

April 2026

JSA successfully represents Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited to secure payment of entire tariff from Madhya Pradesh Power Management Company Limited, resolving the long pending power and water dispute between the two states based on the agreements reached between the States of Uttar Pradesh and Madhya Pradesh

The Appellate Tribunal for Electricity (“**Hon’ble Tribunal**”), in its recent judgment, *Uttar Pradesh Jal Vidyut Nigam Limited. vs. Central Electricity Regulatory Commission and Ors.*¹, has held that the Ld. Central Electricity Regulatory Commission (“**Ld. CERC**”) erred in directing Madhya Pradesh Power Management Company Limited (“**MPPMCL**”) to pay only Operation and Maintenance Charges (“**O&M Charges**”) to Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (“**UPRVUNL**”/“**Appellant**”) (Formerly Uttar Pradesh Jal Vidyut Nigam Limited (“**UPJVNL**”)) instead of the entire tariff for the power supplied by UPRVUNL to MPPMCL.

Consequentially, UPRVUNL is entitled to claim the differential amounts i.e., the difference between the tariff which was payable in terms of the Ld. Uttar Pradesh Electricity Regulatory Commission’s (“**Ld. UPERC**”) tariff orders and the O&M Charges actually paid by MPPMCL during the period from April 1, 2008 till March 31, 2014.

UPRVUNL was represented in the appeal by Amit Kapur, Akshat Jain and Shikhar Verma.

Brief facts

1. UPRVUNL is a generating company which *inter-alia* owns and operates the Rihand Hydroelectric Project (“**Rihand HEP**”) having a capacity of 300 (three hundred) Mega Watt (“**MW**”) (6 X 50 MW) and the Matatila HEP (“**Matatila HEP**”) having a capacity of 30.6 (thirty point six) MW (3 X 10.2 MW) (collectively referred to as “**Projects**”).
2. Due to development of the Projects, lands in the adjoining areas in Madhya Pradesh (“**MP**”) were sub-merged. Consequently, the Central Zonal Council decided in its 6th meeting that 15% of power from Rihand HEP and 33% of power from Matatila HEP would be supplied to Madhya Pradesh Electricity Board (“**MPEB**”) (unbundled into *inter alia* MPPMCL).
3. The cost price of the aforesaid power supply was to be worked out by a Committee headed by Mr. M.R. Sachdeva (“**Sachdeva Committee**”), after hearing the representatives of Uttar Pradesh (“**UP**”) and MP and would be subject to review after 10 (ten) years.

¹ Appeal No. 309 of 2018 (decided on April 13, 2026)

4. In its meetings held on September 2, 1964 and September 3, 1964, the Sachdeva Committee decided that power supply from Rihand HEP to MPEB would be at the rate of 3.5 p/kWh (three point five per kilowatt-hour) (cost of generation plus 5% thereof) and from Matatila HEP, at the rate of 6.5 p/kWh (six point five per kilowatt-hour) (cost of generation plus 5% thereof).
5. The procedural history of the dispute between the parties has been provided hereunder:
 - a) by way of order dated July 27, 2007, Ld. UPERC determined tariff for the Projects for Financial Year ("FY") 2000-01;
 - b) on August 31, 2007, MPPMCL filed Petition No. 107 of 2007 seeking directions to the Government of UP ("GoUP"), Uttar Pradesh Power Corporation Limited ("UPPCL") and UPRVUNL to release MP's legitimate share of power from the Projects and also for payment of INR 365.704 crore (Indian Rupees three hundred and sixty five point seven zero four crore) up to September 2006;
 - c) on February 27, 2008, Ld. CERC passed an interim order in petition no. 107 of 2007 and held that it has the jurisdiction to adjudicate the matter in terms of Sections 79(1)(c) and 79(1)(f) of the Electricity Act, 2003;
 - d) on March 24, 2008, UPPCL filed appeal No. 35 of 2008 before the Hon'ble Tribunal challenging Ld. CERC's order dated February 27, 2008. The said order was upheld by the Hon'ble Tribunal by way of its Judgment dated January 9, 2009;
 - e) meanwhile, on November 12, 2008, Ld. CERC disposed of Petition No. 107 of 2007 and held that as the matter involved inter-state transmission of electricity, Ld. UPERC has no jurisdiction to adjudicate upon disputes involving utilities outside UP;
 - f) Ld. CERC's order dated November 12, 2008 was challenged by UPPCL before the Hon'ble Tribunal by way of appeal No. 151 of 2008;
 - g) on January 9, 2009, Hon'ble Tribunal dismissed the earlier appeal No. 35 of 2008 and held that Ld. CERC has the jurisdiction to adjudicate upon the disputes between the parties;
 - h) on July 21, 2011, appeal No. 151 of 2008 was also dismissed by the Hon'ble Tribunal, affirming Ld. CERC's findings in order dated November 12, 2008;
 - i) on November 30, 2011, UPPCL filed civil appeal Nos. 3377-3378 of 2012 before the Hon'ble Supreme Court of India challenging Hon'ble Tribunal's orders dated January 9, 2009 and July 21, 2011, respectively; and
 - j) on July 6, 2016, MPPMCL approached Ld. CERC by way of Petition No. 128/MP/2016, seeking directions to UPRVUNL for filing Aggregate Revenue Requirement ("ARR") and Petition for determination of O&M Charges with respect to the Projects with effect from April 1, 2008.
6. On October 12, 2017, Ld. CERC decided Petition No. 128/MP/2016 *inter-alia*, directing UPRVUNL to file a Petition for determination of tariff for the Projects for the period from FY 2014-15 to FY 2018-19 in terms of CERC Tariff Regulations, 2014.
7. On November 29, 2017, MPPMCL filed Review Petition No. 1/RP/2018 seeking rectification of error in order dated October 12, 2017 and seeking a direction to UPRVUNL to file tariff petition for the Projects for the period from April 1, 2008, instead of from FY 2014-15.
8. On July 11, 2018, Ld. CERC disposed of Review Petition No. 1/RP/2018 and held that it had made a conscious decision not to reopen the tariff already determined by Ld. UPERC from FY 2009 to FY 2014. Further, Ld. CERC modified its order dated October 12, 2017, to direct MPPMCL to pay only O&M Charges to UPRVUNL instead of the entire tariff determined by Ld. UPERC for the period from April 1, 2008 till March 31, 2014.
9. On August 16, 2018, UPJVNL challenged Ld. CERC's orders dated July 11, 2018 in Review Petition No. 1/RP/2018 and October 12, 2017 in Petition No. 128/MP/2016 by way of appeal no. 309 of 2018.

Issues

1. Could Ld. CERC issue directions to MPPMCL to pay O&M Charges for the period April 1, 2008 to March 31, 2014, when it had noted that Ld. UPERC had already determined tariff for the same period?
2. Had Ld. CERC erred in modifying the tariff determined by Ld. UPERC as was recognised and accepted as basis for tariff payable by MPEB to UPRVUNL?
3. Could Ld. CERC have directed payment of O&M Charges only in context of the minutes of meetings of the Sachdeva Committee and the decisions of the State Governments?

Findings and analysis

1. By way of Petition No. 128/MP/2016, MPPMCL had sought directions to UPRVUNL to file Petition and ARR for determination of O&M Charges for its generating stations in Rihand and Matatila for the period from April 1, 2008.
2. However, since by that date, the tariff petitions filed by UPRVUNL before Ld. UPERC for the period from FY 2000-01 till FY 2013-14 had already been disposed of, Ld. CERC did not disturb the said tariff orders and accordingly directed UPRVUNL to file Petitions for determination of tariff of the Projects for the period from FY 2014-15 to FY 2018-19 in terms of CERC Tariff Regulations, 2014.
3. Review of order dated October 12, 2017 was sought by MPPMCL only to the extent that it did not direct UPRVUNL to file Tariff petitions for the Projects for the period from April 1, 2008. On this count, Ld. CERC did not find any error on the face of the record.
4. While rejecting MPPMCL's prayer for review of order dated October 12, 2017, Ld. CERC found that a prayer made by MPPMCL in Petition No. 128/MP/2016 had remained to be addressed in order dated October 12, 2017 and accordingly modified the said order.
5. Modification done to its earlier order dated October 12, 2017, in review order dated July 11, 2018 was unwarranted and uncalled for, besides being perverse.
6. While seeking review of order dated October 12, 2017, MPPMCL had not prayed or contended that any of its prayers in the original Petition had remained unanswered.
7. It is axiomatic that power to review a judgment or order under Section 114 and Order XLVII of the Code of Civil Procedure, 1908 ("**CPC**") could be exercised by a court of judicial authority only on an application by any of the parties to the *lis*. Such power cannot be exercised *suo motu*.
8. None of the parties had sought review of order dated October 12, 2017 on the ground that the said order does not address one of the prayers in the original Petition. Therefore, when MPPMCL felt satisfied with order dated October 12, 2017 on this count, there was no cause or occasion for Ld. CERC to pinpoint any such error and proceed to correct it.
9. Ld. CERC did not correct any clerical or arithmetic mistake in order dated October 12, 2017, but has modified the said order to curtail UPRVUNL's entitlement to the entire tariff for the Projects. Such a direction could not have been passed without hearing UPRVUNL. By doing so, Ld. CERC has violated the fundamental principle of natural justice namely '*Audi Alteram Partem*' i.e., no person should be condemned unheard.
10. When Ld. CERC had accepted the tariff orders passed by Ld. UPERC and took a conscious decision not to reopen the tariff determined by Ld. UPERC for the said period, there was no occasion for it to direct MPPMCL in review order dated July 11, 2018 to make payment of O&M Charges only for the period from April 1, 2008 to March 31, 2014.
11. Ld. CERC might have held that Ld. UPERC did not have jurisdiction to determine the tariff for the Projects and should have determined the tariff afresh for the entire period commencing from FY 2000-01. Ld. CERC chose not

to re-open the tariff determined by Ld. UPERC till FY 2013-14, thereby holding that the tariff determination till such period by Ld. UPERC valid.

12. However, in the same breath, Ld. CERC ought not have directed MPPMCL to pay O&M Charges only for the period from April 1, 2008 till March 31, 2014. Ld. CERC was not sitting in appeal on the tariff orders passed by Ld. UPERC and thus had no power or jurisdiction to modify the said orders.
13. The Hon'ble Tribunal set aside the impugned order dated July 11, 2018 to the extent that it modifies Ld. CERC's order dated October 12, 2017 by way of paragraph 12, while leaving the remaining portion of the impugned order undisturbed.

Conclusion

1. The judgment passed by the Hon'ble Tribunal affirms that:
 - a) the power to review a judgment or an order under Section 114 and Order XLVII of the CPC cannot be exercised *suo motu* and the same can be exercised only pursuant to an application by one of the parties to the *lis*;
 - b) while reviewing order dated October 12, 2017, Ld. CERC did not correct any clerical/arithmetic error, but it had gone beyond the scope of the review and modified the said order to curtail UPRVUNL's entitlement to the entire tariff for the power supplied from the Projects. Resultantly, Ld. CERC had restricted the amounts payable by MPPMCL to UPRVUNL to only O&M Charges, which is one of the components of tariff; and
 - c) Ld. CERC's directions in terms of which MPPMCL was required to only pay O&M Charges rather than the entire tariff to UPRVUNL for the period from April 1, 2008 till March 31, 2014, have been set aside as Ld. CERC was not sitting in appeal on the tariff orders passed by Ld. UPERC. Consequently, Ld. CERC does not have any power or jurisdiction to modify Ld. UPERC's orders.
2. Consequentially, UPRVUNL is entitled to claim the differential amounts i.e., the difference between the tariff which was payable in terms of Ld. UPERC's tariff orders and the O&M Charges actually paid by MPPMCL during the period from April 1, 2008 till March 31, 2014, which was wrongfully curtailed by Ld. CERC.

Electricity and Power Practice

JSA is the leading national practice in the power sector – conventional and non-conventional. JSA provides legal services at all stages of the value chain in the sector - across the spectrum of contractual, commercial, policy, regulatory and legal issues. We represent clients in all segments: generation, transmission, distribution and trading. JSA serves its clients by transaction-specific integrated teams across various locations and practice areas (Banking & Finance, Mergers & Acquisition and Private Equity, Projects and project related contracting, Dispute Resolution, Taxation, Regulatory proceedings and Policy advisory).

JSA has been regularly engaged in; (a) providing policy advice to Governments of Bangladesh and Maldives, as also the Government of India besides various Indian states. Also, JSA partners have presented expert testimony to the Parliamentary Standing Committees and the Forum of Regulators on challenges faced by the power sector and proposed legislative and policy changes, development financial institutions like the World Bank, the Asian Development Bank, DfID, USAID regulatory authorities and industry bodies; (b) advising project developers, investors, suppliers and contractors on commercial / transactional issues and all aspects of licensing, market structures, competition, performance standards and tariffs; (c) advising financial institutions and borrowers in relation to financing transactions; (d) Advising clients on sustainable development issues like clean development mechanism and environmental compliances; and (e) specialised dispute resolution.

This Prism has been prepared by the following counsel who also represented UPRVUNL in the appeal:



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40 Ranked Lawyers



8 Ranked Practices,
22 Ranked Lawyers



15 Practices and
20 Ranked Lawyers



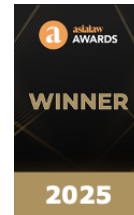
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