

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 369/MP/2022

Subject : Petition for refund of incentive amount paid to NHDC on account of capacity index for the period 1.4.2009 to 31.3.2021.

Petitioner : MPPMCL

Respondents : NHDC Limited

Date of Hearing : **16.5.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Shri G. Umapathy, Senior Advocate, MPPMCL
Shri Aditya Singh, Advocate, MPPMCL
Ms. Suparna Srivastava, Advocate, NHDCL
Shri Tushar Mathur, Advocate, NHDCL
Shri N. K. Chellani, NHDCL
Shri D. K. Kurrey, NHDCL

Record of Proceedings

During the hearing, the learned Senior counsel for the Petitioner made detailed oral submissions, mainly as under:

- (a) The Commission vide order dated 30.10.2007 in Petition No. 56/2007, had issued provisional tariff order in respect of Omkareshwar Hydroelectric Project for the period from 1.5.2007 to 31.3.2008. In the said order, the Commission, while holding that NHDC is entitled to recover full annual fixed charges on provisional basis, decided that NHDC is not entitled to claim incentive on account of capacity index until full maximum output of 65 MW per machine is achieved; This decision was reiterated by the Commission, in its order dated 16.1.2012 in Petition No.265/GT/2010, while approving the tariff of the said generating station for the period 2007-09.
- (b) Except for the 2004 Tariff Regulations (applicable for the period 2004-09), the Tariff Regulations applicable for the periods 2009-14, 2014-19 and 2019-24 provided for payment of capacity charges, inclusive of incentive. Accordingly, the Commission had issued tariff orders in respect of the generating station for the tariff periods till 2019-24. Based on this, NHDC has realized incentive from the Petitioner, for the period from 1.4.2009 to 31.3.2021, contrary to the directions of the Commission in the orders dated 30.10.2007 and 16.1.2012.



- (c) NHDC vide its letter dated 26.3.2021, has intimated that the said project has achieved full reservoir level of El 196.60 meter on 1.4.2021, thus delivering the output of 65 MW per machine from 1.4.2021. Hence, NHDC is liable to refund the incentive amount along with interest to the Petitioner.
2. In response, the learned counsel for the Respondent NHDC, made preliminary submissions on 'maintainability' of the petition, as under:
- (a) Since incentive form part of the capacity charges from the tariff period 2009 onwards, in terms of the tariff regulations, the claim of the Petitioner for refund of incentive, is in the nature of a challenge to the said Tariff Regulations, notified by the Commission, which is not maintainable.
- (b) The tariff orders issued by the Commission, had attained finality, as the Petitioner had not challenged the same, on this issue. Thus, the prayer of the Petitioner, in the present petition, has the effect of seeking review of all tariff orders, issued by the Commission, which is not permissible.
- (c) The Petitioner, being a party to the tariff proceedings, was aware of the information with regard to the the reservoir level and the machine output filed by THDC before this Commission (based on which annual fixed charges were allowed), but had never objected to the same. Hence, there is no cause of action for the Petitioner to raise these issues, in the present petition.
- (d) The claim of the Petitioner vide its reply affidavit dated 26.7.2021 in Petition No,107/GT/2020, for refund of incentive for the period from 2009-10 till 31.3.2021, was never considered in the Commission's order dated 11.3.2022 and therefore, in terms of the settled law, the same is 'deemed to have been rejected' by the Commission. Since no review petition or appeal has been filed by the Petitioner against non-consideration of the said claim, the present petition is not maintainable.
3. In response to the above, the learned Senior counsel for the Petitioner clarified that the present petition is maintainable, since the Commission in its order dated 11.3.2022 in Petition No. 107/GT/2020, had 'not decided' the relief sought by the Petitioner for refund of the incentive amount, vide affidavit dated 26.7.2021.
4. The Commission, at the request of the learned counsel for the parties, permitted the Petitioner and the Respondent to file their written submissions (not exceeding three pages) on '**maintainability**', with copy to the other, on or before **12.6.2023**.
5. Subject to the above, order, was reserved on 'maintainability' of the petition.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

