

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri G.S. Rajamani, Member**
3. **Shri K.N. Sinha, Member**

**Review Petition No.125/2002
in Petition No.31/2002**

In the matter of

Review of order dated 23.9.2002 in Petition No. 31/2002 – Approval of tariff of Singrauli Super Thermal Power Station for the period from 1.11.1997 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, Jammu
8. Power Dept. (Chandigarh), Union Territory of Chandigarh,
Chandigarh
9. Uttaranchal Power Corporation Ltd., Dehradun

..... **Respondents**

The following were present:

1. Shri K.K. Garg, GM(C), NTPC
2. Shri Balaji Dubey, SLO, NTPC
3. Shri T.R. Sohal, NTPC
4. Shri Ajay Dua, Manager, NTPC
5. Shri A.K. Juneja, NTPC
6. Shri R. Singhal, NTPC
7. Shri A.K. Poddar, NTPC
8. Shri S.K. Samui, SM(Comm.), NTPC
9. Shri T.K. Srivastava, EE, UPPCL
10. Shri K.K. Mittal, XEN (ISP), RVPN
11. Shri T.P.S. Bawa, SE, PSEB
12. Shri R.K. Arora, XEN/T, HVPN

ORDER
(DATE OF HEARING 3.4.2003)

The petitioner through this application seeks review of order determining capacity (fixed) charges component of tariff for power sold from Singrauli Super Thermal Station (for short, Singrauli STPS).

2. Petition was filed by the petitioner for approval of capacity charges component of the generation tariff for sale of power from Singrauli STPS for the period from 1.11.1997 to 31.3.2001. The capacity charges payable by the respondents were determined by the Commission vide its orders dated 23.9.2002, based on terms and conditions of tariff contained in Ministry of Power notification dated 2.11.1992, with following basic elements:

- (a) Return on equity,
- (b) Interest on loan,
- (c) Depreciation,
- (d) O&M expenses, and
- (e) Interest on working capital.

3. The petitioner has sought clarification and/or review and/or modification of the specific observations and findings/directions of the order dated 23.9.2002 in Petition No. 31/2002 on additional capitalisation, O&M expenses, calculation of interest on loan and calculation of interest on working capital on the ground of error apparent on the face of record. The methodology adopted by the Commission while approving capacity charges in respect of these items and the grievances of the petitioner are discussed in the succeeding paras.

ADDITIONAL CAPITALISATION

4. Against a total sum of Rs.6818.13 lakh of additional capitalisation claimed by the petitioner in Petition No. 31/2002 for the period from 1.4.1997 to 31.3.2001, the Commission had allowed additional capitalisation of Rs.2938.19 lakh vide order dated 23.9.2002. The balance amount of Rs.3879.94 lakh was disallowed. However, in view of enormity of the details in regard to additional capitalisation disallowed, these were not incorporated in the order.

5. The petitioner in the review petition pointed out that in the absence of details of expenditure disallowed to be capitalised, it could not ascertain the head under which the expenditure had been allowed or disallowed. Shri Amit Kapur, learned counsel who appeared on behalf of the petitioner at the time of hearing of review petition on admission, had submitted that the management of the petitioner company for the purposes of future guidance was desirous to know the amount not allowed for capitalisation and the reasons therefor. We, in our order dated 23.1.2003 had directed the details of the amount disallowed to be capitalised would be kept along with judicial records and be made available for inspection by the parties and obtaining certified copies as per the laid down procedure. In the light of this direction, this issue for review did not survive.

O&M EXPENSES

6. While notifying tariff for the period from 1.11.1992 to 31.10.1997, vide notification dated 2.11.1992, Ministry of Power considered the actual O&M expenses for the year 1991-92, that is, one year prior to the beginning of the tariff period, as the base, which were escalated @ 10% per annum for future years for arriving at O&M

expenses for the respective year. While determining tariff for the period from 1.11.1997 to 31.3.2001, same methodology was adopted by the Commission and the actual O&M expenses of Rs.106.87 lakh, which included water and power charges for the year 1996-97, one year prior to the start of tariff period, as per the audited balance sheet for the station were taken as the base and an escalation factor of 10% per annum was applied to work out O&M expenses for the years 1997-98 to 2000-2001.

7. It is stated by the petitioner that abnormal amount of water charges for the years 1997-98, 1998-99 and 1999-2000 to the extent of Rs.33.93 crore, Rs.30.25 crore and Rs.72.82 crore respectively and power charges of 1996-97 had not been included for computation of O&M expenses for these years. According to the petitioner, although the order states that the O&M expenses are inclusive of water charges, in fact, abnormal water and power charges have been kept out of consideration for calculation of base O&M charges. Accordingly, the petitioner seeks review of the order.

INTEREST ON LOAN

8. 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 petition, whichever is higher, in the tariff order sought to be reviewed:

$$\text{Annual repayment amount} = \text{Annual repayment during the year x normative loan at the beginning of the year/Actual loan at the beginning of the year.}$$

9. 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

10. For the purpose of Working Capital for the computation of interest, the following elements were considered by the Commission in the tariff order dated 23.9.2002:

- (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.

11. For the purpose of calculation of fuel cost and variable charges, it is essential that information relating to price and 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 price and calorific value of coal/oil under the relevant column of the performa by stating "not applicable". The Commission, however, in its order for approval of capacity charges adopted the same values for calculation of Working Capital as were followed by the Central Government in Ministry of Power for the tariff period ending 31.10.1997.

12. 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.

13. Accordingly, the petitioner has prayed for review and modification of findings and directions specific to these issues.

14. 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/decree 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

15. 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 order is to be considered in the light of above-noted and well-settled legal position.

16. As noticed above, in the tariff notification dated 2.11.1992 issued by Ministry of Power, while fixing tariff for the period from 1.11. 1992 to 31.10.1997, the actual expenses for the year 1991-92 were taken as the base with escalation factor of 10% per annum for arriving at O&M expenses for respective year during the tariff period. The Commission adopted the same methodology while approving tariff for the period from 1.11.1997 to 31.3.2001, according to which, O&M expenses of Rs.106.87 lakh which included water and power charges, for the year 1996-97 based on the station balance sheet for that year were taken as the base for determination of O&M expenses for the tariff period commencing from 1.11.1997. The O&M charges payable by the respondents from 1.11.1997 to 31.3.2001 were calculated accordingly by escalating the base O&M expenses for the year 1996-97 and it is so stated in the

order. Ministry of Power notification dated 2.11.1992 did not provide for computation of O&M charges based on actual expenditure for the year. In fact, the actual O&M expenses of a particular year cannot be accounted for in tariff as tariff is determined/notified in advance when actual O&M expenses are unknown. If the tariff for the period from 1.11.1997 to 31.3.2001 was determined/notified before the beginning of tariff period, the question of consideration of actual expenses for the year 1997-98, 1998-99 and 1999-2000 would not have arisen. In view of this, we are satisfied that the petitioner has not been able to make out a case for review of order on this account. 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. It was argued on behalf of the petitioner that the adoption of the principle by the Commission has caused hardship. 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.

17. On the third issue also, the review petition is not maintainable. 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. It is in due consideration of this that the Commission in its order recorded the following:

“The petitioner has not furnished the details of Calorific Value (CV) of Coal/Oil, by stating “Not Applicable”. In view of this, the Commission could not assess the working capital requirement on account of these items. At the same time, the Commission is conscious of the fact that these items are normally required in a power station and took a conscious view to provide for these items, on the basis of what was provided for these items in the calculation of tariff in the previous tariff setting by Govt. of India. Accordingly, the working capital requirement on account of above items has been provided for in this tariff period. The Commission was constrained to take this view because the necessary details were not furnished by the petitioner despite the opportunities which were available to them”.

18. In view of the above decision taken by the Commission, it cannot be stated that there is any error apparent on the face of record necessitating review of the order on account of calculation of interest on working capital either.

19. In the light of above discussion, the application for review (No.125/2002) is not maintainable and is liable to be dismissed. It is ordered accordingly. No order as to costs.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 7th May, 2003