Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 151 of 2008

Dated: 21st July, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,
Hon'ble Mr. Justice P.S. Datta, Judicial Member

IN THE MATTER OF

Uttar Pradesh Power Corporation Ltd.
Shakti Bhavan,
14, Ashok Marg,
Lucknow-226 001 (UP)

.... Appellant

Versus

1. **Central Electricity Regulatory Commission,**
   4th Floor, Chandra Lok Building,
   Janpath,
   New Delhi-110 001

2. **M.P. Power Trading Company Limited,**
   Shakti Bhawan, Rampur,
   Jabalpur (MP)
   PIN-482 008

3. **The Principal Secretary,**
   Energy Department,
   Government of Uttar Pradesh,
   Bapu Bhawan,
   Lucknow (UP)

PIN-226 001

4. Uttar Pradesh Jal Vidyut Nigam Limited.
Shakti Bhawan,
14, Ashok Marg,
Lucknow (UP)
PIN-226 001

....Respondent(s)

Counsel for Appellant(s):Mr.Jaideep Gupta, Sr.Adv.
Mr. Saugata Nath Mitra,
Mr. Arpit Higgins,

Counsel for Respondent(s):Mr.G.Umapathy for MPPTCL,
Mr. K K Agrawal,
Mr. Dilip Singh (Reps)

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

Uttar Pradesh Power Corporation Ltd is the Appellant. The Central Electricity Regulatory Commission

is the 1st Respondent. Madhya Pradesh Power Trading Company Ltd. is the 2nd Respondent.

2. Aggrieved by the order dated 12.11.2008 passed by the Central Commission, the Appellant has filed this Appeal. The relevant facts are referred to as below:

(i) The Appellant is a Government Company and successor of erstwhile Uttar Pradesh Electricity Board. The Appellant being the Power Trading Licensee has been carrying on business of bulk procurement and sale of power within the State of Uttar Pradesh.

(ii) The State Government of Uttar Pradesh developed two Hydro Electric Projects namely, 'Rihand Hydro Power Project' and 'Matatila Hydro Power Project'. The Rihand Hydro Electric Power Project having total installed capacity of 300 MW

came into commercial operation in the year 1962. The Matatila Power Project having total installed capacity of 30 MW came into commercial operation in the year 1965. Both the Power Plants were developed and set-up within the State of Uttar Pradesh.

(iii) While commissioning both the Power Stations certain villages in the State of Madhya Pradesh also got submerged.

(iv) Hence, the Central Zone Council (under Ministry of Home Affairs, Govt of India) in its meeting dated 13.3.1964 decided that due to major submergence, Madhya Pradesh will have 15% share i.e. 45 MW based on energy available at Rihand Hydro Power Station and one third share i.e. 10 MW Power from Matatila Hydro Power Station.

(v) Though the power supply from Matatila Power Station to Madhya Pradesh was made more or less as per its share, the power supply was not made from Rihand Hydro Power Station from November, 1992 onwards. So, a series of high level meetings were held between both the State Governments and their Boards to resolve the issues of resumption of power and payment of compensation. But, the meetings did not yield the desired results. In the meeting held on 9.9.2005, between the Government of Uttar Pradesh and Madhya Pradesh, the Appellant committed that the Madhya Pradesh's share of power supply from Rihand Hydra Power Station will be commenced from 15.10.2005 positively. It was also agreed that in addition to Madhya Pradesh's 15% share from Rihand Hydro Power Station, efforts will be made to supply 15% more power to clear the accumulated backlog.

(vi) The Appellant paid an amount of Rs.21.25 Crores during the period between 1994 and 2000 towards compensation. Thereafter, no payment was paid to the Madhya Pradesh Electricity Board. The Appellant, in spite of the decision taken in several meetings assuring supply and payment, failed to ensure supply of power and compensation.

(vii) Under these circumstances, the Madhya Pradesh Trading Company, the 2nd Respondent filed a Petition 107 of 2007 before the Central Commission praying for the direction to the Appellant to release the legitimate Madhya Pradesh's full share of supply from both Rihand Hydro Power Station and Matatila Hydro Power Station and also further direction to the Appellant to pay an amount of Rs.365.704 Crores which is outstanding against the Appellant towards retention of Madhya Pradesh's share of power from Rihand and Matatila Power Stations.

(viii) The Appellant raised a preliminary objection stating that Central Commission has no jurisdiction since both the Power Stations are owned and controlled by Uttar Pradesh authorities and as such, the claim for compensation cannot be entertained by the Central Commission. The Central Commission after hearing both the parties on the preliminary objection, passed the separate order dated 27.2.2008 holding that the Central Commission has jurisdiction to entertain claim for compensation and adjourned the matter for further hearing to deal with merits of the matter.

(ix) The Appellant aggrieved by the above order dated 27.2.2008 challenged the said order before this Tribunal in Appeal No.35 of 2008. Though this Tribunal admitted the Appeal, it did not incline to grant stay of the proceedings pending before the

Central Commission. Accordingly, the said proceedings were continued and final impugned order was passed on 12.11.2008 by the Central Commission allowing the petition filed by the Madhya Pradesh Trading Company. By this order, the Central Commission directed the Appellant to continue the supply of power and also to pay the undisputed amount of Rs.192 Crores and to pay the future compensation with interest.

(x) At this stage, the Appeal No.35 of 2008 was taken up before this Tribunal and the said Appeal was ultimately dismissed on 9.1.2009.

(xi) Meanwhile, the impugned order dated 12.11.2008 in the present case has been appealed before this Tribunal in the present Appeal No.151 of 2008 and the same has been admitted.

(xii) In the meantime, the Appellant went to the Hon'ble Supreme Court and filed the Appeal as against the judgement of this Tribunal in Appeal No.35 of 2008. On 13.2.2009, the Hon'ble Supreme Court dismissed the said Appeal on the ground that already final order had been passed by the Central Commission on 12.11.2008 which is the subject matter of this Appeal No.151 of 2008 pending before this Tribunal.

(xiii) However, Hon'ble Supreme Court gave liberty to the parties to come before the Hon'ble Supreme Court after the final decision taken by this Tribunal in Appeal No.151 of 2008, if aggrieved. Thereupon, this Appeal has been taken up for final hearing.

3. The Learned Counsel for the Appellant in this Appeal, has urged the following contentions while assailing

impugned order dated 12.11.2008 passed by the Central Commission.

4. "There have been long delay/latches in filing the Petition before the Central Commission and the decision of the Central Commission on delay and latches is not tenable. The agreement to pay compensation at the RAPP rate came to an end by efflux of time. In the absence of the agreement for compensation, the second Respondent i.e. MP Power Trading Company Limited, could only claim compensation on the basis of the cost of generation. There is no evidence for purchase of the power at RAPP rate by the Second Respondent and therefore, no loss has been established. There is no principle on which the interest could be paid. Central Commission has no power to adjudicate the claim for compensation in the absence of any loss or damage".

5. The Learned Counsel for the Respondent has made reply in justification of the impugned order.

6. In the light of the rival contentions, the following questions would arise for consideration:

(a) Whether the Central Commission has wrongly held that there is no delay or latches in filing the Petition before the Central Commission by the Respondent-2?

(b) Whether the Central Commission failed to consider that the settlement to pay compensation for non supply of power to Madhya Pradesh at the rate of RAPP+10% came to end by efflux of time?

(c) Whether the Commission has got the power to adjudicate the claim for compensation in the absence of loss or damage?

(d) Whether the Learned Commission failed to consider that in absence of any agreed settlement,

the Respondent No.2 could claim compensation with interest in view of the cost of generation?

7. Let us now deal with the issues raised in this case one by one.

8. The **first issue** is relating to delay and latches.

9. It is contended by the Appellant that the Petition claiming compensation cannot be entertained because of the long delay and latches. On this aspect, the Central Commission in the impugned order has held as follows:

> *"34. We proceed to examine whether there has been an unreasonable delay in the applicant approaching the Commission for adjudication of dispute. This matter is to be considered in the light of facts on record. Examined from this angle, we note that the question of compensation was first agreed to between the parties in the meeting dated 6.1.1976 held under the aegis of Member (Hydro-Electric), CEA for the period from 1.9.1967 to*

30.9.1974. Subsequently, in the meeting held on 7/8.6.1977 between the representatives of UPSEB and MPEB the specific rates for compensation were agreed to which included the period from 1.10.1974 and onwards. Chief Secretary, Government of Madhya Pradesh in his DO letter dated 30.4.1991 addressed to the Secretary, Deptt of Energy, Government of Uttar Pradesh pointed out that an amount of Rs.15.47 crore as on September 1990, was payable by the State Government of Uttar Pradesh for non-supply or under-supply of power from the generating stations, after adjustment of an amount of Rs.16.13 Crores paid by UPSEB up to January, 1989. This establishes that the Respondents had generally settled the applicant's claim pertaining to the period up to December, 1988. It appears that payments amounting to Rs.28.61 Crores were made by UPSEB thereafter also. This compensation payable by UPSEB was discussed in a meeting held on 9.9.1994 under the Chairmanship of Minister of State for Energy, Madhya Pradesh, whereat it was stated on behalf of MPEB that, as on 1.7.1994, an amount of Rs.41.874 Crore was payable by UPSEB. In response, UPSEB suggested that after disallowing an amount of Rs.20.62 Crore demanded on account of interest, only a sum of Rs.21.254 Crore was payable. At the said meeting, it was decided that the two sides should reconcile the amount payable/receivable. In a subsequent meeting held between UPSEB and MPEB on 29.8.1996, this matter was again discussed, when it was stated on behalf of UPSEB that a sum of

Rs.9.56 Crore was payable till September, 1994, against MPEB's claim of Rs.48.464 Crore, including interest of Rs.20.62 Crore. Once again the matter came up at the fifth meeting of the Standing Committee of the Central Zonal Council held on 18.2.2000. At that meeting, the representative of the second Respondent accepted the liability to pay an amount of Rs.34 Crore, without interest. It was, however, decided that the dispute should be resolved by 30.6.2000. In yet another meeting held on 8/9.9.2005 and attended to by the representatives of MPSEB and the Respondents, including the State Government of Uttar Pradesh, the question of payment of dues for retention of Madhya Pradesh's share of the generating stations was discussed between the officials of two sides, when the Respondents agreed to pay the amount after reconciliation. The last meeting, the minutes of which are held on record, took place on 7/8.6.2007. At this meeting as well, the representative of the second Respondent accepted to make payment of dues after reconciliation.

35. From the above noted facts, it emerges that the Respondents, in particular the second Respondent, have always acknowledged their liability to pay compensation. However, no payments were made since they had either been insisting on reconciliation of the amount payable or were taking the plea of non-availability of funds. The Respondents as public authorities who failed to supply electricity to the State of Madhya Pradesh,

and themselves consumed its share, cannot be permitted to defeat the legitimate claim of the applicant, another public authority, on technical pleas of limitation etc. At no stage, there was any denial of the liability to pay the compensation. Even before us, they have accepted to pay the compensation, but of lesser amount than that claimed. The applicant has been pursuing its claim and the Respondents have all along accepted the liability to pay compensation. The unresolved issue was only the quantum of compensation, which was payable after reconciliation of accounts. Under these circumstances, it cannot be held that the applicant's claim it suffers from delay and latches. In our opinion, the applicant and its predecessors have been diligently and reasonably pursuing the claim for compensation".

10. These observations of the Central Commission would reveal that the Central Commission has categorically held that the claim of the Respondent would not suffer from delay and latches in the light of the fact that the Respondent had been pursuing its claim from the beginning and the Appellant had been all along acceping the liability to pay compensation.

11. As held by the Central Commission, the Appellant accepted the liability of making payment for several years and has only expressed its inability to make the payment in view of the paucity of funds taking the plea of reconciliation of amounts. In other words, the obligation to pay has never been disputed. In this context, it would be proper to refer to the admissions made by the Appellant in its reply which is as under:

> *"(1) Para 14 It is submitted that if the alleged compensation is calculated as per the cost of generation, the alleged compensation would come to about Rs.32 Crores and if the alleged compensation is calculated as per the alleged RAPS rate, the estimated compensation will come nearly to Rs.192 Crores. In this regard, it is submitted that until and unless the mode of calculation of rates are agreed between the parties, it will be very difficult to give any exact figures".*
>
> *"(3)….It is submitted that the answering Respondent paid compensation as per the terms of MOM dated 7.8.1977 for non supply of power to the Petitioner".*

"(6)….The only dispute remains for settlement is the arrear on the non Supply of power in the past".

12. In the Memorandum of Understanding filed by the Uttar Pradesh Jal Vidyut Nigam Limited, the 4th Respondent, it has been clearly recorded as follows:

"2.01. ***ALLOCATION OF POWER****:*

"Subject to and in accordance with the terms of this Agreement, UPJVNL agrees to sell and UPPCL agrees to purchase the entire Net Electrical Output of the generating units covered by this Agreement. The obligation of supply of power to some other States, as per the mutual agreement entered into or to be entered in future would be discharged by UPPCL".

13. As per records, the State of MP has always insisted on the supply of power rather than compensation. The following extracts from the minutes of the meeting of the Standing Committee dated 11.11.94 and the Minutes of the Memorandum held on 8.9.2005 would clarify the

position. The Extracts of the meetings dated 11.11.94 is as follows:

> *"The Chief Secretary, Madhya Pradesh requested the Government of Uttar Pradesh to ensure supply of their share of power from Matatila. He stated that because of power shortage, the State Government would prefer power rather than compensation".*

The extracts of the meeting held on 8.9.2005 is as follows:

> *"In reply UPPCL informed that although UPPCL is facing acute shortage of power, as such it was not possible to release MPSEB share but in order to reduce the outstanding of compensation payable by UPPCL towards retention of power of MP's share and its further accumulation, power will be made available to MPSEB after ensuring survey and healthiness of the line within a fortnight. After making the line feeding supply to MPSEB ready for use, the MP's share of power from Rihand will be fed by 15th Oct, 2005 positively. In addition to the MP's 15% of power from Rihand HPS, efforts will be made to give 15% more power to clear accumulated backlog. The excess supply will be treated as share of MPSEB and will be accounted for in terms of energy against previous share of MPSEB".*

14. These minutes would show the commitments made by the Appellant for supply of power to Madhya Pradesh.

15. The **2nd issue** is with reference to the purchase of power at the RAPP Rates.

16. According to the Appellant, the onus is cast upon the Madhya Pradesh to establish that it had purchased power at the RAPP rates and the same has not been established. This contention is misconceived. The claim of compensation was agreed upon by the parties is evident from the minutes of the meeting held in June, 1977. As per minutes of the meeting, it has been agreed by both the parties that any non supply of power shall be treated as overdrawal by the Uttar Pradesh Power Corporation Limited and the same shall be paid for at the RAPP rate + 10%. Similarly, in case of overdrawal by Madhya Pradesh, the Madhya Pradesh will compensate Uttar

Pradesh at the same rate. Thus, it is clear that any non supply of power to Madhya Pradesh would be treated as overdrawal of power and compensation for the said amount has to be paid in accordance with the terms of the Agreement.

17. The Uttar Pradesh Power Corporation Limited, the Appellant as a successor of State of UP is bound to comply and honour the obligation to supply power in terms of the agreement entered into and acted upon by the parties. As a matter of fact, the Central Commission in its order has recorded about the commitment of the Uttar Pradesh Power Corporation Limited to supply power to the State of Madhya Pradesh from Rihand and Matatila Hydor Power Stations.

18. Even with regard to rate of compensation, the Appellant cannot contend against the same in view of the admissions made by the Appellant with regard to the

rates. This aspect has been dealt by the Central Commission and the findings have been rendered rejecting the contention of the Appellant by giving appropriate reasons. They are as follows:

> "*46. We do not find any force in this submission made by the second Respondent. It is true that in the meeting held on 6.1.1976 under the Chairmanship of Member (Hydro electric) CEA, MPEB had demanded compensation at RAPP rate plus the transmission charges, etc. on the ground that it was purchasing costlier power from RAPP since 16.12.1973. However, at the said meeting, it was decided that compensation to MPEB was to be calculated @ 6 paise/kWh for the period 1.9.1967 to 30.9.1974. It was only at the subsequent meeting held between the Chairmen of UPSEB and MPEB, that it was agreed that w.e.f. 1.10.1974 compensation to MPEB was payable at RAPP rate plus 10% thereof in case MPEB was not supplied power by UPSEB. Similarly, UPSEB also was to be paid compensation at RAPP rate plus 10% in case MPEB overdrew power. The decision arrived at the meeting was on mutually agreed terms with reciprocal rights and obligations. Therefore, the rates of compensation agreed to are binding on the parties as they cannot be said to be based on any misrepresentation. The second Respondent's plea appears to be an afterthought".*

19. The **3rd issue** is with reference to the absence of loss and damage.

20. The Appellant on the strength of the judgement made by the Hon'ble Supreme Court in Fateh Chand Vs. Balkishan Das reported in 1963 (1) SCR 515 and Maula Bux Vs. UOI reported in 1969 (2) SCC 554 has strenuously contended that in the absence of any proof of damage or loss arising from breach of contract, the question of payment of compensation would not arise.

21. As indicated above, the present case is not the case of sale of power but it is a case of share of power. Admittedly, in this case, the parties have agreed upon the compensation for non supply of share of Madhya Pradesh or over drawal of power by either State. Therefore, the above authorities would not be applicable to the facts of

this case. The parties in the present case, as mentioned have categorically agreed that any non supply of power would be treated as overdrawal and the rates of compensation payable for such overdrawal would be applicable to both the parties. This is evident from series of correspondence between these parties.

22. According to the Respondent, the State of Madhya Pradesh has already lost its geographical area due to large submergence of forest land, agricultural land, forest etc. for commissioning Rihand Hydro Power Station and Matatila Power Station. The total submergence in Madhya Pradesh in respect of Rihand Project is 140 Square miles and in respect of Matatila it is 23,320 Acres. The allocation of power from Rihand and Matatila Hydro Power Stations to Madhya Pradesh and the compensation in case of non supply of share of power by the Appellant arises due to above submergence and loss suffered by the Appellant. Therefore, the contention of the Appellant that

there is no loss as such compensation can not be claimed, does not deserve acceptance.

23. Non-restoration of full share of Madhya Pradesh of power from Rihand and Matatila HPS from November, 1992 onwards has actually resulted in the overdrawal from the Regional Grid to the extent of MP's share in Rihand and Matatila HPS resulting into payment of Unscheduled Interchange (UI) charges from July, 2002 to March, 2008. As a matter of fact, the Unscheduled Interchange (UI) charges to the tune of Rs.834 Crs was imposed on MP due to the said overdrawal.

24. According to the Appellant, had the supply of MP's share being restored, the over drawal from the Grid would have been averted at least to the extent of MP's share in Rihand and Matatila HPS. The total Unscheduled Interchange (UI) charges already paid by MP to the various constitutents was Rs.197 Crores. As Rihand and

Matatila Stations are peak load plants, UI charges under peak load condition would be higher than the Rs.197 Crores. Even then, the compensation claimed by the MP from the Appellant during July, 2002 to March, 2008 was only Rs.165 Crores.

25. It shall be stated that the Central Commission has power to adjudicate the claim for compensation which the Appellant has consistently admitted its liability as indicated above in a series of correspondence leading up to a joint meeting held in May, 2010. As a matter of fact, the Appellant in the meeting held on 9.9.2005 had accepted to pay compensation after reconciliation. The last such reconciliation meeting was held on 29.5.2010 wherein the Appellant accepted payment of balance of compensation amount of Rs.134.30 Crore which is in addition to the payment of Rs. 192 Crores already made by it.

26. The Appellant has raised another ground that the claim relates back to four decades and the Central Commission was constituted only in 2003 and therefore it cannot entertain the past claims. This contention also does not merit consideration. As held by the Hon'ble Supreme Court, the Electricity Act, 2003 is a complete Code by itself. It provides for adjudication of all kind of disputes. The preamble of the Act reads as under:

> *"An act to consolidate the laws relating to, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff..."*

27. As per the preamble, disputes of all kinds fall under the purview of the Act. Thus, there is no embargo on

Central Commission to adjudicate upon the claim of the second Respondent.

28. The present case is a case where the sovereign State of UP agreed to compensate the State of MP for the loss of forest, land & villages etc. by agreeing to supply power at cost of power generation plus 5%. It is an obligation vested upon with the State which requires to be fulfilled. The present is not a case of sale of Electricity but supply of the share of power which has been agreed to by the State of UP.

29. In this context, it is relevant to quote the relevant findings given by this Tribunal while deciding about the jurisdiction of the Central Commission in Appeal No.35/2008 dated 9.1.2009. The same is as follows:

"36. *As a matter of fact, the erstwhile UP State Electricity Board, abiding by the agreements entered into between the two States earlier had paid an amount of Rs.28.61 Crores as per the demand of compensation by the State of MP, due to non-supply of MP's share of power from the Rihand and Matatila Hydel projects to the MPEB during the period 1992-2000. It is also an admitted fact that in the meetings held in 2005 and 2007 at Lucknow, the Appellant UP Power Corporation Ltd. agreed to pay the compensation amount after reconciliation of the amount against retention of MP's share from the two power stations. These things show that the agreement between these States have been acted upon.*

37. As pointed out above, this is not the case of mere sale of electricity, but this is a case of share of supply of power on cost, as per the agreement between the States of UP and MP. If there is no supply of power by UP to MP of its legitimate share from the Rihand and Matatila Hydel Power Stations as per the agreement entered into between the two States, the flow of expected quantum of power through the Inter-State Transmission system will be affected.

38. Under those circumstances, it has to be safely concluded that the finding rendered by the Central Commission to the effect that the issue falls under Clause 79 (1) (c), which attracts Section 79 (1) (f) and as such the Central

Commission alone has got jurisdiction to deal with the case is, in our view, perfectly justified and as such, no interference is called for".

30. In fact, the agreement between the two States of UP & MP had been acted upon and several Inter-State meetings had been held between the parties since 1960's till the filing of the Petition before the Central Commission in 2007. Even after the impugned order, several meetings were held where the Appellant accepted the liability to pay compensation for non supply of power to the State of MP. The Appellant as a successor in interest of the State of UP is bound to honour the sovereign obligations of the State of MP in supplying the agreed share of power to the State of MP. It is an admitted position that the State of UP agreed to allocation of power since the two projects in UP involved submersion of land, trees, forests, houses, etc in Madhya Pradesh.

31. The only relevant fact for consideration for the payment of compensation is whether there was failure on the part of Uttar Pradesh to supply power to Madhya Pradesh. The Appellant has admitted that no power was supplied from Rihand since 1992 and only intermittent supply was made from the Matatila Power Project. Thus, the Appellant is bound to either compensate to the agreed rates of compensation or supply the balance power equivalent to the short supply.

32. The **4th question** is with regard to payment of interest.

33. The Appellant cannot contend that the Second Respondent is not entitled to the payment of interest. As a matter of fact these things have been agreed upon by that parties which has been recorded by the Central Commission in the impugned order which is as follows:

"50. The next question is of the Applicant's claim for interest. The Applicant has claimed interest at borrowing rate of MPEB plus two percent, based on the discussions in the meeting of the Governors of the two States held on 27.7.1993, applicable w.e.f. 1.4.1982. According to the applicant, its claim for interest was decided at the said meeting of the Governors. The second Respondent has denied any agreement on the question of payment of interest. In fact, the consistent stand of the Respondents has been that no interest is payable on the compensation due. The second Respondent has claimed that the payment of compensation for non-supply of electricity from the generating stations was not specifically raised at the meeting of the Governors.

51. We have extracted above the relevant portion of the minutes of the meeting of the Governors of Uttar Pradesh and Madhya Pradesh. In the meeting, it was decided that Chairman, MPEB should write to Chairman, UPSEB that "all" dues payable were subject to interest at the borrowing rate of MPEB plus two percent. This was said to be in line with the policy followed by NTPC, as recorded in the minutes. It was also decided that demand bill towards arrears "including interest" should be forwarded to UPSEB. Based on this decision, Chairman UPSEB was approached by Chairman, MPEB vide DO letter dated 19.10.1993, for release of an amount of Rs.43.71 Crore, including interest of Rs.20.62 Crore for the years 1982-83 to 1991-92. We notice that the question of payment of amount of Rs.25 Crore by

UPSEB was raised by MPEB. It is not clear whether this amount of Rs.25 Crore included the amount of compensation or part thereof for non-supply from the generating stations since no such details are available in the minutes. However, the decision taken was that "all" dues payable to MPEB were subject to payment of interest. Therefore, in terms of the minutes of the meeting, a "demand for arrears, including interest" was forwarded to UPSEB. In case interest was not payable by UPSEB, as has been contended by the second Respondent, there would have been no question or need to include interest on the arrears, in the demand that was to be sent to Chairman, UPSEB. Therefore, in our view, the agreement to pay interest on arrears of dues was arrived at the levels of heads of the two States. Pursuant thereto, MPEB claimed interest for the year 1982-83 and onwards.

34. These findings and observations of the Central Commission are perfectly justified. Therefore, the Appellant is estopped from raising the claim on this ground since various correspondence between the parties would clearly indicate that the Appellant agreed for both for compensation and interest.

35. SUMMARY OF OUR FINDINGS

(1) The Central Commission has correctly held that there is no delay or latches on the part of the Respondent to approach the Central Commission for necessary direction. On clear reasoning, the Central Commission has held that the Respondent and its predecessors have been diligently and reasonably pursuing the claim for compensation. Records also show that the Respondent has been pursuing his claim from the very beginning. The Appellant has all along accepted the liability to pay compensation to the Central Commission. The Appellant, while accepting the liability for making payment for several years has only expressed its inability to make the payment in

view of the paucity of funds taking the plea of reconciliation of amounts.

(2) The right of compensation was agreed upon by the Appellant. The same is evident from the minutes of the meeting held in June, 1977, wherein it has been agreed upon by both the parties that any non supply of power shall be treated as overdrawal by Uttar Pradesh Power Corporation Limited, the Appellant and the same shall be paid for at the RAPP rate + 10%. The Central Commission has clearly held on the basis of record that initially in the meeting held on 16.12.1973, it was decided that compensation to the MPEB was to be calculated at the rate of 6 paise/kWh for the period 1.9.1967 to 30.9.1974. and in the subsequent meetings, it was agreed that w.e.f. 1.10.1974 compensation to MPEB was payable at RAPP rate +10% thereof. Therefore,

the rates of compensation agreed to by the both parties are binding on the parties as they cannot said to be based on any misrepresentation.

(3) The third issue is with reference to absence of any loss or damage. The present case is not the case of sale of power but it is a case of share of power. The parties in the present case have categorically agreed that non supply of power would be treated as overdrawal and the rates of compensation payable for such overdrawal would be applicable to both the parties. According to Respondent, the State of Madhya Pradesh has already lost its geographical area due to large submergence of forest land, agricultural land, forest etc. Non restoration of full share of Madhya Pradesh of power from Rihand and Matatila HPS from November, 1992 onwards has actually resulted in the overdrawal from the

Central Sector Grid to the extent of MP's share which again resulted in payment of Unscheduled Interchange (UI) charges from July, 2002 to March, 2008. Therefore, it cannot be said that the Respondent cannot claim compensation in the absence of any loss or damage.

(4) The last issue is with regard to payment of interest. The Cen+tral Commission has categorically held that the interest was payable to the Respondent on the basis of meeting of the Governors of the two States held on 27.7.1993 applicable from 1.4.1982. Records would reveal that in the meeting it was decided that Madhya Pradesh Electricity Board should write to the Uttar Pradesh Electricity Board that all dues payable were subject to interest on the borrowing rate of MP Electricity Board plus two percent. It was also decided that the demand bills towards the

arrears including interest should be forwarded to MP Electricity Board. Therefore, it is evident from the records that the agreement to pay interest on arrears of dues was arrived at the level of heads of two States.

36. In view of the above findings, we do not find any infirmity in the findings rendered by the Central Commission. Therefore, the Appeal is dismissed as devoid of merits. There is no order as to cost.

(Justice P.S. Datta) (Rakesh Nath) (Justice M. Karpaga Vinayagam)
Judicial Member Technical Member Chairperson

Dated: 21st July, 2011

REPORTABLE/NON-REPORTABALE