

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No.44/2004

In the matter of

Non-payment of UI charges by MPSEB

And in the matter of

Western Regional Load Despatch Centre

.....**Petitioner**

Vs

1. Madhya Pradesh State Electricity Board, Jabalpur
2. Gujarat Electricity Board, Vadodara
3. Chhattisgarh State Electricity Board, Raipur
4. Maharashtra State Electricity Board, Mumbai
5. National Thermal Power Corporation, New Delhi
6. Goa Electricity Department, Panjim
7. Union Territory of Dadra & Nagar Haveli, Silvassa
8. Daman & Diu Administration, Electricity Department, Daman
9. Member Secretary, WREB, Mumbai

..... **Respondent**

The following were present.

1. Shri Anjan Roy, GM, WRLDC
2. Shri V. Mittal, AGM, PGCIL
3. Shri A.P. Bhairve, MPSEB
4. Shri Rohit Singh, Advocate, MPSEB
5. Ms Suparna Srivastava, Advocate, CSEB
6. Shri S.N. Chauhan, SE (Comml), CSEB
7. Shri V.B.K. Jain, NTPC
8. Shri I.J. Kapoor, NTPC
9. Shri K.K. Samvi, NTPC
10. Shri S.D. Jha, NTPC
11. Shri D.G. Salpekar, NTPC
12. Shri R. Singhal, NTPC
13. Shri T.R. Sohal, NTPC
14. Shri Shankar Saran, NTPC

ORDER
(DATE OF HEARING. 20.7.2004)

The petition is filed for directions to respondent No.1 to make payments of total dues of UI charges along with interest and also to impose penalty on respondent No.1 on account of the alleged deliberate failure to comply with the directions of the Commission. The petitioner has also made certain other prayers which are not being referred to at this stage.

2. The petitioner had earlier filed a petition (No.14/2003) seeking directions to respondent No.1 for payment of UI charges for the period from 1.7.2002. The Commission in its order dated 6.11.2003 in that petition had directed that entitlement/liability of respondent No.1 to claim/pay UI charges for the period up to 31.10.2003 be worked out by the petitioner and conveyed to respondent No.1 by 15.11.2003. Thereafter, respondent No.1 was directed to pay the entire amount by 31.1.2004, in three equal instalments. According to the petitioner, the liability of respondent No.1 worked out to Rs.68,64,78,240 on account of UI charges and Rs.14,44,72,107 on account of interest which was conveyed to it. However, these payments were not made by respondent No.1.

3. Respondent No.1 filed a writ petition before the Hon'ble High Court of Madhya Pradesh against the Commission's order dated 6.11.2003. On ad-interim writ issued by Hon'ble High Court on 30.1.2004 the present petitioner was directed not to take any coercive action against respondent No.1 for enforcing the order dated 6.11.2003 without prior permission of the court. The Hon'ble High Court modified the ad-interim writ by its subsequent order dated 17.3.2004 that respondent No.1 would pay 25% of UI charges payable in terms of the Commission's order dated 6.11.2003 within a

period of one week and in case it failed to deposit the amount within the time allowed, the ad-interim writ issued earlier would stand vacated. The petitioner failed to deposit the amount of 25% of the total UI charges allowed and instead filed an application before the Hon'ble High Court to allow it another month for complying with the direction. At the hearing held on 22.4.2004, the Hon'ble High Court is stated to have rejected the application made by respondent No.1 and the ad-interim writ issued by order dated 30.1.2004 was vacated. With the vacation of the ad-interim writ, the Commission's order dated 6.11.2003 has become enforceable. The present petition is filed against the above background. It is stated that an amount of Rs.136.55 crore, which includes the amount decreed by the Commission by its order dated 6.11.2003 and the interest has become payable up to 31.3.2004. After 31.3.2004 respondent No.1 is stated to have drawn power beyond its allocation and, therefore, its liability to pay UI charges has gone up further.

4. We have heard Shri Anjan Roy for the petitioner, Shri Rohit Kumar Singh, Advocate for respondent No.1 and Smt. Suparna Srivastava, Advocate for respondent No.3.

5. Respondent No.1 has drawn our attention to the letter dated 11.5.2004 issued by Ministry of Power, Government of India which clarifies the issue regarding interchange of power between State of Madhya Pradesh and State of Chhattisgarh. The letter is stated to be in terms of Section 75(2) of Madhya Pradesh Reorganisation Act, 2000. The relevant extracts are reproduced below:

“3. The issue of non payment of UI charges by Madhya Pradesh has been considered and it has now been decided that with effect from 1st July 2002, the payment of UI charges for drawal of power from the existing Central Generating

Power Stations by M.P. and Chhattisgarh would be accounted in the following manner:-

i. On the basis of daily schedule the quantum of power which one State has not drawn from its allocated share will be added to the schedule of other State to the extent of overdrawal by it;

ii. On the basis of daily schedule as indicated in (i) above overdrawal by one State would be further offset from the underdrawal of other State.

iii. The State getting the benefit from (i) & (ii) above will pay capacity and energy charges for enhanced schedule.

4. The above arrangement will be operative for a period of five years after creation of the new States but will be subject to review as considered necessary even during this period.”

6. According to respondent No.1, it will be entitled to receive UI charges once the clarification regarding interchange of power issued by the Central Government is given effect to. Therefore, it has sought direction to the petitioner and respondent No.9 to prepare schedule in accordance with the above clarification of the Central Government and also to revise UI charges payable from 1.7.2002 onwards in the light thereof.

7. The petitioner has submitted that it will face some practical difficulties in implementation of the above clarification issued by Ministry of Power, since it negates the very basis on which ABT mechanism works. It has stated that billing of capacity/energy charges will be impossible unless it is specifically provided by the Central Government that schedule of a central generating station would also get revised (post-facto) in the light of underdrawal/overdrawal by the two states. It also stated that there is possibility of both the states overdrawing power in the absence of specific allocation because one State will not know the extent of drawal by the other State. It is further stated that in 124th meeting of WREB held on 9.7.2004 it was

decided that Chairman, WREB would take up the matter with Ministry of Power bringing to its notice the anomalies and difficulties in implementation of the letter dated 11.5.2004. The matter is stated to have already been taken up with Ministry of Power in pursuance of the decision of WREB.

8. Smt. Suparna Srivastava, learned counsel, who appeared for respondent No.3 also reiterated the anomalies pointed out by the petitioner in giving effect to the letter dated 11.5.2004. She stated that the matter was also taken up at the level of State Government with Ministry of Power and there was possibility of the issue getting resolved within three weeks. It was also brought to our notice that, Member Secretary, WREB has started issuing provisional regional energy accounts and UI accounts based on the clarification mentioned above. Therefore, the learned counsel prayed that respondent No.9 be directed to stop issuing regional energy accounts based on the clarification.

9. The clarification dated 11.5.2004 issued by Ministry of Power tantamounts to flexible allocation of central sector power between Madhya Pradesh and Chhatisgarh. At this stage we do not propose to give the direction to respondent No.9 as prayed for. The aggrieved parties are reported to have already approached the Central Government. The concern raised by the petitioner about the possibility of simultaneous overdrawals by both the States, Madhya Pradesh and Chhatisgarh resulting in drop in frequency and danger to stability of Western grid has been taken notice of. To us grid security is of utmost and paramount importance. While allowing flexibility in drawal of power in accordance with the clarification of the Central Government, all the parties have to cooperate so that security of the grid is not

jeopardised under any circumstances. The petitioner will have to play a pro active role in advising appropriately the concerned states on real time basis to regulate their drawal pattern. Needless to say, the states concerned have to strictly comply with the instructions of the petitioner in real time operation on maintaining grid discipline.

10. In view of the fact that the Central Government in Ministry of Power is already seized of the issues arising out of the clarification contained in its letter dated 11.5.2004, presently we do not propose to go further into the merits of the submissions made on behalf of the parties. We accordingly direct that petition be listed for hearing on 19.8.2004. Meanwhile, the petitioner is directed to file drawal pattern by respondent No.1 and respondent No.3 after 11.5.2004, through an affidavit with advance copy to the respondents.

11. We note with anguish and dismay that respondent No.9, Member Secretary, WREB has not responded to the notice of the Commission in the present proceedings. None was present on his behalf. As noted above, the preparation of Regional Energy Accounts is the responsibility of respondent No.9. Therefore, we consider his views on the issues raised in response to the letter dated 11.5.2004 to be highly significant. We direct that a fresh notice be issued to respondent No.9, who may file his response and also be present at the hearing on the next date, ie 19.8.2004.

**Sd/-
(K. N. SINHA)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi, dated the 26th July, 2004