



5. Shri Anand K. Ganesan, Advocate, NTPC
6. Ms Swapna Seshadri, NTPC

**ORDER**  
**(DATE OF HEARING: 16.1.2007)**

The interlocutory application has been made by Uttar Pradesh Power Corporation Limited with a prayer to give effect to the order dated 7.7.2006 made by the Appellate Tribunal for Electricity by deleting Para 37 of the order dated 31.3.2005 in the main petition, with a further prayer to delete 16% ROE and interest on the loan provided in the tariff order dated 9.5.2006 (for the period 1.4.2004 to 31.3.2009) in Petition NO.142/2004 and with a direction to Central Utilities for refund of the amount to the applicant and other beneficiaries.

2. The Commission, in its order dated 31.3.2005 in Petition No. 139/2004 had approved additional capitalization on works amounting to Rs.4.521 crore for the period 1.4.2001 to 31.3.2004 in respect of Feroze Gandhi Uchahar Thermal Power Station. In Para 37 of the said order dated 31.3.2005, it was directed that NTPC would earn return on equity and interest on loan for the additional capitalization approved from 1<sup>st</sup> April of the financial year following the financial year to which additional capital expenditure related and the lump sum amount was payable along with tariff for the period 2004-09. Accordingly, return on equity and interest on loan have already been computed in the order dated 9.5.2006 in Petition No. 142/2004, while approving tariff for the period 1.4.2004 to 31.3.2009.

3. The applicant filed an appeal against the Commission's order dated 31.3.2005. The Appellate Tribunal, by its judgment dated 7.7.2006, ordered as under:-

“When the regulation bars revision of tariff during the tariff period ending with 31.03.2004 it follows that there could be no revision of the tariff during the tariff period whatever may be the reason or justification when the additional expenditure is less than 20% of the approved project cost. There is no controversy in this respect. In the circumstances, the direction issued by CERC as set out in Para 37 calls for modification. In fixing the tariff for the tariff period commencing 01.04.2004, the element of interest and investment of return on equity requires to be examined by CERC and included for the purpose of determining the tariff as rightly highlighted by Mr. Ramachandran on behalf of the appellant but there is no warrant to issue such a direction now. In the circumstances, we order deletion of Para 37 of the order appealed against while making it clear that it is well open to CERC to consider the element, namely additional capitalisation return on equity, interest on borrowing, while determining the tariff for the next tariff period. The appeal is dismissed but with the above modification.”

4. The present application has been made with the substantive prayers noted in the opening part of the order against the above background.

5. We have heard Shri D.D. Chopra, Advocate for the applicant and Shri M.G. Ramachandran, Advocate for NTPC.

6. It was argued on behalf of the applicant that in terms of the Appellate Tribunal's judgment, NTPC cannot be allowed return on equity and interest on loan for the period 1.4.2001 to 31.3.2004 on the additional capital expenditure for that period, in view of deletion of para 37 of the Commission's order dated 31.3.2005. It was urged that the Appellate Tribunal's judgment which allows the Commission “to consider additional capitalization return on equity and interest on borrowing while determining tariff for the next tariff period”, should be interpreted to mean that actual amount of debt and equity are to be considered for debt-equity ratio, for the additional capitalization amount.

7. The Appellate Tribunal's above Judgment was considered by the Commission in IA No. 46/2006 in Petition No. 72/2005 filed by Power Grid Corporation of India

Limited. After hearing the parties attending the hearing, the Commission by its order dated 19.9.2006 decided as under:-

- “11. Learned Counsel for the applicant argued that the Appellate Tribunal had left it open to the Commission to allow return on equity, and interest on loan on the amount of additional capitalization pertaining to the period 1.4.2001 to 31.3.2004 while approving tariff for the next tariff period, which is 1.4.2004 to 31.3.2009. He submitted that the Commission has already allowed these two elements of tariff in a number of cases while approving tariff for the tariff period 1.4.2004 to 31.3.2009 in addition to tariff for this period. Accordingly, it was submitted by the learned counsel that impact of additional capital expenditure as prayed for in the interlocutory application is to be considered. Learned counsel urged that the decision of the Appellate Tribunal was based on the analysis of the provisions of Clause 1.10 of the 2001 regulations and the relief prayed for is covered under the second part of Clause 1.10.
12. Per contra, Shri Bawa argued that the applicant is not entitled to any benefit on account of the additional capitalization for the period 1.4.2001 to 31.3.2004 in view of the fact that the Appellate Tribunal had already directed deletion of the relevant para from the orders relating to NTPC which is the basis for the applicant's claim in the present application. He urged that in terms of the Appellate Tribunal's order the Commission can allow return on equity and interest on loan on the additional capitalization amount, for the period 1.4.2004 to 31.3.2009 only.
13. We have very carefully considered the submissions made on behalf of the parties in the light of the decision of the Appellate Tribunal in Appeal No.36/2006. Petition No.139/2004 was filed by NTPC for approval of the revised fixed charges based on additional capital expenditure for Feroz Gandhi Unchachar Super Thermal Power Station Stage-I incurred during the period 1.4.2001 to 31.3.2004. The Commission in its order dated 31.3.2005 had approved additional capital expenditure. As regards revision of fixed charges, the Commission directed that NTPC would be entitled to only two elements of tariff, that is, return on equity and interest on loan, for the tariff period 1.4.2001 to 31.3.2004 on the additional capital expenditure approved. But the benefit was to be given while approving tariff for the tariff period 1.4.2004 to 31.3.2009. In our understanding, the import of the Appellate Tribunal's order is that when additional capital expenditure is less than 20%, it was not necessary to make any observation in the order in a petition pertaining to the period 1.4.2001 to 31.3.2004. It is, however, to be noted that the appeal filed by UPPCL has been dismissed with some modification of the order dated 31.3.2005. Further, the Appellate Tribunal, in its conclusion has made it clear that “it is well open to CERC to consider the element namely additional capitalization return on equity, interest on borrowing, while determining the tariff for the next tariff period”. Though it was urged by Shri Bawa that the liberty granted was in the context of approval of tariff for the period 1.4.2004 to 31.3.2009, we are not convinced by the

argument. Were that so, it was not necessary for the Appellate Tribunal to refer to only two elements, namely; return on equity and interest on loan. The fixed charges component of tariff encompasses other elements, like depreciation, O&M and interest on working capital, etc. If the Appellate Tribunal intended that NTPC would not be entitled to any benefit for the period 2001-04 on additional capitalization, there was no need for the Appellate Tribunal to observe that the elements of return on equity and interest on loan on additional capitalization could be considered while determining tariff for the next tariff period. In the next tariff period, entire tariff is payable and not just the two elements.

14. In keeping with the above, we allow the interlocutory application. The applicant shall be entitled to recover the following amounts from the respondents on account of additional capitalization approved by order dated 9.5.2006 for the period 1.4.2001 to.3.2004.  
.....”

8. We do not find any reasons for deviation from the view already taken on the scope of the Appellate Tribunal’s judgment dated 17.7.2006. We consider ourselves to be bound by the earlier view. We are not impressed by the appellant’s argument that the Appellate Tribunal’s observation in terms of which the Commission was permitted to consider return on equity and interest on loan components during the next tariff period are for the purpose of computation of debt-equity ratio. This aspect has not been deliberated by the Appellate Tribunal.

9. The applicant was a party before the Commission in the proceedings in IA No. 46/2006 leading to issue of the order dated 19.9.2006. However, no representation was made on its behalf in those proceedings. We have been informed that the applicant has already filed an appeal before the Appellate Tribunal against the Commission’s this order and the appeal is presently pending. Be that as it may, no deviation from the earlier view is warranted at this stage.

10. In the light of the above discussion, the present application is dismissed since in our understanding return on equity and interest on loan allowed by order dated 9.5.2006 in Petition No.142/2004 is in accord with the Appellate Tribunal's judgment dated 7.7.2006. It is left to the parties to seek any further clarification on the judgment of the Appellate Tribunal, on the view taken by the Commission.

Sd/-  
**(A.H. JUNG)**  
**MEMBER**

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated the 16<sup>th</sup> January, 2007**