

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal Nos. 129, 150, 167, 184, 212, 224, 232,
247, 252, 253 of 2012
And
53 of 2013

Dated: 27th Jan, 2014

Present:

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON,
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

Appeal No. 129 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Andhra Pradesh Power Co-ordination Committee
(Commercial)
Transmission Corporation of Andhra Pradesh Ltd.,
Vidyut Soudha, Khairatbad,
Hyderabad-500 049**
- 3. A.P Eastern Power Distribution Company Limited.,
P&T Colony, Seethammadhara,
Visakhapatnam-530 013**

4. **A.P Southern Power Distribution Company Limited.,
H.NO.193-93 (M)Upstairs,
Renigunta road, Tirupathi-517 501**
5. **A.P Northern Power Distribution Company Limited.,
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506 004
Andhra Pradesh**
6. **A.P Central Power Distribution Company Limited.,
Mint Compound, Near Secretariat,
Hyderabad-500 063
Andhra Pradesh**
7. **Tamil Nadu Generation & Distribution Corporation Ltd.,
(TANGEDCO) (formerly TNEB)
800, Anna Salai,
Chennai-600 002
Tamil Nadu**
8. **Power Company of Karnataka Ltd.,(PCKL)
(formerly KPTCL)
Cauveri Bhawan,
Bangalore-560 009**
9. **Bangalore Electricity Supply Company Limited.,
K.R. Circle, Bangalore-560 001
Karnataka**
10. **Mangalore Electricity Supply Company Limited.,
Paradigm Plaza, Mangalore-575 001
Karnataka**
11. **Chamundeshwari Electricity supply Company Limited.,
927, L J Avenue, Saraswatipuram,
Mysore-570 009**

12. **Gulbarga Electricity Supply Company Limited.,
Station Road, Gulbarga-585 102
Karnataka**
13. **Hubli Electricity Supply Company Limited.,
P.B. Road, Nava Nagar, Hubli,
Karnataka-580 025**
14. **Kerala State Electricity Board,
Vaidyuthi Bhawan, Pattam,
Thiruvananthapuram-695 004**
15. **Electricity Department,
Government of Puducherry,
58, Subhash Chandra Bose Salai
Puducherry-605 001**

Respondent(s)

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

**Counsel for the Respondent (s): Mr. Manu Seshadri for R-1
Mr. S Vallinayagam for R-7**

Appeal No.150 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

1. **Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**

2. **Madhya Pradesh Power Trading Company Limited.,
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482 008**
3. **Maharashtra State Electricity Distribution Company Ltd
Pradashgad, Bandra (East),
Mumbai-400 051**
4. **Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodra-390 007**
5. **Chhattisgarh State Electricity Board,
PO Sundar Nagar, Danganiya,
Raipur-492913**
6. **Electricity Department,
Government of Goa,
Vidyut Bhawan,
Panaji-Goa-403 001**
7. **Electricity Department,
Administration of Daman & Diu-396210**
8. **Electricity Department,
Administration of Dadra and Nagar Haveli,
Silvassa-396 230**

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

**Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. Pradeep Misra
Mr. Manoj Kr. Sharma
Mr. Daleep Kr. Dhayani for R-2**

Appeal No. 167 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Uttar Pradesh Power Corporation Limited.,(UPPCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001**
- 3. BSES Rajdhani Power Ltd., (BRPL)
BSES Bhawan, Nehru Place,
New Delhi-110 019**
- 4. BSES Yamuna Power Ltd.,(BYPL)
Shakti Kiran Building,
Karkardooma,
Delhi-110 092**
- 5. Tata Power Delhi Distribution Ltd.,
33 KV Substation, Hudson Lines,
Kingsway Camp, Delhi-110 009**
- 6. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi-110 001**

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

**Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. Pradeep Misra
Mr. Manoj Kr. Sharma
Mr. Daleep Kr. Dhayani for R-2
Mr. R.B. Sharma for R-3
Mr. Aashish Gupta and
Ms. Tarunima Vijra for R-4 BYPL**

Appeal No.184 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Uttar Pradesh Power Corporation Limited.,(UPPCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001**
- 3. Superintending Engineer (RPPC)
Jaipur Vidyut Vitaran Nugam Ltd. (JVVN)
Vidyut Bhaban Janpath Jaipur
Rajasthan - 302005**
- 4. Superintending Engineer (RDPPC)
Ajmer Vidyut Vitaran Nugam Ltd. (AVVN)
Old Power House, Hathi Bhata
Jaipur Road, Ajmer- 305001**

5. **Superintending Engineer (RDPPC)
Jodhpur Vidyut Vitaran Nugam Ltd. (JVVN)
New Power House, Industrial Area,
Jodhpur – 342003**

7. **The CEO,
BSES Rajdhani Power Ltd., (BRPL)
BSES Bhawan, Nehru Place,
New Delhi-110 019**

8. **The CEO,
BSES Yamuna Power Ltd.,(BYPL)
Shakti Kiran Building,
Karkardooma,
Delhi-110 092**

9. **Chief Engineer (SP)
Himachal Pradesh State Electricity Board
Kumar Housing Complex Building – II
Vidyut Bhavan
Shimla – 171004**

10. **Chief Engineer (SO & C)
Punjab State Power Corporation Ltd (PSPCL)
220 KV SubStation Ablawal, Patiala – 147001**

11. **The Chief Engineer (Commercial)
Haryana Power Purchase Center (HPPC)
Shakti Bhawan, Sector – VI,
Panchkula, harayana – 134109**

12. **The Chief Engineer (Commercial)
Power Development Department
Govt. of Jammu & Kashmir,
Secretariat, Srinagar – 19009**

**13. The Chief Engineer
Power Department (Chandigarh)
Union Territory of Chandigarh
Addl. Office Bulding
Sector – 9D, Chandigarh – 16009**

**14. Chairman Managaing Director,
Uttarakhand Power Corporation Lrtd. (UPCL)
Urja Bhawan, Kanawali Road,
Dehradun - 248001**

.....Respondent(s)

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

**Counsel for the Respondent(s): Mr. Manu Seshadri for R-1
Mr. Manoj Kr. Sharma
Mr. Daleep Kr. Dhayani for R-2
Mr. R B Sharma for R-3,
Mr. Aashish Gupta and
Ms. Tarunima Vijra for R-4 BYPL**

Appeal No. 212 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

.. Appellant

Versus

**1. Central Electricity Regulatory Commission & Ors.
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**

**2. Uttar Pradesh Power Corporation Limited.,(UPPCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001**

3. **Jaipur Vidyut Vitaran Nugam Ltd. (JVVN)**
Vidyut Bhaban Janpath Jaipur
Rajasthan – 302005
4. **Ajmer Vidyut Vitaran Nugam Ltd. (AVVN)**
Old Power House, Hathi Bhata
Jaipur Road, Ajmer- 305001
5. **Jodhpur Vidyut Vitaran Nugam Ltd. (JVVN)**
New Power House, Industrial Area,
Jodhpur – 342003
6. **Tata Power Delhi Distttribution Ltd. (TPDDL)**
33KV Substation, Hudson Lines,
Kingsway Camp, Delhi – 110009.
7. **BSES Rajdhani Power Ltd., (BRPL)**
BSES Bhawan, Nehru Place,
New Delhi-110 019
8. **BSES Yamuna Power Ltd.,(BYPL)**
Shakti Kiran Building,
Karkardooma,
Delhi-110 092
9. **Haryana Power Purchase Center (HPPC)**
Shakti Bhawan, Sector – VI,
Panchkula, Haryana – 134109.
10. **Punjab State Power Corporation Ltd. (PSPCL)**
The Mall, Patiala – 147001.
11. **Himachal Pradesh State Elelctricity Board**
Kumar Housing Complex Buildiong – II
Vidyut Bhavan
Shimla – 171004

12. Power Development Department
Govt. of Jammu & Kashmir,
Secretariat, Srinagar – 19009

13. Chief Engineer (Commercial)
Power Department (Chandigarh)
Union Territory of Chandigarh
Addl. Office Bulding
Sector – 9D, Chandigarh – 16009

14. Uttarakhand Power Corporation Lrtd. (UPCL)
Urja Bhawan, Kanawali Road,
Dehradun - 248001

... Respondent(s)

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. Pradeep Misra
Mr. Manoj Kr. Sharma
Mr. Daleep Kr Dhayani for R-2
Mr. R.B. Sharma for R-3
Mr. Aashish Gupta and
Ms. Tarunima Vijra for R-4 BYPL

Appeal No.224 of 2012

NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

... Appellant

Versus

1. Central Electricity Regulatory Commission & Ors.
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001

2. **Transmission Corporation of Andhra Pradesh Ltd.,
Vidyut Soudha, Khairatbad,
Hyderabad-500 049**
3. **A.P Eastern Power Distribution Company Limited.,
P&T Colony, Seethammadhara,
Visakhapatnam-530 013**
4. **A.P Southern Power Distribution Company Limited.,
H.NO.193-93 (M)Upstairs,
Renigunta road, Tirupathi-517 501**
5. **A.P Northern Power Distribution Company Limited.,
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506 004
Andhra Pradesh**
6. **A.P Central Power Distribution Company Limited.,
Mint Compound, Near Secretariat,
Hyderabad-500 063
Andhra Pradesh**

...Respondent(s)

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

Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1

Appeal No. 232 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

.. Appellant

Versus

- 1. Central Electricity Regulatory Commission & Ors.
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Uttar Pradesh Power Corporation Limited.,(UPPCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001**
- 3. Jaipur Vidyut Vitaran Nugam Ltd. (JVVN)
Vidyut Bhaban Janpath Jaipur
Rajasthan – 302005**
- 4. Ajmer Vidyut Vitaran Nugam Ltd. (AVVN)
Old Power House, Hathi Bhata
Jaipur Road, Ajmer- 305001**
- 5. Jodhpur Vidyut Vitaran Nugam Ltd. (JVVN)
New Power House, Industrial Area,
Jodhpur – 342003**
- 6. Tata Power Delhi Distribution Ltd. (TPDDL)
33KV Substation, Hudson Lines,
Kingsway Camp, Delhi – 110009.**
- 7. BSES Rajdhani Power Ltd., (BRPL)
BSES Bhawan, Nehru Place,
New Delhi-110 019**

9. **BSES Yamuna Power Ltd.,(BYPL)**
Shakti Kiran Building,
Karkardooma,
Delhi-110 092
9. **Haryana Power Purchase Center (HPPC)**
Shakti Bhawan, Sector – VI,
Panchkula, Haryana – 134109.
10. **Punjab State Power Corporation Ltd. (PSPCL)**
The Mall, Patiala – 147001.
11. **Himachal Pradesh State Electricity Board**
Kumar Housing Complex Building – II
Vidyut Bhavan
Shimla – 171004
12. **Power Development Department**
Govt. of Jammu & Kashmir,
Secretariat, Srinagar – 19009
13. **Chief Engineer (Commercial)**
Power Department (Chandigarh)
Union Territory of Chandigarh
Add. Office Building
Sector – 9D, Chandigarh – 16009
14. **Uttarakhand Power Corporation Ltd. (UPCL)**
Urja Bhawan, Kanawali Road,
Dehradun - 248001

... Respondent(s)

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. Pradeep Misra
Mr. Manoj Kr. Sharma
Mr. Daleep Kr. Dhayani for R-2
Mr. R.B. Sharma for R-3
Mr. Aashish Gupta and
Ms. Tarunima Vijra for R-4 BYPL

Appeal No.247 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Transmission Corporation of Andhra Pradesh
Vidyut Soudha, Khairatabad,
Hyderabad-500 049
Andhra Pradesh**
- 3. A.P Eastern Power Distribution Company Limited.,
P&T Colony, Seethammadhara,
Visakhapatnam-530 013**
- 4. A.P Southern Power Distribution Company Limited.,
D.NO.19-13-65/A, Corporate Office,
Behind Srinivasa Kalyana Mandapam,
Kesavayana Gunta,
Tirupathi-517 503 (AP)**
- 5. A.P Northern Power Distribution Company Limited.,
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506 004
Andhra Pradesh**
- 6. A.P Central Power Distribution Company Limited.,
Singareni Bhavan, Red Hills,
Hyderabad (AP),
Hyderabad-500 044**

7. **Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 002
Tamil Nadu**
8. **Power Company of Karnataka Ltd.,(PCKL)
(formerly KPTCL)
KPTCL Complex, Cauveri Bhawan,
Bangalore-560 009**
9. **Bangalore Electricity Supply Company Limited.,
K.R. Circle, Bangalore-560 001
Karnataka**
10. **Mangalore Electricity Supply Company Limited.,
Paradigm Plaza, Mangalore-575 001
Karnataka**
11. **Chamundeshwari Electricity Supply Company Limited.,
927, L J Avenue, Saraswatipuram,
Mysore-570 009
Karnataka**
12. **Gulbarga Electricity Supply Company Limited.,
Station Road, Gulbarga-585 102
Karnataka**
13. **Hubli Electricity Supply Company Limited.,
P.B. Road, Nava Nagar, Hubli,
Karnataka-580 025**
14. **Kerala State Electricity Board,
Vaidyuthi Bhawan, Pattam,
Thiruvananthapuram-695 004**
15. **Electricity Department,
Government of Puducherry,
137, Subhash Chandra Bose Salai
Puducherry-605 001**

**16. Electricity Department,
Government of Goa,
Vidyut Bhavan,
Panaji, Goa-403 001**

Respondent(s)

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

**Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. S Vallinayagam for R-7**

Appeal No. 252 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Madhya Pradesh Power Trading Corporation Limited.,
(successor of Madhya Pradesh State Electricity Board)
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482 008**
- 3. Maharashtra State Electricity Distribution Co. Ltd.,
(MSEDCL or Mahavitaran)
Prakashgad, Plot No.G-9, 5th Floor,
Bandra (East)
Mumbai-400 051**

4. **Gujarat Urja Vikas Nigam Limited.,
Bidyut Bhawan, Race Course,
Vadodar-390 007,
Gujarat**
5. **Chhattisgarh Power Distribution Company Limited.,
(Successor of Chhattisgarh State Electricity Board)
P.O. Sundar Nagar,
Danganiya, Raipur-492 913**
6. **Electricity Department
Government of Goa,
Vidyut Bhavan,
Panaji, Goa-403 001**
7. **Administration of Daman & Diu
Electricity Department,
Daman-396 210**
8. **Administration of Dadar & Nagar Haveli,
Electricity Department,
U.T. Silvassa-396 230**

Respondent(s)

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

Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1

Appeal No.253 of 2012

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134 109**

Respondent(s)

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

**Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Ms. Shikha Ohri for R-2**

Appeal No. 53 of 2013

**NTPC Ltd.
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

... Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Uttar Pradesh Power Corporation Limited.,(UPPCL)
Shakti Bhawan,
14, Ashok Marg,
Lucknow-226 001**
- 3. Jaipur Vidyut Vitaran Nugam Ltd. (JVVN)
Vidyut Bhaban,
Janpath, Jaipur-302 005
Rajasthan**
- 4. Ajmer Vidyut Vitaran Nugam Ltd. (AVVN)
Old Power House, Hathi Bhata
Jaipur Road,
Ajmer- 305001, Rajasthan**
- 5. Jodhpur Vidyut Vitaran Nugam Ltd. (JVVN)
New Power House,
Industrial Area,
Jodhpur – 342003 (Rajasthan)**
- 10. Tata Power Delhi Distribution Ltd.,
33 KV Substation, Hudson Lines,
Kingsway Camp, Delhi-110 009**

11. **BSES Rajdhani Power Ltd., (BRPL)**
2nd Floor, B-Block,
BSES Bhawan, Nehru Place,
New Delhi-110 019

8. **BSES Yamuna Power Ltd.,(BYPL)**
Shakti Kiran Building,
Karkardooma,
Delhi-110 092

9. **Haryana Power Purchase Centre (HPPC)**
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134 109

10. **Punjab Electricity Board (PSEB)**
220 KV Sub Station
Ablowal, Patiala – 147001

11. **Himachal Pradesh State Electricity Board Ltd.,(HPSEB)**
Kumar Housing Complex Building-II,
Vidyut Bhavan,
Shimla-171 004

12. **Power Development Department**
Govt of Jammu & Kashmir,
Secretariat,
Srinagar-190 009

13. **Power Department (Chandigarh)**
Union Territory of Chandigarh
Addl. Office Building
Sector – 9D,
Chandigarh – 160009

14. **Uttarakhand Power Corporation Ltd.,(UPCL)**
Urja Bhawan, Kanwali Road,
Dehradun - 248001

.....Respondent(s)

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

**Counsel for the Respondent(s) : Mr. Pradeep Misra &
Mr. Manoj Kr. Sharma for R-2
Mr. R.B. Sharma for R-7**

J U D G M E N T

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

1. "Whether the interpretation of the Central Commission over the certain clauses of Central Electricity Regulatory Commission Tariff Regulations, 2009 regarding additional capitalization admissible to Generating Units in determination of tariff is valid or not?"
2. This is the question involved in the Batch of this Appeal.
3. Since the issues raised in these Appeals No.129,150,167,184,212,224,232,247,252,253 of 2012 and 53 of 2013 are same, this common judgment is being rendered.
4. The short facts leading to the filing of these Appeals are as follows:
 - (a) NTPC, the Appellant is a Generating Company owned by the Central Government. The Central Commission is the first Respondent. The other

Respondents are the various beneficiaries of the power projects of the NTPC.

(b) The above Appeals arise out of the Impugned Orders passed by the Central Commission on different dates determining the tariff of the Appellant for the period between 1.4.2009 and 31.3.2014 in the batch of Petitions filed by the different generating stations of NTPC. These Stations are (1) Dadri-I (2) Unchahar-II (3) Singrauli (4) Rihand-II (5) Faridabad (6) Vindhyanchal Station-II (7) Vindhyanchal Station-I (8) Simandhri Station-I (9) Ramagundam -I & II and (10) Ramagundam-III.

(c) The Appellant had filed separate Petitions before the Central Commission for the determination of tariff in respect of various Stations referred to above for the period between 1.4.2009 and 31.3.2014 in terms of Tariff Regulations, 2009.

(d) NTPC, the Appellant, in these Petitions claimed additional capitalization for the expenditure incurred by the Appellant on installation of some assets. The Central Commission by the Impugned Orders passed on different dates, disallowed the said claims holding that in terms of the relevant Regulations, 2009, the

additional capitalization cannot be allowed except for the reason such as change in law, deferred works etc.,

(e) The disallowance of additional capitalization expenditure claimed by the Appellant was on the basis of the interpretation of relevant Regulations namely 7, 9, 10 and 19 (e) of the Central Commission's Tariff Regulations, 2009.

(f) As against this disallowance, the Appellant has filed these Appeals as against different Impugned Orders which were passed on different dates in the different Petitions filed by the different Generating Stations of the Appellant, questioning the validity of the interpretation of the relevant Regulations made by the Central Commission.

5. The Appellant has raised number of issues in these Appeals. Out of these issues, four issues are common legal issues. These four common issues are regarding interpretation of various Regulations as referred to above.
6. According to the Appellant, the last proviso to Regulation 7(2) of the Tariff Regulations, 2009 provides for the additional capitalization to be considered in the case of an existing generating project i.e. the Generating Project commissioned before 1.4.2009 as defined in Regulation 3 (16) of the Tariff Regulations and such additional capitalization is not limited

to those contained in Regulation 9.2 of the Tariff Regulations, 2009 or the compensatory allowances provided for in the Regulations, 19 (e) of the Tariff Regulations and as such the Appellant is entitled to claim additional capitalization as per the last proviso of Regulation 7(2).

7. According to the Respondents, namely Central Commission and Other beneficiaries, Regulation 9 and 19(e) of Tariff Regulations, 2009 are the sole repository for additional capitalization permissible both for existing generating stations and for new generating stations and the last proviso to Regulation 7(2) cannot be given effect to for the claim for additional capitalization expenditure that are not provided in Regulation 9(2) of Tariff Regulations, 2009.
8. It is the further case of the Respondents that the Central Commission has provided for compensatory allowance under Regulation 19(e) based on the actual additional capitalization of the Appellant for the period from 1997 to 2006 and the same covers all additional capitalization permissible over and above those provided in Regulation 9(2) for an existing generating station and as such the Appellant is not entitled to the additional capitalization.
9. The four common legal issues raised by the Appellant in these Appeals are as follows:

(a) Non consideration of additional capitalization under last proviso of Regulation 7(2) of Tariff Regulations, 2009.

(b) Wrong interpretation of Regulation 9 (2) (ii) and Regulation 10.

(c) Wrong interpretation of Regulation 19(e) with reference to scope of the term minor assets;

(d) Non inclusion of the expenditure under Regulation 19(e) of the Tariff Regulations, 2009 for the purpose of determining the working capital requirements.

10. In this judgment, we have decided to deal with and decide these 4 issues alone which are common. In regard to the other different issues raised in these Appeals, we would decide later after hearing the parties on those issues and pronounce the separate judgment. Accordingly, we have allowed the learned Counsel for the parties to argue on those four issues only.

11. Let us now examine these four issues.

12. The **first and Second issue** relate to the **Non Consideration of additional capitalization under last proviso of Regulation 7(2) of Tariff Regulations, 2009**

and interpretation of Regulation 9 (2) (ii) and Regulation 10.

13. Since, both these issues are interlinked; we shall discuss these issues together.
14. The main argument of the Appellant is that the additional capitalization in respect of the existing plant is covered under last proviso of Regulation 7(2) and that therefore, the expenditure incurred on additional capitalization during the period from 2009-2014 ought to have been allowed, since the Appellant is an existing generation station and as such, the expenditure on additional capitalization cannot be restricted to provisions of Regulations-9.
15. In reply to above submission, the Respondents have contended that under Tariff Regulations, 2009, the additional capitalization can be claimed only in respect of eventualities as mentioned under Regulation 9(2) and since the last proviso to Regulation 7(2) under which the Appellant now claims, the additional capitalization, is not an substantive provision, the additional capitalization cannot be claimed under last proviso of Regulation 7(2) without invoking Regulation 9(2) especially when there is a separate provision for compensation allowance under Regulation 19(e) of the Tariff Regulations and as such, the interpretation of these Regulations given by the Central Commission is perfectly valid.

16. Before discussing the above issues, we shall refer to the crux of the impugned findings of the Central Commission contained in the Impugned Orders. Those findings are as follows:

(a) The date of commercial operation of the generating station is 1.10.2009. The cut-off date of the generating station has expired and hence the claim of NTPC for additional capital expenditure has to be considered in terms of Regulation 9(2) of the 2009 Regulations.

(b) Regulation 3(8) defines the capital cost as defined in Regulation 7. Regulation 7(1) provides that the capital cost shall consist of three elements, namely; (i) the expenditure incurred or projected to be incurred up to the date of commercial operation of the project as admitted by the Commission, (ii) capitalized initial spares subject to the ceiling rates as specified in Regulation 8 and (iii) additional capital expenditure as determined under Regulation 9.

(c) Regulation 7(2) provides that the capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff. The last proviso to Regulation 7 of the 2009

Regulations as amended on 21.6.2011, provides that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 duly trued-up by excluding un-discharged liability, if any, as on 1.4.2009 and the additional capital expenditure projected to be incurred for the respective years of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff.

(d) The last proviso to Regulation 7(2) does not make any exception to the word “Project” to mean new project or existing project. It follows there from, that additional capital expenditure would be determined under Regulation 9 for both the new projects as well as the existing projects.

(e) Regulation 9 is an independent substantive provision as regards treatment of additional capital expenditure which does not make any distinction between the existing projects or the new projects. Therefore, the additional capital expenditure irrespective of the fact whether it is for existing project or new project, has to be determined under Regulation 9.

(f) The words “as may be admitted by the Commission” referred to in the last proviso to Regulation 7(2) must be read harmoniously with Regulation 7(1) (c) and Regulation 9. Therefore, in case of existing projects also, additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-2014 may be admitted by the Central Commission having regard to Regulation 9.

(g) The additional capital expenditure for existing generating stations under the last proviso to Regulation 7(2) needs to be considered only in terms of Regulation 9(1) and 9(2) of the 2009 Regulations.

(h) In so far as the additional works and services that are necessary for efficient and successful operation of the generating station are concerned, the same has been taken care of by Regulation 19(e) which provides for compensation allowance.

(i) In response to the Central Commission’s Notification for amendment of Regulation 9 of 2009 for additional capitalization on Renovation & Modernisation (R&M) of gas Turbines, NTPC had urged for extension of the similar provision for

coal based stations stating that the compensation allowance in case of coal based station was not sufficient. However, the Central Commission while amending the provisions of Regulation 9 vide Notification dated 21.6.2011 rejected the prayer of the NTPC.

(j) The provision for compensation allowance allowed for the coal based power stations was made in the 2009 Regulations based on the additional capitalization data of the generating stations from 1992 onwards as available with the Central Commission. The data relied upon by the Central Commission to arrive at the compensatory allowance in the 2009 Regulations has not been contested by the NTPC. Thus, as per the provisions of Regulation 19(e), compensation allowance is admissible to meet the expenses of new assets of capital nature, including minor assets.

(k) The last proviso to Regulation 7(2) carves out an exception in case of existing projects, but it cannot be construed as an exception to other provisions namely Regulation 8 and Regulation 9 of 2009 Tariff Regulations. The words “as may be admitted by the Commission” in the last proviso

to Regulation 7(2) must be read harmoniously with Regulation 7 (1) (c) and Regulation 9.

17. In the light of the above findings, on the basis of which the Central Commission disallowed the claims of the Appellant for additional capitalization, let us analyse these issues.

18. The learned Counsel for the Appellant has strenuously contended that the interpretation with reference to the Regulation last proviso of Regulation 7(2) and Regulations 9 (2) of 2009 is not correct for the following reasons:

(a) Additional capitalisation in respect of existing projects is covered only under the last proviso to Regulation-7(2);

(b) Additional capitalisation provided under Regulation-9 is only with reference to the generating stations coming into operation on or after 1.4.2009 or if commissioned before 1.4.2009, the cut-off date from the date of commercial operation spills over 2009-14 period;

(c) Regulation 9 is not applicable to existing generating projects which have been under commercial operation prior to 01.04.2009;

(d) Regulation 9 does not specify that apart from Regulation-9(1) and (2), no other additional capitalization shall be admissible.

19. On the basis of the above grounds urged by the Appellant, it is submitted that the Appellant being the existing generating project would be entitled to the additional capitalisation under last proviso to Regulation-7(2) de hors the Regulation 9(2) as it would not be applicable to the Appellant.
20. The Central Commission, in the Impugned Orders interpreted the relevant provisions of Tariff Regulations-2009 and held that the additional capital expenditure projected to be incurred after the “cut-off date” may be admitted by the Central Commission only after prudence check under Regulation 9(2) in the light of the definitions of the relevant terms contained in the relevant provision.
21. Let us now refer to the definition of the terms “Additional Capitalisation” and “Cut-off Date”.
22. Sub Regulation-3 of the Regulation-3 provides for the definition additional capitalization. The same is as follows:

“3. Definitions

3. **“additional capitalisation” 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”.**

23. The reading of the above definition would make it clear that the additional capitalization of capital expenditure incurred or projected to be incurred after the commercial operation date of the project, is subject to the provisions of Regulation-9.
24. Let us now see the definition of “cut-off date” in sub Regulation 11 of Regulation-3.

(11) “Cut-off date” means 31st March of the year closing after two years of the year of commercial operation of the project, and in case the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st March of the year closing after three years of the year of commercial operation”.

25. The conjoint reading of these definitions would make it evident that Regulation 3(3) clearly provides that any additional capitalization permissible under the Tariff Regulations 2009 either before or after the “cut-off date”, shall be subject to the provisions of Regulation-9.
26. Let us now refer to the Regulation-7 and Regulation-9 of the Tariff Regulations, 2009, as amended on 21.6.2011:

“7. Capital Cost

(1) Capital Cost for a project shall include:

(a) The expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan – (i) being equal to 70% of the funds

deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;

(b) Capitalized initial spares subject to the ceiling rates specified in regulation 8; and

(c) Additional capital expenditure determined under regulation 9:

Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.

(2) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff;

.....

Provided also that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 duly trued up by excluding un-discharged liability if any, as on 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.

.....

“9. Additional Capitalisation:

(1) The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation

and upto the cut-off date may be admitted by the Commission, subject to prudence check;

(i) Un-discharged liabilities.

(ii) Works deferred for execution

(iii) Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 8:

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(iv) Change in law:

Provided that the details of works included in the original scope of work along with estimates of expenditure, un-discharged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.

(2) The Capital Expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check;

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

(ii) Change in law;

(iii) Deferred works relating to ash pond or ash handling system in the original scope of work;

(iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house

attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation; and

(v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system;

Provided that in respect of sub clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air conditioners, voltage stabilizers, refrigerators, coolers, fans washing machines, heat convectors, mattresses, carpet etc., brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009.

(iv) in case of gas/liquid fuel based open/combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 years of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in the R&M on consumables and cost of components

and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station.

(viii) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payment etc.,”

- 27.** The above provisions would indicate that as per Regulation 7 (1) (c), the additional capital expenditure determined under Regulation 9 will be included in the capital cost of the project besides expenditure incurred or projected to be incurred up to the COD of the project and capitalized initial spares. As per the last proviso to Regulation-7(2), the projected additional capital expenditure to be incurred for the respective years of the tariff period 2009-14, will be considered by the Central Commission while determining the tariff in respect of the existing projects. This last proviso of Regulation 7(2) does not make any distinction between the additional capital expenditure projected to be incurred before the “cut-off date”

and additional expenditure projected to be incurred after the “cut-off date”. On the other hand, Regulation-9 provides for the additional capital expenditure to be admissible after prudence check during the year 2009-14.

- 28.** As referred to above, the Clause-1 of Regulation 9 deals with the expenditure incurred or projected to be incurred up to the cut-off date whereas Clause-2 of the said regulation deals only with the expenditure incurred after the cut-off date.
- 29.** The cut-off date in respect of Generating Stations of the Appellant has admittedly already expired. Therefore, the additional capitalization if at all is permissible only under Regulation 9(2).
- 30.** From this, it is clear that the additional capital expenditure cannot be claimed under the last proviso of Regulation 7(2) if the same is not admissible under Regulation 9.
- 31.** The Appellant has now argued that the last proviso to Regulation 7 (2) ought to be considered independent of Regulation-9. Such an argument cannot be countenanced in view of the following interpretation:
- (a) Regulation 3(3) of the Tariff Regulations, 2009 defines “additional capitalisation” as the capital expenditure incurred or projected to be incurred after the date of commercial operation of the project and

admitted by the Central Commission after the prudence check, subject to provisions of Regulation 9. The cross-reference such as “**subject to**” is used to remove any inconsistency in two provisions of a statute. Regulation 3(3) as indicated above, clarifies that any additional capitalization permissible under Regulation 2009 shall be subject to provisions of Regulation-9.

(b) Regulation 9 (2) was amended by the Central Commission by the CERC (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2011 on 21.6.2011 to add sub-regulations (vi) to (viii) for admitting additional capital expenditure of capital nature for the successful and efficient operation of gas based thermal generating stations under certain specified conditions, etc.

(c) The Appellant’s contention that Regulation 9 (1) and (2) would apply generally to projects commissioned after 1.4.2006 i.e. where the cut-off date as defined in the Regulations spills over 01.04.2009 may not be correct. The plain reading of these Regulations makes it evident that applicability of these provisions are based on the date on which the additional capital expenditure is incurred and not on the date of the commercial operation of the plant. Regulation 9 (1) applies to when the additional capital expenditure is

incurred or projected to be incurred after the COD and up to the cut-off date of the project. Regulation 9 (2) applies to when the additional capital expenditure is incurred after the cut off date of the project. Thus, additional capital expenditure incurred in the project with COD prior to 1.4.2006 would be covered only under Regulation 9 (2).

(d) If the interpretation sought to be made by the Appellant is accepted, then the last proviso to Regulation 7(2) will be read in a manner so as to render Regulation 9 (2) a nullity. The applicability of Regulation 9 to existing projects cannot be curtailed by reading additional conditions in the Regulation. In other words, a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It cannot be interpreted in a manner to carve out an exception to any other provisions of the statute.

(e) Regulation 7 (1) clearly indicates that the capital cost for a project shall include expenditure incurred up to the cut-off date, capitalized initial spares subject to ceiling rates specified in Regulation 8 and **additional capital expenditure determined under Regulation 9.**

(f) In this matter, the Central Commission has harmoniously interpreted the Regulation 7 and

Regulation 9 (2) of the Tariff Regulations, 2009 and held that the additional capital expenditure projected to be incurred after the cut-off date, may be admitted by the Central Commission only after prudence check under Regulation 9 (2).

32. Regulation 10 provides for renovation and modernisation for the purpose of extension of life beyond the useful life of the generating station of a unit for which the generating station has to file an application before the Central Commission for approval of the proposal with Detailed Project Report and other relevant documents as specified. The useful life of a thermal station is 25 years. There is also a provision for a generating company opting for a special allowance as an alternative. Thus, Regulation 10 would not be relevant to the claim of the Appellant for additional capital expenditure incurred on works and services which becomes necessary for efficient and successful operation of the Generating Station during the useful life of the Generating Station.

33. Let us now refer to the other relevant definitions in order to substantiate the above interpretation.

34. The definitions of the term “expenditure incurred”, “existing generating station” and “existing project” under Clause 3 is provided as under:

“3. Definitions:

.....

(2) **“expenditure incurred”** means the fund, whether the equity or debt or both, actually deployed and paid in cash or cash equivalent, for creation or acquisition of a useful asset and does not include commitments or liabilities for which no payment has been released.

.....

(16) **“Existing generating station”** means a generating station declared under commercial operation from a date prior to 1.4.2009;

(17) **“Existing project”** means the project declared under commercial operation from a date prior to 1.4.2009;

35. In the light of the definitions mentioned above, we shall now analyse the last proviso of Regulation-7 as well as Regulation 9 (2).
36. Perusal of the last proviso of Regulation 7, would reveal that the same is applicable to the existing projects i.e. the projects already commissioned.
37. The said Regulation provides for capital cost. The last proviso to the said Regulation specifically mentions that the capital cost of an existing project would be the capital cost admitted by the Central Commission prior to 1.4.2009 and the additional capital expenditure projected to be incurred for the respective year of the above tariff period 2009 to 2014 as may be admitted by the Central Commission which will form the basis for determination of tariff.

- 38.** The phrase “additional capital expenditure projected to be incurred” means the additional capital expenditure projected in accordance with Regulation-9 which provides for additional capitalization.
- 39.** Thus, if any additional capitalization is projected to be incurred as per Regulation 9 in the control period, the same will form the basis for determination of tariff.
- 40.** Under Regulation 9 (2), the additional capitalization can be claimed only in respect of following eventualities in respect of Thermal/Gas Generating Stations after the cut-off date:
- (a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;
 - (b) Change in law;
 - (c) Deferred works relating to ash pond or ash handling system in the original scope of work;
 - (d) In case of gas/liquid fuel based thermal generating stations, any expenditure which has become necessary on renovation of gas tubes after 15 years of operation and the expenditure necessary due to the obsolescence or non-availability of spares for successful and efficient operation of the stations.

(e) Any expenditure necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of coal linkage.

(f) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date.

41. From the combined reading of the relevant Regulations on the basis of the correct interpretation, three aspects would emerge. They are as follows:

(a) Additional capitalisation is the expenditure incurred or projected to be incurred after the Commercial Operation Date subject to the provisions of Regulation 9.

(b) As per Regulation 7 (1), the Capital Cost of a project shall include the expenditure incurred or projected to be incurred up to the Commercial Operation Date, capitalized initial spares and additional capital expenditure as determined under Regulation 9.

(c) Additional capitalization for projects within the original scope of works after the date of Commercial Operation and up to the cut-off date could be claimed under Regulation 9 (1).

(d) Additional capitalization for projects after the cut-off date could only be claimed under Regulation 9 (2), specifically for the heads indicated therein.

42. In the light of these aspects, the contention urged by the Appellant that the last proviso to Regulation-7(2) of the said Regulations is a substantive provision under which it can claim additional capitalization is not tenable. In fact, the capital cost as mentioned under Regulation-7(1) includes only the capital expenditure under Regulation-9. This would make it clear that the additional capitalization cannot be claimed de hors Regulation-9.

43. This issue can be looked at from yet another angle as well.

44. While considering the interpretation of these Regulations projected by the Appellant, the following two questions would arise for consideration on this issue:

(a) Whether the last proviso to Regulation 7 (2) is an independent provision or the same is subject to the provision of Regulations-9?

(b) Whether under 2009 Regulations, the “additional capitalization” has been classified under two broad heads i.e. (i) provided for in Regulation-9 and (ii) provided for in the last proviso to Regulation-7 (2)?

45. In order to understand as to whether additional capitalization under 2009 Regulations is classified into two broad categories as mentioned above, it may again be necessary to quote Regulation 3 (3) which defines the additional capitalisation. The same is as follows:

“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”.

46. In order to categorise an expenditure as additional capitalization, the same needs to be (a) expenditure incurred or expenditure to be incurred after the date of commercial operation (b) admitted by the Central Commission subject to provisions of Regulation-9. Hence, for expenditure to be allowed as additional capitalization, the same has to be allowed only subject to the provisions of Regulation-9.

47. It must be noted at this juncture that while defining the term “additional capitalization” the term used is “means” and not the term as “means and includes” or “includes”. Thus, the definition of additional capitalization is an exhaustive definition and no other meaning can be assigned to the same.

48. In other words, where the term “means” is used in the definition, the definition is intended to be exhaustive and cannot be extended to any other matter not specifically

stated therein. This legal principle has been laid down by the Hon'ble Supreme Court in Bharat Coop. Bank (Mumbai) Limited vs Coop Bank Employees Union, (2007) 4 SCC 685.

- 49.** This definition would make it evident under Regulation 3 (3) which is an exhaustive definition makes additional capitalization subject to the provisions of Regulation-9. The interpretation sought to be given by the Appellant could be accepted only when the Regulation provides with “means and includes” or subject to provisions of Regulation-9 and proviso to Regulation 7. In the absence of these words, we cannot add to or alter the language, structure and content of a provision by reading into what was not specifically intended. This is also undisputed principle of law as laid down in the judgment of Hon'ble Supreme Court in Smt Vijayalakshmma and Anr. Vs B. T Shankar, (2001) 4 SCC 558.
- 50.** It shall be stated that that if the definition of additional capitalization was intended to have been given a wider scope, then the Central Commission would have used the words as “means and includes” in the definition in Regulation 3 (3). The term “includes” is absent in the Regulation and there is no mention of Regulation 7. Further, Regulation 7 (1) clearly indicates that the Capital Cost would include expenditure incurred up to date of Commercial Operation, capitalized initial spares and additional capital

expenditure determined under Regulation 9. Additional Capital expenditure as per last proviso to Regulation 7 (2) is not included in the Capital Cost as per Regulation 7 (1).

51. Let us now refer to Regulation-9 again for proper understanding:

“9. Additional Capitalisation:

(1) The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check;

(j) Un-discharged liabilities.

(ii) Works deferred for execution

(iii) Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 8:

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(iv) Change in law:

Provided that the details of works included in the original scope of work along with estimates of expenditure, un-discharged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.

(2) The Capital Expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check;

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

(ii) Change in law;

(iii) Deferred works relating to ash pond or ash handling system in the original scope of work;

(iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation; and

(v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system;

Provided that in respect of sub clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air conditioners, voltage stabilizers, refrigerators, coolers, fans washing machines, heat convectors, mattresses, carpet etc., brought after the cut-off date shall not be considered for

additional capitalization for determination of tariff w.e.f. 1.4.2009.

(iv) in case of gas/liquid fuel based open/combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 years of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station.

(viii) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payment etc.,”

52. A bare perusal of Regulation-9 makes it evident that the same enlists exhaustively the expenditure incurred both

before and after the cut-off date and the methodology to be followed by the Central Commission to admit the same.

- 53.** According to the Appellant, as mentioned earlier, the provision of Regulation-9 pertains to only new plants and does not provide for old plants whereas the additional capitalization for old and existing plants has been provided in the last proviso to Regulation-7(2).
- 54.** This interpretation, given by the Appellant is totally wrong in the light of the comparison between the 2004 Regulations, and 2009 Regulations which throws light on this aspect.
- 55.** Let us now refer to the difference between these Regulations.
- 56.** Of course, the nature of the expenditure to be allowed as additional capitalization as per Regulation 18 (2) of 2004 Regulations and 9 of 2009 Regulation is the same. But the difference between the Regulation 18 of 2004 Regulation and Regulation 9 of 2009 Regulation is with reference to the additional clauses under Regulation 18(2) of the 2004 Regulation. Those clauses are 18(2) (i) and 18(2) (iv). Regulation 18(2) (i) pertains to deferred liabilities relating to works/services within the original scope of the work. Regulation 18(2) (iv) pertains to additional works which have become necessary for efficient and successful operation of

the generating station but not included in the original project cost.

57. But, the aforesaid two provisions as contained in Regulation 18 of the 2004 Regulations, were consciously not made a part of Regulation-9 of the 2009 Regulations. The said conscious departure from 2004 Regulation is evident from the Statement of Objects and Reasons to the 2009 Regulations.

58. The relevant Statement of Objects and Reasons are as follows:

“10.2.2 The above provision was on similar lines as in the tariff regulations for 2004-09 except for additional capital expenditure on new assets not in original scope of work prior to and after cut-off date, and deferred liabilities and works after the cut-off date. The generating companies in their comments have sought to allow additional capitalization on new assets not in original scope of work and deferred liabilities and deferred works within the original scope after cut-off date.

10.2.4 As regards the generators’ demand to allow deferred liabilities and deferred works executed after the cut-off date, the Commission is of the view that all the works related to the project within the original scope including colony etc., should be completed as early as possible but not later than cut-off date. In fact, the cut-off date has been extended by one more year to take care of the concerns of the generating companies/transmission licensees. The Commission expects that all liabilities and deferred works which could not be settled or completed by the COD of the

station must be settled or completed by the cut-off date. A period of 2-3 years is considered reasonable enough to complete all works within the original scope except the work relating to ash pond and ash handling. Any liability remaining unsettled or work remaining unfinished after the cut-off date could only be because of some dispute or otherwise before arbitration or pending before the court which shall be dealt as per the Regulations dealing with additional capitalization after cut-off date.

10.2.5 As regards new works not within the original scope and expenditure on minor assets, a provision has been made in the Regulations dealing with O&M expenses for a compensation allowance starting from 11th year from COD of units in respect of coal/lignite based stations as discussed elsewhere in this SOR.”

59. From the reading of the above objects and reasons, the following factors would emerge:

(a) There has been a deliberate departure in the 2009 Regulations from the 2004 Regulations in as much as the following have not been considered for additional capital expenditure:

(i) Additional capital expenditure on new assets not in original scope of work after cut-off date;

(ii) Deferred liabilities and deferred works after the cut-off date.

(b) The deferred liabilities and deferred works have not been considered for additional capitalization since the Central Commission is of the view that all liabilities and works must be settled or completed by the cut-off date. In furtherance of the same, the Central Commission has also increased the cut-off date from 1 to 2 years after the year of commercial operation of the project, in the 2009 Regulations.

(c) The Central Commission duly considered the liabilities and/or works that could not be completed till the extended cut-off date and provided for the same within the definition of additional capitalization.

(d) The Central Commission has provided for a compensation allowance as a part of O&M expenses in order to provide for new works not within the original scope of work.

(e) The Appellant, in fact, at the time of framing of the Regulations had objected to such a departure but the said objections of the Appellant were duly considered and rejected by the Commission.

(f) The scope of Regulation 9 is not restricted to new plants and the same also pertains to old/existing plants.

- 60.** In view of the above factors, it cannot be argued that the works not within the original scope of the work and deferred liabilities or works since not provided for in Regulation 9 are covered under proviso to Regulation-7(2).
- 61.** As indicated above, there has been a deliberate departure from 2004 Regulations. Even though this departure was earlier objected to by the Appellant, the Central Commission rejected the said objection and framed this Regulation which has not been challenged. Nevertheless, through the present Appeals, the Appellant is trying to give its own interpretation which is completely contrary to the Statement of Objects and Reasons to the 2009 Regulations.
- 62.** Thus, the Appellant through the present Appeals, is attempting to do the same thing indirectly which the Appellant could not do at the time of framing of the 2009 Regulations.
- 63.** There is one more contention raised by the Appellants which is quite strange.
- 64.** The Appellant has now sought to argue that the disallowance of expenditure in the present case is contrary to the past practice adopted by the Central Commission and that last proviso to Regulation-7(2) should be interpreted and applied to allow what was allowed in the past.

65. This submission deserves straightway to be rejected on account of two reasons:

(a) There has been a deliberate departure from the practice of the past and;

(b) In the absence of any specific provision providing for the same, the provisions of 2009 Regulations cannot be interpreted to allow something which is beyond the scope of the provisions of the 2009 Regulations;

66. It is pointed out that after the Notification of the 2009 Regulations were published on 19.1.2009; the Central Commission amended the 2009 Regulations on 21.6.2011. These amendments were made to Regulation-9 of 2009 Regulations. The following clauses were inserted to Regulation 9(2) by the amendment dated 21.6.2011:

“(vi) In case of gas/liquid fuel based open/combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbine after 15 years of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating stations as result of circumstances not within the control of the generating station.

(viii) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payments etc.,”

67. From the introduction of these Clauses through the amendment dated 21.6.2011, it is made clear that the Central Commission after considering the initial 2009 Regulations, came to the conclusion that the expenditure of a particular nature ought to be included in the 2009 Regulations as “additional capitalization”.

68. It is not the case of the Appellant that the expenses now claimed by the appellant fall under the aforesaid mentioned expenses. In the event, the Central Commission had considered it appropriate to include the expenditure claimed by the Appellant as additional capitalization, it would have done so through the amendment as was done on 21.6.2011. When the Central Commission has deliberately not included the same within the purview of the Regulation 9 of the 2009 Regulations, the Appellant cannot now be permitted to argue

that the same can be covered by the other provision and more specifically by the last proviso to Regulation-7(2).

- 69.** The Appellant has also contended that Regulation-7(2) last proviso which refers to additional capital expenditure for an existing project is a standalone provision which is not subject to Regulation-9. This contention is inherently wrong as the same would be contrary to the scheme of 2009 Regulations which explicitly envisages that the computation and admissibility of the additional capitalisation has to necessarily be done in accordance with Regulation-9.
- 70.** The careful and conjoint reading of the above provisions clearly indicates that Regulation-9 is a governing provision to determine the admissibility of the additional capitalisation and any statement to the contrary is without any merit.
- 71.** It is also pertinent to note that Regulation-7 through Sub Clause 1 (c) provides that the capital cost for a project shall include the additional capital expenditure determined under Regulation-9.
- 72.** Thus, it is clear that even the Regulation-7(1) refers to additional capital expenditure as determined under Regulation-9.
- 73.** It is a settled principle of law that a proviso to provision cannot be torn apart from the main enactment nor can it be used to nullify the implication what the enactment clearly

says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

- 74.** When 2009 Regulations are clear and unambiguous in as much as they expressly provide that the additional expenditure shall be allowed in terms of Regulation-9, the interpretation sought to be given by the Appellant cannot be accepted as the correct interpretation particularly when the last proviso of Regulation 7 (2) does not in any manner indicate that additional expenditure referred to therein is beyond the scope of Regulation-9.
- 75.** In view of the above, the 1st and 2nd issue are decided as against the Appellant.
- 76.** Let us now refer to **other two issues** relating to the interpretation of Regulation 19 (e) with reference to the scope of the term “minor assets” and “non inclusion of the expenditure for the purpose of determining the Working Capital requirement under Regulation 19 (e)”.
- 77.** According to the Appellant, the interpretation given by the Central Commission with regard to Regulation 19 (e) is not correct since the expenditure incurred on additional capitalisation by the Appellant which is an existing generating station, is covered under last proviso of Regulation-7 and such an additional capitalization is not

limited to the compensatory allowance provided for in the Regulation 19 (e) of the Tariff Regulations,

- 78.** On the other hand, the Respondents have contended that the Central Commission has provided for compensatory allowance under Regulation 19 (e) based on the actual additional capitalization of the Appellant for the period from 1997 to 2006 and the same covers all additional capitalisations permissible over and above those provided in Regulation 19 (e) for an existing generating station.
- 79.** In the light of the rival contentions, let us discuss these two issues.
- 80.** Regulation 19 (1) (e) is a separate compensatory allowance which is a new addition in the Tariff Regulations, 2009. This has been introduced to meet the expenses on new assets of capital nature including in the nature of minor assets which are not permissible under Regulation 9 of the Tariff Regulations.
- 81.** Regulation 19 (1) (e) of the Tariff Regulations is reproduced below:

“(e) In case of coal based or lignite fired thermal generating station, a separate compensation allowance unit-wise shall be admissible to meet expenses on new assets of capital nature including in the nature of minor assets, in the following manner from the year following the year of completion of 10, 15 or 20 years of useful life;

<u>Year of Operation</u>	<u>Compensation Allowance</u> (Rs.lakh/MW/Year)
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0-10	Nil
11-15	0.15
16-20	0.35
21-25	0.65”

82. The reading of the above provision shows that the compensatory allowances would increase with the increase in the year of operation of the thermal plant. Thus, this compensation allowance is expected to meet the age related requirements of the thermal power stations including acquiring the new capital assets. So, aforesaid compensation allowance is permitted on normative basis for meeting the expenses on new assets of capital nature.

83. It is pointed out by the Respondent that the Central Commission has already allowed the Appellant the expenses for successful and efficient operation in the form of compensation allowance for sustenance of the current performance level besides the enhanced operation and that maintenance expenses and therefore, the Appellant cannot ask for the double benefits in the form of compensation allowance as well as in the form of additional capitalisation.

84. In the light of this objection raised by the Respondents, let us now refer to the Statement of Objects and Reasons for

providing the compensation allowance under Regulation 19 (1) (e) of the Tariff Regulations. They are as follows:

“21. Compensation Allowance (Regulation 19)

21.1 *The draft Regulations provided for following compensation allowance in respect of coal/lignite based station.*

<u>Year of Operation</u>	<u>Compensation Allowance (Rs.lakh/MW/Year)</u>
0-10	Nil
11-15	0.15
15-20	0.35
20-25	0.65”

21.2 *Generating companies like NTPC have submitted that amounts of compensation allowance are not sufficient to meet the expenditure on new works required for successful plant operation. NTPC and NLC have sought following compensation allowance:*

<u>Years of Operation</u>	<u>As per NTPC</u>	<u>As per NLC</u>
0-5	0.15	Nil
6-10	0.15	0.1
11-15	0.25	0.2
15-20	0.44	0.35
20-25	0.82	0.65

21.3 *NTPC has sought above compensation allowance excluding additional capital expenditure on buildings, road, spares batteries etc., citing the expenditure in case of Singrauli STPS, though the claims have not supported with any details. The Commission’s decision to introduce compensation allowance was based on available data on additional capitalization in the tariff petitions of NTPC stations.*

For this purpose, expenditure on new assets in the nature of Environment Act Plan (EAP), arising on account of change of law or dealing with design deficiency etc., has not been considered.

21.4 *In view of the above, the compensation allowance as proposed in the draft regulation has been retained as clause (e) of Regulation 19”.*

- 85.** A careful perusal of the **Statement of Objects and Reasons** would clearly indicate that a separate compensation allowance covers the expenditure on new assets including the minor assets for a successful plant operation. The Appellant was aware that this compensation is also for successful operation of the generating stations. Although the Appellant tried to plead before the Central Commission that the said amount is not sufficient to meet the expenses of new works, he could not substantiate his claim by producing the relevant materials.
- 86.** In the absence of any input from the Appellant, the Central Commission came out with its own figures of compensation allowance which was based upon the available data of additional capitalisation in the tariff petitions filed by the Appellant’s stations. Thus, the Appellant is not expected to have any grievance on this issue.
- 87.** In this context, it would be worthwhile to refer to the nature of Objections raised by the Generating Companies as well as the reasons given by the Central Commission while

framing its Regulations for making a specific provision for allowing justified additional capital expenditure after prudence check.

- 88.** It is also clear from the perusal of the Objects and Reasons for framing Tariff Regulations, 2009 and second Amendment to those Regulations dated 21.6.2011 that the Central Commission has provided a separate compensation allowance under Operation and Maintenance Expenses after considering the entire data available with the Central Commission regarding additional capitalization granted to the Appellant. Though, the Central Commission in the Regulations, has not provided for any additional capital expenditure except the eventualities mentioned under Regulation 9(2), the Central Commission having considered the data of the Appellant regarding the additional capitalization granted earlier, has provided for a separate compensation allowance to meet the requirements of the Appellant for Capital expenditure required for efficient and successful operation of the plant.
- 89.** That apart, from the careful reading of the relevant Regulations including Regulation 19 (e) which provides for a separate compensation allowance to meet the expenses of capitalization of new assets including minor assets, the following aspects are emerged:

(a) As mentioned above, Regulation-9 is a substantive Regulation both for the existing projects i.e. the projects existing prior to 1.4.2009 as well as for the new projects commissioned during the period 2009-14.

(b) Regulation 19 (e) provides for compensation allowance for coal based thermal power projects to meet the expenses of new assets of capital nature after the cut-off date.

(c) There is no other provision for additional capitalisation for coal based thermal power project for any additional work which became necessary for efficient and successful operation of the plant except for reasons covered under Regulation-9.

(d) By the amendment of the Regulation dated 21.6.2011, the Central Commission allowed the additional capitalization after the cut-off date for gas/liquid fuel based open/combined cycle thermal generating station for any expenditure necessary for renovation of gas turbines after 15 years of operation and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

(e) The Central Commission by this Amendment in fact provided for additional capitalization of any capital

expenditure necessitated on account of modification required in fuel receipt system arising due to the non-materialization of full coal linkage as a result of circumstances not within the control of the Generating Station. However, no amendment was made for the coal based thermal power station for additional capitalization necessary for the efficient and successful operation of the plant which was not included in the original scope of work.

(f) It is an admitted fact that the Appellant at the time of the proposal for amendment to Regulation-9 of 2009 Regulations had made a request for additional capitalization in respect of coal based thermal power station to be allowed after cut-off date for expenditure incurred for the efficient and successful operation of the plant. However, this was rejected by the Central Commission as referred to in the Statement of Objects and Reasons recorded for amendment of 2009 Tariff Regulations dated 21.6.2011.

(g) In the Tariff Regulations, 2009, a provision has been made under Regulation 19 (e) for compensation allowance in respect of coal based or lignite fired thermal generating stations to meet the expenses of new assets including the minor assets. Instead of allowing the additional capitalization in the case of

existing projects for the expenditure necessary for the successful and efficient plant operation, the compensation allowance has been provided in the 2009 Regulations which were not available in the 2004 Tariff Regulations.

- 90.** From this, it is clear that Regulation 19 (e) indicates that the compensation allowance specified in Regulation 19 (e) covers the expenses of new assets of capital nature including the minor assets.
- 91.** The learned Counsel for the Appellant has contended that the Regulation 19 (e) only provided expenditure on new assets of minor nature. We are unable to agree with this contention as this is misconceived.
- 92.** In view of the above, we conclude that the interpretation given by the Central Commission with regard to Regulation 19 (e) is perfectly valid and the interpretation sought to be given by the Appellant is totally wrong.
- 93.** We find that Regulation 18 provides that the working capital shall cover *inter alia*, maintenance spares @ 20% of O&M expenses specified in regulation 19 and operation & maintenance expenses for one month. Sub-clause (a) of Regulation 19 specifies the normative O&M expenses for coal based generating stations given in terms of Rs. lakh/MW. The norms for O&M expenses are not based on a

percentage of the capital cost. Sub-clause (b) of Regulation 19 provides for O&M expenses allowed for certain old thermal power projects of NTPC and DVC. The compensation allowance provided in Regulation 19(e) is to meet the expenses on new assets of capital nature. Therefore, we find no justification in the contention of NTPC for inclusion of compensation allowance in normative O&M expenses for computing the working capital requirement. Thus, we do not find any infirmity in the impugned order of the Central Commission in not including the compensation allowance in the O&M expenses while computing the working capital requirement.

94. Accordingly, these two issues are also decided against the Appellant.

95. To Sum-UP

The interpretation given by the Central Commission with regard to the scope and object of last proviso to Regulation 7, 9(2) and 19(1) (e) of Tariff Regulations,2009 is perfectly valid.

96. Since other issues also have been raised which have to be decided in these Appeals, post these Appeals on 13th February, 2014 for hearing the parties with regard to those issues.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 27th Jan, 2014

√REPORTABLE/~~NON-REPORTABLE~~