

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 17/RP/2022

In

Petition No. 452/MP/2019

Subject : Review of Commission's order dated 24.3.2022 and Corrigendum Order dated 26.4.2022 in Petition No. 452/MP/2019 regarding Lignite Transfer Price for the period 2014-19 on account of truing up in respect of Nevyeli Mines as per Ministry of Coal guidelines for control period 2014-19.

Petitioner : NLCIL

Respondent : TANGEDCO and 14 ors.

Date of Hearing : **12.8.2022**

Coram : Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties present : Shri Kulamini Biswal, Advocate, NLCIL
Shri Ajitesh Garg, Advocate, NLCIL
Shri Adarsh Tripathi, Advocate, NLCIL
Shri P. Vasughi, NLCIL
Shri P. Ravikumar, NLCIL
Shri A. Srinivasan, NLCIL
Shri S. Vallinayagam, Advocate, TANGEDCO
Ms. B. Rajeswari, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Ms. R. Alamelu, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing on 'maintainability'.

2. During the hearing, the learned counsel for the Petitioner submitted that the Review Petition is maintainable as there are errors apparent on record in the Commission's Order dated 24.3.2022 read with the corrigendum order dated 26.4.2022 for the following:

- (a) The claim of the Review Petitioner for additional capitalization in respect of 'New Assets' under heads of Sl. No. 6 to 9 are admissible, as these are based on MOC guidelines and the Commission's order dated 26.2.2008 in Petition No. 118/2007 for the period 2001-04, which was continued for the tariff periods 2004-09 and 2009-14 respectively. MOC has also clarified that the assets specified are indicative and not exhaustive and all assets procured by the Review Petitioner are necessary for the continuous and sustained operation of Mines based on certifications Therefore, disallowing



the same during the period 2014-19, without there being any change in the MOC guidelines is an error apparent on the face of record.

- (b) The Commission in the impugned order has calculated the O&M expenses mine wise, year-wise and restricted to 11.5% at the time of truing up. This is contrary to MOC guidelines dated 2.1.2015 which stipulate the truing up based on actuals. The Commission had allowed the pooling of mines concept since 1998 and the Respondent TANGEDCO is aware of the same as in Order dated 15.9.2005 in Petition No. 5/2002. MOC has clarified that the entitlement of O&M expenses for the 5 years tariff period as a whole is to be considered on a pooled basis for all Pooled mines i.e., Mine 1 Expn., Mine 1A, Mine II & Mine II Expn, which is a mere explanation of the guidelines and not any deviation from the original guidelines. The Commission may consider the O&M expenses for Pooled Mine together with the wage revision impact, for the base year 2013-14.
- (c) The Commission in the impugned order has allowed only spares instead of 'Stores and Spares' which was submitted with audited certificate. It may be noted that the Commission had allowed both 'stores and spares' in the computation of interest on working capital during the tariff periods 2004-09 and 2009-14;
- (d) The MOC clarification dated 9.6.2022 is merely explanatory to the existing MOC guidelines dated 2.01.2015. The same is not a new direction/guideline issued by the MOC and can, in no terms, be referred to as an appeal, assailing the orders of this Commission.
- (e) The Commission may, therefore, admit the review petition and hear the same on merits.

3. The learned counsel for the Respondent TANGEDCO pointed out that the learned counsel for the Review Petitioner has not addressed any submissions on the 'maintainability' of the review petition. He, however, submitted the following:

- (a) The Review Petitioner had not sought any clarification on the said MOC guidelines on Lignite Transfer Price from 2015 till the impugned order dated 24.3.2022. The Review petitioner had not raised any such issues while truing up the tariff for the period 2009-14. Also, the Appeal No. 379/2017 pending before APTEL, which is against the Commission's order dt: 8.3.2017 in Petition No. 256/GT/2014, is based on the 2015 MOC guidelines dated 2.1.2015. Thus, these guidelines have been relied upon by the Review Petitioner before this Commission, APTEL for passing various orders. It is only after the impugned order and the corrigendum order dated 26.4.2022 and after filing this review petition, the Review Petitioner has approached MOC, seeking clarification of the said guidelines.
- (b) The clarifications issued by MOC on 9.06.2022 are post the judicial decision of this Commission, in exercise of its adjudicatory functions, as conferred under the Electricity Act, 2003. The clarification sought by the Review Petitioner and granted by MOC, specifically referring to the order of this Commission, amounts to an appeal being filed before MOC, against the findings of this Commission, which is not permissible under law.



- (c) In the name of clarification, the orders of this Commission are sought to be modified, by making major deviations from the existing guidelines (*para 7(h) of the reply was referred to*). This is not permissible in law.
- (d) It is settled proposition of law that, rules and regulations have prospective application. Otherwise, on every clarification of a rule or guideline, the adjudicatory process already undergone and decided upon will have to be reopened and there will be no finality to the issues under dispute. (*judgment of the Hon'ble Supreme Court in UOI vs Tushar Ranjan Mohanty was referred to*). Even if it is assumed that the MOC letter dated 9.6.2022 is a clarification, the same will have to be applied prospectively and will not impact the impugned order dated 24.3.2022/26.4.2022.
- (e) The non-executive wage revision impact for 2009-14 for calculation of base rate for 2014-19 cannot be considered since the Commission in its order dated 9.7.2018 in Petition No. 32/MP/2018 has observed that the implications arising out of wage revision has to be charged separately and directly from the beneficiaries and cannot form part of the O&M expenses.
- (f) The review petition is, therefore, not admissible.

4. In response, the learned counsel for the Petitioner submitted that the MOC clarification dated 9.6.2022 is valid as the same is to be read in continuation to the MOC guidelines dated 1.2.2015. He also submitted that the judgment of Hon'ble Supreme Court in UOI Vs Tushar Ranjan Mohanty is not applicable to the present case, as the same deals with the applicability of service laws.

5. After the request of the parties, the Commission permitted the Review Petitioner and the Respondent TANGEDCO, to file their written submissions (not exceeding three pages), by **31.8.2022**.

6. Subject to the above, order in the Review Petition was reserved on '**maintainability**'.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

