

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**I.A. No. 4 of 2007 in
Appeal No. 21 of 2006**

Dated: May 17, 2007

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Danganiya,
Raipur (Chhattisgarh).

.... Appellant

Vs.

1. Central Electricity Regulatory Commission,
6th Floor, Core 3, Scope Complex,
New Delhi – 110003
(through its Secretary).
2. Maharashtra State Electricity Board,
Prakashad, Bandra (East), Mumbai-400 051)
(Through its Chairman)
3. Madhya Pradesh State Electricity Board,
Shakti Bhawa, Vidyut Nagar, Rampur,
Jabalpur 482 008
(Through its Chairman).
4. Gujarat State Electricity Board,
(since then succeeded by
Gujarat Urja Vikas Nigam Ltd.),
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara 390007,
(through its Chairman).
5. Western Regional Electricity Board,
F-3, MIDC Area, Marol, Near Seepz,
Andheri (East), Mumbai 400 093,
(Through its Member Secretary).
6. Western Regional Load Despatch Centre,
F-3, MIDC Area, Marol,
Andheri (East), Mumbai 400 093,
(Through its General Manager) Respondents

AND

IN THE MATTER OF

M.P. State Electricity Board,
(Now known as M.P. Power Trading Co. Ltd. ...Applicant

Counsel for the Applicant : Mr. C.S. Vaidyanathan, Sr. Advocate
Mr. Sakesh Kumar with Mr. Rohit
Singh

Counsel for the Respondents : Mr. Ravi Shankar Prasad, Sr. Advocate
with Ms. Suparna Srivastava for CSEB
Mr. Varun Thakur for Mr. Ajit Bhasme
For MSEB

ORDER

By this application, Madhya Pradesh State Electricity Board ('MPSEB'/Madhya Pradesh Power Trading Co. Ltd.) seeks direction to the Western Regional Electricity Board, now called Western Regional Power Committee to recalculate the Frequency Linked Energy Exchange (for short 'FLEE') charges for the period from December 1, 2000 to June 30, 2002 in terms of the Judgment and Order of this Tribunal dated November 14, 2006 and to deal with Western Regional Electricity Board appropriately for non-compliance of the aforesaid order.

2. The prayer of the applicant needs to be appreciated in the context of the Judgment and order of this Tribunal dated November 14, 2006 and the factual matrix of the case on the basis of which the Judgment was rendered.

3. The FLEE charges were introduced in the Western Region from June 1, 1992. These remained in force until June 30, 2002. Thereafter, with effect from July 1, 2002 the Availability Based Tariff (for short 'ABT') was made applicable in the Western Region and FLEE charges were replaced by Unscheduled Interchange (for short 'U.I.') charges.

4. The undivided State of Madhya Pradesh was bifurcated into two States namely Chhattisgarh and Madhya Pradesh by the Madhya Pradesh Reorganisation Act, 2000. While the State of Chattisgarh was formed on November 1, 2000 as a result of the Reorganisation Act of 2000, the Chhattisgarh State Electricity Board was constituted in furtherance of Section 58 thereof, with effect from November 15, 2000.

5. On January 31, 2001, the Government of India, Ministry of Power made allocation of power to the successor States of the undivided State of Madhya Pradesh from the Central Sector Generating Stations in the following manner:-

Central sector power station	State in which located	Installed capacity (MW)	Allocation (MW)		
			Undivided MP	MP MW (%)	Chhattisgarh MW (%)
Korba STPS	Chhattisgarh	2100	610	302 (14.38%)	308* (14.67%)
Vindhyachal STPS	MP	2260	658	552* (24.43%)	106 (4.69%)
Kakrapar APS	Gujarat	440	93	70 (15.91%)	23 (5.22%)
Kawas-I GPS	Gujarat	644	137	104 (16.15%)	33 (5.12%)
Gandhar-I GPS	Gujarat	648	116	88 (13.58%)	28 (4.32%)
Total		6092	1614	1116	498

* Includes home State allocation (10%)

6. The allocation was provisional in nature as provided in the order of the Central Government. It was also provided in the order that to the extent Chhattisgarh was unable to utilize its allocation, as indicated above in accordance with the existing sharing formula, the power would stand temporarily allocated to Madhya Pradesh. As per para-6 of the order, the allocation was to come into operation with immediate effect.

7. Based on the inputs from the Central Electricity Authority and no objection of the Government of Chhattisgarh, the Government of India on February 8, 2002, as a temporary arrangement, allocated 296 MW power from central sector generating stations to Madhya Pradesh out of 498 MW, earlier allocated to Chhattisgarh vide Ministry's letter dated January 31, 2001, as per the following details:-

Name of Power Station	Provisional allocation to Chhattisgarh (MW) vide letter dated 31.01.2001	Temporary re-allocation upto 31.3.2002	
		Chhattisgarh (MW)	MP (MW)
Korba STPS	308	179	129
Vindhyachal STPS	106	-	106
Kakrapar APS	23	23	-
Kawas-I GPS	33	-	33
Gandhar-I GPS	28	-	28
Total	498	202	296

8. Paragraph-3 of the Order of the Government of India, Ministry of Power dated February 8, 2002 stipulated that the temporary allocation will be applicable with immediate effect and continue upto March 31, 2002, where after allocation will be reviewed. It was further stipulated therein that the temporary allocation may continue beyond March 31,

2002 or till such time, CEA or State of Chhattisgarh presents another proposal. In paragraph-4 of the Order dated February 8, 2002, it was stated that Chhattisgarh will be free to utilize the re-allocated power as it desires and the allocation of 498 MW will continue to be the allocation of Chhattisgarh, which will also be free to absorb at a later stage against their future power requirements or outage of any generating unit.

9. On June 17, 2002, the Government of India, Ministry of Power issued another order, whereby it temporarily made fresh allocation of power to Madhya Pradesh out of 498 MW, earlier allocated to Chhattisgarh vide its letter dated January 31, 2001 as per the following details:-

Temporary allocation (Figures in MW)							
		April 2002		May, 2002		June, 2002	
Name of Power Stations	Provisional Allocation to Chattisgarh vide Ministry's letter dated 31.1.2001	01.04.02 to 30.04.02		01.05.02 to 31.05.02		01.06.02 to 30.06.02	
		Chhattisgarh	MP	Chhattisgarh	MP	Chhattisgarh	MP
Korba STPS	308	275	33	308	-	308	-
Vindhyachal STPS	106	-	106	47	59	106	-
Kakrapar APS	23	23	-	23	-	23	-
Kawas GPS	33	-	33	-	33	-	33
GandharGPS	28	-	28	-	28	-	28
Total	498	298	200	378	120	437	61

10. The aforesaid temporary allocation was required to be continued upto June 30, 2002 and with effect from July 1, 2002, the entire share of Chhattisgarh to the extent of 498 MW was to be restored to it. It was

also provided that in the event of Chhattisgarh being unable to consume power allocated to it, the same will be allocated to Madhya Pradesh. Similarly any allocation which Madhya Pradesh was unable to utilize was required to be allocated to Chhattisgarh.

11. By a clarificatory order dated May 11, 2004, it was also directed by the Government of India that the payment of U.I. charges for drawal of power from the existing Central Generating Power Stations by Madhya Pradesh and Chhattisgarh would be accounted for in the following manner:-

- i) On the basis of daily schedule the quantum of power which one State has not drawn from its allocated share will be added to the schedule of other state to the extent of overdrawal by it.
- ii) On the basis of daily schedule as indicated in (i) above overdrawal by one State would be further offset from the underdrawal of other State.
- iii) The State getting the benefit from (i) & (ii) above will pay capacity and energy charges for enhanced schedule.

The aforesaid arrangement was to remain operative for a period of five years after creation of the new States subject to review as considered necessary during this period.

12. The FLEE/U.I. charges were levied on the State of Madhya Pradesh from time to time by the Western Region Electricity Board for over-drawal of power from the Central Sector Generating stations. The State of Madhya Pradesh represented that the FLEE/U.I. charges were being

levied on it without considering the decision of the Government of India to the effect that the under utilized power of one State will be available to the other State for consumption. At the direction of the Delhi High Court in a writ petition filed by the State of Madhya Pradesh, the issue was considered by the Government of India and by a clarificatory order dated November 3, 2004, it was directed that the entitlement of the State of Chhattisgarh and Madhya Pradesh in the Central Sector Generating Stations of Western Region shall be in the following manner:-

	Undivided M.P.	Madhya Pradesh	Chhattisgarh
Korba STPS	610	400	210
Vindhyachal	658	658	-
Kakrapara	93	93	-
Kawas CCGTI	139.2	139.2	-
Gandhar CCGTI	18	118	-
	1618.2	1408.2	210

13. The aforesaid allocation was made in supersession of several letters/orders of the Ministry of Power including orders dated January 31, 2001, February 8, 2002 and June 17, 2002.

14. By another order dated November 4, 2004, the Government of India apportioned the assets, rights and liabilities of the Madhya Pradesh Electricity Board of the undivided state of Madhya Pradesh between the successor Electricity Boards of Madhya Pradesh and Chhattisgarh. This order of the Central Government was challenged by the Madhya Pradesh State Electricity Board and the State of Madhya Pradesh in a writ petition, being writ petition No. 675 of 2004, before the Hon'ble Supreme

Court. The Hon'ble Supreme Court by its order dated September 13, 2006 dismissed the writ petition.

15. Earlier, while the matter was pending before the Supreme Court in writ petition No. 675 of 2004, the Maharashtra State Electricity Board (for short 'MSEB') filed a petition no. 43 of 2005 before the Central Electricity Regulatory Commission (CERC) for direction to the MPSEB to pay a sum of Rs. 114 crores to the MSEB. The CERC assigned the dispute pertaining to determination of FLEE charges and liability of the beneficiaries in the Western Region to a single Member Bench. The single Member Bench submitted its report to the CERC, whereupon the CERC required the parties to file their objections to the report. After considering the objections, the CERC accepted the report of the single Member Bench on December 8, 2005.

16. In the appeal filed by the Chhattisgarh State Electricity Board against the aforesaid order of the CERC before the Tribunal, the following points arose for consideration:-

- a) Whether the MPSEB is liable to pay the FLEE charges for the period June 1, 1992 to November 30, 2000 to the beneficiaries as advised by WREB?
- b) Who is liable to pay FLEE charges to the beneficiaries for the period subsequent to December 1, 2000 and till the introduction of ABT and UI system?

c) To what relief the appellant is entitled to?

17. On November 14, 2006, the appeal was decided by a Bench of this Tribunal comprising of Mr. Justice E. Padmanabhan, Judicial Member and one of us (Shri H.L. Bajaj, Technical Member). In so far as point (a) was concerned, the parties agreed before the Bench that the same was covered by the decision of the Supreme Court rendered in writ petition no. 675 of 2004. Accordingly the Bench answered the first point by holding that it is the Madhya Pradesh State Electricity Board who is responsible to pay FLEE charges for the period June 1, 1992 to November 30, 2000.

18. As regards point (b), it was held that the liability has to be worked out in terms of the Notification of the Government of India dated November 3, 2004.

19. In so far as point (c) is concerned, it was directed that WREB will give effect to the judgment of this Tribunal and it will not be necessary for parties to move either CERC or any other authority.

20. Pursuant to the directions contained in the order dated November 14, 2006, Western Regional Power Committee worked out the liability of the respective beneficiaries for payment of FLEE charges for the post reorganization period and intimated the same through its communication dated December 8, 2006.

21. The MPSEB feeling aggrieved by the letter of the WREB, has filed the instant application on the ground that the order of this Tribunal dated November 14, 2006 has been disregarded and the FLEE charges have not been calculated in accordance with the order of the Government of India dated November 3, 2004.

22. We have heard the learned counsel for the parties.

23. The controversy revolves around the question whether as per directions of this Tribunal contained in the order dated November 14, 2006, the FLEE charges have been calculated in accordance with the order of the Government of India dated November 3, 2004. There is no dispute that FLEE charges have not been computed on real time basis and penalty for perceived overdrawl of power by the MPSEB has been imposed without off setting the same against the under drawl of power by the CSEB. It is significant to note that as per the order of the Government of India dated November 3, 2004, the entitlement of the State of Madhya Pradesh in the Central Sector Generating Stations of Western Region was 1408.2 MW while that of the Chhattisgarh was 210 MW. The WREB has not implemented the order of the Government of India dated November 3, 2004 on real time basis.

24. According to the order of the Government of India dated January 31, 2001, it is clear that the allocation of Madhya Pradesh from the Western Region was to the tune of 1116 MW and that of Chhattisgarh

was to the extent of 498MW. In Para-3 of the order of the Government of India, it was clarified that to the extent Chhattisgarh is unable to utilize its allocation; the power would stand temporarily allocated to Madhya Pradesh. Similarly the orders of the Government of India dated February 8, 2002 and June 17, 2002 made further provisional allocations to Madhya Pradesh out of allocation of 498MW to Chhattisgarh. Again by order dated May 11, 2004, the Government of India directed *inter alia*, that on the basis of daily schedule the quantum of power which one State has not drawn from its allocated share will be added to the schedule of other state to the extent of overdrawal by it. It was also directed that on the daily schedule overdrawal by one State would be offset against the underdrawal of the other State. This arrangement was made operative for a period of five years after creation of the new States subject to being reviewed as considered necessary. This clearly shows that overdrawls by one State was required to be off set against underdrawl of the other state while calculating the FLEE charges. This significant arrangement ought to have been taken into consideration by the WREB. The learned counsel for the Chhattisgarh State Electricity Board however, submitted that WREB was not required to apply the order of the Government of India dated November 3, 2004 retrospectively and the FLEE charges could not be calculated on real time basis. It needs to be pointed out that while the State of Chhattisgarh was created on November 1, 2000, the Chhattisgarh State Electricity Board came into

existence on November 15, 2000. The first provisional order of the Government of India specifying the shares of the successor States in the entitlement of the central sector generating stations of the Western Region was issued on January 31, 2001. Thus, there was a hiatus between the formation of the new States and the allocation of shares. This being so, the Chhattisgarh State Electricity Board, which was constituted only on November 15, 2000, undisputedly drew power, even though at that point of time there was no allocation for it. Obviously, the drawal of power stood regularized to the extent of its share fixed by the Government by its order dated January 31, 2001. Therefore, to say that the allocation cannot be applied retrospectively is to ignore the order of this Tribunal dated November 14, 2006, such an approach will lead to difficulties as the drawal of power by Chhattisgarh would be rendered unauthorized. It is hard to understand as to why WREB did not implement the earlier directive of the Government of India that in case Chhattisgarh is unable to utilize its allocation in accordance with the sharing formula, the power would temporarily be allocated to Madhya Pradesh.

25. In the order of the Tribunal dated November 14, 2006, it has been specifically directed that the liability of the respective Boards, subsequent to bifurcation, has to be worked out in terms of the Government of India Notification dated November 3, 2004. In case the interpretation placed by the WREB is accepted, it would mean that

direction given by this Tribunal would be rendered meaningless. In para-19 of the aforesaid order, the second point namely “who is liable to pay FLEE charges to the beneficiaries for the period subsequent to December 1, 2000 and till the introduction of ABT and UI system” has been considered. FLEE charges were applicable only upto June 30, 2002. Orders dated January 31, 2001, Feb. 8, 2002, June 17, 2002 etc. of the Government of India related to the period when the FLEE charges were in vogue. The letter of the Government of India dated November 3, 2004 was issued pursuant to the order of the Delhi High Court dated August 10, 2004, whereby the Government of India was directed to pass final orders relating to allocation of power to the successor States. Thus the temporary allocation made by letters of the Government of India dated January 31, 2001, Feb. 8, 2002, June 17, 2002 etc. was replaced by the aforesaid final allocation. Obviously the order in so far as calculation of FLEE charges are concerned, needs to be worked out on real time basis as otherwise the final allocation will have no meaning since the FLEE charges ceased to be applicable in July, 2002. The letter of the Government of India dated November 3, 2004 has to be read in the context of the earlier letters of the Government of India dated January 31, 2001, Feb. 8, 2002, June 17, 2002 etc. It will be absolutely unjust not to give effect to the final allocation of power and to calculate FLEE charges without taking into consideration the fact that even in the earlier orders of the Government of India dated January 31, 2001, June 17,

2002 etc., there was a clear stipulation that in case Chhattisgarh is unable to consume the power allocated to it, the same will be allocated to Madhya Pradesh. It seems WREB did not understand the true import of the order of this Tribunal dated November 14, 2006.

26. Therefore, in the light of the aforesaid observations, we direct the WREB to re-calculate the FLEE charges in accordance with the order of this Tribunal dated November 14, 2006.

27. With the aforesaid direction, the application is disposed of.

(Anil Dev Singh)
Chairperson

(H.L. Bajaj)
Technical Member

Dated: the May 17, 2007