

In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)

Appeal Nos.55 of 2013, 77 of 2013, 194 of 2013, 259 of 2012, 63 of 2013,143,
of 2013, 158 of 2013&43 of 2014

Dated: 24th March, 2015

Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Justice Surendra Kumar, Judicial Member

In the matter of:

Appeal No. 55 of 2013

BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi - 110092.

... Appellant

versus

1. Central Electricity Regulatory Commission,
Scope Complex, Lodhi Road,
New Delhi.
2. National Thermal Power Corporation Ltd.,
NTPC Bhawan,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.
3. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,
14, Ashok Marg,
Lucknow-226001.
(Uttar Pradesh)

4. North Delhi Power Limited,
Grid Sub-station, Hudson Lines,
Kingsway Camp,
Delhi-110019.

5. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.

6. New Delhi Municipal Council,
Palika Kendra,
Sansad Marg,
New Delhi-110001.

..... Respondents

Counsel for the Appellant(s) : Mr. Aashin Gupta,
Mr. Paresh B. Lal &
Mr. Dushyant Manocha

Counsel for the Respondent : Mr. M.G. Ramachandran &
Mr. Anand K. Ganesan for R-2
Mr. Pradeep Misra for R-3
Mr. Alok Shankar
Mr. R.B. Sharma for R-5
Mr. Manoj Kumar Sharma
Mr. Daleep Kumar Dhayani &
Mr. Suraj Singh for UPCL

Appeal No. 77 of 2013

Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lane, Kingsway Camp,
North Delhi-110009.

....

Appellant

Versus

1. NTPC Limited,
NTPC Bhawan,
Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003.

2. West Bengal State Electricity Distribution Co. Ltd.,
Vidyut Bhawan, Block-DJ,

Sector-II, Salt Lake City,
Kolkata
Pin-700091.
(West Bengal)

3. Bihar State Electricity Board,
Engineering Bhawan,
Bailey Road,
Patna
Pin-800021.
(Bihar)
4. Jharkhand State Electricity Board,
Engineering Bhawan,
Heavy Engineering Corporation,
DHURWA,
Ranchi
Pin-834004.
(Bihar)
5. GRIDCO Ltd.,
24 Janpath,
Bhubaneswar
Pin-751054.
(Orissa)
6. Damodar Valley Corporation,
DVC Towers,
VIP Road,
Kolkata
Pin -700054.
(West Bengal)
7. Power Department,
Govt. of Sikkim,
Kazi Road,
Gangtok (Sikkim)
Pin-737101.
8. TANGEDCO,
NPKRP Maaligail,
800, Anna Salai,
Chennai
(Tamil Nadu)
Pin-600002.
9. Union Territory of Puducherry,
Electricity Department,

58, Subhash Chandra Bose Salai,
Pondicherry
Pin-605001.

10. Uttar Pradesh Power Corpn. Ltd.,
Shakti Bhawan,
14, Ashok Marg,
Lucknow
(U.P.)
Pin-226001.
11. Power Development Department (J & K),
Govt. of J & K,
Secretariat, Srinagar
(J & K)
Pin-190001.
12. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi-110019.
13. BSES Yamuna Power Ltd.,
Shakti Kiran Bldg.,
Karkardooma,
Delhi-110092.
14. Power Department,
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9D,
Chandigarh
Pin-160009.
15. Madhya Pradesh Power Trading Co. Ltd.,
Shakti Bhawan,
Vidyut Nagar,
Vidyut Nagar,
Jabalpur
(Madhya Pradesh)
Pin-482008.
16. Maharashtra State Electricity Distribution Co. Ltd.,
'Prakashgad', Bandra (East),
Mumbai
(Maharashtra)
Pin-400051.

17. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course,
Baroda
(Gujarat)
Pin-390007.
18. Electricity Department,
Administration of Daman & Diu (DD),
Daman.
Pin-396210.
19. Electricity Department,
Administration of Dadra and Nagar Haveli (DNH),
Silvassa
Pin-396230.
20. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building, 36,
Janpath, New Delhi-110001. Respondents

Counsel for the Appellant(s) : Mr. Vaibhav Choudhary
Mr. Alok Shankar
Mr. Gopal Jain

Counsel for the Respondent : Mr. S. Vallinayagam
Mr. Pradeep Misra,
Mr. Daleep Kumar Dhyani &
Mr. Manoj Kumar Sharma for R-15
Mr. R.B. Sharma for R-4,5 & 12
Mr. Aashish Gupta, Mr. Dushyant
Manocha & Mr. Paresh Lal for BSES
Yamuna
Mr. M.G. Ramachandran for R-1
Mr. Manish Singhvi &
Mr. D.K. Devesh for JVVNL

Appeal No. 194 of 2013

BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi-110 0092.

.....

Appellant

Versus

1. Central Electricity Regulatory Commission,
Core 3, 6th Floor, SCOPE Complex, Lodhi Road,
New Delhi-110003.
2. National Thermal Power Corporation Ltd.,
NTPC Bhawan,
Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003.
3. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan,
Block-DJ, Sector II,
Salt Lake City,
Kolkata.
(West Bengal)
Pin-700091.
4. Bihar State Electricity Board,
Vidyut Bhawan,
Bailey Road,
Patna (Bihar)
Pin-800021.
5. Jharkhand State Electricity Board,
Engineering Building,
HEC, Dhurwa, Ranchi
(Bihar)
Pin-834004.
6. GRIDCO Limited,
24, Janpath,
Bhubneshwar
(Orissa)
Pin-751022.
7. Power Department,
Government of Sikkim,
Kazi Road, Gangtok,
Sikkim.
Pin-737101.
8. Madhya Pradesh Power Trading Corporation Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur
(Madhya Pradesh)
Pin-482008.
9. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,

- 14, Ashok Marg,
Lucknow (Uttar Pradesh)
Pin-226001.
10. Gujarat UrjaVikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road, Baroda
(Gujarat)
Pin-390007.
 11. Power Development Department (J& K),
Government of J & K,
New Secretariat,
Srinagar (J & K).
Pin-190001.
 12. Power Department,
Union Territory of Chandigarh,
Addl. Office Building,
Sector 9-D,
Chandigarh
Pin-160009.
 13. Punjab State Power Corporation Limited,
The Mall, Patiala
(Punjab).
Pin-147001.
 14. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Shimla.
(Himachal Pradesh)
Pin-171004.
 15. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhavan,
Jaipur (Rajasthan)
Pin-302005.
 16. Ajmer Vidyut Vitran Nigam Limited,
Through its Managing Director,
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer (Rajasthan)
Pin-305001.
 17. Jodhpur Vidyut Vitran Nigam Limited,
Through its Managing Director,
New Power House,

Industrial Area,
Jodhpur (Rajasthan).
Pin-342003

18. Chhattisgarh State Power Distribution Company,
Dhagania, Raipur
(Chhattisgarh)
Pin-492013.
19. Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan,
Sector VI, Panchkula,
(Haryana)
Pin-134109.
20. North Delhi Power Limited,
Grid Substation, Hudson Lines,
Kingsway Camp,
Delhi-110019.
21. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.
22. Uttrakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun
(Uttrakhand)
Pin-248001.
23. Electricity Department,
Administration of Dadra and Nagar Haveli (DNH),
Silvasa Via Vapi
Pin-396230.
24. Electricity Department,
Administration of Daman & Diu (DD),
Daman
Pin-396210.
25. Maharashtra State Electricity Distribution Company Limited,
'Prakashgard', Bandra (East),
Mumbai
(Maharashtra)
Pin-400051.
26. Damodar Valley Corporation,
DVC Towers,

VIP Road,
Kolkata
(West Bengal)
Pin-700054.

27. Electricity Department,
Union Territory of Puducherry,
58, Subhash Chandra Bose Salai,
Puducherry
Pin-605001.
28. Tamil Nadu Electricity Board,
NPKRP Maaligail,
800, Anna Salai,
Chennai (Tamil Nadu)
Pin-600002.
29. Haryana Power Purchase Centre, (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula,
Haryana.
Pin-134109.
30. Chief Engineer (MES),
Delhi Zone, Head Quarter,
Delhi Cantt.,
New Delhi-110010.

.... Respondents

- Counsel for the Appellant(s) : Mr. Paresh Lal,
Mr. Dushiyant Manocha,
Mr. Aashish Gupta
- Counsel for the Respondent : Mr. S. Vallinayagam-R 28
Mr. Pradeep Misra &
Mr. Manoj Kumar Sharma for R-9
Mr. M.G. Ramachandran
Mr. Vaibhav Choudhary for R-7
Mr. Manish Singhvi &
Mr. D.K. Devesh
Mr. Gopal Jain
Mr. Kaushik Laik &
Mr. Alok Shankar for R-7

Appeal No. 259 of 2012

Punjab State Power Corporation Ltd.,
The Mall, Patiala

(Punjab)
Pin-147001.
Through its Chairman cum
Managing Director.

... Appellant

Versus

1. National Thermal Power Corporation Ltd.,
NTPC Bhawan,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.
2. Uttar Pradesh Power Corporation Limited (UPPCL),
Shakti Bhawan,
14, Ashok Marg,
Lucknow (UP)
Pin-226001
Through its Chairman cum Managing Director.
3. Jaipur Vidyut Vitran Nigam Limited (JVVN),
VidyutBhawan, Janpath, Jaipur
(Rajasthan)
Pin-302005
Through its Managing Director.
4. Ajmer Vidyut Vitran Nigam Limited (AVVN)
Old Power House Hathi Bhata, Jaipur Road,
Ajmer (Rajasthan)
Pin -305001
Through its Managing Director.
5. Jodhpur Vidyut Vitran Nigam Limited (JDVVN),
New Power House, Industrial Area,
Jodhpur (Rajasthan),
Pin-342003.
Through its Managing Director.
6. North Delhi Power Limited,
Grid Substation, Hudson Road,
Kingsway Camp, Delhi-110009
Through its Managing Director.

7. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019
Through its Managing Director
8. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi-110092
Through its Managing Director.
9. Haryana Power Purchase Centre, (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula, (Haryana)
Pin -134109
Through its Managing Director.
10. Himachal Pradesh State Electricity Board (HPSEB),
Kumar Housing Complex Building-II, Vidyut Bhawan,
Shimla (Himachal Pradesh)
Pin-171004
Through its Chairman.
11. Power Development Department (J & K),
Government of J & K,
Civil Secretariat, Jammu
Through its Secretary Power
(J & K)
Pin-180001.
12. Electricity Department (Chandigarh),
Union Territory of Chandigarh, Addl. Office Building,
Sector-9 D, Chandigarh
Through its Chief Engineer (Electrical)
Pin-160009.
13. Uttrakhand Power Corporation Ltd. (UPCL),
Urja Bhawan, Kanwali Road, Dehradun (Uttrakhand)
Pin-248001
Through its Managing Director.
14. Central Electricity Regulatory Commission (CERC),
4th Floor, Chanderlok Building, 36,
Janpath, New Delhi-110001
Through its Secretary. Respondents

Counsel for the Appellant(s) : Mr. Pradeep Misra
Mr. Manoj Kumar Sharma &

Mr. PradeepDahiya.

Counsel for the Respondent : Mr. R.B. Sharma for R-7
Mr. M.G. Ramachandran
Mr. Alok Shankar
Mr. S. Vallinayagam
Mr. Gopal Jain

Appeal No. 63 of 2013

Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lane, Kingsway Camp,
North Delhi-110009.

....

Appellant

Versus

1. NHPC Limited,
NHPC Office Complex,
Sector-33,
Faridabad (Haryana).
Pin-121003
2. The Chairman,
Punjab State Power Corporation Ltd.,
The Mall, Near Kali Badi Mandi,
Patiala (Punjab).
Pin-147001
3. The Chairman,
Haryana Power Utilities,
(UHBVNL & HDBVNL),
Shakti Bhawan, Sector -6,
Panchkula (Haryana)
Pin-134109
4. The Chairman,
Uttar Pradesh Power Corporation Ltd.,
Shakti Bhavan,
14, Ashok Marg,
Lucknow (Uttar Pradesh)
Pin-226001
5. Chief Engineer & Secretary,
Engineering Department., 1st Floor,
UT Secretariat, Sector 9-D,
Chandigarh
Pin-160009.

6. The Chief Executive Officer,
BSES Yamuna Power Ltd.,
Shakti Kiran Building,
Karkardooma, Delhi-110032.
7. The Chairman,
Rajashtan Rajya Vidyut Prasaran Nigam Ltd. (RRVPNL),
Jaipur Vidyut Vitran Nigam Ltd., (JVVNL),
Jodhpur Vidyut Vitran Nigam Ltd. (JDVVNL),

Ajmer Vidyut Vitran Nigam Ltd. (AVVNL),
Vidyut Bhawan, Janpath,
Jyoti Nagar,
Jaipur
Pin-302005
(Rajasthan).
8. The Chief Executive Officer,
BSES Rajadhani Power Ltd.,
BSES Bhawan,
Nehru Place,
New Delhi-110019.
9. Chairman cum Managing Director,
Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun (Uttarakhand).
Pin-248001.
10. The Managing Director,
Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur (Rajasthan)
Pin-302005.
11. The Managing Director,
Ajmer Vidyut Vitaran Nigam Limited,
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer (Rajasthan).
Pin-305001
12. The Managing Director,
Jodhpur Vidyut Vitaran Nigam Ltd.,
New Power House, Industrial Area,
Jodhpur (Rajasthan).
Pin -342003

13. The Principal Secretary,
Power Development Department,
New Secretariat,
Jammu (J& K)
Pin-180001
(J & K).
14. The Chairman,
Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House,
Shimla (Himachal Pradesh)
Pin-171004
15. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building, 36, Janpath,
New Delhi-110 001. Respondent(s)

Counsel for the Appellant(s) : Ms. Smriti Mishra,
Mr. Ankur Sood,
Mr. Aman Avinav,
Mr. Kunal Kaul &
Mr. Alok Shankar

Counsel for the Respondent : Mr. Sachin Datta, Sr. Adv. &
Mr. Vikram Aditya Naran, Adv. for
NHPC
Mr. Aashish Gupta
Mr. Dushiyant Manocha
Mr. Paresh B. Lal
Dr. Manish Singhvi &
Mr. D.K. Devesh for Ajmer, Jaipur &
Jodhpur V.V. N.L.
Mr. Gopal Jain

Appeal No. 143 of 2013

BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi - 110092.

... Appellant

Versus

1. Central Electricity Regulatory Commission,
Scope Complex, Lodhi Road, New Delhi.

2. National Hydroelectric Power Corporation Ltd.,
NHPC Office Complex, Sector-33,
Faridabad-121003 (Haryana).
3. Punjab State Power Corporation Ltd.,
The Mall, Near Kali Badi Mandi,
Patiala (Punjab).
Pin-147001.
Through its Chairman.
4. Haryana Power Utilities,
(UHBVNL & HDBVNL),
Shakti Bhawan, Sector -6,
Panchkula (Haryana)
Pin-134109.
Through its Chairman.
5. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,
14, Ashok Marg,
Lucknow (UP)
Pin-226001.
6. Engineer Department, Chandigarh,
through its Chief Engineer Secretary,
1st Floor, UT Secretariat,
Sector 9-D,
Chandigarh.
Pin-160009.
7. North Delhi Power Limited,
Grid Sub-station, Hudson Lines,
Kingsway Camp,
Delhi-110019.
8. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Jaipur
through its Chairman,
Vidyut Bhavan,
Jaipur (Rajasthan)
Pin-302005.
9. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.
10. Uttrakhand Power Corporation Limited,

through its Chairman cum Managing Director,
Urja Bhawan, Kanwali Road,
Dehradun (Uttarakhand)
Pin-248001.

11. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhavan,
Jaipur (Rajasthan).
Pin-302005.

12. Ajmer Vidyut Vitran Nigam Limited,
Through its Managing Director,
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer (Rajasthan).
Pin-305001.

13. Jodhpur Vidyut Vitran Nigam Limited,
Through its Managing Director,
New Power House,
Industrial Area,
Jodhpur (Rajasthan)
Pin-342003.

14. Power Development Department,
Through its Principal Secretary,
New Secretariat,
Srinagar, Jammu
Pin-190001.
(J & K).

..... Respondent(s)

Counsel for the Appellant(s)

:

Mr. Aashish Gupta
Mr. Dushiyant Manocha
Mr. Paresh B. Lal

Counsel for the Respondent

:

Mr. Sachin Datta, Sr. Adv.,
Mr. VikramAditya Narain &
Ms. Smita Bhargava for NHPC
Dr. Manish Singhvi &
Mr. D.K. Devesh for Ajmer, Jaipur &
Jodhpur V.V. N.L.
Mr. Vaibhav Choudhary for R-7
Mr. M.G. Ramachandran for R-2
Mr. Alok Shankar
Mr. Gopal Jain

Appeal No. 158 of 2013

BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi-110 0092.

.....

Appellant

Versus

1. Central Electricity Regulatory Commission,
Scope Complex, Lodhi Road,
New Delhi.
2. National Hydroelectric Power Corporation Ltd.,
NHPC Office Complex, Sector-33,
Faridabad (Haryana).
Pin-121003.
3. Punjab State Power Corporation Ltd.,
Through the Chairman,
The Mall, Near Kali Badi Mandi,
Patiala (Punjab).
Pin-147001
4. Haryana Power Utilities (UHBVNL & HDBVNL),
Through its Chairman,
Shakti Bhawan, Sector -6,
Panchkula (Haryana)
Pin-134102.
5. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan,
14, Ashok Marg,
Lucknow (UP)
Pin-226001.
6. Engineering Department, Chandigarh,
Through its Chief Engineer/Secretary,
1st Floor, UT Secretariat, Sector 9-D,
Chandigarh,
Pin-160009.
7. North Delhi Power Limited,
Grid Sub-station, Hudson Lines,
Kingsway Camp,
Delhi-110019.

8. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Jaipur,
Through its Chairman,
Vidyut Bhavan,
Jaipur (Rajasthan)
Pin-302005.
9. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.
10. Uttrakhand Power Corporation Limited,
Through its Chairman cum Managing Director,
Urja Bhawan, Kanwali Road,
Dehradun (Uttarakhand).
Pin-248001.
11. Jaipur Vidyut Vitran Nigam Limited,
Jaipur,
Vidyut Bhavan,
Jaipur (Rajasthan).
Pin-302005.
12. Ajmer Vidyut Vitran Nigam Limited,
Through its Managing Director,
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer (Rajasthan).
Pin-305001.
13. Jodhpur Vidyut Vitran Nigam Limited,
Through its Managing Director,
New Power House,
Industrial Area,
Jodhpur (Rajasthan)
Pin-342003
14. Power Development Department,
Through its Principal Secretary,
New Secretariat,
Srinagar, Jammu (J & K).
Pin-190001,
15. Himachal Pradesh State Electricity Board
Through its Chairman,
Kumar House,

Shimla

(Himachal Pradesh)
Pin-171004

.... Respondents

Counsel for the Appellant(s) : Mr. Aashish Gupta
Mr. Dushiyant Manocha
Mr. Paresh B. Lal

Counsel for the Respondent : Mr. Sachin Datta, Sr. Adv.,
Mr. Vikram Aditya Narain &
Ms. Smita Bhargava for NHPC
Dr. Manish Singhvi &
Mr. D.K. Devesh for Ajmer, Jaipur &
Jodhpur V.V. N.L.
Mr. Kaushik Laik &
Mr. Alok Shankar
Mr. Gopal Jain

Appeal No. 43 of 2014

Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lane, Kingsway Camp,
North Delhi-110009.

....

Appellant

Versus

1. SJVN Limited,
Sharma Nivas,
Near BCS Chowk, SVJNL Limited,
Shimla (Himachal Pradesh)
Pin-171009.
2. The Principal Secretary,
Power Development Department,
New Secretariat,
Jammu (J & K).
Pin-180001
3. The Chairman cum Managing Director,
Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun (Uttarakhand)
Pin-248001.

4. The Managing Director,
Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhavan, Janpath
Jaipur (Rajasthan)
Pin-302005.
5. The Managing Director,
Ajmer Vidyut Vitran Nigam Limited,
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer (Rajasthan).
Pin-305001.
6. The Managing Director,
Jodhpur Vidyut Vitran Nigam Limited,
New Power House,
Industrial Area,
Jodhpur (Rajasthan).
Pin-342003
7. Haryana Power Generation Corporation Limited,
Urja Bhawan,
C-7, Sector-6, HPGCL, Panchkula,
Haryana (India).
Pin-134109
8. The Chairman,
Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House,
Shimla, (Himachal Pradesh)
Pin-171004
9. Government of Himachal Pradesh,
Himachal Pradesh Government Secretariat,
Shimla (Himachal Pradesh)
Pin-171002.
10. The Chairman,
Uttar Pradesh Power Corpn. Ltd.,
Shakti Bhawan,
14, Ashok Marg,
Lucknow (Uttar Pradesh)
Pin-226001.
11. The Chairman,
Punjab State Power Corporation Ltd.,

The Mall, Near Kali Badi Mandi,
Patiala (Punjab).
Pin-147001

12. Delhi Transco Limited,
Shakti Sadan, Kotla Marg,
New Delhi-110002.
13. The Chief Executive Officer,
BSES Rajadhani Power Ltd.,
BSES Bhawan,
Nehru Place,
New Delhi-110019.
14. The Chief Executive Officer,
BSES Yamuna Power Ltd.,
Shakti Kiran Building,
Karkardooma, Delhi-110032.
15. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building, 36,
Janpath, New Delhi-110001.

.... Respondents

Counsel for the Appellant(s) : Ms. Smriti Mishra
Mr. Alok Shankar

Counsel for the Respondent : Mr. M.G. Ramachandran
Mr. M.S. Ramalingam for R-15
Mr. R.B. Singh
Mr. RohitLalwani
Mr. Aashish Gupta

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

Appeal NO. 55 of 2013

1. Appeal No. 55 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant BSES Yamuna Power Limited (distribution licensee)/respondent no.4 against the order dated 12.10.2012, passed by the

Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 63/MP/2011 & other related petitions, under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.2 to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for National Capital Thermal Power Station, Dadri Stage I (840 MW) during 1.1.2006 to 31.03.2009.

Appeal No. 77 of 2013

2. Appeal No. 77 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant Tata Power Delhi Distribution Limited (TPDDL)- (distribution licensee) against the order dated 12.10.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 35/MP/2011 & other related petitions, under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the respondent no.1 (herein NTPC Limited) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for Farakka Super Thermal Power Station (1600 MW) during 1.1.2006 to 31.03.2009.

Appeal No. 194 of 2013

3. Appeal No. 194 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant BSES Yamuna Power Limited (distribution licensee)/respondent no.12 against the order dated 12.10.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition Nos. 49/MP/2011, 50/MP/2011, 59/MP/2011, 60/MP/2011, 64/MP/2011, 66/MP/2011, 67/MP/2011, 76/MP/2011 & 77/MP/2011 & other related petitions, under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.2 (herein-National Thermal Power Corporation Ltd.) to recover additional costs incurred by it towards pay revision of

employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for Kahalgaon Super Thermal Power Station Stage-I, Kahalgaon Super Thermal Power Station Stage-II, Rihand Super Thermal Power Station Stage-I, Singrauli Super Thermal Power Station, Rihand, Super Thermal Power Station, Stage-II, Unchahar, Super Thermal Power Station, Dadri, Gas Power Station, Firoze Gandhi Unchahar Thermal Power Station and the Badarpur Thermal Power Station during 1.1.2006 to 31.03.2009.

Appeal No. 259 of 2012

4. Appeal No. 259 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant Punjab State Power Corporation Ltd.(distribution licensee) against the order dated 12.10.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 65/MP/2011 along with related petition nos. 35/MP/2011, 36/MP/2011, 38/MP/2011, 39/MP/2011, 40/MP/2011, 41/MP/2011, 42/MP/2011, 43/MP/2011, 44/MP/2011, 45/MP/2011, 48/MP/2011, 49/MP/2011, 50/MP/2011, 51/MP/2011, 52/MP/2011, 53/MP/2011, 54/MP/2011, 59/MP/2011, 60/MP/2011, 61/MP/2011, 62/MP/2011, 63/MP/2011, 64/MP/2011, 66/MP/2011, 67/MP/2011, 74/MP/2011, 75/MP/2011, 76/MP/2011 & 77/MP/2011 under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.1 (herein NTPC Ltd.) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for Anta Gas Power Station (419.33 MW) during 1.1.2006 to 31.03.2009.

Appeal No. 63 of 2013

5. Appeal No. 63 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant Tata Power Delhi Distribution Ltd. (TPDDL) (distribution licensee) against the order dated 05.12.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 5/MP/2012 & other related petitions, under Regulations 12 and 13 of

the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.1 (herein NHPC Ltd) to recover additional costs incurred by it towards pay revision of employees, Indian Reserve Battalion (IRBN) Staff and Kendriya Vidyalaya Staff for Teesta-V Power Station during 1.1.2006 to 31.03.2009.

Appeal No. 143 of 2013

6. Appeal No. 143 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant BSES Yamuna Power Ltd. (distribution licensee) against the order dated 05.12.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 12/MP/2012 & other related petitions, under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.2 (herein NHPC Ltd) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for Dulhasti Power Station during 1.1.2006 to 31.03.2009.

Appeal No. 158 of 2013

7. Appeal No. 158 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant BSES Yamuna Power Ltd. (distribution licensee) against the order dated 05.12.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition Nos. 6/MP/2012, 11/MP/2012, 17/MP/2012 & 18/MP/2012 under Regulations 12 and 13 of the Central Electricity Regulatory Commission's (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent no.2 (herein NHPC Ltd) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for Salal, Uri, Chamera I & Chamera II Power Station during 1.1.2006 to 31.03.2009.

Appeal No. 43 of 2014

8. Appeal No. 43 of 2014 has been filed under Section 111 of the Electricity Act, 2003 by the appellant Tata Power Delhi Distribution Ltd. (distribution licensee) against SJVN Ltd. &Ors. against the order dated 08.10.2013 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 92/MP/2013 allowing the petitioner/respondent no.1 (herein SJVN Ltd) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Delhi Public School Staff for Nathpa Jhakri Hydro Power Station during 1.1.2006 to 31.03.2009.

9. The main grievances of the appellants in these Appeals are as under:-

9.1 that the Central Commission, in the impugned orders, has, inter alia, allowed the respondents/NTPC/NHPC/SJVNL to recover additional Operation & Maintenance (O & M) costs incurred during the tariff period 2004-09 by way of arrears and further directed the respective distribution licensee to pay the additional amount in 12 monthly installments during the year 2013-14.

9.2. that the impugned order is bad in law because it respectively amends the tariff for the period 2004-09 after the expiry of the control period.

9.3. that the learned Central Commission has allowed the amendment of the tariff on a reconsideration of the norms fixed under the CERC (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as '2004 Tariff Regulations') completely ignoring the terms of the 2004 Regulations and the methodology prescribed therein for determination of the tariff.

9.4. that the learned Central Commission has revised the O & M Norms for the respondent/petitioner-NTPC, NHPC & SJVNL on the ground that the actual had varied significantly during the control period. While doing so, the Central Commission completely ignored to examine if these Power Generating Companies had actually suffered any loss on account of such variation. Further, the Central

Commission has failed to appreciate that the above stated directions given in the impugned orders by the Central Commission are contrary to the decision of the Hon'ble Supreme Court in Civil Appeal No. 1110 of 2007 wherein the Hon'ble Supreme Court had categorically stated that the future consumers cannot be burdened with the cost of power consumed in the past tariff period.

10. The above noted four Appeals being Nos. 55 of 2013 by BSES Yamuna Power Ltd., 77 of 2013 by Tata Power Delhi Distribution Limited, 194 of 2013 by BSES Yamuna Power Ltd. and 259 of 2012 by Punjab State Power Corporation Ltd. have been filed by the respective distribution licensees under Section 111 of the Electricity Act, 2003 each against the order dated 12.10.2012 passed by the Central Electricity Regulatory Commission (in short, 'Central Commission') in a number of similar petitions filed under Regulations 12 and 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent (herein NTPC Ltd.) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for the afore-stated projects during 1.1.2006 to 31.03.2009.

11. The other three Appeals, being Appeal Nos. 63 of 2013 by Tata Power Delhi Distribution Ltd., 143 of 2013 by BSES Yamuna Power Ltd. and 158 of 2013 also by BSES Yamuna Power Ltd. have been filed by the respective distribution licensees under Section 111 of the Electricity Act, 2003 each against the order dated 05.12.2012 passed by the Central Electricity Regulatory Commission (in short, 'Central Commission') on the petitions filed by the NHPC Ltd., under Regulations 12 and 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 allowing the petitioner/respondent (herein NHPC Ltd.) to recover additional costs incurred by it towards pay revision of employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for the afore-stated projects during 1.1.2006 to 31.03.2009.

12. The various petitions being numbered 33/MP/2011, 36/MP/2011, 38/MP/2011, 39/MP/2011, 40/MP/2011, 41/MP/2011, 42/MP/2011, 43/MP/2011, 44/M P/2011, 45/MP/2011, 48/MP/2011, 49/MP/2011, 50/MP/2011, 51/MP/2011, 52/MP/20

11,53/MP/2011,54/MP/2011,59/MP/2011,60/MP/2011,61/MP/2011,62/MP/2011,63/MP/2011,64/MP/2011,65/MP/2011,66/MP/2011,67/MP/2011,74/MP/2011,75/MP/2011,76/MP/2011 & 77/MP/2011 were filed by the National Thermal Power Corporation Ltd. (for short, 'NTPC') before the Central Commission which have been decided by the Central Commission vide impugned order dated 12.10.2012. These petitions were filed under Regulations 12 & 13 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for recovery of additional costs incurred consequent to pay revision of employees, Central Industrial Security Force and Kendriya Vidyalaya Staff during the period 01.01.2006 to 31.03.2009. All these petitions have been decided by the aforesaid impugned order dated 12.10.2012 which is under challenge before us.

13. Since the impugned orders dated 12.10.2012, 05.12.2012 & 08.10.2013 deal with the same controversy and all the points involved in the above noted Appeals against these impugned orders relate to the same issues for consideration, hence we are taking and deciding all these Appeals together by this common judgment.

14. We have heard the learned counsel for the parties and perused the written submissions filed by the contesting parties. We have cautiously gone through the impugned orders.

15. The following issues arise for our consideration in these Appeals:-

(A) Whether the Commission can exercise its power to remove difficulties to overcome a difficulty which has arisen as a consequence of the application of Regulations themselves, as opposed to removing a difficulty that may arise in giving effect to the Regulations?

(B) Whether the Commission can, in the garb of exercise of its power to remove difficulties, amend the Regulations, contrary to express terms of the Regulations?

(C) Whether the Commission whilst allowing additional employees expenses to the respondent Corporations has failed to consider that the respondent Corporations approached the Commission after an inordinate delay specifically, when the relevant tariff period had already expired and the tariff petition for the next tariff period had also been filed by the respective respondent Corporation.

(D) Whether the Commission was correct in ignoring that the tariff is a package and as such each component of tariff cannot be looked at in isolation?

CONSIDERATION ON ISSUE NOS. A & B

16. Since both these issues are interwoven, we are taking and deciding them simultaneously. On these issues, the following contentions have been made on behalf of the appellants:-

16.1. that the learned Central Commission has incorrectly invoked its power to remove difficulty provided under Regulation 12 of 2004 Tariff Regulations.

16.2. that it is the settled law that the power to remove difficulties is conferred upon the Commission to remove trivial difficulties and does not include the power to amend the Regulations. In addition to above, the said power to remove difficulty can only be exercised to the extent necessary only for giving effect to a particular Regulation. In other words, the said power cannot be exercised when the difficulty arises due to the application of Regulation in question.

16.3. that the Regulation 12 of 2004 Tariff Regulations dealing with 'Power to Remove Difficulty' is extracted as under:-

"If any difficulty arises in giving effect to these Regulations, the Commission may, of its own motion or otherwise, by an order and after giving a reasonable opportunity to those likely to be affected by such order, make such provision not inconsistent with these Regulations, as may appear to be necessary for removing the difficulty."

16.4. that a perusal of the Regulation 12 of 2004 Tariff Regulations, itself makes it clear that the Regulation 12 itself incorporates the inherent limitations that are imposed on the Commission whilst exercising its power under Regulation 12.

16.5. that the Courts have time and again recognized and have consistently held that the said power to remove difficulties is extremely limited and is conferred only to remove minor difficulties encountered by the authority in question, as observed by the Hon'ble Supreme Court in Madera Upendra Sinai V. Union of India reported at (1975) 3 SCC 765.

16.6. that further in addition being extremely limited in nature, the said power to remove difficulty can only be exercised to the extent necessary only for giving effect to a particular Regulation. The said power cannot be exercised when the difficulty arises due to the application of the Regulation in question. The Hon'ble Supreme Court in Madava Upendra Sinai's judgment recognizing the said principle held that :-

"40. Again, the "difficulty" contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not difficulty arising aliunde, or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further."

16.7. that this Appellate Tribunal in Ratnagiri Gas and Power Private Ltd. Uttar Pradesh Vs. Central Electricity Regulatory Commission & Another, 2011 ELR (APTEL) 0532 held that:-

"10.3. In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. Thus, the exercising of power to remove difficulties does not arise in the present case"

"10.06. This Tribunal in 2007 ELR APTEL 7 in the case of NTPC Ltd. Vs. Madhya Pradesh State Electricity Board has held as under:-

It must be held, that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations."

"Summary of our findings

18. The Regulations of the Central Commission and decision of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax norms in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result. It has also to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation. Further, the reasons justifying relaxation have to be recorded in writing. After careful examination of the circumstances of the present case, we have come to the conclusion that there is sufficient justification for the Central Commission to consider relaxation in norms in the initial years of operation of the Appellant's Power Plant to give it an opportunity to stabilize."

16.08. that from the aforesaid citations of law, the following propositions emerge:-

- (a) The power to remove difficulties is extremely limited in nature and can be exercised to remove difficulties which are peripheral in nature.
- (b) The said power can be exercised to remove difficulties in the event there is a difficulty in the application of the Regulation in question and not when there is a difficulty caused pursuant to the application of the Regulation.

16.09. that the Commission has exceeded its power under Regulation 12 of 2004 Tariff Regulations because by changing a norm based tariff to a cost plus one, the Commission

has, in effect, amended the 2004 Tariff Regulations, something which is normally impermissible under the power to relax provided under Regulation 13.

16.10. that under 2004 Tariff Regulations, as per Regulation 21, the O & M expenses are determined normatively and not on the basis of actual. In other words, these O & M expenses are fixed at a particular level and are increased at 4% each year irrespective of the increase /decrease in the individual components of the said O & M expenses. However, the Commission, whilst passing the impugned orders by giving effect to actual increase in employee expenses, has amended the Regulations, changing the entire scheme of the Regulations.

16.11. that there was no difficulty in the application of the 2004 Tariff Regulations and the alleged difficulty was in fact a consequence of the application of 2004 Tariff Regulations. The Commission encountered no difficulty as the said Regulations were clear and there was no difficulty in interpreting or otherwise in applying the said Regulations. It was only after the Commission applied the 2004 Tariff Regulations, that the respondent Corporations faced a difficulty inasmuch as they had an increased financial outgo on account of the office memorandums. This difficulty did not arise on account of the application of 2004 Tariff Regulations but was purely a consequence of the application of the 2004 Tariff Regulations.

16.12. that respondent Corporations had sought to justify the aforesaid action of the Commission by stating that the object of the Regulation 12 is to overcome the difficulties which arose on account of subsequent developments during the control period which makes the norms specified in 2004 Tariff Regulations inadequate.

16.13. that the contention of the respondent Corporations that the power to remove difficulties in 2004 Tariff Regulations may be exercised by the Commission to deal with a development subsequent to the determination of the tariff and/or beyond the expiry of the tariff period 2004-09. According to the appellant, such contention is baseless and unsustainable in law because the power to remove difficulty cannot be used in a manner contrary to the scheme of 2004 Tariff Regulations or to do something which is not expressly warranted by the 2004 Tariff Regulations.

16.14. that the contention of the respondent Corporations that the implementation of the salaries and wages revised post the expiry of the tariff period is a difficulty demanding exercise of power to relax and /or remove difficulties under 2004 Tariff Regulations is unfounded and bad in law because the power to remove difficulties may be used only in cases where there is a difficulty in the application of the 2004 Tariff Regulations. It is

pertinent to note that the revision of wages and salaries of the employees and workmen at the power station of the respondent Corporations was subsequent to the determination of tariff and hence the same cannot be deemed to be a difficulty arising in the application of the 2004 Tariff Regulations.

16.15. that the power to remove difficulties exercised by the Commission in the present cases was based on an incorrect understanding of Regulation 12 of 2004 Tariff Regulations thereby necessitating the interference of this Appellate Tribunal in the said terms.

17. Per contra, on issue nos. A & B, the contentions of the respondents are as under:

17.1 that the respective respondent Corporation like NTPC etc. is entitled to claim the employees cost incurred as a part of the O & M expenses under a capital cost based tariff (in determination of the tariff under sections 61 and 62 of the Electricity Act, 2003), the increase in the employees cost being an event subsequent to the normalization of the O & M expenses for the period 2004-09 based on the actual O & M expenditure of the years 1995-2000.

17.2. that in the present matters, the learned Central Commission has rightly and properly exercised its power under the Regulations, 12 & 13 of 2004 Tariff Regulations because precisely for a situation when there is a subsequent development during the control period which makes the norms specified in the 2004 Tariff Regulations inadequate for reasons not attributable to the generating company.

17.3. that it is well settled that the actual employees cost prudently incurred, needs to be reimbursed to the Utility. The Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission Vs. CESC Limited (2002) 8 SCC 715 has, inter alia, held as under:

"Employees' cost :

"87.....It however agreed with the consultants that the overtime payment that was being made by the company was extremely high and hence for the year 2000-01 it imposed an ad hoc cut from the actual expenditure under this head, to the extent of 447 lacs towards overtime, 600 lacs towards pension contribution and 208 lacs towards provision for leave encashment. The High Court reversed this finding on the ground that the payment of wages including overtime and other welfare benefits was made by the Company under lawful agreements entered with the workmen. Therefore, during the pendency of these agreements, it was legally not possible for the Company to stop these payments. Therefore, the amounts spent towards this purpose namely, towards the employees' cost should not be treated as the amounts not properly incurred. The High Court on this basis allowed the entire expenditure incurred by the Company under this head.

88. We are in agreement with this finding of the High Court. Since it is not disputed that the payments made to the employees are governed by the terms of

the settlement form which it will not be possible for the Company to wriggle out during the currency of the settlement, therefore, for the year 2000-01 the actual amounts spent by the Company as employees' costs will have to be allowed. However, we agree with the findings of the consultants as also the Commission that the amounts spent towards wages are highly disproportionate to the energy generated as also the amounts paid as overtime to the workmen is wholly unrealistic. We also notice that the two plants of the respondent Company namely those at Mulajore and New Cossipore are stated to be economically not viable. Therefore, the Company should take steps either to make the said plants economically viable or to close down if necessary. In this regard, we note that the Commission has for the relevant year not granted the request of the Company for introducing VRS by allocating required sums of money on this account, which under the circumstances seems to be a good one-time investment for reducing the cost under the head "Employees' cost". While considering the tariff revision for the year 2002-03 we direct the Commission to bear this fact in mind. However, we further direct the Company that should there be any need for entering into a fresh settlement with the workmen, then any agreement which entitles the workmen to get overtime payment even when overtime work is unnecessary should be done away with. With the above observations as a future guidance, we accept the finding of the High Court on this count."

17.4. that both the *power to remove difficulties* and *power to relax* supplement each other to deal with the situations which may arise from time to time. In the present case the Central Commission has exercised these powers correctly in allowing the impact of the pay commission recommendations.

17.5. that in addition to the above power to remove difficulties and power to relax, provided in 2004 Tariff Regulations and under the CERC (Conduct of Business) Regulations 1999, the Central Commission has retained the powers such as savings of inherent powers of the Commission & 'power to remove difficulties'.

17.6. that admittedly, if the Pay Commission's Recommendations had been implemented prior to the framing of the Tariff Regulations, 2004, and the salary could have been known, the Central Commission would obviously and undisputedly have factored the increase in the employees cost in the normative O & M expenses specified in Regulation 21 (iv) over and above normalizing the O & M expenditure based on past years actual expenditure.

17.7. that the increase in the salary etc. pursuant to the Pay Commission Recommendations, effective from 01.01.2007 was actually implemented by circulars dated 07.07.2010 and 17.08.2010. This is obviously after the Tariff Regulations, 2009 had come into force. However, the proposed increase was envisaged by the Corporations like NTPC and was placed before the Central Commission at the time when the subsequent Tariff

Regulations, 2009 were considered. In the statement of reasons to the Tariff Regulations, 2009 issued by the Central Commission on 03.02.2009 regarding the revision to pay scales etc, it was stated as under:

"19.10 The CPSU regulated by us were asked to make their estimation of hike on account of revision of scales of pay. The hikes on account of revision of scales of pay estimated by some of the CPSU's are as follows:-

<i>NTPC</i>	<i>56%</i>
<i>Power Grid</i>	<i>70%</i>
<i>NLC</i>	<i>73%</i>
<i>NEEPCO</i>	<i>70%</i>

The estimate submitted by NLC and NEEPCO were not supported by the calculations. The estimates of NTPC and Power grid were however, gone in to and it was observed that the increase includes PRP and allowances in excess of 50% of the basic. Further certain facilities like school, hospital facilities etc., at site were not monetized. On all these consideration, estimates of CPSU's appear to be on higher side. Commission after due consideration of various aspects covered in the implementation of pay revision has come to a conclusion that a uniform normative increase of 50% in employee cost would be just and reasonable for all CPSUs"

17.8. that thus, in the Tariff Regulations, 2009, the Central Commission included the benefit of wage revision in the O & M norms considering the increase in the salary, wages etc to the extent of 50%. This clearly establishes that there was no reason for the Central Commission to have factored the tariff increase for additional employee cost if the same had been crystallized in the year 2004.

17.09. that further, even during the tariff period 2004-09, the Corporations like NTPC had raised the issue of increase in the tariff on account of the revision to the employees cost which was expected to occur. In Petition No. 160 of 2004 filed by NTPC for Anta Gas Power Station for the period 01.04.2004 to 31.03.2009, NTPC had specifically sought additional O & M expenses in view of the wage revision. Similar submissions were also

made for other generating stations. By Order dated 09.05.2006 passed in Petition No. 160 of 2004, the Central Commission decided as under:-

"57. The petitioner has submitted that the wage revision of its employees is due with effect from 1.1.2007. Therefore, O & M Expenses should be subject to revision on account of revision of employee cost from that date. In the alternative, it has been prayed that the increase in employee cost due to wage revision be allowed as per actual for extra cost to be incurred consequent to wage revision. We are not expressing any view, as this issue does not arise for consideration at this stage. The petitioner may approach for a relief in this regard at an appropriate stage in accordance with law".

17.10. that thus, a subsequent development occurred due to the implementation of 6th Pay Commission Recommendations and revision in the pay scale and other benefits. Such a situation is a difficulty which had arisen in giving effect to the Regulations, namely, that the Regulations if given effect to on its terms in relation to O & M expenses would not enable the recovery of the entire legitimate costs and expenses incurred by power generators/corporations like NTPC.

17.11. that in the circumstances, the present case fully justifies the exercise of powers to remove difficulties, power to relax, inherent powers of the Commission etc specified in the Tariff Regulations, 2004 and in the Conduct of Business Regulations, 1999.

17.12. that the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Limited Vs. NTPC (2009) 6 SCC 235 relied on by the appellant does not support the contention of the appellant. In the above case law, the Hon'ble Supreme Court did not grant the relief to NTPC as NTPC did not claim the amount in the first instance, though it was entitled to claim. In the present case, NTPC had made the claim in the first available instance and it was the order of the Central Commission to defer the consideration to a later stage. The appellants did not challenge the said deferment by the Central Commission at the relevant time and now it is not open to the appellants to raise any issue on such deferment at this stage.

17.13. that the decision of this Appellate Tribunal in the case of Uttar Pradesh Power Corporation Limited Vs. Central Electricity Regulatory Commission, 2011 ELR 858 does not support the case of the appellant. In the present case, the NTPC had not claimed the actual O & M expenses qua normative. They had claimed the increase in the employees cost forming part of O & M expenses which were not factored in the normative O & M expenses and hence the said decision of this Tribunal is quite distinguishable and not applicable to the present matters.

17.14. that the decision of the Hon'ble Supreme Court, in Madava Upendra Sinar Vs. Union of India (1975) 3 SCC 765 referred to by the appellants in support of their submissions on

the scope of power to remove difficulties, does not lead to the conclusion that the exercise of powers by the Central Commission in the present case was wrong. In the said decision, the principle had been settled, namely, that the power to remove difficulties is vested in the Authority to make adjustments for implementing effectively the provisions of the Act without touching its substance. It had also been observed that under the guise of removing difficulties, the scheme and essential provisions of the Act should not be changed. The above clearly implies that the power to remove difficulties can be exercised validly so long as the scheme and essential provisions of the Act are not changed and adjustments are made to implement effectively the provisions of the Regulations without making a change in the substance.

17.15. that the present matters relate to the employees cost forming part of the O & M Expenses. Admittedly, the actual employees cost subject to prudent check need to be allowed in a capital cost based tariff. In the present matters, the removal of difficulties undertaken by the Central Commission is nothing but to allow what is always envisaged, namely, the actual employees cost incurred by the Corporations like NTPC without there being any imprudence on their part or otherwise any default or failure of them.

17.16. that in view of the subsequent developments of implementation of the Pay Commission Recommendations, the actual employees cost was not fully factored in Regulation 21 (iv) of 2004 Tariff Regulations and the situation clearly warranted the exercise of powers to remove difficulties and power to relax.

17.17. that this Appellate Tribunal, in the case of Ratnagiri Gas Power Private Limited Vs. Central Electricity Regulatory Commission (2011) ELR (APTEL) 532, has in para nos. 10.3 & 10.07 of the judgment held as under:

"10.3 In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. Thus, the exercising power to remove difficulties does not arise in the present case.

10.7. The above regulations and the decision to give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation."

17.18. that the reliance by the appellants in the judgment of Ratnagiri Gas Power Pvt. Ltd case does not help the appellants because what that judgment requires is that the said Regulations dealing with power to remove difficulty and power to relax giving judicial discretion to the Central Commission to relax norms based on the circumstances of the case and such powers have to be exercised only in exceptional cases. For the exercise of such power, sufficient reasons should exist to justify the relaxation etc. like non exercise of judicial discretion by the Central Commission would cause hardship and injustice to a party or would lead to unjust result. Further, in exercising such power, reasons have to be recorded in writing and the party seeking to exercise such power by the Central Commission has to establish that the circumstances are not created due to the act or omission attributable to the party claiming the relaxation. In the instant matters, there were justified causes and reasons for the Central Commission to exercise discretion to relax norms.

17.19. that the impugned orders of the Central Commission in exercising such power are consistent with the principles laid down in the above decision of the Hon'ble Supreme Court in the case of Uttar Pradesh Power Corporation Limited Vs. NTPC (2009) 6 SCC 235 and also the decision in the case of Ratnagiri Gas and Power Pvt Limited Vs. Central Electricity Regulatory Commission 2011 ELR (APTEL) 532.

17.20. that the interpretation made by the appellants to the effect that the power to remove difficulties can be exercised only if the Regulations cannot be implemented otherwise, is not correct. The difficulties envisaged are actually practical difficulties. It is wrong for the appellants to contend that there was no difficulty if the claim for additional O & M expenses was rejected by the Central Commission. When the scheme of the Act envisages actual expenses prudently incurred to be allowed under a capital cost based tariff and the principle of employees cost being allowed and settled by the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission case (supra), if the Regulations are not adequate to implement the same, there is obviously a need to remove difficulties. In addition, it was also necessary in the circumstances of the case to exercise power to relax.

17.21. that the power to remove difficulties and power to relax supplement each other to deal with a situation which may arise from time to time. The power to relax is to be exercised in the facts and circumstances of the case when the Central Commission comes

to the conclusion that there is justification for allowing the reimbursement of the employees cost.

17.22. that 2004 Tariff Regulations were notified based on the circumstances which existed at the time of Notification of the 2004 Tariff Regulations. In case of O & M expenses for the period 2004-09 it was determined based on the previous year's O & M expenses. The O & M expenses in respect of the 2004 Tariff Regulations did not cover the increase in the employee cost. Therefore, the cash out flow in the head of increase in the employee cost was not included in the O & M expenses under 2004 Tariff Regulations.

17.23. that the normative parameters are set with reference to a specific tariff element and based on the position prevalent at the time of the normative determination. The subsequent developments may change the basis on which the norms had been fixed with reference to a particular tariff element. If such subsequent developments are not on account of any imprudence or failure or default on the part of the utility, or otherwise attributable to the Utility, the normative parameters need to be revised to adjust for the impact of the subsequent developments. Therefore, the Central Commission has rightly exercised its power to relax to give effect to the subsequent developments, namely, directing reimbursement of increase in employee cost by the beneficiaries.

OUR CONCLUSION ON ISSUE NOS. A & B

18. We are to decide whether the learned Commission has exercised its 'power to remove difficulties' and 'power to relax' provided under Regulation 12 and Regulation 13 of 2004 Tariff Regulations respectively. Here we are also to consider whether under the garb of these powers, the learned Commission has amended the 2004 Tariff Regulations in order to give undue benefit to the respondent Corporations like NTPC, NHPC etc.

18.1. The main contention of the appellants on these issues is that the 'power to remove difficulties' or 'power to relax' has been conferred upon the learned Commission only to remove the trivial defects or peripheral defects and the said powers can only be exercised to the extent necessary to give effect a particular Regulation and such power cannot be exercised when the difficulty arises due to the application of Regulation in question.

18.2. A look at Regulation 12 of 2004 Tariff Regulations makes it clear that this 'power to remove difficulties' can be exercised by the learned Central Commission if any difficulty arises in giving effect to these Regulations and the Commission can make such provision

which should not be inconsistent with the said Regulations. Further, the emphasis of the learned counsel for the appellants is on the point that the said power can only be exercised to the extent necessary only for giving effect to a particular Regulation.

18.3. We have gone through the judgment of Hon'ble Supreme Court, in Madeva Upendra Sinar Vs. Union of India (supra), in which the Hon'ble Supreme Court held that 'power to remove difficulty' may be exercised when there is a difficulty arising in giving effect to the provisions of the Act and not of any extraneous difficulty. This Appellate Tribunal in the case of NTPC Ltd. Vs. Madhya Pradesh State Electricity Board reported in 2007 ELR (APTEL) 7, held that the power comprised in Regulation 13 of 2004 Tariff Regulations is essentially a 'power to relax'. In case, any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of 2004 Tariff Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. This Appellate Tribunal in the reported case clearly held that there is no doubt that the Commission has the power to relax any provision of the Regulations. Such power has to be exercised only in exceptional cases and where non-exercise of the discretion would cause hardship and injustice to a party or lead to unjust result. Further, it has to be established by the party seeking exercise of 'power to remove difficulties' or 'power to relax' that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.

18.4. The other main contention of the appellants is that as per Regulation 21 of the 2004 Tariff Regulations, the O & M expenses are determined normatively and not on the basis of actual. Thus, the O & M expenses are fixed at a particular level and are increased at 4% each year irrespective of the increase/decrease in the individual components of the said O & M expenses. The learned Commission in the impugned orders by giving effect to actual increase in employee expenses has amended the said Regulations and thereby changed the entire scheme of the Regulations. It was only after the Commission applied 2004 Tariff Regulations in the present cases, then the respondent Corporations faced a difficulty because the Corporations had an increased financial outgo on account of the office memorandums. This difficulty did not arise on account of the application of 2004 Tariff Regulations but was purely a consequence of the application of the 2004 Tariff Regulations. The respondent Corporations' contention that the implementation of salaries and wages revised after the expiry of the tariff period 2004-09 was a difficulty demanding exercise to relax or to remove difficulties, which according to

the appellants is unfounded and bad in law because the said powers can be used only in cases when there is a difficulty in giving effect to the said Regulations. According to the appellants since the revision of wages and salaries of the employees and workmen at the power stations of the respective respondent Corporations was subsequent to the determination of tariff, hence the same could not be deemed to be a difficulty justifying the exercise of power to remove difficulties or power to relax as provided in 2004 Tariff Regulations.

18.5. Contrary to the aforementioned main contentions of the appellants, the emphasis of the respondents is on the point that the respondent Corporations like NTPC, NHPC etc. were entitled to claim the employees cost incurred as a part of the O & M expenses under a capital cost based tariff (in determination of the tariff under sections 61 and 62 of the Electricity Act, 2003). The increase in the employees cost being an event subsequent to the normalization of the O & M expenses for the year 2004-09 based on the actual O & M expenses of the said period. According to the respondent Corporations, the learned Central Commission has rightly and legally exercised its power under Regulations 12 & 13 of the 2004 Tariff Regulations because precisely for a situation when there is a subsequent development during the control period which makes the norms specified in the 2004 Tariff Regulations inadequate for reasons not attributable to the generating company.

18.6. We have gone through the proposition of law settled by the Hon'ble Supreme Court of India in West Bengal Electricity Regulatory Commission Vs.CESC Limited (2002) 8 SCC 715 in which the Hon'ble Apex Court had observed that the employees cost prudently incurred needs to be reimbursed to the Utility. The Hon'ble Supreme Court expressing agreement with the finding of the High Court held that since it is not disputed that the payments made to the employees are governed by the terms of the settlement form which it will not be possible for the Company to wriggle out during the existence of the settlement, therefore, the actual amounts spent by the Company as employees' costs will have to be allowed. In these matters in hand, after careful and deep scrutiny of the rival submissions made by the parties, we do not find any force in the submissions/contentions made on behalf of the appellants. Rather, the submissions of the respondent power generators/corporations have legal force to which we agree.

18.7. The 'power to remove difficulties' and the 'power to relax' provided in the 2004 Tariff Regulations supplement each other to deal with the situations which may arise from time to time. In the present matters, the learned Central Commission has exercised these powers correctly, properly and legally in allowing the impact of the 6th Pay Commission's Recommendations regarding increase in employees cost including increase in salaries of the employees and wages of the workmen. Apart from it, from the Regulations 12 and 13 conferring 'Power to remove difficulties' and 'Power to relax' upon the Central Commission in 2004 Tariff Regulations, the Central Commission has retained the powers such as savings of inherent powers of the Commission (Regulations 111, 113, 114) & power to remove difficulties (Regulation 115).

18.8. We agree to these contentions of the respondents/power generators that if the 6th Pay Commission's Recommendations had been implemented prior to the framing of 2004 Tariff regulations and the salaries could have been known, the Central Commission would have factored the increase in the employees cost in the normative O & M expenses specified in Regulation 21 (iv) of 2004 Tariff Regulations over and above normalizing the O & M expenditure based on past years actual expenditure. Since the increase in the salary etc. pursuant to the Pay Commission's Recommendations, effective from 01.01.2007 was actually implemented by circulars dated 07.07.2010 and 17.08.2010 which obviously was after 2009 Tariff Regulations had come into force. However, the proposed increase was envisaged by the Corporations like NTPC and was placed before the Central Commission at the time when subsequently 2009 Tariff Regulations were considered. The learned Central Commission, at that time, after due consideration of various aspects covered in the implementation of pay revision had come to a conclusion that a uniform normative increase of 50% in employee cost would be just and reasonable for all CPSUs.

18.9. We may observe that even during the tariff period 2004-09, the Corporations like NTPC had raised the issue of increase in tariff on account of pay revision to the employees' cost which was expected to occur and for that purpose, the NTPC filed a Petition being Petition No. 160 of 2004 for Anta Gas Power Station (419.33 MW) for the period 01.04.2004 to 31.03.2009, seeking additional O & M expenses in view of the wage revision. Similar submissions were also made for other generating stations. The learned Central Commission by its order dated 09.05.2006 passed in Petition No. 160 of 2004 decided that this issue does not arise for their consideration at this stage and the petitioner may approach for a relief in this regard at an appropriate stage in accordance

with law. Thus, the power generator like NTPC approached the learned Central Commission at the relevant time seeking additional O & M expenses on account of wage revision as a result of implementation of 6th Pay Commission's Recommendations and the Central Commission, at that time vide order dated 09.05.2006, directed the NTPC etc. to approach for such relief at an appropriate stage. It was in accordance with the said order dated 09.05.2006 of the Central Commission that the aforesaid petitions were filed by different power generating companies like NTPC etc before the Central Commission and the aforementioned impugned orders have been passed by the Central Commission which are under challenge before us in this batch of Appeals.

18.10. We further hold that a subsequent development occurred due to the implementation of the 6th Pay Commission's Recommendations and revision of pay scales and other benefits and such was a difficult situation which had arisen in giving effect to the 2004 Tariff Regulations, particularly, Regulation 23 of 2004 Tariff Regulations, if given effect to on its term in relation to O & M expenses would not enable the recovery of the entire legitimate costs and expenses incurred by the power generators/Corporations like NTPC. In the circumstances of the present matters, we find that the learned Central Commission was justified in exercising the power to remove difficulties and power to relax as provided under Regulations 12 & 13 of 2004 Tariff Regulations. Apart from this power, the Commission has inherent powers under the Conduct of Business Regulations, 1999.

18.11. So far as the proposition of law as laid down by the Hon'ble Supreme Court of India in Uttar Pradesh Power Corporation Ltd. Vs. NTPC Ltd. & Ors. (2009) 6 SCC 235 relied upon by the appellants is concerned, the Hon'ble Supreme Court did not grant the relief to NTPC as the NTPC did not claim amount in the first instance though NTPC was entitled to claim. The facts of the reported case are quite distinguishable and are not applicable to the instant matters because in the present matters, the power generators NTPC etc. had made the claim in the first available instance and at that time the Central Commission vide its order dated 09.05.2006 deferred the consideration of the same to a later stage. The appellants did not challenge the said deferment granted in its order dated 09.05.2006 in Petition No. 160 of 2004 of the Central Commission at that relevant time and now the appellants cannot raise this issue of deferment at this stage. We find that the judgment of this Tribunal in the case of Uttar Pradesh Power Corporation Ltd. Vs. CERC & Ors 2011 ELR (APTEL) 0858 relied upon by the appellants also does not support the case of the appellants because in the present matters, the NTPC did not claim the actual O & M expenses qua normative and they had claimed the increase for the

employees' cost forming part of the O & M expenses which were not factored while considering normative O & M expenses and hence the said decision of this Tribunal cannot enure to the benefit of the appellants and not applicable to the present matters.

18.12. On perusal of the decision of Hon'ble Supreme Court in *Madeva Upendra Sinai Vs. Union of India (Supra)*, we find that the 'power to remove difficulties' can be exercised validly so long as the scheme and essential provisions of the Act are not changed and adjustments are made to implement effectively the provisions of the Regulations without making a substantial change. In the present matters, relating to employees' cost forming part of the O & M expenses, the actual employees cost subject to prudence check need to be allowed in a capital cost based tariff. In the present matters, the removal of difficulties undertaken by the Central Commission in the impugned orders is nothing but to allow what is always envisaged, namely, actual employees cost incurred by the Corporations like NTPC without there being imprudence on the part of the respondents or otherwise in default or failure of the respondents. Thus, the said cited case law of Hon'ble Supreme Court in *Madeva Upendra Sinia's* case is of no benefit to the appellants.

18.13. We are further of the view that in view of the subsequent developments of implementation of 6th Pay Commission's Recommendations, the actual employees cost was not fully factored in Regulation 21 (iv) of 2004 Tariff Regulations and the situation clearly warranted the exercise of 'Power to remove difficulties' and 'Power to relax' conferred upon the Central Commission. The Central Commission has committed no illegality in passing the impugned orders and allowing the increase in the employees cost subject to prudence check. We further note that the learned Central Commission, in the impugned orders, has cited sufficient reasons for exercising such powers and also exercised the said powers in its judicial discretion because non-exercise of judicial discretion by the Central Commission would cause hardship and injustice to the respondent Corporations or would lead to unjust result. The respondent Corporations like NTPC had successfully established that the circumstances were not created due to the act or omission attributable to them while claiming such relaxation and seeking exercise of 'powers to remove difficulties' or 'powers to relax' as provided in 2004 Tariff Regulations. We find that in the instant matters, there were justified causes and reasons before the Central Commission to exercise such discretion and to relax the norms in the head of O & M expenses. We further note that 2004 Tariff Regulations were notified based on the circumstances which existed at the time of notification of 2004 Tariff Regulations. In case of O & M expenses for the period 2004-09, it was determined based on previous years O & M expenses. The O

& M expenses in respect of 2004 Tariff Regulations did not cover the increase in the employees' cost. Therefore, the cash outflow in the head of increase in the employees' cost was not included in the O & M expenses under 2004 Tariff Regulations.

18.14. We hold that the Central Commission has rightly exercised its 'power to remove difficulties' or 'power to relax' to give effect to the subsequent developments, namely, directing reimbursement of the increase in employees' cost by the beneficiaries.

18.15. In view of the above discussions, we do not find any illegality in the findings recorded on these issues in the impugned orders of the Central Commission. Thus, Issue Nos. A & B are decided against the appellants and in favour of the respondent Corporations like NTPC, NHPC etc.

ISSUE NO. C RELATING TO INORDINATE DELAY AFTER THE EXPIRY OF RELEVANT TARIFF PERIOD

19. The following contentions have been made on behalf of the appellants on this issue:-

19.1 that the respondent Corporation approached the Commission after a considerable lapse of time seeking a revision of its tariff on account of increase in employees expenses. The respondent Corporation has not provided any justification for the said delays and only on the ground of delay, the Commission ought to have rejected the prayer of the respondent.

19.2. that the Commission issued the Tariff Order for the respondent Corporation for the period 2004-09 on 05.05.2006. In the said Tariff Order, the O & M expenses approved by the Commission were as per Regulation 21 (iv) (a) of 2004 Tariff Regulations. In the petition for tariff for the said period 2004-09, the respondent Corporation had sought for revision of O & M expenses on account that the wage revision of the employees of the respondent Corporation was due w.e.f. 01.01.2007. However, while disallowing the same, the Commission in the aforesaid Order dated 09.05.2006 stated that the issue did not arise for consideration at that stage and at that time, the respondent Corporation was given liberty to approach for a relief in this regard at an appropriate stage in accordance with law.

19.3. that the Department of Public Enterprises issued a memorandum which formed the basis for respondent Corporation's request i.e. that the respondent Corporation increased its employees' salary. The memorandum dated 26.11.2008 revised the pay for board level

and below board level executives and the non-unionized supervisors in Central Public Sector Enterprises from 01.01.2007 and despite the issuance of the said memorandum, the respondent Corporation failed to approach the Commission.

19.4. that the respondent Corporation filed petition no. 255 of 2009 for approval of tariff for the period 2009-14 in Financial Year 2009 and despite its filing petition for the next tariff period, viz- 2009-14, the respondent Corporation did not approach the Commission.

19.5. that the respondent Corporation vide circulars dated 07.07.2010 and 17.08.2010 issued by their HR Division finalized the revision of the wages of the workmen category and supervisory category employees. Even after giving effect to the memorandums, the respondent Corporation did not approach the Commission seeking revision of their respective tariff.

19.6. that it was on 08.03.2011, the respondent Corporation approached the Commission under Regulations 12 and 13 of the 2004 Tariff Regulations seeking revision of the respective tariff for the period 2004-09 on account of increased employee expenses. In other words, the respondent Corporation approached the Commission after a period of about 28 months after the issuance of memorandum dated 26.11.2008 which had clearly made the respondent Corporation aware of their respective financial liabilities.

19.7. that the respondent Corporations have failed to explain the delay and they have merely stated that they had approached the Commission even before the Notification of such revision came in effect.

19.8. that the appropriate time to approach the Commission was within the tariff period 2004-09 when the respondent Corporation became aware of its financial obligations and not thereafter. The respondent Corporation should not have been allowed to claim additional O & M expenses post the expiry of the aforesaid tariff period.

19.09. that relating to the Commission's allowance of the respondent Corporation's prayer amounts to re-opening of the tariff after the expiry of the tariff period 2004-09 and burdening the future consumers for the liability of the past, the learned counsel for the appellants has raised the following contentions:-

19.10. that approach of the Commission for a revision of tariff, when not only had the relevant tariff period expired and the tariff petition for the next period had been filed, was a stand alone ground for the Commission to have rejected the prayer of the respondent Corporation's prayer. Thus, the Commission has committed an error in law in passing the impugned order.

19.11. that the respondent Corporation on 08.03.2011 approached the Commission seeking revision of tariff for the period 2004-09 despite having the knowledge of the financial obligations to be incurred as a consequence of the memorandum dated 26.11.2008 issued by the Department of Public Enterprises. The respondent Corporation failed to approach the Commission either during the relevant tariff period or at the time of filing their tariff petition for the next tariff period i.e. 2009-14.

19.12. that the Commission was wrong in allowing a retrospective revision of tariff in the subsequent tariff period.

19.13. that the respondent Commission has committed grave error in law since it allowed the prayer of the respondent Corporation that despite such an unexplained delay, and that too when the previous tariff period was over. The Hon'ble Supreme Court in Uttar Pradesh Power Corporation Vs. National Thermal Power corporation Limited &Ors., reported in (2009) 6 SCC 235 (hereinafter referred to as 'UP Power Corporation judgment') categorically held that a retrospective revision of tariff, when the tariff period in question is over, is impermissible. The Hon'ble Supreme Court in para 60 & 63 of the said judgment held as follows :-

"60. It is difficult to agree with the opinion of the Appellate Tribunal for Electricity that increase in the salary with retrospective effect could have been a subject-matter for determination of tariff in another period. In a fact situation obtaining herein, we are of the opinion that the claim of the respondent Corporation was not justified as the Central Commission should not have been asked to revisit the tariff after five years and when everybody had arranged its affairs.

63. Furthermore, the direction of the Tribunal that the additional costs may be absorbed in the new Tariff, in our opinion, was not correct. Some persons who are consumers during the tariff year in question may not continue to be the consumers of the appellant. Some consumers might have come in there is no reasons as to why they should bear the burnt. Such quick-fix attitude in our opinion is not contemplated as framing of forthcoming tariff was put subject to fresh Regulations and not the old Regulations."

19.14. that the Commission whilst passing the impugned orders ought to have considered that allowing the relief as sought by the respondent Corporation would amount to burdening the future consumers with the liability of past which, as per the judgment of the Hon'ble Supreme Court, is impermissible.

19.15. that in the UP Power Corporation judgment, the revision of O & M expenses at such a belated stage was rejected by the Hon'ble Supreme Court on the ground that (a) the appropriate time for the Corporation to approach the Commission was during the tariff period, (b) tariff period had expired (c) everybody had arranged their affairs, and (d) future consumers would be burdened with liabilities of the past.

19.16. that in the present case, the Commission incorrectly permitted the revision of tariff after the lapse of control period. According to the settled principles of law, the tariff cannot be revised with retrospective effect as the same would amount to burdening future consumers with past dues. By virtue of the impugned orders, the revised tariff would have to be recovered from the future consumers for the power consumed by past consumers. However, the same has been completely ignored by the Commission in the impugned orders. The Commission has proceeded to hold that the legitimate expenditure cannot be denied to the petitioner/respondent Corporation on the ground that it will burden the new customers of past dues.

19.17. that the employees expenses forming a part of the O & M expenses are controllable expenses under the 2004 Tariff Regulations and any expenditure by the respondent Corporation beyond the norms set by the Commission was solely to its own cost which ought not to have been passed on to the consumers.

19.18. that findings in this regard in the impugned orders of the Commission are contrary to the National Tariff Policy dated 06.01.2006 which provides that uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. To the contrary, the Commission, in the impugned orders, has not only converted a controlled cost to an uncontrollable cost but has allowed a delayed recovery of the same i.e. after a period of 4 years resulting in burdening the future consumers for past costs.

19.19. that the Commission while passing the impugned orders, sought to distinguish the U.P. Power Corporation judgment rendered by the Hon'ble Supreme Court recording the reasons as under:-

“In that case, Hon'ble Supreme Court has held that NTPC had not approached the Commission for revision of tariff on account of the implementation of the wage revision even though it was aware of the implementation of the pay revision on the date of filing the application. However, the present case is distinguishable from the other case in the sense that the petitioner had approached the Commission during the 2004-2009 period to consider the impact of the pay and wage revision.”

19.20. that the time difference between determination and implementation of tariff cannot be equated to a revision of tariff for a particular tariff period once the particular tariff period has expired.

19.21. that the justification provided in the impugned order by the Commission is contrary to the principles of law laid down by the Hon'ble Supreme Court and is invalid.

20. Per contra, the respondents have made the following contentions on **Issue No. C-relating to the fact that power cannot be exercised after the Tariff Period 2004-09:-**

20.01. that the appellants' contention that power cannot be exercised after the Tariff Period 2004-09 has no merit as the said powers could not be exercised by the Central Commission under the 2004 Tariff Regulations after coming into force of 2009 Tariff Regulations.

20.02. that 2009 Tariff Regulations provided that where a project, or a part thereof, has been declared under commercial operation before the date of commencement of these regulations and whose tariff has not been finally determined by the Commission till that date, tariff in respect of such project or such part thereof for the period ending 31.03.2009 shall be determined in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

20.03. that the learned Central Commission while deciding the O & M expenses for the period 01.01.2007 to 31.03.2009, has to necessarily invoke and decide the matter as per the 2004 Tariff Regulations, notwithstanding that the control period under the 2004 Tariff Regulations were replaced.

20.04. that the tariff regulations are notified dealing with a specific control period. The 2004 Tariff Regulations dealt with the control period from 01.04.2004 to 31.03.2009. There is no question of the 2004 Tariff Regulations itself getting exhausted after the control period. The 2009 Tariff Regulations do not provide for any provision for retention of the Tariff Regulations, 2004. All matters concerning the tariff period 2004-09 need to be decided based on the 2004 Tariff Regulations irrespective of the time when such decision is taken, namely, whether before 01.04.2004 or after 31.03.2009.

20.05. that the contentions of the appellants that 2004 Tariff Regulations cannot be invoked after 31.03.2009 is patently erroneous because the matters relating to the tariff for the period 01.04.2004 to 31.03.2009 will have to be dealt with under the 2004 Tariff Regulations.

20.06. that there is no delay or default on the part of the Corporations like NTPC to approach the Central Commission for claiming additional O & M expenses. From the very beginning and even before the Notification for such revision came in effect, the Corporations like NTPC had raised the issue of additional O & M expenses due to revision in pay scale. There can be no question of NTPC etc. being debarred to recover the additional

O & M expenses due to increase in employees cost especially when it is not on account for any failure of NTPC etc. and only on the technical ground that the Power under Regulations 12 and 13 of the 2004 Tariff Regulations cannot be exercised after the control period.

OUR DISCUSSION AND CONCLUSION

21. We are to consider whether the learned Central Commission whilst allowing additional employees expenses to the respondent Corporations like NTPC has failed to consider that the respondent Corporations approached the Commission after an inordinate delay, namely, after the expiry of the tariff period and even after the tariff petition for the next control period had been filed by the respondent Corporations.

21.1. The main contention of the appellants on the point of delay in claiming the additional employees' cost by the respondent Corporations like NTPC is that the respondent Corporations did not provide any justification for the said delay and in the tariff order dated 05.05.2006 for the period 2004-09, the O & M expenses approved by the Commission were as per Regulation 21 (iv) of the 2004 Tariff Regulations. In the petition for tariff for the said period 2004-09, the respective respondent Corporations had sought for revision of O & M expenses on account of the wage revision of their respective employees w.e.f. 01.01.2007.

21.2. We have considered the said contentions of the appellants but we do not find any force therein because the respondent Corporations like NTPC, even during tariff period 2004-09 had raised the issue of increase in tariff on account of revision in the employees cost which were then expected to occur and filed Petition No. 160 of 2004 for one power station for the period 01.04.2004 to 31.03.2009 where the NTPC had specifically sought additional O & M expenses in view of wage revision of the employees. Similar, submissions were also made for other generating stations also when the learned Central vide order dated 09.05.2006 passed in Petition No. 160 of 2004 decided that the prayer regarding increase in employees cost due to wage revision be allowed as per actual for extra cost to be incurred consequent to wage revision, may be considered at an appropriate stage and the Corporations like NTPC may approach for relief in this regard at an appropriate stage in accordance with law. Thus, a liberty was granted by the learned Central Commission in its order dated 09.05.2006 passed in Petition No. 160 of 2004 when the respondent - NTPC submitted that the revision of its employees was due w.e.f. 01.01.2007, therefore, the O & M expenses should be subject to revision on account of employees' cost from that date. In that matter, it was also prayed, in the alternative,

that the increase due to wage revision be allowed as per actual for extra cost consequent to wage revision.

21.3. At the time of passing order dated 09.05.2006, the learned Central Commission in this view of the matter clearly noted that the Central Commission was not expressing any view. Hence the said issue did not arise for consideration at that stage and the Central Commission granted liberty to the NTPC to approach for a relief in that regard at an appropriate stage.

21.4. In view of the order dated 09.05.2006 passed in Petition No. 160 of 2004 on the petition of respondent Corporations like NTPC etc, the learned Central Commission in the impugned orders, after due consideration, granted the said relief to the NTPC etc. In this view of the matter, we do not find any force in any of the contentions raised on behalf of the appellants on the issue relating to delay in claiming the O & M expenses on actual basis and the said issue is decided against the appellants as we do not find any illegality or irregularity in any of the findings recorded in the impugned orders on this issue. Thus, this issue is accordingly decided against the appellants and in favour of the respondent Corporations like NTPC etc.

CONSIDERATION ON ISSUE NO. D RELATING TO THE FAILURE OF THE COMMISSION TO TAKE NOTE OF THE FACT THAT TARIFF IS A PACKAGE AND CANNOT BE AMENDED IN PIECEMEAL MANNER

22. On this issue the contentions of the appellants are as under:-

22.1. that it is a settled position of law that tariff is a complete package and cannot be amended in a piecemeal manner by modifying its individual components.

22.2. that infact while passing the impugned orders, the Commission noted that the Bihar State Electricity Board, BSES Rajdhani Power Limited and Gujarat Urja Vikas Nigam Limited, some of the respondents before the Central Commission had objected that tariff is a complete package and its reasonability is required to be examined in its totality. However, despite this objection being raised, the Commission did not apply the said principle.

22.3. that the Commission, in the impugned orders, has sought to justify such adjustment on the following ground:-

“...Normally a party should not be allowed any change in deviation of the norms. However, when a particular expenditure has not been factored while deciding the norms, in that case the claim for such expenditure cannot be said to result in re-opening of norms. The claim has to be considered in addition to norms after due prudence check as regards its reasonability.”

22.4. that the above noted rationale is erroneous and cannot be sustained to adjust particular components of tariff. The norms for determination of tariff are fixed after taking into account various fluctuations that may occur during the control period and the tariff determined consequent to the application of such norms is intended to take into account the said possible fluctuations. Further, a massive fluctuation in one of the components does not imply that a particular component be re-opened and adjusted in isolation.

22.5. that the Commission has failed to appreciate that in the event the tariff is re-opened and adjustment is made to a particular component, all other components should also be re-opened and due adjustment should be made therein. Various components of tariff are so fixed in a manner to cover fluctuations. In case of adjustment in one of the components, all other must be accordingly adjusted, else there would be an imbalance in the tariff. The impugned order did not re-adjust other components while adjusting the O & M expenses thereby acting against the settled principle that tariff is a package and an individual component cannot be looked at in isolation.

22.6. that the reliance placed by the respondent Corporation on the decision of this Tribunal in Uttar Pradesh Power Corporation Ltd. V. Central Electricity Regulatory Commission Vs. CERC (Supra) to contend that the tariff is not a complete package and that the specific parameters of tariff can be revised in isolation without regard to the other parameters, is erroneous and incorrect.

22.7. that the judgment of this Appellate Tribunal in Uttar Pradesh Power Corporation Ltd. case may be of relevance to the present case only to the limited issue of revision of normative tariff on the basis of actuals and even with respect to the said issue this Appellate Tribunal has held that normative tariff cannot be revised on the basis of actuals.

22.08. that the Commission has committed a wrong in converting an element in tariff determination on the normative basis to be a cost plus one.

22.09. that the O & M expenses are determined on a normative basis as per Regulation 21 (iv) (a) of CERC, 2004 Regulations which is as under:-

“Normative operation and maintenance expenses shall be as follows, namely, :-

- (a) Coal based generating stations except Talcher Thermal Power Station and Tanda Power Station of National Thermal Power Corporation Limited.

Year	200/210/250 MW sets	500 MW and above sets
2004-05	10.40	9.36
2005-06	10.82	9.73
2006-07	11.25	10.12
2007-08	11.70	10.52
2008-09	12.17	19.95

Note:-For the generating stations having combination of 200/210/250 MW sets and 500 MW and above set, the weighted average value for operation and maintenance expense shall be adopted."

22.10. that this Appellate Tribunal further in U.P. Power Corporation Ltd. V. Central Electricity Regulatory Commission &Ors. 2011 ELR (APTEL) 0858 at para 10 observed as follows:-

"Thus, each element of the Tariff has to be determined on the norms following commercial principles, encouraging competition and safeguarding the consumer interest and at the same time ensure recovery of the cost of electricity in a reasonable manner. Accordingly, the Central Commission by a reasoned order has decided to allow O & M expenses to the four gas stations of NTPC as applicable to Gas Power Stations without warranty spares. It is expected that if NTPC performs better than the operational norms, it will be rewarded for efficiency and if it performs at lower than normal parameters, it will have to bear the consequential loss. Thus, there is no force in the argument of the appellant that before allowing the enhanced O & M expenses, the Central Commission shall check whether the actual ROE is less than the normative ROE and then only allow the enhanced O & M expenses. This is not as per the scheme of the Regulations."

22.11. A perusal of the above noted judgments of this Appellate Tribunal indicates that it is impermissible for the Commission to change a norm based into a cost plus tariff.

22.12. that no reliance can be placed on the decision of this Appellate Tribunal in Appeal Nos. 94 and 96 of 2005 in the case of NTPC Vs. CERC &Ors to contend that the normative determination of tariff may be adjusted in accordance with the actual.

22.13. that in the aforesaid decision of this Appellate Tribunal in Appeal Nos. 94 and 96 of 2005, a normative debt and equity ratio of 50:50 had been adopted by the Commission for the power stations of the appellant therein whose financial packages had been approved before 31.03.1992. The dispute arose when the Commission, in order to calculate the interest on loan capital prescribed a formula, whereby the amount of debt at the beginning of the tariff period took into account the normative or the actual debt whichever was higher. This Appellate Tribunal held that the financing plan was to be based on the normative ratio and not on the actual debt equity ratio as the normative determination had been adopted. The said decision of this Appellate Tribunal clearly

establishes that in the event a normative method of the determination of tariff is adopted, the same cannot be changed.

22.14. that the Commission, by allowing the increased employee expenses on the basis of increase in actual employee expenses, which admittedly are a part of the O & M head of expenditure, which in turn is a norm based determination, has acted in violation of the settled principles of law and as such the impugned orders are bad in law. Therefore, allowing the employees expenses on the actual run contrary to the settled principles of tariff determination and should be set aside.

22.15. that the tariff is a complete package and as per 2004 Tariff Regulations, the tariff has to be decided on the basis of normative values. Thus, the actuals are not required to be looked into:

22.16. that if the tariff is to be revised on the basis of actuals, then actual values of all the parameters have to be considered and only one component of the tariff cannot be revised on the basis of actuals. Since the O & M expenses are normative, hence for the revision of the same Corporations like NTPC were required to show before the Central Commission that on the basis of the actuals respective Corporations had not received the adequate return. Unless and until it is shown that the respondent Corporation has received adequate return on the equity employed by it, the tariff cannot be revised.

22.17. that the intention and object enshrined in Section 61 (d) of Electricity Act, 2003, is that the tariff should be most economical at the end of consumer. Thus, at the time of revision of tariff, the Central Commission had to consider the consumers' interest because any increase in any of the component of the tariff will ultimately affect the consumer. Unless and until it is shown that cost of electricity and adequate return is not received by the generator, micro splitting of the component of a tariff and revision of the same is not permissible.

22.18. that the basis of claim by the Corporation-NTPC is the letter of Department of Public Enterprises which provides that the impact of pay revision will be borne by Central Public Enterprises out of their profits. Thus, the claim of the Corporations before the Central Commission was not maintainable.

23. Per contra regarding Issue No. D - relating to tariff as a complete package, the learned counsel for the respondents have made the following contentions:-

23.1. that the contention of the appellants that the tariff allowed is a package and, therefore, no element of tariff should be increased without considering all other elements of tariff has no merit and the same is a misconceived conclusion.

23.02. that this Appellate Tribunal further in its judgment dated 14.11.2006 in Appeal Nos. 94 and 96 of 2005 NTPC Vs. CERC &Ors. held that once it has been decided and agreed *that the financing plan would be based on normative debt-equity ratio of 50:50 and not the actual debt-equity ratio, the same normative basis should be adopted for recovery of cost of servicing the capital.*

23.03. that this Appellate Tribunal in its judgment dated 24.05.2011 in Appeal Nos. 100 & 103 of 2009 & batch (UP Power Corporation Limited Vs. CERC) has held that *there is no force in the argument of the Appellant that before allowing the enhanced O&M expenses, the Central Commission shall check whether the actual ROE is less than the normative ROE and then only allow the enhanced O&M expenses. This is not as per the scheme of the Regulations.*

23.04. that the 2004 Tariff Regulations do not provide for actual or norms whichever is lower. Accordingly, there is no truing up of the normative parameters to determine whether such norms are lower or higher than the actual in the case and if the actual are lower than the normative, the same need to be adjusted to actual. Each of the tariff elements are considered on normative basis, wherever specified, independent of other norms and there should not be any overlapping.

23.05. that the subsequent developments may change the basis on which the norms had been fixed with reference to a particular tariff element and if such subsequent developments are not on account of any imprudence or failure or default on the part of the utility, the same can be revised to adjust for the impact of the subsequent developments. The test is if the increase had been implemented when the Tariff Regulations were notified specifying the norms, would have taken into account such increase. There should be no other consideration while deciding on the impact of the subsequent developments either as alleged by the appellants or otherwise.

23.06. that in the present case, a revision in tariff was envisaged by the orders of the Central Commission itself. In this regard, in G.D. Ferro Alloys Ltd &Ors Vs. Delhi Electric Supply Undertaking reported at AIR 1998 Delhi 17, the Hon'ble High Court dealing with the

aspect of consequential enhancement in energy charges on account of fuel adjustment when such a stipulation was contained in the tariff itself held as under:-

"12. As noticed above, in addition to the fixed demand charges, the tariff provides for payment of energy charges at the prescribed rate, which evidently is subject to some minimum payment as laid down in item (d) of the tariff conditions and adjustment under clause (xix) of the general conditions of application. The tariff and the conditions, forming integral part of the tariff, make it abundantly clear that energy charges realized are provisional till variation in fuel adjustment charges as determined on taking the final accounts as the end of the relevant year. This is also borne out from the latter part of the general conditions, which authorizes the DESU Management to make adjustment provisionally from time to time; incorporate it as part of the monthly bill for payment by the consumer; and on finalization of the accounts levy and recover the same retrospectively from the beginning of the financial year.

13. In view of such a stipulation in the statutory tariff, and even otherwise any rates which may be fixed for recovery in the monthly bills raised during the current year would obviously be provisional in nature because they were neither based on the actual generation cost nor the cost of purchase of power from other sources. It will remain so till final accounts are taken by DESU, calculations made and final rates notified. This is clearly borne out from the relevant tariff and it was within the knowledge of the petitioners, who claim to be the major consumers of electricity as basic raw material for their and products. Thus the contention of the petitioners that energy charges levied and collected after the end of the current year should be taken to be the final charges, in our view, is based on misinterpretation and misunderstanding of the provision relating to FAC. The latter part of the general conditions, authorizing DESU to make final adjustment on account of variation in energy charges after the close of period of account is an enabling provision for DESU to determine and fix the final rate qua each year and cannot be said to be laying down a mandatory outer limit within which final rates must be fixed, though the provision reflects the legislative intent that the requisite exercise must be made as soon as possible after the close of the period of account. Having come to the conclusion that energy charges paid by the petitioners were provisional and they were fully conscious of the nature of the charges levied as energy charges, it cannot be said that by revising energy charges on account of the variation in FAC, the respondents have brought out some retrospective amendment in the tariff itself. The consequential enhancement in the energy charges on account of the variation in FAC, in our opinion, has no element of retrospectivity, as alleged by the Petitioners."

23.07. that if an Authority has a power under the law, then merely because the source of power is not specifically referred to or a reference is made to the wrong provision of law, that by itself does not vitiate the exercise of powers so long as the power does exist and can be traced to a source available in law as held by the Hon'ble Supreme Court in the case of P.K Palanisamy Vs. N. Arumugham and Anr. (2009)9 SCC 173; Ram Sunder Ram Vs. Union of India (2007) 13 SCC 255 & N. Mani Vs. Sangeetha Theatre (2004) 12 SCC 278.

23.08. that this contention of the appellants that the Pay Commission Recommendations to provide the extra cost out of the profit and, therefore, the power generator-NTPC

should not be allowed the increase in the employees cost as a part of O & M expenses. This contention is totally misconceived. The recommendation is in respect of all Public Sector Undertakings. Many of the CPSUs are not subject to regulatory tariff determination and they operate under market conditions where there is no restriction on the price to be charged for the products. The power generating corporations like NTPC's price for generation and sale of electricity is regulated by virtue of the determination of tariff by the Central Commission based on the capital cost and expenses. Accordingly, NTPC is deriving a regulated return/profit. It is nobody's case that by payment of employees cost, there would be a dip in the profit of NTPC by more than 20%.

23.09. that the appellants are raising hyper-technical and vexatious plea to deny the legitimate claim of the power generating corporations like NTPC. Once the employees cost is recognized as a part of the O & M expenses to be allowed, there cannot be any reason to object to the employees cost including the increased employees cost to be allowed as a pass through in the tariff. In the facts and circumstances of the matter in hand, there is no issue of the employees cost being high or otherwise being incurred in an imprudent manner.

Contrary to the contentions of the appellants on issues, following arguments have been made on behalf of the respondent-NHPC:-

24. that NHPC can never be expected to bear the burden because of the vacuum in the Regulations that arose on account of the wage revision. It is nobody's case that NHPC should be fastened with the financial burden. Instead, refuge was sought to be taken behind technical pleas, for instance, the impermissibility of invoking Regulation 12 rather than Regulation 13 etc. of 2004 Tariff Regulations for the purpose of somehow defeating the legitimate claims of the NHPC. Clearly, the unforeseen and massive hike in O & M expenses due to increase in employees salary and wages as a result of 6th Pay Commission's Recommendations, have to be taken care of in the tariff and NHPC, a power generator, cannot be expected to virtually subsidise the wage revision.

24.1. that there was a clear gap between the 2004 Tariff Regulations 2004 and 2009 Tariff Regulations inasmuch as the 2009 Tariff Regulations sought to compensate NHPC on account of wage revision w.e.f. 01.04.2009 (the date from which the 2009 Tariff Regulations were made applicable). The gap arose on account of the fact that no provision was made for taking into account the wage revision for the period 2007-2009.

24.02. that the NHPC in its reply, particularly, in para 5 thereof, submitted that the pay revision was due from 01.01.2006 for Central Government Employees and from 01.01.2007 for PSUs. This fact was known to the appellants and to the CERC while framing Tariff Regulations for the period 2009-14. The Central Commission, through the statement of objects and reasons issued for 2009 Tariff Regulations, has also issued methodology to determine the impact of wage/pay revision from 2009-10 onwards.

24.03. Regulation 22 of 2009 Tariff Regulations dealing with O & M expenses of Hydro Generating Stations provided for the methodology to work out average normalized O & M expenses at 2007-08 price level and arrive at O & M expenses for the year 2009-10.

24.04. Regulation 22.7 of the 2009 Tariff Regulations further provides that the above O & M expenses for the year 2009-10 shall be escalated further @ 5.72% per annum to arrive at O & M expenses for subsequent years of the tariff period.

24.05. that it is evident from the said Regulations regarding computation of normative O & M expenses for hydro generating stations that normative O & M expenses for 2004-09 and 2009-14 shall be derived from actual O & M expenses for the period 1998-99 to 2002-03 and 2003-04 to 2007-08 respectively. It implies that impact of wage/pay revision was not taken into account while allowing normative O & M expenses for 2004-09 since these are based on actual O & M expenses of 1998-99 to 2002-03 and only affect normative O & M expenses of 2009-14. Since these are based on actual O & M expenses of 2003-04 to 2007-08 and wage revision falls between this period of consideration, the impugned order has been issued by the Central Commission to fill in the gap between the Regulations governing O & M expenses for the period 2004-09 and the Regulations governing O & M expenses for the period 2009-14.

24.06. that the NHPC has also brought out the said fact when it filed the Tariff Petition for the tariff period 2009-14, it took into account actual O & M expenses of 2003-04 to 2007-08 which also included the provision created for wage/pay revision in balance sheets of the respective power stations. However, the Central Commission while allowing the O & M expenses of 2009-14 have excluded this provisioning while normalizing the actual O & M expenses of 2003-04 to 2007-08.

24.07. that the Central Commission has not considered the provisions made on account of wage/pay revision of employees during 2006-07 and 2007-08 in other tariff petitions of NHPC. Therefore, the NHPC is deprived of the legitimate/uncontrollable expenditure incurred on wage/pay revision. It is pertinent to mention here that 2009 Tariff

Regulations deals with impact of wage revision from 2009-10 onwards only and not for the period prior to 2009-10 and so miscellaneous petitions under Regulations 12 and 13 of 2004 Tariff Regulations were necessary to recover the cost of electricity. Since the impact of the pay revision of employees during 2006-07 and 2007-08 has not been accounted for while fixing the tariff for the period 2009-14, there was no option for the Central Commission except to pass an appropriate order under Regulations 12 and 13 of the 2004 Tariff Regulations. Therefore, there is no error in claiming such additional O & M expenses after the completion of the control period 2004-09. The consideration of the increased salary effective from 01.01.2007 was not there at the time when the 2004 Tariff Regulations were notified on account of the increase in the salary and wages having not been finalized and given effect to. Subsequently, the increase in the salary and wages were given effect pursuant to the decision of the Department of Public Enterprises (DPE), Government of India and implemented by NHPC with actual payment of the increased salary and wages to the employees including to the Central Industrial Security Force (CISF)/Indian Reserve Battalion (IRBN) employed with NHPC generating stations.

24.08. that the recommendations of the Pay Commission and decision of DPE were thus implemented by NHPC. Further, the provisions kept in the balance sheets of respective power stations were not considered by the Central Commission while determining O & M expenses for the tariff period 2009-14.

24.09. that in the facts of the cases in hand, the provisions regarding 'Power to remove difficulties' and 'Power to Relax' were clearly attracted, since the facts that wage/pay revision are going to be effective 01.01.2007 were known to the appellants/distribution licensees and to the Central Commission.

24.10. that the purpose of accounting for the impact of wage/pay revision, the Central Commission had two options : (i) considering the provision created by the power generator during 2006-07 & 2007-08 while allowing normative O & M expenses for 2009-14 under the provisions of 2009 Tariff Regulations and (ii) allowing the actual impact under 2004 Tariff Regulations. Since the Central Commission has not considered the first option, the respondent power generator pursued the second option and the Central Commission allowed the same in terms of detailed impugned order dated 05.12.2012.

OUR CONCLUSION ON ISSUE NO.D

25. Now, we are considering the issue whether the Central Commission has failed to take notice of the fact that the tariff is a package and tariff cannot be amended in a piecemeal manner by modifying its individual components.

25.1. The main contention of the appellants on this issue is that normally a party should not be allowed any change in deviation of the norms and inspite of the objections being raised by the distribution licensees before the Central Commission that the tariff is a complete package and its reasonability is required to be examined in totality, the Commission has failed to consider the same. The other contention of the appellants on this issue is that in the event the tariff is re-opened and adjustment is made in a particular component, all other components of the tariff should also be re-opened and due adjustments should be made therein because various components of the tariff are so fixed in a manner so as to cover the fluctuations, else there would be an imbalance in the tariff. Since the impugned orders did not re-adjust other components while adjusting the O & M expenses thereby acting against the settled principle that the tariff is a package and an individual component cannot be looked at in isolation, the impugned orders are illegal and vitiated. We have perused the rulings cited by the appellants, namely, judgment of this Appellate Tribunal in Appeal Nos. 42 & 43 of 2008 in the case of Haryana Power Generation Corporation Ltd. Vs. Haryana Electricity Regulatory Commission and also in the case of U.P. Power Corporation Ltd. Vs. Central Electricity Regulatory Commission & Ors. reported in 2011 ELR (APTEL) 0858 which prescribed certain guidelines for normative O & M expenses and also normative approach to be made. We have also gone through the judgment of this Appellate Tribunal in Appeal Nos. 94 and 96 of 2005 in the case of National Thermal Power Corporation Ltd. Vs. CERC & Others where this Tribunal held that normative determination of tariff may be adjusted in accordance with the actual.

25.2. We have also considered one more contention of the appellants that the intention and object enshrined in Section 61 (d) of the Electricity Act, 2003 is that the tariff should be most economical at the end of consumer and thus at the time of revision of tariff, the Central Commission was bound to consider the consumers interest because the increase in any of the component of the tariff would ultimately affect the consumer, unless and until it is shown that cost of electricity and adequate return was not received by the generator, the micro splitting of the component of a tariff and revision of the same was not permissible to the Central Commission.

25.3. After considering the rival contentions of the parties and perusing the impugned orders and the material available on record, we do not find any force in the contentions

raised on behalf of the appellants. We are aware that 2004 Tariff Regulations do not provide for actual or norms whichever is lower. Accordingly, there is no truing up of the normative parameters to determine whether such norms are lower or higher than the actual in the case and if the actual are lower than the normative, the same need to be adjusted to actual. Each of the tariff elements are considered on normative basis, wherever specified, independent of other norms and there should not be any overlapping.

25.4. The contention of the appellants that the Sixth Pay Commission's Recommendations to provide the extra cost out of the profit and, therefore, the power generators like NTPC should not be allowed the increase in the employees cost as a part of O & M expenses is totally mis-conceived and not acceptable. The Sixth Pay Commission's Recommendations are in respect of all Public Sector Undertakings. Many of the CPSUs are not subject to regulatory tariff determination and they operate under market conditions where there is no restriction on the price to be charged for the products. The power generating Corporations like NTPC, NHPC etc., the price for generation and sale of electricity is regulated by virtue of the determination of tariff by the appropriate Commission based on the capital cost and expenses. We are of the view that the power generating Corporations like NTPC cannot be denied their legitimate claim on the hyper technical grounds. Once the employees cost is recognized as part of the O & M expenses, the same is to be allowed, there cannot be any reason to object to the employees cost including the increase in employees cost to be allowed as a pass through in the tariff. In the matter of NTPC, since the impact of pay revision of the employees during 2006-07 and 2007-08, had not been accounted for while fixing the tariff for 2009-14, there was no option for the Central Commission except to pass the appropriate orders like the impugned order under Regulations 12 and 13 of 2004 Tariff Regulations. Therefore, there is no error in claiming such O & M expenses after the completion of control period 2004-09. The consideration of the increased salary effective from 01.01.2007 was not there at the time when the 2004 Tariff Regulations were notified on account of the increase in the salary and wages having not been finalized and given effect to. Subsequently, the increase in the salary and wages were given effect pursuant to the decision of the Department of Public Enterprises (DPE), Government of India and implemented by NHPC with actual payment of the increased salary and wages to the employees including to the Central Industrial Security Force (CISF)/Indian Reserve Battalion (IRBN) employed with NHPC generating stations. Thus, the recommendations of the Sixth Pay Commission and justification of DPE was implemented by the NHPC at the relevant time and in accordance therewith, the learned Central Commission passed the impugned order along with increase in employees cost under O & M expenses.

25.5. While deciding Issue Nos. A & B in the upper part of this judgment , we have made observations in Para Nos. 18.08, 18.09, 18.10 & 18.11. We do not want to repeat the same here once again. We further reiterate and observe that the contentions of the respondents/power generators that if the 6th Pay Commission's Recommendations had been implemented prior to the framing of the 2004 Regulations and the salaries could have been known, the Central Commission would have factored the increase in the employees cost in the normative O & M expenses specified in Regulation 21 (iv) of 2004 Tariff Regulations over and above normalizing the O & M expenses based on past years actual expenses. We further note that since the increase in the salary etc. pursuant to the 6th Pay Commission's Recommendations, effective from 01.01.2007 was actually implemented by circulars dated 07.07.2010 and 17.08.2010 which were issued by the Government of India and Department of Public Enterprises after the 2009 Tariff Regulations had come into force, the proposed increase in the employees cost of the NTPC, NHPC etc. was envisaged by the respective Corporations like NTPC and was placed before the Central Commission at the time when 2009 Tariff Regulations were being considered. The Central Commission at that time, after due consideration of various aspects relating to in the implementation of Pay Commission, had come to a conclusion that a uniform tariff increase of 50% in employees cost would be just and reasonable by all CPSUs.

25.6. We further hold that even during the tariff period 2004-09, the Corporations like NTPC had raised the issue of increase in tariff on account of Pay Revision in the employees cost which was expected to occur and for that purpose, the NTPC filed a Petition being Petition No. 160 of 2004 for one of its gas power stations for the period 01.04.2004 to 31.03.2009 seeking additional O & M expenses in view of the wage revision. Similar submissions were also raised for other generating stations. The learned Central Commission vide its order dated 09.05.06 passed in Petition NO. 160 of 2004 decided that this issue does not arise for their consideration at this stage and the petitioner (respondent-NTPC) may approach for a relief in this regard at an appropriate stage in accordance with law. Thus, the power generators like NTPC approached the learned Central Commission at the relevant time seeking additional O & M expenses on account of wage revision as a result of implementation of 6th Pay Commission's Recommendations and the Central Commission, at that time vide order dated 09.05.2006, directed NTPC etc. to approach the Central Commission for such relief at an appropriate stage. It was in accordance with the said order dated 09.05.06 of the Central Commission that the aforesaid petitions were filed by different power generating Companies like NTPC, NHPC etc. before the Central Commission which have been allowed by the impugned orders,

which impugned orders are being assailed before us by the appellants/distribution licensees.

25.7. We further hold that subsequent development occurred due to implementation of the 6th Pay Commissions Recommendations and revision of pay scales and other benefits and to meet out the difficult situation which had arisen in giving effect to 2004 Tariff Regulations, particularly, Regulation 21 (iv) of 2004 Tariff Regulations to give effect to its terms in relation to the O & M expenses and to enable the power corporations like NTPC for recovery of entire legitimate cost and expenses incurred by them and thus passed the impugned orders by exercising the powers conferred upon it under Regulations 12 & 13 of 2004 Tariff Regulations and the learned Central Commission was fully and legally justified in exercising the powers to remove difficulties and power to relax provided under Regulations 12 & 13 of 2004 Tariff Regulations. Apart from this power, the Commission also has inherent power under Conduct of Business Regulations, 1999.

25.8. In view of the above, we find force in the contention raised on behalf of the respondent Corporations like NTPC, NHPC etc. We do not find any infirmity or illegality in any of the findings recorded by the Central Commission in the impugned orders. Hence, Issue No. D is decided against the appellants and in favour of the respondent Corporations like NTPC, NHPC etc. In view of the above discussions, the Appeals, being devoid of merits, are liable to be dismissed.

SUMMARY OF OUR FINDINGS

26. The learned Central Commission, in the impugned orders, which are under challenge in these set of Appeals, while allowing their different petitions, the power generating Companies NTPC, NHPC & SJVNL were allowed to recover additional costs incurred by them towards pay revision of their respective employees, Central Industrial Security Force (CISF) Staff and Kendriya Vidyalaya Staff for their different power generating stations during 01.01.2006 to 31.03.2009 exercising the power to remove difficulties and power to relax under Regulations 12 & 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

26.01. The main grievances of the appellants in these Appeals are that the learned Central Commission, in the impugned orders, has allowed the power generating Companies like NTPC, NHPC & SJVNL to recover additional Operation &

Maintenance costs incurred during tariff period 2004-09 by way of arrears and directed the respective distribution licensees therein to pay the additional amount in monthly installments during the year 2013-14. The impugned orders have further been challenged by the distribution licensees (appellants herein) on the ground that the learned Central Commission has allowed the change in tariff on a reconsideration of the norms fixed under the 2004 Tariff Regulations completely ignoring the said Regulations and the said revision of O & M norms for the respondents NTPC, NHPC & SJVNL on the ground that the actual had varied significantly during the control period could not be made and these were not the fit cases in which the Central Commission could have exercised the powers to remove difficulties and power to relax provided under Regulations 12 & 13 of the CERC (Terms and Conditions) 2004 Tariff Regulations, particularly, after the expiry of the control period of 2004 Tariff Regulations, namely, 2004-09.

26.02. We are unable to accept the aforesaid contentions of the distribution licensees/appellants herein because the 6th Pay Commission's Recommendations had been implemented by the Power Generators after issuance of the Government circulars and the consequent increase in the employees costs due to increase in salaries of the employees etc. The arrears had been paid by the power generating companies. We agree to the contentions of the power generators that if the 6th Pay Commission's Recommendations had been implemented prior to 2004 Tariff Regulations and if the salaries could have been known, the Central Commission would have factored the increase in the employees cost in the normative O & M expenses specified in Regulation 21 (iv) of 2004 Tariff Regulations over and above normalizing the O & M expenditure based on past years actual expenditure. Since the increase in the salary etc. pursuant to the Pay Commission's Recommendations etc., effective from 01.01.2007 was actually implemented by Government circulars dated 07.07.2010 and 17.08.2010 obviously after 2009 Tariff Regulations had come into force. However, the proposed increase was envisaged by the Corporations like NTPC and was placed before the Central Commission at the time when 2009 Tariff Regulations were being considered.

26.03. We may observe that even during the tariff period 2004-09, the Corporations like NTPC had raised the issue of increase in tariff on account of increase in employees cost

which was expected to occur and for that purpose, the NTPC filed a Petition, being Petition No. 160 of 2004, before the Central Commission for the period 01.04.2004 to 31.03.2009, seeking additional O & M expenses in view of the wage revision. The learned Central Commission, vide its order dated 09.05.2006, in Petition No. 160 of 2004, held that the said issue does not arise for their consideration at this stage and these power generators like NTPC etc. may approach for a relief in this regard at an appropriate stage in accordance with law. It was in the light of the order dated 09.05.2006 of the Central Commission and the liberty granted to the power generators like NTPC, NHPC etc., they approached the learned Central Commission, by way of filing the said petitions for the same relief which have been granted by the learned Central Commission through the impugned orders as stated above.

26.04. We further hold that a subsequent development occurred due to the implementation of the 6th Pay Commission's Recommendations and revision of pay scales and other benefits and such was a difficult situation which had arisen in giving effect to the 2004 Tariff Regulations, particularly, Regulation 23 of 2004 Tariff Regulations, if given effect to on its term in relation to O & M expenses would not enable the recovery of the entire legitimate costs and expenses incurred by the power generators/Corporations like NTPC. Hence, we further hold that in the circumstances of the present matters, the learned Central Commission was justified in exercising its power to remove difficulties and power to relax as provided under Regulations 12 & 13 of 2004 Tariff Regulations.

26.05. We further observe that in view of the subsequent developments of implementation of 6th Pay Commission's Recommendations, the actual employees cost was not fully factored in Regulation 21 (iv) of 2004 Tariff Regulations and the situation clearly warranted the exercise of 'Power to remove difficulties' and 'Power to relax' conferred upon the Central Commission under Regulations 12 and 13 of the 2004 Tariff Regulations. The Central Commission has committed no illegality in passing the impugned orders allowing the increase in the employees cost subject to prudence check. The learned Central Commission, in the impugned orders, has cited sufficient reasons for exercising such powers and also exercised the said powers in its judicial discretion because non-exercise of judicial discretion by the Central Commission would cause hardship and injustice to the respondent Corporations or would lead to unjust result. Further, the power generators like NTPC had successfully established that the circumstances were not created due to the act or omission attributable to them.

26.06. We further note that 2004 Tariff Regulations were notified based on the circumstances which existed at the time of notification of 2004 Tariff Regulations. In case of O & M expenses for the period 2004-09, it was determined based on previous years O & M expenses. The O & M expenses in respect of 2004 Tariff Regulations did not cover the increase in the employees' cost and therefore, the cash outflow in the head of increase in the employees' cost was not included in the O & M expenses under 2004 Tariff Regulations.

26.07. Regarding Issue No. C relating to inordinate delay after the expiry of relevant tariff period in filing the impugned petition by the power generating Companies like NTPC etc., we hold that the power generating Corporations were provided liberty and were directed by the learned Central Commission vide its order dated 09.05.2006 passed in Petition No. 160 of 2004 to raise the same issue at an appropriate stage of increase in the employees cost on account of wage revision in the salaries of the employees. The impugned petitions filed before the Central Commission by the power generating corporations like NTPC etc cannot be said to be suffering from any kind of delay in filing the same. Hence, we do not find any force in the contentions of the distribution licensees/appellants on this issue of delay in claiming the O & M expenses on actual basis by the power generating Companies.

26.08. On Issue No. D, relating to failure of the Central Commission to take note of the fact that tariff is a package and it cannot be amended in a piecemeal manner by modifying its individual components, we hold and observe that in view of the liberty granted to the power generating companies by the Central Commission vide order dated 09.05.2006 in Petition No. 160 of 2004, the learned Central Commission, in the facts and circumstances of the present matters, legally, correctly and justly allowed the petitioners/respondents- power generation corporations like NTPC, NHPC & SJVNL to recover additional costs incurred towards the pay revision of the respective employees as the power generating corporations like NTPC etc could not be denied their legitimate claim on the hyper-technical grounds. Once the employees cost is recognized as part of the O & M expenses to be allowed, there cannot be any reason to object to the employees cost including the increase in employees cost to be allowed as a pass through in the tariff. In the matter of NTPC, since the impact of pay revision of employees during 2006-07 and 2007-08 which had not been accounted for while fixing the tariff for 2009-14, in the 2009 Tariff Regulations, there was no option for the Central Commission except to pass the appropriate orders like the impugned orders under Regulations 12 and 13 of 2004 Tariff Regulations. Therefore, we find that there was no error in claiming such O & M expenses

after the completion of control period 2004-09. The consideration of the increased salary effective from 01.01.2007 was not there at the time when the 2004 Tariff Regulations were notified, on account of the increase in the salary and wages having not been finalized and given effect to. Subsequently, the increase in the salary and wages of the employees of NTPC etc were given effect pursuant to the decision of the Department of Public Enterprises (DPE), Government of India and implemented by the generating companies like NHPC etc. with actual payment of the increased salary and wages to the respective employees. Thus, the recommendations of the Sixth Pay Commission and office memorandums of DPE were implemented by the NHPC at the relevant time and in accordance therewith, the learned Central Commission passed the impugned orders along with increase in employees cost under O & M expenses.

26.09. Consequently, these Appeals being Appeal Nos. 55 of 2013, 77 of 2013, 194 of 2013, 259 of 2012, 63 of 2013, 143 of 2013, 158 of 2013 & 43 of 2014 are hereby dismissed as they have no merits. The impugned orders passed by the learned Central Commission in the respective petitions are hereby affirmed. No order as to costs.

Pronounced in open Court on this 24th day of March, 2015.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**
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