

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

**Appeal No.138 of 2011**

**Dated: 03<sup>rd</sup> May, 2012**

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON,  
HON'BLE MR. RAKES NATH, TECHNICAL MEMBER**

**In the Matter of:**

**National Thermal Power Corporation Ltd.,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003.**

**.....Appellant**

**Versus**

1. **Central Electricity Regulatory  
Commission(CERC)  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi -110 001.**
2. **Uttar Pradesh Power Corporation  
Ltd.(UPPCL)  
Shakti Bhawan, 14, Ashok marg,  
Lucknow – 226 001.**
3. **Jaipur Vidjut Vitran Nigam  
Ltd.(JVVN)  
Vidyut Bhawan, Janpath,  
Jaipur-302 005, Rajasthan**
4. **Ajmer Vidyut Vitran Nigam  
Ltd(AVVN)  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer-305 001, Rajasthan**
5. **Jodhpur Vidyut Vitran Nigam  
Ltd.(JdVVN)  
New Power House, Industrial Area,  
Jodhpur-342 003, Rajasthan**
6. **Delhi Transco Limited(DTL)  
Shakti Sadan, Kotla Road,**

7. **New Delhi-110 002**  
**North Delhi Power Ltd.(NDPL)**  
**Grid Substation, Hudson Road**  
**Kingsway Camp, Delhi-110 009.**
8. **BSES Rajdhani Power Ltd.(BRPL)**  
**BSES Bhawan, Nehru Place,**  
**New Delhi-110019**
9. **BSES Yamuna Power Ltd.(BYPL)**  
**Shakti Kiran Building**  
**Karkordooma,Dehi-110092.**
10. **Haryana Power Purchase**  
**Centre(HPPC)**  
**Shakti Bhawan, Sector-VI**  
**Panchkula, Haryana-134 109**
11. **Punjab State Power Corporation**  
**Ltd.(PSPCL)**  
**(Previously Punjab State Electricity Board)**  
**The Mall, Patiala-147 001.**
12. **Himachal Pradesh State**  
**Electricity Board Ltd.( HPSEB)**  
**Kumar Housing Complex Building-II**  
**Vidyut Bhawan, Shimla-171 004.**
13. **Power Development**  
**Department(J&K)**  
**Govt. of J&K, Behind Civil Secretariat,**  
**M.A. Road, Srinagar-190 009.**
14. **Electricity Department**  
**(Chandigarh)**  
**Union Territory of Chandigarh**  
**Addl.Office Building**  
**Sector-9 D, Chandigarh-160 009.**
15. **Uttarakhand Power Corporation**  
**Ltd.(UPCL)**  
**Urja Bhawan, Kanwali Road**  
**Dehradun-248 011**  
**Uttarakhand.**

.....Respondents

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

**Ms. Swapna Seshadri  
Ms. Sneha Venkataramani  
Mr. Anand K. Ganesan**

**Counsel for the Respondent(s):Mr.Paradeep Misra for R-2  
Mr. Manoj Kr. Sharma for R-2  
Mr. Suraj Singh for R-2  
Mr.S.K. Chaturvedi for R.-6**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. National Thermal Power Corporation Ltd(NTPC) is the Appellant.
2. Aggrieved over the orders impugned dated 21.01.2011 and 15.6.2011 disallowing the NTPC to capitalise the cost of Auto Coal Sampler installed at Singrauli Thermal Power Station, the Appellant has filed this Appeal.
3. The short facts are as follows:
  - i) The Appellant being Central government enterprise is engaged in the business of generation and sale of electricity. It owns and operates a number of generating stations situated in different parts of India.

- ii) One of the generating stations of the Appellant is Singrauli Super Thermal Power Station located in the state of Uttar Pradesh.
- iii) The Central Commission approved the tariff of Singrauli Super Thermal Power Station for the period from 01.4.2004 to 31.3.2009 in accordance with the Central Commission's Regulations, 2004. The tariff was revised by the order dated 20.11.2008 by the Central Commission after considering the amount of additional capitalisation incurred for the period 2004-05 to 2005-06.
- iv) The Appellant on 28.8.2009 filed a petition for revision of the said charges on the basis of the impact of additional capital expenditure during the period between 2006-07 and 2008-09.
- v) The Central Commission passed the order allowing certain claims by the order dated 21.01.2011. However it did not allow some of the other claims including the amount of bills amounting to Rs.425.83 lakhs incurred by the Appellant in the year 2008-09 on installation of Auto Coal Sampler before Crusher.

- vi) Challenging this order of disallowance of this claim as well as other claims, the NTPC again approached the Central commission and filed a review petition on 4.3.2011.
  - vii) The Central Commission, after hearing the parties, partly allowed the Review Petition on the issues of some claims but did not allow the claim on the expenditure towards the Auto Coal Sampler.
  - viii) As against the said disallowance in respect of the said claim NTPC has filed this Appeal as against both the orders dated 15.6.011 passed in the review petition and the main order dated 21.01.2011.
4. The Learned Counsel for the Appellant while assailing the impugned orders in respect of this claim has urged the following grounds:-
- (i) According to the terms of Regulation 18(2)(iv) of the tariff Regulations, 2004, the Central Commission has to consider whether the installation of the Auto Coal Sampler before Crusher is necessary for efficient and successful operation of the generating station. So, the duty of the Central Commission would be to find out

as to whether Auto Coal Sampler is increasing the efficiency of the operation. The Central Commission cannot be expected to go into the question as to whether the Power Plant can perform even without the said Auto Coal Sampler. When the installation of Auto Coal Sampler facilitates the efficient operation of the generating plant then the capital cost should be considered for additional capitalisation in terms of Regulation 18(2)(iv) of the Regulations,2004. This aspect has not been considered by the Central Commission.

- (ii) The Central Commission wrongly disallowed the claim by merely considering the performance of the Singrauli Power Station during the past period. The Central Commission cannot conclude that Singrauli Power Station performed well notwithstanding that Auto Coal Sampler was not installed during that period. Hence this conclusion on mere comparison is not correct in view of the fact that the improvement of the efficiency of the generating station with modern techniques is an on-going process. Therefore, this claim should not have been disallowed on the ground of past performance.

- (iii) The Installation of Auto Coal Sampler was in fact considered by the Central Electricity Authority as a part of Renovation and Modernisation and had been approved in the Renovation and Modernisation scheme. The Central Electricity Authority had examined entire Renovation and Modernisation scheme and specifically approved the installation of Auto Coal Sampler as a part of Renovation and Modernisation. Despite this, the Central Commission wrongly rejected the claim holding that the installation of Auto Coal Sampler was unnecessary for the operation of generating station.
- (iv) Auto Coal Sampler is to be installed as per the requirement of the Fuel Supply Agreement entered into between the Appellant and Coal Companies for determination of grade of coal in the event of non-availability of Coal Sampler of Coal Company at the mine's end.

5. In reply to the above submissions of the Counsel for the Appellant, the Learned Counsel for the Uttar Pradesh Power Corporation Limited, 2<sup>nd</sup> Respondent has made the following submissions in justification of the impugned orders:-

- i) The installation of the Auto Coal Sampler will not improve the efficiency of the Singrauli Power Station in any manner.
- ii) Even assuming that the efficiency of the Station may improve by the installation of Auto Coal Sampler, the same would not give any benefit to the beneficiaries. Hence, it should not be capitalised.
- iii) This is a case of additional capitalisation. If it is capitalised it would lead to increase in the tariff causing burden to the beneficiaries.
- iv) Regulation 18(3) of tariff Regulations, 2004 does not permit capitalisation of the minor assets like this Auto Coal Sampler.

6. In the light of the rival contentions the only question to be considered in this Appeal is as follows:-

“Whether in the facts and circumstance of the case, the Central Commission is right in not allowing the capitalisation of the cost of Auto Coal Sampler on the ground that the same is not required for efficient and successful operation of the Power Station?.

7. While dealing with the issue, let us first refer to the finding on this issue rendered by the Commission in both the orders



dated 21.01.201 and 15.6.2011. The Central Commission has in the 1<sup>st</sup> order dated 20.1.2011 has given following reasons for not allowing the capitalisation of the amount incurred on the installation of Auto Coal Sampler.

8. These reasons are as follows:-

*“35. The petitioner has claimed an expenditure of Rs.4309.58 lakh in respect of works approved by CEA based on the submissions made by the petitioner. During the hearing, the petitioner was directed to justify the cost difference for renovation of BFP, renovation of obsolete DAS package, installation of auto coal sampler before crusher and 250 MVA generator transformer for Unit #5 etc on the CEA approval. In response, the petitioner has clarified that the R&M schemes were approved by CEA during the year 2000(as referred in the table above) and the work was carried out in a phased manner in order to avoid shut down of the said units. It has also submitted that the increase in cost was on account of the escalation of price during the period of execution.*

*36. On prudence check, it is found that an expenditure of Rs.425.83 lakhs towards the installation of Auto coal sampler before crusher was unjustified and hence not allowed to be capitalised. Also, an amount of Rs.8.18 lakh for CCTV has been disallowed as it forms part of O&M expense norms specified by the Commission in the 2009 Tariff Regulations applicable for the period 2009-14. The capitalization of the asset if followed, would result in double payment for the said asset by the beneficiaries. Hence, the claim has been disallowed and the corresponding de-capitalization of these assets has also*

*been ignored. The balance claim for Rs.3875.57 lakh under the CEA approved schemes have been allowed along with the corresponding de-capitalization for all the replaced assets”.*

10. The reasonings contained in paragraph 35 and 36 of the impugned order dated 21.1.2011 would indicate that the Central Commission, during the course of hearing though directed the Appellant NTPC to justify the said claim for installation of the Auto Coal Sampler, the Appellant has merely clarified that the Renovation and Modernisation schemes were approved by the Central Electricity Authority. No other material was placed to justify the said claim. Then the Central Commission made prudence check and found the claim of amount of capitalisation in respect of the expenditure towards the installation of Auto Coal Sampler was unjustified.
11. Not being satisfied with this order, the Appellant moved a Review Petition as against the order dated 21.1.2011 raising various claims including the present claim. The Central Commission, though allowed the Review petition on other aspects, it has not allowed the claim of the Appellant NTPC on this issue by the order dated 15.6.2011. The relevant observations and reasonings in the said order are as follows:-

*“5. The claim of the petitioner for Rs.425.83 lakh towards capitalisation of the said asset was disallowed as the petitioner had not demonstrated in its petition(Petition No.189/2009) as to how the installation of auto coal sampler before crusher could contribute to the efficient and successful operation of the generating station. Mere approval by CEA of the said asset as part of the R&M scheme could not be the sole basis for its capitalisation, particularly when the said asset is sought to be installed after 25 years of successful operation of the generating station. Moreover, perusal of the actual operational data pertaining to the period 2002-08 submitted by the petitioner during the finalisation of the 2009 Tariff Regulations (applicable for the period 2009-14), revealed that the Average Availability and the Plant Load Factor(PLF) of the generating station was about 90% during the period 2002-08 which proved beyond doubt that the generating station was operating efficiently and successfully, without the installation of the auto coal sampler. In consideration of the above, the claim of the petitioner was considered unjustified and was accordingly disallowed vide order dated 21.1.2011.*

*6. The petitioner through the present petition seeks to re-agitate the issue on merit, which is not permissible in the proceedings for review. In the circumstances, in our view there is no error apparent on the face of record and consequently, the petitioner’s prayer for review of the order dated 21.1.2011 on this ground is rejected.”*

12. The above paragraphs would indicate that there are detailed reasonings given by Central Commission for disallowing the said claim. The Central Commission has specifically held in the above order that the Appellant had not demonstrated

before the Central Commission as to how the installation of the Auto Coal Sampler had contributed to the efficient and successful operation of the generating Station and that a mere approval of the Central Electricity Authority of the said asset as a part of Renovation and Modernisation scheme could not be the sole basis for its capitalisation. It has also been held by the Central Commission in the above order that the perusal of the actual operation data submitted by the NTPC pertaining to the period 2002-08 reveals that the average availability and the Plant Load Factor was about 90% during the said period and therefore generating station was operating efficiently and successfully even without the installation of the Auto Coal Sampler.

13. Assailing these reasonings, it has been submitted by the Learned Counsel for the Appellant that this finding is not in consonance with the Regulation 18(2)(iv) which provides that any additional works which have become necessary for efficient and successful operation of the generating station may be admitted by the Commission towards the additional capitalisation.
14. In the written submission, the Learned Counsel for the Appellant pointed out various features of the functioning of the Auto Coal Sampler and submitted that despite the same,

the Central Commission has wrongly held that the NTPC was not able to demonstrate before the Central Commission as to how the installation of Auto Coal Sampler improved the efficiency of the operation of the generating station and how it is going to benefit the beneficiaries.

15. Let us now examine the Regulation 18. The said Regulation is being reproduced herein below:-

*“18. Additional capitalization (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:*

- (i) Deferred liabilities;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in Regulation 17;*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
- (v) On account of change in law.*

*Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.*

*(2) Subject to the provisions of Clause(3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission, subject to prudence check.*

*i) Deferred liabilities relating to works/services within the original scope of work;*

*ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;*

*iii) On account of change in law;*

*iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the Original project cost; and*

*v) Deferred works relating to ash pond or ash handling system in the original scope of work.*

***(3) Any expenditure on minor items/assets like normal tools and tackles, personal computer, furniture, air-conditioners, voltage, stabilizers, refrigerators, fans, coolers, TV, washing machines, heat-convectors, carpets, mattresses etc, brought after the cut off date shall not be considered for additional capitalization for determination of tariff with effect from 01.4.2004.***

**Note**

*The list of items is illustrative and not exhaustive.”*

16. As indicated above, the Appellant has relied upon the Regulation 18(2)(iv) of the Regulations,2004 which will not apply to the present case unless it is established that the provision of Auto Coal Sampler has become necessary for

efficient and successful operation of the generating station. In our opinion, the Appellant has not succeeded in establishing the same.

17. As a matter of fact, the Central Commission in the Review order dated 15.6.2011 took note of the average availability and Plant Load Factor of generating station which about 90% during the period 2002-08 as against the norms of 80% and that the asset was being installed after 25 years of successful operation of the generating station and observed that the plant was operating efficiently and successfully without installation of the Auto Coal Sampler. This finding, in our view, is perfectly justified.
18. The Appellant has contended that installation of Auto Coal Sampler was considered by the Central electricity Authority as a part of Renovation and Modernisation and had been approved in the Renovation and Modernisation scheme and since the Central Electricity Authority is expert technical body, the approval should be taken for establishing that the instrument was necessary for efficient and successful operation of the generating station. The functions of the Central Electricity Authority are prescribed under section 73 of Electricity Act, 2003. There is no provision under the Act, 2003 under which the Central Electricity Authority is under obligation to grant approval for the Renovation and

Modernisation scheme to any generating station. Even though the Central Electricity authority is a technical body, it cannot be denied that the Central Commission is also a technical body and as such it is empowered to refuse capitalisation of the amount of in expenditure, when it has found that it is not giving benefit to efficient and successful operation of the generating station.

**19. Summary of Our Findings**

**The Appellant has not succeeded to establish its case that installation of Auto Coal Sampler is necessary for efficient and successful operation of the power station and its capitalisation could be allowed under Regulation 18 (2) (iv) of the Central Commission's Tariff Regulations, 2004.**

20. In view of the above finding we do not find any reason to hold that the impugned order suffers from any infirmity. On the other hand we are in agreement with the conclusion arrived at by the Central Commission in the impugned orders dated 21.1.2011 and 15.6.2011.

21. Accordingly, the Appeal is dismissed being devoid of merits.

22. However, there is no order as to costs.



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

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 03<sup>rd</sup> May, 2012

√ ~~REPORTABLE/NON-REPORTABLE~~