

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

**Appeal No. 94 of 2005**

Dated: July 14, 2006

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member

**IN THE MATTER OF:**

National Thermal Power Corporation Limited,  
NTPC Bhawan, Scope Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi.

.... Appellant

V/s.

1. Central Electricity Regulatory Commission  
Scope Complex, Lodhi Road, New Delhi
  2. Madhya Pradesh State Electricity Board  
Shakti Bhawan, Vidyut Nagar, Jabalpur
  3. Maharashtra State Electricity Distribution Ltd.,  
Prakashgad, Bandra (East), Mumbai
  4. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidhyut Bhawan, Race Course  
Vadodra, Gujarat
- .... Respondents

Counsel for the appellant : Mr. M.G.Ramachandran,  
Ms. Saumya Sharma &  
Ms. Taruna Baghel

Counsel for the Respondents: Mr. Ajit S. Bhasmi &  
Mr. Varun Thakur for MSEB  
Mr. Sakesh Kumar & Mr. Rohit  
Singh for MPSEB  
Ms. Yogmaya Agnihotri &  
Mr. Rohit Singh for CSEB

## **JUDGMENT**

### **Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

This appeal is directed against the Order of the Central Electricity Regulatory Commission, dated April 13, 2004, whereby tariff for the period April 1, 2000 to March 31, 2001, was determined for Gandhar Gas Power Station of the appellant.

2. The appellant, a Company incorporated under the Companies Act is owned and controlled by the Central Government. The appellant generates electricity in its various plants and sells the same to the State Electricity Board and other entities including respondents 2 to 8.

3. Under Section 43 (A) of the Electricity Supply Act, 1948, the Central Government vide notification, dated April 28,

1997, fixed tariff for the Gandar Gas Power Station with effect from March 1, 1995 to March 31, 2000.

4. Before the expiry of the aforesaid period for which the tariff was fixed by the Central Government, the Electricity Regulatory Commission Act, 1998, (for short 'Act of 1998') came into force with effect from April 25, 1998. Under Section 13 of the Act of 1998, the Central Electricity Regulatory Commission was empowered to regulate the tariff of generating Companies owned or controlled by the Central Government. Since the Central Electricity Regulatory Commission was required to regulate the tariff after its constitution, it issued an Order, dated December 21, 2000, whereby it was, *inter alia*, directed that in the case of Gandhar Gas Power Station, the terms and conditions for the determination of tariff for the period April 1, 2000, till March 31, 2001, shall be the same as earlier notified by the Central Government.

5. Subsequently, the Central Electricity Regulatory Commission by its Order, dated April 10, 2002, *inter alia*,

required the appellant to file a petition for re-determination of tariff for its generating stations including Gandhar Gas Power Station for the period April 1, 2000 to March 31, 2001 in case it was claiming revised fixed charges for the year 2000-01.

6. Thereupon, the appellant filed a petition, being Petition No. 94 of 2002, for approval of tariff for Gandhar generating power station for the period April 1, 2000 to March 31, 2001.

7. In the petition, the appellant initially claimed O&M expenses for the year 2000-01, based on actual expenses incurred during this period.

8. It needs to be mentioned that even for its other generating stations, the appellant by separate petitions filed before the Central Electricity Regulatory Commission claimed O&M expenses for the year, 2000-2001 on actual expenditure basis. But the Central Electricity Regulatory Commission in respect of the other generating stations of the appellant including Korba Super Thermal Power Station and

Vindhyachal Super Thermal Power Station Stage-I, considered the actual O&M expenses for the year 1996-97 as the base and applied Escalation Factor of 10% per annum thereon, for working out the O&M expenses for the years 1997-98 to 2000-01. This methodology (for short Escalation Factor) was picked up from the notification of the Ministry of Power, dated November 2, 1992. In the notification, actual O&M expenses for November 1, 1992, were taken as the base with Escalation Factor of 10% per annum for arriving at O&M expenses during the tariff period November 1, 1992 to October 31, 1997. The appellant filed review petitions before the Central Electricity Regulatory Commission, but the same were rejected. In view of the rejection of the review petitions by the Central Electricity Regulatory Commission, the appellant moved an application for seeking amendment of petition no. 94/2002 for claiming O&M expenses in accordance with the methodology applied by the Central Electricity Regulatory Commission in other cases for calculating the O&M expenses instead of determining the expenses on actual expenditure basis.

9. In so far as the Gandhar Gas Power Station is concerned, the Central Electricity Regulatory Commission by Order dated April 13, 2004 chartered a different course. While approving the tariff, for Gandhar Gas Power Station, it determined the O&M expenses on the basis of actual expenditure incurred by the appellant for the period April 1, 2000 to March 31, 2001.

10. Aggrieved by the Order of the Central Electricity Regulatory Commission, dated April 13, 2004, the appellant has filed the instant appeal.

11. We have heard the learned counsel for the parties.

12. The fact that in respect of Gandhar Power Station the Central Electricity Regulatory Commission has not applied the same principle as was applied in the case of other power stations of NTPC including Korba Super Thermal Power Station and the Vindhyanchal Super Thermal Power Station Stage-I for determining O&M expenses, for the period up to March 31, 2001 is not in dispute. In the case of Gandhar Power Station it determined O&M expenses, on the basis of

actual expenses incurred by the appellant, while in the case of other generating stations of the appellant O&M expenses were worked out by the formula based on Escalation Factor. The Commission applied two different yardsticks in judging the O&M expenses for Korba, Vindhyachal and other generating stations of the appellant on the one hand, and another yardstick for determining O&M expenses for Gandhar Power Station, on the other hand. There is no discernable reason why a uniform principle could not be adopted by the Commission for judging O&M expenses.

13. During the course of arguments, we had required the parties to file a chart showing O&M expenses worked out on actual basis as well as the expenses worked out by the formula based on Escalation Factor. Pursuant to our direction, a chart was presented by the learned counsel for the appellant. The figures and calculations given in the chart are not disputed by the learned counsel appearing for the

respondents. At this stage, it will be useful to set out the chart :

Station	As claimed in the Petition incld. Water charges on actuals, Rate Rs. Lakhs / year				Total Rs. Lakhs, Amounts	O & M Expenses allowed by the Central Commission in Tariff, Rs. Lakhs / year				Total Rs. Lakhs, Amounts	Difference	Order reference	
	1997-98	1998-99	1999-00	2000-01		1997-98	1998-99	1999-00	2000-01			Petition No.	Dated
SSTPS	16180	16151	21929	17097	<b>61918</b>	11756	12932	14225	15647	<b>47702</b>	-14216	31/2002	9/23/2002
KSTPS	12299	13322	14644	15928	<b>49018</b>	11441	12585	13844	15228	<b>46424</b>	-2594	34/2002	10/10/2002
RSTPS	11894	13873	16055	18421	<b>53306</b>	11503	12653	13918	15310	<b>46675</b>	-6631	29/2002	10/9/2002
FSTPS				18350	<b>18350</b>				16970	<b>16970</b>	-1380	96/2002	4/23/2004
VSTPS ST-I	9821	11275	12087	14350	<b>41805</b>	7690	8459	9305	10236	<b>31204</b>	-10601	35/2002	10/24/2002
RHSTPS	8716	9059	8899	10052	<b>31642</b>	8127	8940	9834	10817	<b>32977</b>	1335	30/2002	10/4/2002
FGUTPS I	4530	5737	6954	5483	<b>22703</b>	5188	5707	6278	6906	<b>24078</b>	1375	33/2002	10/30/2002
NCTPP		8224	9738	11459	<b>29420</b>		7123	7836	8619	<b>23578</b>	-5843	128/2002	5/18/2004
KHSTPS				8910	<b>8910</b>				8906	<b>8906</b>	-3	98/2002	3/31/2005
ANTA	1573	1957	2416	2503	<b>8449</b>	1659	1825	2008	2209	<b>7700</b>	-748	36/2002	11/1/2002
AURAIYA	1873	3676	3813	2853	<b>12215</b>	2435	2679	2947	3242	<b>11302</b>	-913	32/2002	9/28/2004
DADRI GAS			4478	5439	<b>9917</b>			3089	3398	<b>6487</b>	-3430	95/2002	6/30/2003
KAWAS		3718	4352	5027	<b>13097</b>		3086	3395	3734	<b>10215</b>	-2882	99/2002	3/28/2005
<b>Total (A), Rs. Lakhs, Amounts</b>	<b>66886</b>	<b>86991</b>	<b>105365</b>	<b>135872</b>	<b>360748</b>	<b>59799</b>	<b>75988</b>	<b>86677</b>	<b>121221</b>	<b>314217</b>	<b>-46532</b>		
GANDHAR				5627	<b>5627</b>				2654	<b>2654</b>	-2973	94/2002	4/13/2004

**Note:-**

- In case of SSTPS, KSTPS, RSTPS, VSTPS-I & RhSTPS, the tariff was due for revision w.e.f. 01.11.97, hence the difference in O&M claimed and allowed takes the impact from 01.11.97
- The O&M expenses claimed during the period 1997-2001 includes the ad hoc provisions made in the books (1997-98, 1998-99 and 1999-2000) as well as the actual payments made during 2000-01 towards salary revision of employees due w.e.f. 1.1.1997
- The incremental water charges beyond the amounts allowed have been contested by NTPC
- The O&M expenses for Gandhar GPS were claimed on the basis of actual expenses of previous year plus 10% escalation, as was allowed by CERC in all other stations



14. Thus, it is apparent that the appellant was not able to secure the actual O&M expenses, in respect of thirteen generating stations. On overall basis, the actual O&M expenses are much more than the expenses which have been worked out on the basis of Escalation Factor. It seems to us that it would be unfair and unjust to work out the O&M expenses, on the basis of actual expenses incurred in respect of Gandhar Power station, especially when the O&M expenses have been worked out in respect of the other stations, on the basis of the Escalation Factor. In case, the O&M expenses in respect of the other power stations are worked out on the basis of actual expenses, the appellant would have been entitled to several hundred crores by way of tariff. The Central Electricity Regulatory Commission ought to have applied one yardstick or principle for determining O&M expenses for all the generating stations of the appellant.

15. The Commission while denying the relief to the appellant has observed that the appellant in the amended

petition claimed O&M expenses of Rs.5627 lakhs based on actual O&M expenses of Rs.5115 lakhs for the year 1999-2000, escalating at the rate of 10%. But in the original petition, O&M expenses were claimed on the basis of actual expenses for the period April 1, 2000 to March 31, 2001. The Commission was of the opinion that since the appellant did not obtain leave of the Commission to amend the petition to claim enhanced O&M expenses of Rs.5627 lakhs, the appellant could be allowed an amount of Rs.2654 lakhs, on the basis of actual expenses for the aforesaid period. The Commission clearly committed an error in coming to the conclusion that the appellant had not obtained leave of the Commission to amend the petition. There is no dispute that the Central Electricity Regulatory Commission had rejected the petitions of the appellant seeking review of its Orders, dated October 10, 2002 and October 18, 2002, passed in Petition Nos. 34 and 35 of 2002, relating to Korba Super Thermal Power Station and Vindhyachal Super Thermal Power Station, respectively. In these petitions, the Central Electricity Regulatory Commission had rejected the plea of

the appellant for determination of O&M expenses, on the basis of actual expenditure. The review petitions came to be rejected on May 2, 2003 and May 31, 2003. It was after the rejection of the aforesaid review petitions that the appellant moved the amended petition, in petition no. 94 of 2002, on June 12, 2003, claiming O&M expenses in respect of Gandhar Station on the basis of formula grounded on Escalation Factor. The amended petition filed by the appellant was directed to be taken on record by the Commission by its Order dated October 1, 2003.

16. We fail to appreciate the basis on which the Commission came to the conclusion that the appellant had not sought leave of the Commission to amend the petition. The appellant in respect of all the stations had claimed the actual O&M expenses, but the Commission, as already pointed out, in several other petitions rejected the request of the appellant and applied the methodology based on Escalation Factor. In case, the actual O&M expenses were determined by the Commission, the appellant would have gained couple of

crores. After applying uniformly the Escalation Factor in respect of several generating stations, there was no justification for the Commission to apply a different yardstick in the case of Gadhar Station, especially when the appellant had filed an amended petition in the main Petition No. 94 of 2002, claiming O&M expenses, on the basis of escalation formula, which was approved and applied by the Commission in the other cases. It seems to us that the amendment application was necessitated by the Orders of the Commission in the other matters. Once the application was taken on record by the Commission, it was not justified in observing that the appellant had not sought leave to amend the Petition No.94 of 2002. It also needs to be noted that in the other cases, the appellant had not asked for the application of formula based on Escalation Factor, but it was applied by the Commission to determine the O&M expenses. Similarly, even if there was no application for amendment of the Petition No.94 of 2002, it was the bounden duty of the Commission to apply the same methodology to work out O&M expenses as was adopted in respect of other matters. The

principles of justice and fair play require application of a uniform principle for determining O&M expenses for all stations of the appellant. Therefore, on this basis in respect of the Gandhar Station, the appellant is entitled to O&M expenses calculated on the basis of Escalation Factor described above.

17. Accordingly, we allow the appeal, set aside the impugned order and remit the matter to the Central Electricity Regulatory Commission for determining the O&M expenses of the Gandhar generating station afresh, on the basis of formula based on Escalation Factor. The determination shall be made within a period of four weeks from the date of receipt of a copy of the Order.

**(Justice Anil Dev Singh)**  
**Chairperson**

**(A.A.Khan)**  
**Technical Member**

**July 14, 2006**