

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11/RP/2013 (in Petition No. 269/2009)

Subject: Review of order dated 28.05.2013 in Petition No 269/2009 for Talcher Super Thermal Power Station, Stage-II (2000 MW) for determination of tariff of the period 1.4.2009 to 31.3.2014

Date of Hearing: **31.10.2013**

Coram: Shri Gireesh B. Pradhan, Chairperson
Shri V.S. Verma, Member
Shri M.Deena Dayalan, member
Shri A.K. Singhal, Member

Petitioner: NTPC Ltd., New Delhi

Respondents: APTRANSCO & ors

Parties Present: Shri S.K.Mandal, NTPC
Shri Naresh Anand, NTPC
Shri S.K.Sharma, NTPC
Shri Parimal Piyush, NTPC
Shri Rohit Chhabra, NTPC
Shri R.B.Sharma, Advocate, GRIDCO
Shri S. Vallinayagam, Advocate, TANGEDCO

RECORD OF PROCEEDINGS

During the hearing, the representative of the petitioner contended that there is error apparent in the order dated 28.5.2013 and submitted as under:

(a) The Commission had disallowed the expenditure against the procurement of Locos & Wagons on the ground that requirement of additional rolling stock/wagons would only burden the beneficiaries. Though expenditure related to MGR system during 2010-11 and 2011-12 was allowed, the same has not been allowed against the procurement of locos & wagons required to bring coal through MGR despite the prayer for the same.

(b) Technical approval of CEA for purchase of wagons & locos was obtained on 22.2.2008. Additional capitalization of wagons & locos are necessary to optimize the cycle time in view of emerging shift in coal source to fulfill requirement for coal receipt from linked Kaniha mines as well as Lingaraj mines by MGR system.

(c) Detailed justification along with all relevant facts was submitted before the Commission which has inadvertently not been considered by the Commission in its order dated 28.5.2013. Hence, error apparent in the order of the Commission may be rectified as prayed for.

2. On a specific query by the Commission as to whether the wagons had been purchased and whether they have been deployed elsewhere, the representative of the petitioner clarified that these wagons have been deployed in Stage-II. He further clarified that since the fuel yard and Fuel Supply Agreement was common it cannot be segregated and used separately.

3. The learned counsel for the respondent, GRIDCO objected to the prayer of the petitioner and submitted as under:

- (a) The Commission after hearing the matter in detail had rejected the claim of the petitioner in its order dated 28.5.2013. Since there are clear findings of the Commission for rejection of the claim of the petitioner in the order dated 28.5.2013, the review petition may be rejected.
 - (b) Additional documents cannot be placed for consideration of the prayer for review of order. There are definitive limits to the exercise of power of review and the review proceedings are to be strictly confined to the ambit and scope of Order 47 Rule 1. It is settled law that a review petition cannot be an appeal in disguise, but the only for patent error (*Parsion Devi and others Vs. Sumitra devi and others (1997) 8 SCC 715 was referred to*)
 - (c) The applicant cannot be permitted re-argue the claim which has already been rejected by the Commission in its order. Wagons and Locos form part of the MGR system and not the part of Fuel Receipt System. Hence, prayer for review may be rejected.
 - (d) Error in judgment cannot be cured in a review petition. Accordingly, the review petition may be dismissed as non maintainable.
 - (e) Reply filed may be considered.
4. The learned counsel for the respondent, TANGEDCO referred to his reply and submitted as under:
- (a) From the submissions of the petitioner in page-4, paras 7 & 8 of the review petition, it is clear that the claim of petitioner for capital expenditure concerned with Fuel Receipt System (including wagons and locos) have been disallowed by the Commission in order dated 28.5.2013. Accordingly, issues already considered and rejected cannot be rectified in a review petition.
 - (b) Appeal No. 173/2013 has been filed by the petitioner before the Appellate Tribunal for Electricity against the order dated 28.5.2013 on this issue. Hence, the review petition may accordingly be dismissed.
5. In response to the above, the representative of the petitioner clarified as under:
- (a) Additional submissions had been filed by the petitioner on affidavit in compliance with the directions of the Commission, in the original petition. Since the submissions made by the petitioner justifying the claim for additional capital expenditure on Wagons and Locos have not been considered, review of order has been sought for.
 - (b) Rejoinder to the reply filed by respondent GRIDCO may be permitted.
 - (c) Appeal has not been filed prior to the filing of this review petition. This has been made clear in page 7 of the petition.
6. On a specific query by the Commission as to when the said Wagons were procured, the representative of the petitioner clarified that the said Wagons were procured during 2011-12. On a further query as to whether the existing Wagons and Locos were sufficient to arrange coal from different sources, the representative clarified that the Wagons and Locos of the Railways were being utilized.
7. The Commission after hearing the parties directed the petitioner to file its rejoinder, with copy to the respondents, on or before 13.11.2013.
8. Subject to the above, order in the petition was reserved.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)