

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

**APPEAL NO. 238 OF 2014**

**DATED: 30<sup>th</sup> March, 2016**

**PRESENT: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER  
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

**IN THE MATTER OF:**

Chhattisgarh State Power Generation Co.Ltd.  
Vidyut Seva Bhavan, Danganiya,  
Raipur, Chhattisgarh

**...Appellant/Petitioner**

**Versus**

Chhattisgarh State Electricity Regulatory Commission  
Irrigation Colony, Shanti Nagar  
Raipur – 492001

**...Respondent (s)**

Counsel for the Appellant(s) : Ms. Suparna Srivastava  
Mr. Subhash Sharma

Counsel for the Respondent(s) : Mr. Anand K. Ganesan  
Mrs. Swapna Seshadri for R-1

**JUDGMENT**

**Per Hon'ble Mr. T. Munikrishnaiah, Technical Member**

1. The present Appeal being Appeal No. 238 of 2014 has been filed by the Appellant i.e. Chhattisgarh State Power Generation Company Ltd, under Section 111 of the Electricity Act, 2003, against the tariff order

dated 12.06.2014 (Impugned Order) in Petition No. 5 of 2014, passed by the Chhattisgarh State Electricity Regulatory Commission (**in short “The State Commission”**), whereby the State Commission, while approving the final true-up of the ARR of the Appellant generation company for FY 2011-12 and FY 2012-13 disallowed depreciation expenses to the Appellant for Hasdeo Thermal Power Station (HTPS) Korba West for FY 2011-12 and FY 2012-13 in contravention of the methodology prescribed in the MYT Regulations 2010 and the MYT Tariff order dated 31.03.2011, computed the effect of inflation as an uncontrollable factor in a discriminatory manner and has accordingly allowed the same on allowable O&M costs for thermal generating stations in FY 2011-12 and FY 2012-13. The State Commission also declined to exercise the power of relaxation vested in it under the MYT Regulations, 2010 so as to consider relaxed norms of achievable parameters regarding auxiliary consumption and station heat rate for FY 2011-12 and FY 2012-13 and regarding rectification of O&M expenses in respect of the thermal power stations of the Appellant for MYT control period of FY 2013-14 to FY 2015-16.

2. The Appellant, Chhattisgarh State Power Generation Co. Ltd. (CSPGCL) is one of the successor companies of the undivided Chhattisgarh State Electricity Board under the Chhattisgarh State Electricity Board Transfer Scheme Rules, 2010 notified by the Government of Chhattisgarh under Section 131 of the Electricity Act,

2003. The undertaking forming part of the generation undertakings of the Board as set out in the Transfer Scheme stands transferred to and vested in the Appellant and all functions and duties pertaining to generation of power in the State are being performed by the Appellant as the successor of the Board in terms of the Transfer Scheme.

**3. The brief facts of the case are as under:**

3.1 The Respondent Commission notifies the CSERC (Terms and Conditions of determination of tariff according to the Multi Year Tariff Principles) Regulations, 2010 (hereinafter, the “MYT Regulations”) for the Control Period FY 2010-11 to FY 2012-13.

3.2 Pursuant to the above MYT Regulations, the Appellant filed a petition being Petition No. 5 of 2014 dated 12.06.2014 before the Respondent Commission for approval of Annual Revenue Requirement (ARR) for 3 years MYT control period from FY 2010-11 to FY 2012-13 for thermal plants of CSPGCL and for final true up for FY 2010-11 to FY 2012-13 for Hasdeo Bango.

3.3 The State Commission passed the Impugned Order dated 12.06.2014 in respect of the petition filed by the Appellant.

3.4 The Appellant aggrieved by the Impugned Order dated 12.06.2014, filed this Appeal being Appeal No. 238 of 2014 and prayed for the following reliefs:

- (i) to set aside the impugned Tariff Order dated 12.6.2014 passed by the Respondent Commission to the extent it allows final true up depreciation of Rs.34.14 crores and

Rs.36.88 crores for FY 2011-12 and FY 2012-13 and allow the same at Rs.335.94 crores and Rs.28.53 crores together with all consequential effects and reliefs;

- (ii) to set aside the impugned Tariff Order dated 12.6.2014 passed by the Respondent Commission to the extent it considers the inflation factor of 5.72% for Dr. Shyama Prasad Mukherjee Thermal Power Station (DSPM TPS) for FY 2011-12 and FY 2012-13 and allow the inflation factor of 8.80% and 8.00% for the said power station for the said years with all consequential benefits and reliefs;
- (iii) to set aside the impugned Tariff Order dated 12.6.2014 passed by the Respondent Commission to the extent it declines to relax the norms for auxiliary consumption and station heat rate for Korba Thermal Power Station for FY 2011-12 and FY 2012-13 and allow the same at 11.25% auxiliary consumption and Station Heat Rate 3110 Kcal/KWh for the said power station for the said years with all consequential effects and reliefs;
- (iv) to direct the Respondent Commission to revisit the computation of O&M charges for the control period of FY 2013-14 to FY 2015-16 for all the three thermal power stations of the Appellant and re-compute the same in accordance with the MYT Regulations, 2012 notified by the Commission and the MYT Tariff Order issued thereunder with all consequential benefits and reliefs;
- (v) to pass such further and other orders as this Tribunal may deem fit and proper in the facts and circumstances of the present case.

4. Heard the arguments of the Learned Counsel for the Appellant Ms. Suparna Srivastava and Learned Counsel for the Respondent Ms. Swapna Seshadri and gone through the submissions made by the Counsels of the rival parties and after considering the Impugned Order, the following issues arise for consideration:

**Issue No. 1: Whether the State Commission erred in the Impugned Order, spreading the balance depreciation amount of Rs. 123.09 crores as on 01.04.2010 pertains to HTPS Thermal Station for a period of six years i.e. up to FY 2015-16 instead of adjusting the**

**same within the useful life of the plant as per MYT Regulations, 2010 of the State Commission?**

**Issue No. 2: Whether the State Commission erred in not considering the depreciation rate of 5.11% instead of 6% towards depreciation of additional capitalization works carried out during FY 2010-11 to FY 2012-13 with regard to HTPS Power Station?**

**Issue No. 3: Whether the State Commission erred in considering the inflation factor of 5.72% for FY 2011-12 and FY 2012-13 towards O&M expenditure instead of considering the actual inflation factor for the power plants of the Appellant violating the MYT Regulations 2010?**

**Issue No. 4: Whether the State Commission erred in not relaxing the norms for Auxiliary Consumption and Station Heat Rate for Korba Thermal Power Station for FY 2011-12 and FY 2012-13?**

**Issue No. 5: Whether the State Commission erred in computing O&M expenses of the Appellant's Thermal Plants for FY 2013-14 to 2015-16?**

5. **Issue No. 1: Whether the State Commission erred in the Impugned Order, spreading the balance depreciation amount of Rs. 123.09 crores as on 01.04.2010 pertains to HTPS Thermal Station for a period of six years i.e. up to FY 2015-16 instead of adjusting the same within the useful life of the plant as per MYT regulations, 2010 of the State Commission?**

6. The following are the submissions made by the Learned Counsel of the Appellant on Issue No. 1:

6.1 that the Appellant filed a petition for provisional true up for 2011-12 and final true up of FY 2010-11. In the said petition, claim for total depreciation in the balance two years for HTPS Korba West was made. It was envisaged that no work had taken place which could have resulted in life extension of the project. All the work executed was either statutory requirement or requirement for safe and smooth operation of the plant

- 6.2 that the Respondent Commission considered anticipated age of the assets instead of their “useful life” as provided in the MYT Regulations and allowed depreciation at much lower value. Besides, no specific computation table was provided in the Order. In its subsequent petition filed for final true up for ARR of FY 2011-12 and FY 2012-13 and determination of generation tariff for FY 2014-15, the Appellant requested the Respondent Commission to allow depreciation expenses of the balance depreciable value of assets (HTPS) over useful life of assets as on 31.3.2010 which was 25 years as per the MYT Regulations and requested the State Commission the depreciable value of assets to be allowed in the remaining useful life of this assets i.e. in FY 2010-11 and FY 2011-12.
- 6.3 that the State Commission could not consider the actual life of the assets instead of their useful life as required under the Regulations and as such the State Commission adjusted the depreciation value of the assets upto the FY 2015-16
7. **Per Contra**, the following are the submissions of the Learned Counsel of the Respondent, Chhattisgarh State Electricity Regulatory Commission:
- 7.1 that in the tariff petition, the Appellant had considered station wise cost of depreciation as per the MYT Regulations. The depreciable value of asset had been considered up to 90% of the admitted capital cost of the plant. Further for existing stations, cumulative

depreciation value as on 31.3.2010 had been deducted from the depreciable value of asset and depreciation was estimated on the remaining depreciable value of the asset based on straight line method and at the rates specified in Appendix II to the MYT Regulations.

- 7.2 that as per Regulation 24 and 3.46 of the MYT Regulations, that depreciation would be worked out annually for various assets of a generating station for the first 12 years at the prescribed rates and thereafter, the remaining depreciable value by taking 10% as their salvage value was to be spread over the balance useful life of the assets.
- 7.3 that the Appellant has submitted that the State Commission has erred in allowing the level of depreciation in its Impugned Order dated 12.6.2014. However, the State Commission has allowed depreciation strictly in accordance with the MYT Regulations after having regard to the existing ground realities. Regulation 24 and 3.46 of the MYT Regulations, 2010.
- 7.4 that in line with MYT Regulations, 2010, the State Commission has recognised completion of useful life of HTPS and allowed recovery of full depreciation by FY 2015-16 for existing gross fixed assets.

## 8. Our Consideration and Conclusion on these Issues

8.1 We have examined the submissions of the Appellant, the commercial operation date of HTPS Thermal Plant is in March 1986 and hence the useful life of units of HTPS Generation Station expired in the FY 2011-12. The State Commission after adjustment of cumulative depreciation upto 31.03.2010 had arrived the remaining depreciable amount of HTPS plant as on 01.04.2010, is as follows:

### Depreciation Computation for HTPS (Rs. Crore)

Particulars	FY 2010-11	FY 2011-12
Opening GFA	743.66	-
Yearly Depreciation	7.79	-
Accumulated Depreciation	545.23	-
90% of Gross Block Excluding Land	668.32	-
Amount Remaining to be Depreciated	123.09	-
<b>Depreciation (Equally spread in 6 years i.e. till end of FY 15-16)</b>	<b>20.51</b>	<b>20.51</b>
Additional Capitalization during the year	172.89	32.10
Cumulative Gross Block on Additional Capitalization from FY 2010-11	172.89	205.00

According to Regulations, the 90% of the asset value has to be deducted in two parts i) upto 12 years as per the percentage of depreciation specified by the Commission in Straight Line Method, ii) the balance amount of 90% of the asset value has to be equally spread to the remaining period of useful life of the generating unit. In the instant case, the useful life of HTPS Korba West Thermal Station was expiring in the FY 2011-12. The State

Commission after computing the balance amount of depreciation of the assets of HTPS Thermal Station upto 31.03.2010, the balance amount has to be spread in the next two years which is during FY 2010-11 and FY 2011-12 as per the MYT Regulations, 2010. Instead, the State Commission has spread the remaining amount of depreciation as computed on 31.03.2010 to the period of six years i.e. upto FY 2015-16

8.2 Let us examine the relevant clauses of the MYT Regulations, 2010 of Chhattisgarh State Electricity Regulatory Commission (CSERC), which are as under:

**24.1 “The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission.**

**24.2 The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset.**

**Provided that in case of hydro generating stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:**

**Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciable value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff.**

**24.3 Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.**

**24.4 Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-II to**

**these regulations for the assets of the generating station and transmission system:**

**Provided that, the remaining depreciable value as on 31<sup>st</sup> March of the year closing after a period of 12 years from the date of commercial operation shall be spread over the balance useful life of the assets.**

**24.5 In case of the existing projects, the balance depreciable value as on 01.04.2010 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.03.2010 from the gross depreciable value of the assets”.**

- 8.3 According to Regulation 24.5 of the MYT Tariff Regulations of CSERC, in case of existing project, the balance depreciable value as on 01.04.2010 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.03.2010 from the gross depreciable value of the assets and it should be spread to the balance useful life of the assets.

Thus, the useful life of the HTPS Korba West Plant expires during FY 2011-12. According to the CSERC Regulations 2010, the balance amount of depreciable value after deducting from the gross value of the assets has to be adjusted in the remaining period of useful life of the plant. Hence, as per the Regulations, the balance depreciable amount of Rs. 123.09 crores of HTPS plant has to be spread in two years i.e. in the FY 2010-11 and FY 2011-12. Whereas the State Commission spread the balance depreciation amount upto FY 2015-16 i.e. for a period of 6 years. The contention of the State Commission is that the Commission has allowed specific provisions in the Capital Investment Plan

and hence the life of the plant was taken upto FY 2015-16 and hence the remaining amount of depreciation of HTPS plant was equally adjusted from FY 2010-11 upto FY 2015-16.

The capital cost of the assets excluding land cost has been decided at the time of commercial operation of the units of the generating station including the capital assets, if any, added upto the cutoff date of the generating station of the project.

Further, for depreciation of the assets, the salvage value of the asset shall be considered as 10% and depreciation shall be allowed upto a maximum of 90% of the capital cost of the asset upto the useful life of the unit/station. Accordingly, the 90% of the asset value has to be adjusted within the useful life of the unit. As per Regulations, the useful life of the generating station is 25 years.

Hence, we feel that the contention of the Appellant regarding spreading of balance depreciable amount of HTPS Korba West Plant in the FY 2010-11 and 2011-12 is legally correct.

8.4 Further, the MYT Tariff Regulations were framed by the State Commission duly considering the remarks/suggestions of the stakeholders/public of the licensed area.

Hence, the State Commission should not deviate from their own Regulations, even though the Commission has powers to remove difficulties as per Regulation 70 of the MYT Tariff Regulations

2010. Thus, we do not agree with the State Commission's contention with respect to adjusting the remaining depreciation amount of HTPS Power Station upto FY 2015-16, actual life of the plant as considered by the State Commission.

8.5 It is further submitted that the Hon'ble Supreme Court in its Judgment dated 15 February 2007 in Civil Appeal No. 2733 of 2006 in the Case of "*Delhi Electricity Regulatory Commission Vs. BSES Yumuna Power Limited & Ors*". Has ruled as under:

*"Before concluding we may state that basic object of providing depreciation is to allocate the amount of depreciation of an asset over its useful life and not actual life so as to exhibit a true and fair view of the financial statements of an enterprises. Useful life is a period over which a depreciable asset is expected to be used. Useful life of an asset in a capital intensive industry is generally shorter than its physical life. Useful life is pre-determined by contractual limits or by amount of extraction or consumption dependent on the extent of use and physical deterioration on account of wear and tear which depends on operational factors such as the number of shifts, repair and maintenance policy of the utility and reduced by obsolescence arising from technological changes, improvement in production methods....."*

Thus, the 90% of the capital asset has to be depreciated within the useful life of the asset and not actual life as considered by the State Commission.

8.6 Accordingly, this issue is decided in favour of the Appellant. The matter is remanded back to the State Commission to compute the balance depreciable amount after adjusting the cumulative amount from the 90% asset value of HTPS Thermal Station in two years i.e. FY 2010-11 and FY 2011-12.

9. **Issue No. 2: Whether the State Commission erred in not considering the depreciation rate of 5.11% instead of 6% towards depreciation of additional capitalization works carried out during FY 2010-11 to FY 2012-13 with regard to HTPS Power Station?**
10. The following are the submissions made by the Counsel of the Appellant:
- 10.1 that the account of additional capitalization during FY 2010-11, FY 2011-12 and FY 2012-13, it was not envisaged that the useful life of the project would increase, rather these expenses were incurred which were necessary for safe operation of plant. Since the Commission could not consider the actual life of the assets instead of their useful life as required under the Regulations and as such, the decision taken in the Tariff Order dated 12.7.2013 was required to be revisited and depreciation allowed to be recovered in two years i.e. during FY 2010-11 and FY 2011-12.
- 10.2 that the rate of depreciation at 5.11% considering the life extension of additional assets of 15 years provided in MYT order dated 12.07.2013 appeared to be an arithmetical error and computation needed for rectification.
- 10.3 that the depreciation accounting for HTP Korba West showed that accounting additional capitalization was considered at Rs.75.39 crores and Rs.31.70 crores for FY 2011-12 and FY 2012-13 instead of Rs.88.34 crores and Rs.36.23 crores claimed by the Appellant in the Petition. The total depreciation computed was Rs.34.14 crores and Rs.36.88 crores respectively for FY 2011-12

and FY 2012-13 when the Commission ought to have allowed depreciation of Rs.335.94 crores and Rs.28.53 crores respectively for the said years.

11. **Per Contra**, the following are the submissions made by the Counsel of the Respondent:

11.1 that it is pertinent to mention here that new capital expenditure incurred by appellant on HTPS plant is not a full-fledged renovation and modernization but these are a continuous process, hence, Commission has no date to fix as completion date of renovation and modernization. As these expenditure are continuously being incurred in phased manner towards Renovation and modernization which is yet to be finalized. Hence, in absence of starting date for fixing fifteen years, the State Commission is calculating depreciation on this additional capital expenditure at weighted average depreciation rate as specified at Appendix – II of the MYT Regulations 2010.

12. **Our Consideration and Conclusion on this Issue:**

12.1 The contention of the Appellant is that the State Commission failed to give valid reasons for consideration of 5.11% instead of 6% on the assets capitalized after 2010-11 instead of adjusting in two years for HTPS plant, spread the amount upto FY 2015-16.

12.2 We have gone through the additional capital works submitted by the Appellant and the State Commission disallowed certain additional capitalization works as the expenses were R&M nature. Further, the State Commission considered the depreciation rate of 5.11% on average basis in the Tariff Order dated 12.07.2013.

Regarding consideration of depreciation towards the capital works executed by the Appellant during the FY 2010-11 and FY 2011-12, the Commission has considered the weighted average depreciation rate of 5.11% for the additional capital assets as specified in the Appendix-II of the MYT Tariff Regulations, 2010, instead of considering the depreciation rate of 6% as requested by the Appellant.

12.3 We have also gone through the views of the Commission in the Impugned Order and found that the Commission has rightly taken the weighted average rate of assets capitalized as per Appendix-II of the MYT Tariff Regulations, 2010 as 5.11% instead of 6% as requested by the Appellant. In the Appendix-II, the rate of depreciation for most of the assets pertaining to generating stations varies between 3.34% to 5.28%. Hence, considering weighted average rate of 5.11% by the State Commission is logically correct.

The expenditure on additional capital works has been incurred from FY 2010-11 to FY 2012-13. As contested by the Appellant. If the 90% of the cost of the additional assets is taken into consideration within the useful life of HTPS Thermal Station, then the amount of depreciation amount along with remaining depreciation amount of the plant i.e. as on 31.03.2010 will lead to abnormally high and thereby the consumer has to bear the tariff shock. In view of this, the Commission decided to spread the depreciation amount with respect to expenditure incurred on additional capital assets upto the actual life of the plant i.e. upto the FY 2015-16, we have considered only the depreciation amount pertaining to additional capital works has to be adjusted from FY 2010-11 to FY 2015-16.

- 12.4 Further, the Appellant has proposed depreciation on additional capitalization during the year on pro-rata basis and as per the rates specified in the Appendix-II of the MYT Tariff Regulations, 2010.

The Commission in the final true-up order accepted the methodology submitted by CSPGCL and has accordingly estimated the depreciation cost for FY 2011-12 and 2012-13.

- 12.5 Thus, we feel that the rate of depreciation allowed for the additional capital works executed for the HTPS Thermal Station

as per Appendix-II of the MYT Regulations, 2010 is justified and thus the issue is decided against the Appellant.

13. **Issue No. 3: Whether the State Commission erred in considering the inflation factor of 5.72% for FY 2011-12 and FY 2012-13 towards O&M expenditure instead of considering the actual inflation factor for the power plants of the Appellant violating the MYT Regulations 2010?**

14. The following are the submissions made by the Learned Counsel of the Appellant:

14.1 that the O&M expenses for generating stations of the Appellant were to mean the total of all expenditure under the heads of employee costs, repairs and maintenance (R&M) expenses and administrative and general (A&G) costs. Further, as per Regulation 5.4, costs on account of inflation were to be construed as uncontrollable item and any financial impact there are during the process of true-ups was to be passed on to the beneficiaries through the next ARR.

14.2 that the Appellant quoted the views of the Commission. The Tariff Order dated 28.04.2012 which is as under:

*“3.50 However, the Commission accepts the submission made by petitioner with respect to impact of uncontrollable items like inflation and statutory levies like water tax on O&M cost as these are costs which are not in hand of the petitioner and have to be revised as per prevailing rates.*

*3.51 ..... Further as the CSERC's MYT Regulations 2010 allow for pass-through of any increase related to inflation, the Commission reviews the applicable inflation rate for FY 2010-11. To estimate the actual inflation rate applicable for FY 2010-11, the Commission has considered a weighted average of WPI & CPI increase during the year in the ratio of 80:20, respectively.*

*Accordingly the applicable revised inflation rate for FY 2010-11 works out to be 9.74% and same has been applied on base O&M expenses for FY 2009-10. It is notable that in the initial estimation the escalation factor of 5.72% was also derived by considering 80:20 mix of WPI and CPI of the five years period for FY 2003-04 to FY 2008-09. Now with actual inflation figures for FY 2010-11, firmly in place the factor has been trued up accordingly.*

3.52 .....

*3.53 However, it should be noted that the Commission has only passed through the actual increase in inflation in FY 2010-11, in case of FY 2011-12 & FY 2012-13; the escalation factor is assumed to be 5.72% p.a. only as approved in MYT Order. This rate would be trued up at the time of true up for respective financial years.”*

14.3 that the Commission thus provided the actual increase in inflation at the time of truing up. However, in the computation part the treatment was limited to KTPS and HTPS only and the same was not extended to DSPM thermal power station. No reason for discriminatory treatment was provided in the Order.

14.4 that thereafter when the Appellant filed its petition for final true up of the ARR for FY 2010-11 and provisional true up of the ARR for FY 2011-12, and also when the Appellant filed its Petition for final true up of ARR for FY 2011-12 and FY 2012-13 for thermal generating stations, submitted before the Respondent Commission has adopted annual escalation factor based on WPI and CPI variations published in the website of Reserve Bank of India on the normative O&M expenses value for FY 2010-11 and for computing the normative value for FY 2011-12 and FY 2012-13.

14.5 that the Commission has allowed in the Impugned Tariff Order the effect of actual inflation based on WPI and CPI on the normative O&M cost of other thermal power stations of the Appellant at the rate of 8.80% and 8.00% for FY 2011-12 and FY 2012-13, it has declined to allow the same for DSPM Thermal Power Station. The Commission thus continued with the discriminatory treatment by adopting actual annual escalation factor for HTPS and KTPS and assumed escalation factor for DMPS. The Appellant submits that such a discriminatory treatment was clearly in violation of the MYT Regulations. The effect of actual inflation for all plants of the Appellant was to remain the same and could not be differentiated on the basis of date of their commercial operation. The Respondent Commission was liable to allow inflation factor of 8.80% and 8.00% for DSPM TPS as well for FY 2011-12 and FY 2012-13 respectively instead of the 5.72% considered for both years in the impugned Tariff Order.

14.6 that the Respondent Commission has submitted in its Written Submissions before this Tribunal that the Commercial Operation Date for DSPM plant is after 1.4.2005. In accordance with the proviso to Regulation 26A(3), for new units/stations coming into commercial operation after 1.4.2005, the Commission has adopted norms specified under the CERC (Terms and Conditions

of Tariff) Regulations, 2009 as amended from time to time and therefore escalation rate for DSPM is different from the rates adopted for other plants. The Appellant submits that the reasoning now being given by the Commission is only an afterthought. In spite of detailed submissions by the Appellant in true-up Petition, the Commission has not given any reason in the impugned Tariff Order for allowing discriminatory inflation. Moreover, the Commission's submissions are factually incorrect because,

- (i) Regulation 26 A(2) does not contain escalation rate to be considered for future projections;
- (ii) inflation projection is not considered different for two different categories of plants. For all the plants, the inflation is considered in a uniform manner at the rate of 5.72% for O&M cost projections;
- (iii) it is a settled principle in the true-up methodology that when for the purpose of projections, uniform escalation rate of 5.72% is adopted for all plants, the Commission ought to adopt a non-discriminatory approach at the time of true up also and should allow impact of actual inflation.

14.7 In view of the above, the Appellant requested to adopt the inflation rate which is considered for the HTPS and KTPS Power Plants for DSPM Thermal Power Station also and further stated that the Respondent Commission's reliance on this Tribunal's Judgment dated 30.05.2014 in Appeal Nos.147, 148 & 150 of 2013, in the matter of Torrent Power Limited vs. Gujarat Electricity Regulatory Commission does not apply in case of

generating stations situated in the Chhattisgarh State and hence the State Commission has to be directed to consider the same inflation factor towards O&M expenditure as considered for HTPS and KTPS Thermal Power Plants to DSPM Thermal Power Plant also.

15. **Per Contra**, the following are the submissions made by the Counsel of the Respondent, Chhattisgarh State Electricity Regulatory Commission (CSERC):

15.1 that the Appellant has raised an issue with the level of O&M expenses allowed by the State Commission. The State Commission has allowed inflation factor of 5.72% for 2011-12 and 2012-13. The Appellant has contended that the State Commission has adopted discriminatory treatment by adopting actual annual escalation factor for HTPS and KTPS generating stations and assumed escalation factor of 5.72% for DSPM. The Appellant submits that such a discriminatory treatment is in violation of the MYT Regulations, 2010. The Appellant further submits that the inflation for all plants of the Appellant was to remain the same and could not be differentiated on the basis of date of their commercial operation.

In regards to above, it is pertinent to mention here that Commercial operation date for DSPM Plant is after 01.04.2005. In accordance with proviso to Regulation 26 A (3), for new units/stations coming into commercial operation after 01.04.2005, the

State Commission has adopted norms specified under the CERC (Terms and Conditions of tariff) Regulations, 2009 as amended from time to time.

15.2 that in accordance with proviso to Regulation 26 A (2), for plants whose Commercial Operation date is prior to 01.04.2005, for calculation of escalation factor, Commission has adopted methodology specified in the regulations i.e. on the basis of expenses of previous five years. Hence, escalation rate for two different categories of plants is different which has been dealt strictly as per the MYT Regulations 2010 and hence the State Commission decided this issue against the Appellant.

## 16. **Our Consideration and Conclusion on this Issue**

16.1 According to MYT Regulations, 2010, the normative O&M expenses consist of:

- (1) *Operation and Maintenance (O&M) expenses shall mean the total of all expenditure under the following heads:*
  - a) *Employees costs*
  - b) *Repair & Maintenance (R&M) expenses and;*
  - c) *Administrative and General (A&G) costs*
- (2) *The generating company in its filings shall submit the O&M expenses in above heads separately on the basis of available audited/un-audited accounts for the previous five years preceding the base year and also for the base year. The O&M expenses for the base year will be used for projecting the expenses for each year of the control period.*
- (3) *The O&M expenses, for the units/stations coming into commercial operation after 01.04.2005, shall be in accordance with the norms specified in CERC (Terms and*

*Conditions of tariff) Regulations, 2009 as amended from time to time.”*

Further, the Appellant has to submit available audited/unaudited accounts head-wise for the previous five years preceding the base year and also for the base year. Based on these figures, the State Commission will arrive expenses for the base year and will be used for projecting the O&M expenses for each year of the control period.

- 16.2 We have gone through the submissions and Impugned Order and observed that the State Commission considered Regulation 26-A (2) for the generating companies commissioned before 01.04.2005. According to Regulation 26-A (2), the expenses of the O&M expenses of the base year i.e. 2010-11, the State Commission has considered the available audited accounts for the previous five years, preceding the base year and accordingly the O&M expenses of FY 2009-10 has been computed. The O&M expenses thus arrived for FY 2009-10 inflated as per the Consumer Price Index i.e. WPI and CPI and the O&M cost was arrived for the base year 2010-11, the State Commission has considered actual inflation rate and computed the O&M expenses for the HTPS and KTPS Thermal Stations for the FY 2011-12 and 2012-13 by projecting the base rate of 2010-11.

16.3 In case of DSPM Power Plant which was commissioned after 01.04.2005 comes under Regulation 26A (3) of the CSERC's Tariff Regulations, 2010.

Accordingly, the State Commission has considered the CSERC's Tariff Regulations 2009.

The relevant part of the CSERC's Tariff Regulations 2009 regarding O&M expenses is as under:

**Operation and Maintenance Expenses**  
(Rs. In lakh/MW)

Year	200/210/250 MW sets	300/330/350 MW sets	500 MW sets	600 MW and above sets
2009-10	18.20	16.00	13.00	11.70
2010-11	19.24	16.92	13.74	12.37
2011-12	20.34	17.88	14.53	13.08
2012-13	21.51	18.91	15.36	13.82
2013-14	22.74	19.99	16.24	14.62

The capacity of DSPM Thermal Power Station is 2x250 MW and the last unit became operational in 2008 and thus for the DSPM Generating Station, the applicable Regulation is CSERC Tariff Regulations, 2009 for computation of O&M cost, as the plant was commissioned after 01.04.2005. As per the CSERC Tariff Regulations for units of capacity of 200MW to 250 MW sets, the O&M costs specified in the CERC Tariff Regulations, 2009 for FY 2009-10 is 18.20 lakhs per MW and for the subsequent years, the escalation factor of 5.72% was taken into consideration for

arriving O&M expenditure for the subsequent years 2010-11, FY 2011-12 etc.

16.4 Further, this Tribunal has dealt with a similar situation in Appeal no. 147, 148 & 150 of 2013. In the aforementioned appeals, the Gujarat State Electricity Regulatory Commission (GERC), in the MYT order dated 06.09.2011 for control period 2011-12 to 2015-16 had approved O&M expenses based on normalized expenses of previous three years with escalation @ 4%. However, there has been variation in actual O&M expenses which has not been allowed. The appellant, Torrent Energy in the aforementioned appeal, *inter alia*, contended that the GERC had assumed lower than actual inflation levels. This Tribunal has disallowed the claim of Torrent Energy to allow actual inflation rate in place of escalation factor of 5.72% provided by GERC while truing up of O&M expenses. Hence, the State Commission has approved O&M for DSPM in line with Regulations. The relevant extracts of the judgment is as below:

*“32. Regulation 23.2(h) specifies that variation in Operation and Maintenance expenses are controllable.*

*33. Thus, the Appellant can claim variation in Operation & Maintenance only to the extent it is covered under the uncontrollable factors specified under Regulation 23.1.*

*34. The Appellant has stated that one of the reasons for the variation in O&M expenses is due to higher inflation rate based on weighted average of WPI and CPI with weight of 60 and 40 respectively for FYs 2009-10, 2010-11 and 2011-12 is more than 4%. We find that the Regulation 98.6 for O&M expenses*

*provides that O&M expenses shall be derived on the basis of the actual O&M expenses for 3 years ending 31.3.2010. The average of such O&M expenses shall be considered as O&M expenses for FY 2008-09 and shall be escalated at escalation factor of 4% to arrive at the O&M expenses of FY 2011-12. The O&M expenses for subsequent years will be determined by escalating the base expenses determined for FY 2011-12 at the escalation rate of 5.72%. The Regulations specify fixed escalation factors to arrive at the base year O&M expenses and thereafter for determination of O&M expenses for the subsequent years. There is no provision for true up of escalation factor for 3 year period ending 31.3.2010 and escalation factor of 4% used to arrive at O&M expenses of FY 2011-12. The escalation factor for determining the O&M expenses for subsequent year of the control period from the base year O&M expenses of FY 2011-12 is also fixed at 5.72%. However, under the proviso to Regulation 23.1, if an applicant believes that there is material variation in performance for any financial year on account of uncontrollable factors then such applicant may apply to the Commission for inclusion of such variable and the State Commission at its discretion will consider the same.*

35. *We find that the Appellant has not provided evidence to establish that the factors responsible for variation in O&M expenses are covered under Regulation 23.1 and has also not provided material to establish its claim that these factors have affected material variation in its performance on account such uncontrollable factor”.*

Accordingly, the State Commission arrived at the O&M expenses for the base year towards DSPM Power Plant and considered 5.72% escalation as per the CERC's Tariff Regulations, 2009 and accordingly computed the O&M expenses for the FY 2011-12 and FY 2012-13. We do not find any mistake done by the State Commission with respect to DSPM Power Plant because the State Commission strictly followed the Tariff Regulations 2010.

- 16.5 Thus, we do not find any perversity or infirmity in the decision of the State Commission in the Impugned Order dated 12.06.2014 in computing the O&M expenses of the Appellant's Thermal Station. Accordingly, this issue is decided against the Appellant and impugned order is upheld on this issue.
17. **Issue No. 4: Whether the State Commission erred in not relaxing the norms for Auxiliary Consumption and Station Heat Rate for Korba Thermal Power Station for FY 2011-12 and FY 2012-13?**
18. The following are the submissions made by the Counsel of the Appellant:
- 18.1 that the Appellant submitted that in view of the inclusion in the auxiliary consumption formula of transmission losses and the Generator Static Excitation system load, the auxiliary consumption of 9% allowed in the Regulation on the basis of 5 year historic data was required to be revisited and modified to 9.9% and actual auxiliary consumption of 9.58% for FY 2010-11 was to be accepted on its basis. Similarly 11% auxiliary consumption was required to be allowed for Korba Thermal Power Station (KTPS).
- 18.2 that in addition to the pleading for review of Auxiliary consumption benchmark due to change in metering points with respect to the operational parameter of Station Heat Rate (SHR) for the purpose of provisional true up of ARR for FY 2010-11, the Appellant submitted the performance of KTPS as under:

<b>PARAMETER</b>	<b>UNIT</b>	<b>APPROVED</b>	<b>ACTUAL</b>
Station Heat Rate	Kcal/kwh	2975	3187

18.3 that the Commission once again declined to exercise the power of relaxation of norms vested in it under the MYT Regulations despite specifically observing and agreeing that there was lack of achievability benchmarks for small sets such as those in KTPS and that the performance parameters as per the targets fixed in the MYT Regulations and the Tariff Order required an expert study so as to arrive at more rational and realistic targets.

18.4 that the Appellant with respect to auxiliary consumption, reiterated before the Commission that with the change in computation formula for arriving at auxiliary consumption and addition of two new components therein the form of transmission losses and Generator Static Excitation system load, the benchmarks are required to be realigned by increasing the auxiliary consumption and at the same time deducting it from the transmission losses.

18.5 that the Appellant submitted that the study conducted by CPRI is submitted to the Commission considered the same and after prudence check vide Tariff Order dated 12.07.2013, adopted the norms based on the recommendations of CPRI Study done in

2012-13 set out therein for the next control period of FY 2013-14 to FY 2015-16. In the same Tariff Order, the Commission also carried provisional true up for FY 2011-12, Further, it refused to consider the relaxation/revision of norms on the ground, *inter alia*, that -

- (i) the matter of Regulations could not be reviewed through the Tariff Order;
- (ii) the norms approved for the Appellant's generating stations in the MYT Regulation were based on detailed deliberations and hence there was no merit in reviewing the same in the middle of the control period;
- (iii) the Commission had already deliberated the issues in the previous tariff order.

The result was that despite adoption of the detailed expert study submitting revision in operational norms, the Commission decided to grant the relief from FY 2013-14 onwards. Consequently, the Appellant was saddled with unrealistic and unreasonable operational norms for its generating stations despite there being an express power to relax the said norms if the circumstances so required.

18.6 that thereafter, in its petition for final true up of FY 2011-12 and FY 2012-13, the Appellant submitted that it had been raising concerns regarding need for re-fixation of the norms of performance parameters for KTPS in many of its previous petitions. Further, the relief had been granted only after completion of the CPRI Report and that too from FY 2013-14

onwards. Once a third party determination of achievable parameters had attained finality in light of the provisions of the Act, the National Tariff Policy and certain judicial precedents, adoption of realistic benchmarks for the purpose of true up was not only desirable but was in the larger interest of justice too. It was also submitted that the Regulations provided sufficient margin for such relaxation at the time of true up. The CPRI report became available only in 2012-13 and as such, any filing on its basis was simply not possible in the previous petitions. The Appellant therefore submitted that for true up of FY 2011-12 and FY 2012-13, the norms set for operational parameters for KTPS be revised in line with the achievable parameters determined by the Commission on the basis of the CPRI study. However, vide the impugned Tariff Order dated 12.6.2014, though the computations made in the sharing of gains/loss table were not clear, in the logical portion the Commission reiterated and held that the issue had been dealt with in its earlier Tariff Order dated 12.7.2013 where the operational norms for the generating stations of the Appellant had been approved as per the MYT Regulations based on detailed deliberations so that the same norms were required to be retained.

19. **Per Contra**, the following are the submissions made by the Counsel of the Respondent, Chhattisgarh State Electricity Regulatory Commission (CSERC):

- 19.1 that the Appellant has contended that the State Commission has erred in declining to exercise the power of relaxation vested in it under the MYT Regulations, 2010 and insisting on performance parameters allegedly in contravention of the National Tariff Policy. The Appellant submits that the State Commission has specifically erred in allowing levels of auxiliary consumption and Gross Station Heat Rate (GSHR). The Appellant is seeking higher levels of auxiliary consumption, lower GSHR and PLF which should be worked into the formula for energy charges.
- 19.2 that once the norms are notified in the statutory regulations, all parties are bound by the same including the State Commission. The State Commission is not bound to exercise the power of relaxation vested under the provisions of the MYT Regulations, 2010.
- 19.3 that the normative PLF levels were approved for the Appellant under the MYT Regulations 2010 after detailed deliberation and taking cognizance of the past performance of the plants, design, vintage, age and other such factors affecting the PLF of each generating station. This has already been discussed and settled in the State Commission's previous tariff order dated 13.7.2013. There was no merit in the Appellant's request for reviewing the norms in the middle of the MYT control period.

19.4 that in case of DSPM, the Appellant had again prayed for the relaxation of the PLF norms based on various force majeure conditions. In case of DSPM, the Appellant has submitted that during FY 2011-12, the generating plant was extensively damaged by fire. However, such incident was not covered under definition of 'force majeure' as specified under clause 8.3 and 8.4 of the Standard bidding documents issued by Ministry of Power for medium/long term power procurement under Case -1. Similarly, as per provisions of Chhattisgarh State Grid Code, the situation was not covered under force majeure. The State Commission has also taken note of the frequent failures/outages and time taken by the Appellant for restoration of the same. Accordingly, the State Commission was not inclined to consider the loss in PLF levels over the 48 days. However, the State Commission has allowed deemed generation to the Appellant when it was forced to back-down as per directions of the SLDC for grid maintenance while calculation of gain/ (loss).

19.5 that the reasons provided for force majeure by CSPGCL do not fit under any of the conditions which will be considered as force majeure. Similarly, as per provisions of Chhattisgarh State Grid Code also such situation does not cover under force majeure. Various stake holders have also taken serious objection on the frequent failures/ outages and restoration of the same.

- 19.6 that in view of the above, the Commission opines that it is inappropriate to pass the impact of such outages to the end consumers. Accordingly, the Commission maintains its stand taken in order dated 12<sup>th</sup> July, 2013 in this tariff order and disallows plea of CSPGCL and its effect to be passed on to the consumers.
- 19.7 that the operation parameters are approved in line with the Regulations. Accordingly, the State Commission has reiterated the stand taken in the Order dated 12.07.2013 in the Impugned Order and disallowed the Appellant's plea for relaxation.
- 19.8 that the Appellant has further sought enhancement in the normative rates for auxiliary consumption and GSHR. The issue has already been deliberated by the State Commission in its previous tariff order dated 12.7.2013. The State Commission reiterates that the auxiliary consumption norms and the GSHR was approved for the Appellant's generating stations in the MYT Regulations, 2010 after detailed deliberation and after taking cognizance of the past performance of the plants, design, vintage, age and other such factors affecting the auxiliary consumption of each generating station.
- 19.9 that the Appellant has only repeated its past submissions such as SHR being high due to inherent specifications of plant related to its design, vintage, age, etc. and not because of any inefficiency

on part of the Appellant, unrealistic benchmark, need for environment scan. However, these arguments have already been considered and rejected by the State Commission in its earlier tariff order dated 13.7.2013. Further, the State Commission has to balance the interests of consumers with that of the generating station as any relaxation of the MYT Regulations, 2010 as sought by the Appellant will result in further increase in the tariff which will cost additional burden on the ultimate consumers of electricity.

## 20. **Our consideration and Conclusion on this issue**

20.1 The main contention of the Appellant is that the State Commission failed to consider the Auxiliary Consumption and Station Heat Rate at 11.25% and 3110 kCal/kWh respectively for the KTPS Power Plant for the FY 2011-12 & 2012-13 by relaxing the norms specified.

a) **Auxiliary Consumption:** Let us examine the relevant definition with regard to auxiliary consumption as per Regulation 3.6 of MYT Tariff Regulations 2010 is as under:

*“3.6 Auxiliary Energy Consumption or AUX in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipments of the generating station, and transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station”.*

It is evident from the above that the Auxiliary consumption includes on account of transformer losses and system excitation losses. The Relevant formula for computation of Auxiliary Consumption as specified in MYT Tariff Regulation is as under:

$$\text{Auxiliary Consumption = } \frac{\text{Consumption recorded by UAT + Consumption recorded by station transformer x100}}{\text{Gross generation recorded at generator terminals}}$$

(as per old MYT Regulations)

However, the above formula changed in CSERC MYT Regulations, 2010 as:

$$\text{AUX = } \frac{\text{Generation recorded at Gen. Terminals - Sent out energy recorded at HT side of GT x100}}{\text{Gross generation recorded at Generator Terminal}}$$

Thus, the contention of the Appellant is that as per the new formula, the losses of the generator's transformer unit, auxiliary transformer and reserve transformer losses are taken into consideration in the formula and thereby the Appellant is unable to satisfy the norms specified in the MYT Tariff Regulations, 2010.

According to definition of the auxiliary consumption of Tariff Regulations 2010, the auxiliary consumption of the generating station is gross-generation – (minus) transformer losses within the generating station and energy consumed by auxiliary equipment of the generating station. The definition clearly specifies the auxiliary consumption after taking into consideration transformer losses of the generator transformer, etc.

Thus, we feel there is no ambiguity in computation of Auxiliary Consumption considered by the Commission.

The Commission has specified the norms for Korba East Complex Thermal Station (KTPS) having capacity of 4x50 MW + 2x 120 MW as follows:

	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
Auxiliary Consumption	10.4%	10.35%	10.3%

The Commission has fixed these norms in the MYT Regulations after taking past performance of the similar type of plants, designs, vintage, age and others such factors of similar capacity thermal power plants.

In our opinion, the norms fixed by the State Commission in the MYT Regulation, 2010 duly considering the design aspects of similar plants and discussed these aspects at the time of public hearing with various stakeholders before approving the Tariff Regulations.

The generating company has to conduct the energy audit regarding the consumption of electricity by various auxiliary equipment of the generating station and the preventive methods such as replacing the old auxiliary motors by high efficiency/star rated motor, fixing of suitable shunt capacitor depends upon the capacity of the motor and maintaining the auxiliary equipment in good condition by replacing the worn out parts etc.

Thus, by reducing the auxiliary consumption, the available power generation from the plant will increase and thereby the generation cost per unit will be reduced and thereby the end consumers are benefited. Claiming higher percentage auxiliary consumption i.e. 11.5% is not correct. The contention of change in methodology for computation of auxiliary consumption leading to difficulty in achieving the norms is not justifiable.

We find the norms specified in the MYT regulations towards Auxiliary Consumption for the FY 2011-12 and FY 2012-13 is 10.3% which is very much reasonable in case of smaller power plants like KTPS. Thus, the contention of the Appellant to consider 11.5% towards Auxiliary Consumption is not correct.

- b) With regard to Station Heat Rate, the State Commission has specified in its MYT Regulations 2010 after taking cognizance of the past performance of the plants, design, vintage, age & other such factors affecting the determination of SHR and as such they shall not be revisited within the MYT Control Period.

Further, in the Regulations, the State Commission specified the Station Heat Rate (SHR) with respect to existing coal based generating stations considered as follows for Korba East Complex Thermal Power Station (4x50 MW + 2x120 MW):

	2010-11	2011-12	2012-13
SHR	2975 kCal/kWh	2950 kCal/kWh	2925 kCal/kWh

The Appellant has prayed to consider the SHR for KTPS plant as 3110 kCal/kWh.

20.2 The Appellant has contested that the KTPS Thermal Power Station is having smaller generating units of 50 MW capacities and 120 MW capacities each and also stated that the units of KTPS Thermal Power Station completed their useful life and hence the performance is deteriorated and prayed the Commission to consider higher/actual performance parameters.

20.3 The State Commission considering the arguments and requests of the Appellant directed to engage a neutral reputed third party agency such as CEA/CPRI/NTPC to conduct study within three months to assess reasonable performance parameters.

The Appellant has engaged M/s CPRI to carry out the study. Accordingly, the State Commission took the cognizance of CPRI report for fixation of target for the next control period i.e. from 2013-14 onwards.

20.4 The CPRI Report was not placed before this Tribunal. However, we direct the Appellant to initiate the guidelines specified in the CPRI Report for improving the performance parameters of the CSPGCL thermal plants.

20.5 We do not find any infirmity in the Impugned Order of the Commission. Thus, we are deciding this issue against the Appellant.

21. **Issue No. 5: Whether the State Commission erred in computing O&M expenses of the Appellant's Thermal Plants for FY 2013-14 to 2015-16?**

22. The following are the submissions made by the Counsel of the Appellant, CSPGCL:

22..1 that the methodology regarding normative O&M expenses station-wise have been provided by the Respondent Commission in the MYT Regulations for subsequent control period of FY 2013-14 to FY 2015-16. In its MYT Order dated 30.7.2013 for the said control period, though the Commission has allowed O&M expenses for old power stations based on historical costs, the basis (computation) for the same has not been provided; in fact, when the Appellant has attempted a computation check, it has yielded different results for different plants.

22.2 that the Appellant has submitted the difference in computation for consideration of the Commission and requested that the same may be revisited and rectified by the Commission. The Commission in its reply dated 23.10.2013 has granted leave to the Appellant to raise the issue with reason and justification at the time of next tariff petition. The Appellant has accordingly raised the issue with detail computation and justification in the next tariff

petition, but in the impugned Tariff Order, no finding on the same has been returned by the Commission. The result is that the Appellant's O&M expenses computation continues to suffer from infirmities, thus denying the Appellant of its entitled O&M expenses.

22.3 that in its Written Submissions before this Tribunal, the Respondent Commission has stated that it has inadvertently not dealt with this issue even though the same has been raised by the Appellant in its Petition before the Commission. The Commission has therefore stated that the issue may be remanded back to it for fresh consideration. In recent Tariff Order dated 23.5.2015, though for true-up of Financial Year 2013-14, the Commission has considered the revised corrected value, but the Commission has not rectified the error for Financial Year 2015-16.

23 **Per Contra**, the following are the submissions made by the Counsel of the Respondent:

23.1 that the State Commission has inadvertently not dealt with this issue even though the same was raised by the Appellant in its petition before the State Commission. Therefore, this issue may be remanded back to the State Commission for fresh consideration and passing off appropriate orders.

23.2 that the State Commission's power of relaxation under the MYT Regulations, 2010 is discretionary in nature which has been

rightly and properly exercised by it in passing the Impugned Order while determining the Appellant's generation tariff and truing up the financials for the previous control period from FY 2010-11 to FY 2011-12.

23.3 that in the present matter, the State Commission has correctly and properly exercised the discretion vested in it under the MYT Regulations, 2010 and has rightly refused to relax any of the provisions of the MYT Regulations, 2010. The power of relaxation must be exercised sparingly. The Appellant has also failed to give any reason whatsoever justifying the requirement of relaxation. The Appellant has simply raised issues which were already dealt with under the tariff order dated 12.7.2013. In this matter, no case is made out by the Appellant for exercising discretion to relax the provisions of the Regulations in favour of the Appellant.

#### **24. Our consideration and Conclusion on this issue**

24.1 The contention of the Appellant is that the Commission allowed O&M expenses for old power stations based on historical costs, the basis (computation) for the same has not been provided and the Appellant has found certain deviations in the computation of O&M costs, done by the State Commission and the same was submitted to the State Commission vide Appellant's letter dated 29.08.2013.

24.2 According to the Regulations, the State Commission has to compute O&M expenses for the base year i.e. 2012-13, based on the weighted average inflation at 60% weightage to the actual variation in CPI and 40% to actual variation in WPI.

24.3 We have gone through the relevant regulations deals with O&M expenses for Thermal Power Station i.e. MYT Tariff Regulations, 2012. The relevant part is as under:

***“40.1 Thermal Generating Station:***

- (b) The Operation and Maintenance expenses, excluding water charges, pension fund contribution and impact of pay revision arrears for the base year i.e. FY 2012-13, shall be derived on the basis of the normalized average of the actual Operation and Maintenance expenses excluding water charges, pension fund contribution and impact of pay revision arrears available in the audited/un audited accounts for the previous three (3) years immediately preceding the base year FY 2012-13, subject to prudence check by the Commission.*
- (c) The normalization shall be done by applying weighted average inflation at the rate of 60% weightage to actual variation in CPI and 40% weightage to actual variation in WPI on year to year basis. The average of normalized net present value for 2009-10, 2010-11 and 2011-12, shall then be used to project base year value for 2012-13. The base year value so arrived, shall be escalated by the above inflation rate to estimate the O&M expense (excluding impact of pay revision, if any) for each year of the control period.*
- (d) At the time of true up, the O&M cost shall be considered after taking into account the actual inflation instead of projected inflation for that period. Provided that water charges shall be pass through in tariff on reimbursement basis:*

*Provided further that impact of pay revision (including arrears) shall be allowed on actual during the true-up as per audited /unaudited accounts, subject to prudence check and any other factor considered appropriate by the Commission.*

*40.2 The O&M expenses for the base year i.e. FY 2012-13, for the units /stations coming into commercial operation after 01.04.2005, shall be considered as under:-*

*40.2.1 The normative O&M expenses as specified in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation 2009 above regulation for the year 2009-10 shall be admissible at the rate of 90% of the value allowed by CERC. Such normative value shall be exclusive of water taxes payable to the State government which shall be passing through to the beneficiary on actual basis. However, except for pension fund liabilities, normative value, so derived, shall be considered inclusive of all expenses incurred to meet head office or holding company expenses.*

*40.2.2 The adjusted value for 2009-10, as arrived above, shall be escalated by the actual inflation at a weighted average of 60: 40 of CPI: WPI ratio, on year to year basis till 2011-12.*

*40.2.3 For projecting the normative value for 2012-13 and onwards, average inflation of last three years (i.e 2009-10, 2010-11, 2011-12) shall be applied. Provided, at the time of true up, the normative O&M cost shall be readjusted to take into account the effect of actual inflation for that period.*

*Provided, further that impact of pay revision (including arrears), if any, shall be considered separately during the true-up as per audited /unaudited accounts, subject to prudence check and any other factor considered appropriate by the Commission”.*

24.4 We have also gone through the Impugned Order and found that the Commission has re-computed the station-wise normative O&M expenses for FY 2013-14 considering the true up O&M expenses for FY 2011-12 in accordance with CSERC MYT

Regulations, 2012. The State Commission verified the CPI and WPI data and has accordingly considered the escalation rate as 8.25% as against 8.22% submitted by CSPGCL for FY 2013-14 of various generation stations which is as under:

**O&M Expenses approved in true-up for FY 2013-14**  
(Rs. Crore)

Station	Normative O&M expenses			Actual O&M expenses	
	MYT Order	CSPGCL Petition	Approved	CSPGCL Petition	Approved
KTPS	195.02	204.93	204.99	186.61	186.61
HTPS	254.36	525.21	252.28	252.88	252.88
DSPM	116.87	115.81	115.84	127.25	127.25
HBPS	12.41	12.62	12.62	9.74	9.74
Korba West TPP (Extn.)	0.00	0.00	0.00	19.54	19.54
<b>Total</b>	<b>578.66</b>	<b>572.95</b>	<b>573.11</b>	<b>596.02</b>	<b>596.02</b>

24.5 We have gone through the Commission's view with respect to O&M expenses for FY 2015-16 and Commission has computed the O&M expenses in accordance with the CSERC's MYT Regulations, 2012. Accordingly, the Commission has approved the O&M expenses of Rs. 98.66 crores for FY 2015-16 as claimed by the Appellant CSPGCL for FY 2015-16.

24.6 However, in view of the submissions of the Learned Counsel for the State Commission, we remind this issue to the State Commission for proper consideration.

**ORDER**

The Appeal being Appeal No. 238 of 2014 is hereby partly allowed to the extent indicated above. The matter is remanded

back to the State Commission to consider the depreciation of capital assets of HTPS Power Plant as specified in Issue No. 1 of this Order. The State Commission shall consider the Issue No. 5 properly. The findings and observations in the Impugned Order stand modified accordingly.

Pronounced in the open Court on this **30<sup>th</sup> day of March, 2016.**

**(T. Munikrishnaiah)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

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