

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 59/2010**

**in**

**Petition No. 123/2009**

**Coram**

- 1. Shri S. Jayaraman, Member**
- 2. Shri V.S.Verma, Member**

**DATE OF HEARING: 27.7.2010**

**DATE OF ORDER: 12.10.2010**

**In the matter of**

Review of order dated 11.1.2010 in Petition No.123/2009 pertaining to the determination of impact of additional capital expenditure incurred during the period 2007-09 in respect of Ramgundam STPS, Stage-III (500 MW)

**And in the matter of**

NTPC Ltd, New Delhi  
Vs

**.....Petitioner**

1. Transmission Corporation of Andhra Pradesh, Hyderabad
2. A.P. Eastern Power Distribution Company Ltd., Visakhapatnam
3. A.P. Southern Power Distribution Company Ltd., Tirupathi
4. A.P. Northern Power Distribution Company Ltd., Warangal
5. A.P Central Power Distribution Company Ltd., Hyderabad
6. Tamil Nadu Electricity Board, Chennai
7. Karnataka Power Transmission Corporation Ltd, Bangalore
8. Bangalore Electricity Supply Company Ltd., Bangalore
9. Mangalore Electricity Supply Company Ltd, Mangalore
10. Chamundeshwari Electricity Supply Corp. Ltd., Mysore
11. Gulbarga Electricity Supply Company Ltd., Gulbarga
12. Hubli Electric Supply Company Ltd, Hubli
13. Kerala State Electricity Board, Thiruvananthapuram
14. Electricity Department, Govt. of Puducherry, Puducherry

**....Respondents**

**The following were present:**

1. Shri V.K.Padha, NTPC
2. S.K.Mondal, NTPC
3. Shri A.K.Juneja, NTPC
4. Shri S.Saran, NTPC

## **ORDER**

This application has been made by the petitioner, NTPC Ltd, a generating company, seeking review of the Commission's order dated 11.1.2010, in Petition No.123/2009, determining the impact of additional capital expenditure incurred during the period 2007-09 in respect of Ramgundam STPS, Stage-III (500 MW) (hereinafter referred to as "the generating station), limited to the question of disallowance of the liabilities discharged during the years 2007-08 and 2008-09, in respect of works allowed by the Commission.

2. Briefly, the facts are that the petitioner made an application for determination of impact of additional capital expenditure for the period 2007-09 and the Commission by order dated 11.1.2010 revised the tariff of the generating station, after considering the additional capitalization of ₹1878.85 lakh for 2007-08 and ₹1416.10 lakh for 2008-09. The Commission in its order had approved the capital cost of ₹152390.81 lakh as on 1.4.2007. The annual fixed charges for the period 2007-09 approved by the Commission by order dated 11.1.2010, is as under:

<b>Particulars</b>	<i>(₹ in lakh)</i>	
	<b>2007-08</b>	<b>2008-09</b>
Interest on Loan	6389	5696
Interest on Working Capital	1667	1677
Depreciation	5564	5624
Advance Against Depreciation	4568	4957
Return on Equity	6440	6509
O & M Expenses	5260	5475
<b>TOTAL</b>	<b>29888</b>	<b>29938</b>

3. The grievance of the petitioner against the order dated 11.1.2010 is that the Commission while determining the tariff of the generating station based on the additional capital expenditure incurred for the period 2007-09, had not considered the liabilities discharged during the period 2007-09 on works allowed by the Commission.

4. Heard the representative of the petitioner, on admission.

5. The petitioner has submitted that the details of the liabilities discharged during the period 2007-09 were submitted by affidavit dated 21.8.2009 which was not considered by the Commission at the time of passing of the order dated 11.1.2010. According to the petitioner, there are sufficient reasons to review the order, as the liabilities as and when discharged should be considered as part of the capital cost from the year they are discharged.

6. In order to appreciate the scope of the present application, it is necessary to advert to the basic provisions governing review of order and reiterate the settled principles on the subject evolved through the judgments of the superior courts.

7. In accordance with Rule 1 Order 47 of the Code of Civil Procedure, a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

8. In *Grindlays Bank Vs Central Industrial Tribunal* (AIR 1981 SC 606), the Supreme Court held that when a review is sought due to procedural defect, the inadvertent error committed by the tribunal must be corrected *ex debito justitiatae* to prevent the abuse of its process and such power inheres in every court or tribunal. In *Mt. Rukmabai Vs Ganpat Rao* (AIR 1932 Nagpur 177) it was held that the omission to consider important facts which are on record and which the Judge himself immediately on passing his order realised that he had overlooked and which in his opinion would have led him to pass an order materially different, is a justified ground for entertaining an application for review. The Federal Court in *Jamna Quer Vs Lal Bahadur* (AIR 1950 FC 131) expounded the law in the terms that “where there is an error on the face of the record, whether error occurred of reason of the counsel’s mistake or it crept in by reason of oversight on the part of the court, is not a circumstance which can affect the exercise of jurisdiction of the court to review its decision.” In the light of these reported decisions of the superior courts, it can be safely concluded that omission of the court to consider an important fact is a ground for review.

9. The petitioner’s plea for review is to be considered in the light of above noted legal position. We notice that in the original petition, the petitioner had

submitted affidavit dated 21.8.2009 providing details of the liabilities discharged during the period 2007-09, which had inadvertently escaped the attention of the Commission while passing the order dated 11.1.2010. The Commission has consistently taken a view that liabilities as and when discharged should form part of the capital cost of the generating station. The omission to consider the affidavit dated 21.8.2009 filed by the petitioner as regards the details of the liabilities discharged for 2007-09, in our considered opinion, constitute an error apparent on the face of the record which squarely falls within the scope of Order 47 Rule 1 of the Civil Procedure Code (CPC) and the judicial decisions noted above.

10. In view of the above discussions, the prayer of the petitioner for review of order dated 11.1.2010 is allowed. During the hearing, the petitioner was directed to reconcile the amounts of un-discharged liabilities as indicated in affidavit dated 21.8.2009. In response, the petitioner vide affidavit dated 27.8.2010, has submitted the reconciliation statement revising the details of un-discharged liabilities included in its claim for additional capitalization for the years 2007-08 and 2008-09, in addition to the revision of details of discharged liabilities for the year 2007-08 and 2008-09. A comparative statement showing the details as furnished vide affidavits dated 21.8.2009 and 27.8.2010 is as under:

(₹ in lakh)

Particulars	Affidavit dated 21.8.2009 (A)		Affidavit dated. 27.8.2010 (B)		Difference (A-B)	
	Un-discharged liabilities included in the claim	Discharge of liabilities during the period	Un-discharged liabilities included in the claim	Discharge of liabilities during the period	Un-discharged liabilities included in the claim	Discharge of liabilities during the period
As on 24.3.2005 (COD)	10817.11	0.00	10817.11	0.00	0.00	0.00
2004-05	0.00	4121.14	0.00	4121.14	0.00	0.00
2005-06	301.52	3353.16	301.52	3353.16	0.00	0.00
2006-07	45.96	1206.69	45.96	1206.69	0.00	0.00
2007-08	54.68	582.86	96.92	839.05	(-) 42.23	(-) 256.19
2008-09	91.74	40.24	433.86	50.40	(-) 342.13	(-) 10.16

11. Taking in to account the details of liabilities furnished vide affidavit dated 27.8.2010, the additional capital expenditure allowed vide order dated 11.01.2010, for the period 2007-08 and 2008-09 is revised as under:

(₹ in lakh)

Particulars	2007-08	2008-09
Additional capital expenditure allowed vide order dated 11.1.2010	1878.85	1416.10
<b>Add:</b> Liabilities considered in order dated 11.1.2010	54.69	91.74
<b>Less:</b> Discharge of liabilities considered in order dated 11.1.2010	0.00	0.00
Net Additional capital expenditure allowed vide order dated 11.1.2010 prior to adjustment of liabilities	1933.54	1507.84
<b>Less:</b> Liabilities included in Additional capital expenditure (furnished vide affidavit dated 27.8.2010)	96.92	433.86
<b>Add:</b> Discharge of liabilities ( furnished vide affidavit dated 27.8.2010)	839.05	50.40
<b>Additional capital expenditure allowed for the purpose of tariff</b>	<b>2675.67</b>	<b>1124.38</b>

### Capital cost

12. The capital cost admitted for the purpose of tariff in order dated 11.1.2010, has been revised as under:

(₹ in lakh)

Particulars/Year	2004-05 (25.3.2005 to 31.3.2005)	2005-06	2006-07	2007-08	2008-09
Opening Capital cost	131356.27	135469.51	148443.44	152390.81	155066.48
Additional capital	4113.24	12973.93	3947.37	0.00	0.00

expenditure allowed in order dated 11.1.2010					
Revised Additional capital expenditure for the period 2007-09	0.00	0.00	0.00	2675.67	1124.38
<b>Closing Capital cost</b>	<b>135469.51</b>	<b>148443.44</b>	<b>152390.81</b>	<b>155066.48</b>	<b>156190.86</b>
<b>Average Capital cost</b>	<b>133412.89</b>	<b>141956.47</b>	<b>150417.13</b>	<b>153728.65</b>	<b>155628.67</b>

13. Due to the revision of capital cost as above, the computations in respect of Return on Equity, Interest on loan and Depreciation, in order dated 11.1.2010 has been revised as under:

**(a) Return on Equity**

<i>(₹ in lakh)</i>		
<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>
<b>Equity-Opening</b>	45717.24	46519.95
Addition of Equity due to Additional capital expenditure	802.70	337.31
Equity-Closing	46519.95	46857.26
Average equity	46118.59	46688.60
Return on Equity @ 14%	<b>6456.60</b>	<b>6536.40</b>

**(b) Interest on loan**

<i>(₹ in lakh)</i>		
<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>
Gross Loan opening	106673.57	108546.54
Cumulative repayment of deemed loan upto previous year	16726.39	26857.95
Net loan opening	89947.18	81688.58
Addition of loan due to additional capital expenditure	1872.97	787.07
Repayment of loan during the year	10131.56	10653.49
Net loan closing	81688.58	71822.16
Average loan	85817.88	76755.37
Weighted average rate of interest	7.4690%	7.4623%
<b>Interest on loan</b>	<b>6409.74</b>	<b>5727.69</b>

**(c) Depreciation**

<i>(₹ in lakh)</i>		
<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>
Opening Capital Cost	152390.81	155066.48
Closing Capital Cost	155066.48	156190.86
Average Capital Cost	153728.65	155628.67
Weighted Average Rate of	3.6288%	3.6288%

Depreciation		
Depreciable value @ 90%	138355.78	140065.81
Balance depreciable value	121629.39	113210.37
Balance useful life	-	-
<b>Depreciation</b>	<b>5578.44</b>	<b>5647.39</b>

**(d) Advance against depreciation**

Advance against depreciation has been worked out as per the Regulations after accounting for the revision in capital cost and the admitted Additional capital expenditure, as under:

<i>(₹ in lakh)</i>		
<b>Advance against Depreciation</b>	<b>2007-08</b>	<b>2008-09</b>
1/10th of Gross Loan(s)	10667.36	10854.65
Repayment of the Loan	10131.56	10653.49
Minimum of the above	10131.56	10653.49
Depreciation during the year	5578.44	5647.39
(A) Difference	4553.12	5006.10
Cumulative Repayment of the Loan	26857.95	37511.44
Cumulative Depreciation / AAD	22304.83	32502.82
(B) Difference	4553.12	5008.62
<b>Advance against depreciation [Minimum of (A) and (B)]</b>	<b>4553.12</b>	<b>5006.10</b>
<b>Advance against depreciation (annualised)</b>	<b>4553.12</b>	<b>5006.10</b>

**Interest on working capital**

14. The “receivables” component of the working capital has been revised for the reason of revision of return on equity, interest on loan etc. The necessary details in support of calculation of interest on working capital are as under:

<i>(₹ in lakh)</i>		
<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>
Fuel Cost (Gas) – 1 month	4497.79	4485.50
Liquid Fuel Cost (Naptha) – ½ month	194.19	193.65
O&M expenses	438.33	456.25
Maintenance Spares	1464.47	1552.34
Receivables	9679.64	9691.06
Total Working Capital	16274.42	16378.79
Rate of interest	10.2500%	10.2500%
<b>Interest on working capital</b>	<b>1668.13</b>	<b>1678.83</b>



### **Annual Fixed Charges**

15. The annual fixed charges allowed for the years 2007-08 and 2008-09, in order dated 11.1.2010 stands revised as under:

*(₹ in lakh)*

<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>
Interest on loan	6409.74	5727.69
Interest on working capital	1668.13	1678.83
Depreciation	5578.44	5647.39
Advance Against Depreciation	4553.12	5006.10
Return on equity	6456.60	6536.40
O&M expenses	5260.00	5475.00
Total	<b>29926.03</b>	<b>30071.41</b>

16. The petitioner shall claim the difference between the fixed charges approved by order dated 11.1.2010 and those approved now in three monthly installments.

17. Review Petition is disposed of as above, in the admission stage.

Sd/-  
**[V.S.VERMA]**  
**MEMBER**

Sd/-  
**[S. JAYARAMAN]**  
**MEMBER**