

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri DP. Sinha, Member**
2. **Shri G.S. Rajamani, Member**
3. **Shri K.N.Sinha, Member**

Review Petition No. 119/2000

In the matter of

Review of Order dated 10-10-2000 in Petition No.51/2000 for amendment of Chamera Tariff notification.

Review Petition No120/2000

And in the matter of

Review of Order dated 10-10-2000 in Petition No.55/2000 for amendment for Tanakpur Tariff notification.

Review Petition No.121/2000

And in the matter of

Review of Order dated 10-10-2000 in Petition No.56/2000 for amendment of Uri Tariff notification.

Review Petition No.122/2000

And in the matter of

Review of Order dated 10-10-2000 in Petition No.57/2000 for amendment of Salal Tariff notification.

And in the matter of

National Hydroelectric Power Corporation Ltd.

....**Petitioner**

VS

1. Union of India
2. Punjab State Electricity Board
3. Haryana Vidyut Prasaran Nigam Ltd.
4. Delhi Vidyut Board

5. Uttar Pradesh Power Corporation Ltd.
6. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
7. Himachal Pradesh State Electricity Board
8. Power Development Deptt., Govt, of J&K
9. Chandigarh Admn., Chandigarh

....Respondents

The following were present:

1. Shr B. Dutta, Senior Advocate for NHPC
2. Shr S.K. Aggarwal, Chief Engineer (Comm.), NHPC
3. Shr Aditya Madan, Advocate for RRVPLN
4. Shr V.K. Gupta, SE, RRVPLN
5. Shr J.K. Gupta, Director, PSEB
6. Shr R.K. Arora, XEN, HVPNL

ORDER
(DATE OF HEARING : 6-7-2001)

The petitioner, through these applications has sought review of the Commission's Order dated 10-10-2000 in Petitions No.51/2000, 55/2000, 56/2000 and 57/2000.

2. In the original petitions, the petitioner had prayed that the normative availability of Chamera, Tanakpur, Uri and Salal Hydroelectric Projects be fixed at 85% w.e.f. 15th May, 1999. The facts leading to filing of the petitions are that the Central Government issued a notification dated 30th March, 1992 laying down the factor in accordance with which tariff of thermal and hydro generating stations was to be determined. By virtue of paras 3.3 and 3.4 of the notification dated 30th March, 1992, as amended from time to time, the said notification did not apply to the hydroelectric projects in question. Subsequently, Ministry of

Power issued an Office Memorandum dated 1-4-1997 providing that with effect from that date, tariff of Hydroelectric projects belonging to the petitioner would be fixed under the notification dated 30th March, 1992, as amended.

3. Under the notification of 30th March, 1992, the normative availability for recovery of capacity charges, etc. was prescribed at 90%. Later on, vide notification dated 13th May, 1999, the Central Government made an amendment to the notification dated 30th March, 1992 whereby the normative availability was reduced to 85% for recovery of full capacity charges. The terms and conditions of tariff for Chamera and Tanakpur Hydroelectric Projects were notified by the Central Government on 8-2-1999 and for Uri and Salal Hydroelectric Projects on 14-5-99 and 26-3-99 respectively. In these project-specific notifications the normative availability is prescribed at 90%. Consequent to issue of notification dated 13th May, 1999 amending the notification dated 30th March, 1992, the project-specific notifications were not amended by the Central Government and, therefore, in these cases normative availability remained at 90%. Meanwhile, the jurisdiction on tariff related matters came to be vested in the Commission w.e.f. 15.5.1999. Against this background, the petitioner filed the petitions seeking refixation of normative availability of these hydroelectric projects at 85% from the date the Commission was conferred jurisdiction.

4. The petitions were dismissed by the Commission on 10-10-2000 at admission stage. The Commission took a view that the Office Memorandum

issued by Ministry of Power on 1-4-97 did not have the effect of amending the notification dated 30-3-92, which is of statutory nature, whereas the Office Memorandum was an administrative device. The Commission found that even after issue of the Office Memorandum dated 1-4-1997, paras 3.3 and 3.4 of the notification of 30th March, 1992 excluded application of the norms laid down therein to the hydroelectric projects in question. The Commission felt that the norms prescribed under the notification dated 30th March, 92 were still inapplicable to these projects, notwithstanding the Office Memorandum dated 1-4-97 in view of Section 21 of the General Clauses Act since the Office Memorandum was not published in the same manner as the notification of 30th March, 1992. Therefore, the petitioner could not seek amendment to project-specific notifications dated 8-2-99, 14-5-99 and 26-3-99 on the question of normative availability based on the amended notification dated 30th March, 1992. These applications seeking review of the Commission's Order dated 10-10-2000 have been filed against the above background.

5. We have heard Shri B. Dutta, Senior Advocate appearing on behalf of the petitioner, Shri Aditya Madan, Advocate, for Rajasthan Vidyut Prasaran Nigam Ltd., as also the representatives of Punjab State Electricity Board and Haryana Vidyut Prasaran Nigam Ltd. No one has appeared on behalf of other respondents. The learned Senior Counsel appearing for the petitioner admitted that the notification dated 30th March, 1992, as amended from time to time, issued under Section 43A(2) of Electricity (Supply) Act, 1948 does not apply to

the hydroelectric projects belonging to the petitioner. According to him, tariff of the generating companies like National Hydroelectric Power Corporation Ltd. belonging to the Central Government is to be fixed under proviso to Section 43A(2) since the proviso carves out an exception to the main provision. The learned Senior Counsel argued that by virtue of policy contained in Office Memorandum dated 1-4-1997 issued by Ministry of Power, the norms for fixation of tariff contained in the notification dated 30th March, 1992 have to be *ipso-facto* applied to the generating stations belonging to the petitioner. According to the learned senior counsel, the view taken by the Commission in its Order dated 10-10-2000 constitutes an error apparent on the face of record and, therefore, the order is liable to be reviewed. Shri Aditya Madan, learned counsel appearing for Rajasthan Rajya Vidyut Prasaran Nigam Ltd. sought to argue that the issues raised by the petitioner do not amount to an error apparent on the face of record. He also submitted that no new and important matter or evidence had been brought to the notice of the Commission, requiring review of the order. According to the learned counsel, under these circumstances the petitioner cannot seek review of the order dated 10-10-2000 and the remedy was available elsewhere, in case the petitioner felt aggrieved. The representatives of Punjab State Electricity Board and Haryana Vidyut Prasaran Nigam Ltd. also made similar submissions.

6. We have given our anxious thought to the submissions made by the parties. The terms and conditions of tariff in respect of generating stations

belonging to the Central Government are to be determined under proviso to Section 43 A (2) of the Electricity (Supply) Act and not under the main provision. This view has been taken by the Commission in its order of 7-12-2000 in Petitions No.20/2000 and 26/2000. That being the position in law on the question of interpretation of the provisions of Section 43A (2) of the Electricity (Supply) Act, we are of the view that the reliance by the Commission on Section 21 of the General Clauses Act in the order dated 10th October, 2000, presently sought to be reviewed, was not necessary. Thus the view taken in the order of 10-10-2000 constitutes an error of law apparent on the face of record and is, therefore, a sufficient ground for review of that order. We are satisfied that on account of this error of law, the petitions dismissed vide order dated 10-10-2000 require to be reheard on admission. We, therefore, allow these applications.

7. Accordingly, we direct that the copies of the original Petitions No.51/2000, 55/2000, 56/2000 and 57/2000 shall be furnished by the petitioner to the respondents within 2 weeks from the receipt of a copy of this order. The respondents may file their replies within 4 weeks of receipt of the copy of the petition and the petitioner may file its rejoinder, if any, within 2 weeks thereafter. We further direct that the petitions shall be placed before the Commission on completion of pleading for hearing on admission.

■
(K.N. Sirkha)
Member

V J-2L-*-/
(G.S. Rajamani)
Member


(D.P. Sinha)
member

New Delhi dated the 6th July, 2001.