

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 170/GT/2017  
Petition No. 171/GT/2017  
&  
Petition No. 234/MP/2017**

**Coram:  
Shri P.K.Pujari, Chairperson  
Dr. M.K.Iyer, Member  
Shri I.S.Jha, Member**

**Date of Order: 16<sup>th</sup> April, 2019**

**Petition No. 170/GT/2017**

**In the matter of**

Petition for approval of generation tariff for shared hydro projects of Rajasthan & Madhya Pradesh installed in Rajasthan namely Jawahar Sagar Hydel Power Station for the years 2012-13 & 2013-14

**Petition No. 171/GT/2017**

Petition for approval of generation tariff for shared hydro projects of Rajasthan & Madhya Pradesh installed in Rajasthan namely Rana Pratap Sagar Hydel Power Station for the years 2012-13 & 2013-14

**And**

**In the matter of**

Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur- 302005

**.....Petitioner**

**Vs**

1. Madhya Pradesh Power Management Company Limited  
Block No. 11, Shakti Bhawan, Vidyut Nagar,  
Jabalpur- 482008

2. Madhya Pradesh Power Transmission Company Limited  
Block no. 2, Shakti Bhawan, Rampur,  
Jabalpur- 482008

3. Rajasthan Rajya Urja Vikas Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur- 302005



4. Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur- 302005

5. Ajmer Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer- 305004

6. Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House, Industrial Area,  
Jodhpur- 342003

.....Respondents

**Petition No. 234/MP/2017**

**And**

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Madhya Pradesh Power Management Company Limited  
Block No. 11, Shakti Bhawan, Vidyut Nagar,  
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**Vs**

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
VidyutBhawan, Jyoti Nagar,  
Jaipur- 302005

2. Rajasthan Rajya Urja Vikas Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur- 302005

3. Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur- 302005

4. Ajmer Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer- 305004

5. Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House, Industrial Area,  
Jodhpur- 342003

.....Respondents

**Parties present:**

Shri Pradeep Misra, Advocate, RRVPNL

Shri Sushil Mathur, RRVPNL

Shri V.K.Gupta, RRVPNL

Shri G.Umpathy, Advocate, MPPMCL

Shri Aditya Singh, Advocate, MPPMCL

Shri Dilip Singh, MPPMCL

Ms.Swapna Seshadri, Advocate, Rajasthan discoms

Ms.Parichita Chowdhury, Advocate, Rajasthan discoms



## ORDER

### Background

The States of Rajasthan and Madhya Pradesh have joint venture projects under Chambal-Satpura complex, namely, Gandhi Nagar Hydel Power Station in MP and Jawahar Sagar & Rana Pratap Sagar Hydel Power Stations in Rajasthan. Sarni Thermal Power House-I (312.5 MW capacity) located in the State of MP was also part of the project. But as per recommendations of the National Mission on Enhanced Energy Efficiency and directions of the Govt. of India, Sarni Thermal Power House-I was completely de-commissioned on 7.1.2014. The details of the power projects and share of the States of Rajasthan and MP are as under:

Power station	Capacity (MW)	Date of commissioning	Share of MP		Share of Rajasthan	
			MW	%	MW	%
Rana Pratap Sagar HEP (Raj)	172 (4 x 43)	24.5.1969	86.00	50	86.00	50
Jawahar Sagar HEP (Raj)	99 (3 x 33)	19.7.1973	49.50	50	49	50
Gandhi Sagar HEP (MP)	115 (5 x 23)	3.11.1966	57.50	50	57.50	50
Sarni TPS-I (MP) (de-commissioned)	312.50 (5 x 62.5)	-	187.50	60	125.00	40

2. The aforesaid three hydel Projects (excluding Sarni TPS-I) were executed as per agreement arrived at between the erstwhile Madhya Bharat and Rajasthan on 30.6.1948 and 25.3.1955. Thereafter, several rounds of meeting were held between both State Govt. convened by Chambal Control Board, Ministry of Home Affairs, GOI and it was decided that the cost (capital cost + operating cost) and benefit of three hydel projects in MP and Rajasthan would be shared equally between the two States i.e on 50:50 basis. The respective States has been maintaining and operating the hydel projects located in its own territory. As regards sharing of cost of the three hydel projects after commissioning, both



States have been reconciling and settling the common expenditure on financial year wise basis i.e. additional capital expenditure, R&M expenditure, O&M expenses on 50:50 basis as per accounts duly audited by the auditors. Other expenditure which are not common in nature, like depreciation and interest on loan, if any, are being accounted for by the respective entities in their accounts to the extent of cost being incurred by them in the projects. Thus, after commissioning, running cost of the projects is being shared equally by the two States. With regard to the benefit to be availed by the two States corresponding to their respective shares, it was decided in the meeting held between the Chief Secretaries of both States on 5/6.12.1987 that in case, any State draws power more than its share, the over drawing State will have to compensate at prevailing Badarpur Thermal Power Station rate of NTPC *plus* 10% extra thereon. The over drawal cost would be applicable to the extent of energy over drawn by either States from these projects.

3. The Petitioner, Rajasthan Rajya Vidyut Prasaran Nigam Ltd (RRVPL) is a company registered under the Companies Act, 1956 and has been established on 19.7.2000 by the Govt. of Rajasthan under the provisions of the Rajasthan Power Sector Reforms Act, 1999 as a successor company of RSEB. The Petitioner was granted license for transmission and bulk supply by order of the Rajasthan Electricity Regulatory Commission (RERC) on 30.4.2001 to function as transmission and bulk supply licensee in the State of Rajasthan. The Petitioner has been declared as State Transmission Utility (STU) by the Govt. of Rajasthan and also owns the shared generating projects as representative of erstwhile RSEB. As per Rajasthan Power Sector Reforms Transfer Scheme, 2000, the shared generating



station of Chambal complex belonging to erstwhile RSEB was transferred to the Petitioner.

4. RRVPNL had filed Petition No. RERC/373/13 before the Rajasthan Electricity Regulatory Commission (RERC) for approval of ARR and determination of transmission tariff, including the recovery of expenses of the shared projects from the State discoms for the year 2013-14 based on their shares in the capacity allocation in the said projects. RERC vide its order dated 9.1.2014 declined to determine the tariff for the shared generation projects on the ground that the Central Commission only has the jurisdiction to regulate and determine the tariff of shared generation projects, in terms of the judgment of the Appellate Tribunal of Electricity ('Tribunal') dated 14.12.2012 in Appeal No. 83 of 2011 (BBMB v CERC &ors). Accordingly, the Petitioner has filed Petition Nos.170/GT/2017 & 171/GT/2017 for determination of tariff of shared generation projects for the years 2012-13 & 2013-14 respectively. The Petitions were heard on 20.2.2018 and the Commission vide ROP of the said hearing directed the Petitioner to file certain additional information.

5. The Respondent, MPPMCL vide its reply affidavit dated 15.9.2017 has submitted that the Petition is not maintainable as the Petitioner has not complied with the provisions of the Grid Code. The discoms of Rajasthan (respondents 3 to 6 herein) vide affidavit dated 28.7.2018 have filed preliminary objections stating that the tariff Petition has been filed by the Petitioner after the expiry of the tariff period 2009-14. They have also stated that the Petition is not maintainable as the generating stations have been set up as an outcome of the sharing arrangement between the States of Rajasthan & MP and hence cannot be subjected to tariff determination process by this Commission. The respondents



have further submitted that any determination of tariff by this Commission would only result in upward revision of tariff.

6. During the pendency of the above said Petitions, the Respondent, MPPMCL has filed Petition No. 234/MP/2017 with the following prayers:

*“(a) Direct the Respondent, RRVPNL to make the payment of undisputed amount of Rs 375.696 crore (reconciled) to MPPMCL (Petitioner herein);*

*(b) Direct RRVPNL to make the payment of balance amount of Rs 515.221 crore to MPPMCL and also carry put the reconciliation of energy account, O&M/ capital expenditure accounts etc. with MPPMCL& MPPGCL.*

*(c) Direct RRVPNL to make payment of interest on outstanding amount at the simple interest rate equal to the bank rate as on 1<sup>st</sup> April of the respective year;*

*(d) Direct RRVPNL to take necessary action for scheduling of share of power in partnership projects as per IEGC, 2010 so that either State may draw legitimate share from the Projects.”*

7. The Petition was admitted on 22.2.2018 and notice was issued to RRVPNL. Thereafter, the Commission after hearing the parties on 10.4.2018, observed that the Respondent, RRVPNL shall prepare a schedule indicating its commitment to pay the undisputed amount to the Petitioner, MPPMCL and submit the same to the Commission. Subsequently, the Petition was heard on 29.5.2018 and based on the submissions of the parties, the Commission directed the following:

*“3. The Commission, after hearing the parties adjourned the matter. The Commission however directed the Respondent, RRVPNL to submit a concrete proposal, on affidavit, on or before 29.6.2018, indicating the time period within which the payments are to be made to the Petitioner. As regards scheduling of power to the Petitioner, the Commission directed the parties to interact with WRLDC to formalize the station wise scheduling procedure and resume supply of power to the Petitioner at the earliest.”*

8. Thereafter, the discoms of Rajasthan filed IA No. 51/2018 for impleadment as Respondents in the matter. During the hearing of this Petition along with IA on 21.8.2018, the learned counsel for the Petitioner, MPPMCL submitted that 78 MW of power had been scheduled by the Respondent, RRVPNL in terms of the directions of this Commission vide ROP dated 29.5.2018. However, the learned



counsel for the discoms of Rajasthan referred to the interim order dated 25.7.2018 of the Appellate Tribunal for Electricity ('the Tribunal') in Appeal Nos. 59 of 2014 & 120 of 2014 (MPPMCL vs CERC & ors) relating to disputes between UPPCL and MPPMCL in respect of Rajghat HPS and submitted that the Tribunal had directed the Principal Secretaries (Energy) of both the States to call for a joint meeting and explore possibilities of amicable settlement of the disputes. Accordingly, the learned counsel for the Respondent, RRVPNL and the discoms of Rajasthan prayed that a similar direction may be passed in this Petition. Accordingly, the Commission vide ROP of the hearing dated 21.8.2018 directed the parties to explore possibilities of an amicable settlement of the issues and submit report within a period of two months. The relevant portion in the ROP dated 21.8.2018 in Petition No. 234/MP/2017 is extracted hereunder:

*“3. The Commission after hearing the parties and keeping in view the above interim order of APTEL directed both the parties to explore possibilities of an amicable settlement of the disputes in a joint meeting to be convened by the Secretary (Energy) of both the States and file a report within a period of two months from the date of this ROP.”*

9. While so, Petition Nos. 170 & 171/GT/2017 were heard on 11.10.2018 and the learned counsel for the Petitioner, RRVPNL during the hearing referred to the directions dated 21.8.2018 of this Commission in Petition No. 234/MP/2017 and prayed that similar directions may be issued to the parties in these Petitions. The Respondent, MPPMCL did not object to the said submissions of RRVPNL. Accordingly, the Commission vide ROP dated 11.10.2018 directed the parties to explore possibilities of an amicable settlement and to submit report within a period of two months. The relevant portion containing the directions of the Commission in ROP dated 11.10.2018 is as under:

*“4. The Commission observed that these generating stations have a composite scheme for generation and sale of power to more than one state and hence tariff is to be determined by this Commission. However, the Commission, keeping in view the directions given in Petition No. 234/MP/2017 directed both the parties to explore*



*possibilities for an amicable settlement of the issues in a joint meeting to be convened by the Secretary (Energy) of both the States and file a report within two months from the date of ROP.”*

The time to file the report was however extended at the request of the parties.

10. In compliance with the directions dated 21.8.2018 in Petition No. 234/MP/2017, the Petitioner, MPPMCL vide its affidavit dated 28.2.2019 and the discoms of Rajasthan vide affidavit dated 27.2.2019 have submitted that a meeting between the Government and the power utilities of both the States was held on 23.2.2019 and all outstanding issues covered in Petition No 234/MP/2017 were amicably resolved between the parties. Similarly, in compliance with the directions dated 11.10.2018 in Petition Nos. 170/GT/2017 and 171/GT/2017, the Petitioner, RRVPNL vide its affidavit dated 28.2.2019 submitted that the matter has been mutually settled between the parties in a meeting held on 23.2.2019. Copies of the MOM dated 23.2.2019 has been enclosed along with the said affidavits. Accordingly, both the parties have submitted that these Petitions may be disposed of in terms of the settlement arrived as per MOM dated 23.2.2019.

11. The issues covered in these Petitions (Petition No. 234/MP/2017 and Petition Nos. 170/GT/2017 and 171/GT/2017) which were discussed and decided by the States of Rajasthan and MP, as per MOM dated 23.2.2019 is extracted hereunder:

**Point No.5: Scheduling of 78 MW power from RPS Hydel station to MP**

*“It was agreed that undisputed amount of Rs. 224.54 Cr, upto 31.3.2013, was payable by Rajasthan to MP. Subsequently, O&M and Capital expenses of Rs. 99.33 Cr also become payable for FY 2013-14 & FY 2014-15. It was agreed that this amount shall be payable in 12 quarterly instalment commencing from April-June 2019 quarter. Interest on the amount shall be payable on SBI MCLR prevailing on first date of every quarter. Based on working elaborated in Annexure II, payable amounts work out as under, which shall be updated quarterly considering SBI MCLR:*





Quarter			Amount (₹ in crore)		
			Repayment	Interest	Total
1.	Apr-19	Jun-19	40.89	9.64	50.53
2.	Jul-19	Sep-19	40.89	8.80	49.69
3.	Oct-19	Dec-19	40.89	7.96	48.85
4.	Jan-20	Mar-20	40.89	7.12	48.01
5.	Apr-20	Jun-20	40.89	6.29	47.18
6.	Jul-20	Sep-20	40.89	5.45	46.34
7.	Oct-20	Dec-20	40.89	4.61	45.50
8.	Jan-21	Mar-21	40.89	3.77	44.66
9.	Apr-21	Jun-21	40.89	2.93	43.82
10.	Jul-21	Sep-21	40.89	2.10	42.98
11.	Oct-21	Dec-21	40.89	1.26	42.15
12.	Jan-22	Mar-22	40.89	0.42	41.31

*In order to set off the over draws of energy (both backlog till scheduling and expected in future) and energy exchanges towards border villages, Rajasthan has agreed to supply total 60 MW to MP, through Rajasthan Pool at Rajasthan State Periphery on RTC basis for a period of 5 years on MTOA basis. All losses and charges against this supply shall be borne by MP. Till materialization of MTOA power shall be supplied by Rajasthan to MP through STOA. MP will make necessary arrangements towards MTOA/STOA. Both the states will reconcile energy on half yearly basis.*

*In regard to Capital and O&M Expenditure Accounts for 2015-16, 2016-17 & 2017-18, MPPGCIL has provided the audited accounts for acceptance by Rajasthan. Rajasthan is to revert back on the same in a month.”*

**Point No.6: Details of infrastructure of Sarni TPS PH-1 diverted and being used by MPPGCL at present**

*“Team of Rajasthan has visited Sarni and found that the details as provided by MPPGCL are in order and there is no pending unresolved issue. The amounts as provided by MPPGC based on their audited Books of account, shall be treated final for reconciliation.*

*Further, the un-reconciled amount of Rs 1.99 crore, emerging out of reconciliation since 1985, shall be shared equally by both the States.*

**Point No.7: Determination of tariff of Rana Pratap Sagar and Jawahar Sagar HPS by CERC**

*“The agreement between the two States is for sharing of power & expenditure (both for O&M and Capital) based on audited books of accounts and hence has no direct relation with filing of tariff Petition. It was agreed that the existing mechanism should continue for the same with no change.*

*However, both agreed to file tariff Petitions for the stations operated and maintained by them with their respective regulatory commissions and shall be applicable on respective share of power generated.”*

12. During the hearing of these Petitions on 13.3.2019, the learned counsels for the Petitioner and the Respondents reiterated that the Petitions may be disposed



of in terms of the said settlement arrived at vide MOM dated 23.2.2019. The Commission after hearing the parties reserved its order in these Petitions.

### **Analysis and decision**

#### **Petition Nos. 170/GT/2017 and 171/GT/2017**

13. We have considered the submissions of the parties and the documents available on record. As stated, the Petitioner, RRVPNL has filed Petition Nos. 170/GT/2017 and 171/GT/2017 before this Commission for determination of tariff of the shared projects for the years 2012-13 and 2013-14, pursuant to the order of RERC dated 9.1.2014, which is extracted hereunder:

*“12. The Commission has already stated in its order of approval of Investment Plan for FY 2013-14 that in accordance with the Hon’ble APTEL judgment in Appeal No. 83 of 2011 in the matter of Bhakra-Beas Management Board, CERC is the competent authority to regulate and determine the tariff of the generating station of BBMB. Further, one of the stakeholder, Shri G.L.Sharma has also stated that CERC is the competent authority to determine the tariff of shared generation projects. Thus, in light of above judgment and taking into consideration the suggestion of stakeholder, Commission in this order has not considered the proposal for approval of expenses for shared generation project and related comments/suggestions of the stakeholders....”*

14. Despite the above, the terms of settlement arrived at by the parties vide MOM dated 23.2.2019 as regards determination of tariff of shared projects of the Petitioner RRVPNL, is a under:

*“However, both parties agreed to file tariff Petitions for the stations operated and maintained by them with their respective regulatory commissions and shall be applicable on respective share of power generated.”*

15. Since the parties by mutual consent have agreed to file tariff Petitions before the respective State Commissions in respect of the generating stations operated and maintained by them, we proceed to examine whether the terms of settlement conferring jurisdiction upon the State Commissions and excluding the jurisdiction of this Commission to regulate the tariff of shared projects, is in accordance with law and acceptable by this Commission.



16. As stated, the share of the States of Rajasthan and Madhya Pradesh in the generation projects located in the State of Rajasthan (Rana Pratap & Jawahar HEP) and the State of MP (Gandhi Sagar HEP) is as under:

Power station	Share of MP		Share of Rajasthan	
	MW	%	MW	%
Rana Pratap Sagar HEP	86.00	50.00	86.00	50.00
Jawahar Sagar HEP	49.50	50.00	49.50	50.00
Gandhi Sagar HEP	57.50	50.00	57.50	50.00

17. Section 79(1)(b) of the Electricity Act, 2003 provides as under:

*“79 (1) The Central Commission shall discharge the following functions, namely,*

*(a) xxxxxx*

*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*

*Xxxxxx*

18. As per the above provision, the Central Commission has the power to regulate the tariff of the generating company having a ‘composite scheme’ for generation and sale of electricity in more than one State. In the present case, the three hydel projects were executed as per agreement between the erstwhile Madhya Bharat and Rajasthan on 30.6.1948 & 25.3.1955. It was decided by the State Governments that the cost (capital cost + operating cost) and the benefit of three hydel projects in the States of MP and Rajasthan would be shared equally between the two States. The generation charges allowed comprised of the O&M charges, depreciation and interest charges which are to the extent of contribution of the parties in the projects. Since the power generated from the hydel stations viz., Rana Pratap & Jawahar HEP are supplied to the State of MP in proportionate to the share, which was envisaged since inception of the project, we conclude that the hydel power stations have entered into or otherwise have a composite scheme for generation and sale of electricity in more than one State. The Hon’ble



Supreme Court in its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580) while upholding the jurisdiction of this Commission for regulating the tariff of projects which meet the composite scheme, has explained the term 'composite scheme' as under:

*“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.*

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26. Another important facet of dealing with this argument is that the tariff policy dated 6th June, 2006 is the statutory policy which is enunciated under Section 3 of the Electricity Act. The amendment of 28th January, 2016 throws considerable light on the expression “composite scheme”, which has been defined for the first time as follows:

*“5.11 (j) Composite Scheme: Sub-section (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.*

*Explanation: The composite scheme as specific under section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long-term or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of at least 10% of the capacity of the project to a distribution licensee outside the State in which such project is located.*

27. That this definition is an important aid to the construction of Section 79(1)(b) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one State.”



Therefore, the regulation of tariff of the hydel power stations of the Petitioner, RRVPNL is within the jurisdiction of the Central Commission by virtue of clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003 and in line with the above judgment of the Hon'ble Supreme Court.

19. Also, clause (i) of sub-section (36) of Section 2 of the Electricity Act, 2003 provides that any system used for conveyance of electricity by means of main transmission line from the territory of one State to another State qualifies to be categorized as the inter-State transmission system. It, therefore, follows that the conveyance of electricity from the territory of one State to the territory of another State amounts to inter-State transmission within the meaning of the term used in the said Act. In the present case, the State of Rajasthan has an obligation to supply electricity from its power stations to the State of Madhya Pradesh, in the agreed proportion. Accordingly, the supply of the share of power as aforesaid involves the inter-State transmission of electricity, the jurisdiction for which lies before the Central Commission.

20. One more submission of the parties during the hearing is that the consent to file tariff Petitions before the respective State Commissions as per MoM dated 23.2.2019 is in line with the judgment of the Tribunal in Appeal Nos. 59 of 2014 & 120 of 2014 (MPPMCL vs CERC & ors) relating to disputes between UPPCL and MPPMCL in respect of Rajghat HPS and hence the terms of settlement vide MOM dated 23.2.2019 may be accepted. The submission has been considered. In the said case, MPPGCL and MPPMCL had filed appeals challenging the Commission's order dated 2.1.2014 in Petition No. 45/2010 (UPPCL V State of MP & ors) upholding the jurisdiction of this Commission to adjudicate the disputes and determination of compensation with regard to supply of power from Rajghat HPS.



In terms of the interim order of the Tribunal dated 25.7.2018 to explore possibilities of amicable settlement of the issues, the States of UP and MP vide MOM dated 9.8.2018 had amicably settled the issues involved in the said appeal, including agreement by parties to file tariff Petitions pertaining to Rihand & Matatila HEPs (located in the State of UP) and Rajghat HEP (located in the State of MP) before the respective State Commissions. Accordingly, in terms of the MOM dated 9.8.2018, the Tribunal vide its judgment dated 12.9.2018 modified the Commission's order dated 2.1.2014 and disposed of the said appeals. However, the Tribunal in the said judgment neither expressed any opinion nor had given any clarification with regard to the jurisdiction of this Commission to adjudicate the disputes between the parties in respect of such generating projects, despite being called upon to do so. The relevant portion of the judgment is extracted hereunder:

*"2. The learned counsel Mr. Sethu Ramalingam, appearing for the first Respondent in both the appeals, submitted that this Tribunal may kindly clarify regarding jurisdiction of the first respondent/Central Commission.*

*Xxxxx*

*9. Further, it is needless to clarify that we are not expressing any opinion regarding jurisdiction of the first respondent. Therefore, the question of giving clarification does not call for."*

21. Since the question of jurisdiction of this Commission had not been decided and/or clarified by the Tribunal in the aforesaid judgment, the reliance made by the parties herein to the said judgment dated 21.9.2018 is premature. In the above backdrop, the terms of settlement of the parties vide MOM dated 23.2.2019 to confer jurisdiction of the State Commission thereby excluding the jurisdiction of this Commission to determine the tariff of such shared projects of the Petitioner, is not acceptable.



22. It is pertinent to note that the jurisdiction of this Commission to adjudicate disputes with regard to supply of power by State of UP from the generating stations of Rihand & Matatila to the State of MP was decided by this Commission in its interim order dated 27.2.2008 in Petition No. 107/2007 filed by MPPMCL. On appeal filed by UPPCL against the said order, the Tribunal had upheld the jurisdiction of this Commission vide its order dated 9.1.2009. The Civil Appeal filed by UPPCL before the Hon'ble Supreme Court on this ground was dismissed with liberty. Thereafter, Appeal No. 151/2008 filed by UPPCL against the Commission order dated 12.11.2008 on merits was also dismissed by the Tribunal on 21.7.2011 and the appeal filed by UPPCL against this judgment before the Hon'ble Supreme Court has been dismissed as withdrawn on 15.1.2019.

23. It is settled law that the parties by agreement cannot confer jurisdiction on a Court which otherwise does not have jurisdiction to deal with a matter. This question came up for consideration before the Hon'ble Supreme Court in *Hakam Singh v. Gamon (India) Ltd* (1971) 3 SCR 314. There, a contract was entered into by the parties for construction of work. An agreement provided that notwithstanding where the work was to be executed, the contract 'shall be deemed to have been entered into at Bombay' and Bombay Court 'alone shall have jurisdiction to adjudicate' the dispute between the parties. The question before the Court was whether the court at Bombay alone had jurisdiction to resolve such dispute. Upholding the contention and considering the provisions of the Code as also of the Contract Act, the Hon'ble Court observed:

*"By Clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts of Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the Code.*





24. In a similar case, the contention of MPSEB that MPERC had the jurisdiction to fix tariff under the PPA by virtue of the clause in the PPA whereby the parties had agreed that Lanco would file a Petition before the Appropriate Commission for approval of the tariff was rejected by the Tribunal vide its judgment dated 21.10.2008 in Appeal No. 71/2008 (Lanco Amarkantak Power Pvt Lt V MPERC & ors) wherein it was held by the Tribunal that State Electricity Regulatory Commission (SERC) derived jurisdiction only from the Electricity Act and that the parties could not by agreement confer jurisdiction on the SERC. The relevant portion of the judgment is extracted hereunder:

*“25. It is contended on behalf of respondent No.4 that by virtue of this clause the Commission gets the jurisdiction to fix tariff under the PPA. This argument has to be stated to be rejected. The Commission derives this jurisdiction only from the Electricity Act 2003. The parties before the Commission cannot confer jurisdiction by their agreement if the Commission does not have the same under the Act.”*

25. In the present case, the generation projects of the Petitioner, RRVPNL has a composite scheme for generation and sale of electricity to more than one State, since inception. Hence, the Central Commission in terms of Section 79(1)(b) of the 2003 Act alone has the jurisdiction to regulate the tariff of such generation projects having such composite scheme. Hence, the conferment of jurisdiction on the State Commissions and the exclusion of the Central Commission for tariff determination of such shared generation projects by the parties vide MOM dated 23.2.2019, is in our view, contrary to the provisions of the Electricity Act, 2003.

Based on the above discussions, we find no reason to accept the settlement made by the parties vide MoM dated 23.2.2019 with regard to the filing of tariff Petitions before the State Commissions in respect of the shared generation projects. We observe that RERC has already declined to determine the tariff of





the shared generating projects vide its order dated 9.1.2014 in Petition No. RERC/373/13.

26. The Commission in exercise of its power under Section 178 read with Section 61 of the Electricity Act, 2003 has notified on 7.3.2019, the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 governing the determination of tariff of generating stations and inter-State transmission systems for the period 2019-24. Special provisions have been made in the said tariff regulations by the Commission for determining the tariff of shared generating projects like BBMB & Sardar Sarovar Narmada Nigam Ltd and similar other inter-State generation projects, on case to case basis. In this connection, Regulations 73 & 74 of the 2014 Tariff Regulations notified by the Commission provides as follows:

*“73. Special Provisions relating to BBMB and SSP: The tariff of generating station and the transmission system of Bhakra Beas Management Board (BBMB) and Sardar Sarovar Project (SSP) shall be determined after taking into consideration, the provisions of the Punjab Reorganization Act, 1996 and Narmada Water Scheme, 1980 under 133 Section 6-A of the Inter-State Water Disputes Act, 1956, respectively.*

*74. Special Provisions Relating to Certain Inter-State Generation Projects: The tariff of generating station and the transmission system of Indira Sagar generation project and such other inter-state generation projects shall be determined on case to case basis.”*

Since the Commission has the jurisdiction in the present case to regulate the tariff of shared generation projects of the Petitioner RRVPNL, we direct the Petitioner, RRVPNL to file separate Petitions for determination of tariff of the shared projects for the period 2019-24 in terms of the aforesaid tariff regulations, within two months from the date of this order.

27. The learned counsel for the Rajasthan discoms has submitted that the shared generating projects of the States of Rajasthan and Madhya Pradesh have attained the character of ‘intra-State generating projects’ pursuant to the settlement



made by the parties vide MOM on 23.2.2019 and therefore fall within the scope and purview of the State Commissions. In our view, the terms of settlement vide MOM dated 23.2.2019 do not *prima facie* support the above submissions of the learned counsel. Therefore, the same has not been considered at this stage. However, the parties are at liberty to raise the issue of jurisdiction of this Commission in the tariff Petition to be filed for the period 2019-24 in terms of our directions above and the same shall be considered in accordance with law.

**Petition No. 234/MP/2017**

28. With regard to the prayer of the Petitioner, MPPMCL in Petition No. 234/MP/2017 (*as in para 6 above*) we notice that the issues raised in this Petition has been amicably settled by the parties as per Point No.5 of the MOM dated 23.2.2019. In view of this, the prayer of the Petitioner does not survive anymore and the Petition is therefore dismissed as infructuous.

29. Petition Nos. 170/GT/2017 & 171/GT/2017 and Petition No. 234/MP/2017 with IA No.51/2018 are disposed of in terms of the above.

**Sd/-**  
**(I.S.Jha)**  
**Member**

**Sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**Sd/-**  
**(P.K.Pujari)**  
**Chairperson**

