

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 144/MP/2021**

Subject : Petition under Section 129 of the Electricity Act, 2003 seeking compliance of the Hon'ble Supreme Court of India's judgment dated 9.5.2019 passed in Civil Appeal No. 13452 of 2015.

Petitioner : MPPMCL

Respondents : NTPC & 6 Ors.

Date of Hearing : **10.10.2023**

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

Parties Present : Shri Pradeep Mishra, Advocate, MPPMCL  
Shri Venkatesh, Advocate, NTPC  
Shri Ashutosh Srivastava, Advocate, NTPC  
Shri Nihal Bharadwaj, Advocate, NTPC  
Shri Kartikay Trzveli, Advocate, NTPC  
Ms. Nikita Choukse, Advocate, MSEDCL

**Record of Proceedings**

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During the hearing, the learned counsel for the Petitioner made detailed oral submissions seeking compliance with the Hon'ble Supreme Court judgment dated 9.5.2019 in Civil Appeal No. 13452 of 2015 (NTPC Ltd. v CERC & ors.), holding that FERV should be capitalized towards loan component (instead of equity). He also submitted that since the said judgment relates to the interpretation of the Tariff Regulations for the period 2001-04, the same shall be implemented for other generating stations of the Petitioner viz., Korba STPS, Vindhyachal STPS-I and II and Kawas GPS and the tariff may be revised from that period.

2. The learned counsel for the Respondent, NTPC objected to the submissions of the Petitioner, and mainly submitted as under:

(a)The Petitioner, cannot be permitted to seek the revision of all the tariff orders, retrospectively. Article 141 of the Constitution, provides that the law declared by the Hon'ble Supreme Court shall be binding on all courts within the territory of India. In the present case, there is no declaration of law/substantial question of law, by the Hon'ble Supreme Court vide its judgment dated 9.5.2019, but is a mere dismissal of the civil appeal filed by the Petitioner. Therefore, the question of the application/implementation of the said judgment dated 9.5.2019 under Article 141, to other generating stations of the Petitioner, does not arise. (*judgment of the*



*Hon'ble Supreme Court dated 24.2.1967 in Golaknath & ors v State of Punjab & ors was referred to).*

(b)The Hon'ble Supreme Court judgment, which pertains to the tariff of Kahalgaon STPS-I of the Petitioner has been implemented by the Commission and the tariff of the generating station has been revised from 2004-09. However, pursuant to the judgment of APTEL (in the year 2010) which held that FERV should be capitalized towards loan component only (instead of equity), the Petitioner had neither challenged the tariff orders of this Commission, in respect of the other generating stations (Korba STPS, Vindhyachal STPS-I and II and Kawas GPS) nor had raised this issue in any of the tariff proceedings (of these generating stations) seeking the implementation of the judgment of APTEL. The Petitioner having slept over its rights on this issue from 2010 till 2019, cannot now be permitted to reopen the tariff orders (which had attained finality), under the guise of implementation of the Hon'ble Supreme Court's judgment dated 9.5.2019.

(c)Section 129 of the Electricity Act, 2003 provides for the Commission to give directions to any licensee, by an order, if it is satisfied that the said license is contravening or likely to contravene any of the conditions of the license, in order to seek compliance with the said condition or provision. This section is not applicable in the present case, as the Respondent has neither contravened any of the provisions of the said Act nor the provisions of the Tariff Regulations notified by this Commission. The reliefs sought by the Petitioner are therefore not maintainable.

3. The learned counsel for the Respondent MSEDCL while adopting the submissions of the learned counsel for the Petitioner, mainly submitted that the Hon'ble Supreme Court in its judgment dated 9.5.2019 has expressed its clear 'opinion' on the issue of capitalization of FERV on loan component only, thereby affirming the principle laid down by APTEL. Therefore, the same is applicable to other generating stations of the Respondent NTPC. She further submitted that since there has been a concurrent finding on this issue by all the forums viz. Commission, APTEL and the Hon'ble Supreme Court, the same is required to be implemented to all the generating stations of the Respondent NTPC.

4. In response to submissions of Respondent NTPC, the learned counsel for the Petitioner reiterated that since the Hon'ble Supreme Court has declared the law, on this issue, the same is required to be implemented *suo motu* by this Commission. He further submitted that since there has been a violation of the Tariff Regulations notified by this Commission (in terms of the provisions of the Electricity Act, 2003) and which has been interpreted by APTEL and the Hon'ble Supreme Court, Section 129 of the said Act is attracted in the present case.

5. The Commission, at the request of the learned counsel for the parties, permitted them to file their short-written submissions (not exceeding three pages), on or before **6.11.2023**. Subject to this, the order in the Petition was reserved.

**By order of the Commission**

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

