

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 29/RP/2017

**In
Petition No. 45/GT/2016**

Coram:

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 23.7.2018

In the matter of

Review of the order dated 22.5.2017 with regard to approval of tariff of Bongaigaon Thermal Power Station, Unit I (250 MW) for the period from 1.4.2016 to 31.3.2019.

And

In the matter of

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

.....Petitioner

Vs

1. Assam Power Distribution Company Ltd.,
Bijulee Bhawan, Paltan Bazar,
Guwahati-782 001

2. Meghalaya Energy Corporation Ltd.,
Short Round Road,
Sillong- 793 001

3. Department of Power,
Government of Arunachal Pradesh,
Itanagar

4. Power and Electricity Department,
Government of Mizoram,
Aizawal- 796 001

5. Manipur State Power Distribution Company Ltd.,
Khwai Bazar, Keishampat, Imphal- 795 001



6. Department of Power,
Government of Nagaland,
Kohima

7. Tripura State Electricity Corporation Limited,
Bidyut Bhawan, North Banamalipur,
Agartala – 700 001

.....Respondents

Parties present:

For Petitioner : Ms. Swapna Seshadri, Advocate, NTPC
Ms. Parichita Chowdhury, Advocate, NTPC
Shri Prashant Chaturvedi, NTPC

For Respondents : None

Objectors : Ms. Mallika Bezbaruah
Shri H.M.Sharma

ORDER

This petition has been filed by the petitioner, NTPC for review of Commission's order dated 22.5.2017 in Petition No. 45/GT/2016 wherein the Commission had determined the tariff of Unit-I of Bongaigaon Thermal Power Station (250 MW) (hereinafter referred to as 'generating station') for the period from 1.4.2016 to 31.3.2019 in terms of the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations').

2. Aggrieved by the said order dated 22.5.2017, the petitioner has sought review on the ground of error apparent on the face of the order on the following issues:

(a) To admit the review petition;

(b) To revise the IDC & normative IDC disallowed to the Petitioner and re-compute the same on proportionate basis; and

(c) To condone the delay and allow the IDC/IEDC for the period April 2013 to January 2015 (Bandh / Strikes / Section 144 etc), Non- availability of RCC bridge to support heavy consignment & change in course of Champamati river.;



3. The Commission by interim order dated 23.1.2018 admitted the review petition on the above issues and directed the respondents/objector to file their replies/ response in the matter. The objector, Ms Mallika Bezbaruah has filed response in the matter and the petitioner has filed its rejoinder to the same. The Commission after hearing the matter on 25.4.2018 reserved its order in the petition.

4. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised in the petition as stated in the subsequent paragraphs.

Disallowance Interest During Construction and Normative IDC

5. The Petitioner has submitted that the Commission in its order dated 22.5.2017 had allowed the time overrun of 1303 days and has accordingly considered the SCOD as 27.8.2014 (actual 1.4.2016) for computation of IDC/IEDC. The petitioner while pointing out that IDC/IEDC has also been disallowed has submitted that IDC is incurred and claimed on the basis of actual deployment of debt and equity by the petitioner on pro rata basis. Referring to the judgment of the Appellate Tribunal for Electricity (Tribunal) dated 27.4.2011 in Appeal No. No 72 of 2010 (MSPGCL v MERC), the petitioner has submitted that in terms of the principles laid down in the said judgment by the Tribunal, IDC disallowed should have been in proportion as claimed i.e the disallowed IDC would have been ₹110.77 crore, while the actual IDC disallowed by the Commission is ₹266.73 crore. It has further submitted that the same methodology has been adopted for calculating normative IDC. Accordingly, the petitioner has prayed that the error in computation of IDC & normative IDC may be corrected and the order be revised accordingly.



6. The objector, Ms Bezbaruah has submitted that after calculating IDC upto SCOD, remaining IDC is to be calculated upto actual COD. She has also submitted that if it is found that time overrun was beyond the control of the generating company then the cost overrun of IDC due to time overrun is to be shared in the ration of 50:50 in terms of the judgment of the Tribunal dated 27.4.2011. The objector has further submitted that as per PPA and the 2014 Tariff Regulations, time overrun is attributable to the petitioner, therefore the IDC is to be restricted upto SCOD and cost overrun due to time overrun is on account of the petitioner. IEDC is also to be treated in a similar manner. The objector has added that since the petitioner could not establish that the cost overrun was beyond their control, the entire cost overrun is to be passed on to the petitioner including IDC and IEDC.

Analysis and decision

7. We have considered the submissions of the petitioner. The Commission in its order dated 22.5.2017 had computed IDC for the time overrun of 583 days disallowed by the Commission as under:

“66. As stated earlier, the Commission has condoned the delay of 1303 days as against the delay of 1886 days claimed by the petitioner. Accordingly, scheduled COD has been re-set to 27.8.2014 after considering the time overrun allowed, and residual time overrun disallowed. Therefore, IDC has not been allowed for the time overrun period of 583 days from 27.8.2014 to 31.3.2016 in respect of this generating station (i.e. Unit I). Thus, IDC calculation has been restricted till 26.8.2014 which amounts to ₹90022.90 lakh.

67. The total IDC calculated till 26.8.2014 (₹90022.90 lakh) has been apportioned to Unit I on the basis of installed capacity as under:

<i>IDC allowed for capitalisation as on COD of Unit-I</i>	<i>Rs 30007.63 lakh</i>
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8. In Form-5B of the original petition, the petitioner had claimed IDC (including FC) of ₹56908.35 lakh on cash basis. The petitioner had also submitted date-wise details of the loan draws, the applicable rate of interests with reset details. Also, the draw



down schedule of loan along with deployment of loan and equity vide Form 14 and with details regarding the loan allocated to the project vide Form 8 were submitted. Accordingly, the Commission after prudence check of the aforesaid details submitted by the petitioner, computed the total IDC till 31.3.2016 (till COD of Unit I) amounting to ₹142319.38 lakh. The same was also found to be in conformity with the interest during construction as per the financial statement as on 1.4.2016 submitted by the Petitioner.

9. As stated, the Commission in its order dated 22.5.2017 had condoned the delay of only 1303 days (as against the delay of 1886 days claimed) and accordingly, the scheduled COD was re-set as 27.8.2014, considering the time overrun allowed and disallowed. As the time overrun of 583 days (from 27.8.2014 to 31.3.2016) was disallowed, the Commission in the said order dated 22.5.2017, restricted the IDC till 26.8.2014, which worked out as ₹90022.90 lakh. Since tariff was determined for Unit-I only, the total IDC calculated till 26.8.2014 (₹90022.90 lakh) was apportioned to Unit-I on the basis of the installed capacity. Thus, the IDC of ₹30007.63 lakh was allowed for Unit-I of the generating station. As regards Financial Charges (FC), the petitioner had furnished the details/ break up vide Form-14. Based on this, the total FC computed till 31.3.2016 (i.e. till COD of Unit I) worked out to ₹686.34 lakh and the same was apportioned to Unit-I on the basis of the installed capacity. Accordingly Financial Charges (FC) amounting to ₹228.78 lakh was allowed for Unit-I of the generating station.

10. As regards the computation of normative IDC, the Commission in its order dated 22.5.2017 had observed as under:

“Normative IDC

70. The petitioner has claimed the normative IDC (indicated as notional IDC) of ₹2533.00 lakh on the equity deployed in excess of 30%. The petitioner was directed to provide the



detailed working of the claimed Normative IDC and adjustment of transfer out assets and transfer in assets. In response, the petitioner has submitted the detailed computation of notional IDC for ₹2533.31 lakh.

71. We have examined the computation of normative IDC in line with Form 14 submitted by the petitioner. It is observed that the petitioner has applied the rate of interest as arrived at on the basis of quarterly interest accrued on entire loan. The 2014 Tariff Regulations do not provide for notional IDC, however, we have worked out the normative IDC in accordance with Regulation 9(2) of the 2014 Tariff Regulations. In accordance with Regulation 9(2) of the 2014 Tariff Regulations, if the actual equity deployed is less than 30% of funds deployed (i.e. actual debt is more than 70%), the interest on the actual amount of loan has to be included in capital cost. Also, if the actual equity deployed is more than 30% of the funds deployed (i.e. actual debt is less than 70%), interest on 70% of the funds deployed has to be included in capital cost as Interest during Construction (IDC) by treating equity infusion above 30% as normative loan by the company to itself.

72. Thus, the Normative IDC has been worked out on the basis of rate of interest as arrived at on the basis of quarterly actual interest accrued on entire actual loan drawn during the corresponding quarter. Due to the reset of scheduled COD of Unit I to 27.8.2014 (as stated above), normative IDC has been restricted till 26.8.2014. Based on this, normative IDC is worked out as ₹3628.82 lakh in accordance with the Regulation 9(2) of the 2014 Tariff Regulations and the same has been apportioned to Unit I on the basis of installed capacity. Thus, the normative IDC allowed for the purpose of tariff towards COD of Unit I amounts to Rs 1209.61 lakh.”

11. The petitioner has submitted that the IDC to be disallowed should be on proportionate basis as claimed, in terms of the judgment of the Tribunal dated 27.4.2011. The relevant portion of the said judgment is extracted hereunder:

“(ii) As regards IDC, we agree with the State Commission that infusion of equity and debt has to be more or less on paripassu basis as per normative debt equity ratio. However, increase in IDC due to time overrun has to be allowed only according to the principles laid down by us in para 7.4. Accordingly, the State Commission is directed to re-determine the IDC for the actual period of commissioning of the project on the principles of paripassu deployment of equity and debt and then work out the excess IDC for the period of time overrun on a pro rata basis and limit disallowance to 50% of the same from the total IDC.”

12. With regard to the disallowance of IDC and computation of normative IDC, the Commission has computed both on the basis of actual interest accrued upto the date of commercial operation of the generating station. The petitioner has claimed that the proportionate IDC should be allowed on pro-rata basis in terms of the judgment of the Tribunal dated 27.4.2011. In the impugned order, the Commission has considered the paripasu deployment of loan and equity on quarterly basis, based on the information



submitted by the petitioner in form-13. However, while computing and deducting the IDC for the period of time overrun disallowed, the Commission has adopted the principle which is being followed consistently in similar cases of determination of generation tariff. The principle adopted by the Commission has not been overruled. Therefore, the principle adopted by the Commission is a possible alternative approach for reduction of IDC on account of time overrun. In the above background, we do not find any error apparent on the face of the record and accordingly, review on this ground is rejected.

Condonation of delay for the period from April 2013 to January 2015

Ethnic Violence and related Bandhs

13. The petitioner has submitted that the entire delay in commissioning of the plant was for reasons beyond the control of the petitioner and hence the principles laid down by the Tribunal in its judgment dated 27.4.2011 should have been considered while dealing with time and cost overrun in the case of the generating station of the petitioner. In justification of the same, the petitioner has submitted the following:

(a) The generating station is situated in Kokrajhar district in the State of Assam and falls under Bodoland Territorial Area Districts (BTAD) region which is a disturbed area from law and order point of view. In view of poor law and order situation in Kokrajhar area, workers did not turn up for the job or turned up in very small number during bandh calls. Bandhs have a cascading effect as the workers did not turn up on the previous day of the bandh or the following day of the bandh and all the activities of the project stopped during the Bandhs. Moreover, the working momentum during the bandh call is disturbed and it takes time to bring the progress back to the same momentum which existed prior to the bandh. In addition, the movement of goods, vehicles etc. are also affected during the bandhs. The supporting documents related to Bandhs issued by office of the District Magistrate, Kokrajhar, Government of Assam and newspaper clippings were submitted in the original petition, but the same had not been considered in the order dated 22.5.2017.



(b) During the period from April, 2013 to January, 2015, violence and unrest in the region occurred which had a cascading effect on the progress of the project, as almost entire work force fled the site during the period and it took months to bring back the site to the original strength, after peace returned in the region. The incidents lead to mass exodus of labourers and proved detrimental to the progress of the project.

(c) The total loss of man days due to such violence/bandhs was much more than the notified period as the workers feared for their life and refused to return to site, barring a few. Though there was relaxation in curfews/Section 144 intermittently during the period, the construction of project could be started in full swing only after normalcy returned in the region since workers turned up for the job only after there were signs of complete peace in the region.

(d) It is not that since only few probationary orders were furnished by the petitioner, the condonation of delay can be allowed only of these days. This does not take into account the total number of days lost due to violence and bandhs.

(e) Some of the evidences submitted by the petitioner has not been considered at all. This includes the day wise bandh and violence, the newspaper clipping & report about communal riots in 2014 and incidents and statements involving NDFB (National Democratic Front of Bodoland) report of South Asia Terrorism Portal filed vide affidavit dated 8.8.2016.

14. In the above backdrop, the petitioner has submitted that crucial evidence was not taken into account by the Commission and since the project delay due to prevailing unrest in the region was beyond the control of the petitioner, the Commission may be pleased to condone the delay of 21.5 months.

15. The objector has submitted that Riots, bandhs, civil commotion etc., are force majeure conditions as per signed between the petitioner and the respondent, ASEB. Accordingly, as per provisions of the PPA, the petitioner is not supposed to claim any loss or damage caused due to force majeure conditions unless the petitioner could not intimate the respondent immediately about the occurrence of the event and could satisfy the respondent the extent of damages caused to it. Accordingly, it has submitted that the petitioner is not entitled to get the cost and time overrun.



Analysis and Decision

16. As regards Bandhs, Violence & Curfew, the Commission in its order dated 22.5.2017 has held as under:

“Bandhs, Violence & Curfew

17. We have considered the submission of the parties. As regards the time over-run due to bandhs during the period 2008-12, the petitioner has submitted that the locality has experienced bandhs on 296 days and on an average each bandh had an effect of minimum of 2 working days due to which approximate 564 days were lost. However, after excluding the bandh days overlapping with the period of violence, the petitioner has claimed the effective delay of 331 days due to bandhs. It is observed that the generating station is situated in area wherein the locality has experienced bandhs called by various groups on several days. It is noticed that the activities of the project had stopped during the bandhs as the workers had not reported to the project site. As regards the submission of the petitioner that 2 working days were affected on account of one bandh, it is noticed that the petitioner has not furnished any justification to support its claim and therefore the same has not been considered. Hence, the impact of one day due to each bandh has been considered and therefore, the overall delay of 296 days only has been condoned on account of bandhs. Based on the above discussion, the total delay of 296 days has been condoned, out of the delay of 331 days claimed by the petitioner.

18. As regards the time over-run due to violence during the period from August 2008 to October 2008, the petitioner has submitted the newspaper clippings of October 2008 and map of Assam. It is observed from the submissions of the petitioner that clashes between Bodos and Muslims erupted which was followed by three blasts on 30.10.2008 in Kokrajhar district which killed dozens of people. It is further submitted that clashes in the districts of Udalguri and Darrang forced more than 100000 people to leave their village. As the petitioner has already claimed the for delay for August 2008 and September 2008 due to rainfall, therefore, it has requested to condone the delay for the period from 1.10.2008 to 31.10.2008 i.e. 31 days after making the adjustment with rainfall and bandhs. Accordingly, after checking the newspaper clippings submitted by the petitioner, we are inclined to condone the delay for 31 days. Based on the above discussion, the total delay of 31 days has been condoned, out of the delay of 31 days claimed by the petitioner.

19. As regards time over-run due to violence and bandhs during the period from July, 2012 to December, 2012, it is observed from the submissions that since 20.7.2012, the riots in the Bodoland Territorial Autonomous Districts (BTAD) have claimed about 90 lives and had displaced over 400000 people which has been described as the largest internal displacement since India's partition. In this regard, the petitioner has submitted the supporting documents like copy of letter dated 4.6.2013 issued by office of the District Magistrate, Kokrajhar. Government of Assam regarding details of prohibitory orders under section 144 Cr.P.C. w.e.f. July, 2012 to October, 2012 issued in Kokrajhar, copy of report of Asian Center for Human Rights stating the information of loss due to riots in the BTAD, copy of prohibitory orders dated November 25, 2012, December 6, 2012 and December 11, 2012 issued by administration, newspaper clippings and copy of letter dated April 18, 2015 issued by office of the District Magistrate, Kokrajhar, Government of Assam stating the data/order relating to Bandhs during the said period. Considering the imposition of prohibitory orders under Section 144, curfews, bandhs and such mass displacement on several occasions, there has been stoppage of project



construction as the work force had fled the site. Accordingly, we are inclined to condone delay of 184 days. Based on the above discussion, the total delay of 184 days has been condoned, out of the delay of 184 days claimed by the petitioner.

20. As regards time over-run due to violence and bandhs during the period from April, 2013 to January, 2015, petitioner has requested to condone the delay of 671 days and has furnished the copy of the various prohibitory orders, but the same does not indicate the exact date of imposition of prohibitory orders. The petitioner has also submitted the supporting document indicating the prohibition from 2.5.2014 to 2.6.2014 (i.e. 32 days). Though, the petitioner was directed to submit the effective duration of band against prohibitory orders, the petitioner has not submitted the same and therefore, we are inclined to condone the delay of only 32 days. Based on the above discussion, the total delay of 32 days has been condoned, out of the delay of 671 days claimed by the petitioner.”

17. The main grievance of the petitioner is that the Commission while examining the issue of time overrun during the period from April, 2013 to January, 2015 had not considered some of the evidences related to Bandh violence and communal riots including newspaper clippings submitted vide affidavit dated 8.8.2016. It is however noticed that the Commission while arriving at the findings in paras 17 to 20 above on Time overrun had taken into account the documents/ evidences enclosed by the petitioner, as can be noticed from the following portion in para 11 of the order dated 22.5.2017:

*(a) **Bandhs:** The Kokrajhar district in the state of Assam falls under Bodoland Territorial Area Districts (BTAD) region, which is a sixth schedule area i.e. disturbed area from law and order point of view. Since inception of the project, the locality has experienced bandhs on 296 days called by various groups like Bodo Land People Front, Bodo Peoples Forum, Birsas Commando Force, ULFA, BTC etc. In view of poor law and order situation in Kokrajhar area, workers did not turn up for the job or turned up in very small number during bandh calls. In addition, the movement of goods, vehicles, etc. were also affected during the bandhs. On an average each bandh had an effect of minimum of 2 working days and therefore, 564 days (approx) were lost due to bandhs. However, after excluding the bandh days, overlapping with the period of violence, the petitioner has submitted that the effective delay works out to 331 days. Therefore, the Commission may condone the delay of 331 days*

*(b) **Ethnic Violence and related Bandhs:** The Kokrajhar region had witnessed outbreak of violence many times during the project construction period and this has resulted in loss of lives and the curfew during the period was imposed by the administration prohibitory orders as under:-*

➤ **August 2008 to October 2008 (31 days)-** The Bodoland Territorial Autonomous Districts (BTAD) consists of four districts namely Kokrajhar, Baksa, Udalguri and



Chirang. During the period, mass violence broke out in the districts of Udalguri and Chirang and few people were also killed in the blast in Kokrajhar district which resulted into communal and ethnic riots and mass displacement of people and accordingly the project construction works and transportation of construction material were badly affected for 31 days during the period from 1.8.2008 to July 2012 to December 2012 (184 days)- There was outbreak of communal violence on 20. 7.2012 in BTAD and this resulted in mass displacement of people from Kokrajhar district due to which project construction work was totally stopped. During this period, prohibitory orders were imposed under Section 144 of the IPC by the administration and curfew were imposed and bandhs were called by local groups (around 20 times), resulting in stoppage of project construction. In view of law and order situation in BTAD region, the workers had not reported for work during the bandh calls and during imposition of Section 144 and this badly impacted the project construction work, resulting in the delay in completion of the project in 184 days. Hence, the delay of 184 days may be condoned.

➤ **April 2013 to January 2015 (671 days)** - During this period prohibitory orders were imposed in Kokrajhar district by the administration under Section 144 of the IPC, shoot at sight orders were issued by the administration, curfews were imposed, bandhs were called approximately 100 times by local groups and Parliamentary elections were held which had resulted in complete stoppage of project construction work. The petitioner has further submitted that communal violence also broke out in the area during December 2014 which again resulted in mass exodus of workers. The entire work force fled the site during the period of violence and unrest in the region, and it took months to bring back the site to the original strength after peace returned in the region. Though there was relaxation in curfews/ Section 144 during the period, the construction of project could be started in full swing only after the situation returned to normal in the region, as the workers turned up for the job only after there were signs of peace in the region. In view of the above, the Commission may condone the delay of 671 days caused due to imposition of Section 144, imposition of curfew and due to violence and Bandh calls.

18. It is evident from the above that the Commission while undertaking prudence check of the time overrun involved in the project had considered all the documents/evidences as submitted by the petitioner related to Bandhs, Violence etc., including the newspaper clippings and the communal violence in 2014 etc. It is further noticed that since the documents related to the prohibitory orders did not indicate the exact date of imposition of such orders, the petitioner was directed to furnish the effective duration of bandh against such prohibitory orders, but the petitioner failed to submit the same. Accordingly, on analysis of such prohibitory orders, the delay of 32 days (from 2.5.2014 to 2.6.2014) was condoned in order dated 22.5.2017. The Commission having considered the documents furnished by the petitioner with regard



to violence and bandhs while allowing the time overrun in order dated 22.5.2017, we find no reason to entertain the petitioner's plea for review of the said order on this issue. Accordingly, there is no error apparent on the face of the order dated 22.5.2017 and therefore the prayer of the petitioner for review on this ground fails.

Non availability of RCC bridge to support heavy consignments

19. The submissions of the petitioner as regards the non-availability of RCC bridge as a factor responsible for the delay in commissioning of Unit-I, in the original petition is as under:

*"It is submitted that at the time of inception of the project the condition of approach roads and wooden bridges leading to Bongaigaon TPS site was very poor and all the bridges were wooden bridges. These bridges could safely handle load of only upto 10 MT and were not suitable for heavy vehicles carrying civil construction material (weighing more than 22 MT) and power plant equipments. The matter was taken up with local authorities like PWD for strengthening/ up gradation of these bridges as early as November 2007, i.e. before Investment Approval but the upgraded bridges were declared open for movement by PWD during June, 2013 only. This resulted in delay in transportation of heavy consignments/ equipments, etc. meant for the project. It is further submitted that the total delay on account of non-availability of sufficient capacity bridge work out to be approximately **4 months** as the consignments were transported in parts or through smaller vehicles and heavy consignment like Turbine Generator etc were transported through rail. A copy of the communications with public Works department is attached as Annexure-N. Therefore the Hon'ble Commission may be pleased to condone the delay of 4 months in completion of the project caused due to the transportation constraint since the same is beyond the control of the Petitioner."*

20. Based on the above submissions, the Commission in its order dated 22.5.2017 decided the following:

"Non-availability of RCC Bridge

24. As regards the non-availability of RCC bridge to support heavy consignments, it is noticed that the petitioner was well aware about the poor condition of approach roads and wooden bridges leading to the generating station which could handle load only upto 10 MT. The petitioner has taken up the matter with local authorities like PWD for strengthening/ up gradation of these bridges during November 2007 and the same was upgraded and opened up for movement by PWD during June, 2013. It is noticed that despite the petitioner making several follow ups and co-ordinating with the appropriate authorities, the delay was not within the control of the petitioner to upgrade the bridge. However, as the petitioner was aware of the condition of the bridge, it could have made alternative arrangements for transportation like railways to avoid the delay, instead of waiting for the bridge to get upgraded, which eventually was taken through railways. In our view, there was no prudence



on the part of the petitioner in the management of the project and the delay in on account of slackness on the part of the petitioner and hence we are not inclined to condone the delay of 60 days on account of non-availability of RCC bridge for movement of heavy consignments. We direct accordingly.”

21. The petitioner in this petition has submitted that it had taken the prior steps in the view of movement of heavy assignments even before the investment approval and the same was followed up by the petitioner through various letters and meetings etc. which had been filed along with the main petition. It has also submitted that even after rigorous follow up well before the time of up-gradation/ strengthening of bridge was not carried out by PWD authorities. The petitioner has therefore submitted that it immediately resolved to noval idea of de-assembling the heavy equipment's such as turbine, generator etc. and then transporting to the site. It has further submitted that the work of assembling of these parts of Turbine/generator, which were usually done at works of OEM, were carried out at site and these activities consumed more time leading to delay. The petitioner has stated that if it had waited for the up-gradation of bridge, then the project would have been delayed more since the PWD had given clearance only in June 2013, around 5 years of start of project. Accordingly, the petitioner has submitted that all possible steps were taken to ensure the movement of heavy assignment and there was no slackness on the part of petitioner. Hence, the petitioner has prayed for condonation of delay of 60 days due to non-availability of RCC bridge.

22. The matter has been examined. It is evident from order dated 22.5.2017 that the Commission had considered the submissions of by the petitioner with regard to the delay due to non-availability of RCC bridge and on prudence check, disallowed the prayer of the petitioner for condonation of 60 days. It is observed that the petitioner has sought to justify the prayer for condonation of delay on grounds which had already



been raised in the original petition and rejected by the Commission on prudence check. In short, the petitioner has sought to reopen the case on merits, which had already been considered and disposed of by the Commission by order dated 22.5.2017. This is not permissible in review. The Commission by a conscious decision declined to condone the delay on account of non-availability of RCC Bridge, on prudence check, based on the submissions of the petitioner. Hence, there is no error apparent on the face of the order dated 22.5.2017 and therefore, the prayer of the petitioner is rejected and the review on this ground fails.

Change of Course of Champamati River

23. The submission of the petitioner with regard to change of course of 'Champamati River' as a factor responsible for the delay in commissioning of Unit-I, in the original petition is as under:

"It is submitted that the first unit (Unit-I) of Bongaigaon TPS was initially synchronized to grid on 22.6.2015. After assessing the progress of works, NTPC planned to declare the unit on commercial operation within six months, i.e., by 21.12.2015. Accordingly, NTPC made a program to run the unit at full load, establish stable operation and declare COD thereafter. The pending works envisaged during the six months pertained to Milling System, Steam Generator, Coal Handling Plant and Turbine Generator. These works were to be undertaken during July, 2015 to Nov 2015. It is further submitted that it was envisaged to use makeup water from river Champamati and necessary clearances were obtained from the Central Water Commission and Bodoland Territorial Council in this regard. The erection of makeup water pumps was complete and makeup water pumps were envisaged to have suction from intake well. However, due to very high deposition of silt and consequent change of course of river near intake well, the flow of water was heavily reduced near intake well. It is submitted that due to low flow of water near intake well, makeup water pumps were not able to provide required quantity of raw water for sustained operation of unit at full load. The problem of low level of water near intake well was studied and the need to install submersible pumps emerged. Therefore, the petitioner could not declare the commercial operation of Unit-I on 21.12.2015. The problem of low level of water near intake well resulted into delay in declaration of commercial operation by approximately 3 months. The photograph showing that the river water level is far below the intake well window is attached as Annexure-P. Therefore, the Hon'ble Commission may be pleased to condone this delay of 3 months in completion of the project caused due to the change in course of river Champamati since the same is beyond the control of the petitioner."

24. Based on the above submissions, the Commission in its order dated 22.5.2017 decided the following:



“Change of course of Champamati River

26. As regards time over-run due to change of course of Champamati river, the petitioner has submitted that due to change in course of river near intake well, the flow of water was heavily reduced near intake well, due to which makeup water pumps were not able to provide required quantity of raw water for sustained operation of the generating station at full load. It is noticed that the said activity took place during the period from 1.10.2015 to 31.12.2015, which was just after the period of heavy rainfall i.e. 1.6.2015 to 30.9.2015. In view of this, it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall. Due to lack of adequate/proper justification of the delay under the head, we are not inclined to condone the delay of 30 days on account of change in course of Champamati river.”

25. The petitioner in this petition has submitted that the plea of the petitioner was that due to very heavy rain, high deposition of silt occurred and consequent change of course of river near intake well, the flow of water was heavily reduced near intake well causing make up water pumps unable to provide required quantity of raw water for sustained operation of unit at full load. It has also submitted that high deposition of silt occurs due to heavy rain causing flood which further causes change in course of river. Regarding this behavior of rivers, the petitioner has submitted a study on change on course of river and the special characteristics of river Champamati. The petitioner has further submitted that the river is a rapidly rushing Himalayan Stream which meets the river Brahmaputra. The petitioner has stated that the study clearly shows that due to flood heavy silt occurs which causes change of course of river, which exactly occurred in the case of Champamati river. The petitioner has added that it is not setting up a new case but only placing on record public documents which clearly demonstrate the case of the petitioner. Accordingly, the petitioner has prayed that the Commission may condoned the delay of 30 days due to change of course of Champamati river.

26. The matter has been examined. It is evident from order dated 22.5.2017 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 would lie



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. The reliance made by the petitioner to the “*study on change of course of river and the special characteristics of river Champamati*” in review, cannot be considered as the petitioner cannot be permitted to raise new grounds in justification of its prayer for review of the said order. Nothing prevented the petitioner from placing the said study/document during the proceedings in the original petition. Accordingly, we find no reason to allow the prayer of the petitioner for review of order dated 22.5.2017. 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.

27. Petition No. 29/RP/2017 is disposed of in terms of the above.

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

Sd/-
(A.S. Bakshi)
Member

