

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.41 of 2012

Dated: 21st November, 2012

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

In the Matter of:

**Puducherry Power Corporation Limited
No.10, Second Cross, Jawahar Nagar,
Boomianpet, Puducherry – 605 005.**

...Appellant

Versus

**1. Joint Electricity Regulatory Commission
2nd Floor, HSIDC Office Complex,
Vanijya Nikunj Complex,
Udyog Vihar Phase-V,
Gurgaon – 122016,
Haryana.**

**2. The Superintending Engineer-I
Electricity Department, Govt. of puducherry
137, N.S.C Bose Salai, Puducherry – 605 001.**

...Respondent(s)

**Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Swagatika Sahoo**

Counsel for the Respondent(s):Mr. Dinesh Kapoor

J U D G M E N T

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

1. Puducherry Power Corporation Limited is the Appellant.
This Appellant has filed this Appeal as against the tariff order dated 6.8.2011 as well as the Review order dated 03.11.2011 passed by the Joint Electricity Commission.
2. The short facts are as follows:-
 - i) The Appellant, Puducherry Power Corporation Limited is a generating company in the Union Territory of Puducherry operating a Gas Power Station.
 - ii) The 1st Respondent is the Joint electricity Regulatory Commission (Joint Commission).
 - iii) 2nd Respondent is the Electricity Department in the Government of Puducherry, the distribution licensee.
 - iv) The Appellant filed a tariff petition on 29.11.2010 for determination of tariff for its power station for the 2011-12.

- v) The Joint Commission by the order dated 06.8.2011, determined the Annual Revenue Requirements and applicable tariff for the Appellant for the period 2011-12.
- vi) Since there were errors apparent on the face of the record in respect of some issues, the Appellant filed a Review petition before the Joint Commission.
- vii) The Joint Commission after hearing the parties by the order dated 03.11.2011 partially allowed the Review petition on some issues and disallowed the other issues raised in the Review petition.
- viii) As against the said order disallowing the those issues raised by the Appellant this Appeal has been filed.

3. The Appellant is aggrieved of the following aspects in the impugned order.

- i) Capital cost has been fixed at Rs.137.77 crores instead of at Rs.146.45 crores as claimed by the Appellant.

- ii) Normative Annual Plant Availability Factor of the Appellant was fixed at 87% instead of at 85% as per the Tariff Regulations,2009.
- iii) Determination of Auxiliary Power Consumption at 5.5% without considering the actual Auxiliary Power Consumption of the Appellant for the previous years.

4. In elaborating these issues the learned Counsel for the Appellant has made the following submissions.

- i) The Joint Commission has allowed the Capital Cost of Rs.137.77 crores even though the Appellant claimed capital cost of Rs.146.45 crores incurred prior to 31st March,2009. This claim made by the Appellant was on the basis of the Audited Accounts by the Statutory Auditors produced before the Joint Commission. The Appellant actually claimed the capital cost of Rs.146.45 crores in terms of Regulation 22(2) of the tariff Regulators, 2009 which provides that the same shall be considered on the basis of the Audited Accounts. But the said claim was disallowed by the order dated 6.8.2011

without considering the Audited Accounts merely on the ground that the approval of the competent authority for the amount claimed was not obtained. Even though the Regulations do not require the said approval of the Competent Authority, to be provided, the Appellant received those approvals from the Government, which is the competent authority and placed before the State Commission, for allowing the claim of entire amount of Rs.146.45 crores through the Review petition. However, the Joint Commission without considering the said material rejected the claim maintaining the capital cost at Rs.137.77 crores by the order dated 03.11.2011 on the ground that the Appellant/Review Petitioner failed to produce any new material relating to the approval of the competent authority. This finding is wrong. In fact, the approval of the competent authority, namely the Government of Puducherry was actually placed before the State Commission. But the State Commission went wrong in disallowing the

said claim without considering the relevant material produced before the Joint Commission.

- ii) The Joint Commission erred in fixing the Normative Annual Plant Availability Factor at 87% contrary to the provisions of the Tariff Regulations, 2009 of the Joint Commission. In fact, the clause 36 of the Regulations mandates that the components of generation tariff shall be as laid down in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 which provide for Normative Annual Plant Availability Factor of 85%. The Joint Commission has not given any justification in not following the Central Commission's Regulations. When this issue was again raised before the Joint Commission in the Review Petition, the same has been rejected merely on the ground that nothing new has been pointed out by the Review petitioner for review on that issue. This finding is wrong, in view of the fact that the Joint Commission has not followed the

Central Commission's Regulations in deciding the issue.

- iii) In regard to Auxiliary Power Consumption, the Appellant both in the main petition as well as in the Review petition sought for a relaxation pertaining to the norms of Auxiliary Power Consumption. This was rejected by the Joint Commission maintaining Auxiliary Power Consumption at 5.5 % merely on the ground that the said finding was on the basis of the Central Commission's Regulations. This finding is also wrong because, the Appellant made specific prayer before the Joint Commission seeking for the relaxation and prayed for Auxiliary Consumption on actuals in view of the past performance. But this prayer was not considered by the Joint Commission.
5. We have heard the learned Counsel for the Appellant who argued at length. We have also heard the learned Counsel for the Joint Commission, who argued in justification of the impugned orders. On behalf of the Electricity Department of Puducherry Government, the 2nd Respondent, nobody

entered appearance before this Tribunal, even though the claim of the Appellant raised before the Joint Commission was vehemently objected to by the Department, the 2nd Respondent.

6. In the light of the rival arguments advanced by the learned Counsel for the Appellant as well as the learned Counsel for the Joint Commission, the following questions would arise for consideration:-

- i) Whether the order of the State Commission on the issue of determination of capital cost is contrary to the Regulation 22(2) of the Tariff Regulations,2009?
- ii) Whether, once Normative Annual Plant Availability Factor has been prescribed in Regulation 36 of Tariff Regulations,2009, the Joint Commission can refuse to follow the same?
- iii) Whether the Joint Commission should have relaxed the Normative Auxiliary Consumption provided in the Tariff Regulations,2009 as claimed by the Appellant?

7. Let us now discuss each of the issues one by one.

8. The first issue relates to the Capital Cost. The finding given by the Joint Commission both in the impugned order dated 6.8.2011 as well as the Review order dated 03.11.2011 would now be quoted. The finding in order dated 6.8.2011 is as follows:-

“ 4.6.1. Capital Cost.

For the calculation of various capital cost based components of AFC, the gross fixed assets as of 31.3.2011 has been taken as Rs.146.45 Cr by PPCL.

As per clause 22(1) Capital Cost and Capital Structure, the approved investment plan of the generating company shall be the basis for determining the relevant components for each financial year.

While replying to the objection raised by EDP regarding Capital Cost, PPCL has not been able to substantiate through any documentary evidence the capital cost of Rs.146.45 Cr. As of 31.3.2011 bears approval of a Competent Authority.

Therefore, for the present purpose the Gross fixed Asset/Capital Cost as of 31.3.2011 has been limited to Rs.137.77 Cr. The cost based on which the tariff initially was determined and approved by the then Competent Authority.”

9. The finding in the Review order dated 03.11.2011 is as follows:-

“Capital Cost”

Nothing new has been pointed out by the petitioner. The petitioner failed to produce any documents related to

approval of competent authority of Rs.146.45 Crore as capital cost.

10. According to the Appellant, the Regulation 22(2) of the Regulations,2009 had not been followed by the Joint Commission while passing the impugned order dated 6.8.2011. Let us now quote the Regulation 22 of Regulations,2009 which reads as follows:-

22. Capital Cost and Capital Structure

1) The approved investment plan of the generating company or the licensee shall be the basis for determining, the relevant components of ARR for each financial year.

Provided that only those projects/works shall be capitalized that have been completed and put to use.

2) Investments made prior to and up to 31st March immediately preceding the date of the notification of these Regulations or date of receipt of a petition of tariff determination, whichever is earlier shall be considered on the basis of audited accounts or approvals already granted by the Commission.

11. The reading of Regulation 22(2) would show that for determination of the capital cost, the Joint Commission shall consider investments on the basis of the audited accounts or approvals already granted by the Joint Commission.
12. According to the Appellant, the Appellant had claimed an amount of Rs.146.45 crores as Capital Cost based upon

the Audit accounts of the Appellant as audited by the Statutory Auditors, but this had not been taken into consideration by the Joint Commission despite the Regulation 22(2). We find substance in this submission.

13. It cannot be disputed that Regulations 22(2) provides that the Joint Commission shall fix Capital Cost on the basis of the Audited accounts. On the other hand, the Joint Commission without considering the Audited Accounts allowed Capital Cost of Rs.137.77 crores only out of the claim of Rs.146.45 crores on the ground that the approval of the competent authority was not obtained. This is not the proper approach firstly because the Audited Accounts should have been scrutinised, secondly, the approval of the competent authority was not contemplated under Regulation 22(2).
14. Even though the Regulation does not require the approval of the competent authority, the Appellant, in fact, obtained the said approval from the Puducherry Government, which is the competent authority and placed before the Joint Commission praying for re-consideration of the issue in the Review. However, the Joint Commission again rejected the said claim merely on the ground that “nothing new” has been pointed out by the petitioner. This finding is factually wrong.

15. As a matter of fact, while the Appellant filed a Review petition, an affidavit was filed on 21.10.2011 that approval obtained from the Government has been submitted before the Joint Commission for the purpose of Review petition on this issue. When such a material had actually been placed before the State Commission there was no reason for the Joint Commission to observe in the Review order that nothing new had been pointed out. As quoted above, the perusal of Review order dated 03.11.2011 would show that the said claim was rejected only on the ground that “nothing new” has been produced by the petitioner/Appellant. This amounts to non application of mind.
16. Be that as it may, The Joint Commission should have considered the Audited Accounts as provided under Regulation 22(2) and decided the issue. This was not done. Instead, the Joint Commission rejected the claim for 146.45 crores on the simple ground that the approval of the competent authority was not obtained and filed. There was no reason as to why the Joint Commission insisted for the same. Similarly, there was no reason for the State Commission to reject the said claim through the Review order that “nothing new” was pointed out by the petitioner, although the said approval was produced along with Review Petition. Therefore, the finding with reference to

this issue referred to by the Joint Commission, in our view, is wrong.

17. It is noticed that the Joint Commission has actually acknowledged the fact that the Capital cost of the Appellant was estimated at Rs.146.45 crores and the same had also been considered for calculating the asset wise depreciation table as quoted by the Joint Commission. Having acknowledged the same, the Joint Commission should have scrutinised the Auditors Accounts produced by the Appellant and considered the approval obtained from the Government namely competent authority and passed the order after prudence check in accordance with law.
18. In this context, it is appropriate to quote the judgment of Hon'ble Supreme Court on this issue. The Hon'ble Supreme Court in the case of West Bengal Electricity Regulatory Commission Vs. CESC Limited, (2002) 8 SCC 715 has held that the audited accounts is to be taken as the base upon which prudence check can be conducted by the Regulatory Commission. The Hon'ble Supreme Court has held as under:

“96. The High Court further came to the conclusion that in view of the fact that there is no challenge to the accounts of the Company by the consumers, the said accounts of the Company should be accepted by the Commission. Here, again we are not in complete agreement with the High

Court. There may be any number of instances where an account may be genuine and may not be questioned, yet the same may not reflect good performance of the Company or may not be in the interest of the consumers. Therefore, there is an obligation on the Commission to examine the accounts of the Company, which may be genuine and unchallenged on that count still in the light of the above requirement of Section 29(2)(g) to (h). In the said view of the matter admitting that there is no challenge to the genuineness of the accounts, we thin on this score also the accounts of the Company are not ipso facto binding on the Commission. However, we hasten to add that the Commission is bound to give due weightage to such accounts and should not differ from the same unless for good reasons permissible in the 1998 Act.”

19. The Joint Commission has failed to consider the Audited Accounts. Hence, the finding rejecting the claim of Rs.146.45 crores is liable to be set-aside. Consequently, the Joint Commission is directed to consider all the documents available on record in the light of the above observation and pass an order after prudence check according to law after hearing the parties once again. Thus, the first issue is answered in favour of the Appellant.
20. The second issue relates to the Normative Annual Plant Availability Factor.
21. Before discussing this issue, it would be proper to refer to the Joint Commission’s finding on this issue both in the impugned order dated 6.8.2011 and Review order dated 03.11.2011 which is as follows:-

“Commission’s Analysis”

In view of the prayer made by PPCL regarding relaxation in NAPAF, FY 2011-12 has been considered for analysis. The Commission observes that as the gas supply has since been restored, there is no ground for any relaxation on NAPAF. From the actual achieved from 2000-01 to 2009-10 it is observed that NAPAF is varying from 91% to 98.84% during the period 2010-11 when fuel supply was restricted they achieved a NAPAF of 78.64% only. For fixing of NAPAF, the FY-2010-11 being abnormal has not been considered. The average NAPAF for the period 2000-01 to 2009-10 comes to 95.24%. The normative NAPAF as adopted by CERC is 85%. The average PLF achieved during this period is 89.2%. The annual generation of 257 MU fixed by CEA for the year 2011-12 corresponds to 90% PAF. This is the first tariff petition filed by PPCL to the Commission. Keeping the above facts in view, the Commission has fixed NAPAF between 85 to 90%, that i.e. at 87% and gross generation of 257 MU as already approved by CEA for FY 2011-12. The Commission, therefore, approves the Normative Annual Plant Availability Factor(NAPAF) AT 87% FOR fy-2011-12 against projection of 85% by PPCL.”

22. In the Review order dated 03.11.2011, the State Commission has given following finding:-

“Nothing new has been pointed out by the Petitioner. The Petitioner has been achieving more than 90% of the PLF in the past. The State Commission finds no merit for Review”.

23. According to the Appellant, the Joint Commission has not followed the Regulation 36 of the Tariff Regulations,2009. Admittedly, in terms of the Tariff Regulations of Joint Commission when no norms or parameters were provided

for generation of electricity under Regulation-36, the specific norms and parameters provided by the Central Electricity Regulatory Commission have got to be applied. We will quote clause 36 of Regulations, 2009:-

“36. Generation Tariff

The components of generation tariff shall be as laid down in the Central Electricity Regulatory Commission(Terms and Conditions of Tariff) Regulations, 2004 as amended by the CERC from time to time.”

24. The Tariff Regulations, 2004 of the Central Commission Regulations have been replaced by the Tariff Regulations, 2009, with effect from 1.4.2009. The provision for Normative Annual Plant Availability Factor according to the Tariff Regulations, 2009 is as under:-

“26. The norms of operation as given hereunder shall apply to thermal generation station:

- (i) Normative Annual Plant Availability Factor(NAPAF)
- (a) All Thermal generating stations, except those covered under clauses(b),(c),(d),(e) & (f) – 85%”

25. The Appellant initially claimed relaxed Normative Annual Plant Availability factor due to shortage of gas in the previous years. However, subsequently, the gas supply became more stable, the Appellant had prayed that Normative Annual Plant Availability Factor at 85% in terms

of Regulation 36 of Tariff Regulations 2009, should be maintained. But this aspect has not been taken into consideration by the Joint Commission. On the other hand, the Joint Commission for the first time has taken position in the reply filed before this Tribunal to the effect that Regulation-36 relied upon by the Appellant is not applicable and the Regulation, which is applicable is Regulations 19. This belated stand taken by the Joint Commission which has not been reflected in the impugned order as well as the Review order can not be accepted. The Regulation 36 of Tariff Regulations,2009 specifically states that components of generation tariff shall be as laid down in the Central Electricity Regulatory Commission(terms and conditions of tariff) Regulations,2004.

26. As indicated above, this has been repealed and replaced by the Tariff Regulations,2009 by referring to the Normative Annual Plant Availability Factor in Clause 36 of the Regulations. This signifies that there is a mandate of Joint Commission to adopt the provisions of the Central Commission's Tariff Regulations. The Joint Commission, in fact notified Tariff Reagulations,2009 as per Section 61 of the Electricity Act,2003 which requires the Joint Commission to be guided by the principles and methodology contained in the Tariff Regulations of the Central Commission. Since the Joint Commission had

adopted the Central Commission's Tariff Regulations in some aspects, all the norms and parameters shall be as per the Regulations of the Central Commission and consequently, the Normative Plant Availability Factor should have been fixed at 85% only.

27. With reference to the said issue, the Appellant has brought to the notice of the Joint Commission that the National Tariff Policy mandates the norms and parameters to be determined on Normative basis and not actual or Normative whichever is higher. On this issue, the Tribunal has given a judgement in Appeal 42&43 of 2008 dated 31.7.2009 and Appeal No.94 & 96 of 2006 dated 14.11.2006.
28. According to the Appellant, all these aspects as well as the judgment of this Tribunal, had been placed before the Joint Commission, but the same had not been considered by the Joint Commission.
29. As correctly pointed out by the Appellant, once the norms have been fixed, the same have to be followed and applied. When the norms and parameters have been prescribed by the Central Commission Regulations, the same have to be followed unless it is justified that it is not feasible to follow Regulations of the Central Commission. No such justification was made by the Joint Commission for

rejecting the claim of the Appellant to apply the Central Commission Regulations.

30. That apart, the Regulation 19 relied upon by the learned Counsel for the Joint Commission would not apply to the present case as the said Regulation only deals with the tariff filing and not with reference to the manner of fixation of the norms. This manner of fixation of norms have been provided only in Regulation 36 which adopts the Central Commission Tariff Regulations,2004, as amended from time to time in toto.
31. Therefore, the finding on this issue fixing 87% is wrong as the Appellant's prayer that Normative Plant Availability Factor of 85% in terms of Regulation 36 of Regulations,2009 should be maintained. Hence, the Joint Commission is directed to pass consequential orders on this issue in favour of the Appellant. Thus, 2nd question also is answered accordingly.
32. The last issue relates to the Auxiliary Power Consumption. The Appellant both in the Tariff determination process as well as in the Review proceedings sought a relaxation pertaining to the norms of Auxiliary Power Consumption.
33. According to the Joint Commission, the Auxiliary Consumption was allowed by the Joint Commission taking

into consideration of the averments contained in the Review petition in the Tariff petition as well as the Central Commission Regulations and the CEA recommendations.

34. Now, let us refer to the averments contained in the Tariff petition of the Appellant.

TARIFF PETITION:-

“4.7

For calculating Energy/variable charges, the Heat rate considered is 2400 Kcal/KWh, based on combined cycle small gas turbine as specified for Assam GPS in CERC Regulation 2009. ASSA GPS has a capacity of 29.1 MW which is of similar range as instant station. Since the machine of the instant station is already ten years old, the degradation factor of the machine is also being taken into account for the computation of heat rate. The auxiliary power consumption(APC) is considered as per actual because the station has electric Gas Booster Compressor pumps due to which auxiliary power consumption (APC) is higher and CEA has also recommended higher auxiliary power consumption (APC) for plants having electric driver Gas booster Compressor. The copy of the CEA recommendations as in its Technical Standard on Operation Norms for CCGT Stations is enclosed as Annexure-IV. Since Natural Gas is supplied at a lower pressure i.e. 3 to 5 Kg/Sq.cm. Electric driver Gas booster compressors are required to boost up the gas pressure to 17Kg/sq.cm resulting in increase in auxiliary power consumption(APC). Four electric driven Gas booster Compressors of 300 Kw each has to run to achieve full load. Hence higher actual auxiliary power consumption (APC) may be considered.”

35. Let us now refer to the averments contained in the Review petition.

Auxiliary Power Consumption:

31. In the tariff petition files, the Petitioner had sought the auxiliary power consumption (APC) of the plant as per actual considering the performance of the plant for the previous years. The Hon'ble Commission has allowed the APC at 5.5 % in accordance with the JERC Tariff Regulations.

32. The Hon'ble Commission has not considered the actual performance and age of the plant for determining the APC. As highlighted by the Petitioner, the actual APC of the plant has been much higher than 5.5% since the year 2004-05 owing to the age and deterioration of the plant with age.

33. The Hon'ble Appellate Tribunal for Electricity had held in a number of judgments that the vintage of power plants has to be kept in mind before determining the various operating parameters for the power plant.

36. Now, let us quote the finding given on this issue in the tariff order dated 6.8.2011.

TARIFF ORDER:-

“4.3.2. Auxiliary Power Consumption(APC)

PPCL submitted the actuals of auxiliary consumption for FY 2000-01 to FY 2009-10 and projection for FY 2010-11 and FY 2011-12 as given in the Table below:

Table 4.3.: Auxiliary consumption actuals for earlier years and projection for FY 2010-11 and FY 2011-12.

Year	Auxiliary consumption
(%)	
<i>2000-01(Actuals)</i>	<i>5.45</i>
<i>2001-02(Actuals)</i>	<i>5.30</i>
<i>2002-03(Actuals)</i>	<i>5.43</i>
<i>2003-04(Actuals)</i>	<i>5.47</i>
<i>2004-05(Actuals)</i>	<i>5.65</i>
<i>2005-06(Actuals)</i>	<i>6.00</i>
<i>2006-07(Actuals)</i>	<i>5.90</i>
<i>2007-08(Actuals)</i>	<i>5.98</i>
<i>2008-09(Actuals)</i>	<i>5.94</i>
<i>2009-10(Actuals)</i>	<i>6.41</i>
<i>2010-11(Estimated)</i>	<i>6.70</i>
<i>2011-12(Projected)</i>	<i>6.70</i>

Source – Annexure A of additional information dated 07.02.2011 and Format 12 G of the petition.

PPCL submitted that the auxiliary consumption is considered as per actuals because the station has electric gas booster compressor pumps due to which APC is higher. CEA has also recommended higher APC for plants having electric driver gas booster compressors. Since

natural gas is supplied at a lower pressure (i.e.) 3 to 5 Kg/Sq cm resulting in increase in APC. Four electric driver gas booster compressor of 300 kW each have to run to achieve full load.

Commission's Analysis

According to CERC(Terms and Conditions for Determination of Tariff) Regulations, 2009 the norm of auxiliary consumption for gas turbine generating stations is as follows:

- i) Combined cycle 3.0%*
- ii) Open cycle 1%*

According to CEA guidelines, in cases where electric driver gas booster compressors are part of the auxiliary plant, 2.5% extra auxiliary consumption can be allowed. In view of the above, as the PPCL gas plant is having electric driver gas booster compressors, the auxiliary consumption of 5.5% is approved for FY 2011-12.

The Commission, therefore, approves Auxiliary Power Consumption at 5.5% of gross power generation for FY-2011-12."

37. So, the finding referred to above, discloses that the Joint Commission took into consideration of the Central Commission Regulations,2009 and also the CEA guidelines and approved Auxiliary Power Consumption at 5.5% of the gross power generation for the financial year 2011-12.
38. Now, let us see the finding given in the Review order dated 03.11.2011.

“Auxiliary Power Consumption”

Nothing new has been pointed out by the petitioner. The Commission finds no merit for review”.

39. In this Review order, the Joint Commission merely confirmed the finding in the impugned order on this issue by pointing out that “no new material” has been furnished to interfere in the finding.
40. According to the Appellant, though the Appellant had sought specific relaxation and prayed for Auxiliary Consumption on actuals due to the past performance of the Power Station of the Appellant, the Joint Commission has not considered the same and merely rejected the prayer on this issue. The learned Counsel for the Appellant also cited two decisions of this Tribunal in Appeal No.129 of 2006 i.e. Gujarat State electricity Corporation Limited Vs Gujarat Electricity Regulatory Commission dated 23.11.2006 and Appeal No.96 of 2008 i.e. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited Vs. Uttar Pradesh Electricity Regulatory Commission to show that the request for the relaxation should have been considered by the Joint Commission.
41. We have carefully considered these submissions. As a matter of fact, this point has been taken into consideration by the Joint Commission in the tariff order dated 6.8.2011.

The Joint Commission referred to the said prayer and also considered the Auxiliary Consumption actuals for the previous years 2000-01 to 2009-10 and for the projection for the year 2010-11 and 2011-12. It is specifically held by the Joint Commission in the said impugned order dated 6.8.2011 that Central Commission Regulations 2009 provided the norms of Auxiliary Consumption for gas turbine generating station as

(i) Combined cycle 3.0%

(ii) Open cycle 1%

42. The Joint Commission also referred to the CEA guidelines which provided that in cases where electric driven gas booster compressor are part of the Auxiliary Plant, 2.5% extra Auxiliary Consumption can be allowed. Taking into consideration of all these factors, the Auxiliary Consumption of 5.5% was approved by the Joint Commission for the financial year 2011-12 since the Appellants gas plant is having electric driven gas booster compressor.
43. Thus, it is clear that the Joint Commission followed the Central Commission Regulations as well as the CEA guidelines and correctly approved Auxiliary Power Consumption at 5.5% as there was no case made out for relaxation. This finding, in our view is perfectly justified.

44. Summary of the findings.

i) Tariff Regulation 22(2) provides for determination of the capital cost to be considered on the basis of the audited accounts or approvals already granted by the Commission. The Appellant claimed capital cost of Rs.146.45 crores based on the audited accounts which were not taken into consideration by the Joint Commission and capital cost of only Rs.137.77 was allowed on the ground that the approval of competent authority was not obtained. This is not a proper approach as the approval of the competent authority was not contemplated under the Regulation. Even though the approval of the competent authority for Rs.146.45 crores was placed before the Joint Commission for reconsideration of the capital cost in the Review, the Joint Commission wrongly rejected the claim on the ground that nothing new had been pointed out by the Appellant. The Joint Commission should have scrutinised the audited accounts placed before it by the

Appellant and considered the approval obtained from the Government and passed the order after prudence check in accordance with law. The Joint Commission is directed to consider the documents on record and pass order according to law after hearing the parties once again.

- ii) The Tariff Regulations provide that the components of generation tariff shall be as laid by the Central Commission in the 2004 Tariff Regulations as amended from time to time. The 2009 Tariff Regulations have been made effective by the Central Commission with effect from 1.4.2009. According to the 2009 Regulations, Normative Plant Availability Factor (NAPF) is to be taken as 85% for thermal power stations. However, the Joint Commission in the impugned order adopted NAPF of 87.5% contrary to the Tariff Regulations. The State Commission is directed to pass the consequential order in accordance with the Tariff Regulations.**

iii) The State Commission has determined the auxiliary consumption as per the Tariff Regulations. No case has been made out by the Appellant for relaxation of the norms for auxiliary consumption.

45. In view of the above, issue No. 1&2 regarding capital cost and Normative Annual Plant Availability Factor is answered in favour of the Appellant. Issue No.3 regarding Auxiliary Consumption is answered as against the Appellant.

46. Thus, the Appeal is partly allowed. No order as to costs.

43. Pronounced in the open Court on 20th day of November,2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 21st November, 2012

√REPORTABLE/~~NON-REPORTABLE~~