

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**CORAM:**

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

IA No. 21/2003  
in  
Review Petition No. 143/2002  
in  
Petition No 35/2002

**In the matter of**

Application for amendment of Review Petition (Review of Commission's Order dated 24.10.2002 in Petition No. 35/2002-Vindhyachal STPS Stage I).

**And in the matter of**

National Thermal Power Corporation Ltd. ... **Petitioner**

**Vs**

1. Madhya Pradesh State Electricity Board, Jabalpur
2. Maharashtra State Electricity Board, Mumbai
3. Gujarat Electricity Board, Vadodara
4. Goa Electricity Department, Goa
5. Electricity Department, Daman
6. Electricity Department, Silvassa
7. Chattisgarh State Electricity Board, Raipur ..... **Respondents**

**The following were present:**

1. Shri Amit Kapur, Advocate, NTPC
2. Shri K.K. Garg, GM (Comml.), NTPC
3. Shri Satish Agnihotri, Advocate, MSEB
4. Shri D. Khandelwal, SE, MPSEB
5. Shri Kandeep Patel, GEB
6. Shri H.V. Pandya, GEB
7. Shri S.N. Chauhan, CSEB

**ORDER**  
**(DATE OF HEARING: 3.7.2003)**

The petitioner filed an application, being IA No. 83/2002, in Petition No. 35/2002, which was decided vide order dated 24.10.2002, seeking a direction to place all back-up papers showing the break-up of the amount allowed/disallowed for capitalisation in Petition No. 35/2002. This application was disposed of vide order dated 28.1.2003 with the direction that the statement of amount allowed and disallowed to be capitalised, which would also contain the reasons for the decision, would be kept along with the judicial records to be available for inspection and obtaining certified copies of the relevant documents in accordance with the prescribed procedure. In pursuance of these directions, the petitioner was permitted to inspect the relevant records on 26.3.2003. Thereafter on 3.4.2003, the petitioner applied for obtaining certified copies of some of the documents inspected which were supplied on 10.4.2003.

2. Simultaneously with filing of IA No 83/2002, a Review Petition (No. 143/2002) was also filed by the petitioner for review of certain portions of the Commission's order dated 24.10.2002 in Petition No. 35/2002. The Review Petition was processed for hearing after notice returnable on 16.4.2003 "to show cause why the application for review should not be admitted, heard and decided in accordance with law." The review petition was accordingly heard on 16.4.2003 and was disposed of by the Commission vide its order dated 21.5.2003.

3. On 21.5.2003, which is the date of disposal of the Review Petition, the petitioner filed an application (IA No. 21/2003) for amendment of the Review Petition No.143/2002, whereby it also sought the review of the decision of the Commission dated 24.10.2002 in Petition No 35/2002, in regard to items of expenditure disallowed for capitalisation.

4. According to the petitioner, a review of the direction on additional capitalisation of the expenditure became necessary only after analysis of the details/information contained in the back-up documents, the certified copies of which were supplied on 10.4.2003. In the application for amendment, it has been stated that during the course of the hearing on 16.4.2003, the petitioner had submitted that since new evidence relating to the additional capitalisation issues was received on 10.4.2003, the same was being examined and if considered necessary, the petitioner may approach the Commission to seek clarifications or review of those aspects by amending Review Petition No. 143/2002.

5. The order dated 21.5.2003 in Review Petition No. 143/2002 does not refer to any such statement made on behalf of the petitioner. Nevertheless, the review petition was argued by Shri Amit Kapur, the learned counsel for the petitioner on merits. At the hearing of the application for amendment of the Review Petition, Shri Amit Kapur, Advocate for the petitioner has argued that the application for amendment is maintainable in view the consistent stand taken by the petitioner

that it could take steps for amendment of the review petition after analysis of the information contained in the documents.

6. Shri Satish Agnihotri, Advocate appearing on behalf of the Respondent No.1, MPSEB, submitted that the application for amendment is not maintainable as it would amount to seeking review of the order dated 21.5.2003 in Review Petition No. 143/2002. In support of his contention, the learned counsel adverted to Rule 9, Order XLVII of the Code of Civil Procedure (the Code, for short), according to which no application to review an order made on an application for a review or a decree or order passed or made on review shall be entertained.

7. We shall first consider and dispose of the objection raised by the learned counsel for Respondent No.1. We feel that the argument made by the learned counsel does not have a strong legal footing. The present application is not for review of order dated 21.5.2003 passed in Review Petition No. 143/2002. In fact, the petitioner sought amendment of the review petition in order to take up an additional ground for review of the order dated 24.10.2002 in petition No. 35/2002, not taken up earlier while filing the application for review. In our opinion, the matter does not require to be considered under Order XLVIII of the Code, but is to be considered in the light of the principles laid down for amendment of pleadings, the relevant provisions for which are contained in Order VI of the Code.

8. We are conscious of the fact that Order VI of the Code relating to amendment of pleadings has not been strictly made applicable to the proceedings before the Commission. Nevertheless, we feel that the principles laid down therein can be extended to the proceedings before the Commission as a matter of public policy. Therefore, the question of amendment of the Review Petition No. 143/2002 is to be considered in the light of the relevant provision of the Code.

9. According to Rule 17, Order VI of the Code, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. As is obvious from the language used in Rule 17, the amendment can be considered “at any stage of the proceedings”, which means that the proceedings should be pending before the concerned court or the Commission, in the present case, and not after termination of the proceedings. However, when the proceedings before the court come to an end, the question of amendment of the pleadings cannot arise. Madhya Pradesh High Court in Narendra Singh Sengal Vs. Malla Devi (AIR 1993 MP 248) has held that an amendment application can be entertained after the close of the case for judgement and before judgement is pronounced. Thus, with the disposal of Review Petition No. 143/2002 by the Commission vide its order dated 21.5.2003, the proceedings cannot be said to be pending before the Commission. In the case before us, the application for amendment was filed on 21.5.2003 on which date

the Commission had signed the order and disposed of the Review Petition No. 143/2002. Therefore, the application for amendment is not maintainable and is therefore dismissed. The learned counsel for the petitioner submitted that the certified copy of the order dated 21.5.2003 was dispatched by the office on 23.5.2003 and was received by the petitioner on 27.5.2003. He argued that the petitioner did not have any knowledge of the disposal of the Review Petition when the application for amendment was filed. In our opinion, these facts do not make any difference since the position in law is that the court becomes functus officio after signing of the order. In the instant case, the order was signed on 21.5.2003. Accordingly, we hold that the application for amendment (IA No 21/2003) is not maintainable and is hereby dismissed.

10. The petitioner is, however, at liberty to file an independent petition in accordance with law, if so advised, for redressal of its grievance, which it proposed to take up through the amendment of Review Petition No. 143/2002.

**Sd/-**  
**(G.S. RAJAMANI)**  
**MEMBER**

**Sd/-**  
**(ASHOK BASU)**  
**CHAIRMAN**

New Delhi dated the 9<sup>th</sup> July 2003