

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

**APPEAL No.137 OF 2019**

Dated: 19.11.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**NTPC LIMITED**

NTPC Bhawan Core-7,  
Scope Complex 7, Institutional Area,  
Lodi Road New Delhi - 110003

... Appellant

*Versus*

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*Through its Secretary,*  
3rd & 4th Floor, Chanderlok Building  
36, Janpath, New Delhi - 110001

**2. MALLIKA SHARMA BEZBARUAH**

C/o Mr. A.K. Datta, 222, Pocket-E  
Mayur Vihar Phase – II, New Delhi - 110091

**3. SAURABH GANDHI**

C/o Mr. A.K. Datta, 222, Pocket-E  
Mayur Vihar Phase – II, New Delhi - 110091

**4. ASSAM POWER DISTRIBUTION COMPANY LIMITED**

*Through its Chairman and Managing Director*  
Bijulee Bhawan, Paltan Bazar,  
Guwahati – 781001

**5. MEGHALAYA ENERGY CORPORATION LIMITED**

*Through its Director*  
Short Round Road,  
Shillong – 793001, Meghalaya

**6. DEPARTMENT OF POWER  
GOVERNMENT OF ARUNACHAL PRADESH,**

*Through its Secretary*  
Namsai Town Road, Namsai,  
Itanagar – 792103

**7. POWER AND ELECTRICITY DEPARTMENT  
GOVERNMENT OF MIZORAM,**

*Through its Secretary*  
Kawlphetha Building,  
New Secretariat Complex,  
Khatla, Aizawl, Mizoram – 796001

**8. MANIPUR STATE POWER DISTRIBUTION  
COMPANY LIMITED**

*Through its Managing Director*  
Khwai Bazar, Keishampat,  
Imphal – 795001

**9. DEPARTMENT OF POWER  
GOVERNMENT OF NAGALAND,**

*Through its Secretary*  
Electricity House, A.G. Colony,  
Kohima, Nagaland – 797001

**10. TRIPURA STATE ELECTRICITY CORPORATION LIMITED**

*Through its Chairman and Managing Director*  
Bidyut Bhawan, North Banamalipur,  
Agartala – 700001

... Respondents

Counsel for the Appellant(s) : Anand K. Ganesan  
Swapna Seshadri  
Ritu  
Parichita Chowdhury

Counsel for the Respondent(s) : Hemanta Madhab Sharma  
Attorney/Rep. for Res. 2  
Avijit Roy for Res. 4

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The appellant NTPC Limited (National Thermal Power Corporation Limited) is aggrieved by the order dated 22.05.2017 passed by 1<sup>st</sup> respondent Central Electricity Regulatory Commission (hereinafter referred to as “the Commission” or “the Central Commission”) in petition No.45/GT/2016 filed by the appellant for approval of tariff of its Bongaigaon Thermal Power Station (BTPS) Unit-1 from 01.04.2016 to 31.03.2019 in accordance with the provision of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”).

2. The appellant had initially filed the petition with regards to all the three units i.e. Units 1, 2 & 3 having capacity of 250MW each with anticipated commercial operation date of 21.03.2016, 31.03.2017 and 30.09.2017 respectively. However, in pursuance to affidavit dated 08.08.2016 filed in this

regard by the appellant before the Commission along with revised petition, the petition has been considered only with regards to unit-1 of the said Thermal Power Station having capacity of 250MW and having achieved commercial operation on 01.04.2016.

3. It appears that Assam Power Generation Company Limited (in short "APGCL") was operating a plant with capacity of 240MW at the site of the said power station earlier. Keeping in view the long-term power purchase requirements of the State of Assam as well as the dilapidated condition of the old power plant, it was decided by the central government that APGCL would hand over the old generating station to the appellant and the appellant would construct new generating station at the same site after dismantling / scrapping the old one. Therefore, the implementation of the project included dismantling / scrapping of the unserviceable equipment, old buildings and concrete structures from the plant area.

4. As per the original investment approval dated 30.01.2008, the project was scheduled to be commissioned on 04.02.2011, but achieved actual commercial operation on 01.04.2016 in so far as its unit-1 is concerned. Thus, there has been a delay of approximately 1886 days i.e. 61 months and 20 days in achieving commercial operation of unit-1.

5. The capital cost and the annual fixed charges claimed by the appellant for the period 2016-2019 in the petition are given below: -

**“Capital Cost**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
<i>Capital cost as on COD on cash basis</i>	243123.17	-	-
<i>National IDC Capitalised</i>	2533.00	-	-
<i>Less: Short Term FERV Charged to P&amp;L A/c</i>	(-) 76.26	-	-
<i>Add: Adjustment: Transfer Out Assets</i>	2912.59	-	-
<i>Less: Adjustment: Transfer In Assets</i>	(-)2256.49	-	-
<i>Opening Capital Cost as on 1.4.2016</i>	246236.02	276430.59	277152.70
<i>Additions during the year</i>	10800.00	0.00	0.00
<i>Liability discharges during the year</i>	19394.57	722.10	0.00
<i>De-capitalization</i>	0.00	0.00	0.00
<i>Net Additions</i>	30194.57	722.10	0.00
<b><i>Closing Capital Cost</i></b>	<b>276430.59</b>	<b>277152.70</b>	<b>277152.70</b>

**Annual Fixed Charges**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
<i>Depreciation</i>	13378.10	14186.98	14205.49
<i>Interest on Loan</i>	15318.62	14953.42	13614.25
<i>Return on Equity</i>	15449.08	16362.92	16384.26
<i>Interest on Working Capital</i>	3691.77	3985.06	3986.03

<i>O &amp; M Expenses</i>	<i>6750.00</i>	<i>7892.50</i>	<i>8390.25</i>
<b><i>Total Annual Fixed Charges</i></b>	<b><i>54587.57</i></b>	<b><i>57380.88</i></b>	<b><i>56580.28</i></b>

6. Be noted here that one Shri Saurav Gandhi had appeared before the Commission on behalf of Ms. Mallika Sharma Bezbaruah to oppose the petition. He also filed objections / comments on behalf of Ms. Mallika.

7. As per the appellant, following factors were responsible for delay of 1886 days in commissioning of unit-1 of the power project: -

- (i) Violence, Bandhs & Curfew in 2008, 2012 & 2013
- (ii) Rainfall in 2008, 2009, 2010, 2012, 2013, 2014 & 2015
- (iii) Non availability of RCC bridge
- (iv) Koro Syndrome
- (v) Aggregate availability
- (vi) Storm causing failure of structure
- (vii) Change of course of Champamati river

8. Vide the impugned order, the Commission has condoned the delay of 1303 days as against the delay of 1886 days claimed by the appellant. Accordingly, the scheduled commercial operation date has been reset to 27.08.2014 after considering the time overrun allowed. Therefore, IDC has

not been allowed for the remaining time overrun of 583 days from 27.08.2014 to 31.03.2016.

9. Needless to add here that review petition filed by the appellant was dismissed by the Commission vide order dated 23.07.2018.

10. Aggrieved by the disallowance of time overrun for a period of 583 days as well as consequential IDC / IEDC, the appellant has preferred the instant appeal.

11. Following issues have been raised by the appellant in this appeal for our consideration: -

(a) Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area / region.

(b) Refusal to consider delay of 30 days on account of change of course of Champamati river.

(c) Refusal to condone delay on account of non-availability of RCC bridges on the way of Bongaigaon TPS site.

(d) Disallowance of IDC and IEDC.

12. We have heard learned counsel for the appellant as well as learned counsel for the 4<sup>th</sup> respondent. We have also heard Mr. Hemanta Madhab Sharma, the authorized representative on behalf of the objector / 2<sup>nd</sup> respondent Ms. Mallika Sharma Bezbaruah. We have perused the impugned order as well as the written submission filed on behalf of appellant and 2<sup>nd</sup> respondent. No other respondent has contested the appeal.

**OUR ANALYSIS:**

**(a) Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area / region.**

13. The findings of the Commission on this issue appear in the Paragraph No.20 of the impugned order which are extracted hereunder: -

*“20. As regards time over-run due to violence and bandhs during the period from April, 2013 to January, 2015, petitioner has requested to condone the delay of 671 days and has furnished the copy of the various prohibitory orders, but the same does not indicate the exact date of imposition*



*of prohibitory orders. The petitioner has also submitted the supporting document indicating the prohibition from 2.5.2014 to 2.6.2014 (i.e. 32 days). Though, the petitioner was directed to submit the effective duration of band against prohibitory orders, the petitioner has not submitted the same and therefore, we are inclined to condone the delay of only 32 days. Based on the above discussion, the total delay of 32 days has been condoned, out of the delay of 671 days claimed by the petitioner.”*

14. Thus, the Commission has refused to condone the delay for the said period except the period of 32 days, citing non-submission of prohibitory orders by the appellant issued during the time period in question.

15. The learned counsel for the appellant has taken us through various documents filed in this regard by the appellant before the Commission to support its claim that the project work was seriously impeded on account of violence and bandh from April, 2013 to January, 2015. These documents have been filed along with the instant appeal also and appear at page Nos.208-215, page Nos.232-243, and page Nos.267-322 of the appeal paper book. It is the submission of the learned counsel that each prohibitory order

imposed in Bongaigaon District, Assam, starting from April, 2013 was filed before the Commission but the same has been totally ignored by the Commission while passing the impugned order. The learned counsel also drew our attention to order dated 20.01.2015 issued by District Magistrate, Kokrajhar, filed along with the rejoinder to the reply filed by 2<sup>nd</sup> respondent, by which prohibitory order dated 28.12.2014, prohibiting movement of any person, material, vehicular traffic of any description on any road, street, lane, bylane, passage, thoroughfare, village path or track in the entire Kokrajhar District from 7:00 pm to 5:00 am, was withdrawn with effect from 20.01.2015.

16. We have perused all these documents which were referred to during the course of oral submissions before us. The document at page Nos.208-215 of the appeal paper book is a list of agitational programmes organized by various organizations in the year 2013. It mentions the date and time duration of each bandh / blockade specifically that was observed in the year 2013. At page No.232 of the appeal paper book is the letter dated 18.04.2015 issued by Additional District Magistrate, Kokrajhar to the GM(HR) of the appellant including therein the data relating to bandhs/curfew etc. for the entire time duration between 26.04.2008 and 31.12.2014. From page No.267 onwards are the copies of various prohibitory orders under Section 144 of CrPC issued

by District Magistrate, Kokrajhar during the years 2013-2014 as well as newspaper clippings reflecting the situation in the district during the said period. From page Nos.295 to 322 is the list of incidents of Bandh / curfew etc. that had taken place during the year 2014, published by South Asia Terrorism Portal.

17. A bare perusal of these documents would reveal that the situation in Kokrajhar District, where the power project in question was being constructed by the appellant, remained volatile and affected by regular Bandhs / curfew / prohibitory orders etc. throughout the years 2013-2015 and the situation returned to normal in January, 2015. We find it incomprehensible how and why the Commission overlooked all these documents and did not consider them while returning findings on this issue.

18. As submitted by appellant's counsel, it appears that the Commission has taken note of only one page which bears details of Section 144 prohibitory orders enforced between 02.05.2014 to 02.06.2014 and thus condoned the delay of these 32 days only whereas ignoring the entire set of documents filed by the appellant in support of its claim with regards to the remaining period of time.

19. Hence, the findings of the commission on this issue are absolutely erroneous and unjustified, which cannot be sustained. The same are hereby set aside. We remand the matter back to the Commission to decide the issue afresh after hearing the parties and in the light of whole bunch of documents filed by the appellant, as noted hereinabove. The exercise shall be completed by the Commission within two months from the date of this judgment.

**b) Refusal to consider delay of 30 days on account of change of course of Champamati river.**

20. The reasons which led the Commission to reject the delay of 30 days sought by the appellant on account of change in the course of Champamati river are contained in Paragraph No.26 of the impugned order which is reproduced hereunder: -

*“26. As regards time over-run due to change of course of Champamati river, the petitioner has submitted that due to change in course of river near intake well, the flow of water was heavily reduced near intake well, due to which makeup water pumps were not able to provide required quantity of raw water for sustained operation of the generating station at full load. It is noticed that the said activity took place during*

*the period from 1.10.2015 to 31.12.2015, which was just after the period of heavy rainfall i.e. 1.6.2015 to 30.9.2015. In view of this, it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall. Due to lack of adequate/proper justification of the delay under the head, we are not inclined to condone the delay of 30 days on account of change in course of Champamati river.”*

21. We find the reasoning of the Commission in rejecting the claim of the appellant under this head also beyond comprehension. Admittedly, there had been heavy rainfall in the area from 01.06.2015 to 30.09.2015. It was the contention of the appellant that makeup water for the plant was taken from the Champamati river for which makeup water pumps were erected in the river but due to heavy rainfall, high deposition of silt occurred which caused the change in the course of Champamati river near the intake well due to which there was not sufficient water required for pumps to operate. These contentions of the appellate have nowhere been discussed by the Commission in the relevant portion of the impugned order on this issue. It is neither unbelievable nor uncommon that on account of heavy rainfall in a

particular area, the waterflow in the river flowing through the area also increases which may cause the river to change its course leaving one of its banks with reduced water level. The appellant has filed at page 370 of appeal paper book, image of Champamati river showing that the water level is below the intake window of makeup water pump house. Therefore, the observation of the Commission to the effect, "*it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall.*", is not only incomprehensible but based on mere assumptions and conjectures. It was not the case of the appellant that the water level of entire Champamati river had reduced drastically after the heavy rainfall. The Commission has, manifestly, misdirected itself by not considering the actual import of the submissions made on behalf of the appellant and thus, has erred in refusing to condone the delay under this head.

22. Hence, we set aside the findings of the Commission on this issue as well and remand the same back to the Commission for a fresh consideration after hearing the parties again. The exercise shall be completed by the Commission within two months from the date of this judgment.

**(c) Refusal to condone delay on account of non-availability of RCC bridges on the way of Bongaigaon TPS site.**

23. The findings of the Commission on this issue are contained in Paragraph No.24 of the impugned order which is extracted hereinbelow: -

*“24. As regards the non availability of RCC bridge to support heavy consignments, it is noticed that the petitioner was well aware about the poor condition of approach roads and wooden bridges leading to the generating station which could handle load only upto 10 MT. The petitioner has taken up the matter with local authorities like PWD for strengthening/ upgradation of these bridges during November 2007 and the same was upgraded and opened up for movement by PWD during June, 2013. It is noticed that despite the petitioner making several follow ups and co-ordinating with the appropriate authorities, the delay was not within the control of the petitioner to upgrade the bridge. However, as the petitioner was aware of the condition of the bridge, it could have made alternative arrangements for transportation like railways to avoid the delay, instead of waiting for the bridge to get upgraded, which eventually was*

*taken through railways. In our view, there was no prudence on the part of the petitioner in the management of the project and the delay in on account of slackness on the part of the petitioner and hence we are not inclined to condone the delay of 60 days on account of non availability of RCC bridge for movement of heavy consignments. We direct accordingly.”*

24. We note that the appellant has itself, in the written submissions filed before us in this appeal, stated that at the very inception of the project the condition of approach roads and bridges leading to Bongaigaon TPS was very poor and all the bridges were wooden which could handle load only up to 10MT and thus were not suitable for heavy vehicles carrying civil construction material weighing more than 22 MT as well as power plant equipment. Therefore, the appellant was well aware about the condition of the bridges in the area and the fact that it cannot transport the civil construction material as well as power plant equipment through those bridges. It appears that the appellant took up the matter with local authorities like PWD for strengthening of these bridges which could not be done till the month of June, 2013, and which resulted in delay of transportation of heavy consignments/ equipment to



the project site. At the same time, it is the contention of the appellant itself that the consignments were transported in parts through smaller vehicles and the heavy consignments like turbine generator etc. were transported through rail. What is not understandable is as to why did not the appellant started transporting the civil construction material as well as the power plant equipment like turbine generator etc. through rail as and when required during the construction of the project. We concur with the view of the Commission on this issue that there was no prudence on the part of the appellant in wasting time by waiting for the strengthening of the bridges by PWD till 2013 and ultimately transporting the consignments either in parts through smaller vehicles or through rail. We are unable to find any fault in the observation of the Commission that delay of 60 days claimed by the appellant under this head could have been avoided and therefore, the Commission has rightly refused to condone the same.

25. The findings of the Commission on this issue are affirmed.

**d) Disallowance of IDC and IEDC.**

26. In view of our decision on issue Nos.(a) and (b) hereinabove, the IDC and IEDC needs to be reworked by the Commission. Therefore, this issue is

also remanded back to the Commission for fresh consideration upon hearing the parties.

**CONCLUSION:**

27. We summarize our findings on the issues raised by the appellant in this appeal hereinbelow: -

<b>Sl. No.</b>	<b>Issue No. / Issue</b>	<b>Our decision</b>
1.	<b><u>Issue - a)</u></b>  <b><u>Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area / region.</u></b>	The findings of the commission on this issue are set aside. We remand the matter back to the Commission to decide the issue afresh after hearing the parties and in the light of whole bunch of documents filed by the appellant. The exercise shall be completed by the Commission within two months from the date of this judgment.

2.	<p><b><u>Issue - b)</u></b></p> <p><b><u>Refusal to consider delay of 30 days on account of change of course of Champamati river.</u></b></p>	<p>We set aside the findings of the Commission on this issue as well and remand the same back to the Commission for a fresh consideration after hearing the parties again. The exercise shall be completed by the Commission within two months from the date of this judgment.</p>
3.	<p><b><u>Issue - c)</u></b></p> <p><b><u>Refusal to condone delay on account of non-availability of RCC bridges on the way of Bongaigaon TPS site.</u></b></p>	<p>We are unable to find any fault in the observation of the Commission that delay of 60 days claimed by the appellant under this head could have been avoided and therefore, the findings of the Commission on this issue are affirmed.</p>
4.	<p><b><u>Issue - d)</u></b></p> <p><b><u>Disallowance of IDC and IEDC.</u></b></p>	<p>In view of our decision on issue Nos.(a) and (b) hereinabove, the IDC and IEDC needs to be reworked by the Commission. Therefore, this issue is also remanded back to the Commission</p>

		for fresh consideration upon hearing the parties.
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28. The impugned order of the Commission is accordingly set aside and the appeal stands allowed to the extent hereinabove. The Central Commission shall pass consequential order within two months.

Pronounced in the open court on this the 19<sup>th</sup> day of November, 2024.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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*REPORTABLE / NON-REPORTABLE*

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