

CENTRAL ELECTRICITY REGULATORY COMMISSION

Record of Proceedings

PETITION NO. 107/2008

DATE OF HEARING: 8.7.2008

Petition for direction to UPPCL for payment of compensation amount to MPTRADECO due to retention/non-supply of MP's share of power in Rihand and Matatila Power Stations and resumption of supply of MP's share of power.

Petitioner: Madhya Pradesh Power Trading Corporation Limited (MPTRADECO)

Respondents: 1. Principal Secretary, Energy Deptt., Govt of Uttar Pradesh
2. Uttar Pradesh Power Corporation Limited (UPPCL)
3. Uttar Pradesh Jal Vidyut Nigam Limited (UPJVNL)

Coram: 1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri R.Krishnamoorthy, Member

Parties present: 1. Shri G Umopathy, Advocate, MPTRADECO
2. Shri Sitesh Mukherjee, Advocate, UPPCL
3. Shri Dilip Singh, MPTRADECO
4. Shri GM Tekchandani, MPTRADECO
5. Shri Sapan Kumar Mishra, Advocate, UPPCL

The petitioner, MPTRADECO has made this application for direction to respondent No.2, UPPCL to release MP's full legitimate share of supply from Rihand Hydel Power Station (Rihand HPS) and Matatila Hydel Power Station (Matatila HPS) and to pay the outstanding amount of Rs.365.704 crore as compensation towards retention/non-supply of MP's share of power from the two power stations along with interest thereon.

2. The Commission, in its order dated 27.2.2008 had directed the respondents to restore the power supply to MP and for this matter, the parties to interact with the WRLDC and NRLDC to formalize the scheduling procedure and resume the power supply by 1.4.2008. The Commission was informed that electricity was being supplied to the State of MP from the month of June 2008. Respondent No.2 was directed to file its detailed reply to the petitioner's claim for

compensation and interest. The Commission in its order dated 16.5.2008 further directed the parties to make efforts for reconciliation of the amounts claimed in the petition. Respondent No.2 has filed its detailed reply vide affidavit dated 5.6.2008 and the petitioner its rejoinder on 3.7.2008.

3. During the hearing, the learned counsel for the petitioner, adverting to the genesis of the dispute submitted that Rihand HPS with an installed capacity of 300 MW came into commercial operation in 1962 and Matatila HPS with an installed capacity of 30 MW in 1965. Allocation of power from these power stations to Madhya Pradesh arose because the land, trees, forests and houses in Rewa and Datia districts of Madhya Pradesh were submerged on construction of dams for the power stations. The Central Zonal Council under Ministry of Home Affairs, Govt. of India, in its meeting held on 2.7.1963 decided that the State of MP would have 15% share based on energy available at Rihand HPS which would be supplied at cost price+ 5%, cost was to be worked out by a committee. Similarly, from Matatila HPS, the State of MP was entitled to one third of power based on energy available at cost price+5%, cost was to be worked out by a committee. A committee headed by Shri MR Sachdeva, the then Chairman, Central Water and Power Commission fixed the cost of supply of power from these two stations. The learned counsel further submitted that from 1962 to 2005, the State of Madhya Pradesh had received power supply of 626.84 MUs against the total share of 5263.55 MUs from Rihand HPS and 1285.93 MUs against total share of 1571.38 MUs from Matatila HPS and also some monetary compensation for non-supply of power. The learned counsel submitted that the petitioner having failed in its efforts to secure restoration of supply of power and payment of compensation approached the Commission for appropriate directions. In keeping with the directions of the Commission in its order dated 27.2.2008, respondent No.2 has started scheduling power to the petitioner since June 2008. However the compensation amount had not been paid.

4. The learned counsel further submitted that respondent No.2 in its reply dated 5.6.2008 has opposed the petition on the ground of limitation and computation of compensation and interest thereon which are not tenable. On the question of limitation, he submitted that respondent No. 2 had paid compensation amount of Rs.44.745 crore during the period from 8.6.1977 to 28.6.1999 and was required to pay the balance amount of Rs.365.70 crore as per the break up given at page 18 of the petition after accounting for the amount already received. The meetings were held between respondent No.2 and MPSEB (predecessor of the petitioner) on 8/9.9.2005 at Lucknow wherein the respondent No.2 had accepted its liability to pay the compensation amount after reconciliation. In the subsequent meetings held on 7/8.6.2007 at Lucknow, it was assured by respondent No.2 that MP's share of power from the two power stations would be resumed as soon as the power supply in UP got normalized. Respondent No. 2 was stated to have accepted to make payment of the compensation dues after reconciliation of the accounts and agreed to release additional 15% power from Rihand HPS to clear the accumulated backlog. Despite these assurances, the learned counsel pointed out respondent No. 2 neither resumed the supply of power nor paid the compensation amount. The learned counsel submitted that since respondent

No.2 had accepted its liability to pay compensation as late as June 2007, the claim for compensation is not barred by limitation. For this, he relied upon Section 18 of the Limitation Act, 1963.

5. As regards the computation of compensation amount, the learned counsel submitted that in the meetings held on 7/8.6.1977 between the Chairmen of the UPSEB and MPSEB, it was decided that compensation would be computed at RAPP rate + 10% thereon after giving due credit towards the cost of generation. The learned counsel submitted that the compensation amount had been worked out accordingly. It was further submitted that actual purchase of power by the petitioner from RAPS had no relevance with the payment of compensation amount by respondent No.2 in view of the decisions of the meetings held in June 1977. In this regard, the learned counsel adverted to the minutes of the meetings already on records. It was also stated that though the petitioner in compliance with the Commission's order dated 16.5.2008 visited the headquarters of respondent No.2 at Lucknow from 28.5.2008 to 30.5.2008 for reconciliation of the amount of compensation, respondent No.2 has only reconciled the energy figures for Rihand HPS and avoided calculation of compensation payable to the petitioner. It was prayed that necessary directions be issued to respondent No.2 to pay the compensation amount expeditiously.

6. Shri Sitiesh Mukherjee, appearing for respondent No.2, argued that the agreement for supply of power on which reliance had been placed was with the State of MP and not with the petitioner which is a trading company created under the transfer scheme of the State Government of MP. He pointed out that the petitioner had not placed on record any document to show that by virtue of implementation of the transfer scheme, the present contract was vested in the petitioner. Therefore, as argued by the learned counsel, the petitioner had no locus standi to file the present petition. It was further argued that even though the Commission had directed the respondents to resume supply of power from Rihand and Matatila HPS in exercise of its power under Clause (c) of Sub-Section (1) of Section 79 of the Act, the question of compensation stood on a different footing. According to the learned counsel, the Commission does not have jurisdiction to adjudicate the question of compensation for retention/non-supply of power from the power stations, whose tariff was not being determined by the Central Commission, but was determined by UPERC. He further submitted that in view of these facts, UPERC or a civil court could have jurisdiction to adjudicate upon the quantum or amount payable to the petitioner. He further submitted that the present petition was barred by limitation and also under the provisions of the Electricity Act, 2003 as the petitioner's claim related back to 46 years from the date of filing of the petition. As regards computation of compensation, the learned counsel submitted that despite repeated requests by respondent No.2, the petitioner had failed to provide any data to show that the State of MP was actually purchasing electricity from the RAPP Unit I to entertain the claim for compensation. Concluding his arguments, the learned counsel stressed that the petitioner had no case to claim compensation from respondent No.2.

7. In reply to the queries of the Commission, the learned counsel for respondent No.2 acknowledged its liability to pay compensation to the petitioner, to be adjudicated at appropriate forum and based on cost of generation at the power stations and not at RAPP I rates. The Commission made it clear that since the Commission has already held that the dispute was within its jurisdiction and in the appeal filed by the respondent No.2, the Appellate Tribunal for Electricity is seized of the issue of jurisdiction of the Commission, this question cannot be re-agitated before the Commission.

8. In rejoinder, the learned counsel for the petitioner reiterated that under the transfer scheme of the State Govt. of MP, the petitioner is the successor of the MPEB, who was the party to the agreement arrived at.

9. After hearing the learned counsels for the parties, the Commission reserved its order.

Sd/-
(K.S.Dhingra)
Chief (Legal)