

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

APPEAL NO. 46 of 2009

Dated: 31ST March, 2010.

**PRESENT : HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the matter of:

**NTPC Limited
NTPC Bhawan, Scope Complex
7 Institutional Area, Lodhi Road
New Delhi-110 003**

...Appellant

Versus

**1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.**

...Respondent-1.

**2. Transmission Corporation of A.P., Ltd.
Vidyut Soudha
Khairatabad,
Hyderabad-500 082**

... Respondent-2

**3. A.P. Eastern Power Distribution Co. Ltd.
Sai Shakthi Bhavan
30-14-09, Near Saraswathi Park
Visakhapatnam-531 020**

... Respondent-3

- 4. A.P. Southern Power Distribution Co. Ltd.
H. No. 193-93 (M) Upstairs
Reniguntga Road,
Tirupathi-517 501 ... Respondent-4**
- 5. A.P. Northern Power Distribution Co. Ltd.
Opposite NIT Petrol Pump
Warangal-506 004 ... Respondent-5**
- 6. A.P. Central Power Distribution Co. Ltd.
Singarani Bhavan, Red Hills
Hyderabad-500 004 ... Respondent-6**
- 7. Tamil Nadu Electricity Board
144, Anna Salai
Chennai-600 002 ... Respondent-7**
- 8. Karnataka Power Transmission Corp. Ltd.
Kaveri Bhavan, K.G. Road
Bangalore-560 009 ... Respondent-8**
- 9. Bangalore Electricity Supply Co. Ltd.
Krishna Rajendra Circle
Bangalore-560 009 ... Respondent-9**
- 10. Mangalore Electricity Supply Co. Ltd.
Paradigm Plaza, A.B. Shetty Circle
Mangalore-575 001 ... Respondent-10**
- 11. Chamundeshwari Electricity Supply Corp Ltd.
927, L.J. Avenue, New Kantharfajours Road
Saraswathi Puram
Mysore-570 009 ... Respondent-11**

12. **Gulbarga Electricity Supply Co. Ltd.**
Main Road, Gulbarga
Karnataka-585 102 ... **Respondent-12**
13. **Hubli Electricity Supply Co. Ltd.**
IInd Floor, Eureka Junction, T.B. Road
Hubli-560 029 ...**Respondent-13**
14. **Kerala State Electricity Board**
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram-695 004 ... **Respondent-14**
15. **Electricity Department (Puducherry)**
NSC Bose Salai, Govt of Puducherry
Pondicherry-605 001 ... **Respondent-15**

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

Counsel for the Respondent(s) Mr. P.R. Kovilan &
Ms. Geeta

JUDGMENT

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

1. NTPC is the Appellant herein. Challenging the impugned order dated 24.11.2008 passed by the Central Commission, the

NTPC (Appellant) has filed this Appeal. The short facts of the case are as follows.

2. Ramagundam Thermal Power Station, Stage-III is owned and operated by the Appellant. The Appellant filed a petition before the Central Commission for determination of the tariff for the period from 2005 to 2009. By the order dated 15.10.2007 in Petition No. 140 of 2005, the Central Commission determined the fixed charges on the basis of the admitted capital cost. However, the Commission did not allow the inclusion of undischarged liabilities to be included in the capital cost. Aggrieved by the said order, the Appellant preferred an Appeal No. 152 of 2007 before this Tribunal and the same was allowed by this Tribunal by the order dated 10.12.2008 allowing for the inclusion of the undischarged liabilities in the capital cost.

3. The Appellant filed a separate Petition No. 24 of 2008 for approval of the revised fixed charges due to the impact of SSR

additional capital expenditure in the years 2004-05, 2005-06 and 2006-07. By the impugned order dated 24.11.2008, the Central Commission has determined the revised fixed charges after consideration of the impact of the additional capital expenditure for the years mentioned above but disallowed the undischarged liabilities contained in the said additional capital expenditure. In the said order dated 24.11.2008, the Central Commission has also not considered the provision of additional Maintenance Spares in working capital due to additional capital expenditure.

4. Aggrieved over this finding of the Commission, the present Appeal is filed. In this case two issues are involved: (i) undischarged liabilities and (ii) cost of Maintenance Spares.

5. The question raised in this case, as pointed out by the Learned Counsel for the Appellant are:

(i) Whether the Central Commission was right in excluding the committed liabilities in relation to capital assets established,

commissioned and put to use to the extent of amount which has not been paid and has been retained by NTPC by way of Retention Money, Security Deposit or similar such things to ensure performance of the work undertaken by the contractors and others in accordance with the contract and is to be released in due course?

(ii) Whether the Central Commission is justified in not allowing the cost of Maintenance Spares in the capital cost after taking into account the additional capitalization incurred by the Appellant while computing the interest on working capital?

6. On these issues, arguments were heard from Mr. M.G. Ramachandran, Learned Counsel for the Appellant and Mr. P.R. Kovilan, Learned Counsel for the Respondents. The first issue relating to the undischarged liabilities has already been considered by this Tribunal in 2 sets of Appeals in Appeal No. 151 etc. of 2007 in judgment dated 10.12.2008 and in Appeal No. 133 etc. of 2008 in judgment dated 16.03.2009 and the said issue has been decided

in favour of the NTPC. We now quote the relevant portions of the said judgment dated 10.12.2008 as under:

“ This Regulation is fully comprehensible with the above understanding of the word actually incurred”. Regulation 18 is dealing with capital expenditure incurred after the date of commercial operation and up to the cut off date. The nature of such capital expenditures can be deferred liability and work deferred for execution and the like. Such capital expenditure which were contemplated for being undertaken originally but was deferred and actually undertaken after the date of commercial operation will be treated as additional capitalization. In Regulation 18, the word repeatedly used is “deferred liability”. Obviously deferred liability is the liability which has not yet been assumed. When a capital asset is purchased, the liability is assumed. Such liability is not deferred. Only the payment is deferred. Regulation 18 is not dealing with deferred payments but is dealing with deferred liabilities. Work deferred for execution means works

not already undertaken. Certain works, within the original scope of work may not have been undertaken before date of commercial operation. Such work may be undertaken after the date of commercial operation. If it is so done, the same will be available for recovery through tariff under Regulation 18. It must however be ensured that no capital expenditure which is claimed under Regulation 17 is claimed again as Additional Capitalization under Regulation 18.”

7. The relevant portion in the judgment dated 16.03.2009 is as follows:

“ 4.00 To sum up, our conclusions on the four issues raised in these Appeals are as under:

a. The words ‘actual expenditure incurred’ contained in Regulation 17 of the Act would refer to the liabilities incurred and the same would not refer to the actual cash outflow. Since the wordings in Regulation 17 are very clear, the only rational interpretation would be that the appellant would be

entitled to recover the actual capital expenditure incurred without reference to the actual cash outflow.

“19. We are, therefore, of the opinion that the entire value of the capital asset, as soon as the same is put into operation is recoverable by way of capital cost under Regulation 17 itself, notwithstanding the fact that the part of the payment for the capital asset has been retained.”

8. So, in view of the ratio laid down by this Tribunal, this claim made by the Appellant in respect of undischarged liabilities is to be allowed. Accordingly allowed.

9. The next issue relating to the cost of Maintenance Spares. The Learned Counsel for the Appellant points out that this issue has also been decided by his Tribunal by decision in Appeal No. 139 etc. of 2007 dated 13.06.2007. The relevant portion is as follows:

“It is clear from the abovementioned Clause 18 of the CERC Regulations that additional capitalization after the date of

commercial operation is recognized as part of the capital expenditure. Historical cost does not literally mean that the cost on the date of the commercial operation. The term historical cost is used so as to distinguish it from 'book value' or 'the replacement cost'. The cost of maintenance spares limited to 1% of the historical cost corresponds to the plant and equipment and installations which are required to be maintained. If the cost of additional equipment is not included in the historical cost, how spares for the additional equipment be procured for maintenance of the additional equipment. In this view of the matter, the CERC needs to examine afresh in the light of the aforesaid observations."

10. It is also pointed out by the Learned Counsel for the Appellant that this has been allowed by this Tribunal in its judgment in Appeal No. 54 of 2009 dated 21.8.2009. The relevant portion of the judgment is as follows:

“The second point relates to the disallowance of cost of Maintenance Spares. According to the Learned Counsel for the Appellant, the Central Commission has not allowed the additional capital cost in regard to the maintenance spares corresponding to the additional capitalization while computing the historical capital cost. It is strenuously contended by the Learned Counsel for the Appellant 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. It is further pointed out that this point also has been covered in the judgment in Appeal No. 139 of 2006 dated 13.6.2007. In the judgment, it has been held that the cost of maintenance spares needs to be calculated on the total capital cost inclusive of additional capitalization.

Therefore, it has to be held that the Appellant is entitled to include the cost of maintenance spares also into capital cost.”

11. The observations made by this Tribunal, as quoted above, would squarely apply to the present facts of the case. Therefore, this claim also made by the Appellant has to be allowed in favour of the Appellant. Thus we consider that the order impugned by the Central Commission on these two issues are not valid in law and as such the same is set aside and consequently the Appellant is entitled to include both the amounts in respect of undischarged liabilities and also the cost of maintenance spares into the capital cost.

12. The Appeal is allowed. No cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 31st March, 2010.

Reportable/Non-Reportable