

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 27/2010**

**against**

**Petition No. 44/2009**

**Coram**

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

**DATE OF HEARING: 27.7.2010**

**DATE OF ORDER: 28.9.2010**

**In the matter of**

Review of order dated 30.12.2009 in Petition No.44/2009 pertaining to the determination of impact of additional capital expenditure incurred during the period 2004-05 to 2007-08 in respect of Kawas GPS (656.20 MW)

**And in the matter of**

NTPC Ltd, New Delhi

.....**Petitioner**

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Co. Ltd, Mumbai
3. Gujarat Urja Vikas Nigam Ltd, Vadodara
4. Chhattisgarh State Electricity Board, Raipur
5. Electricity Department, Administration of Daman & Diu, Daman
6. Electricity Department, Govt, of Goa, Panjim
7. Electricity Department, Administration of Dadra and Nagar Haveli, Silvassa

**...Respondents**

**The following were present:**

1. Shri V.K.Padha, NTPC
2. Shri A.S.Pandey, NTPC
3. Shri S.K.Sharma, NTPC
4. Shri Sachin Jain, NTPC

## **ORDER**

This application has been made by the petitioner, NTPC Ltd, a generating company, seeking review of the Commission's order dated 30.12.2009, in Petition No.44/2009, determining the impact of additional capital expenditure incurred during the period 2004-08 in respect of Kawas GPS (656.20 MW) (hereinafter referred to as "the generating station). The prayer for review is limited to the following issues:

(a) Disallowance of capitalization of Rs. 78.31 lakh towards Enterprise Resource Planning (ERP); and

(b) Correction of ministerial errors in table at para 56 of the order

2. As regards the issue at point (b) above, the ministerial error in the table at para 56 of the order dated 31.12.2009 has been corrected *suo motu* by the Commission by its order dated 10.2.2010.

3. As regards the issue at point (a) above, the petitioner has submitted that it had claimed an amount of Rs 1,13,33,996 towards the capitalization of miscellaneous MBOA , communication and IT equipments, which includes an amount of Rs.78,30,765/- towards Enterprise Resource Planning (ERP) Module installed in the generating station as part of the NTPC ERP system launched across the company and other infrastructure items. In this connection, it has

submitted that an affidavit dated 3.12.2009 was filed before the Commission on 7.12.2009, requesting the Commission to allow the expenditure on this count.

4. 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.

5. Admittedly, the affidavit dated 3.12.2009 filed by the petitioner on 7.12.2009 was not considered in order dated 30.12.2009, as it had escaped the attention of the Commission. In *Ms. 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.

6. In the light of foregoing discussion, we allow the application for review of the said order dated 30.12.2009, on the ground as aforesaid. The main petition (Petition No 44/2009) shall be set down for hearing on 28.10.2010 to consider the question of capitalization of ERP expenditure amounting to Rs. 78.31 lakh during 2007-08. The present application for review stands disposed of accordingly.

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

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

Sd/-  
**[Dr. PRAMOD DEO]**  
**CHAIRPERSON**