

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APL No. 86 OF 2012 &
IA No. 421 OF 2024**

Dated: 22.11.2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

In the matter of:

NTPC LIMITED,
NTPC Bhavan, Scope Complex,
Core-7, Institutional Area,
Lodhi Road, New Delhi - 110003 ... Appellant(s)

VERSUS

- 1 CENTRAL ELECTRICITY REGULATORY COMMISSION**
3rd & 4th Floor, Chandralok Building,
36, Janapath,
New Delhi - 110001 ... Respondent No.1
- 2 WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Vidyut Bhawan, Block 'DJ'
Sector – 11, Salt Lake City,
Calcutta - 7700091 ... Respondent No.2
- 3 BIHAR STATE ELECTRICITY BOARD**
Vidyut Bhawan, Bailey Road,
Patna – 800021 ... Respondent No.3
- 4 JHARKHAND STATE ELECTRICITY BOARD**
Engineering Bhawan, HEC,
Dhurwa, Ranchi - 834004 ... Respondent No.4
- 5 GRID CORPORATION OF ORISSA LTD**
Vidyut Bhawan, Janpath,
Bhubaneshwar - 751007 ... Respondent No.5

- 6 DAMODAR VALLEY CORPORATION**
DVC Towers, VIP Road,
Calcutta – 751007. ... Respondent No.6
- 7 POWER DEPARTMENT,**
Govt. of Sikkim,
Gangtok -737101 ... Respondent No.7
- 8 TAMIL NADU ELECTRICITY BOARD,**
800, Anna Salai,
Chennai – 600002 ... Respondent No.8
- 9 UNION TERRITORY OF PONDICHERY**
Electricity Department,
58, Subhash Chandra Bose Salai,
Pondicherry - 605001 ... Respondent No.9
- 10 UTTAR PRADESH POWER CORPORATION LTD.,**
Shakti Bhawan, 14 Ashoka Marg,
Lucknow – 226001 ... Respondent No.10
- 11 POWER DEVELOPMENT DEPARTMENT,**
Government of Jammu and Kashmir,
Secretariat, Srinagar – 190009 ... Respondent No.11
- 12 POWER DEPARTMENT,**
Union Territory of Chandigarh,
Additional Office Building,
Sector-9D, Chandigarh-160009 ... Respondent No.12
- 13 MADHYA PRADESH POWER TRADING CO.LTD,**
Shakti Bhawan, Vidyut Nagar,
Jabalpur – 482008. ... Respondent No.13
- 14 GUJARAT URJA VIKAS NIGAM LTD**
Bidyut Bhawan,
Race Course, Vadodara - 390007 ... Respondent No.14
- 15 ELECTRICITY DEPARTMENT,**
Administration of Daman & Diu,
Daman - 396210 ... Respondent No.15
- 16 ELECTRICITY DEPARTMENT,**
Administration of Dadra and Nagar Haveli,

U.T. Silvasa - 396230

... Respondent No.16

17 BSES RAJDHANI POWERLIMITED

BSES Bhawan, Nehru Place,
New Delhi – 110019

... Respondent No.17

18 BSES YAMUNA POWER LIMITED

Sakti Kiran Building,
Karkardooma, Delhi – 110092

... Respondent No.18

19 NORTH DELHI POWER LIMITED

Grid Substation, Hudson Road,
Kingsway Camp, Delhi - 110009

... Respondent No.19

**20 MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.
LTD.**

Plot No. G-9, Pradashgad,
Bandra (East), Prof. Anant Kanekar Marg,
Mumbai – 400051.

... Respondent No.20

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva
Amal Nair
Ashabari Basu Thakur
Karthikeyan M
Sarthak Sareen for App. 1

Counsel on record for the Respondent(s) : for Res. 1

Raj Bahadur Sharma for Res. 3

Raj Bahadur Sharma for Res. 4

Raj Bahadur Sharma for Res. 5

S. Vallinayagam for Res. 8

Pradeep Misra for Res. 10

Manoj Kumar Dubey for Res. 13

Raj Bahadur Sharma
Mohit K. Mudgal
Sachin Dubey

Mohit Jain for Res. 17

Mohit K. Mudgal
Sachin Dubey
Mohit Jain for Res. 18

JUDGMENT

(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

1. This Tribunal, earlier, by its judgment dated 26.03.2014, after taking note of the following claims of the Appellant involved in this matter, while holding that the appeal was not maintainable, dismissed the same as devoid of merits.
 - (i) De-capitalisation of unserviceable wagons;
 - (ii) Claim for Rs.61.49 lakhs on communication network augmentation;
 - (iii) Claim for expenditure of Rs.289.40 lakhs for procurement of 10 wagons;
 - (iv) Claim for Rs.225.54 lakhs on account of capitalization for the implementation of SAP programmed in the ERP system.

2. Aggrieved by the above said order dated 26.03.2014 passed in this Appeal No. 86 of 2012, the matter was carried to the Hon'ble Supreme Court by way of Civil Appeal No. 5990 of 2014. The Supreme Court vide its order dated 09.11.2017 remanded the matter to this Tribunal for consideration on two issues; 1) disallowance of expenditure of Rs.61.49 lacs on Communication Network augmentation; and 2) disallowance of expenditure of Rs.289.40 lacs on capitalization of 10 Railway Wagons. The issues are for the claim of additional capitalization at the Farakka STPS (1600 mw) for the tariff period 2006-09. The Hon'ble Supreme court has also directed this

Tribunal to consider, in case the tariff is to be revised, whether it should be done retrospectively or prospectively.

3. The facts that are required for disposal of this appeal in nutshell are reiterated as under:

The Appellant-NTPC is a company engaged in the business of generation and sale of electricity to various purchasers/beneficiaries. NTPC is owned and controlled by the Central Government, and its functions of generation and sale of electricity to the Respondent Nos. 2 to 20 is regulated by the Respondent No1, the Central Electricity Regulatory Commission (for short referred to as “**Central Commission/CERC**”).

4. Farakka Super Thermal Power Station (“**Farakka Station**”) with the installed capacity of 1600 MW located at West Bengal is one of the generating stations of NTPC and it consists of 3 units of 200 MW each and 2 units of 500 MW. This generating station became operational from 01.07.1996.

5. The Central Commission on 29.03.2004 notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (for short ‘**Tariff Regulations 2004**’). Based on the above Regulations, the Central Commission vide its order dated 09.05.2006 determined the tariff for the Farakka Station for the period 01.04.2004 to 31.03.2009, which was further revised by order dated 27.10.2006 in Review Petition No. 59 of 2006 and order dated 22.07.2008 in Petition No. 32 of 2007 on account of additional capital expenditure incurred by NTPC for the years 2004-05 to 2005-06.

6. Since the NTPC had incurred additional expenditure for the period 2006-07 to 2008-09, it filed a Petition No. 150 of 2009 before the Central Commission praying for revision in tariff. The Central Commission, vide its order dated 28.04.2011, disposed of the said petition and disallowed the following:

- a) Rs 61.49 lacs incurred in the year 2006-07 towards Data Acquisition System and communication network augmentation for ABT operation and Grid System coordination.
- b) Rs 225.54 lacs incurred in the year 2008-09 for implementation of SAP program in ERP system.
- c) Rs 289.40 lacs incurred in the year 2006-07 on account of procurement of 10 wagons for replacement of Wagons decapitalized in the year 2003-04;
- d) Retention of Capital value of unserviceable wagons amounting to Rs 529.17 Lakhs, especially when capitalization of new wagons the value of which is to be substituted were also not allowed.

7. Aggrieved by some errors in Central commission's order dated 28.04.2011, NTPC filed a review petition No. 11 of 2011, on 16.06.2011 limited to the disallowance of Rs.225.54 lakhs incurred in the year 2008-09 on account of implementation of the ERP system. Thereafter, the Central Commission vide order dated 22.02.2012, has allowed the review petition on the issue of capitalization of amounts incurred for implementing the ERP system. Aggrieved by the other aspects of the order dated 22.02.2012, as Appellant NTPC considered it to have merged with the original order of the Central Commission dated 28.04.2011, the Appellant NTPC had approached this Tribunal by way of the instant Appeal No 86 of 2012 and raised the issues with regard to : i)

disallowance of additional capitalization of Rs 61.49 lacs on Data Acquisition and Communication Network, ii) Disallowance of Expenditure of Rs 289.40 Lacs on capitalization of 10 new Wagons, iii) not allowing NTPC to treat decapitalization of wagons amounting to Rs 529.17 lacs as exclusion. This Tribunal vide its order dated 26.03.2014 in this Appeal No. 86 of 2012, dismissed the Appeal as not only non-maintainable but also devoid of merits.

8. Aggrieved by the said order dated 26.03.2014 of this Tribunal, the Appellant approached Hon'ble Supreme Court by way of Civil Appeal no 5990 of 2014; the Hon'ble Supreme Court vide its order dated 19.11.2017 disposed of the Civil appeal by setting aside the order dated 26.03.2014 of this Tribunal on two issues (a) disallowance of expenditure of Rs 61.49 lacs on Communication Network augmentation, and (b) disallowance of expenditure of Rs 289.40 lacs on capitalisation of Railway Wagons, and remanded the matter to this Tribunal to decide the said issues afresh.

Discussion and Analysis

Issue of Maintainability of the Appeal

9. In its Order, in ***NTPC Limited vs CERC & Others (Judgment in Appeal No. 86 of 2012 dated 26.03.2014)***, this Tribunal upheld the preliminary objection of the Respondent that the Appeal preferred by the Appellant-NTPC Ltd, against the order passed by the CERC in Review Petition No. 16 of 2011 dated 16.06.2011, was not maintainable. Having so held, this Tribunal proceeded to adjudicate the Appellant's claim for additional capitalisation/ decapitalization on its merits, and held that there was no infirmity in the order of the CERC disallowing these claims. In

effect, the Appeal was rejected both on the ground that it was not maintainable and on merits.

10. Aggrieved thereby, the Appellant herein filed Civil Appeal No. 5990 of 2014 and the Supreme Court, by its order in CA No. 5990 of 2014 dated 09.11.2017, set aside the Judgment of this Tribunal and remanded the matter for its consideration and for its fresh decision only on two aspects i.e, disallowance of expenditure on communication network augmentation and disallowance of capitalization of 10 new wagons. The Supreme Court further observed that they had not made any observations on the merits of the case; and this Tribunal was free to reach a decision unfettered by any observation made in the order.

While Shri Pradeep Mishra, Learned Counsel for the 10th Respondent, would submit that the judgement of this Tribunal dated 26.03.2014, to the extent it held that Appeal No. 86 of 2012 was not maintainable, had not been interfered with by the Supreme Court; and has thereby become final and conclusive between the parties. The submission of the Learned Counsel, in effect, is that, whatever be the claim of the Appellant on merits, since this Tribunal had, in its order in Appeal No. 86 of 2012 dated 26.03.2014 held the Appeal itself not to be maintainable, this Tribunal is required, in the present remand proceedings, to dismiss the Appeal, in the light of the earlier judgement of this Tribunal, in Appeal No. 86 of 2012 dated 26.03.2014, on maintainability.

On the other hand, the submission of Shri Anand K. Ganesan, Learned Counsel for the Appellant, is that the preliminary objection of the Respondents, relying on this Tribunal's order in Appeal No. 86 of 2012 dated 26.03.2014 holding that the Appeal was not maintainable, was not tenable; the Supreme Court, by its order in CA No. 5990 of 2014 dated

09.11.2017, had remanded the matter for a fresh adjudication on two issues on its merits; and when there is an issue of maintainability, but the Court proceeds to deal with merits of the case, this Tribunal must proceed on the premise that the objections on the maintainability of the Appeal is deemed to have been rejected by the Supreme Court. Reliance is placed in this regard on **Central Bank of India and Others vs. Dragendra Singh Jadon: 2022 8 SCC 378**.

In the **Central Bank of India** Judgment, the Respondent before the Supreme Court had raised an industrial dispute and, on a reference being made thereto, the Industrial Tribunal had passed an award. Aggrieved thereby, the Respondent before the Supreme Court had filed a Writ Petition before the Madhya Pradesh High Court challenging the award in so far as he was declined back wages. A cross Writ Petition was filed by the Appellant-Bank in so far as they were directed to reinstate the Respondent into service. By a Common Judgment, the Madhya Pradesh High Court dismissed both the Writ Petitions. In compliance with the order passed by the Madhya Pradesh High Court, the Appellant-Bank reinstated the Respondent into service.

11. Thereafter, the Respondent filed a fresh Writ Petition before the Madhya Pradesh High Court to direct the Appellant-Bank to reinstate him to the post of Agricultural Financial Officer with notional fixation of pay up to the date of the award of the Tribunal, and for payment of actual salary from the date of the award. The Respondent also prayed that the Appellant-Bank be directed to fix his seniority and the current salary, taking into consideration his past service. The Appellant-Bank raised a preliminary objection to the maintainability of the Writ Petition on the ground that the subsequent Writ Petition was barred by the principles of *res judicata*.

12. The Madhya Pradesh High Court did not consider the objections regarding maintainability. However, the matter was examined on merits and the Respondent was held entitled for all benefits except back wages, construing him to be in service; and, consequent upon his reinstatement, the Respondent was entitled for regular salary from the date of award subject to adjustment of the amounts already paid.

13. Before the Supreme Court, it was contended on behalf of the Appellant-Bank that, even though principles of res judicata apply to proceedings under Article 226 of the Constitution, yet the High Court had not dealt with this issue of the Writ Petition being barred by the principles of res judicata. It is in this context that the Supreme Court observed that, where an objection to the maintainability of any application/ suit on an issue of law is not expressly dealt with, but the application/ suit is entertained and disposed of on merits, the objection is deemed to have been rejected; and the mere fact that an issue may not have been specifically dealt with, would not vitiate a judgment which is otherwise correct.

14. It is relevant to note that failure on the part of the Madhya Pradesh High Court to consider the issue of maintainability, on the ground that a subsequent Writ Petition was barred by the principles of res judicata, was under consideration in the **Central Bank of India** Judgment of the Supreme Court. APTEL, a creation of the Electricity Act, is a Tribunal subordinate to the Supreme Court, and its orders are subject to appellate scrutiny by the Supreme Court under Section 125 of the Electricity Act. It would be wholly inappropriate for this Tribunal, therefore, to express any opinion on the consequences of the Supreme Court not having examining the question of maintainability of Appeal No. 86 of 2012 despite this Tribunal having held, in its judgement dated 26.03.2014, that Appeal No. 86 of 2012 filed by the Appellant, against the order passed by the CERC,

in Review Petition No. 11 of 2011 dated 16.06.2011, was not maintainable.

15. This Tribunal is bound to comply with the appellate directions of the Supreme Court in its Judgment in CA No. 5990 of 2014 dated 09.11.2017. In terms thereof, the scope of enquiry in the present Appeal is confined only to the two issues regarding additional capitalization/ decapitalization. Without expressing any opinion of the aforesaid contention, relating to the maintainability of Appeal No. 86 of 2012, we shall confine our examination to these two issues alone, as deliberated below and not beyond.

Issue No 1: (a) Disallowance of expenditure of Rs 61.49 lacs on Communication Network augmentation

16. Learned counsel for the Appellant submitted that the expenditure of Rs.61.49 lakhs on communication network augmentation was disallowed by the Central Commission solely on the basis that certain expenditure related to IT and communication networks had already been permitted in the previous years. This Tribunal in IA No. 421 of 2024 upheld the Commission's decision, holding that such expenditure would not confer any benefit to the beneficiaries. However, the Supreme Court in its order dated 09.11.2017 has observed that the issue is not of benefit to the beneficiaries, but whether the said expenditure is necessary for effective and successful operation of the station, in accordance with Regulation 18(2)(iv) of the Tariff Regulations, 2004. In fact, the ABT metering system and its associated system, utilized for energy accounting, requires augmentation of the communication network along with supporting software. The availability of real-time operational data for the station is essential in order to ensure reliable and disciplined grid operations, as well as compliance of the directions issued by the Regional Load Despatch Centre ("RLDC"). The same is allowed as per Tariff

Regulation 2004 for effective and successful operation of the Station. The expenditure claimed on Communication Network Augmentation in the years 2006-09 was for different purpose and against what was considered earlier. Such augmentation like upgradation of software /IT equipment's etc. needs to be done from time to time on regular basis. There was no double claim made by NTPC; the augmentation was specifically required to meet the demands of the RLDC and other entities.

17. Per Contra Learned counsel for the Respondent No. 8 & 10 contended that the central commission has disallowed the expenditure of Rs.61.49 lacs on communication network augmentation, making the following observations:

“40. The Petitioner has claimed an expenditure of 51.73 lakh on account of data communication network and an expenditure of 9.78 lakh for data acquisition system for ABT during 2006-07. It is observed that an amount of 277.00 lakh was allowed during the period 2001-04 for augmentation of IT and communication network. Also, an expenditure of 17.13 lakh was allowed during 2004-04 for supply, installation & commissioning of ABT meters and 4.41 lakh was allowed for 2005-06 for augmentation of communication network. In view of this, further capitalization of 51.73 lakh and 9.78 lakh during 2006-07 is not justified and has not been allowed.”

18. Learned counsel for the Respondents submitted that during 2001-04, the Central Commission has allowed Rs. 277 lakhs to the Appellant on account of augmentation of IT and communication networks; an additional amount of Rs. 17.13 lakhs during 2004-05 for the supply, installation, and commissioning of ABT meters; and Rs. 4.41 lakhs 2005-06 for the augmentation of the communication network; therefore, the Central Commission was justified in declining this expenditure, as augmentation

expenses for the communication network cannot be claimed on an annual basis. The Central Commission, being an expert body, conducted a prudence check and concluded that such expenditure cannot be allowed, therefore, this finding warrants no interference by this Tribunal.

19. The expenditure of Rs 61.49 lacs has been claimed by Appellant-NTPC under additional capitalization for the year 2006-09 for Farakka station. Regulation 18 of the 2004 Regulations is reproduced below:

“18. (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

(i) Deferred liabilities;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(v) On account of change in law.

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after cutoff date may be admitted by the commission, subject to prudence check:

(i) Deferred liabilities relating to works/services within the original scope of work;

(ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(iii) On account of change in law;

(iv) Any additional works/services which have become necessary for efficient and

successful operation of the generating station, but not included in the original project cost; and

v) Deferred works relating to ash pond or ash handling system in the original scope of work;

(3) Any expenditure on minor items/assets like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machine, heat-convectors, carpets, mattresses etc. brought after the cutoff date shall not be considered for additional capitalization for determination of tariff with effect from 1.4.2004.

(4) Impact of additional capitalization in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut-off date.”

20. It is noticed from the above that as per Regulation 18(2)(iv), expenditure incurred on any additional works /services that has become necessary for efficient and successful operation of the generating station, but not included in the original project cost may be admitted by the commission subject to prudence check. The Appellant has claimed that ABT metering and its associated system used for energy accounting requires communication network augmentation with software; the availability of real time operating data of the station is necessary to ensure reliable and discipline grid operation as well as compliance of the directions that are given by RLDC. It has also been emphasized that the augmentation of data acquisition system for ABC monitoring in all five units of Farakka station was

done subsequent to implementation of ABT in Eastern region to have online monitoring of generation as per schedule and in compliance of ERLDC's instructions; the ABT metering system and its associated system is used for energy accounting and in the absence of such equipment, the data is not available to the station in real time and has nothing to do with installation of ABT meters for which the expenditure has been allowed for earlier years. It has also been emphasised by the learned counsel for the Appellant-NTPC that the expenditure claimed on communication network augmentation in the year 2006-09 was for different purpose and no double claim has been made by NTPC. We find force in the submission of the Appellant and are of the view that the expenditure of Rs.61.49 lakhs on communication network augmentation claimed as additional capital expenditure for the year 2006-07 falls under Regulation 18(2)(4), as the said expenditure has claimed to be necessary for efficient and successful operation of the generating station. In our view, the Central Commission has erred in disallowing the said expenditure on the ground that some expenditure with regard to commissioning of ABT meters and augmentation of communication network has already been allowed in the earlier years; since the purpose of expenditure approved earlier and this additional capital expenditure of Rs.61.49 lakhs is said to be for a different purpose and no double claim seems to have been made by the Appellant, the same is therefore allowed as additional capital expenditure for the year 2006-07.

Issue No 2: Disallowance of expenditure of Rs 289.40 lacs on capitalisation of Railway Wagons

21. Learned counsel for the Appellant submitted that this Tribunal, in its Order dated 26.03.2014, has upheld the decision of the Central Commission with regard to disallowance of expenditure of Rs 289.40 lacs on capitalization

of 10 Railway Wagons, holding that NTPC had failed to demonstrate the necessity for the procurement of the 10 additional wagons for Farakka Station. The Central Commission had determined that, since 30 wagons were transferred from the Farakka Station to the Talcher Station, there was no requirement for Farakka to acquire the additional wagons. Learned Counsel for the Appellant -NTPC contended that the Central Commission has not considered the salient aspects of the working of NTPC Stations, despite submitting required documents; NTPC which operates multiple generating stations, frequently conducts inter-unit transfers of spares based on exigency of the situation. The wagons are used for transportation of coal from the mines to the station.

22. It is contended by the learned counsel for the Appellant that in total 275 wagons were capitalized at Farakka Station (1600 MW) for transportation of coal via the MGR system. This includes the rakes required for operations along with the spares to be maintained for reliable operations as well as wagons kept as immediate replacement for any wagons rendered unserviceable due to accidents etc. When damaged wagons are replaced, new wagons are procured to replenish and maintain such stock levels. In the year 2003, upon 10 wagons becoming unserviceable, an order was placed to replace them. Due to the long lead time for procuring wagons, they were delivered in August 2006. In the interim, in April 2006, when Talcher Station required wagons on an urgent basis, NTPC's Farakka station executed an inter-unit transfer of 30 wagons. This transfer has been taken against NTPC to assert that the order for the 10 wagons placed in 2003-04, were not actually required. Similarly, in 2007 and 2008, when several wagons were irreparably damaged at Farakka Station, Farakka station received 15 wagons in October 2007 and another 20 wagons in January 2009 from Kahalgaon Station of NTPC. Thus, during exigency, the scheme

of exchanging Wagons inter-unit enables economies of operation. Further, at no point, Farakka station claimed capitalisation of more wagons than was permitted. However, the Central Commission has considered inter-unit transfer under exclusion. Learned counsel for the Appellant -NTPC prayed that the expenditure of Rs. 289.40 lacs in procurement of 10 Railway Wagons be allowed to be capitalized for Farakka Station for the year 2006-07.

23. Per Contra, learned counsel for the Respondent No. 8 & 10 submitted that the Appellant's claim regarding the expenditure of Rs. 289.40 lakhs for procurement of 10 wagons was disallowed by the Central Commission holding that the replacement of wagon is part of Operation and Maintenance Expenses only. Furthermore, allowing this expenditure provides no additional benefit to the Appellant, the same cannot be permitted. It is also pointed out by the learned counsel that out of 275 wagons, 28 wagons were designated as spares, therefore, there was no requirement for procuring additional wagons. Further, the Appellant has transferred 30 wagons from Farakka Station to other stations demonstrating that the procurement of 10 additional wagons was unnecessary. Thus, the Central Commission was justified in disallowing this claim.

24. We note that in 2003, when 10 wagons were rendered unserviceable, procurement order for 10 railway wagons, was placed in 2003-04 as replacement and to maintain approved stock of wagons at Farakka Station. The rationale of transfer of 30 wagons from Farakka station to Talcher station in April 2006, is to meet urgent requirement of Talcher station and, as such, the 10 wagons ordered way back in 2003-04 for Farakka station were delivered at Farakka in August 2006 with a gap of hardly three months between such inter-unit transfer. On this ground alone, it does not seem to

be justified that since 30 wagons were transferred from Farakka station to Talcher station to meet urgent requirement, the capitalisation of 10 wagons which were ordered way back in 2003-04 in lieu of the 10 wagons rendered unserviceable at Farakka station be denied capitalisation. We have been given to understand that number of wagons approved and capitalised at Farakka station are as per the approved norms and no excess wagons more than this quantity has been sought to be capitalised. It is also a fact that 10 wagons which became unserviceable at Farakka station had already been de-capitalized from Farakka Station in the year 2003 itself. It has been pointed out by learned counsel for the Appellant that lead time of the procurement of wagons is quite long and therefor a situation can emerge, where due to unforeseen circumstances, the requirement of wagons may occur at other generating stations; we do not find any fault with such inter-unit transfer as long as the operation of the station from which the transfer is taking place is not affected. We were also informed that in 2007-08, when number of wagons were irreparably damaged in Farakka Station, Farakka Station has also received 15 number of wagons in October 2007 and another 20 wagons in January 2009 from Kahalgaon Station of NTPC. In our view, the scheme of exchanging wagons inter-unit in exigencies enables sustained operations at both the stations, otherwise strong need may emerge necessitating upward revision of norms for wagons at each generating Station, considering long procurement time of wagons and to tide over exigencies which necessitates requirement of more wagons than approved norms. Therefore, in our view, the Commission has erred in disallowing the expenditure of Rs. 289.40 lakhs on capitalization of 10 new wagons in 2006-07, when the same was within the overall approved wagons at Farakka Station and 10 wagons rendered unserviceable has been decapitalised in 2003-04, therefore, the capitalisation of Rs 289.40 lacs for procurement of 10 wagons in the year 2006-07 is allowed.

25. In view of the above deliberations, the appeal is allowed and the impugned order is set aside to the limited extent of capitalisation of i) expenditure of Rs 61.49 lacs on Communication Network augmentation in 2006-07 and ii) expenditure of Rs 289.40 lacs on procurement of 10 wagons in 2006-07 is allowed, which may be considered by the State Commission in the ensuing tariff order for Farakka Station. All the pending IAs, if any, shall stand disposed of. There shall be no order as to costs.

Pronounced in open court on this 22nd Day of November, 2024

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE/NON-REPORTABLE

ts/ag/dk