

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 220/MP/2022**

Subject : Petition under Section 79(1) & Section 94 of the Electricity Act, 2003 read with Regulations 74, 82, 111 & 112 of the CERC (Conduct of Business) Regulations, 1999 for considering unit and corresponding numerical value of water utilization for irrigation 'Q' from 'BM<sup>3</sup>' to 'MAFt' and Reservoir level of Omkareshwar Sagar Project at EL 192.97 M achieved on 4<sup>th</sup> October, 2017 & at EL 196.59 MW achieved on 5<sup>th</sup> November, 2019 in the tariff orders issued by the Commission from time to time.

**Petition No. 378/MP/2022**

Subject : Petition under Section 79 (f) & 94 of the Electricity Act, 2003 read with Regulations 74, 82, 111 & 112 of CERC (Conduct of Business) Regulations, 1999 for considering unit of water utilization for irrigation 'Q' from BM<sup>3</sup> to 'MAFt' in the Tariff orders of Indira Sagar Hydro Electric Project from time to time, in accordance with the corrigendum dt. 29.3.2022 against the TEC to RCE issued by CEA.

Petitioner : MPPMCL

Respondents : NHDCL and anr.

Date of Hearing : **3.1.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member

Parties Present : Shri G. Umapathy, Senior Advocate, MPPMCL  
Shri Ashish Anand Bernard, Advocate, MPPMCL  
Shri Aditya Singh, Advocate, MPPMCL  
Shri Ravindra Khare, MPPMCL  
Ms. Suparna Srivastava, Advocate, NHDCL  
Shri N. K. Chellani, NHDCL  
Shri Y. N. Rao, NHDCL

**Record of Proceedings**

During the hearing, the learned Senior counsel for the Petitioner submitted that the present Petitions have been filed by the Petitioner with regard to the correction in consumptive water utilization 'Q' unit and its numerical value from 'BM<sup>3</sup>' to 'MAFt' in respect of Indira Sagar HEP and Omkareshwar HEP of the Respondent, as per corrigendum dated 29.3.2022 issued by the CEA, in response to the Petitioner's letter dated 25.5.2021. He accordingly submitted that since the corrigendum issued by the CEA is retrospective in nature, the tariff orders issued by the Commission since 1.4.2010 are required to be revised/revisited. Referring to the judgment of the Hon'ble High Court of



Allahabad in STR No. 52 of 1989 dated 5.10.1991, titled Commissioner Sales Tax, U.P. Vs Dunlop India Limited, the learned Senior counsel submitted that a correction (corrigendum) dates back to the date of the notification corrected and hence it has to be applied retrospectively.

2. In response, the learned counsel for the Respondent mainly submitted that the corrigendum, if applied retrospectively, will amount to a review of the tariff orders passed by this Commission, from time to time, in respect of these projects, which is also barred by limitation. She also submitted that the issues raised in the present case are similar to the Writ Petition filed by the Petitioner before the Hon'ble High Court of Madhya Pradesh (in W.P No. 2366/2022), wherein the revision of Design Energy has been sought by the Petitioner, based on hydrological features, which include water consumption. The learned counsel further submitted that the computation of payable tax for a particular year involves various factors such as the utilisation of Minimum Alternate Tax [MAT] credits available with the Respondent, the deferred tax liability, etc., and therefore, once the tax related matters are settled, they cannot be reopened or reworked. In addition, dividends have also been distributed to the shareholders of the Respondent and the GoMP in all the previous financial years in consideration of the financial statements, which are based on sales income generated based on the various tariff orders issued by this Commission.

3. The learned Senior counsel for the Petitioner clarified that the prayers in the Writ Petition filed by the Petitioner are different from the reliefs sought in the present case, as the writ petition relates to the challenge to the Tariff Regulations notified by the Commission. He also pointed out that the said writ petition was filed prior to the corrigendum order issued by the CEA.

4. On a specific query by the Commission whether the views of the GoMP have been obtained in the present case, the learned Senior counsel for the Petitioner pointed out that in a meeting held by the parties in February 2021, wherein the Secretary (Energy), GoMP was present, it was decided by the parties to approach the Commission for resolution of the issues.

5. The Commission, after hearing the learned counsel for the parties, suggested that the comments/submissions of the GoMP should be solicited in the present case, considering a 49% share of GoMP in NHDCL. Accordingly, the Commission directed the Petitioner to serve a copy of the pleadings in the matter to the GoMP on or before **16.1.2024**, and the GoMP is requested to file its submissions by **16.2.2024**, after serving copies to the other parties.

6. At the request of the learned counsels, the Commission permitted the Petitioner and the Respondent to file their respective written submissions, along with copies of the judgments relied upon by them in the present case, on or before **26.2.2024**.

7. These matters shall be listed for hearing on **3.4.2024**.

**By order of the Commission**

**Sd/-**  
**(B. Sreekumar)**  
**Joint Chief (Law)**



