

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

Appeal No. 213 of 2012

Dated: 19th September,2013

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

NTPC Limited,
NTPC Bhavan, Scope Complex,
Core-7, Institutional Areas, Lodhi Road,
New Delhi-110 003

... Appellant

Versus

1. **Central Electricity Regulatory Commission,**
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.
2. **Uttar Pradesh Power Corporation Limited,**
Shakti Bhawan-14,
Ashoka Marg, Lucknow-226 001
3. **Ajmer Vidyut Vitran Nigam Limited,**
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer-305 001
Rajasthan
4. **Jaipur Vidyut Vitran Nigam Limited,**
Vidyut Bhawan, Janpath,
Jaipur-302005
5. **Jodhpur Vidyut Vitran Nigam Limited,**
New Power House, Industrial Area,
Jodhpur-342003
6. **Delhi Transco Limited,**
Kotla Road, New Delhi-110 001.

7. **Tata Power Delhi Distribution Limited,**
(formerly North Delhi Power Ltd.,)
Sub Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009

8. **BSES Rajdhani Power Limited,**
BSES Bhawan, Nehru Place,
Delhi-110 019.

9. **BSES Yamuna Power Limited,**
Shakti Kiran Vihar,
Karkardooma, Delhi-110 092

10. **New Delhi Municipal Council,**
Palika Kendra, Parliament Street,
New Delhi-110 002.

11. **Military Engineers Services,**
Ministry of Defence,
Government of India,
New Delhi-110 011.

12. **Punjab State Power Corporation Limited,**
(Formerly Punjab State Electricity Board),
The Mall, Patiala 147001,
Punjab

13. **Haryana Vidyut Prasaran Nigam Limited,**
Shakti Bhawan, Sector-VI,
Panchkula-134109,
Haryana.

14. **Haryana Power Generation Company Limited,**
Shakti Bhawan, Sector-VI,
Panchkula-134109,
Haryana.

15. **Haryana Power Purchase Centre,**
Shakti Bhawan, Sector-VI,
Panchkula-134109,
Haryana.

16. **HPSEB Limited,**
Kumar Housing Complex Building-II,
Vidyut Bhawan, Shimla-171004,
Himachal Pradesh.

17. **Power Development Department,**
Government of Jammu & Kashmir,
Mini Secretariat, Jammu-180 006.

18. **Chief Manager,**
Chandigarh Administration,
Sector-9, Chandigarh-160 022

19. **Uttarakhand Power Corporation Limited,**
Urja Bhawan, Kanwali Road,
Dehradun-248 001

20. **Madhya Pradesh State Electricity Board,**
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482008.

21. **Maharashtra State Electricity Distribution Company Ltd.,**
Pradashgad, Bandra (East),
Mumbai-400 051

22. **Gujarat Urja Vikas Nigam Limited,**
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodra-390 007.

23. **Chattisgarh State Electricity Board,**
P.O. Sunder Nagar, Danganiya,
Raipur-492913

24. **Electricity Department,**
Government of Goa,
Vidyut Bhawan, Panaji, Goa-403001

25. **Electricity Department,**
Administration of Daman & Diu,
Power House Building, 2nd Floor, Kathiria,
Nani, Daman-396210

26. **Electricity Department,**
Administration of Dadra and Nagar Haveli,
Vidyut Bhawan (Opposite Secretariat),
Silvassa-396230

27. **Transmission Corporation of Andhra Pradesh,**
Vidyut Soudha, Khairatabad,
Hyderabad-500 049, Andhra Pradesh

28. **A.P. Eastern Power Distribution Company Limited,**
P & T Colony, Seethammadhara,
Visakhapatnam-530 013
Andhra Pradesh

29. **A.P. Southern Power Distribution Company Limited,**
H. No. 193-93 (M) Upstairs,
Renigunta Road, Tirupathi-517 501
Andhra Pradesh

30. **A.P. Northern Power Distribution Company Limited,**
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506004
Andhra Pradesh

31. **A.P. Central Power Distribution Company Limited,**
Mint Compound, Near Secretariat,
Hyderabad-500 063
Andhra Pradesh
32. **Karnataka Power Transmission Corporation Limited,**
Cauveri Bhawan, Bangalore-560009,
Karnataka
33. **Bangalore Electricity Supply Company Limited,**
K.R. Circle, , Bangalore-560001,
Karnataka
34. **Mangalore Electricity Supply Company Limited,**
Paradigm Plaza, Mangalore-575001,
Karnataka
35. **Chamundeshwari Electricity Supply Company Limited,**
927, LJ Avenue, Saraswatipuram,
Mysore-570 009,
Karnataka
36. **Gulbarga Electricity Supply Company Limited,**
Station Road, 927, Gulbarga-585102
Karnataka
37. **Hubli Electricity Supply Company Limited,**
P.B. Road, Nava Nagar Hubli,
Karnataka-580 025
38. **Kerala State Electricity Board,**
Vydyuthi Bhawanam,
Thiruvananthapuram-695 004.
39. **Electricity Department,**
Government of Pudducherry,
58, Subhash Chandra Bose Salai-605001
Pudducherry.

40. **Tamil Nadu Electricity Board,**
800, Anna Salai,
Chennai-600 002
Tamil Nadu.
41. **GRIDCO Limited,**
Janpath, Bhubaneswar-751 022,
Orissa
42. **Damodar Valley Corporation Limited,**
DVC Towers, VIP Road,
Kolkata-700 054.
43. **Bihar State Electricity Board,**
Ground Floor, Vidyut Bhawan-II,
Jawaharlal Nehru Marg,
Patna-800 001
44. **West Bengal State Electricity Distribution Co. Ltd.,**
Bidyut Bhawan, Bidhan Nagar,
Block-DJ, Sector-II,
Salt Lake City, Kolkata-700 091.
45. **Department of Power, Govt. of Sikkim,**
Government of Sikkim, Gangtok-737 101,
Sikkim.
46. **Jharkhand State Electricity Board,**
Energy Building, HEC,
Dhurwa, Randhi-834 004,
Jharkhand
- ...Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri &
Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. Pradeep Misra,
Mr. Shashank Pandit,
Mr. Manoj Kr. Sharma,
Mr. Daleep Kr. Dhayani for R.2 & 20
Mr. R.B. Sharma for R.8, 41 & 46
Mr. S. Vallinayagam for R.40

JUDGMENT

MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by NTPC Ltd. against the order dated 21.8.2012 passed by the Central Electricity Regulatory Commission wherein the claim of the Appellant for recovery of fixed charges on account of capital expenditure incurred at various common offices and facilities of NTPC between 1.4.2004 to 31.3.2009 has been disallowed in petition no. 300 of 2009.

2. The Central Commission is the Respondent no. 1. The beneficiaries of the power from NTPC Projects are the Respondent nos. 2 to 46.

3. The brief facts of the case are as under:
 - (a) NTPC is a generating company. Since the time of its incorporation and till 31.3.2009, NTPC has progressively established common facilities, namely, corporate offices in Delhi and Noida, Regional offices at several places, office for training and common engineering service, custom clearance and transport office, satellite centres for communication, etc. These offices render support facilities such as procurement, coordination, finance, marketing, commercial facilities for sale of electricity, import of equipment, training, engineering services, communication services, etc., for different generating stations of NTPC.

- (b) NTPC had from time to time incurred capital expenditure for establishment of the above common offices and facilities. Between 1.4.2004 to 31.3.2009, NTPC had incurred an expenditure of Rs. 221.02 crores for establishing and maintaining such common offices. This is over and above the capital expenditure of Rs. 370.20 crores incurred on common facilities upto 31.3.2004.
- (c) In terms of Tariff Regulations, 2004, NTPC filed Petition no. 300 of 2009 before the Central Commission seeking approval for recovery of fixed charges on account of servicing of the capital cost incurred by NTPC at its above mentioned common facilities namely a sum of Rs. 221.02 crores incurred between 1.4.2004 to 31.3.2009.

- (d) Prior to this NTPC had filed a petition no. 3 of 2006 before the Central Commission for recovery of fixed charges on account of servicing of capital cost incurred by NTPC at its common facilities, namely, a sum of Rs. 370.30 crores incurred up to 31.3.2004. The Central Commission by its order dated 26.4.2006 dismissed the petition on the ground that there is no provision in law to enable the generating company to claim the servicing of capital expenditure on common facilities and only direct capital cost of the generating station can be considered for the purpose of tariff.
- (e) Aggrieved by the order dated 26.4.2006 of the Central Commission, NTPC filed an

appeal being Appeal no. 94 of 2006 before the Tribunal. By order dated 30.3.2007, the Tribunal dismissed the Appeal.

(f) NTPC filed a second Appeal being Civil Appeal no. 3550 of 2007 before the Hon'ble Supreme Court against the order dated 30.3.2007 of the Tribunal.

(g) Hon'ble Supreme Court vide order dated 2.12.2010 had remanded the matter to the Tribunal with the directions for giving its decision on whether or not the benefit which is claimed by the Appellant on the capital expenditure incurred as on 1.4.2004 could be available in the future years and whether or not such benefit at all be available to the Appellant in view of the Regulations.

- (h) The Tribunal thereafter by Judgment dated 30.8.2011 dismissed the Appeal no. 94 of 2006 on remand. NTPC has filed an Appeal before the Hon'ble Supreme Court against this judgment which is pending.

- (i) The Central Commission in Petition no. 300 of 2009 filed by NTPC for recovery of fixed charges on account of capital expenditure incurred between 1.4.2004 to 31.3.2009 for various offices, also dismissed the petition on the ground of delay and further held that the Tariff Regulations, 2004 do not contain any provision for inclusion of capital expenditure on corporate offices and other offices.

(j) Aggrieved by the above order dated 21.8.2012 passed by the Central Commission, NTPC has filed the present Appeal.

4. We have heard the learned counsel for the parties.

5. The only issue that arises for our consideration is whether the NTPC is entitled to claim fixed charges on account of servicing of capital expenditure incurred from 1.4.2004 to 31.3.2009 in establishment of the common offices and facilities through the tariff of its various generating station?

6. The above issue has been decided by this Tribunal in judgment dated 30.8.2011 in Appeal no. 94 of 2006 in the matter of NTPC vs. CERC & Others. The relevant extracts from the judgment are reproduced below:

“16. Thus the above Regulations do not provide for inclusion of apportioned capital cost incurred on corporate office and other offices in the capital cost of the generating station”.

“19. We are not able to accept the arguments of the learned counsel for the Appellant that the Regulations do not prohibit inclusion of capital cost of the corporate office and other offices. In our opinion if any cost which is not a part of the generating station/unit, is required to be included on pro-rata basis on all the generating stations of the company then there has to be a specific Regulation for the same. The existing Regulations do not leave any scope for inclusion of apportioned capital cost incurred on corporate office or other common offices as on 1.4.2004 or after 1.4.2004 in the capital cost of the generating stations/units”.

“21. The Central Commission has given detailed reasonings for not allowing the capitalization of the cost incurred on the common offices. We are in agreement with those findings of the Central

Commission. The Appellant has not been able to bring to our notice any provision of law which enables inclusion of capital cost incurred on corporate office and other common offices for Return on Equity. The revenue expenditure incurred in these offices has already been allowed by the Central Commission in the tariff in the O & M expenditure. There is no substance in the arguments of learned counsel for the Appellant that since the depreciation and O&M expenditure of the common offices are being allowed the servicing of capital cost should also be allowed and that the maintenance of common offices instead of separate offices has brought about economies of scale. In our opinion, the corporate offices or the Regional offices cannot be a part of a generating station”.

“23. We have come to a different conclusion for NTPC in the present case on the basis of the 2004 Regulations of the Central Commission. Thus, the above judgment of the Tribunal in Appeal No. 271 etc., of 2006 dated 23.11.2007 in case of DVC will not be applicable to the present case.

24. Summary of our findings

24.1. The Tariff Regulations, 2004 of the Central Commission do not provide for inclusion of the capital cost incurred on corporate office and other common offices as on 1.4.2004 or after 1.4.2004 in the capital cost of the generating stations. The Appellant has not been able to bring to our notice any provision of law which enables inclusion of such capital cost for claiming Return on Equity. The findings of the Tribunal in judgment in Appeal No. 271 etc., of 2006 dated 23.11.2007 in Damodar Valley Corporation vs. Central Electricity Regulatory Commission & Ors. will not be applicable to the present case.

25. In view of above, the Appeal is dismissed, as devoid of merits. However, there is no order as to cost”.

7. Thus, the Tribunal dismissed the claim of the Appellant for return on equity on the capital cost incurred on corporate office and other common offices and facilities on the basis of the Tariff Regulations. The findings of the Tribunal in Appeal no. 94 of 2006 will squarely apply in the present case. Accordingly, decided.

8. In view of above, the Appeal is dismissed as devoid of merits. No order as to costs.

9. Pronounced in the open court on this **19th day of September, 2013.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/~~NON-REPORTABLE~~

vs