

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

**APPEAL No. 240 of 2022**

Dated : 14<sup>th</sup> May, 2024

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

**In the matter of:**

**THE TATA POWER COMPANY LIMITED**

*(Through its Authorised Representative)*

Having its office at:

C/o. The Tata Power Company Limited,  
34, Sant Tukaram Road, Carnac Bunder,  
Mumbai – 400 009

... Appellant(s)

*Versus*

**1. GUJARAT URJA VIKAS NIGAM LIMITED**

*(Through its Managing Director)*

Having its office at:

Sardar Patel Vidyut Bhavan,  
Race Course Circle,  
Vadodara – 390 007, Gujarat

**2. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*(Through its Secretary)*

Having its office at:

3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36 Janpath, New Delhi – 110 001

**3. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION  
COMPANY LIMITED**

*(Through its Managing Director)*

Having its office at:

4<sup>th</sup> Floor, Prakashgad,  
Plot No. G-9, Bandra (East),  
Mumbai – 400 051, Maharashtra

- 4. AJMER VIDYUT VITRAN NIGAM LIMITED**  
(Through its Managing Director)  
Having its office at:  
Hathi Bhata, Old City Power House,  
Ajmer – 305001, Rajasthan
- 5. JAIPUR VIDYUT VITRAN NIGAM LIMITED**  
(Through its Managing Director)  
Having its office at:  
Vidyut Bhawan, Janpath  
Jaipur – 302005, Rajasthan
- 6. JODHPUR VIDYUT VITRAN NIGAM LIMITED**  
(Through its Managing Director)  
Having its office at:  
New Power House, Industrial Area,  
Jodhpur – 342003, Rajasthan
- 7. PUNJAB STATE POWER CORPORATION LIMITED**  
(Through its Managing Director)  
Having its office at:  
The Mall, PSEB Head Office,  
Patiala, Punjab – 147001
- 8. UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED**  
(Through its Managing Director)  
Having its office at:  
Vidyut Sadan, Plot No. C-16, Sector-6,  
Panchkula – 134 112, Haryana
- 9. DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED**  
(Through its Managing Director)  
Having its office at:  
Vidyut Nagar, Vidyut Sadan,  
Hissar, Haryana – 125 005

## 10. CENTRAL ELECTRICITY AUTHORITY

Sewa Bhawan,  
R.K. Puram, Sector-1,  
New Delhi – 110 066

Email: [mishra.vk65@gov.in](mailto:mishra.vk65@gov.in)

... Respondent (s)

Counsel for the Appellant(s) : Amit Kapur for App. 1

Counsel for the Respondent(s) : Anand K. Ganesan  
Swapna Seshadri  
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Srishti Khindaria for Res.1

Udit Gupta  
Anup Jain  
Akshay Goel for Res. 3

Poorva Saigal  
Shubham Arya  
Ravi Nair  
Nipun Dave for Res. 4

Nipun Dave  
Poorva Saigal  
Shubham Arya  
Ravi Nair for Res. 5

Nipun Dave  
Poorva Saigal  
Shubham Arya  
Ravi Nair for Res. 6

Poorva Saigal  
Shubham Arya  
Ravi Nair  
Nipun Dave for Res. 7

Poorva Saigal  
Shubham Arya  
Tanya Sareen  
Ravi Nair for Res. 8

Poorva Saigal  
Shubham Arya  
Tanya Sareen  
Ravi Nair for Res. 9

## **JUDGEMENT**

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

1. The Appellant Tata Power Company Ltd. (TPCL) is a successor in interest of Coastal Gujarat Power Limited (CGPL) which had filed the instant appeal against the order dated 22<sup>nd</sup> June, 2020 of the 2<sup>nd</sup> Respondent, Central Electricity Regulatory Commission (CERC) to the limited extent that the CERC has permitted pass-through of Change in Law impact towards installation of FGD on pro-rata basis on the capacity of 4,000 MW in its Ultra Mega Power Project at Mundra, instead of on the installed capacity of 4,150 MW as claimed by the CGPL.
2. Be it noted here that vide order dated 19<sup>th</sup> December, 2023 passed on IA No. 1041 of 2022 filed in this regard by CGPL, the name of the Appellant was changed from Coastal Gujarat Power Limited to Tata Power Company Limited.
3. While the Appellant is a generating company operating Ultra Mega Power Project (UMPP) having installed capacity of 4150 MW (5 X 830 MW) at Mundra, Gujrat, the respondents 1 and 3 to 9 are distribution

licensees operating in the States of Gujarat, Maharashtra, Rajasthan, Punjab and Haryana which are buying electricity generated from the said power project of the Appellant and have entered the power purchase agreement dated 22<sup>nd</sup> April, 2007 with the Appellant in this regard pursuant to determination of tariff on the basis of competitive bidding held by the Commission under Section 63 of the Electricity Act, 2003.

4. Respondent No. 2, the Central Electricity Regulatory Commission is a statutory authority constituted under the Electricity Regulatory Commission Act, 1998 having the powers specified under Section 79 & 178 of the Electricity Act, 2003. The Respondent No. 10, CEA, is an organization originally constituted under Section 3(1) of the repealed Electricity (Supply) Act, 1948, which has since been substituted by Section 70 of the Electricity Act, 2003. Its functions and duties have been delineated under Section 73 of the Electricity Act, 2003.

5. Facts in brief which are necessary for disposal of the said appeal are narrated hereunder :-

(i) CGPL, a wholly owned subsidiary of TPCL, since having been acquired by TPCL, was successful bidder for Mundra UMPP consisting of 5 units of 850 MW. Each of the 5 units have statedly achieved commercial operation and have been generating electricity as well as

supplying the same to the procurers who are Respondent Nos. 1 and 3 to 9 in this Appeal.

(ii) Ministry of Environment, Forest and Climate Change, Govt. of India (MOEF&CC in short) issued a notification on 7<sup>th</sup> December, 2015 inter alia specifying revised standards of norms initially applicable to thermal generating stations which were to be complied with by all thermal power plants including the Appellant on or before 6<sup>th</sup> December, 2017.

(iii) Since, in order to meet these revised norms in respect of sulphur dioxide or nitrogen oxide, CGPL was required to retrofit certain equipment which requires one time capital expenditure as well as recurring operational expenditure during the term of the PPA, the Appellant filed a Petition No. 77/MP/2016 before the 2<sup>nd</sup> Respondent – Commission with the following prayers :-

- (i) *A declaration that the 2015 Notification constitutes a Change in Law event under the PPA; and*
- (ii) *In-principle approval for incurring the capital cost and prescribing a methodology for computing the adjustment in tariff to offset the additional investment or increase in costs due to the 2015 Notification, so as to reconstitute CGPL to the same economic position as if such Change in Law event had not occurred.*

(iv) The Petition was disposed of by the Commission vide order dated 17th September, 2018 holding that notification of 2015 amounts to Change in Law in terms of Article 13 of the PPA and granted liberty to

the Appellant, CGPL to approach the Commission again for determination of increase in costs or/and revenue expenditure on account of implementation of revised norms prescribed in the said notification in accordance with the guidelines to be issued by 10<sup>th</sup> Respondent, CEA.

(v) Meanwhile, on 28<sup>th</sup> June, 2018, MOEFF&CC issued another notification stating inter alia that water consumption requirement and installation of Cooling Tower is not applicable to Thermal Power Plants using sea water and provided a stack height limit for all the Thermal Power Plants with wet limestone FGD.

(vi) CGPL submitted a feasibility report to CEA on 27<sup>th</sup> September, 2018 providing justification for selecting sea-water based FGD system and the tentative capital as well as operational expenditure to be incurred for retrofitting FGD system. Another feasibility report was submitted by CGPL to CEA on 9<sup>th</sup> November, 2019 detailing the nitrogen oxide abatement measures specific to Mundra UMPP.

(vii) CEA vide its letter dated 21<sup>st</sup> February, 2019 recommended sea water based FGD system and also provided the corresponding indicating cost for Mundra UMPP. It also suggested that the FGD system installation should be done through the process of open

competitive bidding in consultation with representative of beneficiary states with whom PPAs had been executed. The relevant extracts of CEA's report are reproduced hereunder :-

**“TECHNOLOGY:**

*In the case of CGPL, two technologies are proposed as below:*

*i. Sea water base FGD*

*ii. Wet lime stone based FGD*

*I - The Sea Water based FGD is suitable for this plant considering its proximity to sea. The source of water for the plant is seawater drawn from the sea (Gulf of Kutch), which is 1.5 km from the site of Project. Seawater is used directly for condenser cooling. The outfall water from condenser will be used as source of water for FGD. The discharge of sulphur rich effluent from FGD will be diluted using outfall channel water to bring the pH to required level.*

*II--Wet Lime stone base FGD.*

**Engineering aspects considered for recommendation:**

- 1. Individual Sea Water based FGD is considered for each Unit.*
- 2. Limit SO<sub>2</sub> below environment norms with up to 1 % Sulphur content in Coal.*
- 3. Absorber Lining - such as Ceramic Tiles or C276 (Nickel Alloy) or Steel Alloy lining or Glass flake filled multi-functional epoxy lining or glass flake lining.*
- 4. Chimney*
  - a) Old chimney to be changed to wet stack with suitable lining by providing temporary chimney over Absorber/ on ground. If required necessity of GGH may be explored in this case only*

*Or*
  - b) Permanent FRP/Steel Chimney over Absorber.*

*Or*
  - c) 05 nos. new single wet stacks Steel or RCC or FRP.*

.....  
*10. APC*

- Additional Auxiliary power Consumption (APC) for complete FGD*



facilities is 1.0 %.

- *Extra APC of 0.153% to be considered only when using GGH with old/existing chimney in FGD system.*

### **CAPEX:**

*The cost of retrofitting FGD for the plant should be discovered through open competitive bidding in consultation with representatives of beneficiary states with whom PPA had been done, information in this regard has been sent by CEA separately Vide letter No: 44/FGD/UMPP/CEA/2019/-193 to GSECL The indicative base cost worked out to Rs 0.30 Cr/MW (CAPEX), it excludes, Opportunity cost related to interconnection period, GGH, any Tax or Duty and other financial miscellaneous costs.*

### **OPEX**

*The Annual indicative Operating Cost (OPEX) will include annual APC for FGD, annual Reagent cost (if any), annual Additional water consumption associated with FGD, annual Manpower charges for O & M of FGD, annual By-product handling (if any) and annual revenue earned from disposal of by product, this shall be calculated after detailed engineering and life cycle cost benefit analysis. Also the regulator may regulate the different aspects of OPEX (as per actual) at appropriate time when the FGD starts operating. Refer the chapter no 09 OPEX.*

### **OPPORTUNITY COST:**

*Since interconnection of newly lined chimneys or New wet stack or stack above absorber may result in loss of generation of the plant, hence CGPL is advised to minimize this interconnection time by taking suitable measure so that the "Opportunity cost" associated with interconnection may have least impact on CAPEX and eventually on tariff revision....."*

(viii) In terms of the liberty granted by the Commission to the Appellant in its order dated 17<sup>th</sup> September, 2019 in Petition No. 77/MP/2016 and in terms of Section 79 of the Electricity Act, 2003 read with article 13 of the PPA as well as Clause 4.7 of a Competitive Bidding Guidelines issued by Ministry of Power, The Appellant, CGPL filed another petition before the 2<sup>nd</sup> Respondent-Commission seeking approval of capital cost (including

recovery of other ancillary expenditure/ loss) and Operational Cost which may be incurred/ caused to it for installing the FGD system so as to meet the Revised Norms. Approval of additional tariff to be allowed to offset the additional investment/ increase in costs to be incurred by Appellant due to the 2015 Notification was also sought. The main prayers in the petition were as under :-

- a. *Approve the total capital expenditure of Rs. 2715 Crores to be incurred by CGPL due to installation of FGD;*
- b. *Approve the recurring annual operating expenditure to be incurred by CGPL due to installation of FGD, as provided in the instant petition,*
- c. *Approve the revised tariff as provided in the instant petition.*
- d. *In the alternative to Prayer (d) above, prescribe, devise and apply appropriate norms for computing the adjustment in tariff to offset the additional investment/ increase in costs due to MoEFCC Notification for restituting CGPL to the same economic position as if such Change in Law event had not occurred.*
- e. *Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

(ix) Following four issues were framed by the Commission for its determination:-

1. *Issue No.1: Whether provisional approval of capital expenditure can be granted to the petitioner for incurring proposed expenditure towards installation of FGD system?*
2. *Issue No.2: Whether additional O&M expenses and the relaxation in other operating norms due to installation of FGD system are admissible as claimed by the petitioner?*

3. *Issue No.3: Whether capacity of 4150 MW or 4000 MW is to be considered towards expenditure/ relief for Installation of FGD system?*
4. *Issue No.4: What shall be the norms and mechanism for computing the adjustment in tariff corresponding to the additional investment and increase in the operating costs due to the 2015 Notification so as to restore the petitioner to same economic position as if such Change in Law event has not occurred?*

(x) The Appellant is aggrieved by the findings of the Commission on Issue No. 3 whereby the Commission held that the calculations for capital expenditure, operating expenditure and auxiliary power consumption related to installation of FGD system shall be done corresponding to the installed capacity of 4150 MW but the respondents shall be liable to pay their expenses on pro-rate basis corresponding to 4000 MW in terms of PPA.

(xi) Review Petition filed by the Appellant against the said order dated 22.06.2020 was dismissed by the Commission vide order dated 16.08.2021.

(xii) Accordingly, the instant appeal has been filed.

6. We have heard Learned Counsel appearing for the Appellant as well as Respondent Nos. 1, 3, 4, 5, 6, 7, 8 & 9. None has appeared on behalf of the Respondent Nos. 2 & 10. Written Submissions have been

filed on behalf of the Appellant and the Respondents Nos. 1, 3, 4 to 6, 7, 8 & 9 which also have been considered.

7. Before advertent to the rival submissions made on behalf of the Parties, we find it profitable to quote the relevant portion of the impugned order of the Commission :-

*“55. It is noticed that capacity recognized under the PPA dated 22.4.2007 is 4000 MW whereas the contracted capacity in the said PPA is 3800 MW. In the bid itself, the auxiliary consumption was recognized as 200 MW, equivalent to about 5%. It is admitted that the Petitioner itself had sought the expansion of Mundra UMPP. Further, the petitioner in its affidavit dated 14.10.2013 in petition 159/MP/2012 submitted that auxiliary consumption was assumed as 4.75% in its bid and installed capacity of 4000 MW. The impact of the additional capital expenditure and operating expenditure is considered within the PPA. The installed capacity of 4000 MW was one of the bid considerations at the time of entering into PPA that has not been amended or altered till today. Therefore, any consideration of impact based on installed capacity of 4150 MW would tantamount to alter the provision of PPA. Further, there will be impact on the CAPEX and auxiliary power consumption by considering the higher installed capacity of 4150 MW. The Mundra UMPP is a case-2 project, wherein the bidder is awarded the project based on the quoted tariff by the Petitioner.*

*56. We also take notice of the submission of the Petitioner that the FGD system has been designed for 4150 MW capacity and the costs have been accordingly claimed. It has contended that the capital cost of the project for 4000 MW capacity would not proportionately come down and, therefore, it would also be incorrect to consider a proportionate reduction. The emission of SO<sub>2</sub> is dependent on amount of coal to be fired and Sulphur content in the coal. The installation of 4150 MW plant capacity in place of 4000 MW by CGPL is to cater to the power consumption requirement of electrical motor driven BFPs keeping same contractual output of 3800 MW to procurers. Selection of 4000 MW plant with turbine driven BFP would have accounted for higher heat rate which in turn would have required higher coal consumption and higher SO<sub>2</sub> emission for the same contractual output. However, we note that the Petitioner has not explained the rationale for such assertions. Moreover, this Petition has been filed for claim of costs related to installation of FGD system. Any claim of the Petitioner for granting costs for 4150 MW is not subject matter of this Petition. Accordingly, we hold that the calculations*

for capital expenditure, operating expenditure and auxiliary power consumption shall be done corresponding to installed capacity of 4150 MW, but the Respondents shall be liable to pay the expenses on pro-rata basis corresponding to 4000 MW in terms of PPA.

8. On behalf of the Appellant, it is submitted that :-

- a. Construct of bidding documents under which Mundra UMPP, was envisaged and set up as a hybrid Case-1/ Case-2 type where fuel (imported), location (Mundra, Gujarat) and technology (super-critical) were chosen by the Procurers. The manner of setting up of the plant including actual installed capacity was left to the bidder. In other words, there was no stipulation/ restriction qua installed capacity.
- b. The Power Purchase Agreement dated 22.04.2007 (“PPA”) links rights and obligations of the parties to the Contracted Capacity (i.e. 3800 MW) since capacity charges relate to Contracted Capacity and not installed capacity –and hence relief on 4150 MW does not alter any terms of the PPA. Hence, the entire basis of reducing the compensation payable to CGPL is without any basis.
- c. Central Electricity Authority’s (“CEA”) norms dated 20.03.2019 for Ammonia and Sea Water based FGD provided the same indicative cost for 800-830 MW. Hence, CEA (apex technical body) has confirmed that the capex would remain the same for installing the FGD where the installed capacity of the unit is between 800 MW to 830 MW. In other words, no inefficiencies/ additional/ imprudent cost is being passed on to the procurers/ consumers.
- d. Furthermore, the factual position qua Tata Power’s Mundra UMPP, is that there no additional coal consumption on account of increase in capacity from 4000 MW to 4150 MW. This is evident from the Corrigendum dated 26.04.2011 to Environmental Clearance for Mundra UMPP, issued by Ministry of Environment, Forests and Climate Change [**@ Pg. 241 of Appeal**]. Consequently, there is no increase in capex for installation of FGD as installation of FGD depends on coal consumption. [**Ann. 8 @ Pg. 240**]
- e. The above findings in the Impugned Order are contrary to Ld. CERC’s own subsequent Order dated 25.04.2023 in P. No. 607/MP/2020 (relating to installation of equipment for meeting revised emission norms of NOx by Mundra UMPP), wherein installed capacity of 4150 MW was considered for compensation (@ para 100 onwards). A copy of Order dated 25.04.2023 in P. No. 607/MP/2020 is marked and annexed hereto as **Annexure-1**.
- f. The Impugned Order is contrary to the settled jurisprudence qua Change in Law provisions which provide for restitution on actuals,, i.e., to restitute parties to an economic position as if such Change in Law had not happened.

- g. *The Impugned Order is contrary to the settled jurisprudence qua delicensing of generation under the Electricity Act, 2003. It presumes to regulate installed capacity and/or restrict Change in Law relief artificially when the law itself contains no restriction on Tata Power's installed capacity in the present case.*
- h. *Granting relief on the basis of installed capacity of 4150 MW does not amount to alteration of PPA terms since the rights and obligations of the parties qua Mundra UMPP is linked to the contracted capacity and not the installed capacity. In terms of the RFP and RFQ, Tata Power submitted its bid. It is not the Procurer's case that Tata Power could not have increased its installed capacity. Non-amendment of PPA demonstrates that increase in capacity has no effect on rights and obligations of parties under the PPA. No reliance can be placed on the mention of 4000 MW on the cover page of the PPA, since no material rights or obligations flow from the same.*
- i. *In any case, no reliance on the bid is permissible since no material terms of the PPA are connected to the installed capacity. Furthermore, Hon'ble Supreme Court in MSEDCL v. APML [(2023) 7 SCC 401, @Paras 105-110] held that bid parameters cannot be considered for Change in Law relief since these parameters are under test conditions. Further, it was held that reliance on these bid parameters, hence, will not reconstitute the affected party to the same economic position as if the approved change in law event has not occurred.*
- j. ***The FGD system to be installed is based on flue gases and SO<sub>2</sub> concentration in it, which depends on quantum of coal consumed and sulphur content in the coal.*** *Increase in installed capacity from 4,000 MW to 4,150 MW was not on account of change in boiler design (which determines the amount of coal consumption and resultant emissions of flue gas) but it was due to substitution of 'Steam Turbine Driven Boiler Feed Pump' from the Steam Cycle to 'Motor or Electricity Driven Boiler Feed Pump'. The said design modification improved the Gross capacity by 30 MW per Unit (or 150 MW for the plant) since for operating Steam Turbine Driven Boiler Feed Pumps, part of the steam is taken out from main steam turbine system to operate the boiler feed pumps. This steam is not used in power generation process. In comparison, in case of units operated with 'Motor Driven Boiler Feed Pumps' (MDBFPs), steam is not taken out from main steam turbine system for operating the Boiler Feed Pumps and consequently the entire steam is used for power generation, which leads to excess generation of 30 MW in each Unit. This excess generation increased the installed capacity of the unit to 830 MW. This excess generation was used for running the motor driven boiler feed pump without affecting the Contracted Capacity to be supplied to the Procurers. Though there is an increase in the installed capacity of the Units/ Power Plant, there was no excess burning of coal. There is no additional operating expenditure, and no excess emission of SO<sub>2</sub> on account of increase in installed capacity from 4000 MW to 4150 MW. Hence, in case of Mundra UMPP, the size of FGD*

with the installed capacity of 800 MW or 830 MW would have remained the same and consequently no additional capital cost is required for installation of FGD. **Tata Power's PPA does not allow Tata Power to sell this extra electricity of 150 MW to other parties and the same is not being sold by Tata Power.**

- k. There is no tangible difference in the capital cost of installation of FGD system for capacity of 4000 MW as opposed to 4150 MW. This is evident from CEA's general norms for installing Ammonia and Sea Water Based FGD applicable from 20.03.2019, which prescribe the base capital expenditure of Rs. 27 Lacs per MW for installing the FGD with installed capacity between 800 MW to 830 MW. CEA itself believes that there would not be any additional expenditure for a unit having an installed capacity of 800 MW vis-à-vis a unit having an installed capacity of 830 MW [**@ Pg. 312**]. Such report was placed on record before Ld. CERC in Petition No. 168/MP/2019 at Annexure 16 [**Relevant @ Pg. 575 of Petition No. 168/MP/2019**].
- l. As stated above, there is no excess auxiliary consumption on account of size of FGD to be installed at Mundra UMPPP. Total auxiliary power consumption in MW is dependent of FGD size and various equipment required for it. **Since, there is no change in the size of FGD with an installed capacity of 4,150 MW 'Motor Driven Boiler Feed Pump' vis-à-vis, installed capacity of 4,000 MW with 'Stream Driven Boiler Feed Pump', the various equipment required for FGD will also be same. Hence, the total auxiliary power consumption of FGD will be same in both the plant sizes.**

9. On behalf of the Respondent, it is argued as under :-

- (i) The contention of the Appellant that the PPA and the Bid documents nowhere refers to capacity of 4000 MW but only Contracted capacity of 3800 MW and therefore CERC erred in granting change in law relief only to the extent of the capacity of 4000 MW, is grossly misconceived.
- (ii) The contention that the PPA, except for the cover page, does not refer to the capacity of 4000 MW is factually incorrect.
- (iii) The bid documents require the bid to be placed by the bidders, mentioning the gross capacity and the contracted capacity. The PPA also specifically incorporates the bid placed and the gross capacity and the contracted capacity mentioned by the bidders. In this regard, the following are relevant:
- (iv) The contention of the Appellant that only the contracted capacity of 3800 MW is to be recognised and not the gross capacity of 4000 MW is misconceived and is also counter-productive. In that event, the

*change in law impact ought to be only on 3800 MW and not for any capacity over the same, not even 4000 MW.*

## **Our Analysis**

10. We find the submission made on behalf of the Appellant that the bid documents and the PPA nowhere referred to capacity of 4000 MW totally incorrect. There is a reference to gross capacity of the project as 4000 MW in Clause 1.4 (iii) of the RFP document which states that the procurers would obtain necessary clearances in relation to the project of cross capacity of 4000 MW employing superficial technology.

11. Similarly, letters dated 2<sup>nd</sup> March, 2007 & 5<sup>th</sup> April, 2007 vide which environmental clearances were granted for the project by the Ministry of Environment and Forests, also mentioned the project capacity as 4000 MW (5x800 MW). Further, the scheduled Commercial Operation Date (COD) and contract capacity given by the Appellant itself in Section B as per Annexure 6-Format 1,2, & 3 of the RPF, the gross capacity of the unit has been shown as 4000 MW in total with contract capacity as 3800 MW. It is vide letter dated 1<sup>st</sup> April, 2011 written by CGPL to the Director, Ministry of Environment and Forests that amendment was sought to the existing environment clearance for the project in order to change the capacity of the project from 4000 MW to 4150 MW which was acceded to by the Ministry



vide communication dated 26<sup>th</sup> April, 2011.

12. However, we do not find any discussion or findings of the Commission in the entire impugned order with regard to the contention of the Appellant that the expenditure for installing FGD system for installed capacity of 4000 MW could have been same as the expenditure for the system for installed capacity of 4150 MW. It has been the specific case of the Appellant that in case of Mundra UMPP, the size of FGD would have been same for the installed capacity of 4000 MW as well as 4150 MW and no additional capital cost would be required for installation of FGD system for the capacity of 4150 MW. It has been further contention of the Appellant that since there is no change in the size of FGD system with an installed capacity of 4150 MW 'Motor or Electricity Driven Boiler Feed Pump' vis-à-vis installed capacity of 4000 MW with 'Steam Driven Boiler Feed Pump', the various equipments required for FGD will also be the same and hence the total auxiliary power consumption of the FGD will be the same in both the cases.

13. It has been argued on behalf of the Appellant that the fact that there is no tangible difference in the capital cost of installation of FGD system for capacity of 4000 MW as opposed to 4150 MW is evident from CGS general norms for installing ammonia and sea-water based FGD system applicable

w.e.f. 20<sup>th</sup> March, 2019 which prescribed the base capital expenditure of Rs.27 Lakh per MW for installing the FGD in the installed capacity between 800 MW to 830 MW. Thus, according to the Appellant, there would not be any additional expenditure for a unit having an installed capacity of 830 MW vis-à-vis the unit having an installed capacity of 800 MW. A copy of these norms issued by CEA is annexed to the Appeal as Annexure 10.

14. Having regard to these submissions made on behalf of the Appellant on the issue under consideration, we are of the opinion that conclusion arrived at by the Commission in the impugned order, is not justified and sustainable in the absence of any exercise on the part of the Commission to find out whether in fact, there would be no additional capital expenditure or operational expenditure on installation of FGD system for the capacity of 4150 MW as opposed to the capacity of 4000 MW. In case, it is found that there is no change in the size of FGD for an installed capacity of either 4000 MW or 4150 MW which would indicate no difference in the capital cost of installation of the system as well as in the equipments required for the system, there would be no justification for allowing the expenditure of the FGD system to the Appellant on pro-rata basis corresponding to 4000 MW.

15. In these facts and circumstances of the case, we find it appropriate to remand the case back to the Commission for a fresh consideration on the above noted submissions/contentions raised on behalf of the Appellant.

16. Hence, the impugned order is hereby set aside to the extent it has been assailed in this Appeal. The appeal stands allowed. The case is remanded back to the Commission for fresh consideration on the aspect noted herein above after hearing the parties again. Needless to say that the Commission shall complete the exercise expeditiously and not later than three months from the date of the receipt of this order from this Tribunal.

**Pronounced in the open court on this 14<sup>th</sup> Day of May, 2024.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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