

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

APPEAL No. 74 OF 2009

Dated: 21st August, 2009

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

In the matter of:

NTPC Ltd.

NTPC Bhawan,
SCOPE Complex,
7, Institutional Area,
Lodhi Road New Delhi

...Appellant

Versus

Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001

... Respondent 1

Uttar Pradesh Power Corporation Ltd.

Shakti Bhawan
14 Ashoka Marg
Lucknow – 226 001

... Respondent 2

Jaipur Vidyut Vitaran Nigam Ltd.

Jaipur Vidyut Bhawan, Janpath
Jaipur – 302 005

... Respondent 3

Ajmer Vidyut Vitaran Nigam Ltd.

Ajmer Old Power House, Hathi Bhata
Jaipur Road, Ajmer – 305 001

... Respondent 4

Jodhpur Vidyut Vitaran Nigam Ltd. Jodhpur New Power House, Industrial Area Jodhpur – 342 001	... Respondent 5
Delhi Transco Ltd. Shakti Sadan, Kotla Road Near ITO, New Delhi	... Respondent 6
BSES Rajdhani Power Ltd. BSES Bhawan, Nehru Place New Delhi – 110 019	... Respondent 7
BSES Yamuna Power Ltd Shakti Kiran Building Karkardooma Delhi – 110 092	... Respondent 8
North Delhi Power Ltd. Grid Sub Station Building Hudson Lines, Kingsway Camp Delhi – 110 009	... Respondent 9
Haryana Power Purchase Centre Shakti Bhawan, Sector-VI Panchkula – 134 109	... Respondent 10
Punjab State Electricity Board The Mall Patiala – 147 001	... Respondent 11
Himachal Pradesh State Electricity Board Vidyut Bhawan Shimla – 171 004	... Respondent 12
Power Development Department Government of Jammu & Kashmir Mini Secretariat Jammu – 180 001	... Respondent 13

The Chief Engineer-cum-Secretary

Engineering Department
Chandigarh Administration
Sector-9, Chandigarh

... Respondent 14

Uttarakhand Power Corporation Ltd.

Urja Bhawan, Kanwali Road
Dehradun – 248 001

... Respondent 15

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

Counsel for the Respondent (s) : Mr. Pradeep Misra
Mr. Suraj Singh

JUDGMENT

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

1. NTPC Ltd. is the Appellant herein.
2. Challenging the Order dated 20.11.2008 passed by the Central Commission disallowing the claim of the Appellant in respect of some items while determining revised fixed charges for Singrauli Super Thermal Power Station for the tariff period 2004-09, NTPC has filed this Appeal.

3. The tariff for the Singrauli Super Thermal Power Station of NTPC for the period 2004-07 was determined by the order dated 9.5.2006 of the Central Commission. Subsequent to the said determination, NTPC filed a Petition in Appeal No. 46 of 2007 before the Central Commission for revision of fixed charges after considering the impact of additional capital expenditure in the year 2004-05 and 2005-06. The Central Commission by the order dated 20.11.2008 had disposed of the said Petition in regard to the additional capitalization claimed by the NTPC. However, the Central Commission has not fully allowed the additional capital cost incurred by NTPC to be considered for revision of fixed charges. It has allowed only some items and disallowed other items. The following items were disallowed by the Central Commission:

- (a) The undischarged liabilities incurred by NTPC
- (b) The expenditure incurred on Residual Life Assessment (RLA) studies on the various Renovation & Modernization (R&M) schemes
- (c) Interest on loan by considering depreciation as deemed loan repayment while computing the interest on loan
- (d) Maintenance spares cost corresponding to the additional capitalization while computing the working capital.

4. On these issues, the Learned Counsel for the Appellant while assailing the impugned Order disallowing these items would point out that out of these 4 issues, 3 issues, namely, (a), (c) & (d) have already been dealt with and decided by the Tribunal in favour of the Appellant and on that basis, it is prayed that the Appeal can be allowed in respect of these 3 issues in terms of those Judgments.

5. The Learned Counsel for the Respondent would point out that even though the claim in regard to items (a), (c) & (d) has already been dealt with by the Tribunal and decided in favour of the Appellant, the Tribunal decided as against the Appellant in respect of item (b).

6. We have considered the submissions made by the Learned Counsel for both the parties.

7. In respect of point (a) above, it is noticed from the impugned order that the Central Commission disallowed the expenditure towards the undischarged liabilities on the ground that the actual cost inflow has not occurred. As pointed out by the Learned Counsel for the Appellant in

Appeal No. 151 of 2007 dated 10.12.2008 and Appeal No. 133 of 2008 dated 16.3.2009, it has been held that the generator is entitled to recover the tariff for the capital asset put into operation and all the expenditure which has gone into the creation of the capital asset, shall be taken into account in spite of the deferment of the payment of such expenditure.

8. In view of the above ratio which has been decided by the Tribunal in the cases referred to above, we feel the Appellant is entitled to claim of capital expenditure incurred pending actual disbursement to be included in the capital cost.

9. The next point i.e. (c) above would relate to computation of the interest on loans, i.e., equating depreciation with normative loan repayment. This point also has been decided in favour of the Appellant in Appeal No. 139 of 2006 dated 13.6.2007 in which it is held that depreciation should not be considered to be an item allowed for repayment of loan. In the very same line, the Tribunal again reiterated the said ratio in Appeal No. 133 of 2008 dated 16.3.2009.

10. In view of the above settled position, we are of the view that the Appellant is entitled to claim in respect of depreciation as well.

11. In regard to the point (d) relating to disallowance of cost of maintenance spares, it is noticed that the Central Commission has permitted the cost of spares as per the capital cost frozen on the date of commercial operation without considering the additional capitalization undertaken from the date of the commercial operation as allowable under the Tariff Regulations, 2004. There is no dispute in the fact that it has been held in the Judgment in Appeal No. 139 of 2006 dated 13.6.2007 that the cost of maintenance spares needs to be calculated on the total capital cost inclusive of the additional capitalization.

12. In view of the above ratio decided by the Tribunal referred to above, it has to be held that the Appellant is entitled to claim for the cost of maintenance spares by adding it into the capital cost.

13. In regard to the point (b) relating to disallowance of expenditure towards RLA studies, as correctly pointed out by the Learned Counsel for the Respondent, which is not disputed by the Learned Counsel for the

Appellant, this point was decided against the Appellant in the Judgment in Appeal No. 133 of 2008 dated 16.3.2009. The following is the extract given in the said order:

“The cost incurred on Renovation and Modernization and Life Extension could only be allowed to be capitalized after decapitalization of the replaced assets. Mere completion of the Residual Life Assessment Studies without the timely implementation of its recommendations does not add any benefit to the plant. Any expenditure admitted by the Commission for determination of tariff on Renovation and Modernization and Life Extension shall be serviced on normative debt equity ratio after writing off the original amount of the replacement assets from the original project cost. So, the finding given by the Central Commission that the expenditure on the completed RLA Study may only be considered along with the cost incurred on R&M works after completion of the said works is perfectly justified.”

In view of the above settled position, we reject the contention urged by the Learned Counsel for Appellant in respect of disallowance of expenses

on RLA studies as in our view the Central Commission has correctly decided on this point.

14. With these observations, the impugned Order is set aside only to the extent indicated above. The matter is remanded to the Central Commission for a fresh consideration in respect of 3 issues i.e. (a), (c) & (d) on the basis of our conclusions and directions. The Appeal is partly allowed. No costs.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 21st August, 2009

Reportable / Non-reportable