

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Review Petition No. 9 of 2011 in
Appeal No. 199 of 2010**

Dated: 19th April, 2012

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

**Maharashtra State Power Generation Co. Ltd.,
Plot No. G-9,
Prakashgad, Bandra (East),
Mumbai-400 051.**

... Review Petitioner/Appellant

Versus

- 1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
13th Floor, Center No. 1,
World Trade Centre, Cuffe Parade,
Colaba, Mumbai-400 005.**
- 2. Dr. Ashok Pendse,
Mumbai Grahak Panchayat,
Grahak Bhavan, Sant Dyaneshwar Marg,
Behind Cooper Hospital,
Vile Parle (W),
Mumbai- 400 056.**
- 3. Thane Belapur Industrial Association,
Plot – P14, MIDC, Rabale Village,
P.O. Ghasoli,
Navi Mumbai-400 701.**
- 4. The President,
Vidarbha Industrial Association,
1st Floor, Udyog Bhavan,
Civil Lines, Nagpur-440 001.**

5. **Prayas (Energy Group),
Amrita Clinic, Athwale Corner,
Deccan Gymkhana, Karve Road,
Pune-411 001.**

6. **Shri Shrikant Dudhane,
Chairman,
Kolhapur Engineer Association,
1243/46, 47, E-Ward,
Shivajiudyam Nagar,
Kolhapur-416 008.**

7. **Shri B.T. Tendulkar,
Vice-Chairman,
Kolhapur Engineer Association,
1243/46, 47, E-Ward,
Shivajiudyam Nagar,
Kolhapur-416 008.**

8. **Shri Balachandran
General Manager (Power & Energy),
ISPAT Industries Ltd.,
“Nirmal” 7th Floor, Nariman Point,
Mumbai-400 021**

9. **Shri N. Poorathnam,
Vel Induction Hardenings,
25, Majithia Industrial Estate,
WTP Marg, Deonar,
Mumbai-400 088.**

10. **Shri Bhasker U. Mete,
Working President,
Graduate Engineers Association,
Quarter No. IV/08/04,
Koradi TPS Colony, Koradi,
Nagpur-441 111.**

...Respondent(s)

Counsel for the Appellant(s): Mr. Sanjay Sen
Mr. Hemant Singh, Ms. Surbhi Sharma
Mr. Ramandeep Singh

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Ms. Richa Bharadwaj for R-1

ORDER

Hon'ble Shri Rakesh Nath, Technical Member

This Review Petition has been filed by Maharashtra State Power Generation Company Ltd. against the judgment dated 4.8.2011 of this Tribunal in appeal No. 199 of 2010.

2. The review petitioner is aggrieved by the findings of this Tribunal on the following issues:

- i) Station Heat Rate for the FY 2009-10
- ii) Fixed cost on the basis of Availability Factor.

The Review Petitioner has stated that there is error apparent on the face of the record in respect of the above findings.

3. We have heard the learned counsel for the Appellant and the State Commission on the above issues.

4. Learned counsel for the Appellant has submitted as under:

4.1. **Station Heat Rate (SHR):**

While the Tribunal has set aside the SHR approved by the State Commission for the FY 2010-11 for implementation of Capex schemes under the medium term, no relief has been granted for implementation of the immediate measures for the FY 2009-10 and the same needs to be reconsidered. The CPRI recommendations, under the immediate measures, do not suggest improvement in O&M practices only. The said recommendations are a mix of monitoring, measurement and performance related schemes. The bulk of the improvement in

performance is only related to the implementation of the specific schemes. The other recommendations pertaining to measurement of parameters, monitoring, etc., are meant to figure out the associated input materials and costs. CPRI recommended total of 935 non-financial schemes and 858 financial schemes in respect of the immediate measures. While the Review Petitioner has already implemented bulk of non-financial recommendations, however, the real improvement can be achieved only when the capital expenditure schemes are implemented.

4.2. Fixed cost based on Availability Factor:

The CPRI recommendations are based on expected level of performance subject to fulfillment of certain preconditions. According to the recommendations of CPRI, the units of 210MW and above are capable of

running at a PLF of 80% subject to focused attention on coal quality, R&M programmes, adherence to planned maintenance schedule, leakage control, operational optimization, etc. According to review petitioner, although efforts have been made to maximize use of washed coal, the quality of coal is an external factor and any loss of availability on this account needs to be given a different interpretation. Further, suitable time frame needs to be considered in implementation of the Renovation & Modernization programmes before any benefit is considered from the same. Implementation of R&M schemes was not feasible during the FY 2009-10.

4.3. In support of his claim the learned counsel made elaborate submissions regarding the various recommendations of CPRI. He also relied on the

findings of the Hon'ble Supreme Court in its judgment reported as MANU/SC/2482/2005 in the matter of Rajinder Singh vs. Lt. Governor, Andaman & Nicobar Island & Ors. in which it was held that the courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases.

5. Learned counsel for the State Commission in his submissions stated that the improvement in SHR for the FY 2009-10 was based on certain immediate term measures as recommended by the CPRI. The findings of the Tribunal regarding reasonable time to be given for implementation of medium term measures do not and cannot apply to those measures for the FY 2009-10 which the CPRI recommended for

immediate implementation. If further time is allowed for improvement of SHR for the FY 2009-10 then the importance and urgency of the entire recommendation of immediate implementation gets lost.

6. As regards the issue of fixed charges based on availability, the learned counsel for the State Commission has stated that the review petitioner has relied upon an advice by the Central Electricity Authority to the Central Commission which was not argued when the appeal was heard by the Tribunal. The review petitioner cannot reargue its case. Further, the CEA's advice does not pertain to impact of quality of coal on availability of the Station. The State Commission in its order impugned before the Tribunal also held that it will review the actual availability and PLF for each station at the end of the year and in case

the availability achieved for thermal stations is lower than that approved, then the Commission will examine the reasons for such deviation. Thus, there is no ground for review on account of quality of coal.

7. According to the learned counsel for the State Commission, the review petitioner has not identified any error on the face of the record of the Tribunal's judgment.

8. In the light of the submissions made by the learned counsel for the parties let us examine if there is any error on the face of the record in our judgment.

9. The CPRI in its Report had given SHR observed during the field tests at the various power plants. It also suggested a trajectory for improvement of the SHR for the period FY 2008-09 to FY 2013-14. The SHR

recommended for the FY 2008-09 was to be achieved with the short-term measures and for the FY 2009-10 after medium term measures are implemented. The State Commission in its order dated 12.9.2010 impugned before the Tribunal had adopted the SHR for the FY 2008-09 same as indicated by the CPRI during the field tests and the same was upheld by the Tribunal in the impugned judgment. For the FY 2009-10, the State Commission adopted the station-wise SHR figures suggested by the CPRI for achievement during the FY 2008-09. The Tribunal in paragraph 8.4 of the impugned judgment has indicated that the State Commission has approved increase in SHR for the FY 2009-10 in the range of 0.9 to 4.2% over the FY 2008-09 for different power stations. The Tribunal held that some improvement could be achieved by improving the operational

practices but major achievement could be achieved only by physically implementing the medium term measures. Accordingly, the Tribunal upheld the State Commission's findings with reference to SHR for the FY 2009-10 and directed the State Commission to reconsider the SHR for the FY 2010-11. If more time is given for achievement of SHR as recommended by the CPRI for the FY 2008-09 after taking short-term measures which has been approved by the State Commission for achievement during the FY 2009-10, then the importance of bringing improvement in the performance of the power plants of the appellant will be lost.

10. Regarding Availability/PLF of the power plants the Tribunal in paragraph 13.4 of the judgment has rejected the contention of the review petitioner since

the target availability/PLF has been kept by the State Commission more or less at the level as recommended by CPRI for the FY 2008-09 based on its field study. Now the appellant wants the Availability/PLF to be kept at the same level as actually achieved on the grounds argued extensively before us in the main appeal. We do not accept that the quality of coal is totally beyond the control of the appellant. If the quality of raw coal supplied by the coal companies is poor, the appellant has to make arrangements for washing of coal and blending with superior quality of coal.

11. The appellant wants to maintain status quo in performance parameters. We feel that the consumers cannot be burdened due to non-performance by the appellant. Thus, we do not find any reason to review our judgment.

12. All the grounds being argued by the appellant now have been considered by the Tribunal at the time of hearing the main appeal. We do not find any error on the face of the record in respect of our findings. The review petitioner's elaborate submissions are for reconsideration of the issues on merits which is not permissible in the review petition.

13. In view of above, the Review Petition is dismissed being devoid of any merits. No order as to costs.

14. Pronounced in the open court on this **19th day of April, 2012.**

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE

vs