

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.74 of 2010

Dated: 20th Oct, 2011

Present: **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,**
Hon'ble Mr.V J Talwar, Technical Member

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

... Appellant(s)

Versus

1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001
2. Haryana Power Purchase Centre., (HPPC),
Shakti Bhawan, Sector – VI,
Panchkula, Haryana-134 109

.....Respondents

Counsel for Appellant(s): Mr. Anand K. Ganesan
Ms. Swapna Seshdri
Mr. M. G Ramachandran
Ms. Sneha Venkatramani
Ms. Ranjitha Ramachandran

Counsel for Respondent(s): -----

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

NTPC the Appellant herein filed a Petition before the Central Commission for revision of the fixed charges after considering impact of additional capitalization during the period from 2006-07 to 2008-09 in respect of Faridabad Gas Power Station in accordance with the applicable provisions of the tariff regulations.

2. The Central Commission by the order dated 11.1.2010 disposed of the said Petition by disallowing the claims on certain aspects relating to the additional capitalisation. As against the said order dated 11.1.2010, the Appellant has filed this Appeal. The short facts are as under:

(a) The Appellant is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. NTPC, at present, owns and operates 22 Generating Stations situated in different parts of India. One of the generating stations of NTPC is the Faridabad Station located in the State of Haryana.

(b) The Central Commission by the order dated 26.3.2001, notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 (hereinafter referred to as 'the Tariff Regulations, 2001) and proceeded to determine the tariff for each generating stations of NTPC for the tariff period from 1.4.2001 to 31.3.2004.

(c) The Central Commission by the common order dated 30.6.2003, decided the Petition No.23 of 1999 filed by the NTPC, determined the tariff for the Faridabad Station for the period from 1.9.1999 to 31.3.2001 and also determined the tariff for the period from 1.4.2001 to 31.3.2004.

(d) On 28.10.2004, the NTPC filed a Petition before the Central Commission for determination of tariff for Faridabad Station for the period from 1.4.2004 to 31.3.2009. Accordingly, the Central Commission by the order dated 9.5.2006 determined the tariff for the Faridabad Station for the period from 1.4.2004 to 31.3.2009.

(e) By the said order dated 9.5.2006, the Central Commission decided certain aspects as against the Appellant. Therefore, the NTPC filed an Appeal before this Tribunal in Appeal No.140 of 2006. This Tribunal by the judgement dated 13.6.2007, set aside the impugned order of the Central Commission in regard to some of the aspects and directed the Central Commission to pass consequential orders on those aspects.

(f) Against this judgement dated 13.6.2007 by this Tribunal, the Central Commission filed a second Appeal before the Hon'ble Supreme Court. Thereupon, by the judgement dated 10.12.2007 in Appeal No.151 and 152 etc., of 2007 this Tribunal allowed the Appeal filed by NTPC in respect of various other Stations and directed the Central Commission to allow capitalization of un-discharged liabilities and interest during construction. This

judgement of this Tribunal was also challenged in the Appeal before the Hon'ble Supreme Court.

(g) In the meantime, by the order dated 9.5.2009 in the Petition No.140 of 2008 filed by the NTPC, the Central Commission approved the revision in tariff for the Faridabad station of NTPC for the tariff period 2007-08 and 2008-09. The NTPC filed Petition No.141 of 2009 praying the Central Commission to decide the issue of additional capitalisation by following the judgement of this Tribunal. However, the Central Commission by the impugned order dated 11.1.2010, dismissed and rejected the claims made by the Appellant by not following the judgement of this Tribunal on the aspects of depreciation being treated as deemed repayment and cost of maintenance spares related to additional capitalisation mainly on the ground that the issue is pending before the Hon'ble Supreme Court.

3. Under the above circumstances, the Appellant aggrieved by the order of the Central Commission rejecting the claim regarding additional capitalisation and cost of maintenance spares, by not following the earlier judgement of this Tribunal, has filed this present Appeal.

4. The issues raised in this Appeal are as follows:

- (a) Exclusion of part of the capital expenditure validly incurred but pending actual disbursement/payment from the capital cost for the purposes of tariff;
- (b) Equating depreciation with normative loan repayment;
- (c) Disallowance of cost of maintenance spares;
- (d) Consequence of Refinancing of loan
- (e) Impact of de-capitalisation of assets on cumulative repayment of loan;
- (f) Applying principle of cut-off date on erroneous interpretation of Regulation 14 and 18 (2) of Tariff Regulations, 2004;
- (g) Disallowance of Rs.116.44 lakhs pertaining to transfer of Switchyard.

5. We have heard the Learned Counsel for the Appellant. Nobody has appeared on behalf of the Respondent.

6. In regard to **First Issue** namely, **Exclusion of part of the capital expenditure validly incurred but pending actual disbursement/payment from the capital cost for the purposes of tariff**, this Tribunal has dealt with the issue and passed the following judgements in favour of the Appellant. Those judgements are as under:

- (a) Appeal No.133, 135 etc of 2008 NTPC V CERC & Ors. 2009 ELR (APTEL)337;

(b) Appeals No.151 & 152 of 2007 – NTPC V. CERC & Ors. 2008 ELR (APTEL) 916

7. Therefore, this issue as already decided in favour of the Appellant is decided again in this Appeal in favour of the Appellant. Accordingly, the findings in respect of this issue by the Central Commission are set-aside.

8. The **Second Issue** is **Equating depreciation with normative loan repayment**. This issue is also covered in favour of the Appellant by the following judgements:

(a) Appeal No.133, 135 etc of 2008 NTPC V CERC & Ors. 2009 ELR (APTEL) 337;

(b) Appeals No.139 & 140 etc of 2006 NTPC V CERC & Ors

9. In view of the above, this point is also accordingly decided in favour of the Appellant as such the findings on this issue by the Central Commission are set aside.

10. In regard to **Third Issue** namely '**Disallowance of cost of maintenance spares**'; this Tribunal has rendered following judgements in favour of the Appellant on this issue:

(a) Appeals No.139 & 140 etc of 2006 NTPC V CERC & Ors

(b) Appeal No.54 of 2009 NTPC V CERC & 2009 ELR (APTEL) 705

11. In terms of the above judgement, this issue is also decided in favour of the Appellant. So the findings on this issue by the Central Commission are set aside.

12. The **Fourth Issue is Consequence of Refinancing of loan.** This issue also stands covered in favour of the Appellant by the judgement of this tribunal dated 13.6.2007 in appeal No.139, 140 etc of 2006 . So, the findings on this issue by the Central Commission are also set aside.

13. The **Fifth Issue is Impact of de-capitalisation of assets on cumulative repayment of loan.** This point is also covered in favour of the Appellant by the judgement dated 13th June, 2007 of this Tribunal in Appeal No.139, 140 etc of 2006. Accordingly, the said issue is decided in favour of the Appellant also. Consequently, the findings on this issue are set aside.

14. The **Sixth Issue is Applying principle of cut-off date on erroneous interpretation of Regulation 14 and 18 (2) of Tariff Regulations, 2004.** This issue has also been decided by this Tribunal in Appeal No.66 of 2008 – 2010 ELR (APTEL) 1096 by the judgement dated 18.8.2010 in favour of the Appellant. Consequently, the findings of the Central Commission are set aside, as this issue is decided in favour of the Appellant.

15. The **Last Issue** is relating to Disallowance of **Rs.116.44 lakhs pertaining to transfer of Switch yard which** is a new issue.

16. The Learned Counsel for the Appellant has made the submissions that the Central Commission has wrongly disallowed the capitalisation of an expenditure of Rs.116.44 lakhs pertaining to the transfer of switchyard from Powergrid Corporation of India to NTPC at Faridabad Station forming part of the assets essential for the generation and supply of electricity.

17. The findings of the Central Commission in regard to cost of switchyard transferred from PGCIL to NTPC in the impugned order is quoted below:-

“(b) Cost of Switchyard transferred to the generating station from PGCIL: *The switchyard of the generating station was transferred to the Petitioner from PGCIL at net value of Rs.2483.25 lakh on 1.9.2007. Accordingly, capital cost and annual fixed charges of the generating station was revised vide order dated 9.6.2009 in PetitionNo.140/2008. In view of the above, exclusion of Rs.2483.25 lakh for the year 2007-08 is in order and is allowed for the purpose of tariff.*

29. *In addition, the petitioner has claimed an amount of Rs.116.44 lakh for 2007-08 towards balance payment made in respect of transfer of Switchyard from PGCIL to the Petitioner. This amount is over and above the amount of Rs.2483.25 lakh (net value) already allowed by the Commission in Petition No.140/2008. The justification submitted by the Petitioner for the expenditure is as under:*

“A separate Petition No.140/2008 was filed with CERC for determining the revised tariff on account of transfer of Switchyard associated with Faridabad GPS from Power Grid to NTPC. Accordingly, CERC vide its order dated 09.06.2009 determined the revised tariff of Faridabad GPS taking into a/c the transfer of Switchyard from PGCIL to NTPC. The Switchyard was transferred at Net Block of Rs.248325000/-. The balance items of Switchyard which have been transferred are being claimed as these were part of the original capital cost of the Switchyard as transferred to NTPC”.

From the details of the list of assets amounting to Rs.2599.69 lakh, the bifurcation of assets amounting to Rs.2483.25 lakh and Rs.116.44 lakh has not been justified. As it is observed that most of the assets in the list viz, furniture, computers etc. are in the nature of minor assets and since the petitioner had not indicated the balance expenditure pertaining to the Switchyard in the Petition No.140/2008, the capitalization of the expenditure has not been allowed for the purpose of tariff”.

18. Vide order dated 9.5.2009, passed in Petition No.140 of 2008 relating to “Approval of revised capacity charges in respect of Faridabad Gas Power Station after accounting for the capital cost of switchyard transferred to NTPC from Power Grid Corporation of India, the Central Commission had taken cognizance of and approved the transfer of the above switchyard as under:

“2. Government of India vide letter No.5/33/00-Th-2 dated 31.8.2000 approved the transfer of ownership and control of switchyard forming part of the Faridabad Transmission System (transmission system) and associated with the generating station, from PGCIL, to the petitioner. The assets included in the transmission system are:

- (a) 220 kV D/C Faridabad-Samaypur transmission line (Asset-I); and*
- (b) 220 kV D/C Faridabad – Palla transmission line (Asset-II)”.*

19. The Central Commission has in the impugned order not allowed the balance expenditure on account of transfer of switchyard. The Appellant has submitted that such expenditure was necessarily required to be allowed by the Central Commission by following the same principle as

followed in the Order dated 9.5.2009 while deciding Petition No.140 of 2008.

20. According to the Appellant, the Central Commission has failed to appreciate the following salient aspects:

(i) Ministry of Power vide Office Memorandum dated 31.8.2000 directed that the ownership and control of switchyard associated with Faridabad Station and Kayamkulam Station should be transferred by Power Grid Corporation of India to NTPC on mutually agreed terms and conditions to achieve operational advantages.

(ii) Accordingly, switchyard of Faridabad Station was transferred from Powergrid to Faridabad Station of NTPC on 1.9.2007;

(iii) In the meantime, Power Grid had filed Petition No.52 of 2007 for revision of tariff on account of transfer of switchyard;

(iv) The Central Commission vide its Order dated 18.6.2008 determined revised fixed charges of Power Grid and permitted NTPC to provisionally claim charges for the Switchyard transferred from Power Grid with effect from 1.9.2007;

(v) The Central Commission then directed NTPC to file a Petition by 31.10.2008 for approval of revised capacity charges for Faridabad Station after accounting for the capital cost of the Switchyard transferred;

(vi) On 29.10.2008, NTPC filed Petition No.140 of 2008 for revision of tariff on account of Switchyard transferred from Power Grid to NTPC;

(vii) The Central Commission vide order dated 9.6.2009 in Petition No.140 of 2008 determined the revised tariff of Faridabad Station taking cognizance of the transfer of switchyard from Power Grid to the Faridabad Station and at the net block transferred of Rs.2483.25 lakhs;

(viii) Subsequently, an additional capital expenditure of Rs.116.44 lakhs has been incurred and capitalised in the year 2007-08 after the date of transfer on account of balance items of switchyard transferred including stamp duty of Rs.112.85 lakh paid to the State Government for transfer of immovable assets by the Appellant.

19. In view of the factors mentioned above which are submitted by Additional Affidavit filed by the Appellant, before this Tribunal, it is clear that the Appellant has specifically placed before the Central Commission the brake-up of the entire expenditure incurred on the transfer of Switch Yard but Central Commission instead of dealing with above submissions, has rejected this claim on the ground that justifiable break up of the expenditure was not given by the Appellant. There is no one from the Respondent to refute this contention of the Appellant. Therefore, this ground is also allowed in favour of the Appellant.

20. **Summary of Our Findings:**

(i) **Out of seven issues raised by Appellant in this Appeal, six issues had already been decided in favour of Appellant by this Tribunal in various Appeals. Earlier decisions of this Tribunal in respect of these issues are required to be followed.**

(ii) **As regards the seventh issue in respect of additional capitalisation incurred on account of transfer of switch yard at Faridabad Station from PGCIL to the Appellant, it is to be stated that out of claim of additional capital expenditure of Rs.116.44 lakhs incurred and capitalised in the year 2007-08 after the date of transfer, Rs.112.85 lakh account for the Statutory Stamp Duty had been paid to the State Government for transfer of immovable assets. This expenditure ought to have been considered and allowed by the Central Commission.**

21. Accordingly, the Appeal is allowed in respect of all issues in view of the reasons mentioned in the above paragraphs. Therefore, the Central Commission is directed to pass the consequential orders.

22. Accordingly ordered. No order as to cost.

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 20th Oct, 2011
REPORTABLE/NON-REPORTABLE