

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**CORAM:**

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**
4. **Shri A.H. Jung, Member**

**Petition No.43/2005**

**In the matter of**

Seeking direction by CERC to the Madhya Pradesh State Electricity Board to pay the amount due to Maharashtra State Electricity Board.

**And in the matter of**

Maharashtra State Electricity Board, Mumbai **....Petitioner**  
Vs

1. The Chairman, Madhya Pradesh State Electricity Board, Jabalpur
2. The Member Secretary, WREB, Mumbai
3. The General Manager, WRLDC, Mumbai
4. The Chairman, Gujarat Electricity Board, Vadodara
5. The Chairman, Chhatisgarh State Electricity Board, Raipur....**Respondents**

**The following were present**

1. Shri Ajit Bhasme, Advocate, MSDCL (MSEB)
2. Shri G.S. Trimukhe, MSDCL (MSEB)
3. Shri J.M. Bhagwat, MSEB
4. Shri Rohit Singh, Advocate, MPSEB
5. Shri D. Khandelwal, Addl CE, MPSEB
6. Shri Yogmaya Agnihotri, MPSEB
7. Shri Sakesh Kumar, Advocate, MPSEB
8. Shri A.P. Bhairve, MPSEB
9. Shri Dilip Singh, MPSEB
10. Shri S.G. Tempe, SE, WREB
11. Shri Manjit Singh, MS I/C, WREB
12. Ms Suparna Srivastava, Advocate, CSEB

**ORDER  
(DATE OF HEARING : 26.7.2005)**

The petitioner, Maharashtra State Electricity Board has sought directions to the

first respondent, Madhya Pradesh Electricity Board to pay an amount of Rs.114.83 crore due under Frequency Linked Energy Exchange (FLEE) Scheme, for the period 1.6.1992 to 30.6.2002. The petitioner has computed the amount as under:

**Arrears due from MPSEB**

Sl. No.	Particulars	(Rs.in crore)
1.	Frequency Linked Energy Exchange (June 1992 – June 2002)	137.82
2.	Goa Wheeling charges (June 1992-September 1999)	15.52
3.	Bilateral arrears as reconciled in February 1997	5.58
	<b>Sub-total:</b>	<b>158.92</b>
4.	Less: allocation of WR-SR payment received till February 2004	-44.09
5.	<b>New receivable from MPSEB</b>	<b>114.83</b>

2. Under FLEE Scheme, the second respondent, Western Regional Electricity Board (WREB) issued monthly advices of the charges payable/receivable by each beneficiary depending on the grid frequency and overdrawal/underdrawal by each of them with reference to its share, at the rates applicable for prescribed frequency range. The charges under FLEE Scheme were to be mutually settled by the beneficiaries.

3. When the petition was previously heard on 9.6.2005, WREB was directed to work out the liability of the beneficiaries. WREB by its letter dated 15.7.2005 has submitted the following details of dues from 1.6.1992 to 30.6.2002:

Sl.No.		1.6.1992 to 30.11.2000	1.12.2000 to 30.6.2002
1.	Composite MPEB to GEB	292,357,494	-
2.	MPSEB to GEB	-	142,617,268
3.	Composite MPEB to MSEB	718,335,339	-
4.	MPSEB to MSEB	-	659,848,951
5.	MPSEB to CSEB	-	2,621,654,715
6.	GEB to CSEB	-	778,692,028
7.	MSEB to CSEB	-	156,751,055
	<b>TOTAL</b>	<b>1,010,692,833</b>	

(in Rs.)

4. The petitioner's claim is based on Ministry of Power letter dated 4.11.2004, issued under sub-section (3) of Section 58 of Madhya Pradesh Reorganisation Act, 2000, wherein, MPSEB's liability to pay an amount of Rs.1,012,963,969 to the petitioner MSEB has been indicated. MPSEB in its reply, apart from disputing the correctness of the amount claimed in the petition, has raised certain preliminary issues regarding the jurisdiction of the Commission to decide the dispute raised.

5. We have heard Shri Ajit Bhasme, Advocate for the petitioner (MSEB) and Shri Sakesh Kumar, Advocate along with Shri D. Khandelwal, Addl CE for the first respondent (MPSEB) and Smt. Suparna Srivastava, Advocate for the fifth respondent (CSEB).

6. Learned counsel for MPSEB raised two preliminary objections. He submitted that the Commission cannot adjudicate upon the dispute relating to charges for the period 1992-1998 as the Commission was established in 1998 and prior to that the Central Government had the jurisdiction. It was submitted that any adjudication by the Commission for the period prior to its establishment will amount to retrospective exercise of jurisdiction. Learned counsel for MPSEB further submitted that the dispute raised is for recovery of money, which is essentially a civil dispute and not within the powers and functions assigned to the Commission under the law. Therefore, it was urged that the petitioner could only file a suit for recovery of the amount due and no proceedings lay before the Commission.

7. On the argument of retrospective exercise of jurisdiction, our attention was drawn to an earlier order of the Commission dated 19.6.2000 in petition No.12/99,

13/99, 14/99 and 16/99 (MPEB, the predecessor of MPSEB was party to those proceedings) wherein the Commission had decided that it had jurisdiction to exercise the same powers as were exercisable by the Central Government before the Commission's establishment. While so deciding, the Commission was guided by the law laid down by the Hon'ble Supreme Court in *New India Insurance Company Vs Smt. Shanti Misra* [AIR 1976 SC 237]. It was held that exercise of adjudication of disputes arising prior to establishment of the Commission cannot be construed as giving retrospective effect as the earlier forum was no longer available and any person seeking enforcement of his vested rights has to go to the new forum, even in respect of cause of action or right of action accruing prior to the change of forum, as there is no vested right of forum but right is vested only for cause of action. So far as the other preliminary objection is concerned, it is sufficient to refer to the provisions of clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003, according to which the Commission is entrusted with the function to adjudicate upon the disputes or to refer any dispute for arbitration. When the learned counsel's attention was drawn to these propositions of law, he submitted that he was not pressing the preliminary objections. Thus, the preliminary objections raised on behalf of MPSEB stand withdrawn.

8. Shri D. Khandelwal for MPSEB submitted that it was ready to make payments of the dues properly calculated. He pointed out that the charges worked out by WREB on underdrawals/overdrawals by the beneficiaries were in relation to NTPC's actual generation, which was higher than the schedule issued by WRLDC, particularly during high frequency regimes. It was submitted that this resulted in higher penalties for the reasons beyond control of MPSEB. Shri Khandelwal urged the Commission to

resolve the issue as also submitted in the reply. It was further stated that WREB while computing the dues under FLEE Scheme for the period 1.12.2000 to 30.6.2002 did not account for Ministry of Power's letters dated 31.1.2004 and 11.5.2004.

9. After withdrawal of the preliminary objections raised on behalf of MPSEB and a categorical undertaking on its behalf of its desire to settle the dues, the dispute regarding the actual determination of FLEE charges and entitlement/liability of the beneficiaries in the Western Region to share these charges survives. For this purpose, we have decided that the issue shall be considered in detail by a one-Member Bench, with one of us (Shri Bhanu Bhushan), who after giving proper opportunity to the parties shall make appropriate recommendations to the Commission for its consideration and decision.

10. We further direct that notice for the next date of hearing shall also issue to NTPC in view of the submissions made by MPSEB, as recorded at para 8 above.

11. The parties shall appear before the one Member Bench on 22.8.2005 at 11.00 A.M. at WREB Office, Mumbai.

Sd/-  
**(A.H. JUNG)**  
**MEMBER**

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

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

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

New Delhi dated the 2<sup>nd</sup> August 2005