

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 11/2016**

**in**

**Petition No.283/GT/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of hearing: 31.3.2016**

**Date of order: 30.6.2016**

**IN THE MATTER OF**

Review of Commission's order dated 25.1.2016 in Petition 283/GT/2014 on the aspect of the stage at which the samples of coal are to be drawn for determining the Gross Calorific Value of coal for the calculation of energy charges in terms of Regulation 30 (6) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

**AND IN THE MATTER OF**

Approval of tariff for Kahalgaon Super Thermal Power Station, Stage-II (1500 MW) for the period from 1.4.2014 to 31.3.2019

**AND**

**In the matter of**

NTPC Limited,  
NTPC Bhawan, Core-4  
SCOPE Complex, Lodhi Road  
New Delhi - 110 003

.....**Petitioner**

Vs

1. GRIDCO Ltd  
24, Janpath  
Bhubaneshwar-751007
2. Power Department,  
Govt of Sikkim, Kazi Road, Gangtok  
Sikkim-737101
3. Gujarat Urja Vikas Nigam Limited,  
Vidyut Bhavan, Race Course,  
Vadodara-390 007
4. Madhya Pradesh Power Management Company Limited,  
Shakti Bhavan, Vidyut Nagar, Jabalpur-482 008



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

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

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

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

9. Uttar Pradesh Power Corporation Ltd  
Shakti Bhawan,  
14, Ashok Road,  
Lucknow – 226001

10. Uttarakhand Power Corporation Ltd  
Urja Bhawan, Kanwali Road,  
Dehradun – 248001

11. Jaipur Vidyut Vitran Nigam Ltd  
Vidyut Bhawan, Janpath,  
Jaipur – 302205

12. Ajmer Vidyut Vitran Nigam Ltd  
Old Power House,  
Hatthi Bhatta, Jaipur Road,  
Ajmer – 305001

13. Jodhpur Vidyut Vitran Nigam Ltd  
New Power House, Industrial Area,  
Jodhpur – 342003

14. Power Development Department,  
Government of J&K,  
Secretariat, Srinagar-19009

15. BSES Rajdhani Power Ltd  
BSES Bhawan, Nehru Place,  
New Delhi – 110019

16. BSES Yamuna Power Ltd  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019

17. Tata Power Delhi Distribution Ltd  
33 kV Sub-station, Kingsway Camp,  
Delhi –110009

18. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula –134 109



19. Punjab State Power Corporation Ltd  
The Mall, Secretariat Complex,  
Patiala – 147 001

20. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Shimla-171004

21. Power Department,  
Union Territory of Chandigarh,  
1<sup>st</sup> Floor, UT Secretariat, Sector 9D,  
Chandigarh – 160 009

22. Tamil Nadu Generation & Distribution Corporation Ltd  
NPKRP Maaligai, 144, Anna Salai  
Chennai-600002

....Respondents

**Parties present:**

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Ms. Poorva Saigal , Advocate, NTPC
3. Shri Ajay Dua, NTPC
4. Shri A.R. Mohanty, NTPC
5. Shri Rajnish Bhagat, NTPC
6. Shri Shyam Kumar, NTPC
7. Shri Uday Shankar, NTPC
8. Shri A.K. Bishoi, NTPC

**ORDER**

This review petition has been filed by the petitioner, NTPC praying for the following relief(s);

*“(a) Admit the review petition;*

*(b) Review and rectify the order dated 25.1.2016 in so far as it decides the sampling of the coal for measurement of GCV to be done based on the samples drawn from the railway wagon;*

*(c) Declare that the samples drawn from the crusher house immediately after unloading shall be considered for the purpose of determination of weighted average value of coal on ‘as received basis’ under Regulation 30(6) of the 2014 Tariff Regulations.*

*(d) Pass such other orders as this Hon’ble Commission may deem fit and proper in the circumstances of the case”*

**Background**

2. The Commission in exercise of its powers under section 61 read with section 178(2)(s) of the Electricity Act, 2003 (Electricity Act) has specified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (‘2014 Tariff Regulations’) for



determination of tariff of the generating companies. The petitioner filed Writ Petition No. 1641/2014 before the Hon'ble High Court of Delhi challenging amongst others, the computation of Gross Calorific Value of Coal (GCV of Coal) in terms of Regulation 30(6) of the 2014 Tariff Regulations. Regulation 30(6) of the 2014 Tariff Regulations provides as under:

*"30(6) Energy charge rate (ECR) in rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:*

*A. For coal based and lignite fired stations*

$$ECR = \frac{\{(GHR - SFC \times CVSF) \times LPPF + CVPF + SFC \times LPSFi + LC \times LPL\} \times 100}{100 - AUX}$$

*b. For gas and liquid fuel based stations*

$$ECR = \frac{GHR \times LPPF \times 100}{\{CVPF \times (100 - AUX)\}}$$

*Where,*

*AUX = Normative auxiliary energy consumption in percentage.*

*CVPF= (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations*

*c. Weighted Average Gross calorific value of primary fuel as received, in kCal per kg, per litre or per standard cubic meter, as applicable for lignite, gas and liquid fuel based stations."*

3. In the said Writ Petition, the petitioner has contended the measurement of GCV of coal should be on 'as fired basis' instead of 'as received basis' However, the Hon'ble High Court by order dated 7.9.2015 directed the Commission to decide the issue i.e at what stage the GCV of coal on 'as received basis' should be measured and pass appropriate orders. In the said order dated 7.9.2015, the High Court had also granted liberty to the petitioner to place before the Commission the relevant material to substantiate its plea that the collection of samples for measurement of coal shall be only after the secondary crusher. Based on this, submissions and materials were placed on record by the petitioner, Association of Power Producers etc. and the Commission after hearing all the parties, including the petitioner, by order dated 25.1.2016 in Petition No.283/GT/2014 decided the issue referred by the Hon'ble High Court. The relevant portion of the order dated 25.1.2016 is extracted as under:



*“58. In view of the above discussion, the issues referred by the Hon<sup>ble</sup> High Court of Delhi are decided as under:*

*(a) There is no basis in the Indian Standards and other documents relied upon by NTPC etc. to support their claim that GCV of coal on as received basis should be measured by taking samples after the crusher set up inside the generating station, in terms of Regulation 30(6) of the 2014 Tariff regulations.*

*(b) The samples for the purpose of measurement of coal on as received basis should be collected from the loaded wagons at the generating stations either manually or through the Hydraulic Auger in accordance with provisions of IS 436(Part1/Section1)-1964 before the coal is unloaded. While collecting the samples, the safety of personnel and equipment as discussed in this order should be ensured. After collection of samples, the sample preparation and testing shall be carried out in the laboratory in accordance with the procedure prescribed in IS 436(Part1/Section1)-1964 which has been elaborated in the CPRI Report to PSERC”*

4. Aggrieved by the said order dated 25.1.2016, the petitioner has filed this review petition seeking the reliefs mentioned in para 1 above.

5. The matter was heard on ‘admission’ and the Commission after hearing the learned counsel for the petitioner, reserved its order in the petition.

6. The grounds raised by the petitioner, in support of its prayer for review of order dated 25.1.2016 are mainly as under:

(a) The opinion of experts/bodies relied on by NTPC have concluded that the sampling of the coal should be done when the container (wagon) is in ‘motion’ than when it is ‘stationary’. The rationale given by the experts/bodies has been that the sampling of coal from a ‘stationary container’ such as rail road wagon can be biased and un-representative and the reliability of the conclusion are not assured and homogenous nature of coal may not be available. If a sample so taken is biased, its reliability and representativeness is not assured, the samples so taken cannot be said to be appropriate for the measurement of GCV for the purposes of determining Energy Charges.

(b) The Commission in its order dated 25.1.2016 has proceeded on the basis that the experts opinion relied upon, also deals with the sampling from railway wagon top, overlooking the fact that experts’ opinion deal with various methods and manner of sampling and advice against sampling from the ‘railway wagon top’ for the above reasons. Merely because one of the alternatives dealt with by the experts/bodies for the different method of sampling provide for samples being collected from the ‘railway wagon top’, may not be made applicable, particularly when all the authorities including the Indian Standards prescribe that wagon sampling may not be representative.



(c) one of the reasons given in order dated 25.1.2016 in favour of wagon top sampling is the technological development of the use of Hydraulic Auger which can be utilized to collect sample from the wagon top. The samples collected from the railway wagon top, whether manually or by use of Hydraulic Auger could still suffer from the deficiencies which the various experts/bodies have concluded, namely, their reliability, representativeness and homogeneity cannot be ensured.

(d) The conclusion reached in order dated 25.1.2016 of samples being collected from railway wagon top and the use of Auger is on the basis of affidavit filed by GUVNL as a practice followed in the generating stations of Gujarat State Electricity Corporation Ltd (GSECL). Firstly, no affidavit has been filed by the GSECL and secondly, the sampling of coal done by GSECL from railway wagon top is not for the purpose of determination of Energy Charges. The Tariff Regulations notified by the Gujarat Electricity Regulatory Commission applicable for the tariff period 2014-15 and even for the earlier period specifically provides for the energy charges to be computed as per the GCV of the coal 'as fired'.

(e) The sampling of the coal from the railway wagon top done by NTPC and others from time to time is to deal with the GCV of the coal received in comparison to the GCV of the coal at the loading point in order to ascertain whether there is a significant grade slippage. At both the places, the samples are collected not for the purpose of determining the exact GCV of the representative of coal with precision but on a broad basis for settlement of the grade of the coal received.

(f) The Commission has proceeded entirely on a premise that NTPC has taken the position that it is impossible to measure the GCV of coal by taking samples from the railway wagon top. This was never the case of NTPC both in the application as well as in the written submissions. The stand of NTPC was that the measurement of coal by samples drawn from the railway wagon top are done for a different purpose and not in a thorough manner which is required in the case of determining the energy charges. The objective of drawing samples from the railway wagon when energy charges were determined on 'as fired' basis are totally different. The energy charges were not getting affected by reason of such measurement of GCV of coal by samples drawn from the railway wagon top.

(g) The Commission had shifted the stage of measurement of GCV of coal from 'as fired' basis to 'as received' basis primarily on the ground that the loss of GCV while stacking in the coal yard and inefficient handling of coal after it is received, should not be passed on to the consumers. In any event, the measurement of coal of samples drawn at the crusher house



(which is most appropriate stage) does not in any manner involve the loss of GCV or any inefficiency from the stage of unloading to the stage of crusher house or taking of samples for measurement of the GCV.

(h) The Commission has proceeded in impugned order on the basis that transparency is ensured when sample is taken from wagon top. NTPC has submitted that transparency is fully ensured if the samples are collected at the crusher house, considering the fact that there is hardly any time lag from the stage of railway wagon to the crusher house and there cannot possibly be any loss of GCV during this process. The time taken for the coal to reach the crusher place is less than 10 minutes and there is also advantage of homogenous mixture of coal being available for sampling which is more transparent and more representative.

(i) The Commission has proceeded on the basis that advance mechanical device for collection of samples from loaded wagon was not available at the time of the laying down the standards i.e. Indian Standards in 1964 and therefore, the Indian Standards providing for appropriateness of samples being taken at a place different from stationery wagon cannot be accepted as at present advance mechanical devices are available. NTPC has submitted that the experts' opinion relied on by NTPC consistently held that the correct method of sampling would be to take the samples when the coal is in movement in order to arrive at a homogenous mixture. This has nothing to do with the availability of advance mechanical equipment to pick up coal samples from the top of the railway wagon as stated by the Commission.

(j) The Commission in impugned order has referred to the coal being taken from different sources necessitating the samples being taken from the wagon top. NTPC has submitted that the samples taken at the crusher house for measurement of GCV does not in any manner gets affected by reason of sourcing of coal from different sources, namely, imported or domestic and in the case of domestic, from different mines. The railway wagons which arrive at the generating station contain coal from specific sources and, therefore, unloading of coal, passing of the coal through the conveyor belt and crushing of the coal at the crusher house and sampling of coal at the Automatic Mechanical Sampler are all confined to any point of time to the coal received from one source.

(k) The Commission has not considered the specific plea of NTPC that detailed sampling on the railway wagon top if undertaken will result in holding up the railway wagons for a significant time leading to the payment of demurrage. NTPC had placed on record the volumes of coal received every day at the site and if it had to collect samples from the railway wagon top before unloading, the time taken would be substantial, if samples have to be of a representative character. The use of Auger will also take time to collect samples from each



wagon at different place. There is no Auger installed at NTPC stations and therefore not practical for collecting representative samples from the railway wagon top. On the other hand, the collection of samples after unloading and at the crusher house adequately gives the representative sample without the deficiencies of collecting samples from the railway wagon top including holding up of the wagons until samples are collected.

(l) The Commission has proceeded only on the basis that it is physically possible to collect such samples, and the difficulties such as time taken for collections of samples and the associated issue of demurrage/reduced off take, safety of personnel etc. have not been addressed.

(m) If wagon top sampling is adopted for the MGR rake (pit head stations) consisting of 40-45 wagons, it will involve stopping the rake, taking sample from 25% of wagons, manually or through auger sampler would lead to a break in the smooth movement of MGR. In non-pit head stations, there would be two issues relating to safety of personnel and the likely delay in release of wagons leading to demurrages. In the rail fed stations with electric traction, the sampling would have to be done manually as auger sampling is not envisaged on such electrified tracks. The manual sampling will involve safety issues and despite taking precautions, serious risk to life and limb cannot be avoided. For both the electrified and non-electrified rail fed stations, the manual/auger sampling will involve delays leading to demurrages.

(n) The fundamental aspect of sampling of coal as laid down by the various experts/bodies right from year 1916 till date (no authority to the contrary) that the samples should be drawn when the coal is in transit, should be representative and be of homogenous mixture etc and sampling from the stationary railway wagon top vitiates the fundamental principle of sampling, has to be given due weightage.

7. In the above background, the petitioner has submitted that there are errors apparent on the face of the record and there are sufficient reasons for review of order dated 25.1.2016

8. We have perused the review petition, the documents on record and the submissions of the learned counsel for the review petitioner. The Commission's power of review is governed in accordance with section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil procedure, 1908 (CPC). Section 94 (1) (f) of the Electricity Act, 2003 provides that the Commission shall have the same power as vested in a civil court under the 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 at the time when the decree was passed or order made, or*

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

*(c) for any other sufficient reasons”*

9. The main grievance of the petitioner is that the sampling of coal from a stationary container such as rail road wagon can be biased and unrepresentative, the reliability of the conclusion are not assured and homogenous nature of coal may not be available. A close scrutiny of the order dated 25.1.2016 reveals that the submissions of the petitioner with regard to the advantages of taking samples after the crusher and not from wagons, had been examined in detail and rejected by the Commission on merits. In this regard, para 27 of the order dated 27.1.2016 is extracted hereunder:

*’27. In support of its contention that samples should be taken after crusher only and not from the wagons, NTPC, APP and MPPGCL have advanced the following reasons:*

*(a) It serves the objectives of switching over from the GCV as fired to GCV as received is to avoid losses;*

*(b) There are multifarious advantages of taking samples after the crusher. They are as under:*

*(i) Samples taken after the crusher are of small size and homogenous in nature while samples taken from the wagons are big in sizes and heterogeneous.*

*(ii) Time consumed for sample collection from the wagons is more leading to imposition of demurrage charges which can be avoided while taking samples after crusher.*

*(iii) The safety of persons collecting the samples is ensured if the samples are taken after crusher compared to samples taken from wagons.*

*(iv) The distance between the wagon tippler/track hopper is used for undertaking essential operations namely, removal of boulders, stones and other external materials.*

*(v) Samples taken from the wagon are not representative as good quality coal are loaded at the top and superficial layers become dry during transportation while the moistures percolates inside the wagons.*

*(c) The IS and various national and international authorities establish that the samples taken when coal is in motion is representative in nature’*

10. The advantages claimed by the petitioner in respect of samples taken after crusher as against samples taken from wagons have been discussed and deliberated in order dated



25.1.2016. The observations of the Commission in the relevant portions of the order are extracted hereunder for reference.

*“37.....If the samples can be collected jointly by the coal supplier and NTPC at the mines end for testing from the coal sizes ranging from 50 mm to 250 mm, there is no reason why the samples cannot be taken at the unloading point at the generating station from the same rake in a similar manner. In any case, size of the coal is immaterial in so far as the collection and preparation of samples is required to conform to the prescribed standards of BIS. Therefore, size of coal received at the generating station cannot be a reason for taking samples after the crusher instead of taking samples from the wagons at the unloading point.*

xxxx

*40.....NTPC has submitted that the coal which is taken to the crusher house and sized is the most representative of the coal which has been supplied by the coal companies without any loss of GCV of the coal from the stage of wagons arriving at the generating station till the crusher house. NTPC has further submitted that the crusher house with an attached AMS serves the same purpose but in a contiguous manner as in case of measuring the GCV of coal samples taken from the railway wagons....*

*41. There is another aspect of measurement of coal on as received basis which is conveniently being overlooked by the generators. If the measurement of coal on as received basis from the wagons on its arrival at the generating station is taken by following Gate to Gate concept, it will crystallize the quantum of grade slippage between the loading point at mines end and unloading point in the generating station and the concerned generating company can take up the issue with the coal companies...*

*42.....We have closely examined the provisions of IS 436 (Part 1/section 1) 1964. The IS deals with sampling from conveyor (para 3), sampling from wagons during loading or unloading (para 4), sampling from ship during loading or unloading (para 5), sampling from stockpiles (para 6), sampling from loaded wagons (para 7), and sampling from loaded ships (para 8). The IS recommends for sampling of coal from the conveyor or during loading or unloading when the coal is in motion. But for collection of samples from stockpile or loaded wagons or loaded ships, the IS states that the representativeness of the samples and reliability of the conclusion are not likely to be assured. At the same time, IS also prescribes an elaborate procedure for taking samples from the loaded wagons.. The petitioner in its affidavit dated 27.10.2015 has submitted the video recording of the coal handling at its generating station. The videos show that there is no space for installing AMS at the location of apron feeder or paddle feeder when the coal is unloaded through wagon tippler. Even in case of BOBR, there is space constraint to install sampling device. Therefore, AMS cannot be installed at the unloading point or at the apron feeder/paddle feeder under the present arrangement at the power stations. The only place left for taking the samples is from the wagon in accordance with para 7 of the IS. It is pertinent to mention that at the time of issue of IS in 1964, advanced mechanical devices for collection samples from the loaded wagons had not been developed and therefore, there were certain limitations to collect samples in a representative manner from the loaded wagons. With the advancement of technology, hydraulic augers are now available which have been successfully functioning in the Wanakbori TPS of GSECL. The use of hydraulic auger has reduced the human intervention for collection of samples from wagons. The augers are capable of taking representative samples from any depth of the wagons. Therefore, argument of NTPC and others regarding lack of representativeness of samples taken from the wagons is not of much relevance in the present context.*

*(g) NTPC has also relied upon (i) Wiley – James J. Speight in the Handbook of Coal Analysis; (ii) Study conducted by George S. Pope on the „Methods of Sampling Delivered Coal“ in 1916, under the aegis of the Bureau of Mines, US; (iii) Study by IEA Clean Coal Centre of International Energy Agency and (iv) United States Environment Protection Agency's research study for coal sampling in 1985. NTPC has submitted that as per these authorities, sampling of coal taken from the wagons when they are stationary is not correct and sampling should be*



*done when the coal is unloaded or is moving on a conveyor. In our view, none of studies relied by NTPC supports the contention that samples should be taken after the crusher.*

*43. From the above discussion, we come to the conclusion that claim of NTPC and others that collection of samples of coal from the AMS installed after the crusher inside the generating station being the correct stage for measurement of GCV on as received basis, cannot be accepted.”*

11. Thus, the submissions of the petitioner favouring samples taken at the crusher house having been rejected by the Commission by a conscious decision, there is no reason to reconsider the prayer for review of order dated 25.1.2016. In our view, the petitioner has sought to reopen the case on merits and the same is not permissible on review. Accordingly, the prayer of the petitioner for review of order on this ground is rejected.

12. One more submission of the petitioner for review of order dated 25.1.2016 is that the Commission had not addressed the difficulties such as time taken for collection of samples and the associated issue of demurrage/reduced off take, safety of personnel etc. In this regard, we extract the submissions of the petitioner as recorded in the order dated 25.1.2016 as under:

*“7. NTPC has further submitted that the distance between the wagon tippler/track hopper place to the crusher house ranges from 200 meters to 500 meters. The conveyor belt speed being in the range of 3 meters per second, the time taken for moving the coal from one wagon of approximately 60 metric tonnes, namely, unloading and moving the same through the Conveyor Belt to the crusher house for sampling is not more than a few minutes. NTPC has submitted that the process of unloading the coal, either through the wagon tippler or through the track hopper, and the movement of the coal up to the crusher house is continuous in most of the stations, without any break except in case of Badarpur TPS where there is a provision to take coal to primary stockyard without crushing, if required. NTPC has further explained that the distance from the wagon tippler/track hopper to the crusher house when the coal is moved through the Conveyor Belt is used for undertaking essential operations, namely, removal of boulders, stones and other external materials through manual process and through magnetic separator*

*8 (d) NTPC will be subject to huge amount of demurrage, and cycling of coal received and taking it to the stockyard cannot be maintained. This is more particularly as the Commission has directed that NTPC should maintain the GCV of the coal separately for various forms of purchase of coal, namely, linked coal, e-auction purchase, imported coal etc. The entire efficacy of the operation of the generating stations in regard to the coal handling will be seriously prejudiced*

*36. NTPC, APP and MPPGCL have claimed that collection of samples after the crusher has certain advantages vis-a-vis collection of samples from the wagons dues small and homogenous sizes of the samples, less time consumed for collection of samples and consequently avoidance of demurrage charges, safety of persons collecting samples, distance between wagon tippler/track hopper and crusher being utilized for carrying out essential operations like removal of boulders, stones and other materials from coal, and representative character of coal etc*



39. NTPC and MPPGCL have raised the issue of safety of personnel while collecting samples from the wagons. NTPC has submitted that in both BOBR and BOXN wagons, the unloading has to be stopped keeping in view the safety of the persons collecting samples from the wagon top.

38. Another point canvassed by NTPC, APP and MPPGCL in support of taking samples after the crusher is that time consumed for sample collection from the wagons is more leading to payment of demurrage charges which can be avoided if sample is taken after the crusher and the findings of the Commission in order dated 25.1.2016..”

13. We have examined the matter. These aspects namely, the time taken for collection of samples, the associated issue of demurrage/reduced off take and safety of personnel etc had been considered by the Commission on merits in order dated 25.1.2016 wherein, the submissions of the parties including the petitioner were rejected on merits. The relevant portion of the order dated 25.1.2016 containing the findings of the Commission are extracted as under:

“38. Another point canvassed by NTPC, APP and MPPGCL in support of taking samples after the crusher is that time consumed for sample collection from the wagons is more leading to payment of demurrage charges which can be avoided if sample is taken after the crusher .....We have considered the submissions. NTPC has submitted that for a 2000 MW plant, the total quantity of coal required per day would require 33,000 tonne considering specific coal consumption of 0.7 kg per unit. NTPC has further submitted that the number of daily rakes would be around 10 considering a rake size of more than 3000 tonnes. IS: 436 (Part I/Sec I)-1964 provides for preparation of sub-lots of the lot (rake) for the purpose of preparation of samples. As per Table 1 of IS, for the weight of the lot of more than 3000 tonnes, the lots shall be divided for six sub-lots. As per 7.1.1 of IS, one gross sample shall be drawn from each of sub-lots so that there are as many gross samples as the number of sub-lots. As per Appendix A to the IS, 18 wagons are to be randomly selected out of the six sub-lots for the purpose of taking samples. As per the submission of MPPGCL, it takes about 15 to 20 minutes for taking samples manually from one wagon. However, in case of GUVNL, it is noticed that samples are collected through hydraulic auger which takes around 5 to 10minutes for collecting the samples. Therefore, with a judicious deployment of adequate number of personnel and requisite equipment, it is possible for the generating station to collect the samples from the wagons at the unloading point and unloading the wagons within the stipulated time allowed by railways. We leave it to the generating station to arrange the requisite personnel and equipment by exercising due prudence.

39. NTPC and MPPGCL have raised the issue of safety of personnel while collecting samples from the wagons.....We have considered the submissions of NTPC, MPPGCL and GUVNL. The wagons are unloaded either through wagon tippler or through track hopper. Collection of samples at the point of unloading will be hazardous to the persons deployed on sample collection. Therefore, safety of the persons can be ensured by collecting samples from the static wagons. Another safety concern for the persons collecting the samples from the wagon is that of the live traction line. In the data submitted by NTPC, it is seen that none of the generating stations served exclusively by MGR, there is electric traction. In five stations of NTPC, coal is supplied through both MGR and wagon tippler. However, there is no traction line from the railway siding to the unloading point. In two stations, wagon tippler is under erection and there appears to be no provision for electric traction. Only in four stations having wagon tippler have electrical tracts upto unloading point. In case of APP, the information regarding the electrical tracts has not been furnished. Therefore, in all generating stations of NTPC except 4 generating stations and the generating stations of APP in whose respect information has been submitted, there is no safety concern on account of live traction lines. In case of FSA in respect



*of Farrakka and Kahalgaon STPS, para 1.2(k) provides that "in case of having overhead traction line, the parties shall ensure that power in the overhead traction is switched off to facilitate collection of joint samples from BOXN/BOBR wagons..... In line with the above provisions, the generating stations of NTPC having traction lines upto the unloading point may in coordination with Indian Railways, if required, switch off the traction lines while deploying the personnel for collection of samples from the wagons. In respect of other generating company, similar protocol may be decided and followed in consultation with Indian Railways."*

14. It is evident from the above that the submissions of the petitioner had been rejected after considering all relevant documents and submissions made by the parties. It is settled law that review lies only for patent error and cannot be an appeal in disguise whereby an erroneous decision is reheard and corrected. Having considered the submissions of the petitioner, the Commission by a conscious decision had rejected the same on merits. Accordingly, we find no reason to allow the prayer of the petitioner for review of order dated 25.1.2016. In our view, the petitioner has sought to reopen the case of merits and the same is not permissible on review. In this background, the submissions of the petitioner are rejected and review on this count fails.

15. The petitioner has also raised similar other issues like non filing of affidavit by GSECL (as regards samples being collected from railway wagon top and use of Auger) and that sampling of coal done by GSECL from railway wagon top is not for the purpose of determination of Energy charges.

16. It is noticed that GUVNL vide affidavit dated 26.10.2015 had submitted that the generating stations of GSECL coal is received through wagons/coal rakes and the samples are taken from wagon/coal rakes in a representative manner without any wastage of time and safety threat to the persons collecting samples. In response to the said affidavit of GSECL, the petitioner vide affidavit dated 3.11.2015 had submitted that the affidavit of GUVNL does not say that the samples for GCV are taken from the wagons for the purpose of determination of GCV either for billing purposes or otherwise. It had also submitted that in Gujarat, GCV of coal on as fired basis is considered in calculation of energy charges. In response, GUVNL vide affidavit dated 30.11.2015 had clarified that that the sampling from the wagons is being done regularly at the generating stations of GSECL for laboratory testing and to take up the various



issues with coal suppliers. GUVNL had further clarified that most Electricity Regulatory Commissions (ERCs) adopt the regulations framed by the Commission and whenever there is a change in the regulations, other ERCs will adopt the same. Thus, the Commission after considering the submissions of the parties had rejected the prayer of the petitioner in order dated 25.1.2016. The relevant portion of the findings of the Commission in order dated 25.1.2016 is extracted as under:

*“55. The only practicable alternative is to take samples from the wagons either manually or by installing Hydraulic Auger at the suitable places. GUVNL vide affidavit dated 30.11.2015 has submitted the video recording of the samples of coal being collected from the railway wagon at the generating stations of GSECL, namely at Ukai TPS and Wanakbori TPS. They have also filed the laboratory testing procedure of the samples taken from the wagons/ Coal Rakes at Wanakbori TPS. From the examination of the video recording, it is observed that samplings of coal were being collected from the railway wagons using Hydraulic Auger. The process of taking samples was found to be smooth, capable of taking representatives samples from any depth of the wagon, from different locations without taking too much of time and the process appears to be safe and reliable. GSECL has been successfully using the Hydraulic Auger for collection of samples from the top of the wagons and NTPC and other generating companies can adopt and improvise the protocol for collection of samples from the wagons. As regards the threat to the safety of the personnel, the issue has been discussed in detail in para 41 of this order and the safeguards suggested in the said para should be adopted.”*

17. In our view, the sampling of coal done from railway wagon top, even if it is not for the purpose of determination of energy charges as alleged by the petitioner, does not preclude the Commission from adopting the procedure of taking samples from railway wagons at the generating stations of GSECL, specially keeping in view the issue to be decided by the Commission in the said petition. Hence the submissions of the petitioner are not acceptable. Even otherwise, the petitioner had not raised this issue in its submissions before the Commission and cannot be permitted to raise new grounds in justification of its prayer for review of the said order. In our view, there is no error apparent on the face of the order and there does not exist some other sufficient cause analogous to the other grounds enumerated in Rule 1, Order 47 of the CPC. The findings of the Commission rejecting the prayer of the petitioner are based on elaborate discussions and therefore the prayer of the petitioner for review is not accepted.

18. Under Order 47 Rule 1 of the Civil Procedure Code (CPC), a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error



which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise. The Supreme Court in the case of Lily Thomas etc. vs. Union of India & Ors., JT 2000 Vol.5 SCC 617 held that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the subject is not a ground for review.

19. We are of the considered view that the review petition does not satisfy the conditions for review laid down under Rule 1, Order 47 of the Code. Also, it is not the case that some new evidence not within the knowledge of the petitioner earlier or which could not be earlier produced by it after exercise of due diligence has come to its knowledge. Similarly, there does not exist some other sufficient cause analogous to the other grounds enumerated in Rule 1, Order 47 of the CPC. In the above background, the submissions of the petitioner for review of order dated 25.1.2016 fails and the review petition is accordingly dismissed.

**Sd/-**  
**(Dr. M.K.Iyer)**  
**Member**

**Sd/-**  
**(A. S. Bakshi)**  
**Member**

**Sd/-**  
**(A. K. Singhal)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**

