

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 59 of 2010

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, Chanderlok Building
36, Janpath, New Delhi-110001

2. Madhya Pradesh Power Trading Co. Ltd.
Shakti Bhawan, Vidyut Nagar
Jabalpur-482008

3. Gujarat Urja Vikas Nigam Ltd.
Bidyut Bhawan
Race Course
Vadodara-390007

4. Electricity Department
Administration of Daman & Diu
Daman-396210
5. Electricity Department
Administration of Dadra and Nagar Haveli
U.T. Silvassa- 396230
6. Maharashtra State Electricity
Distribution Co. Ltd.
Plot No. G-9 Prakashgad
Bandra(East)
Professor Anant Kanekar Marg
Mumbai-400051
7. Chattisgarh State Electricity Board
PO Sundar Nagar, Danganiya
Raipur-492913
8. Electricity Department,
Government of Goa
Vidyut Bhawan
Panaji Goa-403001 ...Respondents

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

Counsel for Respondent(s):Mr. Pradeep Mishra
Mr. Daleep Dhyani
Mr. Nikhil Nayyar
Mr. Swapnil Verma

JUDGMENT

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

NTPC Limited is the Appellant herein. It has filed this Appeal challenging the impugned order dated 10.12.2009 passed by the Central Commission determining the tariff for the period from 20.6.2008 to 31.3.2009 and determining the impact of additional capitalization incurred by the Appellant -NPTC Limited for Sipat Super Thermal Power Station Stage-II during the period from 1.1.2009 to 31.3.2009. In this Appeal the Appellant has raised the following four issues:

- (a) Un-discharged liability
- (b) Disallowance of interest during construction (IDC):
- (c) Equating depreciation to normative loan payment
- (d) Cost of Maintenance Spares

2. According to the Appellant, all these issues stand covered by the various judgments of this Tribunal. In regard to the issue of un-discharged liability it has been submitted by the Appellant that the Central Commission has disallowed the capitalization of un-discharged liability i.e exclusion of part of the capital expenditure validly incurred but pending actual disbursement/payment from the capital cost for the purposes of tariff. On this issue, the Tribunal has decided the same in favour of the Appellant in the following decisions:

(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 these decisions, it has been held that ‘the words ‘actual expenditure incurred’ contained in Regulation 17

would refer to the liabilities incurred and the same would not refer to the actual cash outflow". On the said reasonings, the Appeals referred to above were allowed in favour of the Appellant. During the hearing, the Learned Counsel for the Commission stated that the impugned order has actually allowed the claim of Appellant with regard to un-discharged liability but there is a mistake in the table which would be corrected. Under those circumstances, this point is decided in favour of the Appellant and the matter is remanded for correcting mistakes in the table.

4. The next issue is 'Disallowance of interest during construction (IDC). This issue has also been decided in favour of the Appellant in following judgment:

(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.

5. However, in the impugned order, there is no reference about the judgments of this Tribunal and subsequently rejected the claim of the Appellant with regard to interest during construction.

6. The Learned Counsel for the Uttar Pradesh Power Corporation Limited submitted that the amount of interest during construction repaid by the beneficiaries has to be deducted from capital cost for the purposes of tariff. This submission would not apply to the present case. The issue before this Tribunal is treatment of the internal resources/equity of Appellant which is in addition to equity contribution. This Tribunal has held that Appellant is entitled to claim deemed interest on such loans during construction. Therefore, the question of reducing the said amount from the capital cost does not

arise. On this point, the issue is decided in favour of the Appellant.

7. The next issue is 'Equating depreciation to normative loan payment'. According to the Appellant, the Central Commission has continued to adjust depreciation against the normative loan repayment despite the judgment of this Tribunal as well as the Hon'ble Supreme Court. As a matter of fact, this issue is covered in favour of the Appellant in the following judgments:

(a) Judgment dated 16.3.2009 in Appeal Nos.133 and 135 of 2008 NTPC v. CERC & Ors, 2009 ELR (APTEL)337

(b) Judgment dated 13.6.2007 in Appeals No.139 and 140 of 2006

8. That apart, the Hon'ble Supreme Court has also on the same issue of depreciation has decided in the Delhi Electricity Commission Vs BSES Yamuna Power Limited

(2007) 4 SCC 33. Therefore, this issue is also decided in favour of the Appellant in line with the judgments referred to above.

9. The last issue is of 'Cost of Maintenance Spares'. According to the Appellant, the Central Commission has not considered escalation at 6% per annum on the maintenance spares to be considered for determination of working capital from the date of the commercial operation as per Regulation 21 of the CERC Tariff Regulations, 2004. This issue is also covered in favour of the Appellant in following judgments:

(a) Judgment dated 13.6.2007 in Appeals No.139 and 140 of 2006

(b) Judgment dated 21.8.2009 in Appeal Nos.54 and 74 of 2009 NTPC v. CERC & Ors, 2009 ELR (APTEL)710.

10. In these decisions, it has been held that the cost of the maintenance of spares needs to be calculated on the total capital cost inclusive of additional capitalization. Further, it has been held that the cost of spares has to be decided on the basis of the additional capitalization undertaken from the date of commercial operation as allowable under the Tariff Regulations, 2004.

11. Thus, it is clear that the cost of maintenance cost needs to be calculated on the total capital cost inclusive of the additional capitalization. Under those circumstances, we hold that the Appellant is entitled to claim the cost of the maintenance spares by adding into the maintenance cost.

12. Thus this point is also answered in favour of the Appellant. The Central Electricity Commission is directed to pass consequential orders in terms of the judgments rendered in this Appeal.

13. The Appeal is allowed. The impugned order is set aside. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 31st May, 2011

REPORTABLE/NON-REPORTABLE