

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri R. Krishnamoorthy, Member**

**Review Petition No. 26/2008  
In Petition No. 22/1999**

**In the matter of**

Review of order dated 7.1.2008 – Approval of Tariff for Kayamkulam Combined Cycle Power Project for the period 1.1.1999 to 31.3.2004.

And in the matter of

Kerala State Electricity Board, Thiruvananthapuram	..... <b>Applicant</b>
Vs	
National Thermal Power Corpn. Ltd., New Delhi	..... <b>Respondent</b>

The following were present:

Shri Sathyanathan, Kerala State Electricity Board

**ORDER  
(DATE OF HEARING: 17.6.2008)**

The application has been made for review of order dated 7.1.2008 in Petition No. 22/1999, whereby the Commission had revised the annual fixed charges for Kayamkulam Combined Cycle Power Project, (hereinafter referred to as “the generating station”), for the period 1.1.1999 to 31.3.2004, in the light of the judgment of the Appellate Tribunal for Electricity dated 14.11.2006 in Appeal No. 96/2005. The applicant has accordingly prayed that the Appellate Tribunal’s judgment may not be applied to the generating station, in view of the fact that the applicant’s accounts for the year up to 2004-05 had been finalised.

2. Tariff for the generating station for the period 1.1.1999 to 31.3.2004 was awarded vide the Commission's order dated 5.3.2004, subsequently revised vide order dated 18.5.2004. While awarding tariff for all generating stations owned by the respondent, for calculating interest on loan, the Commission had considered normative repayment or actual repayment, whichever was higher. Similar methodology was followed while awarding and revising tariff for the generating station. The respondent, feeling aggrieved by the methodology adopted by the Commission for computation of interest on loan component of tariff, had filed appeals before the Appellate Tribunal. The Appellate Tribunal, vide its judgment dated 14.11.2006 in Appeal No. 96/2005, relating to Kawas Gas Power Station (Kawas GPS), inter alia, directed as under:

*“The Central Commission shall adopt normative debt repayment methodology for working out the interest on loan liability for the period 1.4.1998 to 31.3.2001. The adjustment arising out of this be made in the future years.”*

3. Based on the above direction of the Appellate Tribunal, the annual fixed charges for the generation station were revised by order dated 7.1.2008, considering the normative repayment of loan. The applicant has sought review of the order on the following grounds, namely:

- (a) Basis adopted by the Appellate Tribunal for arriving at normative debt repayment methodology is not applicable to the generating station

which is a newer generating station, as compared to Kawas GPS whose financial package was approved long back in 1992.

- (b) The Commission has made the order dated 7.1.2008 *suo motu*, and without any opportunity of hearing to the applicant.
- (c) In terms of the order dated 7.1.2008, the applicant is required to pay an additional amount of Rs.173 lakh, which it cannot recover from the consumers since Kerala State Electricity Regulatory Commission has already settled the matter for the previous years.

4. We have heard Shri Sathyanathan for the applicant, on admission. Under clause (f) of sub-section (1) of Section 94 of the Electricity Act, 2003, the Commission is vested with the same powers, as are vested in a Civil Court under the Code of Civil Procedure (the Code), inter alia, for reviewing its decision, directions and orders. Section 114 read with Order 47 of the Code lays down the detailed procedure for review. Under Rule 1, Order 47 of the Code, any person considering himself aggrieved by a decree or order may apply for review, subject to fulfillment of the following conditions, namely:

- (a) From the discovery of new and important matter or evidence which was not within his knowledge or which, after the exercise of due

diligence, could not be produced by him at the time the decree or order was passed; or

(b) On account of some mistake or error apparent on the face of record; or

(c) For any other sufficient reason.

5. The application is to be considered on the touchstone of the above provisions contained in the Code.

6. In the present case, the applicant has not urged that some new evidence not within its knowledge earlier has come to its knowledge or which could not be produced by it earlier after exercise of due diligence or there is an error, whether of fact or law, apparent on face of the record in the said order dated 7.1.2008. The main ground urged by the applicant is that the judgment of the Appellate Tribunal dated 14.11.2006 in Appeal No. 96/2005 is not applicable in the case of the generating station. We find that the applicant has overlooked the fact that the Appellate Tribunal in its judgment dated 22.1.2007 in Appeal No. 87/2005 pertaining to Kayamkulam Combined Cycle Power Project, the generating station, had specifically considered the methodology for computation of interest on loan and reiterated its earlier decision dated 14.11.2006. The relevant extract from the Appellate Tribunal's judgment dated 22.1.2007 is placed below:

*“(a) The issue relates to the methodology adopted by the Central Commission for computation of interest on loan on the actual repayment basis or normative repayment whichever is higher. This Tribunal in its decision dated 14.11.2006 in Appeal Nos. 94 and 96 of 2005 preferred by the Appellant, NTPC, against the orders of the Central Commission has set aside the methodology adopted by the Central Commission of computation of interest on loan and held that the computation should be only on normative loan repayment basis.*

*“(b) In view of the above, the appeals which relate to this issue stand decided in light of the order dated 14.11.2006 passed by this Tribunal.”*

7. The issue was again considered by the Appellate Tribunal in its judgment dated 13.6.2007 in Appeal No. 139 of 2006 and other appeals (which included Appeal No. 144 of 2006 pertaining to the generating station). While dealing with the issue of computation of outstanding loan, as on 1.4.2004, the Appellate Tribunal held that –

*“The question before us is as to how the load outstanding at the end of March 31, 2004 should be computed i.e. on the basis of normative or; actual or whichever is higher. In view of the order of this Tribunal dated November 14, 2006 passed in Appeal Nos. 94 and 96 of 2005 and order dated January 24, 2007 passed in appeal Nos. 81 to 87, 89 to 93 of 2005, computation of loan based on loan repayment on normative basis is to be taken. This decision of the Tribunal squarely applies in this case. In this view of the matter, the Commission is required to recalculate the loan outstanding as on March 31, 2004, based on loan repayment on normative basis.”*

8. It is thus to be noted that the Appellate Tribunal, as regards the generating station, has consistently and specifically held that for computation of interest on loan, the methodology of normative repayment of loan is to be adopted. The order dated 7.1.2008 conforms to and is in compliance with the methodology decided by the Appellate Tribunal.

9. The representative of the applicant, at the hearing, reiterated that before passing of the order, the applicant was not given any opportunity of making its representation by the Commission. In our considered view, no fresh opportunity needed to be given after the Appellate Tribunal gave its directions for re-computation of interest on loan. The applicant had the opportunity before the Appellate Tribunal to present its case. Incidentally, the applicant has not pointed out any mistake in computation of the revised annual fixed charges in the said order dated 7.1.2008. Similarly, the financial implication or burden of implementing a judicial order does not fall within the scope of the provisions of Order 47 of the Code.

10. In view of the above, we are satisfied that the applicant has not been able to make out a case for review of the order dated 7.1.2008, in the light of statutory provisions contained in the Code. Accordingly, the application is dismissed at admission stage.

**Sd/-**  
**(R KRISHNAMOORTHY)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

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

**New Delhi dated 23<sup>rd</sup> June 2008**