

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**

**Review Petition No.6/2007
in
Petition No. 35/2004**

In the matter of

Approval of revised fixed charges due to additional capitalisation for the years 2000-2004 for the Talcher Thermal Power Station (460 MW).

And in the matter of

Review/Clarification/modification/reconsideration of order dated 25.9.2006 in Petition No.35/2004.

And in the matter of

Grid Corporation of Orissa Limited

...**Petitioner**

Vs

National Thermal Power Corporation Limited

... **Respondent**

The following were present:

1. Shri R.K. Mehta, Advocate
2. Shri S.K. Sahoo, Manager, GRIDCO

**ORDER
(DATE OF HEARING: 8.2.2007)**

Petition No.35/2004 was filed by National Thermal Power Corporation Ltd., the respondent herein for approval of the revised annual fixed charges for the years 2000-04 in respect of Talcher Thermal Power Station (Talcher TPS) after accounting for additional capitalization on account of R&M undertaken by the respondent. Earlier, by order dated 19.6.2002 in Petition No.62/2000 the Commission had approved the annual fixed charges for the same period, that, is, years 2000-04, without taking into

consideration the additional capitalization during that period. The revised annual fixed charges were approved by the Commission in its order dated 28.7.2006. The detailed reasons for the revised annual fixed charges approved in the order dated 28.7.2006 were given in the order dated 25.9.2006. The application has been filed for review/clarification/modification/re-consideration of the order dated 25.9.2006. The application is, however, taken on file as the application for review of the said order dated 25.9.2006.

2. We have heard Shri R.K. Mehta, Advocate, for the petitioner on admission.
3. The issues raised by the petitioner are discussed in subsequent paragraphs.

Finalisation of R&M policy

4. In para 6 of the order dated 28.7.2006 the Commission has observed as under:

“6. The policy on Renovation and Modernisation (R & M) is yet to be finalised. The Regulations of 2001-2004 as well as 2004-2009 are silent on the treatment of depreciation once the project has under gone life extension. We are of the view that the issue of reduction of capital cost by accumulated depreciation as claimed by GRIDCO needs to be discussed with all the stakeholders. Once Commission takes a view on the matter, same will be applicable to this generating station as well.....”
5. The petitioner has submitted that before passing the order dated 25.9.2006, the Commission ought to have finalized R&M policy. The petitioner has prayed that impact of additional capital expenditure during 2000-04 on the fixed charges be deferred till finalization of R&M policy. The petitioner has further prayed that R&M policy should be spelt out at the earliest.

6. We have considered the argument made on behalf of the petitioner. The Commission is separately considering the appropriate regulatory framework for R&M of the generating stations. However, this is a long drawn process since all the stakeholders are to be consulted before the Commission specifies the details in regard to admissibility of R&M expenditure, manner of investment etc. We do not find the petitioner's ground to be valid to defer implementation of the revised fixed charges approved based on the additional capital expenditure already incurred by the respondent. R&M works were undertaken by the respondent consequent to agreement with the petitioner, the benefits of which are accruing to the petitioner. Accordingly, review of the order dated 25.9.2006 on this count is rejected. R&M policy, as and when notified will be applicable to Talcher TPS in accordance with law.

Capital Base

7. It has been stated that Talcher TPS was transferred from the erstwhile Orissa State Electricity Board to the respondent at a cost of Rs.356 crore as on 3.6.1995, though the original book value of the generating station on the date of transfer was Rs.178.30 crore. While determining the revised annual fixed charges, the Commission has considered the transfer price of Rs.356 crore as the capital base as on the date of transfer. It is the petitioner's contention that the book value of Rs.178.30 crore ought to have been considered for the purpose of determination of the revised annual fixed charges. In support of its contention, the petitioner has relied upon the Commission's order dated 28.6.2002 in Petition No.77/2001 (NTPC Vs UPPCL), whereunder the Commission determined tariff for Tanda TPS transferred to the respondent by the erstwhile Uttar Pradesh State Electricity Board. In that case, the Commission had considered the original capital cost of Rs.607 crore for

determination of tariff from 15.1.2000 to 31.3.2004 against transfer price of Rs.1,000 crore. The petitioner has submitted that while considering capital base in respect of Talcher TPS, the principle followed in case of Tanda TPS ought to have been followed. Accordingly, the petitioner seeks review of the original capital base considered for the purpose of determination of the revised annual fixed charges.

8. We find the contention of the petitioner to be without merit. Talcher TPS was taken over by the respondent on 3.6.1995 at a cost of Rs.356 crore. The erstwhile Orissa State Electricity Board, the predecessor of the petitioner, and the respondent had mutually agreed to tariff chargeable for a period of five years from the date of take-over by the respondent. For this purpose, the parties concerned agreed to the capital base of Rs.356 crore. Therefore, while determining tariff for the period 2000-2004 in respect of Talcher TPS by order dated 19.6.2002 in Petition No.62/2000, the Commission adopted the capital base of Rs.356 crore, as agreed to between the parties for the purpose of tariff for the period 1995-2000. Accordingly, tariff for the period ending 31.3.2004 was determined by the Commission in its order dated 19.6.2002. The said order dated 19.6.2002 has acquired finality. While approving the revised annual fixed charges, the capital base of Rs.356 crore has been continued. Revision of capital base at this stage would amount to review of the order dated 19.6.2002 in the garb of the proceedings for review of order dated 25.9.2006, which is not permissible. Therefore, the capital base considered for determination of the revised annual fixed charges in the said order dated 25.9.2006 is considered to be outside the scope of review.

9. Further, in case of Tanda TPS, the generating station was transferred from the erstwhile Uttar Pradesh State Electricity Board to the respondent on 15.1.2000. The tariff in respect of this generating station, consequent to its transfer to the respondent, was determined for the first time by the Commission by its order 28.6.2002 by taking the original capital cost of Rs.607 crore as the capital base and ignoring the actual transfer price of Rs.1000 crore. There are stark differences between the two cases and no parallels can be drawn between them. In one case, that is, Talcher TPS the capital base for determination of tariff was agreed to between the parties and tariff was actually paid for a period of five years based on the agreed capital base. In the other case (Tanda TPS), the tariff was determined by the Commission for the first time after its transfer to the respondent. Further, it is established principle of law that a subsequent decision (in case of Tanda TPS on 28.6.2002) cannot be a ground for review of an earlier decision, arrived in case of Talcher TPS on 19.6.2002.

10. In the light of discussion in paras 8 and 9 above, the case for review of capital base for tariff determination is not made out and is accordingly rejected.

Capital Base vis-a-vis Depreciation Recovered

11. It is next contended by the petitioner that life of the generating station has already come to an end and a massive investment towards R&M is being undertaken by the respondent to give fresh lease of life to the generating station. It has been contended that the original equity capital should not be allowed return after expiry of the life of the generating station, otherwise it will unduly burden the consumers since they will be required to pay return on equity on the equity capital even after fresh huge expenditure of Rs.430.05 crore incurred on renovation and modernisation of the

generating station. The petitioner has relied upon para 5.3 (c) of the National Tariff Policy published by the Central Government on 6.1.2006, which, inter alia, states that benefits of the reduced tariff after the assets have been fully depreciated should remain available to the consumers. The petitioner has, therefore, sought review on the ground that the capital base should be reduced by the accumulated depreciation already recovered before considering additional capitalization on account of R&M.

12. The issue raised is to be addressed while finalizing R&M policy. At this stage, review of the order dated 25.9.2006 does not warrant review, which is based on the prevalent practices. Accordingly, this ground for review of order dated 25.9.2006 is also rejected.

Effective date for life extension

13. The petitioner has stated that the Commission in the order dated 25.9.2006 has taken extended life of Talcher TPS of 20 years from 1.4.2001 by which date only 25% of R&M works of 60 MW units had been completed. The petitioner has stated that life of all the units should be considered for a period of 25 years with effect from 1.4.2005, the date on which about 75% of the proposed expenditure on R&M had been incurred.

14. Estimation of extended life is a complicated matter to be undertaken by conducting life extension studies before finalization of R&M contracts. Life extension studies do stipulate the life of critical components subject to re-examination after certain period of operation. Based on the studies agreed, necessary R&M works are carried out. R&M contractors are required to guarantee extended life period and improved operating parameters. However, the extended life is subject to re-

examination after certain years of operation. As such, the extension of life cannot be determined in absolute terms. In the order dated 19.6.2002, the Commission stipulated the life extension by 20 years starting from 1.4.2001 with a view to arrive at a depreciation rate for recovery of investment by the respondent. It is too late in the day to seek review of the matter decided more than four years ago. It is not appropriate to unsettle the issues settled long time back. There should be time after which the matter deserves to be given quietus. Accordingly, we are not inclined to re-open the issue through the process of review under Order XLVII of the Code of Civil Procedure, the scope of the exercise being limited to the grounds laid down under the law.

Discrepancy in the order dated 28.7.2006 and the order dated 25.9.2006

15. The petitioner has pointed out that in accordance with the order dated 28.7.2006, the capital cost as on 31.3.2004 has been shown as Rs.69601 lakh after excluding the administrative expenses and interest on loan of Rs.2713 lakh as the petitioner had agreed to settle this amount with the respondent in two equal installments. It has been pointed out that in para 21 of the order dated 25.9.2006, capital cost as on 31.3.2004 has been indicated as Rs.72314 lakh, which includes administrative expenses and interest on loan of Rs.2713 lakh. The petitioner seeks reconciliation of the discrepancy alleged.

16. The capital cost of Rs.72314 lakh shown in para 21 of the order dated 25.9.2006 should be reduced by Rs.2713 lakh, for reasons recorded in para 29 of the said order dated 25.9.2006. The latter takes note of the fact that amount of Rs.2713 lakh is to be paid by the petitioner in two equal annual installments. While computing

tariff, an amount of Rs.2713 lakh has not been considered. Therefore, no revision of tariff and hence review of the order dated 25.9.2006 is called for, except for a correction of the capital cost on 1.4.2004 as above, that is, Rs.69601 lakh instead of Rs.72314 lakh.

Entitlement to Incentive for Capacity under R&M

17. The petitioner has further pleaded that during the hearing held on 27.7.2006, it was submitted on its behalf that the incentive calculated without taking the capacity under R&M may be adjusted against the actual interest and administrative expenses pertaining to R&M payable to the respondent. On the one hand, the respondent claimed and received the incentive without taking into account the capacity under R&M and on the other hand they had claimed relatable fixed charges for the R&M period and the same has been allowed by the Commission. The Commission accepted the said submission during the course of hearing but this does not find place in the summary order dated 28.7.2006.

18. The progressively increasing target PLF for the generating station was decided by the Commission in view of the deplorable condition of the generating station at the time of its takeover. It was specifically indicated in the orders that PLF for the purpose of incentive would be calculated after taking out the units under R&M. The same was agreed to by the petitioner. Further, the Commission in its order dated 25.9.2006 has allowed relatable fixed charges corresponding to the R&M period in view of the fact that these were the committed liabilities of the respondent during that period and the respondent was able to turn around the project and meet the progressively increasing operating norms. Return on equity, components of O&M and interest on working

capital have not been allowed to be recovered by the respondent as the capacity under shutdown was not providing service to the consumer. As such, by making provision for committed liabilities for period under shut down it cannot be held that the capacity under R&M shall be included for the purpose of calculating target PLF. No decision in this regard has been taken by the Commission. Accordingly, review of the order dated 25.9.2006 on this count is not called for.

Restoration of lost capacity/re-rating of Stage-I units

19. The petitioner has submitted that PPA dated 8.3.1995 between Government of Orissa and NTPC provides as under:

“Installed capacity of TTPS as on date is 460 MW (4x60 MW + 2x110 MW). The installed capacity is however subject to de-rating / re-rating of the generating units as determined from time to time after following the prescribed procedures as laid down by CEA.”

20. It is, however, stated by the petitioner that the Commission in the order dated 25.9.2006 has observed that there were no records to show any agreement between the parties on the definite performance level and the capacity restoration.

21. The petitioner seeks review on this count, on the ground that there is an error apparent on the face of record.

22. We direct that review on this ground may be admitted.

Interest on Loan

23. According to the petitioner, the Commission has considered rate of interest of 14% while calculating interest on loan on loans arising out of additional capital

expenditure approved by the Commission. It has been stated that the respondent had not borrowed any funds for investment on the generating station but has invested its own funds. Accordingly, it has been urged that interest on notional loan should be based on weighted average actual rate of interest of the total borrowing of the respondent or 3% less than SBI PLR rate during the respective years, whichever is less.

24. We admit review on this ground.

Methodology of Calculation of Depreciation

25. The petitioner has stated that by allowing rate of depreciation of 4.5%, the Commission has benefited the respondent as it enables the respondent to recover depreciation at a faster rate.

26. The rate of depreciation is related to the life extension of the generating station consequent to R&M. We have already turned down the petitioner's plea for review of life extension. It is, therefore, axiomatic to say that entire depreciation is recoverable in the extended life. This may result in increase in rate of recovery of depreciation. The result is, however, consequent to the Commission's decision on life extension. Therefore, we decline to admit review of the order dated 25.9.2006 on this ground.

27. To sum up, the application for review of order dated 25.9.2006 is admitted on the following grounds, namely:

- (a) Restoration of lost capacity/re-rating of Stage-I units.
- (b) Computation of interest on loan.

28. The petitioner is directed to serve copy of the petition along with copy of this order to the respondent latest by 7.3.2007. The respondent may file its reply by 31.3.2007, with a copy to the petitioner who may file its rejoinder, if any, by 15.4.2007.

29. List this petition for further directions on 26.4.2007.

Sd/-
(BHANU BHUSHAN)
MEMBER

SD/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 23rd February, 2007