

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 216 OF 2025 & IA No. 801 OF 2025

Dated: 7th August, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Madhya Pradesh Power Management Company Limited Appellant(s)
Versus

Central Electricity Regulatory Commission & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Aashish Anand Bernard
Paramhans Sahani
for App. 1

Counsel on record for the Respondent(s) : Suparna Srivastava
for Res. 2

ORDER

(PER HON`BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

IA No. 801 OF 2025

(for interim relief)

The present application (IA No. 801 of 2025) has been preferred by the Appellant in Appeal No. 216 of 2025, seeking interim stay of the order dated 18.03.2025 passed by the Central Electricity Regulatory Commission (hereinafter referred to as "CERC" or "the Central Commission") in Petition Nos. 220/MP/2019 and 267/MP/2019, which is impugned in the present appeal.

Mr. Aashish Anand Bernard, learned Counsel appearing on behalf of the Appellant, while submitting that the impugned order has allowed the claim of the 2nd Respondent by erroneously interpreting Clauses (7) and (8) of Regulation 44 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (“2019 Tariff Regulations”) that it means any or each year of the tariff period 2014-19 to meet shortfall in energy charges on account of saleable scheduled energy being less than the saleable design energy, has contended that the shortage in the saleable scheduled energy from the saleable design energy would actually needs to be considered cumulatively for the entire tariff period of 2014-19 in terms of the Regulation 44 of “2019 Tariff Regulations”. Learned Counsel for the Appellant submitted that though there was shortfall in saleable scheduled energy as compared to saleable design energy for the year 2017-18 and 2018-19, however, Appellant has paid an excess of about Rs.240 Crores to 2nd Respondent on account of energy charges during the tariff period 2014-19 as for three years i.e. 2014-15, 2015-16 and 2016-17, the saleable scheduled energy was more than the saleable design energy, and cumulatively for tariff period 2014-19 there is no shortfall in saleable scheduled energy and therefore, there is no shortfall in the energy charge to be recovered for the tariff period 2014-19. The learned Counsel for the Appellant further contended that the Appellant has already paid four out of the six instalments to the 2nd Respondent and the CERC vide impugned order has directed the Appellant to make payment of balance two instalments within two months from the date of the order. Learned counsel basing on the above submissions seeks stay of the Impugned Order passed by the Central Commission directing Appellant to make payment of balance two instalments to Respondent No 2.

Per contra, Ms. Suparna Srivastava, learned Counsel appearing on behalf of the 2nd Respondent, submitted that the tariff for a hydro generating station comprises of capacity charge and energy charge payable by the purchaser; the capacity charges are derived on the basis of annual fixed cost or AFC payable monthly, and energy charges are required to be paid in proportion to the allocation in the saleable capacity of the generating station to the purchaser. The CERC (Terms and Conditions of Tariff) Regulations 2014 (**“2014 Tariff Regulations”**) makes a provision for payment of energy charges in situations where actual total energy generation by a hydro generating station during a year is less than the Design energy for reasons beyond the control of generating stations, on a rolling basis, and accordingly, the moderation as per the methodology given in 2014 Tariff regulations can be carried out in the third year only when the energy shortfall occurs in any of the first three years of the control period of FY 2014-19, as where such shortfall occurs in the second last or last year of Control period, there is no third year available in the control period for carrying out such moderation. Thus, in the subsequent Regulations for the control period FY 2019-24, treatment of shortfall of energy for the r control period of 2014-19 has been specified under Regulation 44 of 2019 Regulations, and since the recovery of the charges is on annual basis and the hydro station needs to be compensated for the shortfall in the yearly charges, the computation of shortfall in the energy generated which is beyond the control of the generating station needs to be computed on yearly basis, and be compensated accordingly, therefore, the Central Commission is right in holding that Regulation 44(8) provides for shortfall in energy charges on account of saleable scheduled energy being less than the saleable design energy relating to any or each year of the control period of 2014-19 and not to the cumulative five year period of 2014-19.

The Regulation 44 of “2019 Tariff Regulations” are quoted as under:

"44. Computation and Payment of Capacity Charge and Energy Charge for Hydro Generating Stations:

(5) xxxx

(6) In case the saleable scheduled energy (ex-bus) of a hydro generating station during a year is less than the saleable design energy (ex-bus) for reasons beyond the control of the generating station, the treatment shall be as per clause (7) of this Regulation, on an application filed by the generating company.

(7) Shortfall in energy charges in comparison to fifty percent of the annual fixed cost shall be allowed to be recovered in six equal monthly instalments.

Provided that in case actual generation from a hydro generating station is less than the design energy for a continuous period of four years on account of hydrology factor, the generating station shall approach the Central Electricity Authority with relevant hydrology data for revision of design energy of the station.

(8) Any shortfall in the energy charges on account of saleable scheduled energy (ex-bus) being less than the saleable design energy (ex-bus) during the tariff period 2014-19 which was beyond the control of the generating station and which could not be recovered during the said tariff period shall be recovered in accordance with clause (7) of this Regulation."

We take note that the Central Commission has considered that Clause (8) of Regulation 44, which deals with the shortfall in the energy charges on account of saleable scheduled energy being less than the saleable design energy relates to any or each year of the tariff period 2014-19 and not the cumulative five year period of 2014-19, however,

prima facie, we find merit in the submissions made by learned Counsel for the Appellant that it could mean cumulative energy for the entire 2014-19 period and not the shortage on a year to year basis.

Of the three tests for grant of interim relief, with a *prima facie* case being made out as the *sine qua non*, one of the other two tests of balance of convenience and irreparable injury must be satisfied. Proceeding on the premise that the Appellant has made out a *prima facie* case, we shall examine whether one of the other two tests are satisfied.

As the grant of interim relief is discretionary, exercise thereof is subject to the court/tribunal satisfying itself that its interference is necessary to protect the party from the species of injury. In other words, irreparable injury would ensue before the legal right would be conclusively established. **(Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719)**. The Court/Tribunal should satisfy itself that non-interference would result in “irreparable injury” to the party seeking relief and that he needs protection from the consequences of apprehended injury. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages **(Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719: AIR 1993 SC 276; Mahadeo Savlaram Shelke v. Puna Municipal Corporation, (1995) 3 SCC 33)**.

Even if we consider that the Appellant has made out a *prima facie* case, one of the other two conditions of balance of convenience and irreparable injury is required to be satisfied for grant of interim relief. The Appellant has only stated that if the stay is not granted, then the Appellant

would be put to irreparable and grave damage and injury and loss, without giving any justification in support of his contention. We note that the 2nd Respondent is a joint venture between the National Hydro Power Corporation Limited and the Government of Madhya Pradesh, and it is not even contended by the Appellant that they will not be able to recover the amounts to be paid by them in terms of the Impugned Order from the 2nd Respondent in case the main appeal were to be allowed later. Therefore, the test of irreparable injury in case the Impugned Order is not stayed is not in favour of the Appellant.

Regarding balance of convenience, it is noted that four out of six instalments have already been paid by the Appellant to the 2nd Respondent even before the Impugned Order was passed, and the question is with regard to payment of balance two instalments. Pending adjudication of interpretive issues under Regulation 44(8) of 2019 Tariff Regulations, which shall be deliberated in detail along with “2014 Tariff Regulation” at the time, when the Appeal is heard and decided, we deem it appropriate to protect both parties by directing payment of only one out of the two remaining instalments, while staying the final instalment till disposal of the appeal.

Order

The Appellant is directed to pay 50% of the balance amount, i.e., one instalment, as per the impugned order. The payment of the remaining one instalment shall remain stayed until the final disposal of the Appeal. Payments made by the Appellant to 2nd Respondent shall be subject to the outcome of the main appeal. The IA is, accordingly disposed of.

After verification by the Registry as to whether pleadings are complete, let this Appeal be included in the '**List of Finals**' to be taken up from there, in its turn.

Pronounced in open court on this the 7th August, 2025

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

ts/sk

REPORTABLE/~~NON-REPORTABLE~~