

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R Krishnamoorthy, Member**

**Review Petition No. 59/2008  
In  
Petition No. 35/2004**

**In the matter of**

Review/Clarification/modification of order dated 4.3.2008 passed in Review Petition No.6/2007 in Petition No.35/2004 for Talcher Thermal Power Station (460 MW)

**And in the matter of**

National Thermal Power Corporation Ltd.

.....Petitioner

Vs

Grid Corporation of Orissa Limited

..... Respondent

The following were present:

1. Shri SN Goel, NTPC
2. Shri D Kar, NTPC
3. Shri SK Samui, NTPC
4. Shri AK Juneja, NTPC

**ORDER**

(Date of hearing: 24.6.2008)

The petitioner, NTPC Limited, has made this application seeking review of the order dated 4.3.2008 passed by the Commission in Review Petition No.6/2007 in Petition No. 35/2004 in the matter of the revised fixed charges on account of additional capitalization for the period 2000-04 in respect of Talcher

Thermal Power Station (460 MW), (hereinafter referred to as “the generating station”).

2. We have heard the petitioner’s representative, Shri SN Goel, on admission.

3. The Commission by its order dated 25.9.2006 in Petition No.35/2004 had approved the revised fixed charges for the generating station for the period 2000-04 after accounting for the additional capital expenditure incurred by the petitioner. The respondent in Review Petition No.6/2007 sought review of the said order dated 25.9.2006, on various grounds. Review was, however, allowed by order dated 4.3.2008 on the limited ground of consideration of rate of interest for computation of interest on loan. As in the review proceedings the parties made detailed submissions on merits of the respondent’s claim for manner of computation of interest and interest on loan, the Commission also ordered revision of the interest on loan component of the revised fixed charges earlier approved by order dated 25.9.2006, and consequently the interest on working capital.

4. The petitioner has submitted that the Commission in its order dated 25.9.2006 in Petition No.35/2004 had allowed interest at the rate of 14% on the loan component of the capital cost for the purpose of computation of tariff. However, by its order dated 4.3.2008 in Review Petition No.6/2007, the Commission has applied the weighted average rate of interest on actual loan as

the rate of interest on the notional loan for calculation of interest on loan. It has been submitted that as per the MOU/PPA signed with Orissa State Electricity Board, the predecessor of the respondent, the agreed rate of interest was 14%, which was less than the then prevailing market rate of 16%. Therefore, the Commission in its order dated 19.6.2002 in Petition No.62/2000 and order dated 1.4.2003 in Review Petitions No.92/2002 and 93/2003 had allowed interest @ 14% on the notional loan component of the capital cost for the purpose of tariff which was also retained while approving the revised fixed charges due to additional capitalization for the period 2000-04 in the order dated 25.9.2006 in Petition No.35/2004. However, order dated 4.3.2008 in Review Petition No. 6/2007 has unsettled the settled issue by considering the weighted average rate of interest on actual loan. It has been submitted that the respondent has been enjoying the benefit of lower interest rate of 14% since 1995 when the generating station was taken over by the petitioner. It has been argued that the rate of interest cannot be varied to the disadvantage of the petitioner.

5. The petitioner has submitted that if actual rate of interest is applied on the notional loan, then actual repayment should only be considered for working out the notional loan component by adopting the following formula:

*Actual repayment during the year \* Normative net loan outstanding at the beginning of the year/ Actual loan outstanding at the beginning of the year.*

6. On the question of maintainability of the application, representative of the petitioner submitted that since the order dated 4.3.2008 has modified the original

order dated 25.9.2006 in Petition No.35/2004 in respect of rate of interest, the two orders stand merged and on such merger, the order dated 4.3.2008 is reviewable. It has been submitted that the application is maintainable for that part of the order dated 4.3.2008, which has modified the original order dated 25.9.2006.

7. The present application has been made for review of the order dated 4.3.2008 passed in Review Petition No.6/2007 in Petition No. 35/2004 under clause (f) of sub-section (1) of Section 94 of the Electricity Act, 2003 read with Section 114 and Order 47 of the Code of Civil Procedure (the Code). Rule 9 of the Code provides as under:

**“9. Bar of certain applications:** No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.”

8. Thus, in terms of Rule 9, an application for review of an order made on application for review cannot be entertained. Similarly, no application to further review a decree or an order passed or made on review can be entertained. The order dated 4.3.2008 is, in the first instance, an order made on an application for review. Simultaneously, it is an order made on review, since it has revised the fixed charges for the generating station earlier approved in order dated 25.9.2006. In view of the legal bar under Rule 9, Order 47 of the Code, the application seeking review of the order dated 4.3.2008 is not maintainable.

9. Above apart, the application does not satisfy the conditions for review laid down under Rule 1, Order 47 of the Code. In the order dated 4.3.2008, the Commission decided to adopt the weighted average rate of interest on actual loan, and for this, the Commission has elaborately discussed the methodology adopted for calculation of interest on loan in paras 12 to 19 of the order. It cannot be the case of the petitioner that there is an error apparent on the face of record, since the decision has been arrived at after elaborate discussion. 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 Code. The application is, therefore, barred under Rule 1, Order 47 of the Code as well.

9. For the foregoing reasons, the application is not maintainable and is accordingly dismissed at admission stage.

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

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

New Delhi, dated the 26<sup>th</sup> June 2008