

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 65 of 2010

Dated: 26th Sept, 2011

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

IN THE MATTER OF

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

... Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110 001
2. Madhya Pradesh Power Trading Company Ltd,
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482008,
3. Maharashtra State Electricity Distribution Company Ltd.,
Pradashgad, Bandra (East),
Mumbai-400 051
4. Gujarat Urja Vikas Nigam Ltd,
Sardar Patel Vidyut Bhawan, Race Course Road,
Vadodra-390 007,
5. Chhatisgarh State Power Distribution Co. Ltd.,
PO-Sundar Nagar, Danganiya,
Raipur-492913

6. Electricity Department, Government of Goa,
Vidyut Bhawan,
Panaji, Goa-403 001
7. Electricity Department,
Administration of Daman & Diu
DAMAN-396 210
8. Electricity Department,
Administration of Dadra and Nagar Haveli,
Silvassa-396 210

....Respondent(s)

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

Counsel for Respondent(s): Mr. Pradeep Misra,
Mr. Manoj Kr. Sharma,
Mr. Daleep Kr. Dhyani for R-2
Mr. Suraj Singh,
Mr. Shashank Pandit
Mr. Vivek Narayan Sharma for R-6,
Mr. Rajesh Monga for R-1

JUDGMENT

1. NTPC Limited is the Appellant herein.
2. The Appellant has filed this Appeal as against the impugned order dated 11.1.2010 passed by the Central Commission. The following issues have been raised by the Appellant in this Appeal:

- (i) Exclusion of part of the capital expenditure validly incurred but pending actual disbursement/payment from the capital cost for the purpose of tariff;
- (ii) Equating Depreciation with normative loan repayment;
- (iii) Disallowance of cost of Maintenance Spares;
- (iv) Impact of de-capitalization of assets on cumulative repayment of loan ;
- (v) Readjustment of FERV (Foreign Exchange Rate Variation);
- (vi) Disallowance of expenditure on BFP Recirculation Valve

3. In regard to the **First Issue**, namely 'Un-discharged Liability' the Appellant has contended that the Central Commission has wrongly held that actual expenditure incurred cannot include that part of the capital expenditure, where the actual cash payment was made subsequently. As pointed out by the Learned Counsel for the Appellant, the issue has already been covered in favour of the Appellant by this Tribunal reported in (NTPC v. CERC & Ors.) 2009 ELR (APTEL) 337 and (NTPC & CERF) 2008 ELR (APTEL) 916. So, in view of the same, the impugned order in respect of this issue is set aside. Consequently, we hold this issue in favour of the Appellant.

4. The **next issue** is '**Equating depreciation with normative loan Repayment**'. The Appellant has submitted that the Central Commission is wrong in treating the depreciation for the purpose of repayment of the

loan since it is settled law that the depreciation is not a source of the funding for the current year but for funding the replacement cost of the asset at the useful life of the asset. This issue has also been decided in favour of the Appellant in the judgment of this Tribunal reported in (NTPC v. CERC & Ors.) 2009 ELR (APTEL) 337 and Appeal No.139 & 140 of 2006 dated 13.6.2007.. Accordingly, the impugned order in respect of this issue is set-aside. Consequently we hold this issue in favour of the Appellant.

5. The **next issue** is relating to '**Disallowance of Cost of maintenance spares**'. According to the Appellant, the Tariff Regulations, 2004 provide for cost of the maintenance spares to be allowed on a normative basis and the additional capital works undertaken also require spares and it is therefore, proper that the cost of the additional spares works to be included in the historical capital cost. This issue has also been decided in favour of the Appellant in the in Appeal No.139, 140 etc of 2006 NTPC v. CERC & Ors. Dated 13.6.2007 and judgement reported in 2009 ELR(APTEL) 705. In view of the same, the impugned order is set aside on this issue also. Accordingly, this issue is being decided in favour of the Appellant.

6. The **next issue** is '**Impact of de-capitalization of assets on cumulative repayment of loan**'. According to the Appellant, when the de-capitalization of assets are taken to reduce the capital cost, the cumulative repayment of the loan should also be reduced and this principle has not been followed by the Central Commission in the impugned order. This issue has also been decided in favour of the Appellant in the judgment dated 139 and 140 etc. of 2006 dated

13.6.2007 So in the light of the above decision we hold in favour of the Appellant on this issue.

7. The **next issue is 'Readjustment of Foreign Exchange Rate Variation (FERV)'**. It is submitted by the Appellant that the Central Commission ought to have appreciated the fact that in terms of Regulation 17 of the Tariff Regulation 2004, the capital base determined as per Tariff Regulations, 2001 has to be adopted for the purpose of opening gross block of assets and in view of the same, the Central Commission cannot revise the allocation of the capital cost relating to period prior to 1.4.2004. This issue has also been dealt with by this Tribunal and decided in favour of the Appellant in the Judgement dated 1.9.2010 reported in NTPC V. CERC 2010 ELR (APTEL) 1117. Therefore, the impugned order on this issue also is set-aside.

8. The **last issue is 'Disallowance of Expenditure on BFP Recirculation Valve'**. This is a new issue which is to be dealt with in this Appeal.

9. The Central Commission in the impugned order disallowed the capital expenditure under the head replacement of the BFP Recirculation Valve amounting to Rs.12.97 lacs on account of the fact that the Appellant has not been able to give details of the original Value of the replaced Valve. The relevant finding for disallowance is as follows:

“(e) Replacement of BFP Recirculation Valve: The has claimed an expenditure of Rs.12.97 lakh on replacement of this asset. The justification submitted by the Petitioner for the Expenditure is as under:

“The Existing valves have outlived their useful life and were passing heavily. All this has led to loss of heat rate and increase in Auxiliary Power Consumption. The prolonged use of these valves may seriously jeopardize the safety of men and machine. This proposal has been approved by CEA under Capital Addition Scheme of VSTPS-I. CEA (S.NO.25)”.

The Petitioner has not furnished the corresponding de-capitalization value of the assets and has stated as under:

This entire package was procured from erstwhile USSR. The break-up prices for recirculation valves and BFP is not available. Further, the old valve has been removed from main equipment and has been declared as scrap. The valuation of old asset is being done and shall be adjusted upon sale of scrap”.

The justification of the petitioner for not furnishing the de-capitalized value of original asset even after two years of de-capitalization of the asset is not acceptable and hence, in terms of Note-2 under Regulation 18, the claim of the Petitioner for Rs.12.97 lakh is not allowed”.

10. According to the Appellant, the corresponding de-capitalization value of the old valve cannot be furnished as the entire package had been procured by the Appellant from the erstwhile Russian Federation of the Union of Soviet Socialistic Republic and as such the break up prices of the recirculation valves were not available.

11. It is further contended that the Central Commission did not take into account that the entire proposal of acquisition of the BFP recirculation valves was approved by the Central Electricity Authority under the Capital Addition Scheme of the Vindhyachal Stage I and therefore it is a part of

Capital expenditure. It was further pointed out by the Appellant that the Central Commission in another case in Petition No.128/2008 passed the order dated 11.1.2010, in the case of Korba Super Thermal Power Station, while dealing with similar issue holding that “Hence considering the fact that the asset is necessary for the efficient operation of the generating station, an amount of Rs.43.11 laks is allowed after deducting 10% of the value of the new asset, considering it to be a gross value of the original asset” but this logic has not been applied by the Central Commission in the present case.

12. The Learned Counsel for the R-2, MP Power Trading Company Ltd, while opposing this submission contended that Note 2 of Regulation 18 of the Terms and Conditions for Determination of Tariff Regulation,2004 provides that any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost, but the Appellant in this case has failed to give the original gross value of the BFP Recirculation Valve and therefore, the capitalization against the said assets can not be allowed and as such the impugned order is valid in law on this issue.

13. We have considered the rival contentions urged by the Counsel for both the parties.

14. The grievance of the Appellant in this Appeal is that Central Commission has disallowed additional capitalization in respect of Boiler Feed Re-circulating Valve (BFR). According to the Appellant NTPC, the original valve being old was replaced as the old valve was leaking heavily thereby reducing the efficiency of the Plant and loss of generation and even though the replacement of the valve was approved by the Central Electricity Authority, the Central Commission disallowed the said claim of Rs.12.97 lakhs, namely the cost of new valve merely because that the value of the original cost of the replaced valve could not be produced by the Appellant. On the other hand, the learned Counsel for Respondent submits that as per the note 2 of Regulation 18 of Tariff Regulations,2004, the replaced asset has to be capitalized at its original value before the new asset is capitalized and since the original value of the replaced valve namely old asset was not furnished by the Appellant, the new asset which has replaced old asset can not be capitalized.

15. Let us now refer to Note 2 of Regulations 18 of CERF(Terms and Conditions for Determination of Tariff) Regulation,2004.

Note-2

“Any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets

from the original project cost, except such items as are listed in Clause(3) of this regulations.”

16. The perusal of note 2 would make it clear the gross value of the old asset is to be written off from the project cost for the purpose of capitalization of the value of an asset for replacement of the old asset. In other words, unless and until gross value of the old valve is deducted, the capitalisation can not be done. Admittedly, in this case NTPC did not produce original value of the replaced valve. Under those circumstances the Central Commission has concluded that the new asset which has replaced the old asset can not be capitalized. This conclusion on the basis of the note 2 of Regulation 18 in our view does not suffer from any infirmity, in view of the fact, the conclusion was arrived at on the strength of the Regulations. However, the learned Counsel for the Appellant requests this Tribunal to direct the Central Commission to make a fair estimation of the original value of the old BFR valve and de-capitalise it and allow the capitalization of the new asset on the basis of the particulars of scrap value now available.

18. While capitalizing any asset, depreciation is allowed upto 90% and 10% of the value is considered to be scrap value. If this principle is taken into account, the original cost would be 10 times of the scrap value. On that basis, the learned Counsel for the Appellant has filed an affidavit

giving some details to calculate the estimated scrap value. These details are as follows:-

“i) Total Number of Valves – 18

ii) Weight of one Valve - 40 Kg

iii) Total Weight of scrapped valves – 720 Kgs.

iv) Rate of Ferrous Scrap as M/s MSTCS – Rs.18,000/- per MT

v) Estimated scrap value – $Rs.18000 \times 0.72 = Rs.12960/-$

vi) The rate of the ferrous scrap has been taken as per the bid sheet dated 9.8.2011 by M/s MSTC Limited (A Govt. of India Enterprise), the company through which NPTC generally auctions its scrap items.”

19. In view of these details contained in the affidavit filed by the Appellant, we deem it fit to direct the Central Commission to go into details and consider whether a fair estimation of the value of old asset could be made. If a fair estimation is possible, then it is for the Commission to decide about the de-capitalization of the said value. We make it clear that we do not express any opinion on this. It is for the Central Commission to decide about the course of action to be taken on the basis of the details given in the affidavit filed on behalf of Appellant.

20. In view of the above observations the Central Commission is directed to pass consequent orders in respect of the issues referred to above.

21. Appeal is allowed. There is no order as to costs.

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 26th Sept, 2011
REPORTABLE/NON-REPORTABLE