

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER ON IA NOs.927, 920 & 607 OF 2018 IN**  
**APPEAL NO. 178 OF 2018**  
**ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY**  
**NEW DELHI**

**Dated: 24<sup>TH</sup> July, 2018**

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member**  
**Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

The Tata Power Company Limited  
Jojobera Power Plant,  
PO Rahargora  
Jamshedpur - 831016

...Appellant

**- Versus -**

1. Jharkhand State Electricity Regulatory Commission  
Through its Secretary  
2<sup>nd</sup> Floor Sainik Market,  
Mahatma Gandhi Main Rd, Upper Bazar,  
Ranchi, Jharkhand 834001

2. Tata Steel Limited  
Jamshedpur – 831001, Jharkhand

...Respondents

Counsel for the Appellant (s) : Mr. S. Venkatesh  
Mr. Vikas Maini  
Mr. Sandeep Rajpurohit

Counsel for the Respondent(s) : Mr. Farrukh Rasheed for R-1

The Tata Power Company Limited, the Appellant herein, has filed the instant Appeal, being Appeal No. 178 of 2018, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, being aggrieved by the impugned order dated 19.02.2018 passed in Case No.16 of 2016 and Case No. 05 of 2017 on the file of the Jharkhand State Electricity Regulatory Commission.

**The Appellant has sought the following reliefs as follows:**

- (a) That this Hon'ble Tribunal may be pleased to allow the present Appeal and set aside the Impugned Order dated 19.02.2018 in terms of the grounds raised in Para 9 above;
- (b) Allow Raw Water Charges for FY 2015-16 along with arrears from 01.04.2011 to 31.08.2016 on actual basis;
- (c) Allow the cost of Secondary Fuel Oil Consumption for FY 2015-16 for Jojobera Unit 2 and Unit 3 on normative basis;
- (d) Allow the normative transit loss of 0.8% on MCL, Tailing by Road and Washery Coal for FY 2015-16.
- (e) Allow the computations of Energy Charges and Interest on Working Capital based on normative Specific Fuel Oil Consumption at level of 1 ml/kWh for Jojobera Unit 2 and Unit 3 as enunciated in the Generation Tariff Regulations 2015 for the second control period from FY 17-21.
- (f) Allow the cost of coal and cost of secondary fuel oil as an element of working capital corresponding to the generation at NAPAF and consequently provide relief in the interest on working capital for control period for Jojobera Unit 2 and Unit 3;

- (g) Allow Transit loss of 1% on Middling Coal for Second Control period and consequential relief in the energy charges and interest on working capital for Jojobera Unit 2 and Unit 3 in terms of the submission made in the Appeal at Para 9 above;

**The Appellant has presented this Appeal considering the following substantial Questions of Law:**

- (i) Whether the Ld. State Commission while passing the Impugned Order has acted contrary to its own Regulations?
- (ii) Whether the Ld. State Commission while passing the Impugned Order and while Truing-up the Tariff for FY 2015-2016 failed to appreciate that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial determination of tariff?
- (iii) Whether the Ld. State Commission while passing the Impugned Order and while Truing-up the Tariff for FY 2015-2016 failed to appreciate that at the stage of Truing-up it cannot disallow a cost by changing the principle followed at the time of initial determination of tariff?
- (iv) Whether the Ld. State Commission has failed to appreciate that existence of a Regulation is not a pre-condition for a Commission to grant appropriate relief by way of Tariff?

- (v) Whether the Ld. State Commission has failed to appreciate that once the Regulations are framed the same are binding on the State Commission?
- (vi) Whether the Ld. State Commission has failed to appreciate that once normative parameters are specified the same ought to be followed?
- (vii) Whether the Ld. State Commission while Truing-up the Tariff for FY 2015-2016 under the Impugned Order has erred by disallowing the actual expenses related to Raw Water charge for FY 2015-16?
- (viii) Whether the Ld. State Commission has failed to appreciate its previous Orders wherein actual expenses related to Raw Water charges were allowed to TPCL?
- (ix) Whether the Ld. State Commission while Truing-up the Tariff for FY 2015-2016 under the Impugned Order has erred by allowing the Secondary Fuel Oil consumption on actual basis when the Generation Tariff Regulation 2010 itself provides for a fixed normative norm qua Secondary Fuel Oil consumption?
- (x) Whether the Ld. State Commission while Truing-up the Tariff for FY 2015-2016 under the Impugned Order has erred by considering the Transit loss on MCL, Tailing by Road and Washery Coal on actual basis instead of the normative Transit

loss of 0.8% as provided under the Generation Tariff Regulation 2010?

- (xi) Whether the Ld. State Commission while passing the Impugned Order has failed to provide any appropriate methodology for computing the Carrying Cost?
- (xii) Whether the Ld. State Commission while determining the Tariff for the FY 2016-2017 to FY 2020-2021 under the Impugned Order has erred by considering the specific oil consumption (of LDO) at 0.5 ml/kWh for each year of the Control Period on provisional basis subject to review at time of true-up instead of the normative specific oil consumption of 1ml/kWh provided under Regulation 8.4 of the Generation Tariff Regulation 2015?
- (xiii) Whether the Ld. State Commission while determining the Tariff of Unit 2 and Unit 3 of Jojobera TPP for FY 2016-2017 to FY 2020-2021 has grossly erred by considering/computing the cost of coal and cost of secondary fuel oil as element of working capital based on the projected Plant Load Factor instead of NAPAF?
- (xiv) Whether the Ld. State Commission while determining the Tariff for the FY 2016-2017 to FY 2020-2021 under the Impugned Order has erred by allowing normative Transit Loss of 0.8% only against proposed 1% Transit loss in washed coal, i.e., middling coal?

## ORDER

**PER HON'BLE MR.JUSTICE N.K. PATIL, JUDICIAL MEMBER**

We have heard the learned counsel, Mr. S. Venkatesh, appearing for the Appellant, and the learned counsel Mr. Farrukh Rasheed, appearing for the first Respondent for quite some time.

2. During the course of the submission, the learned counsel for the Appellant, at the outset, fairly submitted that, in the light of the statement made and reason stated in the IA No.920 of 2018 filed on 19.7.2018, the instant Appeal, being Appeal No. 178 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi may kindly be disposed of as withdrawn reserving liberty to the Appellant to redress his grievance in the appropriate forum.

3. The submission made by the learned counsel appearing for the Appellant, as stated above, is placed on record.

4. In the light of the facts and circumstances of the case, as stated above, the instant Appeal, being Appeal No. 178 of 2018, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to redress his grievance in the appropriate legal forum, if so advised or need arises.

5. All the contentions of the Appellant and the Respondents are left open

6. With these observations, the instant Appeal No. 178 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

**ORDER ON**  
**[IA NO. 927 OF 2018 – for early hearing]**  
**[IA NO. 920 OF 2018 – for withdrawing the appeal]**  
**[IA NO. 607 OF 2018 – for exemption from filing clear copies]**

7. In view of the Appeal No. 178 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, relief sought in IA Nos. 927 of 2018, 920 of 2018 and 607 of 2018 do not survive for consideration, stand disposed of.

8. Order accordingly.

**(S. D. Dubey)**  
**Technical Member**

*Bn/pr*

**(Justice N. K. Patil)**  
**Judicial Member**