

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/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: 10th June, 2025

In the matter of:

Petition for review of the Commission's order dated 11.1.2024 in Petition No. 391/GT/2020-pertaining to revision of tariff of Farakka Super Thermal Power Station Stage-III (500 MW) for the period 2014-19, after truing-up exercise.

And

In the matter of:

GRIDCO Limited
Vidyut Bhawan, Janpath,
Bhubaneswar- 751022

.....Review Petitioner

Vs

1. NTPC Limited,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road, New Delhi-110003.
2. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan, Block-DJ, Sector-II, Salt Lake City Kolkata-700091.
3. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road, Patna – 800001
4. Jharkhand Bijlee Vitaran Nigam Limited,
Engineering Building, HEC Township, Dhurwa, Ranchi-834004.
5. Damodar Valley Corporation,
DVC Towers, VIP Road, Kolkata-700054.

.....Respondents

Parties Present:

Shri Raj Kumar Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri Venkatesh, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Kunal Veer Chopra, Advocate, NTPC
Ms. Vanshika Saraf, Advocate, NTPC



ORDER

Petition No. 391/GT/2020 was filed by the Respondent NTPC Limited, for truing-up of tariff of Farakka Super Thermal Power Station, Stage-III (500 MW) (in short 'the generating station') 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, GRIDCO, has filed this Review Petition on the ground that there is an error apparent on the face of the record on the following issue:

- a) Computation of the Interest on Working Capital (IoWC) on the basis of 'as received' GCV of coal for the months from January, 2014 to March 2014, as submitted by NTPC.*

Hearing of the Review Petition

2. The Review Petition was heard 'on admission' on 4.4.2024, and the Commission, after hearing the learned counsel for the Review Petitioner, issued notice on 'admissibility' with directions to the parties to complete pleadings in the matter. Thereafter, the Review Petition was listed for hearing on various dates, viz. 29.8.2024, 8.10.2024, 23.10.2024, 28.11.2024, and 14.1.2025, but was adjourned on account of various reasons viz., request for adjournment, filing of rejoinder, and due to paucity of time.

Hearing dated 6.2.2025

3. During the hearing of the review petition on 6.2.2025, through virtual hearing, the learned counsel for the Review Petitioner and the learned counsel for the Respondent argued the matter at length. The Commission, after permitting the parties to file their short note of arguments, reserved its order in the review petition. In compliance thereof, the Review Petitioner and the Respondent NTPC have filed their note of arguments on 5.2.2025 and 27.2.2025, respectively.



4. Based on the submissions of the parties and the documents on record, we proceed to examine the issue raised in the review petition in the subsequent paragraphs.

Computation of the Interest on Working Capital (IoWC) on the basis of 'as received' GCV of coal for the months from January, 2014 to March 2014, as submitted by NTPC

Submissions of the Review Petitioner

5. The Review Petitioner in the Review Petition has mainly submitted as under:

a) As per Regulation 28 (2) of the 2014 Tariff Regulations, the cost of fuel is to be arrived based on the landed price of coal and GCV of the fuel as per actuals, for the three months preceding the first month for which the tariff is to be determined. Further, as per Regulation 30 (6) of the said regulations, the GCV of coal is on an 'as received' basis.

b) In Para 76 of the Commission's order dated 3.3.2017 in Petition No. 280/GT/2014, the Commission observed that the Respondent, NTPC, had not placed on record the GCV of coal on an 'as received basis' though the Respondent was statutorily required to furnish such information with effect from 1.4.2014. The Commission also directed the computation of the fuel components and energy charges in the working capital, by provisionally taking the GCV of coal on as a 'billed basis' and allowing an adjustment for total moisture, as per the envisaged formula. ECR was, therefore, calculated provisionally based on 'as billed' GCV of coal for January 2014 to March, 2014, which should have been adjusted by NTPC for total moisture based on the adjustment formula, and accordingly, the Energy Charge Rate (ECR) had to be determined.

c) The data furnished in Form-15 of Petition 391/GT/2020 (for Farakka STPS-III- this generating station) and Form-15 of Petition No. 698/GT/2020 (for Farakka STPS-I & II) are the same, wherein NTPC clearly stated as "NTPC does not have Infrastructure for measuring the representative figures of 'as received' GCV for the above months". It is evident that NTPC did not have any infrastructure for sampling of coal on an 'as received' basis for the months of January 2014, February 2014, and March 2014. In case, NTPC had measured the GCV of coal on 'as received' basis and shared the same with the Review Petitioner, there is no reason why it could not produce the same during the period 2014-19 or reflect the same in Form-15 of the Regulations or submit the same in the truing-up petition.

d) Even though in the tariff order dated 3.3.2017, the Commission directed that NTPC would determine the 'as received' GCV of coal by using 'as billed' GCV of coal in the moisture adjustment formula, NTPC, in violation of the said order, has



taken the so-called 'as received' GCV of coal on Equilibrated Moisture (EM) basis'(said to have been measured at their generating station end) in the said moisture adjustment formula to arrive at the 'as received' GCV of coal.

e) There is a huge difference between the 'as billed' GCV (EM basis) furnished with Form-15 of the truing-up Petition and the 'GCV of coal received (also on EM basis)' furnished by NTPC for the months of January 2014, February 2014 and March 2014 in their additional submission dated 28.6.2021. There is a huge difference of 1579.71 kCal/kWh between the as billed' GCV (EM basis) furnished with Form-15 and the 'GCV of coal received (also on EM basis), and also the data furnished by NTPC is erroneous as the GCV on 'as received' on TM basis is lower than the 'GCV as fired', violating the basic principles and methodology of GCV determination.

f) The observations of the Commission in para 125 of the impugned order, clarify that the data on GCV furnished by NTPC is erroneous and based on assumptions and hence cannot be considered for the computation of IoWC. In the impugned order, the Commission has deviated from the methodology as specified by it in the tariff order dated 3.3.2017 to arrive at the 'as received GCV' of coal. While in the tariff order, the Commission directed the determination of 'as received GCV' of coal, based on the adjustment formula, in the impugned order, it has adopted the so-called 'as received GCV' data furnished by NTPC, which were never submitted during the proceedings for tariff determination nor was shared with the Review Petitioner with the bills or furnished in the truing-up Petition or reflected in Form-15 of the Regulations.

g) The Commission has considered the data submitted by NTPC in its additional submissions, assuming that the same were submitted to be on 'GCV of coal, on 'as received basis' in terms of the Third amendment to the 2009 Tariff Regulations, despite the fact that NTPC admittedly had no infrastructure for sampling of coal for the determination of GCV on 'as received' basis for the months of January, 2014, February, 2014 and March, 2014.

h) The data accepted by the Commission does not correspond to the actual coal sampling on an 'as received' basis. There are significant discrepancies between NTPC's 'as billed' GCV and the 'as received' GCV accepted by the Commission, leading to an increase in the ECR. The erroneous acceptance of the data has resulted in a higher IoWC and an inflated ECR.

6. Accordingly, the Review Petitioner submitted that the IoWC computation may be reviewed, considering the correct methodology specified in the 2014 Tariff Regulations, and as directed by the Commission in its earlier orders.



Reply of the Respondent, NTPC

7. The Respondent, NTPC, vide its reply affidavit dated 23.5.2024, submitted the following:

- a) The Review Petition is not maintainable as the Review Petitioner has failed to demonstrate any of the three essential ingredients of review, viz. (a) 'error apparent'; (b) 'sufficient cause'; and/or (c) 'discovery of new facts'.
- b) The Hon'ble Supreme Court in a catena of judgments held that a review petition cannot be used to reargue the merits of evidence, effectively transforming the review into an appeal. A review is not a rehearing of the original matter; it cannot correct all errors like an appellate authority can. It is only for exceptional cases and must be approached with caution. The prayers sought by the Review Petitioner are beyond the scope of the powers conferred by the Courts under Review jurisdiction. Thus, only on this ground, the present Petition should be dismissed at the very threshold.
- c) The Review Petitioner has not approached this Commission with clean hands and has disclosed that various appeals have been filed by the Review Petitioner before the APTEL, thereby raising a similar ground. However, the same is for a different generating station, but the principal issue challenged therein is the same. The Review Petitioner has indulged in forum shopping and has also raised a similar issue in Appeal No. 258/2022 filed by it before the APTEL.
- d) The issue raised by the Review Petitioner in the present petition qua the IoWC on the basis of 'as billed' GCV of coal for the period of January 2014, to March 2014 is an issue which falls for consideration in Appeal No. 258/2022. Notably, all the appeals in question have been filed by the Review Petitioner before the APTEL. When an issue which is *sub judice* before a superior court, the lower court must refrain from considering the said issue till the adjudication of the matter in its entirety by the superior court. Therefore, the present petition is not maintainable at all.
- e) Even otherwise, this Commission *vide* the impugned order observed that the GCV of coal on an 'as received' basis, which was submitted by NTPC for the months of January 2014 to March 2014, was taken into consideration, after a prudence check, while passing the impugned order. This Commission, after doing a prudence check of the GCV value of coal on an 'as received' basis, which was submitted by NTPC, considered the appropriate value of GCV of coal for the computation of IoWC. Therefore, there is no error apparent, and hence the present Review Petition is not maintainable.
- f) The reliance placed on the Hon'ble Supreme Court judgments in C.A. No. 4324/2015 and 4323/2015 (BRPL v DERC and BYPL v DERC) is not applicable, as it was never the case of NTPC for seeking the truing-up exercise to be done



in a retrospective manner, so as to alter the tariff determination methodology. Instead, it is the case of NTPC that it has, at no point in time, acted in a manner which could retrospectively apply the truing up exercise, for the purposes of determination of tariff.

- g) By the 3rd Amendment to the 2009 Tariff Regulations, this Commission prescribed the obligation on the part of the generating companies to provide the details of weighted average GCV of coal procured by the generating companies as well as to publish the same on a monthly basis for a period of three months on their respective websites. Albeit, the express obligation cast upon the generating companies to publish/host the data pertaining to the GCV of coal on an 'as received' basis in terms of second proviso to Regulation 21(6) of the 2009 Tariff Regulations, the same was silent on aspect of the methodology/suitable infrastructure required for measurement of GCV on an 'as received' basis. Despite the same, NTPC commenced with the hosting of requisite data on its website, based on manual sampling at the relevant point in time.
- h) This Commission vide its order dated 25.1.2016 issued a suitable methodology/infrastructure required for measurement of GCV of coal on 'as received' basis. By virtue of the aforesaid order, it is suffice to state that to develop and/or build the necessary infrastructure for the measurement of GCV of coal on "as received" basis came into existence only on 25.1.2016. Hence, NTPC, in Form 15 filed along with its truing petition stated that it did not have "infrastructure for measuring the representative figures of as received GCV" for the aforesaid months.
- i) NTPC had furnished the requisite details *vide* its additional submissions dated 28.6.2021 at the stage of adjudication of the truing up Petition. It was only on the basis of the said data that this Commission passed the impugned order, while computing the IoWC on the basis of the 'as received' GCV data of coal for the aforesaid months, i.e., January, 2014 to March, 2014. Thus, as a logical sequitur, once this Commission has already computed the IoWC on the basis of the data furnished by NTPC, the question of not having adequate infrastructure does not arise in the present case.
- j) This Commission vide its order dated 3.3.2017 in Petition No. 280/GT/2014 in respect of this generating station for the period 2014-19 had taken into consideration the provisional GCV value of coal on "as billed basis". This means that the aforesaid was an ad hoc interim arrangement taken by this Commission. In light of the aforesaid submissions, the impugned order passed by this Commission holds good in law.
- k) The orders passed by this Commission in various petitions involve different stations of the Respondent, the details of which are as follows:
Xxx

From a perusal of the above list of orders passed by this Commission, it is clear that this Commission has taken a consistent view with regard to the



issue at hand. Therefore, the present Petition cannot be given a different position as it would be bad and perverse, as this Commission had already decided the said issue for several other stations of the Respondent in the aforesaid petitions. It is not error apparent when the Courts are taking a consistent view in different matters

- l) For a proper appreciation of the case, the following is noteworthy: On 10.9.2014, NTPC filed Petition No. 283/GT/2014 for approval of the tariff of Kahalgaon STPS, Stage-II, for the period of 2014-19 in accordance with the provisions of the 2014 Tariff Regulations. In the said petition, the Review Petitioner had claimed cost for fuel components in loWC based on 'as fired' GCV of coal procured and burnt in the months of January 2014 to March 2014.
- m) During the pendency of the said tariff petition, this Commission directed NTPC to submit the GCV of coal on an 'as received' basis in accordance with Regulation 28(2) of the 2014 Tariff Regulations. However, this Commission vide its order dated 25.1.2016 in Petition No. 283/GT/2014, inter-alia, held that the most appropriate method for computation of Energy Charge Rate is on the basis of the measurement of GCV of coal on 'as received' basis, which is in line with the 2014 Tariff Regulations.
- n) Being aggrieved by the said order, NTPC sought review of the order dated 25.1.2016 in Review Petition No. 11/2016, which was disposed of as rejected on 30.6.2016. Since NTPC was facing difficulties in implementing the directions in the orders dated 25.1.2016 and 30.6.2016, NTPC filed Petition No. 244/MP/2016 for removal of difficulties in implementing Regulation 30(6) of the 2014 Tariff Regulations, and the same is pending consideration. On 15.1.2020, NTPC filed the petition for truing up of the tariff of this generating station for the period 2014-19 in terms of Regulation 8 of the 2014 Tariff Regulations. However, this Commission in several other tariff petitions of NTPC had sought the data as per the third Amendment to the 2009 Tariff Regulations, for determination of loWC under Regulation 28 of the 2014 Tariff Regulations.
- o) In the additional submissions dated 28.6.2021 filed by NTPC in the truing-up petition, submitted the following:
 - (i) Re-affirming its case for relaxation under the Tariff Regulations;
 - (ii) Also provided the data for January 2014 to March 2014 in accordance with the third amendment of the 2009 Tariff Regulations. As per the directions of the Commission, wherein the GCV of coal on 'as received' basis was to be used for the computation of loWC, for the period of January 2014 to March 2014, NTPC had uploaded the said data on its website.
- p) Thus, keeping in view the consistent stand taken by the Commission in its previous orders, the Commission passed the impugned order, while computing the loWC as per the data furnished by NTPC vide its additional submissions



dated 28.6.2021, in respect of the aforesaid three months, viz. January 2014 to March 2014, in terms of Regulation 30(6) read with Regulation 28 of the 2014 Tariff Regulations.

- q) In fact, this Commission *vide* its order dated 19.2.2016 in Petition No. 33/MP/2014, decided the fate of the subject matter involved herein and held as under:

“45. In the light of the various issues discussed in this order, the following directions are issued for compliance by all generating companies whose tariff is determined by the Commission for strict compliance:

xxx.

(g) As per the 2014 Tariff Regulations, energy charge shall be charged by the generating companies from the beneficiaries based on the computation of GCV at the unloading point at the generating station. Therefore, as per the extant regulations, the grade slippage between the loading point at the mines” end and unloading point at the generating stations is passed on through tariff. The beneficiaries are required to pay on the basis of the GCV of coal on as received basis. All generating companies shall institute the mechanism and install the facilities for measurement of GCV of coal on as received basis if not already done and take measurement of GCV on as received basis and share the same with the beneficiaries in terms of Regulation 30(7) of 2014 Tariff Regulations.

(h) Billing to the beneficiaries shall be done strictly in accordance with GCV on as received basis.

- r) In view of the above order, it is clear that the present dispute does not require any intervention of this Commission, as the view put forth by this Commission is clear and is applicable to the Review Petitioner.

Rejoinder of the Review Petitioner

8. In response to the above, the Review Petitioner *vide* its rejoinder affidavit dated 4.10.2024, mainly submitted as under:

i) The objections raised by NTPC to the maintainability of the Review Petition is misconceived and untenable. The impugned order dated 11.1.2024 to the extent of computation of loWC on the basis of ‘as received’ data of GCV of coal for the months of January 2014, February 2014 and March 2014 submitted by NTPC suffers from ‘errors apparent’ and also falls under the expression ‘for any other sufficient reason’ in Order 47 Rule 1 CPC as interpreted by the Hon’ble Supreme Court in the judgments, viz., BCCI vs. Netaji Cricket Club (2005) 4 SCC 741; and Lily Thomas vs. Union of India (2000) 6 SCC 224.

ii) Review Petition Nos.16/RP/2023 and 20/RP/2023 have been filed by GRIDCO against the truing-up orders of the Commission in Petition No. 392/GT/2020 and 698/GT/2020 respectively for TSTPS-II and FSTPS-I & II. GRIDCO has filed Appeal No. 258/2022 before the APTEL challenging the order dated 21.4.2022 in Petition No. 362/GT/2020 (pertaining to truing-up of tariff of Kahalgaon STPS, Stage-II for the period 2014-19 which is pending. Appeal and Review Petitions have been filed by GRIDCO against the orders of the Commission in truing-up in respect of the different generating stations. In any event, there is no bar against filing of appeal and Review Petition against



the different orders and for the different generating stations, even if the Issue involved is the same.

a) The Review Petitioner, in its note of arguments dated 6.10.2022, highlighted a significant difference in the GCV of coal to the extent of 1580 kCal/kg between the billed GCV (Equilibrated basis) and the GCV measured by NTPC at their end (also on Equilibrated basis). Further, the Review Petitioner pointed out to the lack of infrastructure at the generating station, for sampling coal on an 'as received' basis. However, these submissions are not reflected in the impugned order. It has been held by Hon'ble Supreme Court that the non-consideration of the submissions is a ground for review of the impugned order.

b) The Commission, in para 76 of the order dated 3.3.2017 in Petition No. 280/GT/2014, directed the provisional computation of ECR based on 'as billed' GCV of coal, with adjustments for total moisture, using the prescribed adjustment formula. Instead of following this methodology, the Commission considered NTPC's assumed 'as received GCV' for the IoWC computation, which is contrary to the judgement dated 18.10.2022 of Hon'ble Supreme Court in BYPL-V -DERC & ors (C.A No. 4323/2015), wherein, it has held that the retrospective changes in the tariff determination methodology during 'truing-up' are impermissible.

c) The 2nd Proviso to the 3rd amendment to the 2009 Tariff Regulations, stipulates that "*provided further that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and weighted average GCV of the fuels as received shall also be provided separately with the bills of the respective month.*" NTPC failed to furnish the 'as received GCV' data of coal to the Review Petitioner, with bills of the respective months, in terms of the aforesaid regulations and has instead, stated, that it had uploaded the data on its website, despite being aware that the said data will not be available on their website after a gap of nearly 9 years.

d) The 'as received GCV' data of coal for the months of January 2014, February 2014 and March 2014 appears to be assumed for the reason that if NTPC had measured the 'as received GCV' of coal for the said months, it could have:

i. Furnished the GCV with the bills for the above months as per 2nd Proviso to 3rd Amendment to the 2009 Tariff Regulations;

ii. Provided the said GCV data during the tariff proceedings for the period 2014-19. Instead, NTPC provided the GCV data on 'as fired basis' during the tariff proceeding.

iii. Submitted the GCV data in Form 15 with the truing-up petition. Instead, in the truing-up petition, NTPC submitted the 'as Received GCV' values from October, 2016 to March, 2019 with the prayer that average of the said GCV values less 100 kCal/kg, may be considered towards the computation of Interest on Working Capital.

iv. Provided the said GCV data in Form-15 submitted with the truing-up petition



From the above, it is evident that NTPC had not determined the 'as received GCV' of coal in accordance with 3rd Amendment to the 2009 Tariff Regulations, up to September, 2016 and instead it had measured the GCV on 'as fired' basis.

e) In Form 15 of Petition No. 698/GT/2020 for FSTPS- I & II (Form 15 for FSTPS- I & II and FSTPS- III are same), NTPC had clearly stated that it did not have the infrastructure for measuring the representative figures of 'as received' GCV for the months of January 2014 to March 2014. Further, in para 29 (d) of the Commission's order dated 19.2.2016 in Petition No. 33/MP/2014, it was observed by the Commission that there was absence of facilities for taking and testing samples on 'as received' basis. NTPC appears to be trying to get over / cover up its failure to set up the infrastructure (whether manually or through Hydraulic Augur) for sampling of coal on 'as received basis' to justify the assumed 'as received' GCV data of coal for the months of January 2014, February 2014 and March 2014 as submitted by it subsequently. The IS:436 (Part 1/Section 1) 1964, has prescribed for coal sampling on 'as received' basis from the loaded wagons at the generating stations, either manually or through Hydraulic Augur.

9. The Review Petitioner and the Respondent NTPC have mainly reiterated its submissions in their note of arguments. However, the Review Petitioner in its note of arguments has also submitted that there is a huge difference between the 'as billed' GCV (EM basis) furnished with Form-15 of truing-up petition and the 'GCV of Coal received (also on EM basis)' furnished by NTPC for the months of January 2014, February 2014 and March 2014 in their additional submission dated 28.6.2021. It has also contended that NTPC has assumed a lower GCV (said to be 'as Received' GCV on EM basis), which results in a reduction of 938.47 kCal/kg, 1019.92 kCal/kg & 1479.27 kCal/kg of 'as received' GCV of coal for the months of January 2014, February, 2014 and March, 2014 respectively; The Review Petitioner has stated that such reduction in GCV from 4747.55 kCal/kg (as per above table) to 3654.86 (as per Commission's approval in the impugned order) would result in an increase of 60 paise/ kWh in ECR.



Analysis and Decision

Computation of the Interest on Working Capital (IoWC) on the basis of 'as received' GCV of coal for the months from January 2014 to March 2014

Maintainability

10. Before proceeding to consider the issue raised by the Review Petitioner, we examine the submissions of NTPC that the present petition is not maintainable, on the count that the issue raised by the Review Petitioner in the present petition, qua the IoWC on the basis of 'as billed' GCV of coal for the period of January, 2014, to March, 2014 is an issue which falls for consideration in Appeal No. 258/2022 filed by the Review Petitioner before APTEL and that when an issue which is *sub judice* before a superior court, the lower court must refrain itself from considering the said issue till the adjudication of the matter in its entirety by the superior court. *Per contra*, the Review Petitioner has argued that the Review Petition is maintainable, since there is no bar against the filing of an Appeal and a Review Petition against the different orders of the Commission and for different generating stations of NTPC, even if the issues involved is the same.

11. We have examined the matter. It is noticed that against the Commission's order dated 21.4.2022 in Petition No.362/GT/2020 (truing up of tariff of Kahlagaon STPS, Stage-II for the period 2014-19), the Review Petitioner has filed Appeal No.258/2022 before APTEL on the issue viz., computation of IoWC on the basis of 'as billed' GCV of coal for the period of January 2014, to March 2014. The present Review Petition filed by the Review Petitioner is against the impugned order dated 11.1.2024 in respect of truing-up of the tariff of Farakka STPS, Stage-III for the period 2014-19, being considered in this order. It is therefore evident that the appeal filed by GRIDCO before APTEL is in respect of the Commission's order for a generating station (Kahalgaon STPS), which is different from the Commission's order in respect of a generating station



(Farakka STPS) involved in the Review Petition. As rightly pointed out by the Review Petitioner, even if the issues involved are the same, there is no bar for the filing and consideration of an appeal and a Review Petition in respect of the different orders of the Commission for different generating stations of NTPC. There is also no interim order/directions of the superior court (APTEL), in the present case, barring the Commission from considering the said issue, which has been raised in the Review Petition. In this backdrop, we find no reason to reject the review petition as not maintainable, on this count. Accordingly, we proceed to examine whether the issue raised by the Review Petitioner is maintainable on merits, as stated in the subsequent paragraphs.

Merits

12. The main contention of the Review Petitioner is that the Commission has considered the data submitted by NTPC in the additional submission, assuming that the same were submitted to be on 'GCV of coal on an 'as received' basis, in terms of the 3rd Amendment to the 2009 Tariff Regulations, in spite of the fact that NTPC admittedly had no infrastructure for sampling of coal for the determination of GCV on an 'as received' basis for the months of January, 2014, February, 2014 and March, 2014. *Per contra*, NTPC has contended that though the third amendment to the 2009 Tariff Regulations dated 31.12.2012, cast obligation upon the generating companies to publish/host the data pertaining to the GCV of coal on an 'as received' basis in terms of the second proviso to Regulation 2(6) of the 2009 Tariff Regulations, the same was silent on aspects of the methodology/ suitable infrastructure required for measuring the GCV of coal on 'as received' basis and despite this, NTPC commenced hosting the said data on its website based on manual sampling at that time. Pointing out that the necessary infrastructure for measuring the 'as received' GCV of coal came into



existence only on 25.1.2016 (after the Commission's order in Petition No. 283/GT/2014), NTPC has clarified that, hence, in Form 15, it was mentioned that it did not have the infrastructure for measuring the figures of 'as received GCV' for the aforesaid months. While stating that the provisional GCV value of coal 'on billed' basis, as considered in the Commission's order dated 3.3.2017 in Petition No.280/GT/2014 (tariff approval of this generating station for the period 2014-19), was an adhoc interim arrangement as decided by this Commission, NTPC has submitted that pursuant to the directions of this Commission, through ROP of the hearing of various other tariff petitions covering the generating stations of NTPC, to submit the details of the GCV on 'as received' basis for the months of January 2014 to March 2014 (as uploaded on its website and shared with the beneficiaries in terms of the third amendment to 2009 Tariff Regulations), NTPC furnished the details vide its additional submissions dated 28.6.2021 at the time of truing up of tariff, based on which the impugned order was passed. Accordingly, NTPC has argued that once the Commission had computed the loWC on the basis of the data furnished by NTPC, the question of the absence of adequate infrastructure does not arise.

13. We have examined the submissions. It is pertinent to mention that the 3rd amendment to the 2009 Regulations was silent on the methodology/infrastructure suitable for the measurement of GCV of coal on an 'as received' basis. It was only in compliance of the direction of the Hon'ble High Court of Delhi (in W.P. No. 1641/2014 filed by NTPC) that the Commission vide its order dated 25.1.2016 in Petition No. 283/GT/2014 clarified that the measurement of GCV of coal on an 'as received basis' shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur. However, as NTPC could not comply with the directions contained in aforesaid order, while filing Petition No.280/GT/2014 (tariff for 2014-19 for this



generating station), the Commission vide its order dated 3.3.2017, computed the fuel components and the energy charges in the working capital by provisionally taking the GCV of coal on as “billed basis” and allowed an adjustment for total moisture as per the formula given thereunder. Thus, in order to decide the said issue finally, at the time of truing up of tariff of the generating stations of NTPC for 2014-19, including this station, the Commission, vide ROP of the hearing of the petitions, sought the additional information, directing NTPC to submit the details of the GCV on an ‘as received’ basis for the months of January 2014 to March 2014, which was uploaded on its website and shared with the beneficiaries in terms of the third amendment to 2009 Tariff Regulations. It is pursuant to this that NTPC submitted the requisite details vide additional submission dated 28.6.2021, which was considered by the Commission, passing the impugned order. In its additional submissions, NTPC had prayed that the average of an “as received” GCV of coal, measured by it, for the period from October, 2016 to March 2019 (30 months) i.e., after the creation of the necessary infrastructure in October 2016, may be considered for the purpose of arriving at the IOWC for the period 2014-19 in relaxation of the 2014 Tariff Regulations. However, the Commission, in the impugned order, rejected the said prayer as under:

“122. Regulation 28 (2) of the 2014 Tariff Regulations provides that the computation of cost of fuel as a part of IWC is to be based on the landed price and gross calorific value of the fuel, as per actuals, for the three months preceding the first month for which the tariff is to be determined and no fuel price escalation shall be provided during the tariff period. Thus, the calculation of IWC for period 2014-19 is to be based on such values for months of January 2014, February 2014 and March 2014. The Petitioner has not been able to furnish these values at the time of determination of tariff for the period 2014-19 in Petition No. 280/GT/2014. In the present petition, the Petitioner has proposed that instead of GCV for January 2014, February 2014 and March 2014, the Commission should consider the average values for months of October, 2016 to March 2019 since the measurement of ‘as received’ GCV has been done in accordance with directions of the Commission vide order dated 25.1.2016 in Petition No. 283/GT/2014. In our view, the proposal of the Petitioner to consider the retrospective application of average of ‘as received’ GCV data for 30 months (October 2016 to March 2019) in place of ‘as received’ GCV of the preceding three months (January 2014 to March 2014) is not acceptable, keeping in view that the average GCV for 30 months may not be commensurate to the landed cost of coal for the preceding three months to be considered for calculating IWC in terms of Regulation 28(2) of the 2014 Tariff Regulations and that due to efflux of time



(gap of 30 months), the quality of coal extracted from the linked mines would have undergone considerable changes. Also, the consideration of loss of GCV of 120 kCal/kg cannot be considered, as the same is not as per provisions of the 2014, Tariff Regulations.”

14. Accordingly, the Commission accepted the “as received” GCV of coal data submitted by NTPC (which was uploaded and shared with the beneficiary Discoms, including the Review Petitioner), for the purpose of IoWC calculations. This being so, the Review Petitioners’ submission that NTPC does not have adequate infrastructure (as raised by it earlier also) merit no consideration. Having considered the data submitted by NTPC in the impugned order, on a prudence check, it cannot lie on the mouth of the Review Petitioner to again contend that the Commission has considered the NTPC assumed ‘as received GCV’ of coal for the IoWC computation. There is also no change in the methodology at the time of truing up of tariff, as contended by the Review Petitioner, considering the fact that the provisional GCV value of coal on ‘as billed basis’ considered by the Commission in the original order, was corrected at the time of truing up of tariff by considering the ‘as received’ GCV of coal for the said three months, for the purpose of computing the IoWC. The Commission, by a conscious decision, had considered the data submitted by the Respondent NTPC in the impugned order, and hence, there is no reason to review the impugned order on this count. The Review Petitioner has also not shown any error apparent on the face of the impugned order, warranting review. It is a settled proposition of law as enunciated in terms of the judgment of the Hon’ble Supreme Court in Parsion Devi Vs. 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 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 review have also been enunciated by the Hon'ble Supreme Court in its judgment in Kamlesh Verma Vs. Mayawati and ors (AIR 2006 SC 75). In the above background, the submissions of the Review Petitioner are rejected, and the Review Petition is rejected as not maintainable.

15. Petition No. 12/RP/2024 (in Petition No. 391/GT/2020) stands disposed of as above.

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

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

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

