

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal no. 187 of 2014**

**Dated: 9<sup>th</sup> March, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

Powergrid Corporation of India Ltd. ... Appellant  
Saudamini, Plot No.2,  
Sector 29, Gurgaon – 122 001  
Haryana

Versus

1. Central Electricity Regulatory Commission ... Respondents  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi – 110 001
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Jyoti Nagar, Janpath  
Jaipur – 302 005
3. Ajmer Vidyut Nigam Ltd.  
400 kV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur – 302 005
4. Jaipur Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur – 302 005
5. Jodhpur Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur – 302 005
6. Himachal Pradesh State Electricity Board Ltd.

Vidyut Bhawan, Kumar House Complex Building II,  
Shimla – 171 004

7. Punjab State Power Corporation Ltd.,  
The Mall, Patiala – 147 001
8. Haryana Power Purchase Centre  
Shakti Bhawan, Sector 6,  
Panchkula (Haryana) 134 109
9. Power Development Department  
Govt. of Jammu & Kashmir  
Mini Secretariat, Jammu – 180 001
10. Uttar Pradesh Power Corporation Ltd.,  
Shakti Bhawan Extension  
14, Ashok Marg, Lucknow – 226 001
11. Delhi Transco Ltd.  
Shakti Sadan, Kotia Road  
New Delhi – 110 002
12. BSES Yamuna Power Ltd.  
Shakti Kiran Building  
Karkardooma, Delhi – 110 092
13. BSES Rajdhani Power Ltd.  
BSES Bhawan, Building No. 20,  
Nehru Place, New Delhi – 110 019
14. Tata Power Delhi Distribution Limited  
Power Trading & Load Dispatch Group  
Cennet Building  
Grid Building, Nearer PP Jewellers,  
Pitampura, Delhi 110 034
15. Chandigarh Administration  
Sector 9, Chandigarh – 160 022

16. Uttarakhand Power Corporation Ltd.  
Urja Bhawan, Kanwali Road  
Dehradun – 248 001
17. North Central Railway  
Regional Headquarters,  
Civil Lines, Allahabad – 211 001
18. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi – 110 002

Counsel for the Appellant : Mr. M.G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Poorva Saigal  
Ms. Anushree Bardhan  
Ms. Swagatika Sahoo  
Mr. Arvind Kumar Pandey

Counsel for the Respondents: Mr. Pradeep Misra  
Mr. Manoj Kr. Sharma  
Mr. Shashank Pandit  
Mr. Suraj Singh for R-3 to R-5  
Mr. Rajiv Srivastava for R-10  
Mr. R.B. Sharma for R-13

## **J U D G M E N T**

### **MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by Powergrid Corporation of India Limited against the order dated 15.09.2011 passed by the Central Electricity Regulatory Commission (“Central Commission”) in Petition no. 108 of 2009. The Appellant is aggrieved by treatment of depreciation amount related to

the transmission system associated with Auraiya Gas Power Station as available for repayment of loan taken for the purpose of additional capitalization of a specific asset, namely, the strengthening of transmission towers.

2. Powergrid Corporation of India is the Appellant. The Appellant is a Government of India company set up with the object of undertaking intra-State transmission of electricity in the country. The Appellant discharges the functions of the Central Transmission Utility and is engaged in the transmission of electricity and other functions provided under the Electricity Act, 2003. The Central Commission is the Respondent no.1. The other Respondents are the beneficiaries of the transmission system of the Appellant.
3. The facts of the case are as under: -
  - a) The Appellant has established the transmission system associated with Auraiya Gas Power project and various elements of this transmission system achieved commercial operation during the period from 1989 to 1991.
  - b) On 19.01.2009, Central Commission notified the Tariff Regulations, 2009.

- c) On 10.06.2009 the Appellant filed a Petition being no. 108 of 2009 before the Central Commission for approval of transmission tariff for the above Auraiya Transmission System for the period 2009-14 on the basis of capital cost admitted by the Central Commission as on 31.03.2009 and proposed additional capitalization during the period 2009-14. In the Petition the Appellant claimed *interalia* the additional capitalization proposed to be incurred for the tariff period 2011-12 and 2012-13 towards Tower Strengthening Work on 400 kV Agra-Ballabgarh and 400 kV Auraiya-Agra double circuit transmission lines which are part of Auraiya Transmission System.
- d) Vide order dated 15.09.2011, the Central Commission determined transmission tariff *interalia* considering a normative debt equity ratio of 70:30 for the additional capital expenditure for the Tower Strengthening Work. The Central Commission considered the equity of Rs. 52.44 lakhs and debt of Rs. 122.37 lakhs for the year 2011-12 and equity of Rs. 71.12 lakhs and debt of Rs. 165.96 lakhs for the year 2012-13. The Central Commission, however, did not consider the servicing of the proposed loan for additional capital expenditure for the year 2011-12 and 2012-13 on the ground that the depreciation allowed for entire Auraiya transmission system is available for

deemed repayment of loan for the said period and the entire debt can be taken as repaid in the same year.

4. Aggrieved by the order of the Central Commission where the Commission treated depreciation as deemed repayment of loan under Regulation 16(3) of the Tariff Regulation, 2009, the Appellant on 18.04.2012 filed a writ petition before the High Court of Delhi challenging the legality and vires of Regulation 16(3). The High Court vide order dated 03.03.2014 disposed the Writ Petition with the liberty given to the Appellant to file an Appeal before this Tribunal regarding interpretation of Regulation 16(3).
5. Accordingly, this Appeal has been filed against the order dated 15.09.2011 by the Central Commission challenging the interpretation adopted by the Central Commission of Regulation 16(3) of Tariff Regulations, 2009.
6. The Appellant has made following submissions:
  - a) Regulation 16(3) needs to be purposely interpreted on the individual asset for which loan is taken and depreciation available for the individual assets namely the depreciation related to Tower Strengthening Work being the additional capitalization claimed being taken as available repayment of loan related to such Tower

Strengthening Work. Accordingly depreciation of gross value of the assets of Tower Strengthening Work namely Rs. 174.81 lakhs for the year 2011-12 and Rs. 231.08 lakhs for the year 2012-13 should alone have been considered and not the entire depreciation on the transmission system gross asset value for the said year be considered.

- b) If the entire depreciation amount of the transmission system were to be considered as deemed repayment of loan for the amount capitalized on the tower strengthening work, then the same would lead to an absurd result. Such an interpretation would lead to a situation where debt part of the capitalized amount would not to be serviced at all and the same would be ultra vires of the provisions of the Regulation 14 which provides for depreciation and interest on loan as two different tariff elements to be serviced.
- c) In terms of Regulation 4(1) of the Tariff Regulations, 2009, the tariff is to be determined in the present case for the Towers Strengthening Work. Accordingly, all tariff including interest on loan, depreciation etc. as well as equating loan repayment to depreciation ought to be logically with reference to the said Tower Strengthening Work only.

- d) The concept of equating depreciation to repayment of loan ought not to be applied in a manner that the aggregate depreciation admissible on the entire gross block of asset in a year is equated to repayment of loan relating to an individual asset forming part of the gross block of asset.
- e) Repayment of loan borrowed is generally done progressively in 7 to 10 years and the interest of loan is serviced on the reducing loan balance every year during the above period. The depreciation is allowed generally at an amount less than the loan repayment. Equating deprecation with repayment of loan without considering the above salient aspect is not correct.
- f) It will be harsh and unjust if the entire loan is taken as being repaid in the first year itself as the same would result in the element of interest on loan being not serviced at all in the subsequent years.
- g) The Regulation 16(3) interpreted and applied by the Central Commission leads to an anomalous situation, wherein the entire loan is deemed to have been paid through depreciation, whereas the loan will be serviced by the Appellant for a period of 15 years.
- h) The Central Commission did not take into consideration that depreciation is allowed as a component of tariff in the Tariff

Regulations, 2009 as an expense to the utility. This is independent and distinct from the interest on repayment of loan which has been provided as a separate component of tariff. The depreciation and interest on loan have been provided separately with an intention to allow both the components to the utility.

- i) The Central Commission did not consider that the depreciation on the entire asset base of the utility would always exceed the loan availed for additional capitalization. The amount of additional capitalization would always be lesser than the entire gross block of assets of the utility and, therefore, the loan availed for the same would always be lesser than the depreciation admissible on the gross block of assets of the utility. Thus, the interpretation by the Central Commission would lead to situation where none of the utilities would be able to recover the interest on loan availed for additional capitalization.
7. On the above issues we have heard Mr. M. G. Ramachandran, Learned Counsel for the Appellant, Mr. Pradeep Misra, Learned Counsel for Respondent no. 3 to 5, Mr. R.B. Sharma, Learned Counsel for the Respondent no.13 and Mr. Rajiv Srivastava, Learned Counsel for the Respondent no. 10. After considering the rival

contentions of the parties the only question that arises for our consideration is:

**“Whether the Central Commission has rightly interpreted and applied Regulation 16(3) of Tariff Regulations, 2009 while considering the depreciation of the entire transmission system associated with Auraiya gas based power station for deemed repayment of loan related to additional capitalization for Tower Strengthening Works undertaken during FYs 2011-12 and 2012-13?”**

8. Let us first examine the relevant Regulations in respect of **transmission system** of Tariff Regulations, 2009.
  - a) These Regulation shall apply in all cases where tariff for a **transmission system** is to be determined by the Commission under Section 62 of the Act read with Section 79 thereof.
  - b) Additional capitalization has been defined as under:

**“Additional capitalization** means the capital expenditure incurred or projected to be incurred, after the date of commercial operation of **the project** and admitted by the Commission after prudence check, subject to provisions of regulation 9.”

- c) **'Existing project'** has been defined as the **project** declared under commercial operation from a date prior to 01.04.2009.
- d) **'Project'** means a transmission system.
- e) **'Transmission system'** means a **line** or a **group of lines** with or without associated sub-station, and **includes equipment associated with transmission lines and sub-station.**
- f) Regulation 4(1) states that the tariff for the **transmission system** may be determined for the whole of the **transmission system** or the **transmission line or sub-station.**
- g) Regulation 7(1) provides that **capital cost** shall include (i) the expenditure incurred or projected to be incurred up to the date of commercial operation of **the project** as admitted by the Commission, after prudence check, (ii) capitalized initial spares subject to ceiling specified in the Regulation 8 and (iii) additional capital expenditure determined under Regulation 9.
- h) Regulation 7 (2) provides that the capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff. In case of the existing **projects**, the capital cost admitted by the Commission prior to 1.4.2009 and the additional capital expenditure projected to be incurred for

the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff.

- i) Regulation 14 specifies the components of Annual Fixed Cost or components of tariff, The components of tariff *interalia* include interest on loan and depreciation.
- j) Regulation 16 which is to be interpreted is reproduced as under:-

*“16. Interest on loan capital. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.*

*(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.*

*(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:*

*(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed,*

*(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:*

*Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered.*

*Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.*

*(6) The interest on loans shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.”*

9. The relevant Regulations are summarised as under:-
  - a) These Regulations are for determination of tariff for the transmission system.
  - b) Transmission system means a transmission line or group of transmission lines with or without associated sub-station. The transmission system includes equipment associated with transmission lines and sub-station. A project means a transmission system.
  - c) The existing projects are those which are under commercial operation prior to the date of coming into force of these Regulations i.e. 01.04.2009.
  - d) The tariff for the transmission system is to be determined for project as a whole and not different equipments associated with it.

- e) In an existing project, the capital cost admitted by the Commission prior to 01.04.2009 and the additional capital expenditure projected to be incurred for the respective year of 2009-14 as admitted by the Commission shall be the basis for determination of tariff.
  - f) The normative loan outstanding as on 01.04.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.03.2009 from gross normative loan.
  - g) Repayment of loan for the period 2009-14 shall be deemed to be equal to depreciation allowed for that year.
10. In the present case the transmission system associated with Auraiya gas based power station for which tariff was determined by the Central Commission is an existing project and it comprises a number of transmission lines. The Tower Strengthening Work is only an additional capitalization work carried out on existing transmission asset and is not a separate transmission asset. We find that the Petition filed by the Appellant was for approval of transmission tariff for the transmission system associated with Auraiya gas power project for the period 01.04.2009 to 31.03.2014. Accordingly, the State Commission by the impugned order has determined transmission tariff for the transmission system associated with

Auraiya gas power project. The amount incurred/proposed to be incurred on Tower Strengthening Work has been considered as additional capitalization of the existing transmission assets associated with Auraiya gas base power system.

11. Regulation 16(3) clearly indicates that the repayment of loan for the period 2009-14 shall be deemed to be equal to depreciation allowed for that year. Therefore, irrespective of the amount of actual loan repayment, the normative loan repayment equal to the depreciation allowed for that year has been provided for in the Regulations.
12. In the present case the entire notional loan was repaid prior to 01/04/2004 and Appellant was not entitled to any interest of loan during FY 2009-10 and FY 2010-11. Consequent to the additional capital expenditure during the FY 2011-12 and 2012-13 there was an addition to the normative loan amounting to Rs. 122.37 lakhs and Rs. 165.96 lakhs during 2011-12 and 2012-13 respectively. However, the loan amount was much less than the depreciation allowed by the Commission for the transmission system for the respective years. Accordingly, the loan in these years was set off by the depreciation amount during the same year as per the application of Regulation 16(3). Accordingly, the Commission has not allowed interest on loan

taken for the transmission strengthening work as per its Regulations. We find that Central Commission has correctly not allowed any interest on loan and the findings of the Central Commission are in consonance with the Tariff Regulations.

13. The Central Commission's Regulations provide for normative loan repayment equal to the depreciation allowed for the transmission assets irrespective of the actual loan repayment. There is also no provision for breaking up a transmission line into different elements. The tariff in the present case is being determined for the transmission system associated with Auraiya gas project. Thus, there is no force in the contention of the Appellant that for the purpose of determination of depreciation and interest on loan, the Tower Strengthening Work has to be considered in isolation. The Regulations do not have any provision for separating the elements of additional capitalization from the transmission system for which tariff is being determined. As per the scheme, the entire additional capital expenditure is included in the capital cost of the transmission line or transmission system and then tariff is determined on the basis of the total gross block of the transmission system.

14. The Appellant is claiming the interest on loan taken on additional capitalization works on an existing transmission system dehorse the statutory Regulations of the Central Commission which is not permissible.
15. Learned Counsel for the Appellant has referred to various rulings on purposive interpretation. In the present case the Regulations are very clear and there is no ambiguity. The only meaning that can be derived from the Regulations is as stated by us above. Thus, there is no scope for purposive interpretation in the present case as claimed by the Appellant.
16. According to the Appellant, it is entitled to both depreciation and interest on loan and therefore the Regulations have to be interpreted such that interest on loan is allowed. The Appellant is allowed interest on deemed loan as per the Regulations. Therefore, even if there is actual loan and deemed loan is nil, the Appellant is not entitled to interest on loan. Prior to additional capitalization in FY 2011-12 and 2012-13 also, the deemed loan was nil and the Appellant was not entitled to any interest on loan in the tariff. Thus, there is no merit in the contention of the Appellant in this regard.

17. It has been argued by the Learned Counsel for the Appellant that in any event the State Commission ought to have relaxed the Regulations for the purpose of granting interest on loan on additional capitalization to the Appellant by exercising its Power to Relax under the Regulations.

18. The power to relax has been vested in the Central Commission under Regulation 44 which reads as under:-

*“44. Power to Relax- The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.”*

19. Firstly, the Petition filed by the Appellant before the State Commission was for determination of transmission tariff for the transmission system associated with Auraiya gas Power Project for the period 2009-14 in which a claim for additional capitalization for expenditure proposed to be incurred for Tower Strengthening of 400 kV Agra-Ballabgarh and Auraiya-Agra transmission lines was made. No prayer was made by the Appellant for determination of tariff by exercising power to relax. Secondly, the Appellant is seeking segregation of tariff for a component of capital cost of transmission system namely additional capitalisation for Tower Strengthening Work which is not permissible under the Regulations as tariff can be

determined for a transmission system or transmission line as a whole. The Central Commission cannot introduce altogether a new method of tariff determination which has not been provided for in the Regulations and contrary to the provisions of the Regulations by exercising its power to relax. Additional capitalization is not a standalone asset for which tariff can be determined separately. Additional capitalization has to be merged with the capital cost of the transmission system line on which it is incurred. We cannot ask the Commission to do something indirectly which it cannot do directly.

20. We do not find any merit in the Appeal. Accordingly, the Appeal is dismissed. No order as to cost.

21. Pronounced in the open court on this **9<sup>th</sup> day of March, 2015.**

**(Rakesh Nath)**  
**Technical Member**

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**(Justice Mrs. Ranjana P. Desai)**  
**Chairperson**

**REPORTABLE/NON-REPORTABLE**

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