

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

**Appeal No. 61 of 2009**

**Dated: 31<sup>st</sup> 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  
3<sup>rd</sup> & 4<sup>th</sup> 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  
Mr. Anand K. Ganesan

Counsel for Respondent(s):Mr. Jaideep Gupta,  
Sr. Advocate  
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 20.11.2008 passed by the Central Electricity Regulatory Commission (Central Commission) determining the tariff consequent upon the additional capitalization incurred by the Appellant-NTPC Limited for the Korba Super Thermal Power Station in the years 2004-05 to 2005-06. The Appellant has raised the following issues:

- (a) Un-discharged liability;
- (b) Equating depreciation to normative loan payment;
- (c) Cost of Maintenance Spares;

- (d) Disallowance of expenditure incurred towards RLA studies;
- (e) Disallowance of Cost of Electrolyser Rectifier

2. In respect of the issue of un-discharged liability, this Tribunal in earlier decisions decided the same in favour of the Appellant. Those decisions are as follows:

- (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 the impugned order the Central Commission has not allowed the un-discharged liability. The Learned Counsel for the Central Commission submits that the impugned order was passed on 20.11.2008 whereas the judgment of the Tribunal was rendered on 10.12.08 and therefore, the decision of this Tribunal has not been given

effect to in the impugned order. However, the Central Commission is agreeable that the matter be remanded to the Central Commission for implementing the judgment of this Tribunal in respect of the Generating Station in question. Accordingly, the same is remanded to the Central Commission to pass the appropriate order.

4. The second issue is equating depreciation to normative loan repayment and the third issue is cost of maintenance spares. On both the issues, this Tribunal vide judgment dated 13.6.2007 has decided in Appeals No.139 and 140 of 2006 in favour of the Appellant. On these issues, the Tribunal in Appeal No.133 and 135 of 2008 dated 16.3.2009 and Appeal No.34 and 74 of 2009 dated 21.8.2009 has passed the judgment in favour of the Appellant but the Central Commission has not chosen to follow the ratio decided by this Tribunal on the ground that the decisions were challenged before the Hon'ble Supreme Court and the same is pending.

5. The Central Commission has argued that since the Appellant has given an undertaking before the Hon'ble Supreme court that it will not press for the five issues including this issue pending disposal of the Appeal before the Hon'ble Supreme Court, the Central Commission thought that it can continue to follow its own principles notwithstanding the directions given and the principles laid down in the judgment of this Tribunal dated 13.6.2007.

6. The Learned Counsel for the Appellant has correctly pointed out that mere pendency of the appeal against the judgment in the Hon'ble Supreme Court and mere undertaking given by the Appellant that it would not implement the Tribunal judgment order pending decision would not dilute the ratio of the decision of this Tribunal.

7. The Second appeal filed by the Central Commission is relating to the tariff determination for the period 2004-09. It does not in any manner empower the Central Commission to hold that the claim of the Appellant based on the principles laid down by this Tribunal cannot to be considered in the light of the undertaking given by the appellant.

8. As mentioned above, the undertaking given by the Appellant does not render the judgment of this Tribunal non est or non effective. It is settled law that this decision would continue to operate as a binding precedent till the decision of the Tribunal is set aside. Therefore, with reference to the second and third issue we hold that the Appellant is entitled to claim in terms of the judgments rendered by this Tribunal. Accordingly, the issues are answered in favour of Appellant.

9. The next issue is relating to disallowances of expenditure incurred towards RLA studies. As admitted by the Learned Counsel for the Appellant, this issue has been decided against the Appellant in judgment dated 16.3.2009 in Appeals No.133 and 135 of 2008 NTPC Vs CERC & Ors ELR (APTEL) 337 and Judgment dated 21.8.2009 in Appeal No.74 of 2009 NTPC Vs CERC & Ors ELR (APTEL) 710. Accordingly, the ground on this issue raised by the Appellant is rejected.

10. The next issue is disallowance of cost of Electrolyser Rectifier. This is a new issue to be considered in this Appeal. The Central Commission has disallowed the capital cost of the Electrolyser Rectifier incurred by the NTPC.

11. According to the Appellant, the Central Commission wrongly disallowed the capital cost of the Electrolyser Rectifier procured by the Appellant for



Hydrogen Generation Plant at Korba Station without considering the following features:

(a) the Electrolyser Rectifier procured by NTPC for the Hydrogen Generation Plant at Korba Station, which is used for cooling the generators of the Station;

(b) the Hydrogen Plant is an essential requirement of the power generating station and the entire generation activity will necessarily have to be suspended in case of its failure due to non availability of Hydrogen as cooling agent in generators;

(c) the company which originally supplied the rectifier had ceased operations;

(d) the Electrolyser Rectifier installed was having a single stream of operation and was unable to meet the intended quality and quantity required for the Korba Station generating units;

(e) as the existing rectifier is old and there is non-availability of spares due to the closure of the original equipment manufacturer, there are chances of it failing;

(f) In case of such failure, a replacement is difficult to arrange at immediate notice, which would cause

threat to the availability of the entire generation capacity.

12. On these reasonings, the Central Electricity Authority had approved the procurement of the Electrolyser Rectifier for the Hydrogen Plant at Korba Station on the basis of which the Appellant had made the procurement.

13. According to the Learned Counsel for the Commission, the Electrolyser Rectifier is not a replacement for the existing Rectifier but is an additional or standby one and as such this claim can not be allowed.

14. We are unable to accept this reasons especially in the light of the fact that the existing Rectifier is old and there is a non-availability of the spares due to the closure of the original equipment manufacturer and as such there are chances of failure and in case of such failure, the immediate replacement is difficult to arrange which would cause threat to entire generation capacity.

15. Therefore, the Central Commission is directed to allow the said claim. Accordingly, the findings on this issue is set aside and the matter is remanded back to the Central commission to pass consequential orders on this issue.

16. Thus, we hold all the issues in favour of the Appellant except the issue of disallowance of expenses towards RLA studies. The Appeal is partly allowed. No order as to costs.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

Dated: 31<sup>st</sup> May, 2011

REPORTABLE/NON-REPORTABLE