

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 33/RP/2023  
in  
Petition No. 402/GT/2019**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member**

**Date of Order: 14<sup>th</sup> December, 2024**

**In the matter of:**

Review of the order dated 26.7.2023 in Petition No. 402/GT/2019, for determination of tariff of Khargone STPS (1320 MW) for the period from COD of Unit-I (1.2.2020) to 31.3.2024.

**And**

**In the matter of:**

NTPC Limited  
NTPC Bhawan, Core-7, Scope Complex  
7, Institutional Area, Lodhi Road  
New Delhi-110 003

**.....Review Petitioner**

**Vs**

1. Madhya Pradesh Power Management Company Limited.  
Shakti Bhawan, Vidyut Nagar,  
Rampur, Jabalpur – 110003
2. Maharashtra State Electricity Distribution Company Limited  
Prakashgad, Bandra (East),  
Mumbai- 400051
3. Gujarat Urja Vikas Nigam Limited,  
2nd Floor, Sardar Patel Vidyut Bhawan, Race Course  
Vadodara - 390007
4. Chhattisgarh State Power Distribution Company Limited,  
Vidyut Sewa Bhawan, Dagania Raipur – 492001
5. DNH Power Distribution Corporation Limited,  
UT of DNH, Silvassa – 396230
6. Electricity Department,  
Government of Goa, 3rd Floor,  
Vidyut Bhawan, Panaji Goa- 403001
7. Electricity Department,  
Administration of Daman and Diu, Daman – 396210



8. Khargone Transmission Limited,  
Core-4, Scope Complex,  
7, Lodhi Road, New Delhi – 110003

...Respondents

**Parties present:**

Shri Venkatesh, Advocate, NTPC  
Shri Nihal Bhardwaj, Advocate, NTPC  
Shri Harsh Vardhan, Advocate, NTPC  
Shri Ravi Sharma, Advocate, CSPDCL  
Shri Ravin Dubey, Advocate, MPPMCL

**ORDER**

In Petition No. 402/GT/2019 filed by the Review Petitioner, NTPC for determination of the tariff of Khargone Super Thermal Power Station (1320 MW) (*in short, the 'generating station'*) for the period from the COD of Unit-I (1.2.2020) till 31.3.2024, the Commission vide order dated 26.7.2023 (*in short, the impugned order'*), disposed of the same. Aggrieved by the said order, the Review Petitioner has filed the Review Petition seeking the review of the impugned order on the following grounds:

- i) *Disallowance of the claim of Rs 487 crore incurred towards Railway infrastructure and Augmentation work, as a part of the capital cost; and*
- ii) *Disallowance of the water charges claimed as per part of the water agreement executed between the Review Petitioner and the State water Department.*

**Hearing dated 29.11.2023**

2. The Review Petition was heard on 29.11.2023 on 'admission.' During the hearing, the learned counsel for the Review Petitioner made preliminary submissions in the matter. The learned counsel for the Respondent CSPDCL raised objections on the 'maintainability' of the Review Petition, stating that an appeal has been filed by the Review Petitioner before APTEL against the impugned order. The Commission, after hearing the parties, directed the Review Petitioner to file an additional affidavit correlating submissions made in the Review Petition with the



pleadings in Petition No. 402/GT/2019 and also permitted the Respondents to file their replies on 'maintainability' and on 'merits.' The Review Petitioner filed the additional affidavit on 15.12.2023. The Respondents CSPDCL, MSEDCL, and MPPMCL have filed their replies on 9.1.2024, 12.1.2024, and 18.1.2024, respectively, and the Review Petitioner has filed its rejoinders to the said replies on 13.2.2024.

#### **Hearing dated 4.4.2024**

2. Thereafter, during the hearing on 4.4.2024, the learned counsel for the Review Petitioner made detailed oral submissions on the 'maintainability' of the Review Petition. The learned counsel for the Respondent, CSPDCL, submitted that there is no error apparent on the face of the impugned order in terms of Order 47 Rule 1 of CPC 1908, and therefore, the Review Petition is not maintainable. He also pointed out that the APTEL judgment dated 14.8.2023 (Appeal No. 152 of 2016) on the Railway Infrastructure and augmentation works has left open the issue to be decided by the Commission, and therefore, the Review Petitioner cannot rely on the said judgement. On a specific query by the Commission, whether the issue of water charges can be considered at the time of truing up of tariff, the learned counsel for the Review Petitioner answered in the affirmative and prayed for a grant of liberty. This was opposed by the learned counsel for the Respondent, CSPDCL on the ground that the maintainability of the Review Petition is being considered. The Commission, after hearing the parties, reserved its order on 'maintainability' as well as on 'merits'.



### **Hearing dated 23.10.2024**

3. Since the order in the Review Petition could not be issued prior to the Members of the Commission, who formed part of Coram demitting office, the matter was re-listed on 23.10.2024 but was adjourned. Meanwhile, the Review Petitioner filed a convenience note dated 21.10.2024 indicating certain subsequent developments in the matter. The Respondent CSPDCL also filed its written submissions dated 21.10.2024/ 27.11.2024 in the matter.

### **Hearing dated 28.11.2024**

4. During the hearing of the Review Petition through a virtual hearing on 28.11.2024, the learned counsel for the Review Petitioner mainly submitted as under:

### **Submissions of the Review Petitioner**

5. The learned counsel for the Review Petitioner submitted that pursuant to the APTEL judgment dated 14.8.2023 in Appeal No. 152/2016 (against the Commission's order dated 15.2.2016 in Petition No.59/MP/2015) remanding the matter relating to the Review Petitioner's claim towards Railway Infrastructure and augmentation works, for reconsideration by the Commission in terms of its observations therein, the Review Petitioner has filed Petition No.363/MP/2024 seeking capitalization of the expenditure incurred for the said works in respect of its generating stations viz., Kudgi STPS, Barh STPS-II and Khargone STPS (this generating station) and the same is pending. He, therefore, submitted that since the claim towards Railway Infrastructure and augmentation works in respect of these generating stations is pending consideration of the Commission in Petition



No.363/MP/2024, the said issue does not survive consideration in this Review Petition. Accordingly, the learned counsel prayed that the issue raised in the Review Petition may be treated as withdrawn.

6. With regard to the claim for Water charges, the learned counsel for the Review Petitioner submitted that since the truing-up petition in respect of this generating station for the period from the COD of Unit-I (1.2.2020) till 31.3.2024 is to be filed shortly, along with the details of the actual water charges paid by the Review Petitioner to the State Water Authority, the issue raised in the Review Petition may be treated as withdrawn, but with liberty to the Review Petitioner to claim the actual water charges incurred, at the time of truing-up of tariff of the generating station for the period from 1.2.2020 till 31.3.2024, for consideration of the same in accordance with law.

### **Submission of the Respondents**

7. The learned counsel for the Respondent CSPDCL, while pointing out that the Review Petitioner has filed an appeal before the APTEL challenging the impugned order dated 26.7.2023, submitted that the Review Petitioner may be permitted to withdraw the Review Petition without any liberty being granted, as prayed for. The learned counsel for the Respondent MPPMCL, while adopting the above submission of the Respondent, stated that the Review Petitioner might be permitted to withdraw the review petition simplicitor.

8. In response, the learned counsel for the Review Petitioner pointed out that while Petition No. 363/MP/2024 has been filed before this Commission



in terms of the observations of APTEL in its judgment dated 14.8.2023, the issue of disallowance of the water charges has not been raised in the appeal filed against the impugned order.

### **Analysis and Decision**

9. With regard to the maintainability of the Review Petition vis-a-vis pendency of the appeal, we note that the Hon'ble Supreme Court in *Thungabdra Industries Ltd v Govt of AP* (1964) 5 SCR 174 and *Kunhayammed v State of Kerala* (2000) 6 SCC 359, held that a Review Petition, filed prior to the appeal against the same order, is maintainable under law. The relevant portion of the judgments is extracted below:

#### **Thungabdra Industries Ltd v Govt of AP**

*"...Order 47 Rule 1(1) of the Civil Procedure Code permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been preferred." In the present case, it would be seen, on the date when the application for review was filed the appellant had not filed an appeal to this Court and therefore, the terms of Order 47 Rule 1(1) did not stand in the way of the petition for review being entertained.*

XXXX.

*The crucial date for determining whether or not the terms of Order 47 Rule 1(1) are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the Court hearing the review petition would come to an end.*

#### **Kunhayammed v State of Kerala**

*".....This Court held that the crucial date for determining whether or not the terms of Order 47 Rule 1(1) CPC are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the Court hearing the review petition would come to an end. On the date when the application for review was filed the applicant had not filed an appeal to this Court and therefore there was no bar to the petition for review being entertained.*

10. In the present case, we note that the Review Petition against the impugned order has been filed by the Review Petitioner on 30.8.2023/9.9.



2023, whereas, the appeal (Appeal No.768/2023) has been filed on 11.9.2023. Therefore, in terms of the aforesaid judgments, the present Review Petition is maintainable. Having held that the Review Petition is maintainable, we examine the rival contentions on the prayer of the Review Petitioner (as in paras 5 and 6 above) for disposal of the Review Petition as discussed in the subsequent paragraphs.

11. With regard to the claim towards Railway Infrastructure and augmentation works, the Review Petitioner has filed Petition No.363/MP/2024, and since the said petition is pending consideration of this Commission, it has prayed that the issue raised in the Review Petition may be treated as withdrawn. It is pertinent to mention that pursuant to APTEL vide its judgment dated 14.8.2023 in Appeal No.152/2016 remanding the matter for consideration of this Commission; the Review Petitioner has filed the said Miscellaneous Petition, before this Commission for reconsideration of its claim towards the Railway Infrastructure and augmentation works in respect of its three projects (Kudgi, Barh and this generating station) in terms of its observations therein. Considering the fact that the claims towards the Railway Infrastructure and augmentation works in respect of the said projects in the said miscellaneous petition are required to be examined holistically, after hearing the parties, we find no reason to deal with the same in this Review Petition. Accordingly, the prayer for 'withdrawal' of the Review Petition on this count is allowed.

12. As regards the claim towards Water charges, the Review Petitioner has sought its withdrawal, with the liberty to claim the actual water charges at the time of truing-up of the tariff of the generating station for the period from



1.2.2020 till 31.3.2024. While the Respondent CSPDCL has opposed the prayer for the grant of liberty on the ground that an appeal (filed by the Review Petitioner) on this issue is pending, the Respondent MPPMCL has argued that the issue may be treated as withdrawn simplicitor. We note that the Review Petitioner has affirmed that it has not raised the issue of disallowance of the Water charges in the appeal filed by it before APTEL. In our view, no injustice will be caused to the Respondents if the prayer of the Review Petitioner for considering the issue of water charges at the time of truing up of tariff for the period 2019-24 is allowed, keeping in view that the Respondents will also have an opportunity to participate and place their submissions on this issue, before the Commission during the proceedings in the true-up Petition, for consideration in accordance with law. In this background, we permit the Review Petitioner to withdraw the issue of water charges raised in the Review Petition. However, the Review Petitioner is granted liberty to claim the actual water charges in the truing-up Petition to be filed/filed for the period 2019-24, and the same will be considered in accordance with law. Accordingly, the Review Petition stands withdrawn in terms of the above.

13. Petition No. 33/RP/2023 (in Petition No.402/GT/2019) is disposed of in terms of the above.

**Sd/-**  
**(Harish Dudani)**  
**Member**

**Sd/-**  
**(Ramesh Babu V.)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

