

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No.10/RP/2024
in
Petition No.391/GT/2020**

Coram:

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

Date of Order: 4th August, 2025

IN THE MATTER OF

Petition seeking Review of the order dated 11.1.2024 passed by the Commission in Petition No. 391/GT/2020 with respect to truing up of tariff of Farakka Super Thermal Power Station, Stage-III (500 MW) for the period 2014-19.

AND

IN THE MATTER OF

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

.....Petitioner

Vs

1. West Bengal State Electricity Distribution Company Limited
Vidyut Bhawan, Block-DJ, Sector-II,
Salt Lake City, Kolkata-700 091
2. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road, Patna – 800 001
3. Jharkhand Bijli Vitran Nigam Limited,
Engineering Building, HEC Township,
Dhurwa, Ranchi – 834004
4. GRIDCO Limited
24, Janpath, Bhubaneswar – 751007
5. Damodar Valley Corporation
DVC Towers, VIP Road, Kolkata- 700054

....Respondents

Parties Present:

Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Mr. Karthikeyan Murugan, NTPC
Mr. Prashant Chaturvedi, NTPC



ORDER

Petition No. 391/GT/2020 was filed by the Review Petitioner, NTPC Limited, for truing-up of tariff of Farakka Super Thermal Power Station, Stage-III (500 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 11.1.2024 (in short the 'impugned order') disposed of the said petition. Aggrieved by the impugned order dated 11.1.2024, the Review Petitioner has filed this 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 capitalization of Rs 472.36 lakh of initial spares capitalized (on an accrual basis) during 2014-19;

(B) Non-consideration of Rs 139.91 per MT of coal cost and Rs 324.95 lakh paid as incentive to the coal company;

(C) Non-consideration of Rs 75 lakh of water charges paid to the Farakka Barrage Authority in 2018-19.

Hearing dated 4.4.2024

2. The Commission, after hearing the learned counsel for the Petitioner, 'on admission' on 4.4.2024, issued notice on 'admissibility' and directed the completion of pleadings in the matter.

Hearing dated 29.8.2024

3. The Review Petition was listed on 29.8.2024, and the Commission, as a last opportunity, permitted the Respondents to file their replies in the matter and accordingly, adjourned the matter.

Hearing dated 8.10.2024 and 23.10.2024

4. Though the Review Petition was listed on 8.10.2024 and 23.10.2024, the same could not be heard on account of the request of the Petitioner for adjournment and due to paucity of time.



Hearing dated 28.11.2024

5. During the hearing on 28.11.2024, the learned counsel for the Review Petitioner circulated the note of arguments and made detailed oral submissions on the aforesaid issues. None appeared on behalf of the Respondents despite notice. The Commission Part-heard the matter, after permitting the Review Petitioner to file its notes/compilation.

Hearing dated 14.1.2025

6. During the hearing on 14.1.2025, the learned counsel for the Review Petitioner, after pointing out that none of the Respondents have filed replies in the matter, prayed that the Commission may reserve its orders, as arguments have been completed in the matter.

7. Accordingly, based on the submissions and the documents available on record, we proceed to examine the issues raised by the Review Petitioner, as stated in the subsequent paragraphs:

(A) Non-consideration of the capitalization of Rs 472.36 lakh of initial spares capitalized (on an accrual basis) during 2014-19

8. With regard to the capitalization of initial spares, the Commission in the impugned order dated 11.1.2024 observed as under:

“31. Subsequently, the Commission vide ROP of the hearing dated 6.10.2022 had sought details of the Liquidated Damages (LD) recovered by the Petitioner, from the vendors for delayed delivery of the initial spares along with the year-wise details of the initial spares procured/ capitalized from the COD of the generating station till the cut-off date, on cash basis, and on accrual basis. In response, the Petitioner, vide its affidavit dated 2.11.2022, has submitted that it has not recovered LD from vendors for the delayed delivery of initial spares and since it is in the process of closing the contract with M/s BHEL, the details of recovery, if any, will be furnished at the time of truing-up of tariff for the period 2019-24. The Petitioner has however, furnished the year-wise value of capital spares capitalization on cash and accrual basis as under:

(Rs. in lakh)

Particulars	Cash basis	Accrual basis
UP to COD	415.96	415.96
COD to 31.3.2013	1684.45	1863.31
2013-14	1712.69	1716.24
2014-15	386.16	390.03
2015-16	1017.73	1017.73



Particulars	Cash basis	Accrual basis
2016-17	562.02	625.03
2017-18	2344.19	2448.03
2018-19	598.75	671.66

xxx.

34. It is observed that the Petitioner has claimed capital spares for Rs. 4385.54 lakh on accrual basis (Rs.3995.51 lakh, as on 31.3.2014 and Rs.390.03 lakh in 2014-15) within the cut-off date and Rs. 4762.44 lakh, on accrual basis (Rs.1017.73 lakh in 2015- 16, Rs. 625.03 lakh in 2016-17, Rs.2448.03 lakh in 2017-18 and Rs. 671.66 lakh in 2018-19) i.e. after the cut-off date, under Regulation 14(1)(iii) of the 2014 Tariff Regulations. It is observed that the Commission vide its order dated 3.3.2017 in Petition No. 280/GT/2014 had allowed initial spares amounting to Rs.386.16 lakh in 2014-15 as claimed by the Petitioner. In terms of Regulation 3 (29) read with Regulation 8 of the 2009 Tariff Regulations, the ceiling limit for capitalization of initial spares is 2.50% of the capital cost of the generating station, as on cut-off date. It is noticed that the capital cost allowed, as on 31.3.2015, is Rs. 257725.12 lakh on cash basis. Thus, the ceiling limit for capitalization of initial spares on accrual basis works out to Rs. 6500.66 lakh. However, the Petitioner has claimed initial spares for Rs.4199.26 lakh on cash basis (Rs. 4385.54 lakh on accrual basis) as on cut-off date and the same was allowed by the Commission earlier. It is also noticed that the Petitioner has not projected any claim for initial spares beyond the cut-off date in Petition No. 280/GT/2014, but has now claimed the same beyond the cut-off date along with supporting documents for certain items ordered within the cut-off date but delivered after the cut-off date, for Rs.998.46 lakh, including 80,965 Euro towards 'Control Fluid Pump' (considering the Euro @ INR 69). With regard to the recovery of LD for the delay in delivery of these items, the Petitioner has submitted that it has not withheld any payment or recovered any LD.

35. In consideration of the above submissions and keeping in view the necessity of initial spares for reliable operation of the generating station and that same is within the ceiling limit, we, in exercise of the powers under Regulation 54 of the 2014 Tariff Regulations, **allow the claim of the Petitioner towards initial spares for the years 2015-16 and 2016-17 only, i.e. beyond the cut-off date. However, the Petitioner is directed to furnish the details of de-capitalization of spares considered as part of the capital cost.**

In addition, the Petitioner is directed to take all necessary action against the concerned vendors for the delay in delivery of initial spares, including the recovery of LD and penalty, as applicable in terms of award, and furnish the same, along with supporting documents, at the time of truing up of tariff for the period 2019-24 and the same will be considered in accordance with law."

Submissions of the Review Petitioner

9. The Review Petitioner has submitted the following:

- (a) The Commission in the impugned order dated 11.1.2024 had not considered the capitalization of Rs 472.36 lakh of initial spares capitalized (on an accrual basis) in 2014-19. The Commission exercised its power to relax under Regulation 54 of the 2014 Tariff Regulations, while considering that the expenditure claimed towards initial spares (beyond the cut-off date) was within the permissible ceiling limits of Rs. 6500.66 lakh. However, the Commission inadvertently allowed the relaxation only for 2015-16 and 2016-17, amounting to Rs. 1642.76 lakh, and left out the balance amount of Rs 472.36 lakh.



(b) The aforesaid balance amount of Rs. 472.36 lakhs would be permissible under the ceiling limit of initial spares in terms of Regulation 8(i) of the 2009 Tariff Regulations, as well as the logic given by the Commission in Para 35, namely, that, the spares are necessary for reliable operation of the generating station and the relaxation is being permitted due to the final number being within the ceiling limit. However, this Commission has inadvertently restricted the relaxation to 2015-16 and 2016-17 alone. There is also no computation available, which is an apparent error and needs to be corrected. A table depicting the said error is given below-

Particulars	Amount (in Lakhs)
Permissible ceiling limit	Rs 6500.66
Initial spares as on the cut-off date allowed by the Commission	Rs 4385.54
Initial Spares beyond the cutoff date are allowed in the present Order	Rs 1642.76
Balance (left out)	Rs 472.36

(c) The Commission, by a conscious decision, exercised its power to relax under Regulation 54 of the 2014 Tariff Regulations, while considering that only the claim towards initial spares for 2015-16 and 2016-17 is allowed beyond the cut-off date as it was within the ceiling limit. However, the claim of initial spares for the said years was Rs. 1642.76 lakh. The balance initial spares of Rs 472.36 lakhs have been inadvertently left out of the total permissible ceiling limit of Rs. 6500.66 lakhs.

Analysis and Decision

10. We have examined the submissions and the documents on record. The cut-off date for the generating station is 31.3.2015. The Review Petitioner, in the main petition, submitted the details of initial spares amounting to Rs. 9147.99 lakh, on an accrual basis, from the COD of the generating station till 31.3.2019. This amount included an amount of Rs. 4385.54 lakh towards initial spares incurred up to the cut-off date (31.3.2015) and additional amounts of Rs.1017.73 lakh, Rs.625.03 lakh, Rs.2448.03 lakh, and Rs.671.66 lakh for the years 2015-16, 2016-17, 2017-18, and 2018-19, respectively. Under the 2014 Tariff Regulations, initial spares are allowed to be capitalized only till the cut-off date. However, the Commission, in exercise of its powers under Regulation 54 of the 2014 Tariff Regulations and after considering the necessity of initial spares for the reliable operation of the generating station, permitted the



capitalization of initial spares, beyond the cut-off date, only till the years 2015-16 and 2016-17. The ceiling limit for the capitalization of initial spares was worked out and allowed as Rs. 6500.66 lakh on an accrual basis. Accordingly, the Commission in exercise of its power under Regulation 54 of the 2014 Tariff Regulations, allowed the initial spares claim of the Review Petitioner, after the cut-off date (i.e., for the years 2015-16 and 2016-17) amounting to Rs 1642.76 lakh, in exercise of the powers under Regulation 54 of the 2014 Tariff Regulations, thereby resulting in the total capitalization of initial spares (on accrual basis) up to 31.3.2017, for Rs.6028.30 lakh, which was within the ceiling limit. The decision of the Commission not to exercise the said power under Regulation 54 of the 2014 Tariff Regulations for the period 2017-18, cannot, in our view, be construed as an inadvertent error, so as to review the impugned order. We therefore find no error apparent on the face of the impugned order, warranting review on this count. Accordingly, the review on this count is rejected as not maintainable.

(B) Non-consideration of Rs 324.95 lakh paid as incentive to the Coal company and Rs. 139.91 per MT of coal cost

Submissions of the Review Petitioner

11. The Review Petitioner has submitted the following:

(a) Firstly, the performance incentives have been denied by erroneously linking them to the actual generation versus the Normative Plant Availability Factor (NAPAF) in the "other charges" section. These incentives were based on coal delivery exceeding 90% of the annual contracted quantity, independent of actual generation levels. This decision overlooks factors such as coal quality and varied suppliers. Secondly, the miscalculated weighted average price of coal, which deviates from established methodologies, requires rectification. The Commission's calculation resulted in a figure of Rs 3861.76/kcal, whereas the same should be Rs 4001.67/kcal, thus necessitating a review and correction. The following are the detailed submissions:

Other Charges

(b) The 'other charges' claimed by the Review Petitioner for Performance Incentive charged by the Coal company is as per Clause 3.12.1 of Fuel Supply Agreements signed between the Review Petitioner and the Coal companies, as per which the performance incentive is payable when the seller delivers coal in excess of 90% of the Annual Contracted Quantity (ACQ). The above fact has been noted by the Commission in Para 120 of the impugned order, but in Para



126, an error has crept in, by relating these charges to the actual generation corresponding to NAPAF.

“In this context, it is noticed that the existing regulations provide for working capital with regard to NAPAF and the actual generation during 2012-13 and 2013-14 is lower than generation at NAPAF i.e. the PLF of FSTPS is 63.5% in 2012-13 and 72.18 % in 2013. Accordingly, the claim made for incentive given to coal company has not been considered for working capital.”

(c) The Commission has linked the actual generation of the plant to generation corresponding to the NAPAF. Since the Project receives coal from various coal companies like ECL (both Raniganj and Non-Raniganj area), BCCL, CCL, MCL, and NECL to meet its recommended stock with GCV's varying in the range from W-IV to G1, it is erroneous to link the coal consumed for actual generation with quantity directly, since quality plays a crucial role for such an eclectic mix of coal. Hence, the Review Petitioner requested to reconsider the assumption that a lower generation is linked with a lower specific coal and consequently a lower coal quantity.

(d) Further, there are multiple FSAs with coal companies as mentioned above. Accordingly, the quantity supplied by one coal company is not sufficient to cater to the quantity required for meeting 85% NAPAF. In such a case, if any coal company has supplied the coal quantity that entitles it to receive an incentive as per the provision of FSA, it does not mean that the overall coal supplied is more than that required to meet 85% NAPAF. Also, the performance incentive is payable by a generator as per the FSA signed with the coal company, as per the bill raised by them. Thus, if the incentive was paid in Jan'14, it formed a part of Form'15 of Jan'14 as should be the case.

(e) Accordingly, there is no rationale behind denying the incentive charges paid by the Review Petitioner to the coal company (as per FSA agreement) for the period from January 2014 to March 2014, and it has to be factored in for the determination of interest on working capital.

Weighted Average Price of Coal

(f) For computation of weighted average price of coal (i.e. Rs 4001.67kcal/kg), the Review Petitioner has adopted the methodology decided by this Commission in its Order dated 15.12.2017 in Petition No. 28/RP/2017 in Petition No. 322/GT/2014 [Sipat Super Thermal Power Station Stage-II (1000 MW) for the period from 1.4.2014 to 31.3.2019]. The relevant portion of the order is quoted below-

	Wt. Avg. Price of Coal	January' 2014		February'2014		March' 2014		Total
		Domestic	Imported	Domestic	Imported	Domestic	Imported	
a	Qty (MT)	1557639.63	110182.83	1400042.97	-	1418275.08	45351.72	4531492.23
b	Amount (Rs.)	2575092981	857575341	2513171984	-	3033115941	304042137	9282998384
c	GCV (kCal/kg)	4395.00	6340.00	4390.00	-	4582.00	5728.00	
d	Weighted average landed price = (b/a) (Rs./MT)							2048.55
e	GCV x Qty = (a x c)	6845826173.85	698559142.20	6146188638.30	-	6498536416.56	259774652.16	20448885023.07
f	Weighted average GCV = (e/a) (kCal/Kg)							4512.62



(g) The Commission has, however, without any calculation, arrived at the figure of 3861.76 kcal/kg instead of 4001.67 kcal/kg, which was specifically prayed by the Review Petitioner, following the consistent approach in all its stations and the Sipat order (supra). From a perusal of Form-15, it is clear that for the period January – March 2014, the weighted average price of coal cannot work out to be 3861.76 kcal/kg.

(h) As the court of first instance, there cannot be any inconsistency in the methodologies adopted by the Commission for calculating the weighted average price of coal. Consideration of the weighted average price of coal as Rs 3861.76 / kg instead of the claim for Rs 4001.67/kg is an error apparent on the face of the order, which is a sufficient ground for review.

(C) Non-consideration of Rs 75 lakh in Water charges paid to Farakka Barrage Authority in 2018-19

12. The Review Petitioner has submitted the following:

(a) The Commission in the impugned order had inadvertently deducted an amount of Rs 75 lakh from the Water charges for the year 2018-19 for the generating station. The claim for Rs 673.16 lakh for the said year was bifurcated into Rs 118.08 lakh for the period from April 2018 to September 2018 and Rs 555.08 lakh for the period from October 2018 to March 2019, supported by a Ministry of Water Resources letter dated 20.1.2019, indicating increased water rates. Further, the auditor-certified water charges for 2018-19, totaling Rs 2705.36 lakh, were submitted, yet the Commission's order on 17.4.2023 approved only Rs 2031.51 lakh, leaving a balance amount of Rs 673.16 lakh unapproved for Stage-III. The Petitioner argues that this oversight, contrary to the 2014 Tariff Regulations, justifies a review, since it results in a financial loss of Rs 75 lakh.

(b) The auditor certified figure of Rs 2705.36 lakh was paid as Water charges for the generating station in 2018-19, out of which the Commission allowed an amount of Rs 2031.51 lakh in its order dated 17.4.2023 in Petition No. 698/ GT/2020 (truing-up of tariff of Farakka Super Thermal Power Station Stages I & II, for the period 2014-19). The Review Petitioner claimed the remaining amount of Rs 673.16 lakh in the main petition. Hence, denying the actual charges paid for this generating station during the year 2018-19, which are reimbursable as per the 2014 Tariff Regulations, is an error apparent, resulting in a loss of Rs 75 lakh and is a sufficient ground for review.

Analysis and Decision

13. We have examined the submissions of the Review Petitioner on the issues raised in items B and C above. As regards the calculation of 'other charges' and Weighted Average Price of Coal, the Commission in the impugned order has observed the following:



126. As regards the breakup of the 'other charges' furnished, it is noticed that in January, 2014, these charges include an incentive of Rs. 3,24,95,343 /- (Rs. 3.25 crore) paid towards coal company for coal supplied beyond 90% of ACQ. However, the Petitioner has not provided any details regarding the ACQ, actual quantity supplied, the reasons for incentive for coal supply beyond 90% of ACQ, rather than 100% ACQ, period for which it is associated with, the reasons for considering this annual charge in working capital, loading the complete amount in January, 2014 alone etc., In this context, it is noticed that the existing regulations provide for working capital with regard to NAPAF and the actual generation during 2012-13 and 2013-14 is lower than generation at NAPAF i.e. the PLF of FSTPS is 63.5% in 2012-13 and 72.18 % in 2013 -14. Accordingly, the claim made for incentive given to coal company has not been considered for working capital. Further, the generating station has an MGR system, but the Petitioner has not furnished the break -up of domestic coal received (i.e. through MGR and through Indian Railways), and thus the normative losses are restricted to 0.2 %. The Petitioner has furnished secondary fuel details inclusive of opening stock, but the weighted average GCV and weighted average cost of secondary fuel claimed in the present petition are in variance with those claimed in Petition No. 698/GT/2020, for which no reasons have been furnished by the Petitioner.

127...after considering the claims, relevant regulations, including on blending ratio and on prudence check, the weighted average GCV and weighted average cost of primary as well as secondary fuel for January, 2014 to March, 2014, are determined. In addition, all other operational norms such as NAPAF, Station Heat Rate (SHR), Auxiliary Energy Consumption, Secondary Fuel etc, have been considered as deliberated in preceding paras. Accordingly, various parameters, considered for calculation of working capital is as follows:

	Unit	2014-19
Capacity	MW	500
Gross Station Heat Rate	kCal/kWh	2436.62
Auxiliary Energy Consumption	%	5.75%
Weighted average GCV of oil	kCal / lit	9616.43
Weighted Average GCV of Coal	kCal / kg	3654.86
Weighted average price of oil	Rs. / kL	49578.55
Weighted average price of Coal	Rs. / MT	3861.76
NAPAF	2014 - 17	83 %
	2017 - 19	85 %

14. Similarly, as regards Water charges, the Commission in the impugned order observed as under:

"74. As per the submissions of the Petitioner, the claim for water charges is based on actual water consumption. It is however noticed that though water charges have increased in terms of the letter dated 21.1.2019 of Ministry of Water Resources, the Petitioner has claimed revision in the rate of water charges since October, 2018 and has also **not furnished any reasons/supporting documents in support of the revision in water charges from 1.10.2018 to 20.1.2019**. It is further noticed that the source of water for all stages of Farakka STPS i.e. Stage I, II and III is Farakka Barrage Project, and while the generating station i.e. FSTPS Stage III had closed cycle of circulating water system, Stages I & II has open cycle of cooling water system. However, no details of the apportionment of water quantity among Stage I & II and III has been provided by the Petitioner. It is however observed that the Petitioner, in Petition No. 698/GT/2020 (truing-up of tariff for the period 2014-19 for Farakka STPS, Stages I & II), has claimed the rate of water charges as Rs. 2.929 / m³ in 2018-19. Considering the said rate, the rate of water charges allowed



is Rs. 2.929 / m³ in 2018–19 for this generating station. Accordingly, the water charges allowed to the generating station for the period 2014-19 is as under:

	2014-15	2015-16	2016-17	2017-18	2018-19
Actual Water Consumption (1000 m ³)	18611.14	17121.57	20174.28	18898.18	20414.77
Rate (Rs./ 1000 m ³)	1143.86	1143.86	1143.86	1143.86	2929.29
Water CHARGES (Rs. In Lakh)	212.89	195.24	230.55	216.17	598.01

Analysis and Decision

15. It is evident from the above that the Commission, after detailed deliberations, had worked out and considered the weighted average price of coal and also rejected the claim of the Review Petitioner for consideration of the incentive given to the coal company for working capital. It is not the case of the Review Petitioner that there are errors in the calculation of the weighted average landed price of coal, but the Review Petitioner has only challenged the methodology adopted for the calculation of the weighted average landed price of coal. Similarly, the Commission, while considering the prayer of the Review Petitioner for the grant of water charges, had examined the claim of the Review Petitioner and observed in the impugned order, that it had not furnished the basis for revision of the water charges and also not provided the details of the apportionment of water quantity among Stage I & II and III. In our considered view, the Review Petitioner has sought to re-argue the case on its merits, which is not permissible in review. The Review Petition has a limited purpose and cannot be an appeal in disguise. It is a settled proposition of law as enunciated in terms of the judgment of the Hon'ble Supreme Court in *Parsion Devi v Sumitra Devi* (1997 8 SCC 715) that the review proceedings are not by way of an appeal and have to strictly confine to the scope and ambit of Order 47 Rule 1 of CPC 1908 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. An error that is not self-evident and has to be detected through 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 review have also been enunciated by the Hon'ble Supreme Court in



its judgment in Kamlesh Verma v. Mayawati and ors. (AIR 2006 SC 75). We, therefore, find no reason to allow the Review Petition on this count. Accordingly, we hold that the prayer of the Review Petitioner for review of the impugned order on these counts is not maintainable.

16. Issues (A), (B), and (C) are disposed of accordingly.

17. Review Petition No. 10/RP/2024 (in Petition No. 391/GT/2020) stands disposed of in terms of the above.

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

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

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

