

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No. 1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 51 of 2009

In the matter of
Joint Petition of Water Resource Department and MSPGCL seeking issuance of advice
to transfer existing Veer Hydro Power Station to Water Resource Department

Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member

1. Water Resource Department,
Government of Maharashtra
Mantralaya,
Mumbai – 400 032

2. Maharashtra State Power Generation Company Ltd.
G-9, Prakashgad,
Bandra (East),
Mumbai – 400 051

..... Petitioners

ORDER

Date : 14th December, 2009

The Water Resource Department, Government of Maharashtra (“WRD”) and Maharashtra State Power Generation Co. Ltd. (“MSPGCL”) submitted a joint Petition under affidavit on 11.08.2009, for transfer of existing Veer Hydro Power Station (Veer HPS) to WRD and to undertake renovation and modernization of the same through private participation. Petitioners have referred to Sections 10(3)(a) and 86(2)(iv) of the EA 2003, justifying the filing of the Petition thereunder. The Petitioners have made the following prayers in their petition:

- “(i) *Accept this Petition*
- “(ii) *Advise of transfer of existing Veer HPS from MSPGCL to WRD, GoM*



- (iii) Advise to undertake renovation and modernization of the same through private participation as per the relevant Government Policy in Force
- (iv) Advise to adjust the amount of over recovery of lease rent towards Veer HPS in the lease rent for balance hydro power stations under lease with MSPGCL
- (v) Condone any shortcomings / deficiencies and allow WRD, GoM to submit additional information / data at a later stage as may be required by Hon'ble Commission."

2. In the Petition, the Petitioners have given the details of the existing Veer HPS, which are summarized as follows:

- a) The existing Veer HPS comprises of 2 x 4.5 MW Hydel Units was installed and commissioned on Right Bank Canal (RBC) of Veer dam by WRD, GoM in February 1975.
- b) The Veer HPS was handed over to MSPGCL (then Maharashtra State Electricity Board) in February 1975 for operation and maintenance on an annual lease rent basis. The 35 years lease period commenced in 1976-77 and is supposed to end in 2011-12. MSPGCL has paid a total lease rent of Rs. 11.64 crores to WRD, GoM towards the plant till 2008-09.
- c) In accordance with the order passed by the Commission dated October 27, 2008 in Case No. 17 of 2007, the lease rent of 27 plants to be paid by MSPGCL to WRD has been revised with effect from FY 2009-10. As per this order, due to over-recovery of lease amounts for Veer HPS by WRD, GoM in previous years, MSPGCL is entitled to receive the amortised lease rent amounts in respect of Veer HPS from WRD, GoM. It has also been stated by the Petitioners that this amount shall be adjusted in the lease rent of Hydro Power stations under lease with MSPGCL. The details given there are as follows:

FY	2009-10	2010-11	2011-12
Over-recovered lease rent (Rs. Crore)	6.29	5.93	5.57

- d) The Petitioners have stated the viability of the transfer of Veer HPS under different heads inter alia **Proposed irrigation works, Need and role of private participation, Impact of transfer on MSPGCL, Impact of transfer on government and Proposed mechanism.**

3. The Commission vide its Notice dated September 22, 2009 fixed a hearing in the matter on 7.10.2009.



4. Subsequently, on 5.10.2009, Shri Subhash Dhansingh Rathod, General Secretary, Subordinate Engineer Association, MSEB, filed an intervention application under affidavit before the Commission.

5. At the hearing, Shri. Y.C. Shelke, Chief Engineer, WRD, Shri. V.R. Sonar, Ex. Engineer, appeared for WRD. Shri. Waghmare, Executive Director, MSPGCL, Shri. C.S. Swami, CGM (H), MSPGCL appeared for MSPGCL. When the Commission enquired of the lease deeds of all hydro stations, Shri. Shelke submitted that separate lease deeds are not there for the 27 hydroelectric projects. The Commission enquired as to what the petitioners have put before the State Govt as their proposal. The Petitioners submitted that so far as R&M was concerned they are proposing that those projects which have completed their useful life of 35 years would be transferred to the State Govt for further R&M work and the R&M would be carried out by the State Govt's Electrical Wing. The WRD will run those projects after expiry of 35 years of life. The Commission enquired as to why the petitioners have approached the Commission with the present petition. Shri. Y.C. Shelke submitted that the Commission may advice the State Govt., in relation to the prayers as made in the petition. The Commission observed that as regards the prayer made for adjustment of the amount of over recovery of lease rent towards Veer HPS in the lease rent for balance hydro power stations under lease with MSPGCL, the Petitioners have neither submitted on affidavit any formula, nor the rate or the form in which the adjustment is sought for. WRD with whom the excess lease rent is said to be lying has not filed any reply. There is also no back up certificate from auditor or chartered accountant regarding the veracity of the excess amounts said to be paid by MSPGCL or received by WRD.

6. The intervener objected to the transfer of power plant as the lease period was already getting expired and the capital cost had also been exhausted. He submitted that the power plant cannot be a property of the State Govt., any more, as it is the property of the public. He submitted that if there is any proposal to transfer the same from MSPGCL to Water Resources Department there must be a public hearing. He also submitted that WRD should have formulated the DPR and sought approval of the CEA under Section 8 of the Electricity Act, 2003. It was enquired from the petitioners as to what was the capital expenditure threshold fixed by the Central Government which requires a hydro-generating station to prepare and submit the scheme to the CEA for its concurrence. The intervener also objected to the proposal of privatization as the same would tend to increase the tariffs of the HPS. He also submitted that MSPGCL had earlier written to the State Govt., that renovation and maintenance of the Veer HPS was not necessary for a further 15 to 20 years. He submitted that MSPGCL has not disclosed that they had sent the said letter to the Energy Department wherein MSPGCL had also stated that it is not so necessary to transfer because after transferring the HPS to WRD for renovation and maintenance the generation is not going to increase and would rather reduce. He also referred to one Central Government letter dated 26.4.2006 wherein it has been stipulated that no sooner a power station goes in for renovation and maintenance it would be precluded from privatization, i.e., under the scheme of maintenance and renovation, privatization is prohibited. So, according to the intervener, the present petition should be dismissed because it has several lacunaes. He submitted that



MSPGCL has not followed any conditions of the State Government or the Central Government and have not taken cognizance of the aforesaid letter. On hearing the above, the Commission directed both the petitioners to submit on affidavit their replies to the allegations as made above.

7. Thereafter, intervention applications were received by the Commission from Shri. Annasahib Ramchandra Desai, Convenor Kriti Samiti on 12.10.2009 and Shri N. Ponrathnam, Vel Induction Hardenings on 23.10.2009, but could not be admitted since these were filed after the hearing held on 7.10.2009.

8. No replies have been filed by the petitioners as directed during the hearing.

9. Having heard the petitioners and intervenor, the Commission is of the view that Section 10(3) as relied upon by the Petitioners cannot be said to be applicable to this case as the said section provides that “(3) Every generating company shall - (a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;”. This section, *prima facie*, has no applicability to the Petition as filed. As regards Section 86(2)(iv) relied upon by the Petitioners, the said Section provides that “(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-..... (iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government.” As 35 years lease period which commenced in 1976-77 is to end in 2011-12, Veer HPS is in any case to revert to WRD, GoM. No advise is required to be given by the Commission to the State Government under Section 86 (2)(iv) for such transfer by MSPGCL which in any case is to happen as the lease period comes to an end in 2011 – 2012 as submitted by the Petitioners themselves. The State Govt has also not sought any such advice from the Commission. Prayer (ii) in this regard cannot be granted. Upon such transfer back to the State Govt of Veer HPS, if the State Govt requires this Commission to advise it under Section 86(2)(iv) regarding renovation and modernization of the same through private participation, then such a matter would be referred to this Commission by the State Govt. The Commission therefore finds that prayer (iii) is pre-mature, and accordingly cannot be granted. As regards prayer (iv) seeking an advise to be given by the Commission to the State Govt under Section 86(2)(iv) to adjust the amount of over recovery of lease rent towards Veer HPS in the lease rent for balance hydro power stations under lease with MSPGCL, the same cannot be granted in the present proceedings. This primarily is a matter to be taken up by MSPGCL with the State Govt. This is not within the scope of Section 86(2)(iv). In any case, adjustment of amount of over recovery of lease rent towards Veer HPS in the lease rent for balance hydro power stations under lease with MSPGCL, cannot be achieved by asking the Commission to advise the State Govt to make the foregoing adjustments. Accordingly, the Commission is of the view that the present proceedings is not the proper and correct



proceedings to seek adjustment of amount of over recovery of lease rent towards Veer HPS in the lease rent for balance hydro power stations under lease with MSPGCL.

10. In the circumstances, the present petition stands dismissed as not maintainable and consequently prayer (i) is rejected.

11. Before parting, the Commission notes with anguish that this petition has been filed with no application of mind and is an attempt to achieve goals by preempting actions through the Commission which are otherwise matters between both the Petitioners. During the hearing, the Commission had warned that all proceedings before the Commission are judicial proceedings within the meaning of section 193 of the Indian Penal Code and whoever intentionally gives false evidence at any stage of such judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, is punishable with imprisonment and fine as stated in the said section. Accordingly, in future, if any such instance is noticed by the Commission including the affidavits filed before it by any party, the Commission will not desist from taking stringent measures as may be permissible in law.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC