

**Central Electricity Regulatory Commission
New Delhi**

RECORD OF PROCEEDINGS

Petition No. 45/2010

Subject: Petition under Section 79 of the Electricity Act, 2003, seeking directions to M.P. Power generating company Ltd (Respondent No.3) for filing of ARR and petition for determination of tariff in respect of Rajghat Hydro Power Project by the Commission.

Date of Hearing: 26.4.2011

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member

Petitioner: Uttar Pradesh Power Corporation Ltd (UPPCL)

Respondents: Secretary Energy Dept, State of M.P., MPSEB, MPPGCL and MP Tradeco,

Parties present: Shri S.N.Mitra, Advocate, UPPCL
Shri Jagdish Agarwal, UPPCL
Shri G.Umapathy, Advocate, MPPTCL
Ms. Sudha Umapathy, Advocate, MPPTCL

As directed by the Commission, the parties advanced their submissions on the question of 'jurisdiction' of the Commission to deal with the matter.

2. The learned Counsel for the petitioner submitted as under:
 - (a) The investment, funding, development and sharing of power from the Rajghat Project (the generating station) was agreed upon between UPSEB and MPSEB by the Minutes of the Meeting dated 3.3.1993 wherein the total completed cost was to be shared between UPSEB and MPSEB in the ratio of 50:50.
 - (b) This project was commissioned under a composite scheme, since 50% share of the generation from the project was earmarked to UPSEB and as such, the Central Commission has the power to determine tariff of the generating station in terms of Section 79(1)(b) of the Electricity Act, 2003 (the Act).
 - (c) Neither MPPTCL nor the erstwhile MPSEB supplied the 50% share of electricity pertaining to the erstwhile UPSEB or UPPCL till date. In terms of Section 79 of the Act, the Central Commission is also authorized to regulate the inter-state transmission and to adjudicate upon disputes involving generating companies or transmission utilities in regard to matters enumerated under Clauses (a) to (d) of Section 79(1) of the Act.
 - (d) The contention of MPPGCL (Respondent No.3) that the entire electricity generated from Rajghat generating station was supplied to MPPTCL and that it does not supply power to any other person except MPPTCL is not legally tenable, since UPSEB/UPPCL was/is entitled to 50% share of electricity from

the project as per MOM dated 3.3.1993 and any denial of its share of power would amount to a violation of an agreement.

- (e) The issue of jurisdiction stands settled in terms of the judgment dated 9.1.2009 of the Appellate Tribunal for Electricity in Appeal No. 35/2008 (UPPCL-v-CERC & ors) wherein the Tribunal upheld the order of the Commission to adjudicate the matter relating to the release of legitimate share of supply of energy by UPSEB to MPPTCL.
 - (f) Since tariff for the generating station was related to the determination of capital cost, it was necessary that the cost of the project be determined by the Central Commission after considering the payments made by the petitioner and the claims of the respondent, MPPTCL and consequently determine the tariff for the generating station.
 - (g) To sum up, the Central Commission has the jurisdiction to deal with the matter and direct the respondents to supply the 50% share of power from the project to the petitioner.
3. In response to the above, the respondent, MPPTCL submitted as under:
- (i) The issues raised in the petition pertain to the sharing of 50% of the cost of the project by UPPCL, the supply of 50% share of power by MPPTCL to UPPCL, filing of tariff petition by MPPGCL, arbitration of claims of petitioner and compensation if any, for non-supply of the said power.
 - (ii) The Commission has no jurisdiction to deal with the above matter as the issues raised by the petitioner do not fall within the ambit and scope of Section 79 of the Electricity Act, 2003.
 - (iii) The agreement between the parties pertains to the sharing of the supply of 50% power generated from the project and there was no sale of power by MPSEB to UPSEB. As there was no composite scheme for sale of power from the project, the provisions of Section 79 (1) (b) of the Act was not attracted in the said case.
 - (iv) The 50% share of power from the project could not be scheduled to the petitioner, since the petitioner has failed to pay its balance share of the project cost accrued with interest.
 - (v) Only the MP State Electricity Commission has the jurisdiction to determine the tariff of the generating station and the prayer of the petitioner in this regard before the Central Commission was not tenable.
5. The Commission directed the parties to file their written submissions on affidavit, within 10 days i.e on or before 6.5.2011.
6. Subject to the above, order of the Commission on the question of jurisdiction was reserved.

Sd/-
(T.Rout)
Joint Chief (Law)