

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

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

Petition No.98/2003

In the matter of

Petition for seeking directions to the respondents regarding reimbursement of income tax amount to NHPC for the period 1.4.2000 to 31.3.2003 in respect of Loktak H.E. Project.

And in the matter of

National Hydroelectric Power Corporation Ltd.

...Petitioner

Vs

1. Assam State Electricity Board, Guwahati
2. Meghalaya State Electricity Board, Shillong
3. Deptt. of Power, Govt. of Arunachal Pradesh, Itanagar
4. Electricity Deptt., Govt. of Manipur, Imphal
5. Electricity Deptt., Govt. of Mizoram, Aizwal
6. Electricity Deptt., Govt. of Nagaland, Kohima
7. Electricity Deptt., Govt. of Tripura, Agartala

....Respondents

The following were present

1. Shri S.D. Tripathi, ED, NHPC
2. Shri Prashant Kaul, CE, NHPC
3. Shri S.K. Agarwal, GM (Comml), NHPC
4. Shri A.K. Srivastava, DM, NHPC
5. Shri Ansuman Ray, NHPC
6. Shri T.K. Mohanty, SM (Law), NHPC
7. Shri Naveen Sauriya, NHPC

**ORDER
(DATE OF HEARING 3.3.2004)**

The petitioner, National Hydroelectric Power Corporation Ltd in this petition seeks directions to the respondents for reimbursement of certain amounts due on account of

income-tax applicable for Loktak Hydroelectric Project in North Eastern Region. The amounts are stated to be due against respondents 1 to 7 for the year 2000-2001 and against respondents 1 and 3 to 7 for the year 2002-2003. It is stated that no income-tax bill had been raised on the respondents for the year 2001-2002 due to 'loss' from Loktak Hydroelectric Project during that year.

2. It is stated that the petitioner had raised bills on the respondents for reimbursement of income-tax on 7.12.2001 (for 2000-2001) and 1.9.2003 (for 2002-2003). However, the bills remain unsettled, except in case of respondent 2 who has reimbursed the amount due for the year 2002-2003. The matter of non-reimbursement of income tax by the respondents is stated to have been discussed at 51st Meeting of North Eastern Regional Electricity Board but the respondents had not agreed to reimburse the amount and a decision was taken at the said meeting that the petitioner might take up the matter with the Commission for appropriate direction. Against this background, the petitioner has filed the present petition seeking directions to the respondents for the reimbursement of the amount of income-tax along with surcharge @ 1.5 percent per month from the date of billing till the date of payment.

3. No reply has been filed on behalf of any of the respondents. We heard Shri SK Aggrawal, General Manager, for the petitioner. None has appeared on behalf of the respondents despite notice. Shri Aggrawal strenuously argued that a direction be issued by the Commission as prayed for since, according to the petitioner, this is one of the remedies available to it under the law.

4. The reimbursement of income tax is part of tariff and authorised under the terms and conditions of the tariff notified by the Central Government as also the Commission, disobedience of which attracts the penal provisions. We are unable to ascertain the reasons for non-reimbursement by the respondents because no reply has been filed by any one of them and they have also preferred to abstain from the hearing. Similarly, the minutes of 51st Meeting of North Eastern Regional Electricity Board, the relevant extracts of which have been filed by the petitioner are also silent on this aspect. However, the amount due on account of the non-reimbursement is recoverable like other outstanding dues of the Central Power Sector Utilities.

5. We take notice of the fact that the Central Government, the State Governments and the Reserve Bank of India have entered into a tripartite agreement with the aim of securing payment of current dues to the Central Power Sector Utilities. The said tripartite agreement lays down an elaborate procedure for settlement of current dues of State Electricity Boards or their successor utilities. The scheme envisages that in case the payments remain outstanding for a specified period, the Central Power Sector Utilities have the option to reduce the power supply of the defaulting state utilities. The dues can also be recovered by Ministry of Power by withholding releases from the Accelerated Power Development & Reforms Programme. In accordance with the tripartite agreement, recoveries on behalf of the Central Power Sector Utilities can further be effected by Ministry of Finance through adjustment against releases due to the respective State Government on account of plan assistance, States' share of Central taxes and any grant or loan. In our opinion, sufficient alternative remedies are available to the petitioner to enforce reimbursement of income tax, which as we have already stated is a component

of tariff. We, therefore, dispose of the petition with the observation that the petitioner may in the first instance exhaust the alternative of remedies available to it for recovery of outstanding dues. In case of the petitioner's failure to recover the amount due, it may approach the Commission for appropriate directions.

6. With the above observations, the petition stands disposed of.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated 11th March, 2004