

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 369/MP/2022**

Subject : Petition for refund of incentive amount paid to NHDC on account of capacity index for the period 1.4.2009 to 31.3.2021.

Petitioner : MPPMCL

Respondents : NHDC Limited

Date of Hearing : **23.3.2023**

Coram : Shri I.S Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member

Parties Present : Shri Aditya Singh, Advocate, MPPMCL  
Ms. Suparna Srivastava, Advocate, NHDCL  
Shri Tushar Mathur, Advocate, NHDCL  
Ms. Astha Jain, Advocate, NHDCL  
Ms. Divya sharma, Advocate, NHDCL  
Shri N. K. Chellani, NHDCL  
Shri D. K. Kurrey, NHDCL

**Record of Proceedings**

During the hearing, the learned counsel for the Petitioner submitted the following:

(a)The present petition has been filed for refund of the incentive amount paid to the Respondent on account of capacity index (until full maximum output of 65 MW per machine is achieved, in respect of Omkareshwar Hydroelectric project, for the period 1.4.2009 to 31.3.2021, along with interest.

(b)The Commission in its order dated 16.1.2012 in Petition No 265/2010, had permitted the Respondent herein to recover the full fixed charges corresponding to an output of 50 MW, as against the installed capacity of 65 MW per machine. The Commission had also observed that the Respondent herein, is not entitled to claim incentive on account of capacity index until full maximum output of 65 MW per machine is achieved.

(c) The Respondent, despite not achieving the full output of 65 MW per machine, has claimed and realised the incentive of Rs.183 crore during the period from 1.4.2009 till 31.03.2021 from the Petitioner herein, which is contrary to the directions of this Commission in the orders.

(d)The Respondent vide its letter dated 26.3.2021, intimated that the said project has achieved full reservoir level of El 196.60 meter on 01.04.2021, thus delivering



the output of 65 MW per machine from 1.4.2021. Accordingly, the Respondent is liable to refund the incentive realised along with interest, to the Petitioner.

(e) In Petition 107/GT/2020, the Respondent had submitted that the project commenced DC of 65 MW per machine, with a total declared capacity of 520 MW w.e.f. 1.4.2021 and the same was recorded by the Commission, while issuing order dated 11.3.2020. However, no views were expressed by the Commission in the said order on the Petitioner's prayer vide affidavit dated 26.7.2021 in the said Petition, for refund of incentive by the Respondent herein.

(f) In view of the above, the Petition may be admitted and the relief prayed for may be granted.

2. The learned counsel for the Respondent NHDC raised objections on the 'maintainability' of the petition, and submitted that the Petitioner has sought to challenge the tariff regulations notified by the Commission. She further submitted that the issue has attained finality and the Petitioner had also not challenged the Commission's order dated 11.3.2020 in Petition No.107/GT/2020. The learned counsel, however, sought time to file its reply on the 'maintainability' of the petition.

3. The Commission, after hearing the parties, directed the Respondent NHDC to file its reply on 'maintainability' by **17.4.2023**, after serving copy on the Petitioner, who may, file its rejoinder, if any, on or before **5.5.2023**. The parties shall complete their pleadings in the matter, within the due dates mentioned and no extension of time shall be granted.

4. The Petition shall be listed for hearing on 'maintainability,' on **16.5.2023**.

**By order of the Commission**

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

