

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.84 of 2011

Dated: 2nd Jan, 2013

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**M/s. NTPC Limited
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003**

...Appellant

Versus

- 1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001**
- 2. Uttar Pradesh Power Corp. Ltd (UPPCL)
Shakti Bhawan, 14, Ashok Marg
Lucknow-226 001**
- 3. Jaipur Vidyut Vitran Nigam Ltd. (JVVN)
Vidyut Bhawan, Janpath,
Jaipur-302 005**
- 4. Ajmer Vidyut Vitran Nigan Ltd.,(AVVN)
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer-305 001**
- 5. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVN)
Vidyut Bhawan, Janpath,
Jaipur-302 005**

- 6. Delhi Transco Limited (DTL)
Shakti Sadan, Kotla Road, near ITO
New Delhi-110002**
- 7. North Delhi Power Ltd., (NDPL)
Grid Sub Station, Hudson Road,
Kingsway Camp, Delhi-110009**
- 8. BSES Rajdhani Power Ltd., (BRPL)
BSES Bhawan, Nehru Place
New Delhi-110 019**
- 9. BSES Yamuna Power Ltd., (BYPL)
Shakti Kiran Building,
Kakardooma, Delhi-110 092**
- 10. Haryana Power Purchase Centre. (HPPC)
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134 109**
- 11. Punjab State Power Corporation Ltd., (PSPCL)
The Mall, Patiala-147 001**
- 12. Himachal Pradesh State Electricity Board Ltd (HPSEB)
Kumar Housing Complex Building-II
Vidyut Bhawan, Shimla-171 004**
- 13. Power Development Department (J&K)
Govt of J&K,
Secretariat, Srinagar-190 009**
- 14. Electricity Department (Chandigarh)
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9- D,
Chandigarh-160 009**

**15. Uttarakhand Power Corporation Ltd. (UPCL)
Urja Bhavan, Kanwali Road,
Dehradun-248 001 (Uttarakhand)**

.....Respondent(s)

Counsel for the Appellant(s) : Mr. M G Ramachandran, Sr Adv.
Mr. Anand K Ganesan
Ms. Swapna Seshadri,
Ms. Sneha Venkataramani
Ms. Sugatika Sahoo

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. Shashank Pandit
Mr. Manoj Kr Sharma
Mr. Daleep Dhayani
Mr. R B Sharma
Mr. S K Chalumedi

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. The following questions of law will arise in the present Appeal:

- (a) **Whether the Central Commission was right in not allowing the NTPC to retain the capital cost of Wagons which had become unserviceable in the capital base for the purpose of tariff, under the Act, 2003?**

- (b) **Whether the value of initial spares should be included for determination of amount of maintenance spares while computing the interest on working?**

2. This Appeal has been filed by the NTPC challenging the impugned order passed by the Central Commission on 20.4.2011 disallowing the NTPC to retain the capital value of the assets like Wagons which were de-capitalized in the books of accounts and also for excluding the cost of initial spares for determination of maintenance spares for computing the interest on working capital. The short facts are as follows:

- (a) The NPTC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in all over India.
- (b) NTPC, at present owns a number of generating stations situated in different parts of India. One of the Generating Stations of NTPC is the Rihand Super Thermal Power Station, Stage-II located in the State of Uttar Pradesh.
- (c) NTPC on 21.8.2009 field a Petition for revision of the fixed charges after considering the impact of additional capital expenditure incurred during the

period from 2008-09 on the tariff for Rihand Station in accordance with the applicable provisions of the Tariff Regulations, 2004.

- (d) The Central Commission, after hearing the parties passed the impugned order dated 20.4.2011. In this order, the Central Commission has not allowed as an exclusion from the de-capitalisation of certain unserviceable wagons used for transportation of coal amounting to Rs.40.09 lakh.
- (e) In addition to above, while determining the interest on working capital as per Regulation 21 (v) of the Tariff Regulations, 2004, the Central Commission has deducted the value of initial spares from the capital cost to work out the value of maintenance spares thereby reducing the amount of working capital to be allowed to NTPC.

3. In the light of the findings given by the Central Commission, following aspects need to be considered in this Appeal:

- (a) The legality and validity of the disallowance of the claim of NTPC when the cost of wagons should not be de-capitalized for the purpose of tariff and;
- (b) Exclusion of value of initial spares for determination of the amount of maintenance

spares while computing interest on working capital.

4. On these issues, the Learned Counsel for the Appellant has made the following submissions:

- (a) The Central Commission has failed to consider that the assets had become unserviceable and had been de-capitalized for the accounting purpose only.
- (b) The Appellant will have to incur expenditure on the replacement of the above assets in the near future.
- (c) As per the applicable Regulations, the additional capitalization incurred towards the same will not be allowed by the Central Commission. Even after the assets have become unserviceable, the generating company still has the obligation to meet the norms and parameters.
- (d) The Central Commission has not considered the initial spares while calculating maintenance spares on historical cost for calculating interest on working capital in accordance with the Regulations, 2004.

5. The issue of cost of maintenance spares has been decided by this Tribunal in the judgment rendered on 31.5.2011 in Appeal No.169 of 2010.
6. In reply to the above submissions, the learned Counsel for the Respondents made their respective submissions. While the Respondent No.2, Uttar Pradesh Power Corpn Limited (UPPCL) has justified the impugned order, Respondent No.8, BSES Rajdhani Power Ltd (BRPL) though defended the impugned order in respect of the First Issue, has submitted that in respect of the maintenance spares for calculating of interest on working capital, it is in agreement with the submissions made by the learned Counsel for the Appellant.
7. Under these circumstances, the questions that are to be considered in the Appeal which are quoted as above are again referred hereunder:
 - (a) **Whether the Central Commission was right in not allowing the NTPC to retain the value of Capital cost of the Wagons which had become unserviceable in the capital base for the purpose of tariff, under the Act, 2003?**
 - (b) **Whether the value of the initial spares should be included for determination of amount of**

maintenance spares while computing the interest on working capital?

8. The **First issue** is relating to disallowance to retain the value of assets becoming unserviceable in the capital base for the purpose of the tariff.
9. The Appellant in this case claims additional capitalisation during the period from 2008-09 hence the same will be governed by the statutory Regulations known as CERC (Terms and Conditions of Tariff) Regulations, 2004.
10. These Regulations would indicate that the capital cost of generating station is a cost which was incurred in commissioning the plant and any other additional expenditure made for efficient running of the plant. The tariff of the Generating Stations is determined on cost plus basis meaning thereby that any capital expenditure incurred which will enhance the efficiency of the plant will be capitalized and the tariff will be determined accordingly. Similarly, if any asset is taken out of service, then its gross value will be deducted from the capital cost of the plant. The Appellant has claimed to retain the de-capitalized amount in respect of wagons and capitalized spares during the period 2008-09. If the equipment is not rendering any service, the same cannot be retained in the capital cost for the purpose of tariff

as no benefit out of the same is being given to the beneficiaries.

11. The assets which are not in service are to be excluded from the capital cost of the generation station and the same are not rendering any service or benefit to the beneficiaries. It is settled law, that in the cost plus principle any amount spent by the Appellant which gives benefit to the beneficiaries has to be capitalized.
12. Thus, the Commission has rightly refused to retain these negative entries for the purpose of tariff. As such, the tariff of the Appellant Generating Stations has to be determined by the CERC Regulations, 2004 and CERC (Terms and Conditions for Determination of Tariff) Regulations, 2009 cannot be looked into for the purpose of determining the additional capitalization. 2009 Regulations, admittedly, are applicable only for the period from 1.4.2009 to 31.3.2014.
13. Note 2 under Regulation 18 (2) of the 2004 Tariff Regulations clearly stipulate that any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost.
14. According to the Appellant, under Tariff Regulations 2 of 2009, even if new assets are purchased, the same may not

be capitalized as while dealing with a similar claim of NTPC relating to Vindhyachal Station Stage-II, the Central Commission has rejected the same for capitalization and the said order has been challenged by NTPC and is pending for determination before this Tribunal. We feel that the impugned order pertains to additional capitalization during the control period 2004-09 and has to be dealt with as per the 2004 Tariff Regulations. On the other hand, the additional capitalization incurred during the control period 2009-2014 has to be dealt with as per the provisions of the 2009 Tariff Regulations.

15. Therefore, the Central Commission has correctly decided the issue on the basis of the CERC Regulations, 2004 and rejected the claim with respect to the First Issue. This issue has also been decided by this Tribunal in the judgment dated 21.12.2012 in Appeal No.58 of 2011 in the matter of NTPC Ltd Vs. CERC & Others. Hence, we reject the claim of the Appellant on this 1st issue.
16. The **Second issue** is value of maintenance spares for calculating the interest on working capital.
17. This issue has already been decided by this Tribunal in Appeal No.169 of 2010 in the judgment rendered by this Tribunal on 31.5.2011, which supports the claim of the Appellant on this issue. Hence, the order regarding the cost of maintenance spares by the Central Commission is set-aside and

consequently the Central Commission is directed to workout the cost of the maintenance spares in accordance with the Tariff Regulations, 2004 and the judgment dated 31.5.2011 in Appeal No.169 of 2010.

To sum up:

(1) The 1st Issue relating to the disallowance to retain the value of assets becoming unserviceable is decided as against the Appellant.

(2) The 2nd Issue relating to the value of maintenance spares for calculating the interest on working capital is decided in favour of the Appellant.

18. In view of the above findings, the Appeal is partly allowed. The Central Commission may pass consequential orders in terms of the above judgment.

19. There is no order as to costs.

(Rakesh Nath)
Technical Member

Dated:2nd Jan, 2013

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~