

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 9/RP/2014 in Petition No. 204/GT/2011

Subject: Review of Order dated 21.1.2014 in Petition No.204/GT/2011 regarding approval of generation tariff of Farakka Super Thermal Power Station, Stage-III (1 x 500 MW) for the period from the actual date of commercial operation COD (4.4.2012) to 31.3.2014.

Date of Hearing: 8.5.2014

Coram: Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member

Petitioner: NTPC Ltd.

Respondents: WBSEDCL & 5 Others

Parties present: Shri M.G.Ramachandran, Advocate, NTPC
Ms. Swagathika Sahoo, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Shri A.Basu Roy, NTPC
Shri Umesh Ambati, NTPC
Shri R.B.Sharma, Advocate, GRIDCO & JSEB.

RECORD OF PROCEEDINGS

During the hearing, the learned counsel for the petitioner made submissions on all the issues raised in the review petition, contending that there is error apparent on the face of the order, mainly as under:

(a) The Commission after examining the justifications and submissions of the petitioner had concluded that there has been no imprudence on the part of the petitioner in the selection of the contractor or in the execution of contractual agreements, nor any delay in awarding of contracts and monitoring of projects. Accordingly, the Commission in its order ought not to have held that NTPC cannot be fully absolved of its responsibility and shall have to bear 50% of the total costs due to time overrun. Since the delay has not been attributed to NTPC, the matter would be squarely covered under clause (ii) of para 7.4 of the judgment dated 27.4.2011 of the Appellate Tribunal in Petition No. 72/2010 (MSEDCL v- MERC)

(b) The Parliamentary elections affected the progress of work in all fronts of the project, including boiler erection. The justification for the same was provided by the petitioner in its affidavits dated 20.7.2012 and 6.2.2013 which has not been considered by the Commission.

(c) The delay on account of damaged sluice gates prevented the supply of cooling water from Farakka Barrage to Farakka station and the same affected the commencement of operation of the station. This is a force majeure event affecting the declaration of the commercial operation and the same cannot be declared without the supply of cooling water from Farakka Barrage. Only after repair of sluice gates maintained by external agency, over which NTPC has no control, the station could proceed for declaration of commercial operation. The Commission has also not considered the delay caused due to non performance of ash handling system and compressed air system and the consequent cost and time overrun which was borne by NTPC.

(d) On account of the delay of 14 months, the Commission has disallowed Rs 2132 lakh as increase in main plant turnkey package and the main plant civil work package, on *pro rata* basis, relating to increase in contract price due to escalation in cost, after comparing the awarded value with the capitalisation amount on cash basis, as on COD. In respect of civil packages (including main plant civil package), NTPC in Form -5D of the amended petition via affidavit dated 7.9.2012 had submitted that *'in civil packages actual expenditure includes owner issued materials wherever applicable'*. The free supply of steel and cement was outside the scope of the contract and the capital expenditure (as on COD) is however inclusive of these materials. The pre-commissioning expenses were capitalised/booked to the main plant SG and TG package as per accounting guidelines and these expenses do not form part of the contract award value.

(e) The method of calculation of allowable IDC for the period upto 5.2.2011 has not been laid down in the order dated 21.1.2014. The Commission has considered the date of 5.2.2011 as the cut-off date for disallowance of IDC and FC (including notional IDC) on the total debt deployed. The details of debt deployed by NTPC during the period of construction were provided in Form-8 and Form-14 of the amended petition. Around 27% of the debt is deployed during the period (5.2.2011 to 4.4.2012) and it forms parts of the admitted capital cost. Therefore, the disallowance of IDC (including notional IDC) from debt deployed during time overrun, leads to a situation where in debt deployed is allowed but the corresponding IDC and FC are disallowed, which is against the objectives of the regulations of the Commission which mandates appropriate servicing of actual admitted capital cost deployed. In terms of the principle laid down by the Tribunal in its judgment dated 27.4.2011, the IDC (incl. notional IDC) to be disallowed should have been ₹4344.33 lakh, instead of the actual IDC of ₹7920.52 lakh disallowed by the Commission.

(f) While restricting the interest calculation in Bond series, the Commission had not considered the difference in the date of receipt of money and the deemed date of allotment of bond series. Also, the explanation submitted by NTPC in its affidavit dated 6.2.2013 has not been considered. The interest rate starts accruing from the date of receipt of bond money before the actual deemed date of allotment of bonds.

(g) The Commission has considered the weighted average price of coal as ₹3494.27 per MT instead of ₹3544.99 per MT as submitted vide affidavit dated 26.9.2013 wherein Form-15 was revised, segregating the domestic coal received through MGR and railways separately while considering the transit loss of 0.2% for domestic coal received through MGR and 0.8% for domestic coal received through railways. This needs to be corrected.

(h) The Commission has not considered the details provided by NTPC in its affidavit dated 6.3.2012 regarding the notification filed in Petition No. 121/MP/2011 pending before the Commission, which indicate an increase of 3000% in the Water Charges from the Farakka Barrage. Also, the Commission in its order dated 14.6.2012 in Petition No. 222/2009 (pertaining to claim for water charges for Farakka Stage-I and II) has held that the decision taken in Petition No.121/MP/2011 would be applicable for the said generating station.

(i) NTPC vide its affidavit dated 26.8.2011 in the original petition had prayed for relaxation of Target Availability to 80% in terms of Regulation 44 of the 2009 Tariff Regulations along with detailed justifications and the same has not been considered by the Commission in its order.

(j) The surveillance fee of 0.03% paid by the petitioner in all bond series and considered in the calculation of weighted average rate of interest has not been considered by the Commission in its order. Also, in case of PFC –V loan, D-22 repayment has not been considered in calculations in Form-13. The

value at depreciation computation table is different from the annual fixed charge components considered in the order.

2. Accordingly, the learned counsel for petitioner submitted that there is error apparent on the face of the record or otherwise sufficient reason for review of the decision on the above aspects and prayed that the petition may be allowed as prayed for.

3. In response, the learned counsel for the respondents, GRIDCO & JSEB objected to the above submissions of the petitioner. Referring to the reply filed on behalf of GRIDCO, the learned counsel pointed out that there was no error apparent in the face of the order and submitted as under:

(i) The Commission in its order has given a clear finding that the delay in completion of the project is not fully attributable to the petitioner and the judgment of the Tribunal dated 27.4.2011 is applicable in the present case. It is evident that the petitioner is partially responsible and accordingly the responsibility of the petitioner has been determined as 50% in terms of the said judgment of the Tribunal.

(ii) The petitioner could not justify the delay in completion of the project on the grounds of parliamentary and assembly elections and accordingly the same was rejected. The petitioner cannot be permitted to re-argue the case.

(iii) As regards delay due to damage of sluice gates, the issue of force majeure was never raised by the petitioner before the Commission. Moreover, the force majeure is not applicable in terms of the clause (ii) of judgment of the Tribunal.

(iv) As regards disallowance of ₹2132 lakh towards increase in contract price, NTPC had failed to provide proper clarification in respect of information sought for by the Commission. Also the details of the recoveries made against the contractors responsible for the delay were not submitted. The correctness of the decision has been questioned by the petitioner in review, which is not permissible.

(v) The disallowance of ₹7920.52 lakh as cost overrun towards IDC and FC is on account of the petitioner being found partially responsible by the Commission, in line with the judgment of the Tribunal.

(vi) As regards non-consideration of start date for interest calculation in Bond series, any relief claimed which has not been expressly granted in the order is deemed to have been refused by the Commission. It is evident that the said problem is in respect of only few bond series and solution to the problem needs to be sought from the authorities who created the same.

(vii) The instant station is a pit head generating station and accordingly a normative transit & handling loss of 0.2% is permissible.

(viii) The non-consideration of the prayer for Water charges and relaxation of Target Availability cannot be a subject matter for review since any relief claimed and which has not been expressly granted by the Commission shall be deemed to have been refused.

(ix) Since the petitioner has been found to be partially responsible by the Commission for time overrun, the disallowance of ₹770.18 lakh as cost overrun due to time overrun for IEDC during construction is in order,

(x) The petitioner has neither claimed any relief regarding Surveillance fee and D-22 repayment of PFC-V loan in the body of the petition nor had prayed for the same.

(xi) The value of depreciation computation which is different from the AFC component appears to be a typographical error which can be corrected.

(xii) 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. An erroneous decision can be corrected only by a higher forum (*Parsion Devi & ors-v- Sunitra Devi & ors 1997 8 SCC 715 referred to*). Accordingly, the review petition may be rejected.

(xiii) The reply filed on behalf of GRIDCO may be adopted for the respondent, JSEB.

4. The Commission after hearing the parties reserved its order in the petition.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)