
**Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal No. 120 of 2013

Dated: 7th December, 2015

**PRESENT: HON'BLE MRS. JUSTICE RANJANA P.DESAI, CHAIRPERSON
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF:

NTPC Limited
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003

.....Appellant

VERSUS

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
2. West Bengal State Electricity Distribution Company
Limited
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City
Kolkata – 700 091
3. Bihar State Power Holding Company Limited
(erstwhile Bihar State Electricity Board)
Vidyut Bhawan, Bailey Road
Patna – 800 001
4. Jharkhand State Electricity Board,
Engineering Building,
HEC, Dhurwa, Ranchi – 834004

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5. GRIDCO Limited
24, Janpath,
Bhubaneswar – 751007
 6. Damodar Valley Corporation
DVC Towers, VIP Road
Kolkata-700054
 7. Power Department
Govt. of Sikkim, Kazi Road,
Gangtok, Sikkim-737101
 8. Tamilnadu Generation and Distribution Company
Limited , NPKRP Maaligail,
144, Anna Salai, Chennai – 600002
 9. Electricity Department
Union Territory of Puducherry
58, Subhash Chandra Bose Salai
Puducherry-605001
 10. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001
 11. Power Development Department (J&K)
Govt. of J&K Secretariat,
Srinagar-190 009
 12. Power Department
Union Territory of Chandigarh
Addl. Office Building
Sector-9D, Chandigarh- 160 009
 13. Madhya Pradesh Power Trading Corporation Limited
Shakti Bhawan, Vidyut Nagar
Jabalpur – 482008
 14. Maharashtra State Electricity Distribution Company
Limited, 'Prakashgad', Bandra (East),
Mumbai-400051

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15. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course, Baroda – 390007
 16. Electricity Department
Administration of Daman & Diu(DD)
Daman-396 210
 17. Electricity Department
Administration of Dadra and Nagar Haveli (DNH)
Silvassa, via VAPI-396 230
 18. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019
 19. BSES Yamuna Power Limited
Shakti Kiran Bldg., Karkardooma
Delhi-110092
 20. Tata Power Delhi Distribution Ltd
(erstwhile North Delhi Power Limited)
Grid Substation Hudson Road.
Hudson Road Kingsway Camp
New Delhi-110009

....Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran

Counsel for the Respondent(s) : Mr. Pradeep Misra for R.10
Mr. R. B Sharma for R.4,5 & 18

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal has been preferred by the NTPC under Section 111 of the Electricity Act 2003 against the Order dated 15.04.2013 passed by the Central Electricity Regulatory Commission (hereinafter called the 'Central Commission') in Review Petition No. 23 of 2012 in Petition No. 228 of 2009 relating to determination of generation tariff for Talcher Super Thermal Power Station, Stage-1 (1000 MW) for the period 01.04.2009 to 31.03.2014. The Appellant NTPC is aggrieved by the impugned order dated 15.04.2013 on the following aspects:
 - a) Disallowance of capital expenditures of Rs. 1094 lakhs on procurement of Wagons during 2009-14 on the ground that this expenditure is not covered under the purview of Regulation 9(2) of Tariff Regulations 2009.
 - b) Disallowance of compensation allowance for calculation of maintenance spare and Operation and Maintenance expenses for calculating Interest on Working Capital.

2. Facts of the case

- A.** The Appellant, NTPC Limited (hereinafter '**NTPC**') is a Government of India Undertaking and a Company incorporated under the provisions of the Companies Act, 1956 with registered office at NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi – 110003.
- B.** NTPC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. NTPC being a generating company largely owned and controlled by the Central Government is covered by clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The generation and sale of power by NTPC is regulated under the provisions of the Electricity Act, 2003 by the Central Commission, the Respondent No. 1 herein.
- C.** One of the generating stations of NTPC is the Talcher Super Thermal Power Station, Stage-I (hereinafter called the "**Talcher Station**"). The electricity generated from the Talcher Station is supplied to Respondents No. 2 to 20 herein.
- D.** The Talcher Station with the total capacity of 1000 MW comprises of two units of 500 MW each. The date of commercial operation of the different units of the generating stations are as under:

Unit	COD
Unit I	01.01.1997
Unit II	01.07.1997

E. For the period from 1.4.2004 to 31.3.2009, the Central Commission framed the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter called the **Tariff Regulations, 2004**) inter-alia, providing for the norms and parameters applicable for the thermal generating stations for which tariff was to be determined by the Central Commission under Section 62(1)(a) read with Section 79(1)(a) and (b) of the Electricity Act, 2003 and proceeded to determine the tariff for the generating stations of NTPC for the period from 1.4.2004 to 31.3.2009.

F. The Central Commission determined the tariff for the Talcher Station for the period from 01.04.2004 to 31.03.2009 by order dated 09.05.2006 in Petition No. 144 of 2004.

G. For the tariff period from 1.4.2009 to 31.3.20014, the Central Commission framed the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter called the **Tariff Regulations, 2009**) inter-alia, providing for the norms and

parameters for the determination of tariff of the thermal generating stations.

H. In terms of the Tariff Regulations, 2009, on 07.10.2009, NTPC filed Petition No. 228 of 2009 before the Central Commission for determination of tariff of the Talcher Station for the period 2009-14.

I. During the pendency of Petition No. 228 of 2009, vide order dated 20.01.2011 in Petition No. 195 of 2009 the Central Commission revised the annual fixed charges of the Talcher Station after considering the additional capital expenditure incurred during the period 2004-09.

J. Subsequently the Central Commission vide order dated 23.06.2011 in Petition No. 195 of 2009 again revised the annual fixed charges for the Talcher Station for the period 2004-09, taking in to consideration the Central Commission's order dated 01.06.2011 in Review Petition No. 1 of 2011 in Petition No. 195 of 2009 which was filed for the review of the order dated 20.01.2011, and the direction contained in the judgment of this Hon'ble Tribunal dated 13.06.2007 in Appeal No. 139 to 142 etc of 2006 and 10, 11, 23 of 2007, subject to the final outcome of Civil Appeals pending for consideration before the Hon'ble Supreme Court against the order dated 13.06.2007.

K. In terms of the direction of the Central Commission in order dated 29.06.2010 in Petition No. 245 of 2009, NTPC by affidavit dated 15.03.2011 filed amended petition (in Petition No. 228 of 2009) taking in to consideration the revised figures as per the Central Commission's order dated 20.01.2011 in Petition No. 195 of 2009.

L. In the above petition, the Central Commission from time to time sought for various information, details, clarifications etc. from NTPC including on the aspects of admissibility of additional capitalization under the Tariff Regulations, 2009. In response to the above, NTPC submitted the requisite details on the issue of admissibility of Additional Capitalisation under different heads.

M. By order dated 15.06.2012, the Central Commission decided the Petition No. 228 of 2009 and determined the Tariff of the Talcher Station for the period of 2009-14. The Central Commission has not fully allowed the claim of NTPC namely; capital expenditure of Rs. 1091.0 lakh on 24 nos. of wagons during 2009-14 but has however excluded the de-capitalisation of 15 wagons on the basis that capitalisation of 24 wagons are not allowed as prayed by NTPC. The Central Commission has also not included the compensatory allowance expenditure forming part of the Regulation 19 (e) for calculation of maintenance spares and one month O&M expenses for IWC.

N. Aggrieved by the Order dated 15.04.2013 read with the Order dated 15.06.2012 passed by the Central Commission, NTPC is filing the present appeal.

3. We have heard Mr. M.G. Ramachandran, learned counsel for the Appellant and Mr. Pradeep Misra and Mr. R.B. Sharma, learned counsel for the Respondents and after going through the written submissions, the following issues arise for our consideration.

A) *Whether the Central Commission has legally disallowed the additional capital expenditure on procurement of wagons during 2009-14 on the ground that this expenditure is not covered under the provision of Regulation 9(2) of Tariff Regulations, 2009 ?*

B) *Whether the Central Commission erred in disallowance for calculation of maintenance of spares and one month O&M expenses for calculating interest on working capital?*

4. ISSUE A:

The following are the submissions of the learned counsel for the Appellant on this issue:

i) That the Central Commission disallowed the expenditure on procurement of wagons on the grounds that there is

no provision under Regulation 9(2) of Tariff Regulations, 2009 to consider the expenditure for procurement of wagons against the replacement of old wagons on the generating stations of the Appellant is only entitled for compensation allowance of Tariff Regulations, 2009 in terms of Regulations 19(e).

ii) That the expenditure and procurement of wagons of substantial in nature and are covered under compensation allowance as provided under Regulation 19(E). Regulation 19(E) under the head O&M expenses is clear that the regulation dealing with the compensation allowance is in the context of minor assets and like and it does not deal with the additional capitalization of substantial nature like expenditure on procurement of wagons. Wagons are mechanical equipments used for transporting coal and they are likely to be replaced from time to time.

iii) That the Appellant has claimed that the Central Commission has disallowed the capital expenditure through procurement of 24 no. Wagons amounting to Rs.1091 lakhs used for transporting coal from the mine

head to the power station. The alleged claim of the appellant was rejected by the Commission as the same is not covered under Regulation 9(2) of the Tariff Regulations 2009.

5. Per contra, the following are the submissions made by learned counsel for Respondent Nos. 4, 5 & 18.

i) That the Appellant has claimed that the Central Commission has disallowed the capital expenditure through procurement of 24 no. Wagons amounting to Rs.1091 lakhs used for transporting coal from the mine head to the power station. The alleged claim of the appellant was rejected by the Commission as the same is not covered under Regulation 9(2) of the Tariff Regulations 2009.

ii) That the Appellant failed to mention the relevant regulation under which claim for wagons can be made. It was apparent to the Appellant that there is no provision for additional capital expenditure for procurement of new wagons and the Appellant was expected to meet the expenditure of this nature from the compensation allowance admissible to the generating station under

Regulation 19 (e) of the Tariff Regulations, 2009. Further, the contention of the Appellant that these wagons are required to be replaced from time to time is also flawed as these wagons needed proper maintenance and not the replacement even on the slightest pretext just because the replacement expenditure is required to be borne by the beneficiaries through tariff. Maintaining the generating station in proper condition is the essence of the tariff regime applicable during 2009-14 tariff period.

iii) That the additional capitalization can be allowed only if the same falls under Regulation 9 of the Tariff Regulations, 2009. This principle has been validated by this Tribunal's Judgment dated 27.01.2014 in Appeal No. 44 of 2012, the relevant portion is quoted below:

“Summary of our findings :

1) The additional capitalization has to be allowed only according to the Regulation 9 of the 2009 Tariff Regulations which will apply to both existing and new power projects.”

6. Our consideration and conclusions on this issue are as follows:

- i) We have gone through impugned order of the Central Commission regarding additional capitalization of wagons disallowed by the Central Commission. The relevant para of the order dated 15.6.2012 in Petition No. 228 of 2009 rejecting the claim is quoted below:-

“The petitioner has claimed expenditure of 1091.00 lakh during 2011-12 towards the procurement of 24 nos. Of Wagons as replacement against the de-capitalization of 23 nos. Of damaged/condemned wagons viz, 1 No. In which capitalization of the said expenditure for procurement of wagons, has not been furnished by the petitioner. The respondents, GRIDCO, JSEB and BSEB in their replies while pointing out that the petitioner has not been able to identify the relevant regulation under which the expenditure can be allowed has submitted that additional capitalization is permissible under Regulation 9 and 10 of the 2009 Tariff Regulations and once it fulfils the conditions of Regulation 7 of the 2009 Tariff Regulations. Thus, it has been submitted that the expenditure for 1091.00 lakh may be rejected. In response, the petitioner has submitted that 24 wagons are being procured against damaged / condemned wagons, part of which was de-capitalized in books and also for tariff purposes during 2004-09. It has also submitted that against the de-capitalization during 2009-10, capitalization has been proposed during 2011-12 as replacement only. It has further stated that these wagons are required to maintain the coal requirement for the generating station and the Commission may

allow the same. We have considered the submissions of the parties. There is no provision under Regulation 9(2) of the 2009 Tariff Regulations to consider the expenditure claimed by the petitioner for procurement of wagons against replacement of old wagons. The generating station is entitled for compensation allowance in terms of Regulations 19(e) of the 2009 Tariff Regulations to meet the expenses on new assets of capital nature can be met from the compensation allowance admissible to the generating station. Hence, the claim of the petitioner under this head is not allowed. Since, the additional capital expenditure for procurement of new wagons have not been considered, the corresponding de-capitalization has also been ignored”.

- ii)** Let us examine the relevant Regulations of the Central Commission Tariff Regulations, 2009.

“Regulation 9 (2) (vii):

Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt systems arising due to non materialisation of fuel coal linkage in respect of the thermal generating station as result of circumstances not within the control of the generating station.

Regulation 19 (e):

In case of coal-based or lignite-fired thermal generating station a separate compensation allowance unit-wise shall be admissible to meet expenses on new assets of capital nature including in the nature of minor assets, in the following manner from the year following the year of completion of 10, 15 or 20 years of useful life :

Year of Operation	Compensation Allowance (Rs.Lakh/MW/ Year)
0-10	Nil
11-15	0.15
16-20	0.35
21-25	0.65”

After perusing these regulations, we are of the opinion that reasoning of the Central Commission on this issue is correct.

- iii)** Further, this Tribunal in Judgment in Appeal No. 173 of 2013 dated 08.05.2014 on this issue held as under:

“The learned counsel the respondents having taken us through Tariff Regulations, have vehemently pointed out that as per the Appellant, the said claim has been made under Regulation 9 (2) (vii) of the tariff regulations 2009 (2nd Amendment) but this Regulation provides for modification required fuel receipt system like wagon tippler at the generating station arising due to non-materialization of full coal linkage in respect of thermal generating station and not the coal transport system containing the rolling stock/wagons.

After giving serious consideration to the rival submissions and having a look at the relevant part of the impugned order, we do not find any force in the submissions made by the appellant. We agree to all the findings recorded on this issue in the impugned order and there is no reason to deviate there-from. This issue is also decided against the appellant.

This issue is decided against the appellant.”

iv) This Tribunal in Judgment in Appeal No. 44 of 2012 dated 27.01.2014 held as under :

“50. Summary of our findings :

1) The additional capitalization has to be allowed only according to the Regulation 9 of the 2009 Tariff Regulations which will apply to both existing and new power projects.”

7. After going through the relevant tariff Regulations of the Central Commission and Judgments of this Tribunal, we find this issue is similar to the issue discussed in the above Judgment of this Tribunal. Further, the expenditure on capitalization of wagons has to be met under compensatory Regulation 19 (e) of the tariff Regulations 2009 of the Central Commission. In view of the above, the issue is decided against the Appellant and the order of the Central Commission is affirmed.

8. ISSUE ‘B’

Admittedly, Issue ‘B’ is covered against the Appellant by this Tribunal’s Judgment in Appeal No. 44 of 2012 dated 27.01.2014. The relevant portion of the Judgment is quoted below :

“47. According to NTPC, while calculating the interest on working capital, one month O & M expenses and maintenance spares @ 20% of O & M cost inclusive of the compensation allowance for the period 2011-12 to 2013-14 were claimed by them but the Central Commission has wrongly excluded the amount pertaining to the compensation allowance for calculation of one month O & M expenses and maintenance spares.

48. We find that Regulation 18 provides that the working capital shall cover inter alia, maintenance spares @ 20% of O&M expenses specified in regulation 19 and operation & maintenance expenses for one month. Sub-clause (a) of Regulation 19 specifies the normative O&M expenses for coal based generating stations given in terms of Rs. Lakh/MW. The norms for O&M expenses are not based on a percentage of the capital cost. Sub-clause (b) of Regulation 19 provides for O&M expenses allowed for certain old thermal power projects of NTPC and DVC. The compensation allowance provided in Regulation 19(e) is to meet the expenses on new assets of capital nature. Therefore, we find no merit in the contention of NTPC for inclusion of compensation allowance in normative O&M expenses for computing the working capital requirement. Thus, we do not find any infirmity in the impugned order of the Central Commission in not including the compensation allowance in the O&M expenses while computing the working capital requirement. Accordingly, this issue is decided against the Appellant.”

Accordingly, we decided this issue against the Appellant.

ORDER

- 9.** Accordingly, we do not find any irregularity or perversity with the impugned Order. We uphold the same view and reasons recorded in the impugned Order.

Consequently, both the issues are decided against the Appellant and Appeal merits dismissal without order as to costs.

10. Pronounced in the Open Court on this day of 7th December, 2015.

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

Dated: 7th December 2015

✓REPORTABLE/NON-REPORTABLE