Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Appeal Nos.196 of 2014 and 326 of 2013

Dated: 18th September, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

In the Matter of:

Appeal No. 196 of 2014

Haryana Power Generation Corporation Ltd.
C-7, Urja Bhawan, Sector-6,
Panchkula – 134 109 **… Appellant/petitioner(s)**

Versus

1. **Haryana Electricity Regulatory Commission**
   Bays No.33-36, Sector-4,
   Panchkula – 134 109.

2. **Uttar Haryana Bijli Vitaran Nigam Ltd.,**
   Vidyut Sadan, Plot No.C-16,
   Sector-VI, Panchkula, Haryana-134 109.

3. **Dakshin Haryana Bijli Vitaran Nigam Ltd.**
   Vidyut Nagar, Vidyut Sadan,
   Hisar, Haryana – 125 005. **… Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Mr. Shubham Arya, Ms. Poorva Saigal
Mr. Avinash Menon and Ms. Anushree Bardhan, Advs., Mr. R.L. Kamboj (Rep.)

Counsel for the Respondent(s) : Mr. Hemant Singh
Ms. Shikha Ohri, Mr. Rajesh Monga
Ms. Meghana Aggarwal, Mr. Tushar Nagar, Ms. Rumita Dev for R.No.1
Mr. Anand K. Ganesan, Ms. Mandakini Ghosh for R.No.2 and Ms. Swapna Seshadri for R.No.3

Appeal No. 326 of 2013

Haryana Power Generation Corporation Ltd.
Through Sh. B.B.Gupta
Financial Advisor / HQR.
Urja Bhawan, C-7, Sector-6,
Panchkula – 134 109. **… Appellant/Petitioner(s)**

Versus

1. **Haryana Electricity Regulatory Commission**
Through the Secretary
Bays No.33-36, Sector-4,
Panchkula – 134 109.

2. **Uttar Haryana Bijli Vitaran Nigam Ltd.,**
Vidyut Sadan, Plot No.C-16, Sector-VI,
Panchkula, Haryana-134 109. **… Respondent(s)**

Counsel for the Appellant(s) : Mr. Pradeep Dahiya, Mr. Aman Kalra, Advs. and Mr. Atul Singh, Consultant

Counsel for the Respondent(s) : Mr. Hemant Singh,Ms. Meghana Aggarwal
Mr. Tushar Nagar, Mr. Rajesh Monga
Ms. Rumita Dev for R.No.1
Ms. Swapna Seshadri, Mr. Anand K. Ganesan
Ms. Mandakini Ghosh for R.No.2 & 3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUIDICIAL MEMBER

The appeal No. 196 of 2014 under Section 111 of the Electricity Act 2003 has been filed against the Order dated 29.05.2014 passed by the Haryana Electricity Regulatory Commission (in short referred to as the State Commission) for determining the Annual Revenue Requirement (ARR) of the appellant / petitioner for the Multi Year Tariff Control Period FY 2014-15 to 2016-17, true up for FY 2012-13 and generation tariff for FY 2014-15 in Petition No. 39 of 2013 under Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply of Electricity under Multiyear Tariff Framework) Regulations, 2012 (hereinafter referred to as the MYT Regulations, 2012).

2) Another Appeal No. 326 of 2013 has also been filed by the same appellant, namely, Haryana Power Generation Corporation Ltd. against the impugned tariff order dated 29.03.2013 passed by Haryana Electricity Regulatory Commission (in short the State Commission) on the appellant's generation tariff for the FY 2013-14. This appeal has been filed against the impugned order dated 19.08.2013 (Review Order) passed by the State Commission on the appellant's Review Petition seeking review of generation tariff order dated 29.03.2013 in case No. HERC/PRO-25 of 2012.

3) Since most of the issues involved in both these appeals are common, they have been heard together and are now being decided by this common judgment.

4) Facts of Appeal No. 196 of 2014:

The relevant facts for the purpose of deciding this appeal are as under:

a) The appellant / petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of generation and sale of electricity. The appellant generates and supplies electricity to Respondents 2 & 3, the distribution licensees in the State of Haryana which are maintaining the distribution and retail supply of electricity to the consumers at large in the State.

b) That the generation stations owned and operated by the appellant / petitioner are Panipat Thermal Power Station (PTPS), Deenbandhu Chottu Ram Station (DCRTPP), Rajiv Gandhi Thermal Power Station (RGTPP) and Western Yamuna Canal Hydro Project (WYC).

c) That the respondent State Commission is empowered under the provisions of the Electricity Act 2003 for determining the said tariffs under the relevant regulations framed by it.

d) That prior to the above, the State Commission had notified Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for

Generation Tariff) Regulations, 2008 governing the period till 31.03.2013 for FYs 2009-10, 2010-11, 2011-12 and 2012-13.

e) That on or about 30.11.2013, the appellant / petitioner filed a Petition being Case No.39 of 2013 before the State Commission for determination of its ARR for MYT control period 2014-15 to 2016-17 and the generation tariff for the FY 2014-15 as well as for true up of financials for the FY 2012-13.

f) That Regulation 79 of MYT Regulations, 2012 contain specific provision empowering the State Commission to exercise power to relax, which is as under:

"The commission may in public interest and for reasons to be recorded in writing, relax any of the provisions of these regulations."

The State Commission has also the power to remove difficulties under Regulation 78 and inherent power under Regulation 81 of MYT Regulations 2012 and these powers are to be exercised in a judicial manner, wherever the situation requires.

g) The appellant/petitioner had given justification for applying norms and parameters, relaxing the specific provisions contained in the MYT Regulations 2012. The State Commission, vide impugned order dated 29.05.2014, had decided the said Petition No. 39 of 2013 but the State Commission has disallowed the following claims of the appellant / petitioner:

(i) the carrying cost while considering the true up of the year 2012-13

(ii) Auxiliary Energy Consumption

(iii) Relaxation claimed on the cost of maintenance spares while determining the working capital requirement for MYT period 2014-17

(iv) Fixed charges in case of Rajiv Gandhi Station for the period of shutdown of Unit 2 during FY 2013-14 and on actual plant load factor (PLF) for FY 2014-15 by not allowing the relaxation on the PLF as claimed by the appellant.

(v) Recovery of SLDC charges as a pass through expense in the tariff

(vi) Depreciation in part

h) Further the appellant is aggrieved by the impugned order on the following aspects:

(i) Determination of Station Heat rate (SHR) without considering the appellant's submission on the applicable Gross Calorific Value (GCV)/ Design Energy

(ii) Wrongly taking the base year as FY 2011-12 instead of taking FY 2013-14 for determination of expenses for the appellant's plants and restricting escalation rate of the expenses to 4% without considering the repair and maintenance cost and allowing Administrative and General Expenses (A&G) only to the extent of 50% while determining O&M expenses of Panipat Station.

(iii) Restricting the Return on Equity (ROE) to 10% against 14% claimed by the appellant

5) Facts of Appeal No. 326 of 2013:

Facts of Appeal No. 326 of 2013 are briefly stated as under:

a) The appellant on 30.10.2012 filed generation tariff application before the State Commission for FY 2013-14. Vide Memo No. HPGC/FIN/Reg-4171/446. During a public hearing the appellant made a presentation before the State Commission highlighting the achievements, past performance, concerns and challenges and emphasized on the basis for tariff proposal for the FY 2013-14. The State Commission as already mentioned vide tariff order dated 29.03.2013 has decided the generation tariff with some modification of the tariff proposal of the appellant and approved the generation tariff for FY 2013-14 allegedly fixing lower tariff for the appellant. By this impugned order dated 29.03.2013 the State Commission has reduced the ROE and maintenance cost.

b) The appellant referring its financial health due to lower tariff of its generating station filed review petition seeking review of the main tariff order dated 29.03.2013 submitting that the State Commission while passing the order dated 29.03.2013 has not followed its own Tariff Regulations for determination of tariff, provisions of Section 61 of Electricity Act 2003 and also did not follow the CERC methodology.

c) The learned State Commission vide Review Order dated 19.08.2013 partly allowed the Review Petition but rejected the prayer of the appellant on ROE and O&M cost. Thus the appellant in this instant appeal, being No.326 of 2013 is aggrieved by the main tariff order dated 29.03.2013 and Review Order dated 19.08.2013 on the aspect of ROE and O&M cost.

d) According to the appellant the State Commission has arbitrarily fixed ROE at 7% instead of 14% in violation of principles laid down by CERC and further the State Commission has wrongly fixed the O&M expenses for FY 2013-14 on normative basis based upon the actual O&M expenses for 2011-12 with only4% escalation instead of granting the O&M expenses as per actual.

e) Since both these issues namely, ROE and O&M expenses have also been raised by the same appellant almost with identical facts in another appeal, we have, in the subsequent paragraphs, framed issue No.(d) on O&M expenses and Issue No. (f) on ROE.

6) We have heard Mr. M.G.Ramachandran learned counsel for appellant at length and Mr.Hemant Singh, Mr. Anand K. Ganesan, Ms. Swapna Seshadri for respondents and have gone through the material on record including written submissions filed by the contesting parties.

7) The following issues arise for our consideration in this appeal:

   a) Whether the State Commission is right in disallowing the carrying cost for the additional employees cost incurred during the FY 2012-13, when the State Commission had duly allowed such additional cost during true up?

b) Whether the State Commission is right in not relaxing the Station Heat Rate parameters and not linking such parameters with GCV/Design Energy in relation to Station Heat Rate of Rajiv Gandhi, Deenbandhu Chottu Ram and Panipat Units 5 and 6?

c) Whether the State Commission is right in not considering the relaxed auxiliary energy consumption claimed by the appellant?

d) Whether the State Commission is right in not considering fully the claim of the appellant for operation and maintenance expenses allegedly consistent with the baseline of O&M expenses provided for in the Tariff Regulations?

e) Whether the State Commission is right in disallowing the relaxation claimed on the cost of maintenance spares while determining the working capital requirements for MYT tariff period 2014-17?

f) Whether the State Commission is right in restricting the return on equity to 10% as against 14% claimed by the appellant?

<u>Issue No.(a):</u> Whether the State Commission is right in disallowing the carrying cost for the additional employees cost incurred during the FY 2012-13, when the State Commission had duly allowed such additional cost during true up?

8) On this issue the following contentions have been made on behalf of the appellant:

a) That though the State Commission has acknowledged and allowed the additional employee cost of Rs.524.6 Million in the truing up for 2012-13, the carrying cost on the same has not been allowed. No reason has been given for disallowing the carrying cost on the said amount of Rs.524.6 Million, when the said amount was legitimately incurred by the appellant in the year 2012-13.

b) That the Hon'ble Supreme Court in Delhi Electricity Regulatory Commission Vs. BSES Yamuna Power Ltd. & Ors. (2007) 3 SCC 33 held that the carrying cost is legitimate expense and has to be allowed. Even this Appellate Tribunal in its order dated 13.09.2012 in Appeal No.202 and 203 of 2010 in the case of Reliance Infrastructure Ltd. Vs. Maharashtra Electricity Regulatory Commission has reiterated the same view.

c) That this Appellate Tribunal while dealing with the issue of carrying cost vide its order dated 15.02.2011 in Appeal No. 173 of 2009 in the case of Tata Power Co. Ltd. Vs.

Maharashtra Electricity Regulatory Commission also held that once expense is allowed then the appellant is not only entitled to the expenses but also to the carrying cost as its legitimate claim. The process of restructuring the claim of the utility by not allowing the reasonable anticipated expenditure and offering to do the needful in the true up exercise is not prudent.

d) That the State Commission was required to allow the carrying cost on the true up value of the terminal liabilities of the appellant for the period to which it pertains till the date of order i.e. since middle of FY 2012-13 till 29.05.2014 (date of impugned order) and further till the date of actual recovery from the beneficiary, particularly when the State Commission has deferred the recovery as held by this Appellate Tribunal in its judgment dated 08.04.2015 in Appeal No.211 and 215 of 2013 in the case of Reliance Infrastructure Ltd. Vs. Maharashtra Electricity Regulatory Commission where this Appellate Tribunal has recently held that for carrying cost, the State Commission has considered the revenue gap to be applicable from the end of the year of the occurrence of revenue gap up to the middle of the year in which the same is proposed to be recovered. This is not correct. The interest should be calculated for the period from the middle of the FY in which the revenue gap had occurred up to the middle of the FY in which the recovery has been proposed.

9) **Per contra,** the learned counsel for the distribution licensees namely, respondent No.2 & 3 has made the following contentions:

i) That the State Commission has framed the MYT Regulations 2012 and Regulations 13.3 thereof provides as under:

"13. TRUING-UP

.....

13.3 The Commission shall allow carrying costs for the trued-up amount (positive or negative) at the interest rates specified in these regulations by adjusting the interest allowed on the working capital requirements for the relevant year of the control period.

<u>Provided that no carrying cost shall be allowed on account of delay in filing for true-up due to unavailability of the audited accounts;</u>

Provided further that if the Commission determines an over recovery during the true-up, funding cost for such trued up amount shall be considered for the delayed period and adjusted accordingly as per provisions of this regulations."

ii) That in the present case, the impugned tariff Petition No. 39 of 2013 was filed on 29.11.2013 along with the audited accounts for FY 2011-12. Neither the audited accounts for 2012-13 was filed with the tariff petition nor any prayer for allowing Rs.524.6 Million was made in the same.

iii) That the amount of Rs.524.6 Million was claimed by the appellant by way of separate petition, being Petition No. 36 of 2013 in which the State Commission discovered this amount. Even in Petition No.36 of 2013 no prayer for allowing carrying cost was made by the appellant.

iv) That in terms of the proviso to Regulation 13.3, the carrying cost was not allowed. Also, the above amount has been allowed to be recovered by the State Commission as a part of Rs.1000 Crore Bonds to be issued by HVPNL towards the appellant. The relevant finding of the State Commission in the impugned order on this issue is as under:

"11.1 *In view of the above discussions, the Commission allows Rs.524.6 millions as 'true up' expenses on account of employees cost for FY 2012-13, however, no carrying cost shall be allowed. This amount shall form part of Rs.1000 Crore bonds allowed by the Commission to be issued by HVPNL in order to meet with the additional liabilities of the Discoms towards HPGCL and HVPNL. Case No. HERC/PRO-36 of 2013 in the matter of truing up of employees cost of HPGCL for FY 2012-13 is disposed of accordingly."*

v) That in this way the carrying cost / interest on the Bonds of Rs.1000 Crore has also been allowed by the State Commission. Therefore, no separate claim for carrying cost can be made towards the very same amount of Rs.524.6 Million.

vi) That the aforesaid judgment of this Appellate Tribunal, cited by the appellant, are not applicable in view of the specific stipulation contained in the proviso to Regulation 13.3 of Tariff Regulations 2012. In the said judgments the ratio laid down by this Appellate Tribunal is that if State Commission is postponing any recovery, then the carrying cost on the same needs to be allowed.

vii) That in the present case the State Commission has not deferred the recovery of costs. There was a delay by the appellant itself in claiming the employee cost for 2012-13. As and when it was claimed, the same has been allowed by the State Commission. There is no question of any carrying cost on the same.

10) **Our consideration and conclusion on Issue No.(a):**

Without repeating the relevant facts and the counter submissions, which we have described above, we directly come to the issue:

i) As is evident from the material on record, the State Commission has determined the ARRs and Tariff for the appellant for the FY 2012-13 vide impugned order. In the impugned order, while considering the true up of the financial FY 2012-13 the State Commission, has in the impugned order, noted that the actual employee cost including terminal benefit as per the audited accounts for the FY 2012-13 is Rs.3046 million, hence, the difference of Rs.524.6 Million has now been worked out from the beneficiaries along with the carrying cost by the appellant/petitioner. Further, the State Commission thoroughly examined the audited accounts for the FY 2010-11 and 2011-12 submitted by the appellant. The employee cost for the FY 2010-11 as per the audited accounts is Rs.1635.05 Million and Rs.3046 Million for the FY 2012-13 which includes the actual terminal liabilities of Rs.906 Million. The appellant submitted before the State Commission that no new addition to the existing work force was made in the FY 2012-13. Thus, the difference of Rs.524.6 Million (Rs.3046 Million (-) Rs.2521.4 Million) can be attributed to changes on account of pay scale and dearness allowance which as per Regulation 8.3(b) of the MYT Regulations 2012 is an uncontrollable item. After discussing these datas in the impugned order the State Commission, by the

impugned order has allowed Rs.524.6 Million as true up expense on account of employee cost for the FY 2012-13 without allowing any carrying cost thereof. The State Commission in the impugned order has clearly held that this Rs.524.6 Million shall form part of Rs.1000 Crore Bonds allowed by the State Commission to be issued by HVPNL in order to meet with the additional liabilities of the Discoms towards the appellant as well as HVPNL. We have thoroughly compared and checked the figures given in the audited accounts by the appellant for the relevant period which was a part of the impugned order. In this way, the State Commission has allowed / acknowledged the additional employee expenses of Rs.524.6 Million in the truing up for 2012-13 and carrying cost on that account has not been allowed. In view of the proviso to Regulation 13.3 of the MYT Regulations 2012 this proviso clearly provides for that no carrying cost shall be allowed on account of delay in filing true up petition due to unavailability of the audited accounts. Since in this matter, the appellant itself delayed the filing of true up petition on the ground of non-availability of its audited accounts, the carrying cost could not be legally allowed to the appellant by the State Commission. Further, when the Tariff Petition No. 39 of 2013 was filed on 29.11.2013 by the appellant/petitioner it was accompanied with audited accounts of FY 2011-12 only. Neither the audited account for 2012-13 was filed with this tariff petition nor any prayer for allowing Rs.524.6 Million was made in the petition. Not only this the said amount of Rs.524.6 Million was claimed by the appellant by way of separate petition, being Petition No. 36 of 2013 in which the State Commission had discovered the said amount. Even in Petition No. 36 of 2013 no prayer for allowing any carrying cost was made by the appellant / petitioner. In these circumstances, the State Commission has legally and rightly disallowed the carrying cost on amount of Rs.524.6 Million as there was no prayer for allowing carrying cost on the said amount.

ii) On perusal of the rival contentions of the parties and the impugned order, we do not find any legality in the findings recorded on this issue in the impugned order. The case law cited by the appellant / petitioner on this issue does not support the

contentions of the appellant as the facts are completely different from the matter in hand.

<u>Issue No.(b):</u> Whether the State Commission is right in not relaxing the Station Heat Rate parameters and not linking such parameters with GCV/Design Energy in relation to Station Heat Rate of Rajiv Gandhi, Deenbandhu Chottu Ram and Panipat Units 5 and 6?

11) On this issue the following contentions have been made on behalf of the appellant:

a) That the State Commission has not considered allowing station heat rate of the units of Deenbandhu Chotu Ram Station on the basis of average of last four years stating that same cannot be accepted as the Units have not performed well due to repeated major break down. The frequent backing down / shut down of Units mainly affect the specific oil consumption resulting in increase in station heat rate. During FY 2013-14, the specific oil consumption of Deenbandhu Chotu Ram Station remained 0.82 ML/kwh, which was below the normal of 1 ML/kwh allowed by the State Commission. Despite achieving the oil consumption below the normative value during FY 2013-14, the station heat rate of the said station Units remained 2386 kcal/kwh which is more than the norm of 2344 kcal kwh allowed by the State Commission.

b) That backing down is done on the instruction of the State Load Despatch Centre (SLDC) and Regional Load Despatch Centre (RLDC) and hence, is uncontrollable for the appellant. Backing down leads to higher auxiliary consumption, as more auxiliary equipments have to be run at full load even if plant is generating at partial capacity, thereby increasing auxiliary consumption. Even in case of boxed up (complete breakdown) of the Units certain auxiliary equipments have to be operated. Hence, any variation in auxiliary consumption due to deterioration of plant load factor caused by backing down should be allowed as a pass through in tariff as uncontrollable item.

c) That further due to poor quality of coal received than that the plant is designed for, additional quantity of coal is required to be fed into the furnace. For this additional quantity of coal is consumed, there is more power consumption. Since **GCV** is also

uncontrollable factor, variation in auxiliary consumption due to the same should be allowed as a pass through.

d) That in addition, the increase in the number of tripping is not the inefficiency of the appellant but has been on account of circumstances faced by the appellant on the instructions given by the respondents to it.

e) That the State Commission has not considered that the original equipment manufacturer (OEM) of Deenbhandu Chotu Ram Units, M/s SEC has also indicated the impact of reduced load on the heat rate in manual as under:

1. At 100% load, turbine cycle heat rate is 1916 kcal/kwh
2. At 80% load, turbine cycle heat rate is 1952 kcal/kwh
3. At 60% load, turbine cycle heat rate is 2021 kcal/kwh

f) That the State Commission should have considered the claim of the appellant and allowed the station heat rate as per actual heat rate achieved by the appellant, in the past with improvement in subsequent years by exercising its 'power to relax'

12) **Per contra,** the following are the contentions raised on behalf of the distribution licensees/respondent No.2 & 3.

i) That the appellant has claimed that the State Commission ought to have considered the relaxation in the station heat rate of the generation station mainly due to the following reasons:

a) Frequent backing down instructions;

b) Poor quality of coal;

c) GCV has been accepted as an uncontrollable factor and hence the Station Heat rate caused by deterioration on GCV is also to be allowed in tariff

ii) That the contention of the appellant that the backing down instructions caused higher station heat rate has been rejected by this Appellate Tribunal vide

judgment dated 12.12.2013 in Appeal No.168 of 2012 in the case of Indraprastha Power Generation Company limited Vs Delhi Electricity Regulatory Commission & Ors.

iii) That so far as poor quality of coal is concerned, arranging the coal is the responsibility of the generating company i.e. the appellant and if the quality is not proper the remedy is to take it up with the coal supplier and not pass on the appellant's inefficiency by way of tariff, as held by this Appellate Tribunal in its judgment dated 30.04.2012 in Appeal No. 110 of 2012 in NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors.

iv) That the tariff MYT Regulations 2012 provide Gross Calorific Value as an uncontrollable factor, the contentions of the appellant on this aspect are not correct. Regulation 8.3 of the tariff MYT Regulations 2012 reads as under:

*"8.3 **Controllable and Uncontrollable items of ARR***

(a) For the purpose of this regulation, the items of ARR shall be identified as 'controllable' or 'uncontrollable'. The variation on account of uncontrollable items shall be treated as a pass-through subject to prudence check/validation and approval by the Commission;

Provided that the Commission may allow variations in controllable items on account of Force Majeure events and also those attributable to uncontrollable factors as pass-through in the ARR for the ensuing year based on actual values submitted by the generating company and licensees and subsequent validation and approval by the Commission during true-up.

(b) The items in the ARR shall be treated as 'controllable' or 'uncontrollable' as follows:

ARR Element	**Controllable/ Uncontrollable**
Heat Rate	Controllable
Auxiliary Energy Consumption	Controllable

GCV of domestic coal procured through e-auction / open market and imported coal	Controllable

v) That the State Commission has to act and determine station heat rate etc. as per its regulations. If the appellant is aggrieved by the MYT Regulations 2012, he is to challenge the same in the Writ Court namely, the High Court but the same act cannot be done in this Appellate Tribunal.

vi) That the appellant is seeking relaxation in station heat rate and not any gross calorific value. The contention of the learned counsel for the appellant that station heat rate and gross calorific value are inter linked, hence, the station heat rate should have been relaxed by the State Commission, is not legally, sustainable in case in hand.

vii) That since the station heat rate is controllable item even GCV is controllable except the GCV on domestic coal procured through e-auction/ open market and imported coal. Accordingly, the appellant cannot claim that because of this small element of GCV, the entire station heat rate would be uncontrollable and ought to be allowed as a pass through in tariff.

13) Our consideration and conclusion on Issue No.(b):

After citing rival contentions raised by the parties on this issue, without there being any need for reiteration, we deal with this issue as under:

i) The appellant contends that the State Commission ought to have considered relaxation in the station heat rate of the aforesaid generating stations of the appellant due to frequent backing down instructions, poor quality of coal and since GCV has been accepted as an uncontrollable factor, hence, the station heat rate caused by deterioration on GCV is also to be allowed in tariff. On our careful consideration on this contention, we do not agree to the same because this Appellate Tribunal has rejected the same contention vide its judgment dated 12.12.2013 in Appeal No.168 of 2012 in the Indraprastha Power Generation

Company Limited vs. Delhi Electricity Regulatory Commission & Ors. observing as under:

"9. The learned counsel for the appellant has raised the following points/issues with regard to ***Gas Turbine Power Station(GTPS) of the appellant:-***

A. Station Heat Rate

10. The learned State commission has not relaxed the station heat rate of 2450 kCal/kWh in combined cycle mode in spite of aging and technological obsolescence and has failed to appreciate the following aspects:

.....

viii. *The State Commission has not considered that as per the manufacturer design data curve, the operation of station at 60% PLF requires approximately 3.6% more heat as compared to the operation at a level of 70%. Station Heat rate of GTPS is also on higher side due to frequent backing down during night time by State Load Despatch Centre (SLDC), resulting in partial operation. Sometimes, transmission evacuation constraints have also led to partial operation of the station resulting in higher heat rate.*

.....

31. By way of filing the present appeal in this Tribunal, the appellant has sought relaxation of the norms prescribed in DERC Tariff Regulations, 2011 under various counts on the ground that the appellant's power stations have not achieved the same norms due to the various factors (which we have mentioned in the upper part of the judgment) and it was not at all possible for the appellant's power generating stations to achieve the said norms. The reasons advanced by the appellant before us and also raised before the learned State Commission have been cited by us above and the repetition of the same is not proper. The appellant has not been able to make out any case for relaxation of the norms specified for that purpose, hence the appellant is not entitled to the relaxation of DERC, Tariff Regulations 2011 in the case in hand before us considering the circumstances of the matter. The learned State Commission in support of its findings has cited proper, cogent and valid reasons for arriving at the correct conclusion to which we are in full agreement. The appellant has miserably failed to establish that the relaxation of the norms

prescribed under DERC Tariff Regulations, 2011 as sought by the appellant is in the public interest. The learned State Commission has not found the said relaxation in the public interest and rightly rejected the said contention of the appellant.

32. After going through the impugned order of the learned State Commission, we find that the learned State Commission has rightly and correctly not allowed the request of relaxation of the norms for the power generating stations of the appellant."

ii) Thus this Appellate Tribunal in Appeal No. 168 of 2012 while dealing with the same contention, namely that the backing down instructions caused higher station heat rate has been rejected, observing that if any power station has not achieved the same norms due to various factors like manufacturing design data curve, operation of station at 60% PLF, frequent backing down as per direction of SLDC resulting in partial operation, then the said power generating company has to make out the cause for relaxation of norms specified for that purpose and if the appellant fails to make out the specific case then, it is not entitled to the relaxation of the said Tariff Regulations. We note that in the case in hand the appellant has miserably failed to establish that the relaxation of the norms prescribed in MYT Regulations 2012 is sought by the appellant in public interest. Further if the relaxation of the norms is not in public interest the same is bound to be rejected. Further, if the said contention of the appellant is accepted it will result in further increase in tariff which will cause additional burden on the respondents and ultimately the end consumers of the electricity. Besides it the appellant has failed to give any technical reason to explain why it has not achieved the said norms prescribed in MYT Regulations 2012. The State Commission is vested with powers to relax any of the provisions of MYT Regulations 2012 in the public interest but for exercising the power to relax, reasons are required to be recorded in writing by the State Commission. In the case in hand the State Commission has rightly and legally refused to exercise the power to relax in favour of the appellant on this aspect while passing the impugned order. No doubt discretionary power is vested with the State

Commission but the discretion should be exercised judicially and judiciously that needs recording of special reasons in writing for the exercise of such power to relax. Thus in the aforesaid circumstances, the appellant has completely failed to give any reason whatsoever justifying the relaxation of the operational norms fixed in MYT Regulations 2012 on the aspect of station heat rate.

iii) Regarding the issue of poor quality of coal we find, that arranging the coal is the responsibility of the generating company of the appellant and if the quality of coal is not proper, the remedy is to take it up with the coal supplier and not pass on its inefficiencies by way of tariff. This Appellate Tribunal in its judgment dated 30.04.2012 in Appeal No. 110 of 2012 in the case of NTPC Ltd. Vs. Central Electricity Regulatory Commission & Ors. has held as under:

"21. Coal is the basic raw material for generation of electricity. Arrangements of sufficient quantity of said raw material is the basic responsibility of the Plant developer, the NTCP. At any cost, the responsibility of the Appellant for procurement of the basic raw materials cannot be shifted to the beneficiaries.

22. .....

23. So, for inability to arrange adequate fuel by NTPC, the beneficiaries cannot be held responsible. Further if the relaxation in the NAPAF is allowed to the Appellant, then it would tantamount to penalize the beneficiaries and ultimately the consumers for no fault of theirs. Further it would also lead to re-opening of several similar cases of non achievement of NAPAF and relieve the plant developer from the onus of arranging proper and sufficient quantity of basic raw material."

iv) One more contention of the appellant on this issue, that the State Commission has not determined the station heat rate parameters given by appellant based upon the average actual achievement of past four years and further has not related the SHR parameters with the design GCV and PLF in regard to the said generating station of the appellant, is not legally sustainable and we are unable

to accept the same. Regulation 8.1 of MYT Regulations 2012 defines the Base line values as "*Commission shall determine baseline values for various financial and operational parameters of ARR for the control period taking into consideration the figures approved by the Commission in the past, actual average figures of last three years, audited accounts, estimate of the figures for the relevant year, industry benchmarks / norms and other factors considered appropriate by the Commission."* The State Commission, in the impugned order, while dealing with this aspect of the matter has kept the station heat rate as per norms given in MYT Regulations 2012. Further, the State Commission has not found the matter fit for exercise of power to relax in favour of the appellant. The plea like backing down as per instructions of SLDC resulting in partial operations or low plant load factor had already been rejected by this Appellate Tribunal in its judgment dated 12.12.2013 in Appeal No. 168 of 2012.

v) On the careful perusal of the Tariff Regulations 2012, we find that these Regulations provide GCV as an uncontrollable factor and hence, the contentions of the appellant on this aspect are not correct. As per Regulation 8.3 dealing with controllable and uncontrollable items of ARR of MYT Regulations 2012, the only variation on account of uncontrollable item shall be treated as a pass through subject to prudence check/validation and approval by the State commission. There is a proviso where the State Commission may allow variations in controllable items on account of *force majeure* events and also contributable to uncontrollable factors as pass through in the ARR for the ensuing year based on actual values submitted by the generating company and licensees and subsequent validation and approval by the State Commission during true up. We note that station heat rate as an ARR element as per MYT Regulations 2012 has been depicted as controllable which cannot be allowed to be a pass through to the consumers. Even GCV is controllable except the GCV on domestic coal procured through e-auction / open market and imported coal. In this background of the facts we are unable to accept the contention of the appellant that because of this small element of GCV, the entire station heat rate

would be uncontrollable and ought to be allowed as a pass through in tariff to the detriment of the end consumer. In view of the above discussions, we don't find any merit in any of the contentions of the appellant and this issue is decided against the appellant.

Issue No.(c): Whether the State Commission is right in not considering the relaxed auxiliary energy consumption claimed by the appellant?

14) The following contentions are made by the appellant :

a) That the State Commission has allowed auxiliary consumption as under:

i) Panipat Station-
Unit 1 to 4 at 11%
Unit 5 & 6 at 9%
Unit 7 & 8 at 8.5%
ii) Deenbandhu Chotu Ram Station – Unit 1 & 2 at 8.5%
iii) Rajiv Gandhi Station – Unit 1 & 2 at 6%
iv) Western Yamuna Hydel Station & Kakroi Hydel Plant at 1%

b) That the State Commission has not relaxed the claim on auxiliary consumption as made by the appellant. The extent of auxiliary consumption has been higher on account of frequent backing down of generation by the distribution licensees i.e. respondent No. 2 & 3. In view of such backing down, the norms and parameters for auxiliary consumption decided in the MYT Regulations 2012 on the basis of normal practice ought not to be considered and relaxation in the auxiliary norms ought to have been applied by the State Commission.

c) That the State Commission has allowed auxiliary consumption of Unit 5 & 6 of Panipat Station at 9% saying that the appellant should give special attention for reduction in number of tripping, minimize start up/stop operations and take all other remedial measures so as to reduce the auxiliary energy consumption to the normative levels.

d) That the State Commission has failed to appreciate that the 210 MW Unit-5 of Panipat Station which was commissioned during 1989, has outlived its life span of 25 years.

The normative auxiliary consumption allowed by the State Commission has not been achieved by Unit-5, since last seven years. Further, during FY 2007-08 and FY 2008-09, while the Unit achieved the PLF 96.23% and 94.27% respectively, however, the auxiliary consumption of Unit was 9.26% and 9.36% respectively. The auxiliary consumption allowed for the said years was 9% which indicated that the norms of 9% auxiliary consumption is stringent, even at a high PLF of 95% or so, the auxiliary consumption is higher than 9%. If the PLF is below 95%, the auxiliary consumption should have been proportionately allowed which would have been higher than 9% naturally.

e) That the Unit-5 of Panipat Station is being extensively backed down, it is not possible to achieve the norm even after implementation of remedial measures. During FY 2013-14, actual PLF of Unit remained 25.75% whereas the deemed PLF of the Unit remained 72.6% i.e. a gap of about 45%. The auxiliary power consumed for running the emergency auxiliaries, during shut down of the Unit, increases the total auxiliary power consumption.

f) That in the subsequent order dated 27.03.2015, passed in Petition No.HERC/PRO-61 of 2014, filed by the appellant, while determining generation tariff for the FY 2015-16, the State Commission has granted further relaxation of 1% on auxiliary consumption over and above the norms in the case of Panipat Station Units 1–6. Relaxation by 1% on auxiliary consumption supports the contention of the appellant that auxiliary consumption of a generating station depends on the quality of the coal it receives at the feeding point, number of frequent start ups and shut downs it under goes, the aging of the equipments and number of drivers used in actual operation.

g) That in these circumstances the appellant is entitled to claim relaxation in auxiliary power consumption for Panipat Thermal Power Station, Deenbandhu Chottu Ram Station in the range of 1–1.5% as subsequently decided by the State Commission in its order dated 27.03.2015.

15) **Per contra,** the learned counsel for respondent Nos. 2 & 3 has made the following contention on Issue No.(c):

That the appellant has prayed for relaxation of norms in respect of auxiliary consumption. Whereas this Appellate Tribunal has held in several cases that power of relaxation should be exercised with strict circumspection only in exceptional cases. The reasons being cited by the appellant for using power to relax have already been considered and rejected by this Appellate Tribunal in its judgment dated 12.12.2013 in the matter of Indraprastha Power Generation Company Limited Vs. Delhi Electricity Regulatory Commission & Ors. (supra). The same principle applies in respect of this norm as well.

16) **Our consideration and conclusion on Issue No.(c):**

i) We have considered the submissions raised by the rival parties on this issue relating to relaxation in auxiliary consumption. First of all we would like to reproduce the relevant part of the impugned order relating to this issue so as to enable us to make our own independent assessment.

*"5.4.3 **Auxiliary Energy Consumption (%)***

On the above issue HPGCL had submitted that auxiliary energy consumption for a generating station depends on quality of coal it receives at the feeding point, number of frequent start-ups and shut downs it encompasses and the ageing of equipment. In addition, it was submitted, that the number of drives being used in the actual operation on account of the decline in the above mentioned factors and technological factors also leads to an increase in auxiliary energy consumption.

The following table provides the trend in the auxiliary energy consumption for HPGCL plants from FY 2005-06 onwards, as provided by them.

.....

HPGCL had submitted that the auxiliary energy consumption of PTPS Unit 1&2 is expected to be about 12.5% during the MYT control

period. It was further submitted that the auxiliary energy consumption of PTPS Units 3&4 is expected to witness incremental increase after the requisite R&M as per the report from M/s Energo Engineering Pvt. Ltd. The Petitioner has envisaged improvement in the auxiliary energy consumption in PTPS Unit 5-8 and DCRTPS Unit 1&2 while auxiliary energy consumption for RGTPS, as per the submissions of the Petitioner, is expected to be in line with the norms provided in the MYT Regulations 2012. The Petitioner has reiterated that PTPS Unit 1 to 4 has outlived their useful economic life and the performance over the past few years has been well below the norms.

It was further submitted that PTPS Unit-5 is also nearing the end of its useful economic life due to which the auxiliary energy consumption remains high. Additionally it was submitted that DCRTPS had frequent shutdowns and hence the auxiliary energy consumption of the Units has been on the higher side. The Petitioner had submitted that steps are being taken to reduce the auxiliary energy consumption of the power plants during the control period and had proposed the following levels of auxiliary energy consumption after taking into consideration the historical performance of the power plants."

ii) We are unable to accede to this contention of the appellant that auxiliary energy consumption for a generating station depends on the quality of coal it receives at the feeding point, number of start-ups and shutdowns it encompasses and the ageing of equipments. This Appellate Tribunal had already on consideration of said aspects rejected the contentions in the judgment dated 12.12.2013 in Appeal No. 168 of 2012 in the case of Indraprastha Power Generation Company Limited Vs. Delhi Electricity Regulatory Commission & Ors. and that judgment still holds good. We don't find any reason to reconsider the same issue and same factors again with regard to the power to relax by the State Commission.

iii) According to the appellant/petitioner it is the PTPS Unit 1-4 which has outlived their useful economic life and the performance for the past few years has been well below the norm prescribed by the Tariff Regulations. Further, PTPS Unit-5, as per the appellant, is also nearing the end of its useful economic life due to which the auxiliary consumption remains high. Further, the submission of the

appellant is that the other Unit of DCR Thermal Power Station had frequent shutdowns resulting in higher auxiliary energy consumption. The appellant contended that the large steps have been taken to reduce the auxiliary energy consumption of the power plants during the controlled period. The State Commission, after considering all these contentions of the appellant, has correctly and justly, not found it a fit case where power to relax could be exercised by the State Commission and the Commission has legally decided the issue as per the norms prescribed in MYT Regulations 2012. Further power to relax has to be exercised in exceptional cases when the same is in the public interest. In the case in hand if the contention of the appellant is allowed and norms for auxiliary are diluted or relaxed that would cost additional burden on the end consumers of the Discoms which should not be permitted considering the relevant provisions in this regard given in the Electricity Act, 2003. Consequently this Issue No. (c) is also decided against the appellant.

Issue No.(d) : Whether the State Commission is right in not considering fully the claim of the appellant for operation and maintenance expenses allegedly consistent with the baseline of O&M expenses provided for in the Tariff Regulations?

17) On this issue following contentions have been made by the appellant:

a) That the State Commission, while computing the O&M expenses for MYT period of 2014-17, has wrongly taken the base year as 2011-12 instead of taking 2013-14 for the determination of O&M expenses. Regulation 3.9 defines the base year as meaning the financial year immediately preceding the first year of the control period and as the control period being from 01.04.2014, the base year to be considered is FY 2013-14.

b) That the State Commission in its subsequent order dated 27.03.2015, while determining generation tariff for FY 2015-16 has considered the actual O&M expenses as per the audited accounts for FY 2013-14, now made available by the appellant, as the base year for working out O&M expenses for FY 2015-16 in case of aforesaid generating stations of the appellant as per MYT Regulations 2012.

c) That in the subsequent order dated 27.03.2015 the State Commission has correctly taken the base year as 2013-14 for computing the O&M expenses for the period 2015-16 for the afore mentioned generating station of the appellant but while computing the O&M expenses for Panipat Station, the State Commission has considered the O&M expenses as per Impugned Order dated 29.05.2014. Hence, the appellant's contention to the extent that base year has to be taken as FY 2013-14 while computing the O&M expenses for MYT period 2014-17 should be allowed.

d) That the Impugned Order of the State Commission in regard to Western Yamuna Hydel project is erroneous because of the following reasons:

i) The actual O&M expenses for the plant as per audited figures of FY 2012-13 are Rs.20.47 Crores and that for FY 2013-14 are Rs.24.52 Crores (as per the Audited accounts).

ii) The State Commission in its Order dated 27.03.2015 has allowed O&M Expense for FY 2015-16 on the basis of audited account of FY 2013-14 at Rs.26.52 Crores. Following the same approach the State Commission needed to approve O&M Expense of WYC Karkoi for FY 2014-15 on basis of audited account of FY 2013-14 with appropriate escalation.

iii) Generation from the Western Yamuna Canal Hydro Project is a renewable energy source which should be encouraged under section 86(1)(e) of the Electricity Act, 2003. However, in case the Appellant is not unable to recover at least its actual fixed cost, then it will not be financially prudent to generate from such sources.

e) That the increase in O&M cost for MYT period has been restricted to 4% only for the financials approved in the earlier Regulations for the base year, which on the basis of Consumer and Whole Price Inflation index (WPI index) is quite less, hence, the State Commission ought to have considered higher escalation for determining O&M expenses in control period.

f) That the normative increase of 4% in O&M expenses is also erroneous because it is on the lower side as compared to the other neighbouring States like Punjab where Punjab State Electricity Regulatory Commission has approved average WPI increase of 7.6% considered for FY 2013-14 over FY 2012-13, approved expenses as also in Rajasthan, Rajasthan Electricity Regulatory Commission (RERC) has allowed annual escalation of 5.72%, subject to truing up based on WPI as per RERC Regulations 2009-14.

g) That the State Commission has failed to consider that it had already allowed higher O&M expenses in the FY 2012-13 in the true up forming part of the Impugned Order and the same needs to be considered in the O&M cost for MYT controlled period from 2014-17.

h) That reduction in Administrative and General Expenses (A&G) forming part of O&M to 50% in case of Panipat Station is also arbitrary because the State Commission has restricted the A&G expenses on the finding that there was lesser generation in the Panipat Station. The A&G expenses will not be reduced by reason of lesser generation and intermittent generation. Moreover, Repair and Maintenance expense (R&M) and A&G expense ought to have been fully allowed when the State Commission has approved 35% Plant Load Factor for a generating station.

18) Per contra, the learned counsel for the respondent Nos. 2&3 on this issue has made the following submissions:

i) That on the aspect of taking FY 2011-12 as the base year instead of 2013-14, the Regulation 5 of the MYT Regulation 2012 dealing with O&M expenses provides for the same and the same has been correctly applied in the Impugned Order. In the subsequent order dated 27.03.2015 being relied on by the appellant, it is clearly recorded that the O&M expenses for FY 2013-14 'now made available by the appellant'. Therefore, the appellant cannot take advantage of not providing the requisite details to the State Commission.

ii) That on the second aspect of giving relaxed O&M for Western Yamuna Canal Hydro Project which is a renewable energy project, the appellant has the option

of filing a petition for project specific tariff determination giving all necessary details before the State Commission instead of claiming the general relaxation in the impugned tariff order.

iii) That on the aspect of O&M escalation being restricted to 4% the Tariff Regulations 2012 provide as under:

*"(5) **Operation and maintenance expenses:** The O&M expenses (in Rs. Lac per MW) for the existing plants, except for Panipat TPS Unit 1-4, have been based on actual O&M expenses for FY 2011-12 as per audited accounts for the respective plants escalated @ 4% per annum ....."*

iv) Similarly, stating that other State Commissions are allowing the higher escalation is not a justifiable reason to change the present Regulation.

v) That on the aspect of reduction of A&G expenses forming part of O&M to 50% in the case of Panipat Station, the State Commission has not acted arbitrarily and has given the following reasons:

"*In the case of PTPS (Units 1 to 4), the Commission expects that these Units may be dispatched only intermittently, hence besides employees cost and some A&G expenses HPGCL may not incur the full normative O&M expenses. Thus the Commission has considered full employees cost and 50% of A&G only for allowing O&M expenses. However, this is subject to true up at the end of the respective financial year in line with the actual dispatch. HPGCL is advised to shift some of the employees to other Units as well as plan outsourcing for PTPS (Units 1-4) accordingly. In all other cases the O&M expenses have been covered in accordance with the MYT Regulations, 2012."*

vi) **That the State Commission has also given the liberty to the appellant/petitioner to approach the State Commission with relevant data during true up.**

19) Our consideration and conclusion on issue No. (d):

Without repeating the rival contentions of the parties we now proceed to decide this issue as under :

No one is entitled to claim higher relaxation or higher escalation just on the basis that the Regulations of other State Commissions provide for higher escalation or higher norm. Every State Commission is an independent body, having freedom to frame its own Regulations including Tariff Regulations, and every Commission is to be guided by the provisions settled by the Central Commission. Regulation 5 of MYT Regulations 2012 dealing with O&M expenses states that O&M expense for the existing plants except for Panipat Thermal Station Units 1-4 have been based on actual O&M expenses for FY 2011-12, as per audited accounts for respective plant escalated @ 4% p.a. The State Commission while passing the impugned order felt that Panipat Units 1-4 has a very large component of wages and though the wage rate may not be controllable but the number of employees is certainly controllable. Therefore, the State Commission, for reasons of its social consequences did not recommend any retrenchment but felt that efforts should be done to bring down per MW wage cost through natural attrition and not by filling or creating new posts so in the case of Panipat Units 1-4. The O&M expenses are also based on audited expenses for FY 2011-12, whereas the A&G and R&M expenses have been escalated at 4% p.a., no escalation has been allowed in the case of employee expenses. For the new plants, commissioned after 01.04.2012, the normative O&M expenses have been kept at the same level as the normative O&M expenses for the existing plants of the same/similar capacities. In the case in hand, MYT Tariff Regulations 2012 clearly provide for taking base year as 2011-12. The State Commission in the subsequent tariff order dated 27.03.2015 clearly records that O&M expenses for FY 2013-14 are now made available by the appellant and on this analogy the appellant cannot take advantage of not providing requisite details to the State Commission. The State Commission in the Impugned Order has clearly given the liberty to the appellant to approach the State Commission with relevant data during true up. We have taken note of this fact. Since the appellant has been given liberty by the State Commission to approach the State Commission with the relevant data during true up, the appellant cannot be said to be really aggrieved by the

decision on the issue No.(d). We do not find force in the contentions made by the appellant rather the counter submissions of the Discoms have merit. We agree to all the findings recorded by the State Commission on this issue. Consequently, this issue No.(d) is decided against the appellant.

Issue No.(e) : Whether the State Commission is right in disallowing the relaxation claimed on the cost of maintenance spares while determining the working capital requirements for MYT tariff period 2014-17?

20) On this issue following contentions have been made on behalf of the appellant:

a) That the State Commission has erred in not considering the ground realities and actual circumstances prevalent while considering the aspect of maintenance spares as a part of working capital.

b) That the State Commission ought to have considered the proposed maintenance spares @ 20% of annual O&M expenses for thermal plants and at 15% for hydro plants taking into consideration the make of the plants and the availability of spares as against the normative requirement @ 10% of normative O&M for thermal plants and @ 7.5% of normative O&M for hydro plants (in line with CERC norms).

c) That the requirements of enhanced capital requirement are due to the following reasons:

i) Norms approved by the State Commission are on the lower side and in fact is also lower than the industry benchmark of 20% for thermal as approved by the Central Commission. The State Commission has allowed cost of maintenance spares at the rate of 10% of O&M expenses as a part of working capital. The appellant is having variety of generating plants of different make, size, vintage and origin. Separate inventories have to be kept for the maintenance spares for each Unit as these are not interchangeable.

ii) Further, two of its new stations, i.e. Deenbandhu Chotu Ram Station and Rajiv Gandhi Station are of foreign make. A considerably higher inventory has to be kept for these stations to avoid shipping delays and interruption in generation of

power. Further, the design of Deenbandhu Chotu Ram Station was the last of its kind and has since been discontinued by the manufacturer. Till now no indigenous development has been made which can be used as a substitute. There is no liaisoning office or service centre of the foreign supplier in India.

iii) That in the subsequent tariff order dated 27.03.2015 in Petition No. HERC/PRO-61 of 2014 the State Commission while carrying out the generation tariff order for FY 2015-16, has in fact enhanced maintenance spares to 15% of annual O&M expenses for afore said two generating stations of the appellant as against 10% approved in the Impugned Order. The basis for enhancement should actually be 20% for thermal power plants and 15% for hydro power plants as claimed by the appellant which is also in line with the CERC norms. In these circumstances, the appellant wants relaxation for maintenance spares as part of the O&M expenses to achieve the above threshold for thermal power plants as well as for hydro power plants.

21) **Per contra**, the following are the submissions made by the distribution licensee on this issue:

i) that once again, the appellant is seeking for a relaxation from MYT Tariff Regulations 2012. The appellant is asking for a change in almost all the Regulations and needs to approach a Writ Court challenging the validity of the Tariff Regulations 2012.

ii) That the Tariff Regulations 2012 provide as under:

"22. Interest on Working Capital

22.1 Components of working capital:

For the purpose of computing working capital the components mentioned in the table below shall be considered:

Generating company
I. Coal-based Thermal Generating Plants:

a) ...

b) ...
c) ...
d) Maintenance spares @ 10% of the O&M expenses;
e) ...

II. Open-Cycle/Combined Cycle Gas Turbine Thermal Generating Plants:

a) ...
b) ...
c) Maintenance spares @ 15% of normative operation and maintenance expenses;
d) ...
e) ...

III. Hydro power plants

a) ...
b) Maintenance spares @ 7.5% of normative operation and maintenance expenses;
c) ..."

iii) In view of Regulation 22 of Tariff Regulations 2012, the State Commission has provided for 10% maintenance spares for coal based thermal stations, 15% for gas based generating station and 7.5% for hydro power plants.

iv) That the appellant needs to challenge the above norms giving proper justification instead of merely asking for relaxation.

22) Our consideration and conclusion on issue No. (e):

a) The State Commission, in the impugned order, in our considered view legally and correctly allowed the normative @ 10% of O&M expenses to thermal power plants and @ 7.5% of normative O&M expenses for hydro power plants as provided in Tariff Regulations 2012. The appellant did not provide any data or proper justification while seeking relaxation of the norms provided in MYT Tariff Regulations 2012. For seeking relaxation there are certain conditions which are required to be fulfilled and then only the State Commission can exercise the said power to relax.

b) Regulation 79 of MYT Regulations 2012 states that the Commission may in the public interest and for reasons to be recorded in writing, relax any of the said provisions. Thus the State Commission can only exercise power to relax when the same is in the public interest and for justifying the public interest, the Commission is required to record the reasons in writing. The contentions of the appellant made on this issue nowhere clarify that the said relaxation is in the public interest. If these contentions of the appellant are accepted then we are of the considered view that the relaxation sought by the appellant is not at all in the public interest as it would cause adverse impact on the end user causing additional burden of tariff to them. The learned State Commission has correctly and legally decided this issue after thorough consideration thereof and we do not find any sufficient ground to deviate from the said findings recorded in the Impugned Order. We may note here that in the case here, through subsequent tariff order dated 27.03.2015, the learned State Commission while carrying out the generation tariff order of the appellant's power plants for FY 2015-16 has enhanced the maintenance spares to 15% of the annual O&M expenses for Deenbhandhu Chotu Ram project and Rajiv Gandhi Station as against earlier 10% approved in the Impugned Order. Thus whatever concession was possible to be given to the appellant, the State Commission has considered the same in the subsequent tariff order and has accordingly enhanced the maintenance spares.

c) The points which the appellant is raising on this issue, dealing with maintenance spares, should have been raised by it at the relevant time when the said Regulations namely MYT Regulation 2012 were being considered and comments were being called. Any norms fixed by the Central Commission is not binding upon any State Commission as the same is just a guideline which the State Commission may consider if it so likes. This issue is consequently decided against the appellant.

<u>Issue No.(f)</u> : Whether the State Commission is right in restricting the return on equity to 10% as against 14% claimed by the appellant?

23) On this issue following contentions have been made on behalf of the appellant:

a) That the State Commission has erroneously reduced and restricted the Return on Equity (ROE) to 10% on account of no dividend being declared by the appellant to the shareholders. Non-declaration of dividend cannot *per se* be a ground to reject or reduce ROE. The amount is shareholders' fund retained earnings and utilized for the needs of the generating company. The ROE is a tariff element and is not dependent on declaration of dividend.

b) The MYT Regulation 2012 provide for ROE to be allowed up t 14% but the State Commission has erroneously restricted it to only 10% pre tax return on equity. The 10% pre tax return on equity, allowed is arbitrary and discriminatory and is contrary t the methodology laid down by Central Commission prescribing a higher ROE of 15% post tax. This finding of the State Commission is also against the mandate of Section 61 of the Electricity Act 2003 which provides that the State Commission shall be guided by the principles of tariff determination laid down by the Central Commission.

c) That the appellant has given all valid justifications in applications of norms and parameters provided in MYT Regulations 2012 and the State Commission ought to have exercised the power to relax and other similar powers to remove difficulties and inherent powers to be given to appellant.

24) **Per contra,** the discoms have contended as under on this issue:

i) That Regulation 20 dealing with ROE provides as under:

> *"**20. RETURN ON EQUITY***
>
> *20.1 The rate of return on equity shall be decided by the Commission keeping in view the incentives and penalties and on the basis of overall performance subject to a ceiling of 14% provided that the ROE shall not be less than the net amount of incentive and penalty."*

ii) That therefore, the appellant cannot demand 14% ROE as a matter of right. It is the discretion of the State Commission and the Regulation only provides 14% as a ceiling. The appellant on the one hand is seeking relaxation on almost all operating parameters and on the other hand claiming ROE at the rate of 14% as a matter of right.

iv) That a perusal of Regulation 20 of MYT Regulations 2012 dealing with ROE makes it abundantly clear that the State Commission has legally restricted ROE to 10% in accordance with the said Regulation. Income Tax /Minimum Alternate Tax, if any, shall be met by the appellant from the ROE allowed. Further, as additional capital expenditure proposed by the appellant has not been considered by the Commission, the average equity and ROE thereto in the case of PTPS (Units 1-4) stands reduced to that extent. In this view, the State Commission has correctly and legally allowed ROE at 10% amounting to Rs.2110.64 millions for each year of the first MYT control period. Plant wise breakup of the same is provided in the related fixed cost table.

25) Our consideration and conclusion on issue No. (f):

a) After considering the rival contentions of the parties on this issue, we deem it relevant to adduce the relevant part of the Impugned Order on this issue:

"3.5 Return on Equity (ROE):

.....

The Commission has examined the ROE claim of HPGCL in the light of the fact that ROE is in the nature of dividend payout to the shareholders (in this case the State Government) and no such payout is made unless a company has outperformed the industry benchmark leading to profit or has reserves and surplus created out of better performance of the company in the past. In the present case neither is applicable. To the contrary the Commission observes that HPGCL in most of the cases have failed to achieve even the minimum benchmark set by the Commission in the MYT Regulations, 2012 applicable for FY 2012-13 for which data is available."

b) We note that the appellant cannot demand 14% ROE as a matter of right as it is the discretion of the State Commission and the Regulation provided 14% as a

ceiling. The appellant cannot be granted the ROE claimed by it because the appellant on one hand seeks relaxation in almost all operating parameters and even without achieving the said parameters, the appellant on the other hand wants ROE at 14% as a matter of right, which cannot be said to be equitable, just, and legal by any stretch of imagination.

c) The contention of the appellant, that the non-declaration of dividend cannot be a ground to reject or reduce ROE, appears to us to be without merit because the appellant wants the shareholders' fund as retained earnings and utilise the said fund for the needs of its generating company which appears to be legally unsustainable. In view of the above, we do not find any merit in the contentions of the appellant on this issue and we approve the findings recorded in the Impugned Order on this issue No. (f). Consequently issue No.(f) is also decided against the appellant.

d) We have dealt at length with all the issues in both these appeals and since all the issues have been decided against the appellant/petitioner, the instant appeals are bound to be dismissed.

O R D E R

Both these appeals, being Appeal Nos. 196 of 2014 and 326 of 2013, are hereby dismissed and the Impugned Orders passed there under by the Haryana Electricity Regulatory Commission are hereby affirmed. No costs.

Pronounced in the open court on this **18th day of September, 2015**.

(I. J. Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member

✔ **REPORTABLE** / ~~**NON-REPORTABLE**~~