

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 19/RP/2014

in

Petition No.148/GT/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Hearing: 11.09.2014

Date of Order: 20.11.2014

In the matter of

Review of Order dated 15.5.2014 in Petition No.148/GT/2013 revising the tariff of Vindhyachal Super Thermal Power Station Stage-III (1000 MW) for the period 1.4.2009 to 31.3.2014

And in the matter of

NTPC Ltd.
NTPC Bhawan,
Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

...Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhavan, Vidyut Nagar, Jabalpur-482 008

2. Maharashtra State Electricity Distribution Company Ltd,
'Prakashgad', Bandra (EAST), Mumbai-400 051

3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhavan, Race Course, Vadodara-390 007

4. Chhattisgarh State Power Distribution Company Ltd,
Dhagania, Raipur-492 013

5. Electricity Department, Govt. of Goa,
Vidyut Bhavan, Panaji, Goa

6. Electricity Department,
Administration of Daman & Diu,
Daman-396 210

7. Electricity Department Administration of Dadra and Nagar Haveli,
Silvassa Via VAPI

....Respondents



Parties present:

Shri M.G. Ramachandran, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri Sachn Jain, NTPC
Ms. Suchitra Maggon, NTPC
Shri A.K. Chaudhary, NTPC
Shri Anurag Naik, MPPMCL

Order

This petition has been filed by the petitioner, NTPC Ltd for review of order dated 15.5.2014 in Petition No.148/GT/2013 whereby the Commission had revised the tariff of Vindhyachal Super Thermal Power Station Stage-III (1000 MW) in terms of the proviso to Regulation 6(1) of the 2009 Tariff Regulations for the period from 1.4.2009 to 31.3.2014.

2. Aggrieved by the said order, the petitioner has sought review of the said order dated 15.5.2014 on the ground of error apparent on the face of the order, raising the following issues:

- (i) *Disallowance of Work Adjustments pertaining to the payments of balance works/adjustments;*
- (ii) *Disallowance of the amount of Electricity duty and Cess;*
- (iii) *Disallowance of the capitalization of acoustic leak detection system.*

3. By interim order dated 4.8.2014 the petition was admitted on the above issues and notice was ordered on the respondents. The respondents, MPPMCL and CSPDCL have filed reply to the petition.

4. Heard the parties. Based on the submissions of the parties and the documents available on record, we consider the issues raised by the petitioner in the subsequent paragraphs.

Disallowance of Work Adjustments pertaining to the payments of balance works / adjustments

5. The Commission in order dated 28.5.2012 had allowed the expenditure of ₹17.00 lakh during 2009-10 under Regulation 9(2)(viii) towards adjustments against claim for final payment of various works which were capitalized before 1.4.2009. However, the claim of the petitioner for actual capital expenditure during the period 2009-12 towards adjustment was disallowed by the Commission by order dated 15.5.2014 on the ground that the petitioner had not submitted any justification in support of its claim under Regulation 9(2) (viii) and prudence check of these liabilities could not be accordingly undertaken.

6. NTPC has submitted that the Work adjustments which have been disallowed pertain to payments of balance works/adjustments in respect of works already allowed by the Commission vide order dated 30.7.2008 and 10.2.2011 in Petition No.157/2007 and Petition No.185/2009 respectively for the period up to 31.3.2009. NTPC has also submitted that the further item-wise and package-wise details of Works adjustment submitted on 3.4.2013 vide affidavit were specifically in compliance to letter dated 8.2.2013 in Petition No. 148/GT/2013 directing NTPC to explain nature of item along with work-wise position of the same. The petitioner has stated that on perusal of NTPCs submission on 3.4.2013 would indicate that the balance payments/works adjustments claimed in the petition included works such as SG Area Civil Works package, Off-site Civil Works Package and Chimney Elevator Package etc., which were already capitalized in the above mentioned petitions. Accordingly, the petitioner has pointed out that these submissions of the petitioner vide affidavit dated 3.4.2013 have escaped Commission's attention at the time of passing the order dated 15.5.2014, which amounts to an error apparent on the facts of the case.

7. By interim order dated 4.8.2014, the petitioner was directed to submit information on the following:

"Reasons for increase in the 'Work adjustment' amount from ₹17.00 lakh to ₹195.00 lakh in affidavit dated 7.9.2012 along with reasons for claiming the same vide affidavit dated 3.4.2013 when the said increase in adjustment amount was capitalized in 2009-10."

8. In response, the petitioner vide affidavit dated 19.8.2014 has submitted as under:

There is no change in the amounts claimed against 'Works adjustments' i.e., payments of balance works/adjustments in respect of works already allowed by the Commission, in submissions made on 7.9.2012 and 3.4.2013. The Petitioner had filed Petition No. 148/GT/2013 on 7.9.2012 for truing up exercise for the years 2009-10, 2010-11 and 2011-12, wherein it had claimed an amount of Rs. 195.00 lakh as 'Works Adjustments'. The same was clearly indicated as item C (vii) on page 74 as well as in Gross Block re-conciliation table at page 105 of the petition. Subsequently, the Commission vide letter dated 8.2.2013 directed the Petitioner to furnish the details of 'Work adjustments'. Accordingly, in line with the direction of the Commission, the Petitioner vide affidavit dated 3.4.2013 submitted these details."

9. The respondent, MPPMCL has submitted that since the Commission had considered the additional submissions filed by NTPC and passed a reasoned order, there is no justification for review of the order. The respondent has also submitted that no justification has been provided by the petitioner as regards such a huge difference in projections, except stating that due to inadvertent error, the expenditure of ₹17.00 lakh has been claimed against the actual expenditure of ₹195.21 lakh for 2009-10.

10. The matter has been examined. It is noticed that the petitioner, in response to the letter dated 8.2.2014 had submitted the detailed information regarding 'Works adjustments' amount duly reconciled with the gross block vide affidavit dated 3.4.2013 and the said information furnished by the petitioner had escaped attention of the Commission at the time of considering the claim of the petitioner for actual capital expenditure during the period 2009-12 towards adjustment, in order dated 15.5.2014. The non consideration of the said affidavit dated 3.4.2013 in order dated 15.5.2014 on this issue, is according to us is an error apparent on the face of the order which is required to be corrected. Hence, we allow the review of order dated 15.5.2014 on this ground and direct the rectification of the said error at the time of final truing-up of tariff of the generating station for the period 2009-14 in terms of Regulation 6(1) of the 2009 Tariff Regulations.

Disallowance of Electricity Duty and Cess

11. NTPC vide affidavit dated 3.9.2012 had claimed actual capital expenditure of ₹74.01 lakh during 2011-12 for Excise Duty and Cess paid to the Govt. of Madhya Pradesh for construction power used for the project during the period prior to the COD. The Commission in its order dated 15.5.2014 had allowed the claim of ₹74.01 lakh of the petitioner observing as under.

"25. The petitioner has claimed actual expenditure of ₹74.01 lakh in 2011-12 for Excise Duty & Cess paid to the Government of Madhya Pradesh for construction power used for this project during the period prior to its COD. Due to revision of rates in the tariff order issued by the MP State Electricity Regulatory Commission (MPSERC) which is applicable for the period prior to the COD of the project, an additional amount was paid to the Govt. of MP towards EDuty & Cess on construction power. Since ED & Cess are statutory expenditure incurred, the claim under this head is allowed."

12. NTPC in this petition has submitted that while dealing with the above aspect, the Commission has not considered the submission filed on 3.4.2013 wherein NTPC had furnished the details of the revised claim of actual expenditure of ₹145.70 lakh towards Electricity Duty & Cess paid and capitalized. The petitioner has accordingly pointed out that the Commission has based its decision dated 15.5.2014 only on the initial pleadings filed on 3.9.2012 and without considering the submissions filed on 3.4.2013 and had disallowed the amount of Electricity Duty & Cess inadvertently. The petitioner has further submitted that the non-consideration of the affidavit filed on dated 3.4.2013 amounts to an error apparent on the facts of the case and also there are sufficient reasons for review of the decision taken in the order on the above aspect.

13. By interim order dated 4.8.2014, the petitioner was directed to submit information on the following:

"(b) Reasons for change in the actual expenditure of ₹74.01 lakh to ₹145.70 lakh towards Electricity Duty & Cess along with reasons for not claiming the actual expenditure of ₹145.70 lakh on Excise Duty & Cess and ₹127.06 lakh towards Madhya Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhinyam (MPGATSV) Tax incurred during 2010-11 and 2011-12 in affidavit dated 7.9.2012."

(c) Auditor certificates in respect of the claim of ₹145.70 lakh towards E.D & Cess and claim of ₹127.06 lakh towards MPGATSV along with reconciliation of accounts amongst stages duly certified by statutory auditors."

14. In response, the petitioner vide affidavit dated 19.8.2014 has submitted as under

"The Commission vide letter dated 8.2.2013 in Petition No.148/GT/2013 directed the Petitioner to reconcile and furnish the details of various items claimed by the Petitioner. During the course of such re-conciliations, it was found that the expenditure under head MPGATSVTA Tax was missed out and amount of ED and cess was indicated erroneously. Accordingly, while submitting the details in compliance to Hon'ble Commission's letter dated 8.2.2013, vide Affidavit 3.4.2013 the Petitioner modified its claim of capitalization to the above extent and had re-calculated the tariff and enclosed the revised relevant Tariff Forms along with Affidavit dated 3.4.2013. This submission dated 3.4.2013 has escaped the attention of Hon'ble Commission in the impugned Order dated 15.05.2014."

15. The respondent, MPPMCL has stated that the expenditure towards electricity duty and cess may be allowed to be recovered subject to prudence check by the Commission from the beneficiaries in proportion to their allocation of share through monthly energy bills in six installments. The respondent, CSPDCL has stated that expenditure should be covered under 'deferred tax liability' as the same is for the period prior to 31.3.2009 and hence as per Regulation 39 of the 2009 Tariff Regulations, the same should be recovered directly from the beneficiaries and should not be allowed to be capitalized. It has also submitted that the expenses towards MPGATSVTA amounting to ₹127.06 lakh should not be allowed to be capitalized and if so, may be recovered directly from the beneficiaries.

16. The matter has been examined. It is noticed that the petitioner, in response to the letter dated 8.2.2014 had submitted detailed information vide affidavit dated 3.4.2013 as regards the amounts towards Electricity Duty & Cess and MPGATSVTA Tax, duly reconciled with the gross block and has accordingly modified its claims for capitalization and re-calculated the tariff and enclosed the revised relevant tariff forms. The revised details furnished by the petitioner vide affidavit dated 3.4.2013 had escaped attention of the Commission at the time of considering the claim of the petitioner for the years 2010-11 and 2011-12 respectively in order dated 15.5.2014. The respondents MPPMCL and CSPDCL have also not contested the claim for the ₹145.70 lakh towards ED & Cess and ₹127.06 lakh towards MPGATSVTA Tax. According to us, the non consideration of the said affidavit dated

3.4.2013 in the order dated 15.5.2014 on this issue, is an error apparent on the face of the order which is required to be corrected. Hence, we allow the review of order dated 15.5.2014 on this ground and direct the rectification of the said error at the time of final truing-up of tariff of the generating station for the period 2009-14 in terms of Regulation 6(1) of the 2009 Tariff Regulations.

Disallowance of the capitalization of Acoustic leak detection system

17. The petitioner had claimed projected expenditure of ₹70 lakh during 2013-14 for installation of Acoustic Steam Leak Detection System for early detection of boiler tube leakage points etc. The Commission in its order dated 15.5.2014 had disallowed the said claim observing as under:

"23. The petitioner has claimed projected expenditure of ₹70.00 lakh in 2013-14 for installation of Acoustic Steam Leak detection. The petitioner has submitted that this system would help in early and correct detection of boiler tube leakage points resulting in reduction of unit shut down time and enhancement of availability. It has also been submitted that this asset is necessary to meet higher availability norms specified by the Commission in the 2009 Tariff Regulations and accordingly, claim has been made under Change in law. We appreciate the submission of petitioner that this system helps in the early detection of boiler tube leakage. However, we are of the view that if the boiler and water system of the generating station is properly maintained there would be no reason for tube leakages and consequent unavailability of the generating station. We notice that the generating station has been provided with reasonable O& M expenses for effective and efficiently maintenance of different systems/ components of the units/ generating station. We also hold that the requirement to meet higher availability of norms specified by the Commission in the 2009 Tariff Regulations cannot fall under 'Change in Law' as per definition provided under the 2009 Tariff Regulations. In view of the above, the claim has not been allowed."

18. The petitioner has submitted that it was not possible to achieve zero tube leakages and such leakages were beyond the reasonable control of the generating company. The petitioner has also submitted that the Commission may consider allowing the expenditure in exercise of 'Power to Relax' under Regulation 44 of the 2009 Tariff Regulations considering the importance and effectiveness of such expenditure and that the same cannot be covered under the limited O&M expenditure.

19. The respondent, MPPMCL has submitted that since the expenditure on Acoustic Steam Leak Detection has not been accepted by the Commission in tariff determination order dated 28.5.2012

the same should not be considered for the purpose of capitalization at this stage. It has also submitted that consideration of the same under 'Power to relax' would be grossly against the spirit of the provisions of the 2009 Tariff Regulations and the Statement of Reasons thereof. The respondent, CSPDCL has submitted that adequate O&M expenses has been allowed in tariff during the period 2009-14 and since the same will take care of such expenses, the amount is not required to be capitalized.

20. The matter has been examined. The power of the Commission to review its order under clause (f) of sub-section (1) of Section 94 of the Electricity Act is analogous to the power of a Civil Court under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure. The Commission can review its order on any of the grounds enumerated in Order 47, Rule 1, but not otherwise. On consideration of the material available on record, the Commission by order dated 15.5.2014 had rejected the petitioner's claim. The rejection of the claim after due deliberation of the plea of the petitioner cannot be said to be the case of error apparent on the face of record necessitating review of the order. The petitioner has sought to re-agitate the claim in the guise of review. The petitioner has now given additional grounds to substantiate its claim for capitalization of the asset. Such a course is not open to the petitioner as the Commission while considering the application has to limit itself to the material which was available when the order dated 15.5.2014 was passed. Hence, the review sought on the issue of disallowance of additional capitalization of Acoustic Steam Leak Detection system is not accepted.

21. The petitioner has also prayed for allowing the expenditure in exercise of 'Power to Relax' under Regulation 44 of the 2009 Tariff Regulations considering the importance and effectiveness of such expenditure and that the same cannot be covered under the limited O&M expenditure. The matter has been examined. The above Regulation gives the judicial discretion to the Central

Commission to relax norms based on the circumstances of the case and there has to be sufficient reasons to justify relaxation. The petitioner in its original petition had prayed for capitalisation of this item under Regulation 9(2)(ii)-i.e Change in law, in order to meet higher availability norms, which had been rejected by the Commission in order dated 15.5.2014. No prayer was made by the petitioner in the original petition for allowing this item in exercise of the 'Power to relax', under Regulation 44 of the 2009 Tariff Regulations. Hence, a new plea raised by the petitioner in review petition cannot be permitted. For all these reasons, the prayer of the petitioner for review of order dated 15.5.2014 in respect of Acoustic Steam Leak Detection system is rejected.

22. Review petition 19/RP/2014 is disposed of in terms of the above.

Sd/-
(A.K.Singhal)
Member

Sd/-
(A.S. Bakshi)
Member

Sd/-
(M. Deena Dayalan)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson