

**COURT – I****IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI****REVIEW PETITION No. 24 of 2015 in  
APPEAL NO. 319 OF 2013****Dated: 25<sup>th</sup> February, 2016****Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. T. Munikrishnaiah, Technical Member****IN THE MATTER OF:**

NTPC Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003

.... Appellant/ Petitioner

**VERSUS**

1. Central Electricity Regulatory Commission,  
3rd & 4th Floor, Chanderlok Building,  
36, Janpath, New Delhi-110001.
2. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Vidyut Nagar,  
Jabalpur-482008.
3. Maharashtra State Electricity Distribution Company Ltd.  
Pradashgad, Bandra (East),  
Mumbai-400051.
4. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhawan, Race Course Road,  
Vadodra-390 007.
5. Chattisgarh State Electricity Board,  
P.O. Sundar Nagar, Danganiya,  
Raipur-492913.
6. Electricity Department, Government of Goa,  
Vidyut Bhawan,  
Panaji, Goa-403001.
7. Electricity Department,  
Administration of Daman & Diu – 396210.

8. Electricity Department,  
Administration of Dadra and Nagar Haveli,  
Silvassa-396230. .... Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Poorva Saigal  
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Rishabh Donnel Singh  
for R.2

## **ORDER**

### **PER HON'BLE MR. T. MUNIKRISHNAIH, TECHNICAL MEMBER**

1. The Appellant/Petitioner, NTPC filed Review Petition under section 120 of the Electricity Act, 2003 read with Order 47 Rule 1 of Civil Procedure Code, 1908 for Review of the judgment dated 05.10.2015, passed by this Tribunal in Appeal No. 319 of 2013 regarding disallowance of Rs.173.15 crores claimed as Additional Capital Expenditure on account of life extension and Renovation and Modernization (R&M) of a unit of Jhanor Gandhar Gas Turbine Station, which is put in operation in the FY 2013-14.
2. The Appellant claimed this expenditure in the Petition No.23/GT/2014 as additional capital expenditure spent on Renovation and Modernization of one unit of Gandhar Gas Turbine Station and the Central Commission in their order dated 11.09.2013 disallowed the additional capital expenditure. Hence, the

petitioner/appellant filed an appeal before this tribunal in Appeal No. 319 of 2013.

3. This tribunal after going through the submissions and hearing the rival contentions of the parties, upheld the decision of the Central Commission in the impugned order dated 11.09.2013 and directed the Appellant to claim this disallowed amount of Rs.173.15 crores towards additional capital expenditure of Gandhar Gas Turbine Station in the next control period i.e. 2014-19 as the R&M work was not completed in the control period 2009-14 and proposed to be completed in FY 2014-15 as per the affidavit dated 07.09.2012 submitted by the Appellant, NTPC (para 18 of Impugned Order dated 11.09.2013).
4. This tribunal while passing the judgement in Appeal No. 319 of 2013 considered the findings of the central commission in the impugned order and the relevant part is quoted below:

*"We have examined the matter. It is observed from the revised phasing of expenditure as projected by the petitioner, the expenditure towards R&M of GTs are to be incurred from 2012-13 onwards only and the major expenditure on R&M, which constitute to 54% (approx) of the total expenditure, is to be incurred during the year 2014-15. Since the complete benefit of R&M in the form of life extension, improvement in operational performance would only be passed to the respondents after the completion of major R&M works during 2014-15, we are of the view that the expenditure on R&M package could only be considered during the next tariff period. We direct accordingly, in view of this, the total net additional capital expenditure of 170.17 crore towards R&M package as allowed by the Commission by order dated 30.12.2011 for the period 2009-14 has not been considered in this order. However, the expenditure claimed on this count would only be considered during the next tariff period for the reasons stated above."*

Accordingly, we felt that the additional capitalization of one unit of Gandhar Gas Turbine Station will be completed during the FY 2014-15 and hence we suggested the appellant to claim the additional capital expenditure during the next tariff control period 2009-14.

5. In the present Review Petition the Appellant prayed to consider the additional capital expenditure spent on one unit of Gandhar Gas Turbine Station which is put in use during the FY 2013-14. Further the Appellant relied on this Tribunal's judgment dated 17.04.2014 in Appeal No. 245 of 2013 wherein this tribunal had given a liberty to present its case before the Central Commission during true up of additional capital expenditure exercised to be carried out by the Central Commission for the control period of 2009-14 after 31.03.2014 as per Regulation 6(1) to enable it to claim additional capitalization actually incurred on the assets which are put to use during the control period 2009-14.

6. This tribunal in the judgment dated 17.04.2014 in Appeal No. 245 of 2013 felt as under:-

*"16.4. The projected expenditure on Gas Turbine Life Extension was indicated as a package and not unit wise schedule and expenditure. The Appellant is now claiming that the additional capitalization on R&M on one GT which was completed during the proceedings before the Central Commission during FY 2012-13 and the projected expenditure for two more GTs during the FY 2013-14 should have been allowed.*

*16.5 We are not inclined to accept the contention of the Appellant. Firstly, no case was made out for true-up of*

*expenditure actually incurred on one GT. Secondly, the projected capital expenditure of the other two GTs which were proposed to be renovated during the FY 2013-14 could not be allowed in the true-up petition under Proviso to Regulation 6(1) as the true up can only be for the expenditure actually incurred.*

*16.6 In view of above, we agree to the observation and conclusion of the Central Commission to the fact that since the complete benefits of Renovation & Modernization (R&M) in the form of life extension and improvement in operational performance would be passed to the respondents/beneficiaries only after the completion of R & M of all the three Gas Turbines in FY 2014-15 and the projected additional capital expenditure claimed for R & M of Gas Turbines could be considered only during the next tariff period, namely, FY 2014-19. The learned Central Commission has not totally disallowed the said claims of the appellant but simply deferred the consideration of the claims of the appellant to the next tariff period viz. FY 2014-2019.*

*16.7 However, we give liberty to the Appellant to present its case for GT wise additional capital expenditure incurred on R&M during the period 2012-13 to 2013-14 during the true up of additional capital expenditure exercised to be carried out by the Central Commission for the control period 2009-14 after 31.3.2014 as per Regulation 6(1), to enable it to claim additional capitalization actually incurred on the assets which are put to use during the Control Period 2009-14. In such an event, the Central Commission shall consider the same and decide as per the law."*

Accordingly, the Appellant prayed to consider the additional capital expenditure of Rs.173.15 Crores spent on one unit of the Gandhar Generating Station during true up of capital expenditure to be carried out for the control period 2009-14 after 31.03.2014.

7. After going through the submissions, we felt it justifiable to consider the prayer of the petitioner in the Review Petition being No. 24 of 2015, and give liberty to the Appellant/Petitioner to present its case

G.T. wise additional capital expenditure incurred on R&M during the period 2012-13 to 2013-14 of one unit of Gandhar Gas Turbine Station during the true up additional capital expenditure exercise to be carried out by the Central Commission for the control period 2009-14 after 31.03.2014 as per Regulations 6 (1) to enable it to claim additional capitalization of Rs.173.15 crores on the assets which are put to use during the control period 2009-14.

8. Accordingly, the Review Petition is allowed and the matter is remanded back to the Central Commission to consider the issue during true up of expenditure incurred in the control period 2009-14 after 31.03.2014 of one unit Gandhar Gas Turbine Station.

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

**(Justice Ranjana P. Desai)**  
**Chairperson**