

CENTRAL ELECTRICITY REGULATORY COMMISSION

Coram:
Dr. Pramod Deo, Chairperson
Shri R. Krishnamoorthy, Member
Shri S. Jayaraman, Member

Review Petition No.100/2008
in
Petition No. 32/2007

In the matter of

Review of order dated 22.7.2008 in Petition No. 32/2007,

And in the matter of

Revision of fixed charges for the period 2004-09 after considering the impact of additional capital expenditure incurred during 2004-05 and 2005-06 in respect of Farakka STPS, (1600 MW).

And in the matter of

NTPC Ltd, New Delhi

Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd., Calcutta
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. Grid Corporation of Orissa Ltd., Bhubaneshwar
5. Damodar Valley Corporation, Calcutta
6. Power Department, Govt. of Sikkim, Gangtok
7. Tamil Nadu Electricity Board, Chennai
8. Union Territory of Puducherry, Pondicherry
9. Uttar Pradesh Power Corporation Ltd., Lucknow
10. Power Development Department, Govt. of J&K, Srinagar
11. Power Department, UT of Chandigarh, Chandigarh
12. Madhya Pradesh Power Trading Co. Ltd., Jabalpur
13. Gujarat Urja Vikas Nigam Ltd., Vadodara
14. Electricity Department, Administration of Daman & Diu, Daman
15. Electricity Department, Administration of Dadra & Nagar Haveli, Silvassa
16. North Delhi Power Limited, Delhi
17. BSES Rajdhani Power Limited, New Delhi
18. BSES Yamuna Power Limited, Delhi
19. Maharashtra State Electricity Distribution Co. Ltd., Mumbai ... **Respondents**

Following were present

1. Shri V.K.Padha, NTPC
2. Shri G.K Dua, NTPC
3. Shri Vivek Kumar, NTPC

ORDER **(Date of hearing: 20.8.2009)**

This application has been made by NTPC for review of order dated 22.7.2008 in Petition No. 32/2007, whereby the Commission approved the revised fixed charges for the period 2004-09 after considering the impact of additional capital expenditure incurred during 2004-05 and 2005-06 in respect of Farakka STPS , (1600 MW).

2. The petitioner sought correction of certain clerical errors in the said order dated 22.7.2008. These errors were ordered to be rectified in the order dated 25.6.2009 while admitting the present application. In addition, the petitioner sought review of the said order dated 22.7.2008 on the following two grounds, namely –

(a) Disallowance of capitalization of expenditure on Residual Life Assessment (RLA) studies, and

(b) Disallowance of capitalization of IDC.

3. The review on the first ground was rejected by order dated 25.6.2009, relying on the Appellate Tribunal's judgment dated 16.3.2009 in Appeal No. 133/2008, filed by the petitioner. As such, this ground for review does not survive so far as the present order is concerned. The Commission in its order dated 25.6.2009 admitted the application for consideration of the second ground, namely, disallowance of capitalization of IDC.

4. According to the petitioner, its claim for capitalization of Rs. 23.09 lakh on account IDC on the additional capital expenditure incurred during 2005-06 was turned down on the ground that there was no provision in the tariff regulations to allow capitalization of IDC. It has been stated that on account of denial of the claim, interest paid during the period of construction will remain unserved, resulting in perpetual loss. The petitioner has pointed out that in the past the Commission had been allowing capitalization of IDC under similar circumstances.

5. Reply to the petition have been filed by Bihar State Electricity Board who has supported the Commission's decision on the ground that there does not exist any provision in the tariff regulations notified by the Commission to allow capitalization of IDC. It has stated that the omission is reasonable as it takes into account the consumers' interest in view of sub-section (d) of Section 61 of the Electricity Act (the Act). Bihar State Electricity Board has further stated that the past practice of allowing capitalization of IDC was neither raised by the petitioner in its pleadings nor at the time of hearing of the petition. Therefore, it has been urged that the issue cannot be raised in the review proceedings which have a very limited scope.

6. We heard Shri V. K. Padha for the petitioner and Shri R. B. Sharma for the second respondent, Bihar State Electricity Board. None was present on behalf of other respondents.

7. During the hearing, the representative of the petitioner reiterated the ground for review taken in the application. He submitted that the petitioner had actually incurred expenses towards IDC and the same ought to be considered as part of the capital cost for the purpose of tariff. He emphasized that IDC in respect of loan applied to the works executed under R&M forms part of the capital cost. He added that the accounting rules also permitted capitalization of IDC.

8. Learned counsel for Bihar State Electricity Board, submitted that the petitioner was not entitled to the claim for capitalization of IDC as the Commission in its order dated 2.7.2008 had given sufficient reasons for its rejection of the claim. Learned counsel also pointed out that the petitioner had failed to point to any provision of the tariff regulations supporting capitalization of IDC and, therefore, no relief could be granted. Learned counsel further submitted that determination of tariff of the generating stations was guided by the tariff regulations framed by the Commission, and not by the accounting principles adopted by the petitioner. Learned counsel submitted that the petitioner had questioned the findings of the Commission in the said order dated 22.7.2008 which could only be considered in an appeal, and not on a review, as there existed definitive limits for exercise of the power of review. Learned counsel pointed out that sub-section (d) of Section 61 of the Act provides for recovery of cost of electricity in a reasonable manner and therefore, the petitioner is entitled to recover the costs incurred, only in terms of the tariff regulations notified by the Commission. On the petitioner's averment that capitalization of IDC was allowed by the Commission in the past, learned counsel referring to the reply submitted that the issue had neither been

raised in the petition nor in any of the annexures accompanying the petition. Learned counsel added that the claim of Rs 23.09 lakh as IDC had not been mentioned clearly and the submission of the petitioner was a bald statement. Learned counsel reiterated that the issues raised do not deserve any consideration by the Commission and sought dismissal of the application.

9. In rejoinder, the representative of the petitioner submitted that the provisions of capital cost and additional capital expenditure in the tariff regulations would also include IDC and that the relevant statements/formats for determination of tariff had been filed by the petitioner, in terms of the said regulations. The representative further submitted that the accounting standards followed while arriving at the cost of the asset, when put to use, are in conformity with the tariff regulations.

10. We have very carefully considered the rival submissions. The issue is whether any deviation from the past established practice can be a ground for review within the provisions of Order 47, Rule 1 of the Code of Civil Procedure (the Code). There is no dispute regarding the fact that the petitioner had claimed capitalization of IDC of Rs 23.09 lakh during 2005-06, which was disallowed by the Commission in the said order dated 22.7.2008. The reason for rejecting the petitioner's claim was that the tariff regulations were silent on the question of capitalization of IDC on year-to-year basis. The petitioner has claimed that in the past IDC was permitted to be capitalized along with the additional expenditure allowed to be capitalized. The respondents have not denied that. Under the Code, review is permissible on the grounds of discovery of new and important fact or evidence which was either not within the knowledge of the person

seeking review or could not be produced by him despite exercise of due diligence, or on the ground or error or mistake apparent on the face of record, or for any other sufficient reason. In other cases considered under the same tariff regulations, the petitioner had claimed capitalization of IDC in similar fashion which was permitted by the Commission. Thus, it had been an established past practice to allow capitalization of IDC despite the absence of specific provision to that effect in the tariff regulations. In the earlier cases too, the petitioner put forth his claim through the calculations given in the annexures attached to the petition. The case of revision of fixed charges for Farakka STPS cannot, in any manner, be said to be different from earlier cases decided by the Commission. The practice followed in those case was overlooked while approving the revised fixed charges by the said order dated 22.7.2008. In our view, any departure from the established past practice constitutes an error apparent on the face of record or “any other sufficient reason” to justify review.

11. In the light of foregoing discussion, we allow the application for review of the said order dated 22.7.2008, to the limited extent as aforesaid. The main petition (Petition No 32/2007) shall be set down for hearing on 22.10.2009 to consider the question of capitalization of IDC amounting to Rs. 23.09 lakh during 2005-06. The present application for review stands disposed of accordingly.

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[R. KRISHNAMOORTHY]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

New Delhi, dated the 29th September, 2009