

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 1/RP/2018
in
Petition No. 128/MP/2016

Coram:

Shri. P.K.Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Order: 11th July, 2018

In the matter of

Review of order dated 12.10.2017 in Petition No. 128/MP/2016 filed by M.P. Power Management Company Limited seeking directions on U.P. Jal Vidyut Nigam Limited for filing ARR and for determination of O & M charges in respect of Rihand Hydel Power Station and Matatila Hydel Power Station from 1.4.2008

And in the matter of

Madhya Pradesh Power Management Company Limited
Shakti Bhawan, Rampur, Jabalpur

.....Petitioner

Vs

1. U. P. Jal Vidhyut Nigam Limited
Shakti Bhawan, 14, Ashok Marg
Lucknow-226001

2. Energy Department
Government of Uttar Pradesh
Bapu Bhawan, Lucknow-226001

3. U. P. Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001

..... Respondents

Parties Present:

Shri G.Umapathy, Advocate, MPPMCL
Shri Aditya Singh, Advocate, MPPMCL
Shri Dilip Singh, Advocate, MPPMCL
Shri Sanjay Singh, Advocate, UPJVNL
Shri Rajiv Srivastava, Advocate, UPPCL
Ms. Garima Srivastava, Advocate, UPPCL



ORDER

This Review Petition has been filed by the Petitioner, MPPMCL seeking the following reliefs:

- (a) Allow the application for rectification of error in order dated 12.10.2017 passed by CERC in Petition No. 128/MP/2016;
- (b) Direct the Respondent to file tariff petition in respect of Rihand & Matatila for the period from 1.4.2008 onwards instead of from 2014-15; and
- (c) Pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.”

Background

2. Petition No.128/MP/2016 was filed by the Petitioner, MPPMCL with the following prayers:

- (i) Direct the 1st Respondent to file petition and ARR for determination of O & M expenses of ‘the generating stations’ HPS for the period from 1.4.2008 onwards under section 64(1) to (4) and 79 (1) (b) of the Electricity Act, 2003 and as per CERC’s Regulations prescribed from time to time;
- (ii) Direct the 1st Respondent to raise the bills of supply of MP’s share of power from ‘the generating stations’ HPS, at the O & M expenditure indicated in the tariff orders of UPERC, on provisional basis till final determination of same by this Commission;
- (iii) Declare that the bill towards surcharge is illegal and in the alternative, direct the 1st Respondent not to raise surcharge bill till adjudication on the claim of 1st Respondent of O & M charges;
- (iv) Restrain the 1st Respondent from giving any threat towards discontinuance of supply of MP’s share of power from ‘the generating stations’ HPS;

3. The Commission after hearing the parties on merits, disposed of the said Petition by order dated 12.10.2017 as under:

“42. Thus, the respondents having accepted the jurisdiction of the Central Commission in the case of Rajghat HPS, has taken a different stand in respect of ‘the generating stations’ in this Petition, despite being aware that the facts and circumstances in both these cases were similar. In this background, the respondent, UPJVNL cannot be permitted to reopen the matter on extraneous grounds and is therefore estopped from contesting the question of jurisdiction. In our considered view, the issue of compensation amount payable upto 31.3.2008 in respect of ‘the generating stations’ having been decided in the earlier proceedings, the Petitioner cannot be estopped from seeking directions on the respondents to file tariff petition, in respect of the generating stations’ from 1.4.2008.



43. We have in this order decided that ‘the generating stations’ has a composite scheme for generation and supply of power in more than one State and accordingly, this Commission has the jurisdiction to determine the tariff of ‘the generating stations’ for supply of power made by the respondent, UPJVNL to the Petitioner. The respondent has submitted that the ARR & tariff petitions filed before UPERC in respect of ‘the generating stations’ for the period from 2000-01 till 2014-19, had been decided, excepting for the period 2014-19, which is still pending. In view of this and as a corollary to the findings in this order, we direct the respondent, UPJVNL to file petition for determination of tariff of ‘the generating stations’ for the period from 2014-15 to 2018-19 in terms of the provisions of the CERC (Terms and Conditions of Tariff), Regulations, 2014, within three months from the date of this order.

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49. We have in para 43 of this order directed the respondent, UPJVNL to file tariff Petition in respect of ‘the generating stations’ for the period 2014-19 in terms of the provisions of the 2014 Tariff Regulations. Accordingly, the above submissions of the parties as regards the cost of generation charged for supply of power to the Petitioner shall be considered at the time of determination of tariff of ‘the generating stations’. We direct accordingly.”

4. Aggrieved by order dated 12.10.2017, the Petitioner has sought review on the ground that there is error apparent on the face of the order. The Petitioner has referred to paras 42 and 43 of the said order and has submitted that since the prayer of the Petitioner for directions on Respondent, UPJVNL to file tariff petition from 1.4.2008 was acknowledged by the Commission in para 42, the observations of the Commission in para 43 of the said order directing UPJVNL to file tariff petition from 1.4.2014 to 31.3.2019 (i.e 2014-19) is in conflict with para 42 and therefore, an error apparent on the face of the order. The Petitioner has submitted that the Commission ought to have directed the Respondent, UPJVNL to file tariff Petition from 1.4.2008 instead of 2014-15. Accordingly, the Petitioner has prayed for rectification of the order dated 12.10.2017 and to direct the Respondent, UPJVNL to file Petition from 1.4.2008 instead of 1.4.2014.

5. The Petitioner has also filed IA No.17 /2018 for condonation of delay in filing the Review Petition. The Petitioner has submitted that the order dated 12.10.2017



was received on 24.10.2017 and after seeking legal advice, the Review Petition was filed on 2.12.2017, thereby causing a delay of 4 days. In terms of Regulation 103 A of the CERC (Conduct of Business) Regulations 1999, as amended, the time limit for filing the review petition is 45 days from the date of the order. It is noticed that the order dated 12.10.2017 was posted in the web site of the Commission and was also e-filed to the Petitioner on the same day. Hence, the Petitioner should have filed the review petition on or before 26.11.2017. It is noticed that the Petitioner has filed the Review Petition (hard copy) on 29.11.2017 and had e-filed the same on 1.12.2017. However, after rectification of the deficiencies, the said petition was registered on 3.1.2018. Accordingly, there has been a delay of 3 days in filing the review petition and in consideration of the submissions of the Petitioner, the delay has been condoned.

6. The Commission by order dated 21.2.2018 admitted the Petition and directed the parties to complete pleadings in the matter. Reply to the Petition has been filed by the Respondent, UPJVNL vide affidavit dated 7.3.2018. The Petition was heard on 5.6.2018 and the Commission after directing the parties to file its written submission, reserved its order in the Petition.

Analysis and Decision

7. Heard the learned counsel for the Petitioner and the Respondents, UPJVNL and UPPCL. We now consider the prayers of the Petitioner based on the submissions of the parties and documents on record as stated in the subsequent paragraphs.

8. The Petitioner has submitted that in para 43 of the order dated 12.10.2017, the Commission had directed the Respondent, UPJVNL to file tariff Petition for the



period 2014-19 in terms of the 2014 Tariff Regulations after holding in para 42 of the said order that the Petitioner cannot be estopped from seeking directions on the Respondents to file tariff petitions in respect of the generating stations from 1.4.2008. This according to the Petitioner is an error apparent on the face of the order and the Petitioner has prayed for rectification of the same.

9. The Respondent, UPJVNL in its reply affidavit has submitted that the Commission, while passing the order dated 12.10.2017 was conscious of the fact that the ARR and tariff Petitions filed by UPJVNL in respect of the generating stations were decided by UPERC for the period 2000-14 and only the MYT Petition for the period 2014-19 was pending before UPERC. Hence, the Commission has rightly directed the Respondent to file tariff petition in respect of the generating station for the period 2014-19. It has also submitted that the Board of Directors of UPJVNL had decided to file tariff Petition before this Commission for the period 2014-19, in compliance with the Commission's order dated 12.10.2017. Accordingly, the Respondent has submitted that there is no mistake or error in the Commission's order dated 12.10.2017 and the Review Petition may be dismissed. The Respondent, UPPCL has not filed any reply in the matter.

10. The matter has been examined. In Petition No. 128/MP/2016, the Petitioner had prayed for direction on the Respondent UPJVNL to file tariff petition in respect of the generating stations for the period from 1.4.2008 onwards in terms of the Tariff Regulations specified by this Commission. Based on the submissions of the parties, the said prayer of the Petitioner was disposed of by order dated 12.10.2017 as under:

“42. Thus, the respondents having accepted the jurisdiction of the Central Commission in the case of Rajghat HPS, has taken a different stand in respect of ‘the generating



stations' in this Petition, despite being aware that the facts and circumstances in both these cases were similar. In this background, the respondent, UPJVNL cannot be permitted to reopen the matter on extraneous grounds and is therefore estopped from contesting the question of jurisdiction. In our considered view, the issue of compensation amount payable upto 31.3.2008 in respect of 'the generating stations' having been decided in the earlier proceedings, the Petitioner cannot be estopped from seeking directions on the respondents to file tariff petition, in respect of the generating stations' from 1.4.2008"

11. Though the Commission in para 42 had acknowledged the Petitioner's prayer seeking directions on the Respondent, UPJVNL to file tariff petition with effect from 1.4.2008, it was observed by the Commission that the tariff petitions for the period from 2000-01 till 2013-14 had been disposed of by UPERC and only the tariff petition for the period 2014-19 was pending before it. Accordingly, the Commission, by a conscious decision, decided not to reopen the tariff already determined by UPERC for the period from 1.4.2008 till 31.3.2014. In this background, the Commission had, in para 43 of the order, directed the Respondent, UPJVNL to file Petition for determination of tariff of "the generating stations" for the period from 2014-15 to 2018-19 in terms of the 2014 Tariff Regulations. The relevant portion of the order is extracted hereunder:

"43. We have in this order decided that 'the generating stations' has a composite scheme for generation and supply of power in more than one State and accordingly, this Commission has the jurisdiction to determine the tariff of 'the generating stations' for supply of power made by the respondent, UPJVNL to the Petitioner. The respondent has submitted that the ARR & tariff petitions filed before UPERC in respect of 'the generating stations' for the period from 2000-01 till 2014-19, had been decided, excepting for the period 2014-19, which is still pending. In view of this and as a corollary to the findings in this order, we direct the respondent, UPJVNL to file petition for determination of tariff of 'the generating stations' for the period from 2014-15 to 2018-19 in terms of the provisions of the CERC (Terms and Conditions of Tariff), Regulations, 2014, within three months from the date of this order."

Since it was a conscious decision of the Commission not to direct UPJVNL to file tariff Petition from 1.4.2008 to 31.3.2014 as brought out in para 43 of the impugned order as quoted above, we do not find any error apparent on the face of the order dated 12.10.2017 and the review on this ground fails.



12. One more prayer of the Petitioner in Petition No. 128/MP/2016 was for a direction on the Respondent, UPJVNL to raise bills of supply of Madhya Pradesh share of power at the O&M expenses indicated in the tariff orders of UPERC, on provisional basis, till final determination of tariff by this Commission. This prayer of the petitioner was inadvertently not addressed by the Commission in order dated 12.10.2017. To that extent, the order dated 12.10.2017 suffers from infirmity. Since the Respondent, UPJVNL has been directed by this Commission by order dated 12.10.2017 to file the tariff Petition for the period from 1.4.2014 onwards and not from 1.4.2008 on account of the tariff having been decided by the UPERC for the said period, we are of the view that appropriate directions need to be issued for payment of charges by the Petitioner for the period from 1.4.2008 to 31.3.2014. Accordingly, we modify the impugned order by adding the following at the end of para 43 of the order:

“As regards the tariff for the period from 1.4.2008 to 31.3.2014, the Petitioner is directed to make payment of O & M charges for this period in accordance with the relevant tariff orders of UPERC, subject to adjustment of payments made on provisional basis.”

13. The Petitioner has further submitted that the Commission is required to determine the cost of generation for supply of power to the Petitioner, including O&M expenses. In response, Respondent, UPJVNL has submitted that the Commission may consider the same at the time of determination of tariff of the ‘generating stations’. In this regard, the Commission in order dated 12.10.2017 had observed as under:

“49. We have in para 43 of this order directed the respondent, UPJVNL to file tariff Petition in respect of ‘the generating stations’ for the period 2014-19 in terms of the provisions of the 2014 Tariff Regulations. Accordingly, the above submissions of the parties as regards the cost of generation charged for supply of power to the Petitioner shall be considered at the time of determination of tariff of ‘the generating stations’. We direct accordingly.”



Since the submissions of the Petitioner have been disposed of in the impugned order as per the para quoted above, we do not find any necessity to issue further directions in this regard.

14. Petition No. 1/RP/2018 is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P. K. Pujari)
Chairperson

