

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 73 of 2009

Dated: 31st May, 2011

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

In the matter of

National Thermal Power Corporation Ltd.
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

... Appellant(s)

Versus

1. Central Electricity Regulatory
Commission
3rd & 4th floor, Chandralok Building
36, Janpath, New Delhi-110001

2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg
Lucknow-226001

.....Respondents

Counsel for Appellant(s): Mr. M.G.Ramachandran
Ms Swapna Seshadri
Mr. Anand K. Ganesan

Counsel for Respondent(s):Mr. S. Ravi Shankar, Sr.Adv.
Mr. Pradeep Mishra
Mr. Daleep Kumar Dhyani
Mr. Nikhil Verma
Mr.Swapnil Verma
Mr. Nakhil Nayyar

JUDGMENT

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

NTPC Limited is the Appellant herein. It has presented this Appeal as against the impugned order dated 23.1.2009 passed by the Central Commission determining the Tariff consequent upon the additional capitalization incurred by the Appellant-NTPC Limited for Tanda Thermal Power Station. The Appellant has raised the following issues:

- (a) Un-discharged liability

- (b) Disallowance of interest during construction incurred on renovation and modernization in excess of the normative 30% equity.
- (c) Disallowance of expenditure incurred as capital expenditure but booked in the books as revenue expenditure
- (d) Wrong calculation of opening capital cost as on 31.3.2004

2. With reference to the First Issue, namely un-discharged liability, the issue has already been covered in favour of the Appellant in the following judgments:

- (a) Judgment dated 16.3.2009 in Appeal No.133 and 135 etc of 2008, NTPC V. CERC & Ors. 2009 ELR (APTEL)337.
- (b) Judgment dated 10.12.2008 in Appeals No.151 & 152 of 2007 –NTPC Vs CERC & Ors. 2008 ELR (APTEL) 916.

3. In view of these judgments, the Appellant is entitled to claim over this issue. Accordingly, the Central

Commission is directed to follow the decision decided by this Tribunal in the judgments referred to above.

4. The next issue is disallowance of interest during construction incurred on renovation and modernization in excess of the normative 30% equity. This issue is also covered in favour of the Appellant in the Judgments referred to as below:

(a) Judgment dated 16.2.2009 in Appeal Nos.133 and 135 of 2008 NTPC v. CERC & Ors, 2009 ELR (APTEL)337

(b) Judgment dated 10.12.2008 in Appeals No.151 and 152 of 2007 NTPC Vs CERC & Ors 2008 ELR (APTEL) 916.

5. Regarding this issue, it is submitted by the Learned Counsel for the Respondent that Tanda Thermal Power Station was taken over by NTPC in 2000 under working condition and hence the question of interest during construction does not arise. We are unable to accept this contention as IDC claimed is on the amount incurred on

renovation and modernization in excess of 30% normative equity.

6. In view of the ratio decided earlier by this Tribunal, this issue is answered in favour of the Appellant.

7. The next issue is Disallowance of expenditure incurred as capital expenditure but booked in the books as revenue expenditure. On this issue, as admitted by the Learned Counsel for the Appellant, the judgments rendered by this Tribunal rejecting this ground as against the Appellant. The said judgment is in Appeal No.82 of 2009 NTPC Vs CERC & Ors ELR (APTEL)871 dated 27.7.2010. Accordingly, the ground of this issue is rejected as against the Appellant.

8. The next issue is wrong calculation of opening capital cost as on 31.3.2004. On this issue, the Tribunal earlier gave judgment dated 26.3.2009 in Appeal No. 103

of 2008 {2009 ELR (APTEL) 397 } setting aside the reduction in the capital cost by the Central Commission by Rs.32 crores and restored the capital cost at 607 crores and remanded the matter to the Central Commission. Therefore, this issue is also decided in terms of the said judgment in favour of the Appellant.

9. Accordingly, the Central Commission is directed to implement the findings given in this Judgment. The Appeal is partly allowed and the impugned order in respect of the issue decided in favour of Appellant alone is set aside. There is no order as to cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 31st May, 2011

REPORTABLE/NON-REPORTABLE