

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 99 of 2010

Dated: 24th May, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**Maharashtra State Power Generation Co. Ltd.,
A company incorporated under the
Companies Act, 1956 and having
its registered Office at Plot No. G-9,
Prakashgad, Bandra (East),
Mumbai-400 051.**

... Appellant(s)

Versus

- 1. Maharashtra Electricity Regulatory Commission,
a Commission constituted under the provisions
of Electricity (Supply) Act, 1998 and having its office at
13th Floor, Center No. 1,
World Trade Centre, Cuffe Parade,
Colaba, Mumbai-400 005.**
- 2. Shri Shrikant Dudhane,
Chairman,
Kolhapur Engineer Association,
1243/46, 47, E-Ward,
Shivajiudayh Nagar,
Kolhapur-416 008.**
- 3. Prayas (Energy Group),
Amrita Clinic, Athwale Corner,
Deccan Gymkhana, Karve Road,
Pune-411 001.**

4. **Mumbai Grahak Panchayat,
Grahak Bhavan, Saint Dyaneshwar Marg,
Behind Cooper Hospital,
Vile Parle (W),
Mumbai- 400 056.**
5. **The General Secretary,
Thane Belapur Industrial Association,
Plot No. P-14, MIDC, Rabale Village,
P.O. Ghasoli,
Navi Mumbai-400 701.**
6. **Vidarbha Industrial Association,
1st Floor, Udyog Bhavan,
Civil Lines, Nagpur-440 001.**
7. **Maharashtra State Electricity Distribution Co. Ltd.,
Plot No. G-9, Prakashgad,
Bandra (East), Mumbai-400 051** **...Respondent(s)**

Counsel for the Appellant(s): Ms. Deepa Chavan, Mr. Kiran Gandhi &
Ms. Taruna A. Prasad

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan for R-1

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Maharashtra State Power Generation Company Limited against the order of the Maharashtra Electricity Regulatory Commission (State Commission) dated 15.12.2009 determining the tariff of unit no. 3 at Paras Thermal Power Station for

the years 2008-09 and 2009-10. The State Commission is the Respondent no. 1. The Respondent nos. 2 to 6 are Consumer's Associations/NGOs. Maharashtra State Distribution Company is the respondent No.7.

2. The brief facts of the case are as under:

2.1. The Appellant is a generating company engaged in the business of generation of electricity in the State of Maharashtra.

2.2. On 29.3.1997, the erstwhile Maharashtra State Electricity Board, the predecessor of the Appellant, approved the proposal for development of the 250 MW Paras Unit no. 3. On 13.6.2003, the Central Electricity Authority accorded the Techno Economic Clearance to this project under the relevant provisions of the Electricity (Supply) Act, 1948. On 25.5.2004,

the project implementation commenced with placement of order for main plant equipment on M/s Bharat Heavy Electricals Ltd. (BHEL). On 17.12.2004, Agreement for design, engineering, manufacture, supply, etc., for the main plant equipment was signed between the Appellant and M/s BHEL.

2.3. On 31.3.2008 Paras Unit no. 3 was commissioned after a delay of about 14 months with respect to the contractual date of commissioning. According to the Appellant, the delay was solely attributable to M/s BHEL for which the Appellant imposed liquidity damages on M/s BHEL.

2.4. Subsequently, the Appellant filed a petition for determination of tariff for Paras Unit no. 3 for the years 2008-09 and 2009-10 before the State

Commission. On 15.12.2009 the State Commission passed the impugned order disallowing some of the claims of the Appellant. Aggrieved by the order dated 15.12.2009, the Appellant has filed this Appeal.

3. The Appellant is aggrieved by the following issues:
 - i) Non-consideration of reasons for delay in commissioning of Paras Unit No. 3 and consequential disallowance of the capital cost;
 - ii) Disallowance of actual capital cost incurred;
 - iii) Disapproval of Advance Against Depreciation (AAD);
 - iv) Deferment of Additional Capitalization.

4. On the above issues the Appellant has made the following submissions:-

i) Reasons for delay in commissioning of Paras Unit 3:

BHEL was the sole bidder for the Project. The delay was solely on account of BHEL who had to complete the project by January 2007, as per the Agreement. The Appellant took all necessary measures to follow up with BHEL and had even stationed an officer at the manufacturing unit of BHEL to expedite supplies of equipment. However, due to heavy order book and inadequate manufacturing capacity of BHEL there were delays in implementation of the project which were beyond the control of the Appellant. There was no delay on the part of the Appellant to provide necessary inputs in the scope of the

Appellant to match the erection activities of BHEL to achieve contractual schedule. The State Commission has wrongly attributed the entire delay to the Appellant and disallowed the costs on account of delay in commissioning of the unit to the Appellant. However, the State Commission has not ruled that any delay was on account of actions or inactions of the Appellant.

ii) Disallowance of actual Capital Cost:

This issue is to a large extent related to the first issue and is a consequence of attributing the entire delay in commissioning of the project to the Appellant. Against the claim of capital cost (excluding IDC) of Rs. 1248.91 crores by the Appellant, the State Commission has allowed a sum of Rs. 1122.62 crores, thus disallowing a cost of Rs. 126.29 crores. IDC has also not been

allowed fully. This is not in consonance with the Regulation 30.1 of the Tariff Regulations, 2005 of the State Commission. The costs disallowed partially are Interest During Construction (IDC), overhead cost, cost of initial spares, refund of interest subsidy under Accelerated Generation & Supply Programme Scheme (AG&SP) and interest on loans due to pro-rata reduction in debt component as per debt equity ratio.

iii) Disapproval of Advance Against Depreciation -

The State Commission has disapproved the Advance Against Depreciation (AAD) for Paras Unit No. 3 contrary to the Regulation 32.3, even though the loan payment exceeded the amount of depreciation. The State Commission has wrongly disallowed AAD on the ground that the depreciation of the company as a whole is more

than loan repayment of the company. The State Commission should have approved AAD on the project based position and not considered company as a whole for allowance of AAD.

iv) Deferment of Additional Capitalization:

The State Commission has deferred consideration of capitalization of certain expenditure post commissioning of the Unit on the ground that some details were not provided by the Appellant. The State Commission should have sought the information from the Appellant instead of deferring the Additional Capitalization.

5. Mr. Buddy A. Ranganadhan, learned counsel for the Respondent-1/State Commission has argued extensively supporting the findings of the State Commission in the impugned order. He argued that

the project suffered from time and cost over-run. As per the contract with BHEL, the date of completion of supply and trial operation was January 2007 but the Unit was commissioned in March 2008, i.e. after a delay of about 14 months. Also as against capital cost of Rs. 923 crores approved by CEA in the year 2003 and approval of the Board for Rs. 1022.53 crores in February, 2004, the actual cost incurred by the Appellant excluding IDC and Financing cost was Rs. 1327.21 crores. The Appellant can not absolve itself of the responsibility of timely commissioning of the unit and pass on the blame on its Contractor, M/s. BHEL. The State Commission has analysed and explained the disallowed portion of the claim of capital cost due to delay in commissioning of the project attributable to the Appellant, cost of some common facilities between Unit 3 and 4, spare parts, etc.

6. After examining the contentions of the parties, we have framed the following questions for consideration:

- i) Was the State Commission right in attributing the entire delay in commissioning of the Unit to the Appellant and disallowing entire time over-run related cost to the Appellant without considering the delays and shortcomings on the part of the supplier, viz. M/s BHEL?
- ii) Has the State Commission erred in rejecting part of capital cost due to IDC, overheads, cost of initial spares and loan subsidy, etc.?
- iii) Was the State Commission right in considering Advance Against Depreciation Company-wise instead of Station-wise?

iv) Was the State Commission correct in deferring the Additional Capitalization claimed by the Appellant?

We find that all the above issues have been covered in the Judgment of this Tribunal dated 27.4.2011 in Appeal No. 72 of 2010 in the matter of Maharashtra Power Generation Co. Ltd. vs. MERC & Others. In light of findings of the Tribunal's Judgment dated 27.4.2011, we will answer the above questions.

7. The first issue is regarding delay in commissioning of the Unit.

7.1. According to the Appellant, the delay was solely on account of BHEL. On the other hand, the State Commission's contention is that the Appellant can not absolve itself of responsibility of project management and simply pass on the blame on its contractor. The

cost over run due to delay in execution of the project can not be passed on the consumers.

7.2. Let us first examine the relevant Regulation for capital cost. Regulation 30.1 of the Tariff Regulations, 2005 is reproduced below:

“Subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of the original cost of project. The original cost of project shall be determined based on the approved capital expenditure actually incurred up to the date of commissioning of the generating station and shall include capitalized initial spares subject to following ceiling norms as a percentage of the cost as on the cut- of date.....”

Thus, the capital cost shall be on the basis of actual expenditure incurred on completion of the project, subject to prudence check by the State Commission.

There is no dispute on the capital cost incurred by the

Appellant. What is disputed is the cost which has been disallowed mainly due to time over run.

7.3. Let us examine the findings of the State Commission regarding delay in commissioning of the unit in the impugned order. The relevant extracts are reproduced below:

“95. As regards the impact of time over run on account of delay in the project commissioning, MSPGCL has considered the entire IDC incurred till actual COD of the Project and has proposed to reduce the same by the Liquidated Damages levied on the Contractors for delay in project. The commission agrees with the views of some of the stakeholders raised during the hearing that the burden of increase in IDC due to delay in Project should not be loaded to the consumer. The Commission has therefore, re-computed the IDC considering original schedule and original phasing of expenditure”.

“100. MSPGCL submitted that the total amount received and refunded to PFC under AG&SP amounts to Rs. 18.47 Crore. The Commission observes that had the Project been commissioned on time, this amount of Rs. 18.47 Crore received as subsidy under AG&SP would have reduced the project cost by that amount. The amount refunded by MSPGCL under AG&SP cannot be passed on to consumers as the consumers in Maharashtra have already suffered in terms of load shedding as well as higher purchase costs from the costlier sources due to delay in the Project. Therefore, the Commission has not considered the refund of Rs. 18.47 Crore under AG&SP as pass through to the consumers and has considered the benefit of interest subsidy while computing the tariff”.

7.4. The State Commission has not gone into the reasons for the delay in commissioning of the project and has attributed the entire delay to the Appellant

and accordingly disallowed the cost incurred due to the delay on the Appellant.

7.5. On the other hand, the Appellant in its petition before the State Commission, copy of which was enclosed with this Appeal, has annexed a copy of letter dated 17.9.2008 from General Manager, MAHAGEN Co. indicating the delay in the various activities due to delay in supply of material/equipment by BHEL and inadequate manpower.

7.6. This issue has been dealt with in this Tribunal's Judgment dated 27.4.2011 in Maharashtra State Power Generation Co. Ltd. vs. MERC and Others in appeal No. 72 of 2010. The relevant extracts of the Judgment are reproduced below:

“7.2.....The prudence check of the capital cost has to be looked into considering whether the

Appellant has been careful in its judgments and decisions while executing the project or has been careful and vigilant in executing the project.

7.3. The Tariff Regulations of the State Commission do not specify any benchmark norms for prudence check of the capital cost..... The Central Commission has also not laid down any benchmark norms for prudence check, but its Regulations only indicate the area of prudence check including cost overrun and time overrun. The State Commission has not examined the reasons for delay in commissioning of the project and attributed the entire time overrun related cost with respect to the contractual schedule agreed with BHEL to the Appellant. In our view, this is not prudence check. In the absence of specific regulations, we will now find answer to the question raised by us relating prudence check of time overrun related costs.

7.4. The delay in execution of a generating project could occur due to following reasons:

- i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.*
- ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.*
- iii) situation not covered by (i) & (ii) above.*

In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run. However, the consumers should get full benefit of the LDs recovered from the contractors/suppliers of the generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in imprudent time schedule not in accordance with good industry practices.

7.5. *In our opinion, the above principles will be in consonance with the provisions of Section 61(d) of the Act, safeguarding the consumers' interest and at the same time, ensuring recovery of cost of electricity in a reasonable manner.*

7.6.....

7.7. *Admittedly, there is no dispute regarding capital cost incurred by the Appellant. We have noticed that the State Commission has not gone into the reasons for delay in commissioning of the project and has proceeded with attributing the entire delay and cost of such delay on the Appellant, except allowing the Appellant to retain the Liquidated Damages. The State Commission has also not considered the reasons for delay as submitted by the Appellant in its petition.*

7.8. *Let us now examine the matter in light of the principles laid down by us in para 7.4 above. It has been indicated by the Appellant that against the Notice Inviting Tender for the main plant only*

one bid was received, viz. from BHEL. Thus there was no alternative available to the Appellant in so far as placement of order for main plant is concerned presumably due to lack of competition in manufacturing of main plant equipment at that point of time. The agreement with the BHEL provided for a reasonable time schedule for completion of the project as also a reasonable clause for Liquidity damages. Thus there seems to be no imprudence on the part of the Appellant in selecting the main equipment supplier, which happens to be a major state owned equipment manufacturing company and in the terms & conditions of the agreement.

7.9.....

7.10. It is also argued by the Appellant that BHEL being the only major supplier of the equipment in the country at that time could not cope up with the targetted schedules due to heavy orders. Delays were experienced not only at Parli Unit 6 but also at other projects. In our opinion, this appears to be

the case of sudden spurt in execution of the Power Projects in the country and consequential increase in demand of equipments and the gestation period required by the industry in enhancing the manufacturing capacity.

7.11. Considering all these facts and documents submitted before this Tribunal, though it is evident that there was delay on the part of BHEL in supply and commissioning of the main plant, it is not established beyond doubt that the entire delay was due to the reasons beyond the control of the Appellant.

7.12. In view of above, we feel that this case falls under category (iii) described in para 7.4. Accordingly, following the principles of prudence check laid down by us, the cost of time over run has to be shared equally between the generating company and the consumers. Admittedly, there is no enhancement in cost of the contract price of the equipment as no price variation escalation was permissible to BHEL beyond the schedule date of

completion of the Project according to the terms of the agreement. The impact of time over run beyond the contractual schedule is only on IDC and overhead costs. Accordingly, the same have to be shared between the generating company and the consumers. Excess IDC and overhead costs for time overrun from scheduled date of commissioning to actual date of commissioning has to be worked out on prorata basis with respect to total actual time taken in commissioning of the unit. 50% of the excess IDC and overhead costs will have to be disallowed. Deduction on account of 50% of the Liquidity Damages received by the Appellant from its suppliers/contractors has also to be allowed from the capital cost, to give due credit for LDs to the consumers. This issue is answered accordingly.”

7.7. In our opinion, the facts of the present case are similar to that in the Appeal No. 72 of 2010. In this case also against the Notice Inviting Tender (NIT) only one bid was received., viz., from BHEL. There seems

to be no imprudence on the part of the Appellant in selecting the main equipment supplier. There were delays in supply of material and execution of the main plant and equipment by BHEL. However, there is delay in stabilization of the generating unit. There has also been collapse of ESP field, hoppers, flue gas duct which were being executed under the overall supervision of the Appellant. There is also no mention about commissioning of the Balance of Plants which constitute a major part of the Project. Though it is evident that there was delay on the part of BHEL in supply and commissioning of the main plant, it is not established beyond doubt that the entire delay in commissioning of the Project was due to the reasons beyond the control of the Appellant. Accordingly, this issue is decided as per para 7.12 of the Tribunal's

Judgment dated 27.04.2011 in Appeal No. 72 of 2010 reproduced above.

8. The next issue is regarding overheads, Interest During Construction, cost of initial spares, loan subsidy and interest on loan. We will take up these issues one by one.

8.1. The issue of overhead costs has been decided in the Judgment of this Tribunal dated 27.4.2011 in Appeal No. 72 of 2010 as under:

“8.2.....The State Commission has observed that the overheads according to Techno Economic Clearance (TEC) of CEA is Rs. 76.49 crores against the total approved cost of Rs. 946 crores i.e. 8.09% of total cost excluding Interest During Construction (IDC) and Financing Charges (FC). Accordingly, the State Commission has allowed the overheads @ 8.09% of total cost of the project of Rs. 1249.92 crores.

8.3. We find that there are no specific regulations for determining the overhead cost. Overhead of 8.09% of total project cost was not a CEA norm but a derived figures from the elements of capital cost approved by the CEA in its Techno-economic clearance. The State Commission has not determined the project cost based on CEA's approval and has taken the order placement cost as the base cost. Thus, it would not be correct to determine norms of overhead cost from CEA approved cost.

8.4. There is no dispute that the total overhead cost as claimed by the Appellant has been incurred. As pointed out by the Appellant a part of total Operation and Maintenance (O&M) cost are booked to the upcoming projects and the same is excluded from the O&M expenses of the existing power plants. Thus if the expenses booked to the upcoming project are not allowed in O&M cost of existing plants, the same has to be allowed in the capital cost of upcoming projects. However, a part

of this overhead cost is on account of time over run of the project. Therefore, a part of the overhead cost on account of delay in commissioning of the project may have to be disallowed on the principles as decided in the first question. Accordingly, the State Commission is directed to determine the overhead cost for the time overrun from the scheduled date of commissioning of the project on pro-rata basis with respect to actual time taken in completion of the project. 50% of the excess overheads due to time over run calculated thus may be disallowed.”

The overheads may be re-determined by the State Commission accordingly.

8.2. The relevant extract of the Judgment dated 27.4.2011 on Interest During Construction are reproduced below:

“We agree with the State Commission that the infusion of debt & equity has to be more or less on pari passu basis as per normative debt equity

ratio. However, the increase in IDC due to time over run has to be allowed only according to the principles laid down in para 7.4 above. Accordingly, the State Commission is directed to re-determine the IDC for the actual period of commissioning of the project and then work out the excess IDC for the period of time over run on a pro-rata basis and limit the disallowance to 50% of the same on account of excess IDC. This question is answered accordingly”.

The State Commission is directed to determine the IDC accordingly. The principle laid down by us for IDC and overheads will also be applicable to the amount of AG&SP loan subsidy.

8.3. The relevant extracts of Judgment dated 27.4.201 on initial spares are reproduced below:

“8.8. We find substance in the arguments of the Appellant. It is true that the tariff has been determined according to the 2005 Regulations.

However, the State Commission has powers to relax under the provisions of the Regulations. When the Appellant placed the orders, there were no regulations and it could be guided only by the CEA's TEC which allowed capital spares @ 3% of capital cost. Admittedly the Appellant has incurred the cost of capital spares. Looking into the circumstances of the case, it is fit case where the State Commission may exercise its power to relax the norms. Accordingly, we direct the State Commission to consider the actual cost of initial spares subject to maximum of 3% of the approved capital cost”.

We accordingly direct the State Commission to determine cost of spares in light of the above finding.

8.4. As regards disallowance of interest on loan, we have directed the State Commission to re-determine the capital cost according to our findings on cost of spares, overheads, etc. Accordingly, the amount of

debt and interest on debt will have to be re-determined.

9. The next issue is Advance Against Depreciation. The relevant extracts of our Judgment dated 27.4.2011 are reproduced below:

“9.1.This issue has been dealt with in details by this Tribunal in Judgment dated 27th April, 2011 in Appeal no. 191 of 2009 in the matter of Maharashtra State Power Generation Co. Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. The relevant extracts are as under:

“12.5. Let us now examine the above contentions of the Respondent no. 1 in seriatim.

i) In the entire tariff exercise the tariff is being determined station-wise. All the components of tariff are determined for each station. The availability at which a

generating station recovers its full fixed cost is also determined station-wise. Regulation 32.3 also provides for AAD specific to a generating station. Therefore, it is logical that AAD is also allowed station-wise and not company as a whole. AAD results in front loading of the tariff but the balance depreciation after repayment of loan is appropriately adjusted for AAD so that the total depreciation allowed to a generating station remains the same. If the Regulations provide for AAD for a generating station, it should not be denied on some other grounds which do not form part of the Regulation.

- ii) The second contention of the Respondent No. 1 is that the State Commission adopted similar approach for AAD in earlier tariff order. In our opinion each tariff proceeding is a separate and distinct cause of action. Failure of the Appellant to challenge an issue in earlier tariff order does not bar the Appellant to challenge that issue in a subsequent tariff order.*

iii) According to the Appellant same generic loans were taken by the erstwhile Maharashtra State Electricity Board prior to its reorganization which have been allocated station-wise. In our opinion the Appellant's contention of allocating such loans station-wise is the correct approach. The station-wise interest on loan and tariff of the generating stations of the Appellant is also being determined on the basis of such allocated loans and specific loans taken for a generating station. Thus actual repayment of such allocated loans can also be apportioned power station-wise.

In view of above we decide this issue in favour of the Appellant and direct the State Commission to determine station-wise AAD”.

In view of above, we decide this issue in favour of the Appellant.

10. The next issue is additional capitalization. The relevant portion of the Judgment dated 27.4.2011 are reproduced below:

“10.1. According to Ms. Deepa Chavan, learned counsel for the Appellant, even though data sought by the Respondent-1/State Commission had been provided it deferred the consideration of additional capitalization on certain expenditure till the final truing up which is contrary to the principles of Section 61 of the 2003 Act and National Tariff Policy. On the other hand the learned counsel for the State Commission has maintained the position that the Appellant did not submit detailed scope of work along with estimates and the claim of Additional Capitalization would be considered at the time of final true-up.

10.2. Tariff Regulation 30.2 provides for additional capitalization for inclusion in the original cost of project, subject to prudence check. In our opinion, the Additional capitalization should be considered

expeditiously by the State Commission as the delay would only add IDC or carrying cost besides delaying return on equity to the Appellant. Accordingly, the Appellant is directed to submit the desired information to the State Commission and the State Commission would consider it at the earliest. This issue is answered accordingly”.

Accordingly, we direct the Appellant to submit the details to the State Commission and the State Commission would consider the same.

11. Summary of our findings:

11.1. The first issue is regarding attributing entire delay in commissioning of the project to the Appellant and disallowing time over run related costs to the Appellant. In the absence of the norms for prudence check, we have laid down the principles of prudence check of time overrun related costs in our Judgment dated 27.4.2011 and

the same is described in para 7.6 above. After detailed examination we have come to conclusion that though it is evident that there was delay on part of the BHEL in supply and execution of main plant, it is not established beyond doubt that the entire delay was for reasons beyond the control of the Appellant. Accordingly, it is held that the 50% of the excessive cost incurred due to time overrun has to be disallowed to the generating company.

11.2. The second issue is regarding rejection on part of overheads, IDC, initial spares and interest on loan.

- i) There is no dispute that the entire overhead cost as claimed by the Appellant has been incurred. A part of the overhead cost is on account of delay in execution of**

the project, 50% of which may have to be disallowed according to the principles laid down by us. Accordingly, the State Commission is directed to determine the excessive overheads cost for the period of delay on pro-rata basis with respect to actual time taken in completion of the Project. 50% of the overheads due to time overrun thus calculated may be disallowed out of the total overhead cost incurred.

- ii) As regards IDC, we agree with the State Commission that infusion of equity and debt has to be more or less on pari passu basis as per normative debt equity ratio. However, increase in IDC due to time overrun has to be allowed only according to the principles laid down by us in para 7.4 of**

the Judgment of this Tribunal dated 27.4.2011 in appeal No. 72 of 2010. Accordingly, the State Commission is directed to re-determine the IDC for the actual period of commissioning of the project on the principles of pari passu deployment of equity and debt and then work out the excess IDC for the period of time overrun on a pro rata basis with respect to actual time taken in completion of the project and limit disallowance to 50% of the same from the total IDC. The principles laid down by us for IDC will also be applicable to the amount of AG&SP loan subsidy.

iii) As regards, cost of initial spares, we notice that the order for initial spares was placed

before the formation of the Regulations and the Appellant could be guided by the TEC accorded by CEA which provided for initial spares @ 3% of cost as against 2.5% specified in the State Commission's Regulations notified subsequently. Accordingly, we direct the State Commission to consider the actual cost of initial spares subject to maximum of 3% of the approved capital cost.

- iv) As regards disallowance of interest on debt, we have already directed the State Commission to re-determine the capital cost according to our findings. Accordingly, the debt and interest on debt will also have to be re-determined. This question is answered accordingly.**

11.3. The next issue is Advance Against Depreciation. This issue has already been decided by this Tribunal in its Judgment dated 27th April, 2011 in Appeal no. 191 of 2009 in the matter of Maharashtra State Power Generation Co. Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. which would apply to the present facts of this case. Accordingly, the State Commission is directed to re-determine station-wise AAD as per its Regulations by following the Judgment of this Tribunal referred to above.

11.4. The next issue is deferment of Additional Capitalization. In our opinion, the Additional capitalization should be considered expeditiously by the State Commission. Accordingly, the Appellant is directed to submit the desired

informations to the State Commission and the State Commission would consider it at the earliest.

Conclusion

12. In view of above, the Appeal is partly allowed and the impugned order is set aside to the extent indicated above. The State Commission is directed to give effect to the findings in this Judgment at the earliest. No order as to cost.

13. Pronounced in the open court on this **24th day of May, 2011.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

REPORTABLE / NON-REPORTABLE

vs