

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri G.S. Rajamani, Member**

**Review Petition No.140/2002
in
Petition No.32/2002**

In the matter of

Review of order dated 1.11.2002 in Petition No. 32/2002 – Approval of tariff of Auraiya Gas Power Station for the period from 1.4.1997 to 31.3.2001

**Review Petition No. 141/2002
in
Petition No.33/2002**

In the matter of

Review of order dated 30.10.2002 in Petition no. 33/2002 - Approval of tariff of Feroze Gandhi Unchahar Thermal Power Station Stage I for the period from 1.4.1997 to 31.3.2001.

**Review Petition No.144/2002
in
Petition No. 36/2002**

In the matter of

Review of order dated 1.11.2002 in Petition No. 36/2002 -Approval of tariff of Anta Gas Power Station for the period from 1.4.1997 to 31.3.2001.

And in the matter of

National Thermal Power Corporation Ltd.

.....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd, Jaipur
3. Delhi Vidyut Board, New Delhi
4. Haryana Vidyut Prasaran Nigam Ltd, Panchkula
5. Punjab State Electricity Board, Patiala
6. Himachal Pradesh State Electricity Board, Shimla
7. Power Development Department, J&K, Srinagar
8. Chief Engineer, Chandigarh Administration, Chandigarh
9. Uttaranchal Power Corporation Ltd., Dehradun

..... Respondents

The following were present:

1. Shri K.K. Garg, GM(C), NTPC
2. Shri Amit Kapur, Advocate, NTPC
3. Shri M.S. Chawla, AGM(C), NTPC
4. Shri S.K. Sharma, Sr. Manager (C), NTPC
5. Shri S.K. Samui, SM(Comm.), NTPC
6. Shri Balaji Dubey, SLO, NTPC
7. Shri T.A. Sohal, NTPC

8. Shri D.K. Dogra, DGM(C), NTPC
9. Shri Ajay Dua, Manager, NTPC
10. Shri Rajal Sughal, Manager, NTPC
11. Shri A. Sardana, NTPC
12. Shri T.K. Srivastava, EE, UPPCL
13. Shri D. Khandelwal, Manager, MPSEB
14. Shri Satish Agnihotri, Advocate, MPSEB
15. Shri Rohit Singh, Advocate, MPSEB
16. Ms Gayatri Bedi, Advocate, MPSEB
17. Shri D.D. Chopra, Advocate, UPPCL
18. Shri R.K. Arora, XEN/T, HVPN

**ORDER
(DATE OF HEARING 16.4.2003)**

The petitioner through these applications seeks review of orders determining capacity (fixed) charges component of tariff for power sold from Auraiya Gas Power Station (for short, "Auraiya GPS"), Feroze Gandhi Unchahar Thermal Power Station (for short, "FGUTPS") and Anta Gas Power Station (for short, "Anta GPS"). As the questions raised are common, these applications were heard together and are being disposed of through this common order.

2. Petitions were filed for approval of capacity charges component of the generation tariff for sale of power from Auraiya GPS (663.36 MW), FGU TPS (420 MW) and Anta GPS (419.33 MW) for the period from 1.4.1997 to 31.3.2001. The capacity charges payable by the respondents were determined by the Commission vide its orders dated 1.11.2002 for Auraiya GPS and Anta GPS and vide order dated 30.10.2002 for FGU TPS. The capacity charges component of generation tariff of thermal stations comprises of

- (a) Return on equity,
- (b) Interest on loan,
- (c) Depreciation,

- (d) O&M expenses, and
- (e) Interest on working capital.

3. The disputes raised in these applications for review relate to “interest on loan” and “interest on working capital” components of capacity charges. As such, the issues related to these two components are being considered.

Interest on loan

4. For the interest on loan payable by the respondents to the petitioner, the annual repayment amount for the years from 1997-98 to 2000-01 had been worked out in accordance with following formula or annual repayment amount as given in the respective petitions, whichever is higher, in the tariff orders sought to be reviewed:

$$\text{Annual repayment amount} = \text{Annual repayment during the year} \times \frac{\text{normative loan at the beginning of the year}}{\text{Actual loan at the beginning of the year}}$$

5. According to the petitioner, for calculation of interest on loan, the annual repayment amount should have been calculated either by taking the normative repayment in accordance with the formula given above or by considering the actual repayment. It is averred that the principle adopted by the Commission is inequitable, partial and biased.

Interest on working capital

6. For the purpose of Working Capital for the computation of interest, the following elements were considered by the Commission in the tariff orders sought to be reviewed:

- (a) Fuel cost, coal stock and oil stock,
- (b) O&M expenses for one month,
- (c) Spares, and
- (d) Receivables (for two months) comprising of capacity (fixed) and variable charges.

7. For the purpose of calculation of fuel cost and variable charges, it is essential that information relating to calorific value of fuel is made available in the performa prescribed for the purpose. The petitioner, however, while submitting proposal for determination of capacity charges, did not furnish the necessary information relating to calorific value of coal/oil under the relevant column of the performa by stating “not applicable”, because it had not sought revision of variable charges. After these petitions were heard and order reserved, the petitioner filed affidavits in the respective petition placing on record the calorific value of fuels. The Commission, however, in its orders for approval of capacity charges did not take into consideration the information contained in these affidavits and adopted the same basis for calculation of Working Capital as was followed by the Central Government in Ministry of Power for the tariff period ending 31.3.1997.

8. On the issue of calculation of interest on working capital, the petitioner has explained that the data on calorific value was not furnished as it was felt that even though there were variations on month-to-month basis, the average calorific value over a period remained more or less same. It is further submitted that it had not claimed the variable charges separately as these charges had already been billed. However, according to the petitioner, adoption of the value of calorific value or the variable charges, etc. as considered by the Central Government for the previous tariff period, has put it into loss since it has been denied the benefit of escalation in fuel prices. Therefore, the petitioner has prayed for review and modification of findings and directions specific to these two issues.

9. Under Section 12 of the Electricity Regulatory Commissions Act, 1998, the Commission is conferred the same power of review of its order, decision, direction as is vested in a civil court under the Code of Civil Procedure (for short "the Code") Section 114 read with Order 47 of the Code are the relevant provisions dealing with review of order/degree by a civil court. According to Rule 1, Order 47 of the Code, review of order/decreed is permissible on the following grounds:

- (a) Discovery of new and important matter which was not within the knowledge of the person aggrieved or could not be produced by him after exercise of due diligence,
- (b) Error apparent on the face of record, and
- (c) Any other sufficient reason

10. The settled legal position is that the power of review can be exercised on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person concerned or could not be produced at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason. A review cannot be sought merely for fresh hearing or argument or correction of an erroneous view taken earlier. The power of review can only be exercised for correction of a patent error of law or fact, which stares in the face without any elaborate argument being needed for establishing it. As held by the Hon'ble Supreme Court, the expression "any other sufficient reason" used in Order 47, Rule 1 of the Code means a reason sufficiently analogous to those specified in the earlier part of the rule. The above legal position emerges out of various judgements of the Supreme Court, notably, Smt. Meera Bhanja Vs Smt. Nirmala Kumari Choudhary [(1995) 1SCC 170], Ajit Kumar Rath Vs. State of Orissa and others [(1999) 9 SCC 596] and Devendra Pal Singh Vs State and another [(2003) 2 SCC 501]. The petitioner's prayer for review of orders is to be considered in the light of above-noted and well-settled legal position.

11. On the issue of interest on loan, the annual repayment amount has been arrived at in accordance with the given formula or as given in the petition, whichever is higher, through a conscious decision of the Commission. In our opinion, the review of this decision does not lie, as it does not fall within any of the grounds prescribed by law. The learned counsel for the petitioner argued that the adoption of the principle by the Commission has caused hardship to the petitioner. The application for review of

order on the ground of hardship is not justified, unless it falls within the four walls of the conditions prescribed under Rule 1, Order 47 of the Code.

12. On the other issue also, the review petition is not maintainable. The petitioner in the original petitions had sought revision of capacity charges only. Therefore, in the first instance, it did not furnish the information relating to calorific value of fuel. According to the petitioner, it had not furnished information relating to Calorific Value of coal and oil in the original petition as, in its opinion, it was not relevant for determining the capacity charge for which it had filed the petition. The petitioner ought to have realised that it was in no position to decide whether information sought for in the formats prescribed by the Commission was relevant or not. In case, it chose to take such a decision the consequences could not be different.

13. Affidavits were filed subsequently by the petitioner of its own and without seeking approval of the Commission to place on record the data in this regard. Nevertheless, the Commission in its orders took note of the affidavits filed by the petitioner, but these affidavits were not relied upon by the Commission for computation of working capital for which it recorded the following reasons in the order in Petition No. 36/2002 and similarly in other petitions.

“In line with the practice followed by GOI, Naptha stock as given in the audited balance sheet for the year 1996-97 in the inventory schedule as “fuel oil” has been considered for computing the working capital. The petitioner has furnished the GCV of fuels vide affidavit dated 8.10.2002. Since variable charge is not being revised and the order is for Revised Fixed charges for the period 1.4.1997 to 31.3.2001, the fuel cost as considered by the Central Government in its notification dated 30.4.1994 has been taken into account”.

14. In view of the above reasoned order of the Commission, it cannot be stated that there is any error apparent on the face of record necessitating review of the order or any.

15. In the light of above discussion, the applications for review No. 140/2002, 141/2002 and 144/2002 are not maintainable and are liable to be dismissed. It is ordered accordingly. No order as to costs.

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 6th May, 2003