 as per the Commission's directions dated 12.11.200 in Petition No. 107/2011 . However, the petitioner has not cleared the bills for the electricity used by it since 1.4.2008.

(e). Rihand HPS and Matatila HPS does not envisage the composite scheme of generation or sale of electricity in more than one State, infact, the petitioner's share of electricity is made available to the petitioner at the generating station step-up sub-station terminal. Since, the petitioner has not made any capital investment in the Rihand HPS and Matatila HPS and the government of Uttar Pradesh has paid compensation for the lands submerged, UPERC is the Appropriate Commission to determine the tariff of the Hydro Power Stations of UPJVNL, which includes Rihand HPS and Matatila HPS.

(f) The instant petition is barred on the principles of constructive res-judicata. In support of his arguments, learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Ramchandra Dagdu Sonavane Vs. Vithu Hira Mahar and Others (2009) 10 SCC 273**

(g). UPJVNL is not only entitled to for O&M charges but is also entitled for the cost price plus 5% of the energy supplied to the petitioner and the share of the petitioner is to the extent of 15% of the energy available at Matatila HPS. The cost does not only include the O&M charges but the charge would mean the tariff has been decided by the UPERC from time to time.

3. After hearing the learned counsels for the parties, the Commission directed the petitioner to file the Sachdeva Committee Report or any other available record which proves the cost of generation charged to erstwhile MPSEB was **exclusive of** Return on Equity, Interest on Loan, Interest on working capital and Depreciation. The Commission further directed the respondent to file the Sachdeva Committee Report or any other available record which proves the cost of generation charged to erstwhile MPSEB was **inclusive of** Return on Equity, Interest on Loan, Interest on working capital and Depreciation.

4. Subject to the above, the Commission reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**