

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
APPELLATE JURISDICTION**

Review Petition No. 26 of 2007 in A. No. 30 of 2007

Dated: 22nd Nov. '07

**Coram: Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

Madhya Pradesh Power Trading Co. Ltd. ... Review Petitioner
Versus
Central Electricity Regulatory Commission & Others ... Respondents

For the Review Petitioner : Mr. Sakesh Kumar, Advocate along
with Mr. A. K. Garg, AGM (Comml.),
MPPTC

For the respondents : Mr. M. G. Ramachandran,
Mr. Anand K. Ganesan and
Ms. Swapna Seshadri, Advocates for
NTPC

ORDER

The Review Petition is filed by the appellant seeking review of the judgment of this Court dated 27.04.2007. It is contended in the petition that while disposing of the appeal No. 30 of 2007 this Court has not considered the plea raised by the appellant in Paragraphs 5.6, 5.7 & 5.8 of the appeal. The appeal No. 30 of 2007 arose out of the claim of NTPC relating to Operation & Maintenance (O&M) expenses considered for determining the tariff for Gandhar Gas Power Station of NTPC. The NTPC being aggrieved with the manner in which O&M expenses to be allowed to be recovered through tariff,

was calculated by Central Electricity Regulatory Commission (CERC for short) for the Gandhar Gas Power Station filed an appeal before this Tribunal being appeal No. 94 of 2005. The dispute related to the tariff for the period 01st April, 2000 to 31st March, 2001. For the earlier period tariff was fixed by Central Government under Section 43(A) of the Electricity (Supply) Act 1948. The CERC became empowered to fix tariff under the Electricity Regulatory Commissions Act 1988 which came into effect on 25th April, 1988. CERC issued an order dated 21st December, 2000 whereby it was inter alia directed that in case of Gandhar Gas Power Station the terms and Conditions for determination of tariff for the period 01st April, 2000 till 31st March, 2001 shall be the same as earlier notified by Central Government. The NTPC claimed O&M expenses for the year 2000-01 based on the actual expenses incurred during this period. This Tribunal while disposing of the appeal found that for the other power station of NTPC the CERC has considered the actual O&M expenses for the year 1996-97 and applied escalation factor of 10% for working out O&M expenses for 1997-98 to 2000-01 and that such methodology was based on notification of Ministry of Power dated 02nd November 2002. This Tribunal found that the CERC has not applied the same principle for the Gandhar Gas Power Station as was done by other stations of NTPC for the period in dispute. This Tribunal directed that for the Gandhar Station the appellant was entitled to O&M expenses calculated on the basis of escalation factor. This Tribunal set aside the tariff order impugned in the appeal and remitted the matter to CERC for determining the

O&M expenses to Gandhar Gas Generating Station afresh on the basis of formula based on escalation factor.

2) Pursuant to this order the CERC re-calculated the O&M expenses and passed a fresh order on 27th September, 2006. The O&M expenses for the year 2000-01 was calculated at Rs.5627 Lacs by taking the actual O&M expenses of Rs.5115 Lacs for the year 1999-2000 and escalating that figure by 10%. This came to be challenged in the appeal filed by the present petitioner being appeal No. 30 of 2007 which was disposed of by us on 27th April, 2007.

3) The order dated 27th April, 2007 deals with objections raised by Mr.Sakesh Kumar, Advocate that the escalation factor should have been applied on the expenses for the year 1998-99 rather than on that of 1999-2000. This plea was based on a letter of OSD (tariff) on the subject 'Terms and Conditions of Tariff of Power supplied from Gandhar Power Station' dated 28.04.97. In this it was stated that fixed charges has been determined based on the amounts capitalized in the accounts of NTPC as on 31.03.1996. Mr. Sakesh Kumar, therefore, submitted that since for the year 1997-98 the accounts for the year ending 31.03.1996 was considered, for the year 2000-01 the figures of 1998-99 should be considered. We examined the notification enclosed with the letter of 28.04.97 and found that there was no rationale behind this submission as, as soon as the finalized accounts of the preceding year are available the escalation figures were to be adopted and not

the expenses of the year prior to the preceding year. Accordingly, the appeal was dismissed. Incidentally we have to add that the judgment dated 27th April, 2007 was passed immediately after the arguments were heard in Court and in the presence of Mr. Sakesh Kumar as well as the counsel representing the Commission namely Mr. M. G. Ramachandran, Advocate and others.

4) What is being submitted now is that the appeal also contained certain other pleas in its Paragraphs 5.6, 5.7 & 5.8. Mr. Sakesh Kumar, now intends to dispute the base figure of Rs.5115 Lacs itself, contending that Rs.5115 Lacs was the amount of actual expenditure claimed by NTPC whereas the Commission itself allowed only Rs.3536.79 Lacs and therefore escalation factor of 10% should have been applied on Rs.3536.79 Lacs. Mr. Sakesh Kumar found this figure in the order of the CERC dated 02.11.2004 in the matter of approval of tariff in respect of Gandhar Gas Power Station for the period 01.04.2001 to 31.03.2004. This document was not placed before us when the appeal No. 30 of 2007 was being heard.

5) Paragraph 5.6 alleges that Rs.2.16 Crore towards R&M expenses was credited to the account of NTPC. Paragraph 5.7 alleges that cost of warrantee spares was also required to be reduced from O&M expenses. Paragraph 5.8 alleges that a sum of Rs.646.73 Lacs, which was included in the corporate office expenses, had not been considered by the CERC. The learned counsel submits that only the figures as trued up for the year 1999-

2000 could have been taken for arriving at O&M expenses for the year 2000-01 with the escalation factor.

6) The judgment of 27.04.07 was passed immediately on the conclusion of the arguments and was dictated in open court in presence of Mr. Sakesh Kumar. Mr. Sakesh Kumar did not press the pleas in paragraphs 5.6, 5.7 & 5.8. As such he gave up these pleas and were not required to be dealt with by us. The omission to deal with these pleas is not an error in the judgment which can be corrected in review.

7) However, this plea was not pressed at the time of hearing of the appeal and is being pressed now we have considered the plea and we find no merit in it. The escalation, as per the notification was to be done on the basis of finalized account i.e. audited accounts. Further the figures shown by Mr. Sakesh Kumar were not the figures of truing up. The statement only shows what figures were considered for arriving at an average of five previous years expenses for the purpose of determining the normalized expenses for the base year 2000-01 on the basis of which the approval for tariff was credited for the multiple years, 01.04.01 to 31.03.2004. There is no allegation that there was any over estimation / over invoicing in the audited figure showing O&M expenses of Rs.5115 for the year preceding the year in question.

7) The review petition has no merit and the same is accordingly ***dismissed.***

Pronounced in open court on this day of **22nd November,**
2007.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. A. A. Khan)
Technical Member

The End