

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**

**Petition No.67/2003
(Suo motu)**

**Re: Amendment of the terms and conditions of tariff applicable during 1.4.2004
to 31.3.2009 - Statement of Reasons**

The Commission in exercise of powers conferred on it under Section 178 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) has notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as “the tariff regulations”) applicable from 1.4.2004 to 31.3.2009. The tariff regulations lay down the following operational norms in respect of Tanda Thermal Power Station (hereinafter referred to as “the generating station”):

<i>Target Availability</i>	<i>Target PLF</i>	<i>Station Heat Rate (kcal/kWh)</i>	<i>Auxiliary Energy Consumption Norm (%)</i>	<i>Specific Fuel Oil Consumption (ml/kWh)</i>
60%	60%	3000	11.00	3.5

2. When the operational norms for the generating station were finalized, it was undergoing R&M. By order dated 29.3.2004, NTPC Limited, (hereinafter referred to as “NTPC”), the owner of the generating station was directed to approach the Commission for revision of operational norms for the generating station after completion of R&M works. An application being Petition No.26/2006, was, however, made by Uttar Pradesh Power Corporation Limited (hereinafter referred to as “UPPCL”) for revision of operational norms for the generating station on the ground

that performance of the generating station had improved remarkably after R&M. It was urged that the operational norms in respect of the generating station be brought at par with other thermal power generating stations laid down in the tariff regulations.

3. The Commission, by its order dated 24.1.2007, based on the application made by UPPCL, decided to revise the operational norms in respect of the generating station, applicable with effect from 1.4.2007 as hereunder:

Target Availability	Target PLF	Station Heat Rate Norm (kCal/kWh)	Auxiliary Energy Consumption Norm (%)	Specific Fuel Oil Consumption (ml/kWh)
80%	80%	2850	12%	2

4. Based on the above decision of the Commission, the draft amendments of the tariff regulations were published with a view to inviting suggestions or objections from the stakeholders. A copy of the draft amendments was specifically sent to NTPC and UPPCL under letter dated 24.1.2007. NTPC and UPPCL have filed their suggestions or objections to the proposed amendments. No suggestions or objections have been received from any other person.

5. UPPCL in its suggestions and objections has pleaded for revision of operational norms from 1.4.2004, instead of 1.4.2007 proposed by the Commission.

6. NTPC has stated that it was to approach the Commission for revision of operational norms after completion of R&M works. It has been stated that only 59.2% of R&M works have been completed and accordingly, there is no case for review of operational norms at this stage. It has been pointed out that the planned outages to

carry out the R&M works would be of the order of 14% during 2007-08 and 16% during 2008-09 and the operating parameters need to be fixed in that perspective. NTPC has accordingly prayed for deferment of revision of operational norms till completion of R&M works. NTPC has further submitted that because of old design, 110 MW units of the generating station are to be given different treatment with respect to operational norms and these norms should be inferior to the norms fixed for 200 MW units.

7. Firstly, we consider the submission made on behalf of UPPCL. The tariff regulations are a piece of subordinate legislation, having been notified by the Commission in exercise of the powers under Section 178 of the Act. It is well-known principle of law that the subordinate legislation cannot be applied retrospectively, unless specifically so authorized by the parent Act. This principle was reiterated by the Hon'ble Supreme Court in *Regional Transport Officer Chittoor Vs Associated Transport Madras (P) Ltd.* [1984 (4) SCC 597]. In that case Hon'ble Supreme Court in its concluding paras has held as under:

"4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the Constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the present case the power under Section 4(2) does not indicate either alternative. The position has been considered by the High Court at length and there is no need for us to go through the exercise over again. Indeed, considerable reliance was placed by learned counsel for the appellant on two circumstances. He argued that the impugned rule was framed in pursuance of a dissolution passed by the legislature. The fact does not have any bearing on the question under consideration except for us to make the observation that the State Government should have been more careful in giving effect to the resolution and should not have relied upon its delegated power which did not carry with it the power to make retrospective rules. The second ground pressed before us by learned counsel for the appellant is that the rules had to be placed on the table of and approved by the legislature.

This was sufficient indication, in his submission, for us to infer that retrospectively in the rule-making power was implicit. We cannot agree. The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the Section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in *Hukam Chand v. Union of India*,⁽¹⁾ Mr. Justice Khanna speaking for the Bench observed:

"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of *Craies on Statutes Law* that there are three kinds of laying:

- (i) Laying without further procedure:
- (ii) Laying subject to negative resolution:
- (iii) Laying subject to affirmative resolution.

The laying referred to in sub-section (3) of Section 40 is of the second category because the above sub-section contemplates that the rules would have effect unless modified or annulled by 630 the House of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule making power of the Central Government."

5. It is, therefore, plain that the authority of the State Government under the delegation does not empower it to make retrospective rules. With this position clarified there is no surviving submission for appellant's counsel. The appeal must be dismissed and we do so with costs (one set)." (Emphasis added)

8. A reading of Section 178 of the Act shows that there is no power conferred on the Commission to frame regulations with retrospective effects either expressly or by necessary implication. Accordingly, amendment to the tariff regulations cannot be applied from retrospective effects from 1.4.2004 as contended by UPPCL. In fact, in the past no regulations have been applied by the Commission before the date of their publication in the official Gazette. Therefore, we do not find force in the contention of UPPCL to give retrospective effect to the amendments to the tariff regulations.

9. Next we consider the suggestions and objections received from NTPC. It has been stated by NTPC that question of revision of operational norms for the generating station should be deferred till completion of R&M works by the end of 2008-09. The submission made deserves to be rejected at the outset. By order dated 24.10.2005 in Petition No.8/2005, the Commission has already approved capitalization of additional expenditure amounting to Rs.17747 lakh, incurred by NTPC on R&M works during the period up to 31.3.2004. Based on the additional capital expenditure approved, NTPC has been authorized the revised fixed charges. Thus, NTPC is already enjoying the fruits of the expenditure incurred on R&M and UPPCL is paying additional tariff on that account. Therefore, improvement of efficiency of the generating station consequent to R&M should be to the advantage of UPPCL. On perusal of the data made available on record by NTPC as well as UPPCL in Petition No.26/2006, the Commission was satisfied that despite partial R&M, the generating station had achieved efficiency, generally at par with other generating stations of NTPC except the auxiliary energy consumption and gross station heat rate. Nothing has now been brought to our notice to dispute the corrections of the conclusions earlier arrived at by the Commission. Therefore, we are satisfied that there is a strong case for revision of operational norms, as published in the draft amendments of the tariff regulations.

10. We accordingly direct that the draft proposals for amendment of the tariff regulations be finalized and notified in the official Gazette to be effective from 1.4.2007.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 8th March 2007