

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S. Jayaraman, Member**
- 4. Shri V. S. Verma, Member**

Petition No. 96/2002

In the matter of

National Thermal Power Corporation Ltd.

Petitioner

Vs

1. West Bengal State Electricity Board, Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board
4. Grid Corporation of Orissa Ltd., Bhubaneswar
5. Damodar Valley Corporation, Kolkata
6. Power Deptt., Government Sikkim, Gangtok
7. Assam State Electricity Board, Guwahati
8. Transmission Corporation of Andhra Pradesh, Hyderabad
9. Madhya Pradesh State Electricity Board, Jabalpur
10. Tamil Nadu State Electricity Board, Chennai
11. Kerala State Electricity Board, Trivandrum
12. Karnataka Power Transmission Corporation Ltd., Bangalore
13. Uttar Pradesh Power Corporation Ltd., Lucknow
14. Gujarat Electricity Board, Vadodara
15. Union Territory of Pondicherry, Pondicherry
16. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
17. Haryana Vidhut Prasaran Nigam Ltd., Panchkula
18. Power Department, UT of Chandigarh, Chandigarh

Respondents

And in the matter of

Approval of tariff for the period 1.4.2000 to 31.3.2001 in respect of Farakka STPS
In terms of order dated 27.11.2008 of Appellate Tribunal for Electricity in Appeal
No. 39/2008,

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 Transco Ltd., New Delhi
4. Haryana Vidhut Prasaran Nigam Ltd., Panchkula
5. Punjab State Electricity Board, Patiala
6. Himachal Pradesh State Electricity Board, Shimla
7. Power Development Department, Govt. of J&K, Jammu
8. Power Department, UT of Chandigarh, Chandigarh
9. Uttranchal Power Corporation Ltd., Dehradun

Respondents

And in the matter of

Approval of tariff for the period 1.4.1998 to 31.3.2001 in respect of National Capital Thermal Power Station, Dadri – In terms of order dated 13.1.2009 of Appellate Tribunal for Electricity in Appeal No. 27/2008.

Following were present

1. Shri M.U. Ramachandran, Advocate, NTPC
2. Ms. Swapna Seshadri, Advocate, NTPC

ORDER
(Date of Hearing 24.3.2009)

Petition No. 96/2002

This petition was filed for approval of tariff of Farakka STPS for the period from 1.4 2000 to 31.3.2001. The tariff was initially approved by order dated 23.4.2004. While approving tariff, the Commission, for computation of interest on loan, considered actual repayment of loan since it was lower than normative loan. However, the tariff was revised by order dated 2.1.2008 in keeping with the

judgment dated 14.11.2006 of the Appellate Tribunal in Appeal No. 96/2005, according to which, the Commission was required to adopt normative debt repayment methodology for working out the interest on loan liability. In the order dated 2.1.2008, opening loan as on 1.4.2000 was arrived at by considering actual repayment of loan up to 31.3.2000.

2. After approval of revised tariff, the petitioner by its letter dated 30.1.2008 pointed out that there was a clerical mistake in regard to computation of cumulative repayment of loan up to the previous year relevant to the tariff year, that is, up to 31.3.2000. It was pointed out by the petitioner that cumulative repayment up to 31.3.2000 and opening balance of loan as on 1.4.2000 had to be determined on normative basis and not on actual basis. In the letter it was stated that normative repayment up to the previous year needed to be determined based on the tariff notification dated 7.5.1999 issued by the Central Government in Ministry of Power for the generating station. The petitioner pointed out that opening loan as on 1.4.2000 needed to be taken as Rs. 90417 lakh on normative basis against the amount of Rs. 96741 lakh considered on actual basis. Calling this as a clerical mistake, the petitioner requested for correction of said order dated 2.1.2008.

3. The petitioner also filed appeal against the Commission's order dated 2.1.2008 before the Appellate Tribunal who in its order dated 27.11.2008 in Appeal No. 39/2008, arising out of order dated 2.1.2008, while hearing the

appeal on admission directed the Commission to consider the letter dated 30.1.2008 sent by the petitioner and pass appropriate orders, in the light of the contents of the said letter, after hearing the appellant. Subsequently, in its order dated 13.1.2009 in Appeal No. 27/2008, arising out of order dated 31.12.2007 in the Petition No. 128/2002, the Appellate Tribunal has remanded the matter to the Commission for reconsideration in the light of the petitioner's letter dated 13.2.2008. In the latter order, the Appellate Tribunal has directed the Commission to pass appropriate orders, in accordance with the law, after affording an opportunity of hearing to both the learned counsel for the appellant as well as respondents. Both the appeals filed by the petitioner have been disposed of by the Appellate Tribunal in the above terms.

4. In the light of what has been stated above, the petition was heard by the Commission. In view of the order passed by the Appellate Tribunal in Appeal No. 27/2008, notices for hearing were issued to the parties.

5. We heard Shri M. G. Ramchandaran, Advocate, for the petitioner and Shri R. B. Sharma, Advocate, for the respondent, Bihar State Electricity Board.

6. Shri Ramachandaran learned counsel reiterated the request made in the letter dated 30.1.2008, arguing that it was clerical mistake which could be rectified by the Commission *suo motu* also, in exercise of the power Regulation 114 of the Central Electricity Regulatory Commission (Conduct of Business)

Regulations, 1999. In reply to a question, learned counsel submitted that since the Appellate Tribunal had remanded the matter to the Commission for consideration of and decision on the petitioner's letter dated 30.1.2008, the Commission is to dispose of the said letter.

7. Learned counsel for Bihar State Electricity Board opposed the contention of learned counsel for the petitioner. Firstly, he submitted that he was not aware of the contents of the said letter dated 30.1.2008. When learned counsel for the petitioner offered to supply him a copy the said letter, learned counsel for Bihar State Electricity Board argued that the Commission could not take cognizance of the letter even for correction of clerical mistake. He urged that the petitioner should file a petition for review of the order if there was any apparent error or else an application for correction of the clerical or ministerial error. Learned counsel submitted that it was possible to argue the matter on merits only through a petition, after notice. In reply, learned counsel for the petitioner submitted that the petitioner could not file a review petition as the appeal had already been filed.

8. We have considered the matter very carefully in the light of the remand orders of the Appellate Tribunal and the submissions made by learned counsel of the parties present at the hearing. The order dated 13.1.2009 in Appeal No. 27/2008, arising out of order dated 31.12.2007 in the Petition No. 128/2002 is extracted hereinbelow:

“The only grievance of the learned counsel for the appellant is that even though they sent a letter dated 13.02.2008, to the Central Electricity Regulatory Commission, pointing out a clerical mistake occurred in the order dated 31.12.2007, in petition No. 128 of 2002, with regard to the cumulative repayment of loan amount for rectification, no response has been received so far. The learned counsel for the appellant requests that a similar direction which was given in Appeal No. 39 of 2008 to consider the letter sent by NTPC to Central Electricity Regulatory Commission, and pass appropriate orders in the light of the contentions of the said letter, may be given.

It is contended by the learned counsel for the respondent that the appellant instead of filing review application or any other application to correct such a mistake before the Central Electricity Regulatory Commission, simply sent a letter requesting to correct the mistake and this cannot be entertained.

*Having regard to the contention of the learned counsel for the appellant, we feel it appropriate to give a similar direction, which was given in Appeal No. 39 of 2008. **Accordingly, the Central Electricity Regulatory Commission is directed to consider the letter sent by NTPC dated 13.02.2008, and pass appropriate orders, in accordance with law, after affording an opportunity of hearing to both the learned counsel for the appellant as well as respondents.***

*With these observations, the appeal is disposed of. **Therefore, a view on the letter written by the petitioner needs to be taken after considering all the aspects of the issue.**” (Emphasis added)*

9. It is noted that the Appellate Tribunal has remanded the matter to the Commission for reconsideration in the light of the petitioner’s letter with a further direction to pass appropriate order, “in accordance with the law”, after affording an opportunity of hearing to the parties. The Appellate Tribunal has further directed the Commission to take a view on the petitioner’s letter “after considering all the aspects of the issue.” These observations of the Appellate Tribunal provide the necessary guidelines. The petitioner, through its letter has sought correction of opening balance of loan, termed as clerical mistake, without explaining the basis on which it has arrived at the amount. Acceptance of the petitioner’s request as contained in the letter dated 30.1.2008 may have its serious implications on tariff for the subsequent periods, since it will increase the

amount of loan recoverable in future years and thereby liability of the respondents to pay interest. This will have civil consequences for the respondents-beneficiaries. It also needs to be pointed out that even a copy of the letter has not been furnished to them. The Commission is a quasi-judicial body. In adversarial proceedings like determination of tariff, it is required to act in accordance with the principles of natural justice. The Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 envisage making of applications for different purposes. These regulations do not provide for taking cognisance of matters which are likely to affect other parties, based on letters received. Therefore, the Commission generally, in such matters, does not act based on letters written by any of the parties. If a party feels aggrieved by an order of the Commission it is required to make an appropriate application in accordance with law. As we are mandated by the remand order of the Appellate Tribunal to consider the letter and dispose it of in accordance with the law and after considering all the relevant aspects of the issue, we consider it proper that procedural requirements of law are complied with before a decision is taken on merits of the petitioner's request.

10. Under the above circumstances, and on being guided by the observations of the Appellate Tribunal in the order dated 13.1.2009 *ibid*, we point out that the petitioner may make an appropriate application in accordance with law, in case it feels aggrieved by any aspect of the order dated 2.1.2008. With these observations, the letter dated 30.1.2008 stands disposed of.

Petition No. 128/2002

11. Petition No. 128/2002 was filed for approval of tariff for the period 1.4.1998 to 31.3.2001 in respect of NCTPS Dadri. In this case also, tariff was initially approved under order dated 18.5.2004. Subsequently, tariff was revised by order dated 31.12.2007 based on the judgment of the Appellate Tribunal dated 14.11.2006 *ibid*. In the order dated 31.12.2007, opening loan as on 1.4.1998 was arrived at by considering actual repayment of loan up to 31.3.1998.

12. After approval of revised tariff, the petitioner by its letter dated 13.2.2008 pointed out that there was a clerical mistake in regard to computation of cumulative repayment of loan up to the previous year relevant to the tariff year, that is, up to 31.3.1998. It was pointed out by the petitioner that cumulative repayment up to 31.3.1998 and opening balance of loan as on 1.4.1998 had to be determined on normative basis and not on actual basis. In the letter it was stated that normative repayment up to the previous year needed to be determined based on the tariff notification dated 25.2.1999 issued by the Central Government in Ministry of Power for the generating station. The petitioner pointed out that opening loan as on 1.4.1998 needed to be taken as Rs. 7077 lakh on normative basis against the amount of Rs. 11446 lakh considered on actual basis. Calling this as a clerical mistake, the petitioner requested for correction of said order dated 31.12.2007.

13. As noted above, the Appellate Tribunal in its order dated 13.1.2009 in Appeal No. 27/2008, arising out of order dated 31.12.2007 has remanded the matter to the Commission for reconsideration in the light of the petitioner's letter dated 13.2.2008 and pass appropriate orders, in accordance with the law, after affording an opportunity of hearing to both the parties..

14. The facts of this case are similar to those in Petition No. 96/2002, considered and decided hereinabove. For the view we have taken, we dispose of the petitioner's letter dated 13.2.2008 in terms of para 10 above of this order.

Sd/-	Sd/-	Sd/-	Sd/-
(V. S. VERMA)	(S. JAYARAMAN)	(R. KRISHNAMOORTHY)	(DR. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON

New Delhi dated 31st March 2009