CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri R. Krishnamoorthy, Member

Petition No.107/2007

In the matter of

Petition for direction to U.P Power Corporation Ltd (UPPCL) for payment of compensation amount to M.P Power Trading Company Ltd (MPTRADECO) due to retention of MP's share of power/non-supply of it from Rihand and Matatila Hydel Power Stations to MPSEB and resumption of MP's share of power from Rihand and Matatila Hydel Power Stations.

And in the matter of

Madhya Pradesh Power Trading Company Ltd. **…. Petitioner**

Vs

1. Principal Secretary, Energy Department, Govt. of UP, Lucknow
2. Uttar Pradesh Power Corporation Ltd., Lucknow
3. Uttar Pradesh Jal Vidyut Nigam Ltd., Lucknow **…. Respondents**

The following were present:

1. Shri G. Umapathy, Advocate, MPPTCL
2. Shri Dilip Singh, MPPTCL
3. Shri G. M. Tekchandani, MPPTCL
4. Shri Sitesh Mukherjee, Advocate, UPPCL
5. Shri Sapan Kumar Mishra, Advocate, UPPCL

ORDER
(DATE OF HEARING: 8.7.2008)

The applicant through this application made under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) seeks directions to the respondents for:

(a) release of MP's legitimate full share of supply of power from Rihand Hydel Power Project (Rihand HPP) and Matatila Hydel Power Project (Matatila HPP);

(b) payment of an outstanding amount of Rs.365.704 crore by the second respondent for retaining MP's share of power from Rihand HPP and Matatila HPP; and

(c) payment of interest at the borrowing rate of MPSEB plus 2% extra as decided in the meeting held on 27.7.1993.

2. Before we refer to the detailed facts leading to the dispute, we consider it appropriate to examine, in the first instance, the status of the parties. The applicant is a company registered under the Companies Act formed pursuant to the Madhya Pradesh Electricity Reforms Transfer Scheme Rules, 2006, (the 2006 Rules) notified by the State Government of Madhya Pradesh in exercise of power under Section 131 of the Act read with Sections 23 and 56 of the Madhya Pradesh Vidyut Sudhar Adhiniyam 2000 (the State Act). The State Government of Madhya Pradesh had initially notified the Madhya Pradesh Electricity Reforms First Transfer Scheme Rules, 2003 (the 2003 Rules) in exercise of powers under the State Act. By virtue of these rules, the State Government reorganized and restructured the Madhya Pradesh State Electricity Board (MPSEB) by creating generation undertakings, transmission undertaking and distribution undertakings, retaining with MPSEB functions of bulk purchase and bulk supply, namely, purchase of electricity from the generating companies and supply thereof to the distribution companies. Through the 2006 Rules, the function of bulk purchase (from the generating companies) and bulk supply (to the distribution companies) was transferred to the applicant. MPSEB had succeeded the

erstwhile Madhya Pradesh Electricity Board (MPEB), established under Section 5 of the Electricity (Supply) Act, 1948, which continued to function till the reorganization of the erstwhile State of Madhya Pradesh. Thus, the applicant is a lineal descendant of MPEB.

3. The second and third respondents were formed consequent to reorganization of the erstwhile Uttar Pradesh State Electricity Board (UPSEB) under the Uttar Pradesh Electricity Reforms Transfer Scheme 2000 (the Scheme), as modified by notification dated 25.1.2001. Under para 5 of the Scheme, the undertakings forming part of hydro generation of the erstwhile UPSEB were transferred to Respondent No.3, Uttar Pradesh Jal Vidyut Nigam Ltd. (UPJVNL) and the undertakings forming part of transmission and distribution net work of the erstwhile UPSEB were transferred to the second respondent, Uttar Pradesh Power Corporation Ltd. (UPPCL). In this manner, the second and third respondents are the successors of the erstwhile UPSEB.

4. The State Government of Uttar Pradesh developed Rihand Hydel Power Project (Rihand HPP) (300 MW) and Matatila Hydel Power Project (Matatila HPP) (30 MW), hereinafter collectively referred to as the generating stations. The salient features of the generating stations as extracted from the application are given hereunder:

	Salient Features	Rihand Hydel Power Project	Matatila Hydel Power Project
A	Location		
	(1) State	Uttar Pradesh	Uttar Pradesh
	(2) District	Mirzapur	Lalitpur
	(3) River	Rihand	Betwa
B	Capacity and Allocation		
	(1) (a) Installed capacity	300 MW	30 MW
	(b) MP's share	45 MW(15%)	10 MW
	(2) Year of Commissioning:	5 x 50 MW March, 1962 1 x 50 MW March, 1966	1965
C	Hydrology		
	(1) Total catchment area	5148 Sq. miles	8000 Sq. miles
	(a) Catchment area in UP	525 Sq. miles (10.1%)	720 Sq. miles (9%)
	(b) Catchment area in MP	4623 Sq. miles (89.9%)	7280 Sq. miles (91%)
	(2) (a) Total submergence in UP	40 Sq. miles (22.2%)	9000 Acres (28%)
	(b) Total submergence in MP	140 Sq. miles (77.8%)	23320 Acres (72%)
	(3) Number of villages submerged	MP 44 UP 108	MP 18 UP 15
D	Transmission Lines for supply of share to MP	132 kV Rihand-Morwa (MP) Line	66 kV Matatila-Pochhore Line 11 kV Hasari (UP)-Datia (MP) 11 kV Matatila-Basai (MP)

5. On account of development of the generating stations, the land, trees and forests in the adjoining areas in the State of Madhya Pradesh were sub-merged, for which the State of Madhya Pradesh was demanding compensation in the form of supply of power from the generating stations. This issue was discussed in the sixth meeting of Central Zonal Council, headed by the Union Home Minister with Chief Ministers of the States of Uttar Pradesh and Madhya Pradesh as Members, and established under Section 15 of the States Reorganisation Act, 1956, held on 1st and 2nd July 1963. At the instance of Chairman of the Council, it was agreed by the State Governments of Uttar Pradesh and Madhya Pradesh that 15% of power from Rihand HPP and 33% of power from Matatila HPP based on energy available at the

generating stations on year-to-year basis would be made available to MPEB, at cost price plus 5% thereof. The cost price was to be worked out by a Committee headed by Shri M.R. Sachdeva, the then Chairman, Central Water and Power Commission, after hearing the representatives of the two States. In its meeting held on 2nd and 3rd September 1964, the Sachdeva Committee decided that supply of power from Rihand HPP was to be @ 3.5 paise/kWh (cost of generation plus 5% thereof) and from Matatila HPP, supply was to be at the average rate of 6.5 paise/kWh (average cost of generation of available energy, both firm and secondary, plus 5% thereof). The Committee further decided that power to Madhya Pradesh from Rihand HPP was to be supplied at the border of State of Uttar Pradesh and MPEB was to bear an annual charge @ Rs.1.5 lakh for the transmission line to be constructed by UPSEB for conveyance of power. This was accepted by the representatives of UPSEB and MPEB, who were present at the meetings of the Sachdeva Committee. The rates decided by the Sachdeva Committee and agreed to by the concerned parties were subject to review after 10 years. The conclusions drawn by the Sachdeva Committee in regard to fixation of rates for supply of power to the State of Madhya Pradesh were ratified by the Central Zonal Council in its meeting held on 19.9.1964. In this manner, the two issues relating to the quantum of supply of power from the generating stations and the rates of supply were decided.

6. For evacuation of power from Rihand HPP, it was agreed to construct a 132 kV single circuit line from Rihand to Amarkantak power station in Madhya Pradesh. UPSEB constructed the portion of transmission line from Rihand HPP up to the border of Uttar Pradesh/Madhya Pradesh and the portion from the border of Uttar Pradesh to Amarkantak was to be constructed by MPEB. From the available records it is

gathered that MPEB completed its portion of the transmission line sometime in 1967 and supply of power to MPEB started in September that year.

7. The State Governments of Uttar Pradesh and Madhya Pradesh on different occasions sought to reopen the rates of supply of power decided by the Sachdeva Committee and agreed to between them at the Central Zonal Council meeting held on 19.9.1964. Thereafter, the matter was again discussed in the Central Zonal Council meeting held on 11.10.1969 whereat it was decided that the parties would strictly abide by the decisions of the Sachdeva Committee. Despite these developments, it has been alleged, the State of Madhya Pradesh was not supplied its full share of power from the generating stations. The applicant has stated that till October 1992, the State of Madhya Pradesh was supplied 626.841 MU from Rihand HPP against its share of 3510.612 MU and 763.288 MU from Matatila HPP against the share of 977.723 MU. It has been further alleged that from November 1992 till 2005-06, State of Madhya Pradesh was not supplied any power from Rihand HPP, though it was entitled to receive 1752.936 MU during that period. As regards Matatila HPP, the State of Madhya Pradesh is stated to have received 522.642 MU against the share of 593.666 MU. The applicant has summarized the status of supply for the period from 1962-63 to 2005-06 as under:

(MU)

	Rihand HPP	**Matatila HPP**
Entitlement	5263.549	1571.389
Supply	626.84	1285.93

8. The matter of non-supply or under-supply of power from Rihand HPP was discussed at subsequent meetings of the Central Zonal Council, as also the meetings held between the officers of the two States. But the issue remained outstanding as

the State of Madhya Pradesh was not given sufficient supply from Rihand HPP. A perusal of the minutes of the various meetings reveals that the reasons for non-supply of power to Madhya Pradesh given from time to time were that Rihand Dam was not getting filled up to its full capacity or because of shortage of power in the State of Uttar Pradesh or availability of surplus power in Madhya Pradesh or unavailability of proper arrangements for drawing power from Rihand HPP. The State of Madhya Pradesh demanded monetary compensation from the State of Uttar Pradesh/UPSEB for non-supply or inadequate supply of power at a meeting held on 21.6.1971. This demand was, however, opposed by the officials of the State of Uttar Pradesh. Thus, no decision in regard to payment of compensation could be arrived at. A meeting was held on 6.1.1976 under the Chairmanship of Member (Hydro-electric) CEA, when it was agreed that compensation to MPEB was to be calculated @ 6 paise/kWh (9.5 paise/kWh-3.5 paise/kWh) for the period 1.9.1967 to 30.9.1974. It was further agreed that for the period 1.9.1967 to 15.5.1969, for the purpose of compensation, difference of power to be considered was to be as under:

Period	**Difference of power to be compensated**
1.9.1967 to 15.11.1968	1500 MW
16.11.1968 to 31.12.1968	1000 MW
1.1.1969 to 15.5.1969	250 MW

9. In a further meeting held on 7/8.6.1977, attended by Chairmen of UPSEB and MPEB, along with their officials, it was agreed that from 1.10.1974 and onwards, if MPEB over-drew power, it would pay compensation to UPSEB at the current Rajasthan Atomic Power Project (RAPP) rates plus 10% thereof. Similarly, UPSEB also agreed to pay compensation at the same rates, that is, current RAPP rates plus

10% thereof in case MPEB was not supplied with its due share of power, after giving due credit to UPSEB for the units consumed by it against MPEB's share at the cost of generation. As regards the period prior to 1.10.1974, it was re-iterated that UPSEB would pay compensation @ 6 paise/kWh for the energy not supplied or received by MPEB against its share of power from 1.9.1967 onwards.

10. The summary of details of power generated at the generating stations and supplied to Madhya Pradesh for the period up to hydrological year 2005-06 as given by the applicant are summarized hereunder:

RIHAND HPP

(MU)

Period	Energy Generated	Auxiliary Consumption	Energy Sent out	MP's share	Power Supplied to MP
1962-63 to October 1992	23881.717	477.634	23404.083	3510.612	626.841
November 1992 to Hydrological Year 2005-06	11924.736	238.495	11686.241	1752.936	0.000
Total	35806.453	716.129	35090.324	5263.549	626.841

MATATILA HPP

(MU)

Period	Energy Generated	Auxiliary Consumption	Energy Sent out	MP's share of Sent out	Power Supplied to MP
Hydrological Year 1965-66 to Hydrological Year 1991-92	2993.029	59.861	2933.169	977.723	763.288
Hydrological Year 1992-93 to Hydrological Year 2005-06	1817.346	36.347	1780.999	593.666	522.642
Total	4810.375	96.208	4714.168	1571.389	1285.930

11. The applicant has worked out a total amount of compensation of Rs.365.704 crore for non-supply or under-supply of power from the generating stations. This includes a sum of Rs.20.62 crore on account of interest from 1982 to 1992.

12. The applicant has claimed interest at the borrowing rate of MPSEB plus 2% extra, stated to have been decided at the meeting of Governors of Uttar Pradesh and Madhya Pradesh held on 27.7.1993. The portion of the minutes of the meeting, on which reliance has been placed is extracted below:

> "Chairman, Madhya Pradesh Electricity Board should write to the Chairman, Uttar Pradesh Electricity Board that all dues payable to Madhya Pradesh Electricity Board would be subject to interest at the borrowing rate of MPEB plus two percent. A demand bill towards arrears including interest should be forwarded to Uttar Pradesh Electricity Board."'

13. The above decision arrived at the meeting of the Governors was followed up through a DO letter dated 19.10.1993, addressed to the Chairman, UPSEB, whereby it was informed that "MPEB has now decided that interest be levied on outstanding arrears of UPSEB with retrospective effect". Accordingly, remittance of a sum of Rs.43.71 crore, which included interest of Rs.20.62 crore, was demanded. The issue of release of payment by UPSEB in favour of MPEB was subsequently discussed at various meetings between the two sides. UPSEB has, however, always insisted that it was not liable to pay interest. As regards the principal, UPSEB or its successor entities, without denying their liability to pay, had been seeking reconciliation of the amount demanded and deferring payment of even the undisputed amount on the ground of unavailability of funds. At the last meeting the minutes of which are held on record, held on 7/8.6.2007, it was pointed out on behalf of the applicant that an amount of Rs.335 crore as on 30.9.2005 was due against the respondents who insisted that because of discrepancies in RAPP rates between April 2000 to March

2003 the amount due could not be reconciled. It was informed at that meeting that for exact RAPP rates applicable, the second respondent had already taken up the matter with Nuclear Power Corporation. As regards the cost of generation of power at the generating stations, for which credit was to be given for adjustment against the claim for compensation, it was agreed that the rates provided by the third respondent, duly audited, would be final and binding on all parties. At this meeting, the officers of the third respondent assured to provide the cost of generation from October 1999 and onwards, within a month's time. However, as it transpires, these details have not been furnished.

14. The applicant having failed in its efforts to secure restoration of supply of power and payment of compensation approached the Commission by way of the present application for appropriate directions for resumption of supply of power from the generating stations and payment of compensation by the second respondent.

15. The second respondent filed a short reply to the application vide its affidavit dated 22.11.2007 in which it had questioned the jurisdiction of the Commission to entertain the petition. It was stated that the Commission could exercise its jurisdiction under clause (b) of sub-section (1) of Section 79 of the Act only if there was a composite scheme for generation and sale of electricity in more than one State. Since the generating stations do not have composite schemes for generation and sale of electricity in more than one State, the Commission does not have jurisdiction to adjudicate the dispute. Reliance in this regard was placed on the Commission's order dated 29.3.2006 in Petition No.103/2005 wherein while deciding the question of jurisdiction to regulate generation tariff of five hydro generating stations owned and

operated by Uttaranchal Jal Vidyut Nigam Limited, but also supplying to the State of Himachal Pradesh, in addition to the State of Uttaranchal (now Uttrakhand), the Commission held that approval of tariff of those generating stations did not fall within its jurisdiction as the said hydro generating stations did not qualify to have 'composite scheme' of generation and sale of electricity in more than one State, a condition necessary to invoke clause (b) of sub-section (1) of Section 79 of the Act. It was further submitted that the Central Zonal Council was already seized of the matter and was making efforts to persuade the parties to resolve the dispute. The second respondent also made its counter-claim for non-supply of power from Rajghat Power Station, located in the State of Madhya Pradesh and stated to be a joint venture of the States of Uttar Pradesh and Madhya Pradesh. It was urged that the Commission should not entertain the present application.

16. The third respondent in its reply dated 5.12.2007 had submitted that as per the transfer scheme notified by the Government of Uttar Pradesh vide notifications dated 14.1.2000 and 25.1.2001, no liability on account of the amount claimed by the applicant was incorporated therein and therefore, the third respondent could not be held liable for the payments due prior to 14.1.2000. Secondly, it was stated, no PPA entered into between MPEB and UPSEB was made available to fasten the responsibility on it to supply electricity to the applicant from the generating stations. Thirdly, according to the third respondent, determination of tariff of electricity generated by the power stations owned by it being under the jurisdiction of UPERC as per the Uttar Pradesh Electricity Reforms Act,1999, the rates determined by any other agency in respect of the energy earmarked as Madhya Pradesh's share became inoperative w.e.f. 14.1.2000. Lastly, according to the third respondent, as per the

MOU signed between the second and third respondents effective from 14.1.2000, entire energy generated at the generating stations is to be supplied to the second respondent and therefore, the commitment to supply power to the applicant was to be honoured by the second respondent.

17. The Commission, after hearing the parties, and on recording a finding that the dispute involved regulation of inter-State transmission of electricity, covered under clause (c) of sub-section (1) of Section 79 of the Act, in its order dated 27.2.2008 directed the respondents to restore supply of power to the applicant from the generating stations. We were given to understand that power supply has been restored since the first week of April and thus the direction has been complied with. The other claims of the applicant for payment of compensation for non-supply or short-supply of power during the prior period and interest thereon remain to be adjudicated.

18. The third respondent in its affidavit dated 2.4.2008 has pointed out a slight discrepancy in the order dated 27.2.2008. It has submitted that the order dated 27.2.2008 incorrectly records that the transfer scheme provides that after honouring commitment of supply of power to the State of Madhya Pradesh from the generating stations, the balance total power as generated is to be supplied to the second respondent. According to the third respondent, such a stipulation is contained in the MoU dated 7.3.2000 between the second and third respondents for sale of power. It has been urged that since the order dated 27.2.2008 proceeds on a wrong premise, it should be withdrawn.

19. We have taken note of the submission and the fact that the part of the statement attributed to the transfer scheme in fact forms part of the MoU. However, it does not call for review of the conclusions already arrived at that the respondents failed to meet their obligation to supply power to the State of Madhya Pradesh and the dispute involves regulation of inter-State transmission of electricity under clause (c) of sub-section (1) of Section 79 of the Act. In that view of the matter, the direction to restore power to the State of Madhya Pradesh remains unaltered.

20. The second respondent in its detailed reply dated 5.6.2008 has opposed the application. The second respondent has referred to the appeal filed before the Appellate Tribunal against the Commission's order dated 27.2.2008 and has, therefore, contended that further adjudication should be held in abeyance, particularly when the Central Zonal Council is also seized of the matter. It has also objected to the maintainability of the application on ground of limitation, lack of jurisdiction of the Commission to adjudicate the dispute since in the applicant's contention it is only UPERC who determines tariff for sale of electricity from the generating stations, has the jurisdiction to decide the dispute. The second respondent has also underlined the incompetence of the applicant as a trading company to make the application for settlement of dispute. It has been further stated that the second respondent through a series of communications approached the applicant for settlement but the applicant never evinced any interest in the settlement. In this regard, the second respondent has placed copies of some letters issued to the applicant or its predecessor entities to settle the dispute.

21. On merits, the second respondent has submitted that it had been supplying some quantum of electricity continuously from Matatila HPP. As regards Rihand HPP, it has been stated that the supply line from Rihand had been maintained and was kept charged. In this regard, the second respondent has placed reliance on the meter readings taken on 15.10.2005 and on 17.4.2008. The second respondent has further contended that in the absence of a formal agreement for payment of compensation, the applicant is entitled to recover the cost of generation of power to be supplied to Madhya Pradesh, which works out to Rs.32 crore approximately. It has averred that the agreement was to be reviewed after expiry of 10 years and since no review has taken place, the agreement has come to an end by efflux of time and as such agreement for payment of compensation has also ceased to have effect. Therefore, it has been contended, the compensation rate cannot be higher than the cost of generation of power. The second respondent has further stated that agreement to pay compensation on RAPP rate was based on misrepresentation of fact by MPEB that it had to purchase electricity from RAPP and, therefore, the compensation should be at the same rate. The applicant, it is alleged, has failed to provide any data to show that it is purchasing electricity from RAPP. In any case, by applying RAPP rate, the amount of compensation works out to Rs.192 crore and not Rs.365.704 crore claimed by the applicant. The second respondent has opposed the applicant's claim for interest, on the ground that the claim is without any legal basis and is not sustainable in the eyes of law. The second respondent has pointed out that the minutes of the meeting between the Governors of Uttar Pradesh and Madhya Pradesh held on 27.7.1993 which is the basis for levy of interest by the applicant is not in relation to the present dispute and there is no concurrence between the parties on

payment of interest on compensation, neither is it envisaged in terms of the discussions held on 27.7.1993.

22. We have carefully considered the submissions made on behalf of the parties. We do not find any force in any of the preliminary objections taken on behalf of second respondent.

23. First of all, we consider whether pendency of appeal before the Appellate Tribunal bars adjudication of the applicant's claim for compensation and interest. As noticed, the second respondent has filed an appeal before the Appellate Tribunal (Appeal No.35/2008) against the Commission's order dated 27.2.2008 on the ground of lack of jurisdiction of the Commission to adjudicate the dispute. The Appellate Tribunal in its order dated 3.4.2008 while disposing of IA No.63 of 2008 for ex parte interim stay of the Commission's order directed as under:

> " It is stated by the learned counsel for the appellant that at present no power is being generated at Rihand Power Station due to non-availability of water. Since no power is generated at present from Rihand Power Station, it will not be necessary for the appellant to supply power to the respondent company, MP Trading Power Company, from the Rihand Power Station. Whenever power is generated at Rihand Power Station, the supply shall be made by the appellant to the above said Company, in accordance with the agreement. As and when power is generated by the Rihand Power Station, schedule of generation of power shall be given by the appellant to the Load Despatch Centre. This order shall ensure till the next date. "

24. Thus, the Appellate Tribunal's interim order, prima facie, seeks to re-inforce the Commission's order dated 27.2.2008. Under the circumstance, there is no case for staying further adjudication of the dispute. Needless to say, the Commission's order shall always abide the Appellate Tribunal's decision.

25. The second respondent has submitted that the Commission should refrain from deciding the question of compensation as the dispute is pending before the Central Zonal Council. We are of the view that the Central Zonal Council is a body constituted to resolve the inter-State issues through consultative process. The Central Zonal Council is not invested with adjudicatory powers. Precisely for this reason, the past decisions in the Central Zonal Council have not been complied with. In our view, engagement of the Central Zonal Council with the dispute is not a bar to the adjudication of the dispute by the Commission in exercise of its statutory powers under clause (f) of sub-section (1) of Section 79 of the Act read with clause (c) thereof.

26. Next we consider the objection of limitation or delay and laches. The Act is a special Act and does not provide for any period of limitation for filing of the application before the Commission. The Limitation Act, 1963 (the Limitation Act) consolidates the law for limitation of suits and other proceedings. We are conscious that the Hon'ble Supreme Court has consistently held the view that the provisions of the Limitation Act are not applicable to the proceedings before the quasi judicial bodies and tribunals. In LS Synthetics Ltd Vs Fairgrowth Financial Services Ltd & others [(2004) 11 SCC 456], the Hon'ble Supreme Court held as under:

> "33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of

the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises."

27. The issue of applicability of the Limitation Act was also considered in Nityananda M. Joshi Vs LIC [(1969) 2 SCC 199] wherein the question was examined with reference to applicability of Article 137 thereof. The Hon'ble Supreme Court held that the Limitation Act deals with the applications before the courts and the labour court, a quasi judicial body under the Industrial Disputes Act, was not a court within the meaning of the Limitation Act and hence Article 137 of the Limitation Act was not applicable. The observations of the Hon'ble Supreme Court are extracted below:

"3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

28. The issue was again considered in Sushila Devi Vs Ramanandan Prasad [(1976) 1 SCC 361] with reference to applicability of Section 5 of the Limitation Act to an application made before the Collector. Here also, the Hon'ble Supreme Court held that the Collector was not a court though certain powers under the Code of Civil Procedure were vested in him. The Hon'ble Supreme Court concluded that Section 5 of the Limitation Act could not be invoked in the proceedings before the Collector. These observations of the Hon'ble Supreme Court are extracted hereunder:

"The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Section 5 of the Limitation Act an appeal or application

"may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

The Collector to whom the application was made was not a court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise."

29. Another case in which this issue was considered is reported as Sakuru Vs Tanaji [(1985) 3 SCC 590]. In this case also the Hon'ble Supreme Court held that the Limitation Act does not apply to the appeals or applications before quasi judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under Code of Civil Procedure or Criminal Procedure Code, as per the observations extracted below:

"……the provisions of the Limitation Act, 1963 apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on  *courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. ……."*

30. As noted above, the Act does not specifically lay down period of limitation for adjudication of disputes under clause (f) of sub-section (1) of Section 79. In the light of the above decisions of the Hon'ble Supreme Court, the Limitation Act cannot be invoked to decide the bar of limitation in the present petition.

31. Notwithstanding the fact that the Limitation Act does not govern the proceedings before the quasi judicial authorities like the Commission, the courts have repeatedly held that the parties should approach for enforcement of their rights within a reasonable period. It has been held that any inordinate delay is fatal to the claim when raised. A classic example of this proposition of law is judgment of the Hon'ble Supreme Court dated 22.9.1964 in CA No. 140/64, titled Smt. Naraini Devi Khaitan Vs State of Bihar. This case had its origin through the proceedings before the High Court under Article 226 of the Constitution for enforcement of fundamental rights. The Hon'ble Supreme Court held that if the petitioner is guilty of laches and there are other relevant circumstances to indicate that it would be inappropriate to exercise its prerogative jurisdiction under Article 226, ends of justice may require that writ should be refused. However, the matters are left to the discretion of the court which must be exercised judiciously and reasonably. The observations of the Hon'ble Supreme Court are extracted below:

> *"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."*

32. A similar proposition of law was laid down in P.S. Sadasivaswamy Vs State of Tamil Nadu [(1975) 1 SCC 152] as seen from the extracts placed below:

> *"…….A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. ……."*

33. In Rabindra Nath Bose Vs Union of India [(1970) 1 SCC 84] the Hon'ble Supreme Court refused to grant relief in a petition filed before it under Article 32 when the petitioner approached the Supreme Court after the lapse of a number of years, as noted from the following observations:

> *"It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.*
>
> *We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years."*

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 crore 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 crore 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 amounts 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 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 laches. In our opinion, the applicant and its predecessors have been diligently and reasonably pursuing the claim for compensation.

36. On the question of jurisdiction, it is to be noticed that UPERC has jurisdiction to adjudicate disputes between the licensees and the generating companies operating

within the State of Uttar Pradesh since its jurisdiction is to determine tariff for generation, supply, transmission and wheeling of electricity within that State and is also assigned function to facilitate intra-State transmission and wheeling of electricity. UPERC does not have jurisdiction to adjudicate disputes involving the utilities outside the State. As already held by the Commission in its order dated 27.2.2008, the dispute relates to inter-State transmission of electricity which falls within the exclusive jurisdiction of this Commission. The applicant's claim for compensation is consequential to non-supply of electricity in the course of inter-State transmission of electricity, regulation of which is the function of this Commission. Therefore, it is only this Commission who has the jurisdiction to adjudicate upon the applicant's claim for compensation and interest thereon, since it directly flows from the finding already recorded by the Commission in the order dated 27.2.2008 that UPSEB and its successor entities had failed to honour the agreement for supply of electricity to the State of Madhya Pradesh.

37. In the order dated 27.2.2008, the Commission has already held that the dispute relates to regulation of inter-State transmission of electricity and the Commission in its exercise of power under clause (f) of sub-section (1) of Section 79 of the Act has the power to adjudicate the dispute in relation to regulation of inter-State transmission of electricity.

38. It has been averred by the second respondent that the present claim for compensation and interest by the applicant as a trading company does not fall within clauses (a) to (d) of Section (1) of Section 79 of the Act and is, therefore, outside the adjudicatory functions of the Commission under clause (f) of sub-section (1) of Section

79 thereof. We have noted above that the applicant has succeeded MPSEB under the scheme of transfer notified by the State Government. There is no challenge to the scheme. It is an undisputed fact that MPEB and its successor, MPSEB had vested right to claim share of power agreed to be supplied to the State of Madhya Pradesh. In our considered opinion, the applicant, as successor of MPEB and MPSEB, can enforce the agreement. We may hasten to add that in case it is found that the applicant is not lawfully invested with the function of bulk purchase and bulk sale of power under the 2006 Rules, the conclusion might be different. We have, however, not gone into this aspect in the absence of any challenge to the 2006 Rules. Further, under clause (f) of sub-section (1) of Section 79 of the Act, the Commission is assigned the function of adjudication of the disputes involving the generating companies or the transmission licensees in regard to matters connected with clauses (a) to (d). There cannot be any manner of doubt that the dispute involves, *inter alia*, the generating company, the third respondent, since the applicant's claim is for supply of power from the generating stations. MPSEB was involved in the discussions, and meetings with the respondents when it was assigned the function of bulk purchase and bulk sale of electricity after re-organisation in 2003. Similarly, it is also noticed that the applicant was also engaged in discussions for settlement of the dispute. From the minutes of the meetings held on 7/8.6.2007 to discuss the issue of transmission of power supply to the State of Madhya Pradesh and payment of outstanding dues payable by the second respondent, it is observed that the officials of the applicant participated on behalf of the State of Madhya Pradesh. The second respondent has also entered into correspondence with the applicant as noticed from the letter dated 28.5.2007, copy placed at page 21 of the second respondent's affidavit dated 2.6.2008. In the meetings, the respondents have recognized and

acknowledged the right of the applicant to get power supply restored and also receive compensation. Therefore, we do not find any merit in the second respondent's objection that the applicant is not the proper person to make the present application.

39. The second respondent has further urged that despite its best efforts the dispute for payment of compensation could not be resolved because of lack of commitment of the applicant in that direction. To prove its bonafides, the second respondent has placed on record copies of the letters written by it.

40. We have perused the documents placed on record on behalf of the second respondent. No serious attempt seems to have been made by the respondents to resolve the long outstanding issue. The second respondent had been routinely insisting on revision of bills based on joint meter readings by its own officials and the officials of the third respondent in addition to the applicant. It appears to us that the respondents intended to delay somehow the settlement of the issue of payment of compensation because of unavailability of funds as observed from the minutes of the meeting held on 7/8.6.2007.

41. The second respondent has further urged that in the absence of formal agreement, the compensation should not be payable and if at all, it should be payable at the cost of generation.

42. The stand taken by the second respondent is untenable. The Commission in its order dated 27.2.2008 has held that the State of Uttar Pradesh had an obligation to supply electricity from the generating stations to the State of Madhya Pradesh in

agreed terms. The Commission, on noting that the respondents had committed defaults in meeting their obligation, as agreed to by the State Government of Uttar Pradesh and UPSEB, directed to resume the power supply latest by 14.2.2008. The second paragraph of Section 73 of the Contract Act recognizes the right of a party to receive compensation in case of failure of the other party to discharge its obligation, in the following terms, namely-

> **"Compensation for failure to discharge obligation resembling those created by contract:-** When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and broken his contract."

43. Further, in the meeting held on 7/8.6.1977 between Chairmen of UPSEB and MPEB, the rates of compensation payable from 1.9.1967 and onwards were specifically agreed to. The minutes of meeting were duly signed by them. Therefore, the agreement in respect of the rates of compensation was in writing, if at all the written agreement was necessary.

44. The second respondent in its reply has conceded that it "paid compensation as per the terms of MOM dated 7/8.6.1977 for non-supply to the petitioner". It only shows that there has been acceptance of the rates of compensation as per the meeting.

45. The second respondent has further argued that it agreed to pay compensation at RAPP rate since MPEB had stated that it had to purchase costlier power from RAPP and, therefore, compensation should be at the rate payable for RAPP power plus transmission incidence. It has been urged that the applicant has not produced any evidence that it in fact purchased power from RAPP. Therefore, it has been

submitted that rate of compensation should be the cost of generation of the generating stations.

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.

47. It has next been urged that the agreement was to be reviewed after 10 years and, therefore, the conditions agreed to were not applicable after 10 years when the agreement expired by efflux of time. Therefore, it has been submitted that for this reason also, the compensation should not exceed the cost of generation.

48. On perusal of the documents on record we find that the cost of supply of power to the State of Madhya Pradesh decided by the Sachdeva Committee was valid for a period of 10 years and was to be reviewed thereafter. However, the rate of compensation agreed to between the Chairmen of UPSEB and MPEB, effective from 1.10.1974 were applicable in perpetuity. This rate was linked to rate of supply from RAPP. Therefore, unless reviewed with the consent of the parties, the rate of compensation agreed to at the meeting held on 7/8.6.1977 shall continue to govern. As regards cost of supply from the generating stations the agreed term of cost of generation plus 5% theeof is applicable. The data of cost of generation available with the respondents, duly audited, forms the base for cost of supply to the State of Madhya Pradesh.

49. We, therefore, conclude that for the period from 1.10.1974 and onwards, compensation is payable by the second respondent at RAPP rates plus 10% thereof in terms of the agreement arrived at in the meeting held on 7/8.6.1977.

50. The next question is of the applicant's claim for interest. The applicant has claimed interest at borrowing rate of MPEB plus two per cent, 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 per cent. 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.

52. It is well settled that interest may be awarded for the period prior to the date of institution of the proceedings if there is an agreement for payment of the same or interest is payable by the usage of trade having force of law. Interest is also payable in the exercise of equity jurisdiction. This position also follows from sub-section (1) of Section 4 of the Interest Act, 1978, according to which, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having force of law. The other rule of law should include the power to award interest on equitable grounds. The provision is intended to prevent unjust enrichment of one party at the cost of another since the aggrieved party has been deprived of money, legitimately belonging to it. These considerations apply to the case of the applicant with *proprio* vigore. Firstly, as we have concluded there was an agreement between the Governors of the two States for payment of interest. Payment of interest is also covered by usage of trade since as recorded in the minutes of the Governors' meeting, NTPC, a dominant undertaking in the power sector, was following the same practice. Even on equitable considerations payment of interest is justified as the applicant and its predecessors have been deprived of money-compensation for a long time. On all these considerations, we uphold the applicant's claim for interest at the borrowing rate plus 2% thereof, w.e.f. 1.4.1982, claimed in the DO letter dated 19.10.1993. This conclusion of ours is compatible with the spirit of Section 3 of the Interest Act, 1978.

53. We sum up our conclusions as under:

(a) The respondents have always been under a legal obligation to supply power from the generating stations to the State of Madhya Pradesh in accordance with the agreed shares.

(b) In the part, the respondents or their predecessor committed defaults in discharging the obligation, and this has entitled the applicant to receive compensation.

(c) The compensation is payable @ 6 paise/kWh for the period from 1.9.1967 to 30.9.1974 and thereafter the compensation shall be payable at RAPP rate plus 10% thereof, less the cost of generation at the generating stations.

(d) The applicant shall also be entitled to claim simple interest at the borrowing rate, as applicable on 1st April of the year plus two per cent, with effect from 1.4.1982, the date from which it asked for interest in its DO letter dated 19.10.1993. In other words, no interest shall be payable for the period up to 31.3.1982.

(e) Interest shall be calculated from 1st April of the year on the amount outstanding on 31st March immediately preceding, after duly taking into account the payments made during the preceding year.

54. The applicant has claimed a total amount of Rs.365.04 crore, without giving detailed break up and calculations of the amount. It is also not clear whether the amount claimed includes interest for the past period. The RAPP rates applicable, cost of generation and the applicant's or its predecessors' borrowing rates of interest are not on record. In the absence of all these details we are unable to ascertain the exact amount payable. Further, the respondents have also been claiming reconciliation of

the amount payable. For all these reasons, we cannot decree the applicant's claim. The second respondent in its detailed reply-affidavit has, however, accepted that at RAPP rate, compensation payable works out to Rs.192 crore, against which an amount of Rs.44.74 crore has already been paid.

55. We, therefore, direct as under:

(a) The respondents shall continue to supply power to the State of Madhya Pradesh from the generating stations in accordance with the directions contained in the order dated 27.2.2008.

(b) The undisputed amount of Rs.192 crore shall be paid by the second respondent in three equal monthly installments, starting from November 2008, after adjusting the payment of Rs.44.47 crore already made.

(c) The parties shall recalculate the amount of compensation from 1.9.1967 onwards and interest payable from 1.4.1982 in accordance with our decisions recorded above, by 31.3.2009, after reconciliation of the available data of energy generated and sent out to the State of Madhya Pradesh. Such reconciliation shall be completed within one month of the date of the order.

(d) RAPP rates, applicable for working out the compensation, may be obtained from Nuclear Corporation of India Ltd., if not already available with the parties.

(e) For giving credit to the second respondent, the cost of generation based on audited accounts of the generating stations or those taken into account by UPERC from the year 1999 onwards shall be considered.

(f) The amount of compensation found to be due as a result of the above exercise, and after giving adjustment for Rs.192 crore payable in accordance

with the direction at (b) above, along with interest shall be paid by 30.6.2009 through equal monthly installments.

(g) In case of any differences, either of the parties is at liberty to approach the Commission for decision.

56. With the above directions, the present application stands disposed of.

Sd/-	Sd/-	Sd/-
(R. KRISHNAMOORTHY)	**(BHANU BHUSHAN)**	**(DR. PRAMOD DEO)**
MEMBER	**MEMBER**	**CHAIRPERSON**

New Delhi, dated the 12th November, 2008.