

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 280/GT/2014

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V, Member

Shri Harish Dudani, Member

Date of Order: 2nd January, 2025

In the matter of:

Approval of tariff of Farakka Super Thermal Power Station, Stage-III (500 MW) for the period 2014-19-Implementation of the judgments of APTEL

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
(*erstwhile Bihar State Electricity Board*)
Vidyut Bhawan, Bailey Road
Patna – 800 001

3. Jharkhand Bijlee Vitaran Nigam Limited,
Engineering Building, HEC Township, Dhurwa,
Ranchi – 834 004

4. GRIDCO Limited,
24, Janpath, Bhubaneswar – 751007

5. Damodar Valley Corporation,
DVC Towers, VIP Road
Kolkata-700054

.....**Respondents**



ORDER

Petition No. 280/GT/2014 was filed by the Petitioner, NTPC for approval of tariff of Farakka Super Thermal Power Station, Stage-III (1x 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, disposed of the same vide its order dated 3.3.2017. Aggrieved by the said order, the Petitioner filed Appeal No. 178/2017 before the Appellate Tribunal for Electricity (*in short, 'APTEL'*) on the following issues:

- (a) Reduction of the O&M expenses by applying the multiplication factor;*
- (b) Disallowance of Projected additional capital expenditure on account of the deferred works beyond the cut-off date; and*
- (c) Proportionate additional capitalisation of Farakka Barrage from the Special allowance of Farakka Stage-I & II-Construction of Bridge over Ganga-Feeder Canal*

2. During the pendency of the aforesaid appeal, the Petitioner filed Petition No. 391/GT/2020 before this Commission, for truing-up of tariff of the generating station, for the period 2014-19 in terms of the provisions of the 2014 Tariff Regulations. It also filed Petition No. 454/GT/2020 for approval of the tariff of the generating station, for the period 2019-24, in terms of the provisions of the 2019 Tariff Regulations.

3. While so, APTEL in terms of its directions vide common judgment dated 11.1.2022 in Appeal Nos. 101/2017 & batch, disposed of the Appeal No. 178/2017, on the issue (a) above viz., 'Reduction of O&M expenses by applying the multiplication factor' setting aside the findings of this Commission and remanded the matter to this Commission to pass a reasoned order. Accordingly, the Commission, while truing up the tariff of the generating station for the period 2014-19, vide order dated 11.1.2024



in Petition No. 391/GT/2020, had revised the normative O&M expenses of the generating station, in line with the decision of APTEL in its judgment dated 11.1.2022. This decision was also considered by the Commission while allowing the normative O&M expenses for the generating station in its order dated 12.1.2024 approving the tariff of the generating station for the period 2019-24 in Petition No. 454/GT/2020. Thus, the issue of 'Reduction of the O&M expenses for the period 2014-19 by applying the multiplication factor' stands implemented in order dated 11.1.2024, in terms of the APTEL judgment.

Disallowance of the Projected additional capital expenditure on account of the deferred works beyond the cut-off date;

4. In Petition No.280/GT/204, the Petitioner had claimed the total Projected additional capital expenditure of Rs 3603.79 lakh in 2015-16 in respect of the following works (@ Sl. Nos 31 to 40 and Sl. Nos.43 to 48) as indicated in the table under para 19 of the order dated 3.3.2017:

Sl. No	Head of Work /Equipment	2014-15	2015-16	2016-17	2017-18	Total
31	Malancha Ash Dyke Works	135.47	0.00	0.00	0.00	135.47
32	Drains & Drainage System	0.00	41.16	0.00	0.00	41.16
33	Stores Civil Works	0.00	5.59	0.00	0.00	5.59
34	Misc Civil Works-M. Plant	0.00	0.91	0.00	0.00	0.91
35	Off - site Civil Package	0.00	80.91	0.00	0.00	80.91
36	Chimney - Civil	0.00	6.00	0.00	0.00	6.00
37	Township Facilities/ works	0.00	2562.13	0.00	0.00	2562.13
38	Main Plant Turnkey	0.00	189.00	0.00	0.00	189.00
39	Main Plant Civil Works Pkg	0.00	564.99	0.00	0.00	564.99
40	Condensate Polishing Plant	0.00	0.26	0.00	0.00	0.26
xxx						
43	Ash Water Recirculation System Pkg	0.00	5.57	0.00	0.00	5.57
44	DM plant & CW treatment System	0.00	3.96	0.00	0.00	3.96
45	Station Piping Pkg & FDPS	0.00	49.12	0.00	0.00	49.12
46	Air Conditioning	0.00	28.93	0.00	0.00	28.93
47	Electrical Equipment Supply and Erection	0.00	16.12	0.00	0.00	16.12
48	Control Cable	0.00	0.08	0.00	0.00	0.08



5. The aforesaid claim of the Petitioner was disposed of by the Commission vide order date 3.3.2017 as under:

“26. We have considered the submission of the parties. It is noticed that these works which were approved by order dated 24.8.2016 have been deferred for execution after the cut-off date of the generating station. The petitioner had sufficient time period of three years from the COD of the generating station till the cut-off date (31.3.2015) for execution of these works. It is however noticed that the petitioner has also not submitted any reasons/justifications for the delay in completion of the said works and the steps taken by the petitioner to mitigate the delay in the execution. Accordingly, in our view there is no reason for us to consider the claim of the petitioner in exercise of the power to relax and allow the capitalization. Hence, the claim of the petitioner for capitalization of the said works in 2015-16 is not allowed.”

6. In Appeal No.178/2017 filed by the Petitioner, before APTEL, rejecting the said disallowance of claims, the APTEL vide its judgment dated 1.12.2022 held as under:

“57. The Appellant has claimed that some of the works deferred for execution beyond cut-off date of 31.03.2015, however, these works were also part of the original scope and prayed the Central Commission for invoking power to relax under Regulation 54 of Tariff Regulations, 2014 as quoted in the preceding paragraphs.

58. As seen from the order, the Central Commission rejected the claim as the Appellant has also not submitted any reasons/justifications for the delay in completion of the said works and the steps taken to mitigate the delay in the execution, further, stating that there is, as such, no reason for invoking power/to relax, on the contrary, the Appellant has submitted that it had provided justification/documentation for claiming these works vide affidavit dated 07.01.2016, which was not considered.

59. The Respondent No. 5, GRIDCO also submitted that Appellant has not been able to justify cause of delay for seeking extension beyond cut-off date, therefore, there is no justification for invocation of relaxation of power under Regulation 54 of CERC Tariff Regulations, 2014 for allowing the additional capitalisation since the delay in execution of the work within the cut-off date was solely attributable to NTPC.

60. On the contrary, the Appellant submitted that the reason for delay in execution of works is on account of abandoning of works by one of the contractor: M/S B.P. Constructions and thus, the balance works were offloaded to the other Contractor, which took some time, the justification as provided for delay in execution of the works in 2015-16, even, if otherwise, some more documents were required, the Central Commission could have sought the additional documentation.

61. We find the submissions of the Respondent No. 5 as unreasonable in the light of the above submissions of the Appellant.

62. From the above, it is noticed that the Central Commission has negated the justification provided without going into the details of it, therefore, we opine that the Central Commission ought to have considered the information/documents provided by the Appellant or directed the Appellant to provide additional documents, if required.

63. We find it just and reasonable to direct the Central Commission to relook afresh on the basis of the justification provided by the Appellant, seeking additional



documentation, if required for the sake of justice and issue necessary order(s), the matter is remitted back to the Central Commission accordingly.

7. Thus, APTEL in its judgment dated 1.12.2022 has, based on the submissions of the Petitioner, remanded the matter to this Commission, with directions to relook at the matter afresh based on the justification provided by the Petitioner (dated 7.10.2016) or seek additional documentation, if required, for the sake of justice and pass necessary orders. As stated earlier, during the pendency of this appeal, Petition No 391/GT/2020 (truing-up of tariff for 2014-19) was filed by the Petitioner and the Commission, after finally hearing the parties on 6.10.2022, reserved its orders in the said petition, after directing the Petitioner vide ROP, to file certain additional information, including the information with regard to the claims of the Petitioner for additional capital expenditure on items/works forming part of the original scope of works, but beyond the cut-off date, as under:

“3(iii)(b): In respect of items/works claimed part of the original scope of works but beyond the cut-off date, supporting documents substantiating that the subject work is part of the original scope”

8. It is observed that the Petitioner vide affidavit dated 2.11.2022, has furnished the additional information, and the Commission after examining the said documents, allowed substantial additional capital expenditure, after the cut-off date i.e during the years from 2015-16 to 2018-19 vide order dated 11.1.2024 (in Petition No.391/GT/2020), which included the expenditure on assts which were rejected for want of proper justification/documents in Petition No. 280/GT/2020 e.g expenditure of Rs.2562.13 lakh (projection basis) disallowed in order dated 3.3.2017 in Petition no. 280/GT/ 2020 was reconsidered in Petition No. 391/GT/2020 and the actual additional expenditure of Rs.3746.56 lakh claimed was allowed including the expenditure incurred after cut-off date. However, the actual additional capital expenditure claimed



in Petition No. No.391/GT/2020 in respect of certain assets/items, after the cut-off date was again rejected for want of proper justification/supporting documents after prudence check. In other words, while truing up the tariff of the generating station for the period 2014-19 in Petition No.391/GT/2020, the additional capital expenditure claimed was allowed / rejected, only after granting opportunity to the Petitioner to re-submit the additional information. Seen in this context, the Commission had complied with the directions of the APTEL in its judgment dated 1.12.2022, with regard to seeking the additional information on certain deferred works after the cut-off date, from the Petitioner, and considered the same while truing up the tariff for the period 2014-19 vide order dated 11.1.2024 in Petition No.391/GT/2020. It is observed that against the order dated 11.1.2024, the Petitioner has filed Appeal No. 133/2024 before APTEL and the same is pending. Considering the fact that certain assets/items (covered under the judgment of APTEL) had been rejected based on prudence check of the additional information furnished in Petition No.391/GT/2020, and keeping in view that the appeal filed by the Petitioner, challenging the rejection of such assets, is pending consideration of the APTEL, we deem it fit to await the final decision of APTEL in the said appeal.

Proportionate Additional Expenditure under Special Allowance for Farakka Stage-I & II - Construction of Bridge over Ganga-Feeder Canal

9. In Petition No. 280/GT/2014, the Petitioner had claimed the total projected additional capital expenditure of Rs 5700 lakh in 2016-17 towards the Construction of two-lane bridge on Ganga Feder canal under Regulation 14(1) read with Regulation 54 (power to relax) of the 2014 Tariff Regulations, with the following justifications:

“...that at present only one old (40 years old) narrow public bridge (single lane) exists across the Farakka Feeder Canal owned by Farraka Barrage Projects Authority (FBPA), which connects the Farakka Station and Farakka Township/ NH-34. The petitioner has further submitted that since the existing bridge is very narrow the traffic movement is



only in one direction at any instant and the traffic from the opposite direction waits on other side resulting in vehicular queue. It has also submitted that the problem has been aggravated due to increased vehicular movement with time and increase in station capacity and over 600 or more loaded vehicles and private vehicles cross the bridge daily including ash trucks and containers that supply materials for day to day working of generating station. It has further submitted that in the event of breakdown of the bridge, the entire traffic along with the vehicles carrying the material for plant's operation comes to a halt. Accordingly, the petitioner has submitted that in view of these difficulties and increased movement of ash trucks due to increased dry ash evacuation, containers etc. the expenditure towards the bridge across Feeder Canal may be allowed."

10. The Commission vide order dated 3.3.2017, disposed of the aforesaid claim of the Petitioner, holding as under:

"34. We have considered the matter. It is observed that the construction of the two-lane Bridge over Ganga Feeder Canal is necessary for smooth movement of traffic as well as for the heavy trucks for works related to this generating station. It is also observed that the two-lane Bridge is common to Stages I, II and III of this generating station and accordingly serves all of the stages of this generating station. Considering the fact that the two-lane bridge is common to all the stages and is an approach bridge for employees/operating staff/agencies/person from township/, and would contribute to the efficient operation of the generation station, we are inclined to allow the additional capital expenditure of Rs 5700.00 lakh claimed by the petitioner. It is noticed that the provision of Regulation 14(1) or 14(3) do not provide for capitalization of additional capital expenditure which have become necessary for successful and efficient plant operation. Since the expenditure of the two-lane Bridge over Ganga Feeder Canal is necessary for smooth operation of the generating station as narrated above, we in exercise of the power under Regulation 54 of the 2014 Tariff Regulation, relax the provision of Regulation 14(3)(viii) and allow the additional capital expenditure incurred in respect of this generation stations. However, out of the total expenditure of Rs 5700.00 lakh claimed, only the proportionate cost of Rs 1357.00 lakh has been allowed in respect of this generating station after apportioning the cost between Stage- I&II and Stage III of Farakka generating station. The remaining cost of Rs 4343.00 lakh shall be considered from special allowance of Stage I and II"

11. In Appeal No.178/2017 filed by the Petitioner, on this issue, the APTEL vide its judgment dated 1.12.2022 held as under:

66. From the observations of Central Commission in the impugned order, it is seen that the Central Commission is fully satisfied with the usability of bridge for smooth vehicular traffic movement and smooth functioning of Farakka station, based on which the Central Commission has invoked its power under Regulation 54 to relax provisions for allowing additional capitalisation under Regulation 14 for allowing the additional capital expenditure for Farakka -III and on the same time denied it in Farakka-I&II allowing it under special allowance.

67. The Appellant has argued that the Additional Capital Expenditure incurred by it falls under Regulation 14 and thus cannot be directed to be met under Special Allowance i.e. Regulation 16 of Tariff Regulations, 2014, it is therefore, important to refer the relevant Regulations of Tariff Regulations, 2014, as under:



“14. Additional Capitalisation and De-capitalisation:

(1) xxxx

68. The Appellant has submitted that the Central Commission while exercising Power to Relax under Regulation 54 of the Tariff Regulations, 2014 has relaxed Regulation 14(3)(viii) of Tariff Regulations, 2014 and allowed proportionate cost of Rs. 1357 Lakhs in Farakka -III, however, disallowed the cost of Rs. 4343 Lakhs, claimed by the Appellant under Additional Capital Expenditure as per Regulation 14 (1) towards construction of two-lane bridge on Ganga Feeder Canal, further arguing that while disallowing the cost of Rs. 4343 Lakhs, the Central Commission directed the Appellant to recover the said cost of Rs. 4343 Lakhs from the Special Allowance granted to Farakka STPS for its Stage I and II.

69. The Appellant further submitted that the Special allowance under Regulation 16 of the Tariff Regulations, 2014 provides for Special Allowance, which is a compensation to a thermal generating station for renovation and modernization beyond its useful life, whereas, the work of construction of two lane bridge over Ganga Feeder Canal was never envisaged under renovation and modernization, it was the compelling reasons that the Appellant has to undertake construction of two lane bridge over Ganga Feeder Canal on account of the precarious condition of the bridge, which fact is also admitted and acknowledged by the Central Commission.

70. The Appellant is agreeable to apportion the total cost of construction i.e. Rs. 5700 Lakhs to both the stages of the project (Stage I & II and Stage III), in case the Central Commission allowed the cost by exercising its power to relax (Regulation 54), as it was necessary for the successful and efficient operation of the plant, however, the Central Commission, while admitting the proportionate cost of Rs. 1357 lakhs apportioned to Stage III, remarked that the remaining cost of Rs. 4343 lakhs shall be realized from the special allowance of Stage I & II.

71. It is seen that the Central Commission has misconstrued the application of Regulation 16 vis-a-vis additional capital expenditure (allowable under Regulation 14), for creation of a separate infrastructure for which the Appellant has evidently incurred an amount of Rs. 5700 Lakhs, additionally the Central Commission has deviated from the established norm of mandatory capitalization of borrowed funds by providing for a recovery of apportioned cost of Rs. 4343 lakhs, through the special allowance.

72. It cannot be disputed that the Special allowance is a pre-emptive right of the Appellant to be obligatorily allowed for any of its generating unit which has been under commercial operation for over 25 years, whereas Regulation 14 is a provision for seeking expenditure which may be incurred by any 'existing generating station' during the course of its operation, therefore, any co-relation sought to be established by the Central Commission between Regulation 16 and Regulation 14 to deny legitimate expenditure to the Appellant is unjust and unreasonable.

73. On the contrary, the arguments of Respondents were relied upon the Judgement dated 12.05.2015 passed by this Tribunal in Appeal No. 129 of 2012, wherein similar issues were adjudicated, we note here that the said Judgment does not apply to the merits and the facts of the case as in the said Appeal, the Appellant had challenged various Orders passed by the Central Commission disallowing the Additional Capital Expenditure incurred by the Appellant on the premise that the Appellant was availing Special Allowance as per the Regulation 10(4) of the Tariff Regulations, 2009.



74. We find merit in the submissions of the Appellant and directs the Central Commission to re-examine the case and pass fresh order(s) after duly considering the provisions and intent of Regulation 14 and Regulation 16.”

12. It is therefore evident that while the Petitioner has accepted the apportionment of the total construction cost of Rs 5700 lakhs to the Stages of the Project, it is only aggrieved with the direction of the Commission to apportion an amount of Rs 1357 lakh to Stage-III (this station) and for the remaining cost of Rs 4343 lakhs to be realised from the Special allowance of Stages-I and II. However, APTEL, while finding merit in the submissions of the Petitioner, has observed that any co-relation sought to be established by the Commission between Regulation 16 and Regulation 14, to deny the legitimate expenditure to the Petitioner, is unjust and unreasonable. Accordingly, APTEL has remanded the matter for re-examination of the case and to pass fresh orders, duly considering the provisions and intent of Regulation 14 and Regulation 16. We note that APTEL vide its common judgment dated 28.8.2023 in Appeal Nos. 309/2016 & batch (NTPC v CERC & ors) had examined the provisions of Regulation 14(3) (additional capitalisation) of the 2014 Tariff Regulations vis-à-vis the option for Special Allowance under Regulation 16(1) of the 2014 Tariff Regulations and concluded as under:

XIX Conclusion

“For the reasons afore-mentioned, we are satisfied that the CERC was not justified in denying the Appellant, the benefit of additional capitalization under Regulation 14(3), solely on the ground that they had opted for, and were extended the benefit of, Special Allowance under Regulation 16(1). The Appellant would be entitled to claim additional capitalization under Regulation 14(3), notwithstanding their having claimed and received Special Allowance under Regulation 16(1), provided they have not claimed the benefit of both Regulations 14(3) and 16(1) for the same items of capital expenditure”

13. Keeping in view the observations of APTEL vide judgment dated 1.12.2022 (as quoted in para 11 above) and in line with the decision of APTEL in its judgment dated 28.8.2023 (as referred above), we allow the proportionate additional capital



expenditure claimed by the Petitioner for Rs 5700 lakh towards the “Construction of Bridge over Ganga-Feeder canal” as a part of the capital cost of Farakka Stages-I & II for the purpose of tariff of the generating station for the period 2014-19, provided that the cost has been actually incurred during the period 2014-19. It is however noticed that in Petition No. 391/GT/2020 (truing up of tariff of the generating station for the period 2014-19), the Petitioner has not claimed actual additional capital expenditure for this asset/item viz., “Construction of Bridge over Ganga-Feeder canal” on the ground that it could not complete and capitalize the work during the period 2014-19.

14. We, however note that in Petition No. 454/GT/2020 filed by the Petitioner for determination of tariff of the generating station for the period 2019-24, the Petitioner had claimed the projected additional expenditure of Rs. 7100 lakhs during the year 2020-21 instead of the projected additional capital expenditure of Rs. 5700 lakhs claimed earlier and the Commission vide its order dated 12.1.2024, decided as under:

“40. ...In this context, considering the documents available on record, it is noted that the delay attributed to various entities does not have merit and also no information / reasons were provided for increase in projected cost from earlier approved cost of Rs. 5700 lakhs to Rs. 7100 lakhs. Accordingly, the projected additional capital claimed towards these works, is being restricted to Rs. 5700 lakhs at present, which was allowed by order dated 3.3.2017 and the apportioned amount allowed for the generating station is Rs.1357.00 lakhs under Regulation 25(2)(d) of the 2019 Tariff Regulations, in exercise of the power under Regulation 76 of 2019 Tariff Regulations. However, the Petitioner is granted liberty to claim apportioned additional expenditure beyond Rs. 5700 lakhs, along with all relevant details and justification, including IDC / IEDC for delay, at the time truing up for consideration of the same in accordance with applicable regulations.”

15. It is evident from the above deliberations that the Petitioner could not capitalize and claim the additional expenditure towards the “Construction of Bridge Over Ganga-Feeder canal”, on actual basis, during the period 2014-19 and therefore, there is no requirement for the revision of tariff of this generating station (Farakka Stage-III) for the period 2014-19, on this count. Needless to say, in case actual additional capital



expenditure is incurred and capitalized by the Petitioner on this asset/item, viz., “Construction of Bridge over Ganga-Feeder canal”, the same shall be considered at the time of truing-up of tariff of the generation station (Farakka-III) and Farakka-I & II for the period 2019-24, in line with the decision of APTEL and the provisions of the applicable regulations.

16. For the above-mentioned reasons, the tariff of the generating station for the period 2014-19 (In Petition No.280/GT/2014 ad Petition No.391/GT/2020) has not been revised by this order. The APTEL judgment dated 1.12.2022 in Appeal No. 178 / 2017 stands implemented in terms of the above discussions.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

