

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 11/2011**

**in**

**Petition No. 150/2009**

**Coram: Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S. Verma, Member  
Shri M. Deena Dayalan, Member**

**Date of hearing: 17.11.2011**

**Date of Order: 22.2.2012**

**In the matter of**

Review of order dated 28.4.2011 in Petition No.150/2009 for revision of fixed charges on account of additional capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09 in respect of Farakka Super Thermal Power Station (1600 MW).

**And in the matter of**

NTPC Ltd, New Delhi

**.....Petitioner**

Vs

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

**.....Respondents**

**Present:**

Shri S. Majumdar, NTPC  
Shri A. Basu Roy, NTPC  
Shri R.B.Sharma, Advocate, BSEB, JSEB & GRIDCO  
Shri Manish Garg, UPPCL  
Shri Manoj Dubey, Advocate, MPPTCL

**ORDER**

This petition has been filed by the petitioner, seeking review of the Commission's order dated 28.4.2011 in Petition No.150/2009 revising the annual fixed charges for 2006-09 in respect of Farakka STPS (1600 MW) (hereinafter referred to as 'the generating station') after considering the impact of additional capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter called 'the 2004 Regulations'). Aggrieved by the said order, this review petition has been filed on the limited question of disallowance of capitalization of ₹225.54 lakh towards SAP-ERP system during 2008-09.

2. The review petition was admitted on 19.8.2011 after hearing the parties. The respondent Nos. 4, 9 and 13 namely, GRIDCO, UPPCL and MPPTCL have filed replies to the said petition and the petitioner has filed its rejoinder to the same.

3. The Commission vide its order dated 28.4.2011 disallowed the claim of the petitioner for capitalization of ₹225.54 lakh towards SAP-ERP system during 2008-09 and had observed as under:

*"44. Expenditure for ₹225.54 lakh claimed during 2008-09 is on account of capitalization of SAP (ERP system). It is observed that the generating station was unable to operate to its full capacity and also to achieve the normative plant availability factor (PAF) due to insufficient supply of coal. The petitioner has already approached the Commission for relaxation of norms for availability on this ground. In view of this, the capitalization of ₹225.54 lakh is not justified. Since ERP would bring in more operational efficiency and availability to the generating station in case of sufficient availability of fuel, it would enable the generating station to earn incentive for higher availability and saving in O&M and efficiency norms. Thus, there is no need for capitalization of the expenditure on ERP and the said amount is disallowed".*

4. The petitioner in its petition while seeking review of the above order disallowing ERP expenditure for 2008-09 has submitted as under:

*"It is submitted that the fuel supply optimization may be only one such resource planning & optimization, but usage of ERP (SAP) is required to integrate & implement uniform solution in all station in all areas including Materials Management, O&M, Project Management, Billing & Recording etc. It helps in faster Data retrieval, Manpower rationalization, & quicker Decision Making. The gain in process & system efficiency is much higher compared to investment made such expenditure is necessary for efficient & successful operation of the station". Recognizing this the Hon'ble Commission has already allowed expenditure on account of the same in all other stations."*

5. The petitioner has pointed out in its petition that the Commission had allowed expenditure towards ERP vide its order dated 8.1.2010 in Petition No.149/2009 (Simhadri TPS) on the ground that these items/facilities were required for efficient functioning of the generating station. It has also been pointed out that the expenditure on ERP, which was initially disallowed by order dated 30.12.2009 in Petition No. 44/2009 (Kawas GPS), was subsequently allowed on a review application filed by the petitioner, after considering the objections of the respondents.

6. During the hearing on 17.11.2011, the representative of the petitioner reiterated its submissions made above. The learned counsel appearing for respondent Nos. 2,

3, 4 and 16 namely, BSEB, JSEB GRIDCO and BSES-BRPL adopted the reply filed on behalf of GRIDCO and submitted that there is no ground for review of the said order since the Commission has given adequate reasons for disallowing the claim of the petitioner in respect of expenditure on ERP. He also submitted that the said respondents were not barred by the principle or *res judicata* since it was not a party to the proceedings in the review petition pertaining to Kawas generating station. The learned counsel submitted that power of the Commission as envisaged under Section 94 of the Electricity Act, 2003 is akin to the powers as are vested in a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure, 1908 and hence the petitioner cannot reopen and reargue the case and seek review on the ground of 'error in judgment'. Referring to the judgment of the Hon'ble Supreme Court in Parsion Devi & others–v-Sumitra Devi & ors (1997) 8 SCC 715) and some of the judgments of Appellate Tribunal for Electricity, as annexed to its reply, the learned counsel submitted that a review is by no means an 'appeal in disguise' whereby an erroneous decision is re-heard and corrected, but lies only for patent error. He also submitted that review of an order on the grounds of 'error in judgment' is not maintainable and the same is liable to be dismissed.

7. The representative of the respondent No.9, UPPCL while submitting that there is no error apparent on the face of record in the order sought to be reviewed, has contended that the claim of the petitioner, if allowed, would burden the respondents for reimbursement of an expenditure for which no benefit has been derived by them. He also submitted that there has been substantial gains made by the petitioner in terms of O&M expenses and fuel efficiency and that the Commission had taken a

conscious decision to disallow the said claim, with proper reasons. The representative has thus prayed that the review petition may be rejected on the grounds above.

8. The learned counsel for the respondent No. 12, MPPTCL has submitted that the petitioner cannot raise the issue of ERP in the review petition since the same has been duly considered and disallowed by the Commission with proper reasons. He also clarified that in the case of Kawas generating station of the petitioner, the Commission had allowed the ERP expenditure (on review) on the ground that it was not considered originally while determining the tariff of the generating station whereas, in the instant case the Commission had considered and disallowed the said expenditure by a reasoned decision.

9. Section 94(1)(f) of the Electricity Act, 2003 provides that the Commission shall have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court which passed the order under the following circumstances;

*“(a) On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or*

*(b) On account of a mistake or error apparent on the face of the record, or*

*(c) For any other sufficient reasons.”*

10. We have heard the parties and perused the pleadings and documents on record. In our view, 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 ERP of ₹225.54 lakh during 2008-09, which was disallowed by the Commission in the said order dated 28.4.2011. The main reason for rejecting the petitioner's claim was that the plant was unable to run to its full capacity and maintain normative PLF due to insufficient availability of coal. The claim of the petitioner that in the past, the expenditure on ERP was permitted to be capitalized in respect of some of its other generating stations has not been denied by the respondents. It is also noticed that in Petition No. 44/2009 pertaining to Kawas Gas Power Station of the petitioner, the Commission had initially disallowed the claim of the petitioner for expenditure on ERP for capitalisation. However, on a review filed by the petitioner, the said expenditure was allowed by our order dated 21.1.2011 rejecting the contention of MPPTCL (one of the respondents therein), that the expenditure on ERP should not be allowed as the generating station could not generate to the require PLF due to non availability of gas. Under the Code, review is permissible on the grounds of discovery of a 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 of error or mistake apparent on the face of record, or for any other sufficient reason. In other cases, which were considered under the same tariff regulations (2004 Tariff Regulations), the claim of the petitioner for capitalization of ERP expenditure on similar grounds as claimed in this petition was permitted by the Commission on the ground that the expenditure is necessary for efficient and successful operation of the

generating station [Regulation 18(2)(iv)]. Thus, it had been an established past practice to allow capitalization of ERP to the generating stations of the petitioner for efficient and successful operation of the generating station under Regulation 18(2)(iv) of the 2004 Tariff Regulations. The claim for capitalisation in the instant case, cannot in any manner be said to be different from earlier cases decided by the Commission. The practice followed in those cases were overlooked while approving the annual fixed charges by order dated 28.4.2011 for this generating station. 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. The contentions of the respondents are thus rejected.

11. In the light of foregoing discussions, we allow the application for review of the said order dated 28.4.2011, as aforesaid. Accordingly, the annual fixed charges determined by order dated 28.4.2011 in Petition No.150/2009 is directed to be revised taking into consideration the capitalization of expenditure on ERP amounting to ₹225.54 lakh during 2008-09. The present application for review stands disposed of as above.

**Sd/-**  
**(M.DEENA DAYALAN)**  
**MEMBER**

**Sd/-**  
**(V.S.VERMA)**  
**MEMBER**

**Sd/-**  
**(S.JAYARAMAN)**  
**MEMBER**

**Sd/-**  
**(DR.PRAMOD DEO)**  
**CHAIRPERSON**