

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri R Krishnamoorthy, Member
4. Shri S. Jayaraman, Member

Petition No. 50/2008

In the matter of

Miscellaneous petition to order to refund the excess tariff collected on the capitalization of outstanding liability not materialized and consequent withdrawal of such excess capitalization in respect of Ramagundam Super Thermal Power Station, Stage I & II (2100 MW) and other NTPC stations during the tariff period 2001-04.

And in the matter of

Tamil Nadu Electricity Board, Chennai

.....Petitioner

Vs

NTPC Limited, New Delhi

.....Respondent

The following were present:

- A. Shri R Krishnaswami, TNEB
- B. Shri V.K. Padha, NTPC
- C. Shri Sameer Aggarwal, NTPC
- D. Shri AK Juneja, NTPC

ORDER

(Date of Hearing: 16.12.2008)

The petitioner, Tamil Nadu Electricity Board, has made this application seeking directions to the respondent to refund excess tariff said to have been

recovered on capitalization of outstanding liabilities not materialized, and decapitalized during the period 2001-04. The present petition contains the details specific to Ramagundam Super Thermal Power Station Stages I & II (hereinafter “the generating station”) and accordingly the consideration of the issue is confined to the generating station.

2. The Commission in its order dated 30.6.2006 in Petition No. 148/2004 while approving tariff for the period 1.4.2004 to 31.3.2009 in respect of the generating station had observed as under:

“12. Besides, the petitioner has also decapitalised certain assets during the period 2001-04. These decapitalised assets were removed from the gross block to arrive at admissible additional capitalization for the purpose of capital cost while dealing with Petition No. 173/2004. The petitioner is maintaining accounts on accrual basis. This resulted in inflated capital base in earlier tariff period due to capitalization of liability provision. The expenditure for which provision was made did not materialise and it was decapitalised subsequently. But the petitioner has been allowed tariff on the inflated capital base till 31.3.2004. However, as decided by the Commission in other cases, tariff for the pervious period has not been reopened, and may be mutually settled between the petitioner and the beneficiaries.”

3. The petitioner has submitted that in the light of the above directions of the Commission, it took up the matter with the respondent vide its letter dated 25.9.2006 for release of the excess amount, duly supported with detailed calculation. It has been stated that a meeting was arranged in the office of the respondent to resolve the issue. However, no tangible result could be achieved. Accordingly, the petitioner has prayed for a direction to the respondent to calculate and refund the excess tariff collected in respect of the generating station. The petitioner has sought similar directions in respect of Farakka STPS,

Kahalgaon STPS, and Kayamkulam CCPP, as it has been alleged, the respondent has not refunded the excess tariff recovered in respect of these generating stations also.

4. Initially, when the petition was heard on admission the respondent sought three months' time to mutually settle the matter with the petitioner, though the petitioner insisted on adjudication of the dispute since, according to the petitioner, the efforts made in the past to resolve the dispute through mutual discussion did not meet with any success. As the respondent had expressed willingness to resolve the matter through mutual discussion, by order dated 25.6.2008 the parties were afforded opportunity of reconciling the differences and the parties were relegated to the discussion table.

5. The respondent in its reply has submitted that the mutual discussions took place when it offered to the petitioner to settle the impact of de-capitalization of liabilities for the tariff period 2001-04. since, according to the respondent, tariff approved for the period prior thereto had acquired finality and could not be re-opened. This was conveyed by the respondent to the petitioner under its letter dated 30.7 2008. The respondent has further claimed that impact of de-capitalization can be considered only during the year in which these assets were de-capitalised and for this reason as well, the petitioner cannot claim refund of the so called excess tariff recovered prior to the de-capitalization. The respondent has submitted that prior to establishment of the Commission, the

tariff for all its generating stations was determined by the Central Government who as a matter of practice, considered the impact of de-capitalisation from the year in which liabilities were removed from the accounts. The respondent insists that the same methodology should be adopted in this case also.

6. On merits, the respondent has submitted that tariff of its generating stations for the period up to October 1988 was determined through mutual agreements with the beneficiaries, including the petitioner herein. Thereafter, for the period up to March 1992, the tariff was determined through the award of an Umpire appointed by the Central Government. The Umpire is said to have finalised the award by adopting the capital base, based on gross assets from the audited balance sheet of the generating station. It has been stated that the Central Government accepted the award of the Umpire and conveyed it to all the State Governments, including the Government of Tamil Nadu. The respondent has submitted that with the acceptance by the Central Government, the award made by the Umpire could not be impeached or re-opened. According to the respondent, the petitioner is fully aware of the methodology followed for capitalization and de-capitalization of assets and liabilities, prevalent for many years, but did not raise any objection. For this reason also, the respondent contends, the petitioner is estopped from claiming any past benefit on account of de-capitalization decided by the Commission in Petition No. 173/2004. Therefore, the respondent has submitted that the petitioner's claim is liable to be dismissed on that account, apart from the ground that it would cause undue hardship and

difficulties in the implementation, if refund of tariff for the period prior to de-capitalization is ordered.

7. The petitioner in its reply to the respondent's affidavit has submitted that in the past when tariff was determined by the Central Government, the details of assets considered in the gross block were not furnished to the beneficiaries. It has been submitted that for the first time the respondent submitted the necessary details when it approached the Commission in November 2004 in Petition No. 173/2004 for revision of annual fixed charges on account of additional capital expenditure incurred during the period 2001-04,. Immediately thereafter, in the affidavit filed in December 2004, the petitioner is said to have objected to the respondent's claim for revision of annual fixed charges, based on capital cost which included outstanding liabilities. The petitioner has reiterated its claim for refund of the excess tariff from the date of capitalization of the liabilities, which did not materialize and were finally de-capitalized.

8. The representative of the respondent, relying on the judgment dated 10.12.2008 passed by Appellate Tribunal for Electricity in Appeals Nos.151 and 152 of 2007 submitted that as per the law decided by the Appellate Tribunal, the committed liabilities were to be capitalized and serviced in tariff and that the claim of the petitioner should be decided in the light of the said judgment. In response, the representative of the petitioner submitted that the issue considered in the appeals decided by the Appellate Tribunal pertained to deferment of

payment for works which were already executed whereas in the present case the liability never materialized. He submitted that since the respondent had received tariff for which it had not paid, he urged the Commission to issue necessary directions for refund/adjustment of the excess tariff so recovered from the beginning.

9. Subsequently, under its affidavit dated 22.12.2008 the petitioner has placed on record a copy of the judgment of the Appellate Tribunal dated 10.12.2008 *ibid*. A certified copy of the Appellate Tribunal's judgment is not yet received in the Commission. However, for the present case, it is not necessary for us to examine the rival contentions in regard to applicability of the said judgment.

10. We heard the representatives of the parties. We have very carefully perused the records, including that of Petition No.173/2004, in which de-capitalization of assets was ordered.

11. In Petition No. 173/2004, while seeking approval of the revised annual fixed charges for the period 2001-04 after additional capitalization, sought de-capitalization of the following amounts:

Year	Amount of De-capitalization (Rs. in lakh)	Remarks
2002-03	136	Land sold to SCCL on the directions of Government of Andhra Pradesh
2003-04	78.28	Interest on Land compensation

12. After adjustment of the capital expenditure incurred by the respondent during 2002-03 and 2003-04 and permitted to be capitalized, by order dated 3.5.2005, a total amount of Rs. 211.80 lakh (Rs. 133.58 lakh during 2002-03 and Rs. 78.22 lakh during 2003-04) was ordered to be de-capitalized. The petitioner has sought refund of tariff recovered by the respondent against the amount de-capitalized during 2002-03 and 2003-04.

13. The de-capitalization of an amount of Rs.136 lakh occurred for the reason that a part of land belonging to the generating station was sold to SCCL on the directive of the State Government of Andhra Pradesh. The money received as consideration for sale was de-capitalized during 2002-03. The respondent also received an amount of Rs.78.20 lakh as interest on land compensation during 2003-04 and was accordingly de-capitalized. Till the time of sale in 2002-03, the land in question was a part of the capital asset of the generating station. It is not the case where capital asset was not created but was capitalized. It is also not the case where the liability capitalized was not met, ultimately leading to de-capitalization, and thereby resulting in undue benefit to the respondent. It is a case where the capital asset (land) formed part of the generating station all along and up to the time of sale followed by de-capitalisation. Therefore, the petitioner

cannot claim that it was a case of over-capitalization of undischarged liabilities, to justify its claim for refund of tariff recovered against the capital cost later on de-capitalized. Similarly, the petitioner cannot claim refund of tariff against the interest received during 2003-04, on land compensation and de-capitalized. The observations made by the Commission in its order dated 30.6.2006 in Petition No. 148/2004 are of general nature. However, while arriving at the exact amount refundable on account of excess tariff if any, recovered, all these aspects need to be taken into consideration.

14. The capital asset (land) and interest on land compensation were de-capitalized during the years 2002-03 and 2003-04. The petitioner is entitled to refund recovery of the excess tariff, if any, recovered after such de-capitalization. The respondent has agreed to refund such excess tariff for the period 2001-04, during discussions with the representatives of the petitioner as also in its reply filed. This should be end of the dispute.

!5. As regards the petitioner's prayer for refund of excess tariff recovered for other generating stations owned by the respondent, we are unable to give any general direction because the facts of those generating stations have not been considered in the present petition. As a corollary, we make it clear that the decision on the present petition is based on the facts on record and shall not be considered to be a precedent for deciding other cases which may be considered on their own merits and the surrounding facts.

16. Accordingly, the petition stands disposed of with the direction that the respondent shall refund/adjust the amount of excess tariff recovered after de-capitalization of capital assets as per order dated 3.5.2005 in Petition No.173/2004, within two months of this order. The respondent shall also furnish to the petitioner the detailed calculations for the excess amount refunded/adjusted.

Sd/-
(S. Jayaraman)
Member

Sd/-
(R. Krishnamoorthy)
Member

Sd/-
(Bhanu Bhushan)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

New Delhi, dated the 3rd February 2009