

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram :

- 1. Shri. Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri A.H. Jung, Member**

**Review Petition No. 54/2006
in
Petition No. 160/2004**

In the matter of

Review of order dated 9.5.2006 in Petition No. 160/2004, for approval of tariff in respect of Anta GPS, for the period 1.4.2004 to 31.3.2009.

And in the matter of

National Thermal Power Corporation Limited.**Petitioner**

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
3. Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
4. Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur
5. Delhi Vidyut Board, Delhi
6. Punjab State Electricity Board, Patiala
7. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
8. Haryana Power Generation Company Ltd. Panchkula
9. Himachal Pradesh State Electricity Board, Shimla
10. Power Development Deptt. Govt of Jammu & Kashmir, Jammu
11. Chief Engineer & Secy, Engineering Deptt. Chandigarh
12. Uttaranchal Power Transmission Corporation of Ltd., Dehradun

...Respondents

The following were present

1. Shri. S.N. Goel, NTPC
2. Shri I. J. Kapoor, NTPC

**ORDER
(DATE OF HEARING : 7.9.2006)**

This application has been made for review of order dated 9.5.2006 in Petition No.160/2004, whereby the Commission determined tariff in respect of Anta GPS (hereinafter "the generating station), for the period 1.4.2004 to 31.3.2009.

2. The petitioner has submitted that there are certain fundamental errors in the said order dated 9.5.2006 and accordingly has sought review thereof. According to the petitioner, the order needs to be reviewed on account of the following errors:

(a) Computation of Interest on Loan Capital, and

(b) Impact of decapitalisation of assets on cumulative repayment of loan

(c) Depreciation for 2004-05 not allowed at the rates prescribed in 2004 regulations

Computation of Interest on Loan Capital

3. The petitioner has stated that for the tariff period up to 31.3.2004, the Commission had applied the methodology of actual or normative repayment of loan, whichever is higher to decide the quantum of loan to be taken into account for calculation of interest. This methodology has been changed in 2004 regulations, which provide for determination of loan on normative basis. The petitioner has contended that the determination of cumulative repayment of loan should be based on actual repayment up to 31.3.2004 and not on the basis of repayment on actual or normative, whichever is higher.

4. The annual repayment of loan for the tariff period 2001-04 worked out as per the methodology followed by the Commission in all cases for that tariff period, is given hereunder:

Actual repayment during the year or repayment as worked out as per the following formula:

Actual repayment during the year X normative net loan at the beginning of the year/actual net loan at the beginning of the year, whichever is higher".

5. The petitioner had sought review of the above methodology considered for computation of interest on loan during the tariff period 2001-04. The review was disallowed by the Commission. The petitioner subsequently filed appeals before the Appellate Tribunal for Electricity and these appeals are pending. Any reconsideration of the issue at this stage will amount to review of the methodology considered during 2001-04, which is not permissible under the facts and circumstances of the present case.

6. However, we consider it necessary to give the rationale behind the methodology adopted by the Commission. In our opinion, once the normative loan has been arrived at on the basis of normative debt:equity ratio, as is the case here, it is considered for all purposes, including calculation of re-payment of loan. The loan repayment on actual basis is considered if the normative repayment is less than the actual in order to provide comfort to the utilities, like the petitioner meeting its loan repayment obligations, by allowing Advance Against Depreciation. In this manner, the petitioner is, in fact, the beneficiary of the methodology considered.

7. Further, as per the provisions of Regulation 21(b) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, the loan outstanding as on 1.4.2004 is to be worked out as the gross loan minus cumulative repayment as admitted by the Commission up to 31.3.2004. Thereafter, the loan repayment for the period 2004-09 is required to be worked out on normative basis. The cumulative loan repayment as on 31.3.2004, considered by

the Commission in the instant case has been arrived at based on computation of tariff for the period 2001-04 and is in accordance with the tariff regulations.

8. Accordingly, the prayer for review on this ground is not admissible.

Impact of decapitalisation of assets on cumulative repayment of loan

9. The petitioner's next grievance is that cumulative repayment of loan corresponding to the assets de-capitalised should also be adjusted to the extent of loan component of the de-capitalised assets to arrive at cumulative repayment, as on 1.4.2004, for the purpose of computation of tariff for the period 2004-05 to 2008-09. The petitioner's case is that in the course of operation of the generating stations (which have a life of 15 years or more) it de-capitalizes assets from time to time. On such decapitalisation, the value of the capital assets is reduced in the balance sheet of the concerned generating station for accounting purposes. However, the Commission in its order dated 9.5.2006 has reduced the capital base to the extent of such de-capitalisation which has adversely affected its entitlement to tariff on the value of assets de-capitalised. The petitioner has stated that de-capitalisation of assets does not amount to taking back the capital employed in the assets except to the extent of the value recovered on sale of those assets, which generally is the scrap value. Further, according to the petitioner, de-capitalisation of assets does not reduce the loan capital and the obligation towards servicing of loan continues as scheduled. It has been urged that the revenue realized on the sale of the de-capitalised assets should be taken into account as a non-tariff income in the year in which such sale proceeds are realized. The petitioner has further submitted that if the de-capitalised assets are adjusted against the capital base, the cumulative depreciation recovered as well as the cumulative repayment of the loan

proportionate to those assets de-capitalised should also be reduced. The Commission, in the order dated 9.5.2006 has made adjustment in cumulative depreciation on account of decapitalisation without any adjustment of cumulative repayment of loan. The petitioner states that by such non-adjustment of cumulative repayment due to de-capitalisation, the petitioner will not be able to service the loan taken and employed for capital works, as the cumulative repayment has been allowed only to the extent of the reduced capital base.

10. We have considered the contentions of the petitioner. There are generally two concepts associated with recovery of depreciation. According to one concept, depreciation is charged for replacement of the assets, the other one relates depreciation to repayment of loan. In the present case, certain assets were de-capitalised and certain other assets capitalised for the period ending 31.3.2004 on face value. For the assets de-capitalised, the petitioner was allowed recovery of depreciation of 90% of the value of the assets de-capitalised, which has been allowed to be retained by the petitioner, in addition to the scrap value of the assets de-capitalised. The entire value of the new assets replacing the old assets has been considered for the purpose of computation of tariff, without adjusting the depreciation recovered on the old replaced assets, discarding the first concept. The petitioner is thus also entitled to recover interest on the entire loan amount considered for the new asset. By extending the second concept to the facts of this case, funds for repayment of loan were available to the extent of depreciation recovered and have to be utilised accordingly. In case the contention of the petitioner for adjustment of loan component of the de-capitalised asset is accepted, it will amount to servicing the loans already recovered through depreciation recovered.

11. In the above circumstances, decapitalisation of assets should not have any impact on cumulative repayment of loan recovered. Therefore, in our considered opinion, no case for review in this regard has been made out.

Depreciation for 2004-05 not allowed at rates prescribed in 2004 regulations

12 The tariff regulations 2004 in clause 21 (1) (ii) (a) (iii) provide that on repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.

13. The petitioner has contended that as per computation given in para 39 of the order dated 9.5.2006, net opening loan for 2004-05 is Rs. 385 lakh and therefore, depreciation should be spread over from 2005-06 instead of 2004-05. The petitioner has submitted that for the year 2004-05, depreciation chargeable in tariff should be computed based on weighted average depreciation rate.

14. We are unable to agree. The entire loan was repaid during 2002-03 and there was no outstanding loan as on 1.4.2003. Therefore, depreciation was spread over the useful life from the year 2003-04 itself in accordance with the terms and conditions applicable during the period 2001-04. However because of additional capitalization allowed on works and FERV for the period 2001-04, normative loan of Rs. 385 lakhs arose during 2004-05 which itself gets repaid in the year 2004-05 by the amount of depreciation recoverable on the basis of remaining life of the station. The petitioner's contention that it should get depreciation at weighted average rate on additional capitalization of Rs. 102.546 lakh and admitted FERV of Rs. 667.951 lakh, which works out to Rs.2000 lakh is not tenable. It will further widen the difference between cumulative depreciation collected and cumulative repayment of

loan made. The petitioner in its tariff petition, original as well as amended had calculated depreciation for the tariff period 2004-09 by spreading it over balance useful life of the asset. The contention of the Petitioner in the present application for review therefore, is not maintainable as it does not satisfy the conditions laid down in section 114 read with order XLVII of the Code of Civil Procedure.

15. In the light of above discussion, even a prima facie case for review of the order dated 9.5.2006 in Petition No. 160/2004 has not been made out. The review petition is accordingly dismissed at the admission stage.

Sd/-
(A.H.JUNG)
MEMBER

sd/-
(BHANU BHUSHAN)
MEMBER

sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 26th October 2006