

petitioner in support of the application for review. By order dated 1.12.2006, the application for review was admitted on grounds of computation of interest on loan and computation of cost of maintenance spares.

INTEREST ON LOAN

2. It has been pointed out that tariff for the period 1.4.2004 to 31.3.2009 was claimed by the petitioner considering an amount of Rs.37671 lakh as loan outstanding as on 31.3.2004, after adjusting the cumulative repayment of Rs.46957 lakh up to that date. The petitioner has averred that the Commission in its order dated 19.7.2006 has taken cumulative repayment of loan up to 31.3.2004 as Rs.67646 lakh and thereby the loan outstanding as on 31.3.2004 has been considered Rs.16964 lakh, and allowed interest accordingly. According to the petitioner, the methodology adopted by the Commission will leave unserviced in tariff the actual loan amount of Rs.20689 lakh. The petitioner has contended that determination of cumulative repayment up to 31.3.2004 ought to have been based on actual repayment or normative repayment of loan and not on the basis loan repayment, actual or normative, whichever is higher.

3. The Commission while computing interest on loan component of tariff in respect of Korba STPS for the period prior to 1.4.2004 as also for the period 1.4.2004 to 31.3.2009 considered the normative repayment of loan. In certain other cases, however, the Commission had considered the cumulative repayment of loan on the basis of actual repayment since it was higher than the normative repayment. In those cases, the petitioner had filed appeals before the Appellate Tribunal impugning the methodology adopted by the Commission for

computation of cumulative repayment. The Appellate Tribunal in its various orders has decided that the cumulative repayment is to be worked out by considering normative repayment, irrespective of whether it is higher or lower than the actual repayment. In view of this decision of the Appellate Tribunal, interest on loan already allowed based on normative repayment is not to be reopened since the methodology adopted in case of Korba STPS is in conformity with the decision of the Appellate Tribunal.

4. Madhya Pradesh Power Trading Company Ltd (MPPTCL) the first respondent, in its reply has stated that the Appellate Tribunal vide its judgement dated 14.10.2006 in Appeals No.135/2005 to 140/2005 had decided that FERV component of loan should be added to loan and no portion of FERV is allocable to equity. MPPTCL has requested that the effect of the judgement of the Appellate Tribunal may also be considered in case of Korba STPS while making the decision in the present review petition.

5. We have considered the submission made on behalf of MPPTCL. The Appellate Tribunal in its order dated 14.10.2006 *ibid* has construed Ministry of Power notification dated 16.12.2007, applicable up to 31.3.2001, laying down the norms for determination of tariff for the transmission assets owned by Power Grid Corporation of India Ltd (PGCIL). The tariff in respect of Korba STPS for the period prior to 1.4.2001 was determined under a separate notification issued by Ministry of Power. MPPTCL in its reply has not laid the factual structure or foundation for extending the judgement of the Appellate Tribunal dated

14.10.2006 as applicable to Power Grid Corporation of India to the generating stations owned by the petitioner including Korba STPS. It is settled law that for extending the judgement rendered in one case, to any other case, it is necessary to discuss the factual position of the decision in which reliance is placed. In CIT Vs Sun Engineering Works (P) Ltd (1992) 4 SCC 363, the Hon'ble Supreme Court held as under:

“It is also a well-established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgement must be read as applicable to the particular facts proved or assumed to be true since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it.”

Also, the issue raised by MPPTCL does not arise in the present application for review, directly or indirectly. Therefore, request made by MPPTCL is not being considered for the present. MPPTCL is, however, at liberty to make an appropriate application in accordance with law for review of allocation of FERV amount between debt and equity in case of Korba STPS.

COST OF MAINTENANCE SPARES

6. The petitioner has prayed that in the order dated 19.7.2006, the maintenance spares, as a component of working capital have been calculated based on historical cost of Rs.123080 lakh, as inclusive of initial spares of Rs.5725 lakh as on 31.3.1991. By referring to Ministry of Power notification dated 2.11.1992, the petitioner has pointed out that the historical cost of Rs.123080 lakh was exclusive of initial spares of Rs.5725 lakh. The petitioner has accordingly prayed for recomputation of working capital.

7. MPPTCL in its reply has submitted that the capital cost of Korba STPS for the year 1990-91 was Rs.107386 lakh, excluding the initial spares. It has been pointed out that after adding the cost of initial spares, the capital cost would work out to Rs.113111 lakh against which the capital cost of Rs.123080 lakh considered by the Commission in its order dated 19.7.2006. In the submission of MPPTCL, the petitioner has recovered excess amount on account of interest on working capital. MPPTCL has pleaded for review.

8. We have noted the submission of the parties. MPPTCL in its reply has relied upon an award made by Shri A.K. Sah, Umpire in a dispute involving the petitioner, erstwhile MP Electricity Board and others. On perusal of the award of the Umpire it is noticed that the cost of Rs.107386 lakh is stated to be equipment cost only, and does not include other elements of the capital cost of the project. The Umpire in his award recommended the total capital cost of Rs.136825 lakh. The Commission has considered capital cost of Rs.123080 lakh as already noted, which is less than the total capital cost recommended by the Umpire. Therefore, we do not find any force in the submission made by MPPTCL.

9. We have also gone through the records, including the Ministry of Power notification dated 2.11.1992. We are satisfied that the historical cost of Rs.123080 lakh as on 31.3.1991 considered by Ministry of Power and adopted by the Commission was exclusive of cost of initial spares worth Rs.5725 lakh. Therefore, there is an apparent error in computation of working capital and consequently the interest on working capital component of tariff. This error needs

to be rectified. In our opinion, correction of the error does not call for any more hearing. Accordingly, the interest on working capital component of tariff is revised as under by considering the historical cost of Rs.128805 lakh (Rs.123080 lakh + Rs.5725 lakh).

(Rs.in lakh)					
Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
Coal Stock – 1.1/2 months	7497	7497	7497	7518	7497
Oil Stock – 2 months	688	688	688	690	688
O&M expenses	1690	1757	1828	1900	1977
Spares	2617	2774	2940	3117	3304
Receivables	17803	17848	17916	17420	17551
Total Working Capital	30296	30564	30869	30644	31018
Rate of Interest	10.25%	10.25%	10.25%	10.25%	10.25%
Interest on Working Capital	3105	3133	3164	3141	3179

10. As a consequence, the annual fixed charges allowed by order dated 19.7.2006 shall stand revised as under:

(Rs. in lakh)						
S.No.	Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
1.	Depreciation	6266	6266	6266	2450	2450
2.	Interest on Loan	1219	651	183	0	0
3.	Return on Equity	11845	11845	11845	11845	11845
4.	Advance Against Depreciation	0	0	0	0	0
5.	Interest on Working Capital	3105	3133	3164	3141	3179
6.	O&M Expenses	20280	21087	21930	22800	23727
	Total	42715	42981	43388	40236	41202

11. The review petition stands disposed of.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi dated the 15th June 2007