

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO.97 OF 2013

Dated: 1st May, 2015.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri Rakesh Nath, Technical Member.**

IN THE MATTER OF:

NTPC Limited, NTPC Bhawan, SCOPE)
Complex, 7, Institutional Area, Lodhi)
Road, New Delhi – 110 003.) Appellant

Versus

1. Central Electricity Regulatory)
Commission, 3rd and 4th Floor,)
Chanderlok Building, 36,)
Janpath, New Delhi – 110 001.)
2. Uttar Pradesh Power Corporation)
Limited, Shakti Bhawan, 14,)
Ashok Marg, Lucknow – 226 001,)
Uttar Pradesh.) Respondents

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Avinash Menon
Ms. Ranjitha Ramachandran

Counsel for the Respondent(s) ... Mr. K.S. Dhingra for **R-1**.

Mr. Pradeep Misra,
Mr. Manoj Kr. Sharma,
Mr. Daleep Kr. Dhayani,
Mr. Shashank Pandit &
Mr. Suraj Singh for **R-2**.

JUDGMENT

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON:

1. The Appellant has challenged order dated 17/10/2012 passed by Respondent No.1 – The Central Electricity Regulatory Commission (“**Central Commission**”) in Petition No.229 of 2009 relating to the determination of generation tariff for Tanda Thermal Power Station (440 MW) for the period from 01/4/2009 to 31/3/2014.

2. The Appellant - NTPC Limited ('**NTPC**') is a Government of India Undertaking and a Company incorporated under the provisions of the Companies Act, 1956 with registered office at NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi – 110 003.

3. NTPC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. NTPC being a generating company owned and controlled by the Central Government is covered by clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003 ("**Electricity Act**"). The generation and sale of power by NTPC is regulated under the provisions of the Electricity Act by the Central Commission, the Respondent No.1 herein.

4. One of the generating stations of NTPC is the Tanda Thermal Power Station ("**Tanda Station**"). The electricity generated from the Tanda Station is supplied to Respondent No.2 herein.

5. Gist of the facts of the case as narrated by the Appellant needs to be stated. The Tanda Station with the total capacity of 440 MW comprises four units of 110 MW each. The date of commercial operation of the different units of the generating stations are as under:

Unit	COD
Unit I	21/03/1988
Unit II	11/03/1989
Unit III	28/03/1990
Unit IV	20/02/1998

6. The Tanda Station was taken over by NTPC on 14/01/2000 from the erstwhile Uttar Pradesh State Electricity Board (“**UPSEB**”). At the time of takeover, the condition of Tanda Station was precarious. The PLF of the generating station was below 30% and the operating parameters such as Heat Rate, Auxiliary Energy Consumption and Specific Oil Consumption were much higher. There was a need to undertake exhaustive renovation and modernisation of the Tanda Station both as short term and long term measures. These renovation and modernisation programmes involved capital expenditure on various items.

7. Upon its constitution in the year 1999, the Central Commission initiated proceedings for determining the financial

and operational norms applicable to generating companies and transmission utilities. The Central Commission, after hearing all the interested parties, proceeded to decide on such norms and parameters by orders dated 4/1/2000, 15/12/2000 and 21/12/2000. Pursuant to the above, the Central Commission framed and notified the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 ("**Tariff Regulations, 2001**") applicable for the period from 1/4/2001 to 31/3/2004.

8. For the period from 1/4/2004 to 31/3/2009, the Central Commission framed the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 ("**Tariff Regulations, 2004**") *inter-alia*, providing for the norms and parameters applicable for the thermal generating stations for which tariff was to be determined by the Central Commission under Section 62(1)(a) read with Section 79(1)(a) and (b) of the Electricity Act and proceeded to determine the tariff for the

generating stations of NTPC for the period from 1/4/2004 to 31/3/2009.

9. The Central Commission determined the tariff for Tanda Power station for the period from 01/04/2004 to 31/03/2009 by order dated 30/11/2006 in Petition No.163 of 2004, based on the admitted cost of Rs.78447 lakhs. Further after revision of interest on working capital component of tariff, by order dated 14/12/2007 passed in Petition No.163 of 2004 the Central Commission revised the annual fixed charges of the Tanda Station for the period 2007-09.

10. Subsequently the Central Commission by order dated 09/04/2008 in Petition No. 8 of 2005 further revised the tariff for the period 14/01/2000 to 31/03/2004 based on this Tribunal's judgment and order dated 06/06/2007 in Appeal Nos.205 of 2005 and 9 of 2007 and recalculated the capital cost of the Tanda Station after taking into account the adjusted gross block and the admitted additional capital expenditure.

11. Thereafter NTPC filed Review Petition No.9 of 2007 against the order dated 30/11/2006 in Petition No.163 of 2004. The Central Commission vide order dated 15/12/2008 decided the revision of interest on loan, exclusion of payment of ex gratia from O&M expenses, consideration of LDO as secondary fuel and computation of maintenance spares for the purpose of interest on working capital and revised the annual fixed charges for the Tanda Power Station.

12. After this revision in annual fixed charges the Central Commission vide order dated 23/01/2009 passed in Petition No.47 of 2007 approved the revised fixed charges for the period 2004-09, after allowing additional capital expenditure of Rs.2261.89 lakhs for the year 2004-05 and Rs.2426.82 lakhs for the years 2005-06.

13. For the tariff period from 1/4/2009 to 31/3/2014, the Central Commission framed the Central Electricity Regulatory

Commission (Terms and Conditions of Tariff) Regulations, 2009 (“**Tariff Regulations, 2009**”) *inter-alia*, providing for the norms and parameters for the determination of tariff of the thermal generating stations.

14. In terms of the Tariff Regulations, 2009, on 13/10/2009, NTPC filed Petition No.229 of 2009 before the Central Commission for determination of tariff of the Tanda Station for the period 2009-14.

15. During the pendency of Petition No.229 of 2009 and based on the judgment of this Tribunal dated 26/03/2009 in Appeal No.103 of 2008, the Central Commission by order dated 01/07/2009 passed in Petition No.8 of 2005 revised the tariff of the Tanda Station for the period from 14/01/2000 to 31/03/2004 considering the capital cost of Rs.60707 lakhs as on 14/01/2000 and additional capital expenditure of Rs.17382.59 lakhs for the period from 14/01/2000 to 31/03/2004. Thereafter, taking into consideration the directions of this

Tribunal in judgment and order dated 13/06/2007 in Appeal No.23 of 2007 and judgment and order dated 16/03/2009 in Appeal Nos.133, 135, 136 and 148 of 2008 (subject to the outcome of the civil appeals filed before the Supreme Court against these orders) and on account of the additional capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09, the Central Commission by order dated 29/04/2011 in Petition No.186 of 2009 revised the tariff of the Tanda Station for the period 2006-09.

16. In terms of the direction of the Central Commission in order dated 29/06/2010 in Petition No.245 of 2009, NTPC by affidavit dated 09/08/2011 filed amended petition (in Petition No.229 of 2009) taking into consideration the revised figures as per the Central Commission's order dated 23/01/2009 in Petition No.47 of 2007 and order dated 29/04/2011 in Petition No.186 of 2009.

17. In the above petition, the Central Commission from time to time sought for various information, details, clarifications etc.

from NTPC including on the aspects of admissibility of additional capitalization under the Tariff Regulations, 2009. In response to the above, NTPC submitted the requisite details on the issue of admissibility of Additional Capitalisation under different heads.

18. By order dated 17/10/2012, the Central Commission decided Petition No.229 of 2009 and determined the tariff of the Tanda Station for the period of 2009-14. In the order, the Central Commission has interpreted the Regulations to hold that the additional capital expenditure is allowable under Regulation 9 and not under the last proviso to Regulation 7. However, in the facts and circumstances related to Tanda Power Station being taken over by NTPC from the UPSEB and the plant being under depleted condition, the Central Commission had in some respects exercised the power to relax under Regulation 44 of the Tariff Regulations, 2009 after applying prudence check and had allowed certain additional capitalisation.

19. According to the Appellant, upon receipt of order dated 17/10/2012, NTPC sought for and was given the background notes prepared by the Office of the Central Commission, based on which many of the additional capitalisation claimed by NTPC had not been allowed in the Order dated 17/10/2012. In the order dated 17/10/2012 read with the statement furnished, the following had been disallowed:

- (a) Additional Capitalization claimed in regard to Installation of Chlorine Leak Absorption System amounting to Rs.29.91 lakhs;
- (b) Sulphur & Nitrogen Oxide (SO_x and NO_x) Analyzer amounting to Rs.57.75 lakhs and Procurement of one Generator Transformer;
- (c) Construction of Employees Development Centre amounting to Rs.96.11 lakhs;
- (d) Capital expenditure incurred on various items relating to township and colony forming part of

the generating station at Tanda including expenditure on substation, boundary wall, roads, parking areas, auditorium, tube wells, sewer pipelines, cabling, switchgear, distribution line, land development etc as more fully set out in the petition filed before the Central Commission;

- (e) Wrong depreciation rate being applied on the additional capitalisation; and
- (f) Capital expenditure on air conditioning of Thyristor Room being allowed in the wrong tariff year.

20. As there were errors apparent on the face of record, on 12/12/2012; NTPC filed Review Petition No.28 of 2012 before the Central Commission for review of the order dated 17/10/2012 on the aspect of calculation of depreciation and additional capitalization on account of Air Conditioning of thyristor room for the year 2011-12 (Items at R(e) & R(f) above).

21. By order dated 15/03/2013, the Central Commission has decided the review petition by allowing the review petition on the issues raised by NTPC, namely, depreciation rate and the year on which the capital expenditure on account of air conditioning of Thyristor Room was to be allowed. The Appellant has challenged order dated 17/10/2012 to the extent it disallows certain claims made by it which are more particularly set out in paragraph 24 of this judgment.

22. We have heard Mr. Ramachandran, learned counsel for the Appellant. We have perused the written submissions filed by the Appellants. The gist of the submissions is as under:

- (a) The Central Commission has disallowed the claim of Additional Capitalization in regard to installation of Chlorine Leak Absorption System on the ground that the said item is in the nature of minor asset covered under

Regulation 19(e) of the Tariff Regulations, 2009. The Central Commission has not dealt with the nature of capital expenditure incurred by the Appellant and has disallowed the claim only on a general basis that such an asset is minor in nature.

- (b) The Chlorine Leak Absorption System is installed as an essential part of the Generating Station to ensure that the leakages of Chlorine during operation do not in any manner affect the plant or its activities. This system is required for safety of employees working and people residing nearby. The Chlorine Leak Absorption System cannot be said to be an asset of minor nature such as furniture, etc. The installation of Chlorine Leak Absorption System has been a part of the renovation and modernization scheme of Tanda Power Station after it has been taken over by the Appellant from the UPSEB.

- (c) The Central Commission did not allow the capital expenditure of Rs 57.75 lakhs on SO_x and NO_x Analyzer, which is for monitoring of the operation of the four generating units and to obtain feed back as regards the proper combustion into furnace. The emission of CO, NO_x and SO_x causes environmental pollution and, therefore, there was a need to install a system for achieving optimization by monitoring combustion in the Boiler. In the circumstances the expenditure being of essential nature the Central Commission ought to have exercised the powers of relaxation to allow additional capital expenditure on this item.
- (d) The Central Commission disallowed the expenditure on the ground that it is not in compliance with any pollution control norms as per the Central Pollution Control Board directions and in respect of which expenditures had already been allowed during 2010-11. The expenditure claimed by the Appellant is over and above the expenditure already

allowed by the Central Commission during 2010-11 to monitor the level of SOx and NOx. The fact that the Analyzer required in the ESP side is for getting a feedback on the proper combustion into furnace and the same was not possible to be met from the capital expenditure allowed during 2010-11 for the monitoring system. The Central Commission ought to have examined on merits the issue of the need of monitoring proper combustion into furnace before deciding that the expenditure already allowed is sufficient for the purpose.

- (e) The Central Commission has not allowed the capital expenditure towards the spare Generator Transformer claimed by the Appellant on the ground that the spares after the cut-off date are not to be allowed. The Central Commission has not considered that since Tanda has been taken over by the Appellant from UPSEB the cut-off date provided for in Regulation 9(2) of the Tariff Regulations,

2009 should not be applied and the power of relaxation ought to have been exercised.

- (f) The Generator Transformer had been in operation in Tanda Station for more than 20 years and during the capital overhaul of the Generator Transformer, insulation was found to be affected due to aging and fatigue, and this may lead to failure of Generator Transformer. The sudden outage of the Generator Transformer will lead to extensive repair and restoration time and there will be significant loss of generation over a period of time. It was therefore, necessary to procure one spare Generator Transformer from BHEL and keep the same in stock. There is, therefore, full justification for procurement of one Generator Transformer as claimed by the Appellant.

- (g) It is an established practice to maintain a spare Generator Transformer at all generating stations to enable immediate replacement in case any of the Generator Transformers in

operation become unworkable. This is essential for the sustained operations of the generating station. The Central Commission has itself allowed a Spare Generator Transformer to be capitalized in the past in the case of other generating stations (For example in the case of Rihand Super Thermal Power Station, Stage-I, a Spare Transformer was allowed to be capitalized in the year 2004-05; Reference may be made to the order dated 10/07/2008 of the Central Commission approving the generation tariff for the Rihand Thermal Power Station for the period 1/4/2004 to 31/3/2009 wherein a Spare Generator Transformer was allowed to be capitalized for the Financial Year 2004-05.)

- (h) The Central Commission has not allowed the capital expenditure incurred on the Employees Development Centre on the ground that it is not a part of the generating station. Such a centre is an essential part of the generating station as it is necessary to provide training skills to the employees at a remote place. The Central Commission ought to have

considered such aspects of the Development Centre in a pragmatic and realistic manner instead of disallowing the same as not pertaining to the power station. The Central Commission has not considered that for the proper operation of the power station at a remote place like Tanda, a proper Development Centre is a necessity.

- (i) The Central Commission has disallowed the various claims of the Appellant in regard to the expenditure incurred for the Township and Colony on the ground that they do not relate to the R&M of the Power Plant.

- (j) The generating station has been defined in Section 2 (30) of the Electricity Act, 2003 as including any building used for housing operating staff of a generating station. Accordingly expenditure to be allowed for a generating station would include expenditure incurred in the provision of township with amenities for the employees working particularly in a remote station.

- (k) The capital expenditure incurred on aspects such as sewer pipelines in the township, construction of auditorium, cable laying and installation of feeder pillars, construction of 11 KV/433V substation, construction of boundary walls, roads, parking, tube wells etc are all essential for the proper operation of the generating station. As in the case of the plant, the township was also in a depleted condition at the time of takeover of the Station from UPSEB. The renovation/ augmentation of township facilities was essential.
- (l) It is submitted that the Appellant has also challenged the interpretation of Regulations 5.7 and 9 of the Tariff Regulations, 2009 by the Central Commission to the effect that Regulation 7 – last proviso does not provide for consideration of additional capital expenditure. By order dated 27/1/2014 passed in Appeal No. 44 of 2012 this Tribunal has upheld the interpretation made by the Central

Commission and has rejected the contention of the Appellant. The Appellant reserves the right to challenge the above aspect pertaining to the present case. All submissions are made without prejudice to the above.

23. We have heard Mr. Misra, learned counsel for Respondent No.2. We have perused the written submissions filed on behalf of Respondent No2. Gist of the submissions is as under:

- (a) Parliament has enacted the Electricity Act so that the tariff would be cheapest at the consumer end and on the other side the generating company should get adequate return of its investment. Section 61(d) thereof indicates the aim and object of the Electricity Act. A reading of the section shows that any kind of expenditure cannot be capitalized unless and until it is shown that because of that expenditure, the generator has not got adequate return. In the present case, the Appellant has not shown that inspite of incurring such expenditure adequate return has not been given to them in the relevant period.

- (b) All expenses incurred by the Appellant are passed through in the tariff and paid by the beneficiaries. Any expenditure out of which no benefit is given to the beneficiaries cannot be capitalized for the purpose of tariff.
- (c) The Appellant has claimed Rs.29.91 lakhs for installing Chlorine Leak Absorption System. The said system is a minor asset, hence cannot be capitalised.
- (d) No benefit for installation of such an asset is available to Respondent No.2, hence, the same cannot be capitalized for the purpose of tariff.
- (e) There is no provision in Regulation 9 of the Tariff Regulations, 2009 under which such an asset could be capitalized.
- (f) The Appellant has claimed Rs.57.75 lakhs for SO_x and NO_x Analyzer. There is no provision in the Regulations for such

- expenditure, hence this expenditure cannot be allowed. No benefit arises out of installation of this asset to Respondent No.2, hence such an expenditure cannot be allowed in the tariff.
- (g) The Appellant has already installed Ambient Air Quality Monitoring System during this very control period which will also detect the presence of SO_x and NO_x in the atmosphere. Hence, the Central Commission has rightly refused to capitalize this expenditure.
- (h) There is no provision under the statutory regulations for capitalization of any spares; hence the Central Commission has rightly disallowed the capitalization of this expenditure under this head. No asset could be capitalized for which there is no provision under the Regulations. The Central Commission has rightly declined to capitalize this asset.
- (i) The Tanda Thermal Power Station has been taken over by the Appellant on 14/01/2000 and, hence, the capitalization

- of this asset at this stage is not required. There is no provision for capitalisation of such asset in the statutory regulation and hence, the same could not be capitalized.
- (j) There is no provision in the statutory regulations for capitalization of such asset, hence the Central Commission has rightly declined to capitalize this amount. The Central Commission has held that it relates to R&M works, hence the same was rightly declined.
- (k) No benefit out of this expenditure is given to the Respondent No.2, hence the same cannot be capitalized. Merely because the Appellant wants to give some facilities to its employees, does not mean that the consumers in Uttar Pradesh should be burdened with the higher tariff.
- (l) No legal provision has been shown under which the capitalization of such an asset could be claimed.

- (m) There is no provision in the statutory regulations for capitalization of such asset, hence the Central Commission has rightly declined to capitalize this amount. If there is no provision under the Regulations for capitalization, such expenditure cannot be capitalized.
- (n) No benefit out of this expenditure is passed onto Respondent No.2 and, hence, the same cannot be capitalized. Merely because the Appellant wants to give some facilities to its employees, the consumers in Uttar Pradesh should not be burdened with the higher tariff.
- (o) In the circumstances, it is submitted that the appeal deserves to be dismissed.

24. Shortly stated the Appellant is aggrieved by the following disallowances:

- (A) Disallowance of Additional Capitalization claimed in regard to Installation of Chlorine Leak Absorption System amounting to Rs 29.91 lacs;
- (B) Disallowance of additional capitalization claimed in respect of Sulphur & Nitrogen Oxide (SO_x and NO_x) Analyzer amounting to Rs 57.75 lacs’
- (C) Disallowance of the expenditure on the procurement of one Generator Transformer;
- (D) Disallowance of additional capitalization claimed in respect of Construction of Employees Development Centre amounting to Rs 96.11 lacs;
- (E) Disallowance of capital expenditure incurred on various items relating to township and colony forming part of the generating station at Tanda including expenditure on substation, boundary wall, roads, parking areas, auditorium, tube wells, sewer pipelines, cabling, switchgear,

distribution line, land development etc as more fully set out in the petition filed before the Central Commission;

25. We shall now deal with these grievances serially.

26. The first issue is regarding disallowance of additional capitalization claimed by NTPC in regard to installation of Chlorine Leak Absorption System amounting to Rs.29.91 lakhs.

(a) NTPC had claimed additional capitalization of Rs.29.91 lakhs for installation of Chlorine Leak Absorption System to arrest possibility of chlorine leak under 'change in law' provision of the Tariff Regulations. The Central Commission considered NTPC's claim under Regulation 9(2)(ii) of the Tariff Regulations, 2009 under change in law. The Central Commission disallowed the above expenditure as the asset is in the nature of minor asset.

(b) According to learned counsel for the NTPC, Chlorine Leak Absorption System is installed as an essential part of the

generating station to ensure that leakage of chlorine during operation of the plant does not in any manner affect the plant or its activities. The system is required for safety of employees and people residing nearby the Plant. The Chlorine Leak Absorption System cannot be said to be an asset of minor nature such as furniture, etc. The System has been a part of the renovation and modernization scheme of Tanda Power Plant after it has been taken over by NTPC from UPSEB.

- (c) The Respondents have argued that there is no provision in Regulation 9 of Tariff Regulations, 2009 under which such an asset can be capitalized.
- (d) This Tribunal in **judgment dated 27/01/2014 in Appeal No.44 of 2012 (NTPC v. CERC & Others)** has held that additional capitalization can be considered by the Central Commission as per provisions of Regulation 9 only. Regulation 9 (2)(ii) is regarding capital expenditure incurred after the cut-off date under change in law. We find that the

capital expenditure towards Chlorine Leak Absorption System is not covered under change in law and any other provisions under Regulation 9. In Appeal No.44 of 2012, this Tribunal has held that provision has been made under Regulation 19(e) for compensation allowance in respect of coal based thermal generating stations to meet the expenses on new assets of capital nature including in the nature of minor assets. In this judgment the Tribunal has not accepted the contention of NTPC that Regulation 19(e) covers only assets of minor nature and has held that compensation under Regulation 19(e) covers the expenditure on new assets of capital nature including the minor asset. Therefore, we do not find any merit in the claim of NTPC for capital expenditure for Chlorine Leak Absorption System.

27. The second issue is regarding disallowance of capital expenditure towards SO_x and NO_x analyzer on ESP side.

- (a) We find that the NTPC in its petition had claimed an expenditure of 57.75 lakhs towards SOx and NOx Analyzer to be provided on ESP side for all the four units, as at present, SOs/NOx and monitoring is not available in all the four units. Therefore, feedback of proper combustion in the furnace is not available. In the absence of this System, boiler combustions process optimization is not possible. The Central Commission observed that this asset is required for monitoring of combustion in boiler and is not meant for compliance with any pollution control norms. The Central Commission observed that since it had already allowed expenditure incurred on Ambient Air Quality Monitoring System (“**AAQMS**”) during 2010-11 for monitoring the level of SOx, NOx as per guidelines of the Central Pollution Control Board, the additional capital expenditure on SOx/NOx Analyzer on each unit cannot be allowed.
- (b) Learned counsel for the NTPC has argued that emission of SOx and NOx is causing environmental pollution and, therefore, there was a need to install a system for

- achievement of optimization by monitoring combustion in the boiler. In the circumstances, the expenditure being of essential nature, the Central Commission ought to have exercised the powers of relaxation to allow capital expenditure of this item. The analyzer required in the ESP side is for getting of feedback on the proper combustion into furnace and the same is not possible to be met from the capital expenditure allowed for AAQMS during FY 2010-11.
- (c) While we do not dispute the requirement of SO_x and NO_x Analyzer on ESP side of each unit, the question here is whether this expenditure can be allowed as additional capitalization under the Tariff Regulations. Even though NTPC had claimed this expenditure under change in law in its petition before the Central Commission, NTPC is now requesting that Central Commission ought to have exercised its powers to relax to allow additional expenditure. This was not argued before the Central Commission.

(d) We do not find any force in the arguments of learned counsel for the NTPC. The expenditure of SOx and NOx Analyzer of ESP side is not covered under Regulation 9(2)(ii) change in law and is not admissible for capitalization under additional capitalization. For monitoring of SOx and NOx as per the guidelines of the Central Pollution Control Board, the Central Commission has already allowed expenditure incurred by NTPC on AAQMS as additional capital expenditure during F.Y. 2010-11. We do not find any reasons to interfere with the decision of the Central Commission.

28. The third issue is regarding disallowance of capital expenditure towards Generator Transformer - spares.

(a) NTPC had claimed additional capitalization for a Spare Generator Transformer as the existing Generator Transformers of the units have been more than 20 years old and, therefore, a Spare Generator Transformer is proposed to be procured to meet the contingency of sudden outage of

Generator Transformer. The Central Commission did not allow capital expenditure on Spare Generator Transformer stating that the spares after cut-off date are not to be allowed as per the Tariff Regulations.

- (b) According to learned counsel for the NTPC, the cut-off date provided for in Regulation 9(2) of Tariff Regulations of 2009 should not be applied and the power to relax ought to have been exercised by the Central Commission. Generator Transformers have been in operation in Tanda for more than 20 years and during the capital overhaul of the Generator Transformers insulation was found to be affected due to aging and fatigue and this may lead to failure of existing Generator Transformers. Therefore, it is necessary to procure one Spare Generator Transformer to be kept in stock to meet the eventuality of sudden outage to a Generator Transformer. According to NTPC, the Central Commission has itself allowed a Spare Generator Transformer to be capitalized in the past in the case of other generating station e.g. Rihand Super Thermal Power Station

- where Spare Transformer was allowed to be capitalized in the year 2004-05.
- (c) According to Mr. Pradeep Misra, learned counsel for Respondent No.2 there is no provision in the statutory Regulation for capitalization of any spares, therefore, the Central Commission had rightly refused to capitalize the expenditure under this head.
- (d) We find that additional capital expenditure on account of Spare Generator Transformer is not permissible under the Tariff Regulations 2009. The example of Rihand Super Thermal Power Station where additional capitalization on account of Spare Generator Transformer was allowed will not be applicable in the present case as in case of Rihand additional capitalization was allowed under the Tariff Regulations 2004 wherein such capital expenditure was permissible. Therefore, we do not find any infirmity in the finding of the Central Commission.

29. The fourth issue is regarding disallowance of capital expenditure of Employees Development Centre.

- (a) NTPC had claimed expenditure of Rs.96.11 lakhs towards construction of Employees Development Centre to provide basic amenities to the employees. This was not allowed by the Central Commission.
- (b) Learned Counsel for NTPC has submitted that the Central Commission ought to have considered that the above Centre is an essential part of the generating station and is necessary to provide training skills to employees. According to Shri Pradeep Misra, Learned counsel for Respondent No.2 there is no provision for such capitalization in the Tariff Regulations.
- (c) We find that there is no provision in the Tariff Regulations 2009 to provide additional capitalization on the above expenditure. Therefore, we do not find any infirmity in the findings of the Central Commission.

30. The fifth issue is regarding disallowance of capital expenditure of township and colony.

- (a) The Appellant had claimed the above expenditure under the renovation and modernization of power plant. The Central Commission disallowed these claims as they do not relate to renovation and modernization of the power plant.
- (b) According to learned counsel for the NTPC generating station has been defined under Electricity Act as including any building for housing operating staff. The capital expenditure incurred on aspects such as sewer pipelines in the township, construction of auditorium, cable laying and installation of feeder pillars, construction of 11 kV/430V sub-station, construction of boundary walls, roads, parking, tube wells etc. are all essential for the proper operation of the generating station. The township like power plant was also in depleted condition at the time of takeover from UPSEB. The renovation/augmentation of township was essential.

- (c) We find that the Central Commission has allowed the net expenditure of Rs.12767.62 lakhs under Regulation 9(2) in exercise of powers to relax under Regulation 44 of Tariff Regulations, 2009. This has not been challenged by the Respondents. However the Central Commission allowed the renovation and modernization expenditure on the main power plant and auxiliaries system but has not allowed the expenditure incurred on renovation of employees township colony.
- (d) According to Section 2(3) of the Electricity Act, the definition of generating station includes any building used for housing operating staff of a generating station. Therefore, if the Central Commission has allowed expenditure incurred towards renovation and modernization of main plant equipment and auxiliaries of the generating station, the expenditure on the renovation and modernization of the housing colony should also have been considered as it is an essential part of the power plant. Accordingly we direct the

Central Commission to reconsider allowance of expenditure to the extent incurred on renovation and modernization of the township. The matter is remanded to the Central Commission for reconsideration of this issue.

31. The appeal is partly allowed as indicated above.

32. Pronounced in the Open Court on this 1st day of May, 2015.

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE / ~~NON-REPORTABLE~~**