

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 49/RP/2022**

**in**

**Petition No.365/GT/2020**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 19<sup>th</sup> May, 2024**

**In the matter of:**

Petition for review of order dated 30.9.2022 in Petition No. 365/GT/ 2020 for truing up of annual fixed charges for the period 2014-19 in respect of NLCIL Thermal Power Station-I Expansion Units I & II.

**AND**

**In the matter of**

NLC India Limited,  
135/73, EVR Periyar Salai, Kilpauk,  
Chennai – 600 010, Tamil Nadu

**.....Petitioner**

**Vs**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
NPKRR Maaligai, 144, Anna Salai,  
Chennai – 600002
2. Power Company of Karnataka Limited,  
KPTCL Complex, Kaveri Bhavan,  
Bangalore – 560009
3. Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle, Bangalore - 560 001
4. Mangalore Electricity Supply Company Limited  
Corporate Office, MESCOM Bhavana, Bejai, Kavour Cross Road,  
Mangalore- 575 004
5. Chamundeshwari Electricity Supply Corporation Limited,  
Corporate Office No CA 29, Vijayanagar 2<sup>nd</sup> Stage Hinakal,  
Mysore -570017



6. Gulbarga Electricity Supply Company Limited,  
Station Main Road, Gulbarga -585 102,  
Karnataka
7. Hubli Electricity Supply Company Limited,  
Corporate office, P. B. Road, Navanagar,  
Hubli - 580 025
8. Kerala State Electricity Board Limited,  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram-695004
9. Puducherry Electricity Department,  
137, NSC Bose Salai,  
Puducherry – 605 001

.... Respondents

**Parties Present:**

Shri Kulamani Biswal, Advocate, NLCIL  
Shri S. Vallinayagam Advocate, TANGEDCO

**ORDER**

Petition No. 365/GT/2020 was filed by the Review Petitioner, NLC India Limited (in short 'NLCIL'), for truing-up of tariff of NLC Thermal Power Station Stage-I Expansion (2 x 210 MW) for the period 2014-19, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations') and the Commission vide order dated 30.9.2022 (in short, the 'impugned order') had disposed of the said petition. Aggrieved by the impugned order dated 30.9.2022, the Review Petitioner has filed the Review Petition on the ground that there is an error apparent on the face of the record on the following issues:

- a. Non-consideration of the landed price of lignite for the computation of Interest on Working Capital;*
- b. Disallowance of Personnel charges in the claim of Water charges; and*



*c. Disallowance of certain additional capitalization for the period 2014-19, including the linking of compensatory allowance in the evaluation of additional capitalization.*

**Hearing dated 16.2.2023**

2. The Review Petitioner was heard on 'admission' on 16.2.2023. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in support of its prayers for the review of the impugned order. The learned counsel for Respondent TANGEDCO pointed out that the issues raised by the Review Petitioner are not maintainable as the Review Petition cannot be an appeal in disguise. The Commission, after hearing the parties, vide interim order dated 20.2.2023, directed Respondent TANGEDCO to file its reply on 'maintainability as well as on merits' and for the completion of pleadings in the matter.

3. In compliance with the above directions, the Respondent TANGEDCO has filed its reply vide affidavit dated 28.3.2023, and the Review Petitioner has filed its rejoinder vide affidavit dated 12.4.2023.

**Hearing dated 27.4.2023**

4. The Review Petition was heard on 27.4.2023. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter and prayed that the review sought on the aforesaid issues may be allowed. The learned counsel for the Respondent, TANGEDCO circulated a short note of arguments and made detailed oral submissions in the matter. At the request of the learned counsel, the Respondent was permitted to upload the note of arguments. The Commission also permitted the parties to file their submissions. Subject to this, the order in the petition was reserved. A copy of the note of arguments has been filed by the Respondent TANGEDCO.



### **Hearing dated 31.1.2024**

5. Since the order in the Review Petition could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter was re-listed for hearing on 31.1.2024. During the hearing, the learned counsel for the Review Petitioner and the learned counsel for the Respondent, TANGEDCO, submitted that since pleadings and arguments in the matter had been completed, the order in the Review Petition may be reserved. Accordingly, based on the consent of the parties, the Commission reserved its order in the petition. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs.

#### **A. *Non-consideration of the landed price of lignite for the computation of Interest on Working Capital;***

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

6. The Review Petitioner has submitted that it has considered the landed price of lignite of Rs. 1773.60/- per tonne, which is inclusive of the base price of Rs. 1578 per tonne plus Rs. 24.92 per ton of the additional O&M expenses (as per order in Petition No. 32/MP/2018), along with the applicable taxes, while computing the interest on working capital for the period 2014-19. It has, however, submitted that the Commission vide impugned order dated 30.9.2022 had considered the base price of lignite pertaining to the provisional order dated 5.2.2014 in Petition 167/MP/2011 and order dated 7.5.2015 in Petition 68/MP/2013 (pooled price including Mine-2 Expansion) for the period 2009-14. The Review Petitioner has submitted that the non-consideration of the landed cost of fuel while computing the interest on working capital, is an error apparent on the face of the impugned order. Accordingly, the Review Petitioner has submitted that the Commission may review the impugned order by considering the



landed price of lignite as per the order dated 30.3.2017 in Petition No.149/MP/2015 (pertaining to the period 2009-14).

***Reply of the Respondent TANGEDCO***

7. The Respondent TANGEDCO has submitted that the Commission has clearly stated that the lignite price as per order dated 20.3.20217 in Petition No. 149/MP/2015 will be considered, subject to reworking of the Lignite Transfer Price (LTP), as per the directions given in Petition No. 149/MP/2015. Accordingly, the Respondent has submitted that the Review Petitioner shall rework the LTP as per the order dated 20.3.2017 and approach the Commission for appropriate relief. While pointing out that there is no error apparent on the face of the record on this count, the Respondent has stated that the Review Petitioner may also be directed to rework the energy and capacity charges as per para 29 of the said order and pass on the difference to the beneficiaries.

***Rejoinder to the reply of the Respondent TANGEDCO***

8. The Review Petitioner has submitted that in the impugned order dated 30.9.2022, the Commission has considered the base price of lignite pertaining to the provisional order dated 5.2.2014 in Petition No.167/MP/2011 and order dated 7.5.2015 in Petition No. 68/MP/2013 (Pooled price including Mine-II expansion) for the period 2009-14, instead of the lignite price determined in an order dated 20.3.2017 in Petition No. 149/MP/2015. Accordingly, the Review Petitioner has submitted that the Commission shall consider the landed price of lignite as per the order dated 20.3.2017 in Petition No. 149/MP/2015 for the period 2009-14. The Respondent TANGEDCO, in its written submissions, has reiterated the submissions made in its reply as aforesaid.



## **Analysis and Decision**

9. The matter has been considered. As regards LTP, the Commission, in the impugned order dated 30.9.2022 in Petition No.365/GT/2020, had observed as under:

*“98. In case of the generating stations of the Petitioner, the price of fuel for the preceding three months (January, 2014, February, 2014 and March, 2014) would instead be the pooled price of lignite for the year 2013-14. The pooled lignite transfer price for the generating station for the year 2013-14 as approved vide order dated 5.2.2014 in Petition No.167/MP/2011 and order dated 7.5.2015 in Petition No. 68/MP/2013 was Rs. 1610/tonne (This rate is exclusive of clean energy cess w.e.f. 1.7.2010 @ Rs. 50/ Ton and excise duty on lignite and other taxes and duties).*

*99. The Petitioner had filed Petition No. 149/MP/2015 for truing up of lignite transfer price for the period 2009-14 and the Commission vide order dated 20.3.2017 had directed the Petitioner to revise the pooled lignite transfer price based on the O&M cost of the mines...*

*100. Also, in the said order, the Petitioner was directed to work out the lignite transfer price based on actual capacity utilization.....*

*101. The Petitioner has considered the average price for lignite for January, 2014, February, 2014 and March, 2014 as Rs. 1773.59 per tonne for computation of working capital. However, in case of the Petitioner's generating station, the average price of January 2014, February, 2014 and March, 2014 means the cost of lignite transfer price for the year 2013-14. The Lignite transfer price for the year 2013-14 needs to be considered as per direction of the Commission vide order dated 20.3.2017 in Petition No 149/MP/2015. **In the absence of details of the pooled lignite transfer price for the period 2013-14 as per directions of the commission vide order dated 20.3.2017, we have considered the pooled lignite transfer price of Rs.1610/ton for the year 2013-14 (for indicative purpose only)** as approved by order dated 5.2.2014 in Petition No.167/MP/2011 and order dated 7.5.2015 in Petition No. 68/MP/2013. However, the final lignite transfer price to be considered for the computation of working capital for the period 2014-19 shall be computed by the Petitioner based on the lignite transfer price for the period 2013-14 as per the direction contained in order dated 20.3.2017 in Petition No. 149/MP/2015. The price & GCV of lignite and secondary oil as adopted by the Commission (for indicative purpose) are as under:..”*

10. It is evident from the above order that the pooled LTP allowed by the Commission was for indicative purposes only in the absence of details of the pooled LTP for the period 2013-14, as the Commission, in the order dated 20.3.2017 in Petition No.149/MP/2015, had not determined the LTP, but had directed the Review Petitioner to revise the LTP (exclusive of clean energy cess w.e.f. 1.7.2010 @ Rs. 50/ Ton and excise duty on lignite and other taxes and duties) as per directions in the said order. It is, however, noticed that in an appeal (Appeal No. 185/2017) filed by the



Review Petitioner before the APTEL, challenging the order dated 20.3.2017 in Petition No.149/MP/2015, mainly on the issue of computation of O&M expenses (considering the methodology of taking the actual cost of lignite or 11.5% whichever is less, for each mine separately), the APTEL, vide its judgment dated 25.7.2023, set aside the Commission's order and remanded the matter to the Commission, for its consideration afresh. It also directed that the Commission shall apply the very same modality of pooling, which was earlier adopted during the tariff determination exercise, and compute the O&M expenses for the 5-year period 2009-14 at the true up stage, taking the actual cost into consideration. Thereafter, the Review Petitioner filed Petition No.62/IA /2023 before this Commission seeking implementation of the said judgment in Petition No.149/MP/2015, and the Commission vide its order dated 14.3.2024 disposed of the same as under:

*“32. As per the above notification, it was agreed that the O&M expenses would be trued up at the beginning of the next tariff period. Further also, consequent to the APTEL order dated 25.7.2023 in Appeal No. 185 of 2017 & IA No. 1071 of 2022, we consider the actual O&M incurred by the Petitioner for the period 2009-14 only. Accordingly, the O&M expenditure considered for the period 2009-14 is as under.*

<i>(Rs in lakh)</i>					
O&M cost	2009-10	2010-11	2011-12	2012-13	2013-14
Pooled Mines	124848	148806	168008	179482	213721

11. Accordingly, the said petition was disposed of to consider the impact of the capacity utilization of mines on the pooled LTP and determine the lignite transfer price accordingly. Subsequently, a corrigendum dated 6.4.2024 was issued to the order dated 14.3.2024, modifying para 34 of the said order. Consequently, the revised lignite transfer price is required to be worked out by the Review Petitioner considering the O&M expenses allowed vide order dated 14.3.2024, as stated above. The Review Petitioner is directed to calculate and revise the ECR and also revise the impact on variable charge for the period 2009-14 for its different generating stations within three



months and adjust the same in tariff accordingly. Issue (A) is disposed of in terms of the above

***B. Disallowance of Personnel charges in Water charges***

12. Regarding Personnel charges in water charges, the Review Petitioner has mainly submitted the following:

- a. The norms of O&M expenses prescribed by the Commission for the control period 2014-19 for thermal and hydro generating stations, excluding Water Charges, are common for the generator who purchases (contracted water) or uses its own resource (aquifer). Therefore, a different treatment towards the determination of the cost of utilities should not be adopted by stating that a portion of expenditure is covered under normative O&M.
- b. NLCIL has claimed the water charges in accordance with the provisions of Regulation 29(2) along with the auditor certificate as a supportive document for the claim in the truing up petition.
- c. The personnel charges claimed are expenditures incurred by NLCIL towards the personnel deployed in the raw water group to monitor the water requirements of different generating stations of NLCIL. These are expenditures that are specifically incurred towards water facilitation and claimed in terms of Regulation 29(2), and the Personnel charges claimed have not been included or covered under the O&M expenses of the generating stations.

***Reply of the Respondent TANGEDCO***

13. The Respondent TANGEDCO has submitted that the claim of the Review Petitioner for Rs. 6,35,44,052/- towards Personnel charges and Rs. 4,02,106/- towards 'other charges' is illegal, as the employee cost is already covered under the normative O&M expenses. It has pointed out that the Commission, in para 84 of the impugned order, had disallowed the Personnel charges in the water charges claimed, but has raised the same claim, stating that they are not covered under O&M expenses. The Respondent has also submitted that though water charges have been separately allowed under the 2014 Tariff Regulations, the employees of NLCIL have been looking after the water group even prior to the said Tariff Regulations and there is also no





proof that NLCIL has recruited the personnel exclusively to be deployed in water management. The Respondent has argued that the Review Petitioner has claimed the Personnel charges as extra, though the employees are serviced under the normative O&M expenses.

***Rejoinder to the Reply filed by TANGEDCO***

14. The Review Petitioner has mainly reiterated its claim and submitted that the Respondent has, time and again, raised this issue without understanding the fact that NLCIL has integrated Mines, through which water beneath the lignite seam is supplied to the Thermal generating stations, unlike other power stations in the country, procuring water from the State Government sources. It has been stated that there is always a difference in the cost between the own source of water and the contracted quantity of the water supplied by the State Governments. The Review Petitioner has pointed out that as per the extant regulations, the cost of water charges is to be claimed separately. The Review Petitioner has further submitted that these are expenditures specifically incurred towards water facilitation and have been claimed in terms of Regulation 29(2) of the 2014 Tariff Regulations and the Personnel charges claimed have not been included or covered under the O & M expenses of the generating stations.

**Analysis and Decision**

15. The submissions have been examined. Regulation 29(1) (a) of the 2014 Tariff Regulations provides as follows:

*“Normative Operation and Maintenance expenses of thermal generating stations shall be as follows: (a) Coal based and lignite fired (including those based on Circulating Fluidized Bed Combustion (CFBC) technology) generating stations, other than the generating stations/units referred to in clauses (b) and (d):*

*(Rs in Lakhs)*

<i>Year</i>	<i>200/210/250 MW</i>	<i>300/330/350 MW</i>	<i>500 MW</i>	<i>600 MW</i>
<i>2014-15</i>	<i>23.90</i>	<i>19.95</i>	<i>16.00</i>	<i>14.40</i>



2015-16	25.40	21.21	17.01	15.31
2016-17	27.00	22.54	18.08	16.27
2017-18	28.70	23.96	19.22	17.30
2018-19	30.51	25.47	20.43	18.38

The above norms of O&M expenses for thermal and hydro generating stations are excluding Water Charges. Water charges, as applicable, shall be allowed separately. Para 10 of the Explanatory Memorandum to the draft Regulation discussed the approach for arriving at O&M expenses states as follows:

*“Further, Since water charges are to be approved and allowed separately the same has not been considered as a part of O&M expenses for thermal and Hydro Generating stations”.*

16. Para 29.31 of the Statement of Reasons and Objects (SOR) to the 2014 Tariff Regulations, stipulates as follows:

*“As regards the comment that the O&M expenses have been approved on the basis of escalating past years expenses though water charges are now being allowed separately, the Commission would like to clarify that the water charges for 2008-09 to 2012-13 have not been considered as a part of O&M expenses while determining the norms for O&M expenses for 2014-19.”*

17. The Review Petitioner has claimed an amount of Rs.866.87 lakh towards Water charges, which includes an amount of Rs. 635.44 lakh towards Personnel charges and Rs. 4.02 lakh towards ‘other charges.’ In response to the contention of the Respondent TANGEDCO that the Review Petitioner has created a special 'Raw water group' only during 2018, the Review Petitioner has only clarified that the Personnel charges claimed are expenditures incurred towards the Personnel of the Review Petitioner deployed in the Raw Water Group to monitor the water requirements of different generating stations of Review Petitioner. The list furnished by the Review Petitioner shows that its own employees are posted to the Raw Water Group. It is pertinent to mention that the generating stations regulated by this Commission are located in different States and the rate of Water charges and the policies of water allocation are different in different States. In order to negate the anomaly arising out of this situation, the Commission, while framing the 2014 Tariff Regulations, has allowed the Water charges separately. In terms of this, the Water charges to be



allowed, are for the contracted quantum and actual water consumption for the generating station only. The wages and salaries of own employees working in 'Raw Water Group,' including the Performance Related Pay, cannot, in our view, be considered/allowed under the Water charges. Even otherwise, the raw water group was created only in 2018, but the Review Petitioner has claimed the Personnel charges retrospectively, which is not permissible. It is not the case of the Review Petitioner that for the employees working in the raw water group, the salaries are undertaken from a separate account. In light of the above, we find no reason to entertain the prayer of the Review Petitioner to include the Personnel charges under the Water charges. Accordingly, the review of the impugned order on this count is not allowed. Issue (B) is disposed of as above.

***(C) Disallowance of the Additional capitalization for the period 2014-19***

***Submissions of the Review Petitioner***

18. The Review Petitioner has submitted that against its claim for Rs. 2814.45 lakh towards additional capital expenditure, the Commission had allowed only Rs. 221.75 lakh in the impugned order. The Review Petitioner has contended that the disallowance of additional capital expenditure towards High Pressure Heaters, Heaters, EMS Monitoring systems, Fire Extinguishers, Sewage Treatment plant, IR HD fixed camera / Surveillance Camera, and RCC road from the fire station to silo while dealing with additional capitalization is an error apparent on the face of the record. The Review Petitioner has further submitted that the Commission had disallowed certain capital assets, observing that the cost of assets which are of a minor nature, have to be covered under the Compensation allowance, and the same is an error apparent on the face of the record. It has stated that the provision for compensation allowance made on a normative basis is only for assets of a minor



nature and does not include specialized and other major items that are not routine in nature.

***Reply of the Respondent TANGEDCO***

19. The Respondent TANGEDCO has submitted that the provisions of Regulation 14(3) of the 2014 Tariff Regulations are applicable in respect of the existing generating station, and the assets/items claimed under additional capital expenditure by the Review Petitioner do not fall under category. While pointing out that the first proviso to Regulation 14(3) specifically states that any expenditure on acquiring minor items or assets, including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets, etc., brought after the cut-off date, shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2014, the Respondent has stated that the Review Petitioner has included items such as refrigerators and air-conditioners in the additional capital expenditure claimed for the period 2014-19, which is not allowable. The Respondent has further submitted that the Commission has taken a conscious and reasoned decision while disallowing each of the additional capital expenditure claims of the Review Petitioner, and therefore, the prayer for review is devoid of merits and hence may be rejected. As regards linking the additional capital expenditure with the compensation allowance, the Respondent has submitted that most of the items claimed are in the nature of O&M and have to be met from the O&M expenses allowed to the generating station. Accordingly, the Respondent has argued that there is no apparent error on the face of the record, and the claim may be rejected.



### ***Rejoinder of the Review Petitioner***

20. The Review Petitioner has mainly reiterated its submissions in the Review Petition. It has also submitted that it had already suffered under-recovery of the O&M expenses, and hence, the contention of TANGEDCO that most of the assets are to be covered under the O&M expenses is not justified.

### **Analysis and Decision**

21. The submissions have been considered. It is evident from the impugned order that the Commission, after prudence check, had disallowed certain additional capital expenditures claimed by the Review Petitioner, on the grounds that (i) no details as to whether the expenditure incurred is based on the directions of the governmental agencies or the statutory authority responsible for security have been furnished (ii) the said expenses are to be met from the compensation allowance allowed to the generating station. It was also observed in the said order that the Review Petitioner had not demonstrated as to how the additional expenditure incurred falls within the scope of change in law, and that the assets are minor in nature. In our view, the Review Petitioner, in the Review Petition, has sought to reargue the case on merits by submitting justifications in support of the claims and has prayed for re-consideration of the same. The Review Petition cannot be an appeal in disguise. This is not permissible. It is a settled position in terms of the judgment of Hon'ble Supreme Court in *Parsion Devi v Sumitra Devi* reported in 1997 8 SCC 715 that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning



can hardly be said to be an error apparent requiring the court to exercise its power of review. These principles of the review have also been enunciated by the Hon'ble Supreme Court in judgment in Kamlesh Verma v. Mayawati and Ors. As reported in AIR 2006 SC 75. Against this backdrop, we find no reason to entertain the prayer of the Review Petitioner to review the impugned order on this count. The relief prayed for under this head is accordingly rejected. Issue (c) is disposed of accordingly.

22. Review Petition No. 49/RP/2022 (in Petition No.365/GT/2020) is disposed of based on the above.

**(Pravas Kumar Singh)**  
**Member**

**(Arun Goyal)**  
**Member**

**(Jishnu Barua)**  
**Chairperson**

