

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

**Appeal No. 81 of 2009**

**Dated: 12<sup>th</sup> January, 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,  
Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of:**

**GRIDCO LIMITED  
Through its CMD  
24, Janpath, P.O. Bhoinagar  
Bhubaneswar-751022  
ORISSA.**

**... Appellant(s)**

**Versus**

**1. Central Electricity Regulatory Commission  
Through its Secretary,  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath  
New Delhi-110 001.**

**2. NTPC Limited  
(Formerly National Thermal Power  
Corporation Ltd)  
NTPC Bhawan, SCOPE Complex  
7, Institutional Area, Lodhi Road  
New Delhi-110 003.**

**Respondents**

**Counsel for Appellant(s) Mr. R.B. Sharma**

**Counsel for Respondent(s):Mr. M.G. Ramachandran &  
Ms. Swapna Seshadri  
Ms. Ranjitha Ramachandran**

**JUDGMENT**

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

**GRIDCO Limited is the Appellant. Central  
Commission is the 1<sup>st</sup> Respondent. NTPC Limited is  
the 2<sup>nd</sup> Respondent.**

**2. Aggrieved by the order dated 3.2.2009, passed by  
the Central Commission refusing to entertain the  
claim of the Appellant for the re-rating of the Units at**

**Talcher Thermal Power Station and sharing other benefits with the Appellant, GRIDCO Limited has filed this Appeal.**

**3. The short facts are as follows:**

- (i) Talcher Thermal Power Station is an old thermal power station with the capacity of  $4 \times 62.5 + 2 \times 110$  MW making a total capacity of 470 MW. This Thermal Power Station was initially owned and operated by the then Orissa State Electricity Board which was subsequently transferred to NTPC Limited, the 2<sup>nd</sup> Respondent in the year 1995 owing to the financial constraint. GRIDCO Limited, the Appellant herein, is the sole beneficiary of the power generated at this Power Station which is consumed in the State of Orissa.**

**The tariff of this Thermal Power Station was for the first time determined by the Central Commission for the period from 1.4.2000 to 31.3.2004 by Order dated 19.6.2002. Thereupon, the Respondent NTPC Limited filed the petition for additional capitalization for the investment made on Renovation and Modernization upto 31.3.2004. Accordingly, the additional capitalization was approved by the Central Commission by the order dated 25.9.2006 for the year 2000-01 to 2003-04.**

- (ii) The Appellant filed a petition No.59/2007 for the operational parameters for the tariff period 2004-09 for sharing the benefits of efficiency gain on account of additional capital expenditure incurred on renovation**

**and modernization during the period 2000-04. These were allowed through the order dated 20.8.2007. The sharing of the benefits were allowed only after amendments made in the Central Commission Tariff Regulation, 2004 from 1.10.2007.**

**(iii) NTPC Limited thereupon filed the Petition No.31/2008 for Additional capitalization for the investment made on renovation and modernization during the years 2004-05, 2005-06 and 2006-07. The Central Commission approved an amount of Rs.78.98 crores through the impugned order dated 3.2.2009 after rejecting the various issues raised by the Appellant. Challenging the**

**same, this Appeal has been filed by the GRIDCO Limited.**

**4. The Appellant has raised the following issues in this Appeal:**

- i) Restoration of lost capacity/re-rating of the Units;**
- ii) Non-sharing of benefits of efficiency improvements with the Appellant GRIDCO Limited;**
- iii) The objections of the Appellant to the capitalization of the renovation and modernization works were not properly considered.**
- iv) The failure of the Central Commission to follow the National Tariff Policy and its own Regulations and also the failure on the part of the Central Commission to direct the NTPC Limited to disclose information on performance indices.**

**5. In regard to the restoration of lost capacity/re-rating of the Units, the Appellant has submitted the following:**

**“The Central Commission has not directed NTPC Limited to restore the capacity of four Generating Units of the Talcher Thermal Power Station from the de-rated 60 MW to original capacity of 62.5 MW. The error crept in the order of the Central Commission in retaining the de-rated capacity of all the four Units at Talcher Thermal Power Station Stage-I at 60 MW each had provided to the NTPC Limited effective ground for gaming in ABT regime thereby enriching the NTPC Limited by claiming undue unscheduled interchange charges at the cost of the Appellant. The restoration of the lost capacity is the legitimate claim of the Appellant for which overwhelming information had been furnished by the Appellant GRIDCO Limited. The Central Commission has**

**failed to consider the information in the proper perspective.”**

**6. In regard to the non-sharing of benefits of efficiency improvements between utility and the beneficiary, it is submitted by the Appellant as follows:**

**“Regulation 82 of the Central Commission Conduct of Business Regulation 1999 and the statutory tariff policy stipulates sharing of benefits of the efficiency improvements. But unfortunately, the Appellant has not been permitted to share the benefits of the efficiency improvements for the investment made by NTPC Limited on renovation and modernization works under the impugned order.”**



**7. In regard to the other point relating to the objection of the Appellant to the capitalization of the renovation and modernization works which were not considered by the Central Commission, the Appellant submits as follows:**

**“An amount of Rs.680.33 lakhs has been allowed by the Central Commission on initial spares for initial capitalization even though there is no provision contained in the Regulations for Additional capitalization for initial spares. NTPC Limited in its Written Statement on this issue has taken a contradictory stand claiming that the initial spares were not available at the time of taking over of this station and yet capital spares to the tune of Rs.1,297.36 lakhs were de-capitalized. The Central Commission in the instant case, allowed capitalization of initial**

**spares in utter disregard to the Tariff Regulation, 2004.”**

**8. With reference to the other incidental issues relating to the sharing of benefits, the Appellant had submitted as follows:**

- (i) The Central Government has issued an order dated 8.6.2005 by which the difficulties arising out of the requirements of license for supply of power to the housing colony or township had been removed. Although the generation companies have been precluded from the requirement of license for distribution of power to their colonies from the generating stations, the supply of power to the housing colonies is required to be accounted for and accordingly**

**adjusted. This aspect has not been dealt with by the Central Commission. In view of the same, the NTPC Limited has drawn huge benefits on this account by considering the colonies' consumption as part of the normative auxiliary energy consumption.**

**9. To these points, the learned Counsel for the Respondent NTPC Limited has made the following reply:**

- (i) All these issues which have been raised by the Appellant in this Appeal have already been decided and settled by the Central Commission through the earlier order for the earlier Tariff Period 2001-04 and 2004-09 for Talcher Station.**

- (ii) **These contentions of GRIDCO Limited were rejected not only while fixing the tariff but also in the Review Petition filed by the Appellant raising the very same issues. The contention that the Tariff Regulation, 2004 do not contain any provision for allowing the claims for additional capitalization of NTPC Limited is totally wrong.**
- (iii) **The claim allowed by the Central Commission in favour of NTPC Limited for additional capitalization was under the Heads mentioned in Regulation 18(1)(i) to (v) after due prudence check done by the Central Commission. Therefore, the issues raised by the GRIDCO Limited in this regard have no merit.**

**10. Let us now discuss each of the issue raised by the**

**Appellant:**

**Issue No.I:**

**Restoration of lost capacity/re-rating of  
generating units:**

**(i) According to the Appellant, Central Commission had ignored the legitimate claim of the Appellant for re-rating of Stage-I Units of Talcher Power Station from 4x60 MW to 4x65 MW and sharing other benefits in accordance with para 5.3(g) of the Statutory Tariff Policy of the Government of India. On the other hand, it is submitted by the Respondent NTPC that originally, the name plate rating of the four Units of Stage-I were 62.5 MW each, but due to design deficiency and also due to want of infusion of funds by the then owner of the Generating Station, namely, the Orissa State Electricity Board towards Operation,**

**Maintenance, Renovation and Modernization expenditure over the years, the capacity of the above Units was de-rated to 60 MW each in the year 1990.**

**(ii) This aspect has already been considered in the earlier orders passed by the Central Commission in the matter of approval of the revised fixed charges due to the additional capitalization for the years 2000 and 2004 for the Talcher Thermal Power Station. It is noticed from the said order dated 25.9.2006 that Central Commission has dealt with this aspect and given a finding as follows:**

***“The Respondent has pleaded that one of the agreed objectives of R&M was the restoration of the lost capacity and deteriorated***

***efficiency. Since the majority of R&M works on all 60 MW units of stage-I are over, the respondent has contended that the declared capacity of these units should be restored to its original nameplate capacity of 62.5 MW each. The issue was not raised by the respondent in Petition No.62/2000 when norms of operation were being prescribed for the period 2000-04. We find that major emphasis by the parties has been on the life of the generating station and improving the performance level as result of R&M....”***

**(iv) The Appellant once again raised this issue in its Review Petition in No.6 of 2007 filed for review of the order dated 25.9.2006. This aspect has again been dealt with by the Central Commission and**

**detailed order has been passed on 14.3.2008. The relevant observation of the Central Commission is as follows:**

***“10. The petitioner has sought restoration of capacity for four units of the generating stations on the ground that clause 2.0 of the PPA contains a provision for de-rating/re-rating of the generating units after following the procedure as laid down by CEA and the R&M proposal had capacity restoration as one of its objectives. In our view, provisions in the PPA and R&M proposal do not automatically result in capacity restoration unless it is shown that R&M works have resulted in achieving the capacity of 62.5 MW each of the four***



***units of the generating station. The petitioner has not been able to submit a copy of the proposal it is stated to have sent to CEA for de-rating of the units. The letter of CEA dated 26.9.2007 does not throw any light on the claim of the petitioner. The contents of the letter dated 26.9.2007 is extracted hereunder:***

***“Reference may please be invited to your office letter No.Sr.GM(PP)/35/2004/424 dated 19.06.2007 on the above subject. It is informed that CEA has not de-rated the units of TTPS Stage-I from 62.5 MW to 60.0 MW and as per the latest General Review 2005-06 being published by CEA, the capacity of***

***all the four units of Stage-I of Talcher Thermal Power Station stands at 62.5 MW each unit.”***

***The letter merely states that de-rating of the units has not been done by CEA and capacity of the units continues to be of 62.5 MW in the record of CEA. The letter of CEA is of very little help to us in resolving the dispute in question.***

- 11. We observe that the PPA dated 8.3.1995 between the Government of Orissa and the respondent clearly mentions the installed capacity of each of the four units for the generating stations as 60 MW on the date of the agreement. The tariff of the generating station was fixed by mutual agreement between the***

***parties from 3.6.1995 (date of transfer of the station to the respondent) till 31.3.2000 and by the Commission from 1.4.2000 till 31.3.2004 considering the capacity of each of the four units of the generating station as 60 MW. The petitioner has raised the question of restoration of capacity from 60 MW to 62.5 MW only after completion of major R&M works. To resolve the issue, we had directed the respondent to furnish the details of energy generation for each 60 MW unit for the months of April, May and June 2007, which have been filed on affidavit. A generating unit having a rated capacity of 60 MW can generate a maximum of 1440 MWh***

***in a day, unless over-stretched. Analysis of the data furnished by the respondent reveals that in April 2007, the four 60 MW units have generated more than 1440 MWh in a day for 29, 7, 28 and 28 days respectively. The weighted average rate of MW per machine for these days comes to 61.10 MW. Similarly, for the months of May and June 2007, the weighted average rate of MW per machine works out to 60.92 and 60.94 respectively for the days of generation more than 1440 MWh per day. The weighted average generation of the machines for the months of April to June 2007 for the days the generation exceeded 1440***

***MWh, is summarized in the table given below:***

	<b><i>April</i></b>	<b><i>May</i></b>	<b><i>June</i></b>	<b><i>Average</i></b>
<b><i>Weighted average rate of MW per machine</i></b>	<b><i>61.10</i></b>	<b><i>60.92</i></b>	<b><i>60.94</i></b>	<b><i>60.99</i></b>

***The above generation data clearly establishes that the average unit rating of the four units of the generating station is less than 61 MW and the petitioner's case for re-rating of the four units of the generating station from 60 MW to 62.5 MW consequent to the completion of major R&M works is not made out. We are inclined to retain the unit rating of four units for the***

***generating station at 60 MW for the purpose of tariff.”***

**(v) The reading of the above order will show that the Central Electricity Authority’s letter dated 26.9.2007 has not opined on the capacity. On the basis of the actual data , the Central Commission had decided to retain the unit capacity to 60 MW in its earlier orders and that there is no question of treating the same as 62.5 MW. In the Impugned Order the Central Commission has not dealt with the issue of re-rating of the units.**

**(vi) If the machines are able to generate slightly higher than 100% of the capacity, this cannot be taken as installed capacity being available at 62.5 MW on a sustained basis. Admittedly, no**

**evidence had been produced before the Central Commission that required re-rating of planned capacity of 62.5 MW. As a matter of fact, it is pointed out that the NTPC Limited submitted all such details as was called for by the Central Commission during the proceedings before it.**

- (vii) As submitted by the learned counsel for the NTPC Limited, the Central Commission has been dealing with the Tariff fixation of Talcher Station for the various periods including 2000-04, 2004-09 and now 2009-14. Central Commission has also determined the Tariff Regulation on account of additional capitalization from time to time. The Central Commission based on the data available, has been notifying various Tariff Regulations and**

**normative levels to be achieved by the generating stations of NTPC.**

**(viii) Therefore, the Central Commission has taken a comprehensive view of the matter and may re-rate the capacity as and when it considers appropriate. That apart, Talcher Station is declaring the ex-bus generation based on the condition prevailing in the power station on day-to-day basis and not based on station capacity less the normative APC.**

**(ix) We cannot find fault with the Central Commission in not re-rating the units in the Impugned Order in view of its earlier orders dated 25.09.2006 and 4.3.2008.**



**ISSUE NO.II:**

**Non-sharing of benefits of efficiency improvements by the Respondent NTPC with he Appellant GRIDCO:**

- (i) According to the Appellant, Regulation 82 of the Central Commission (Conduct of Business) Regulation, 1999 and the statutory Tariff Policy of the Government of India stipulate sharing of benefits of the efficiency improvements but the Central Commission has failed to direct Respondent NTPC to furnish performance indices of the Thermal Station so that the Appellant could share the benefits of the improvement in efficiency made by the NTPC.
- (ii) It has been contended by the Appellant that the NTPC has not shared the benefits of the performance improvement of Talcher Station due

**to additional capitalization with the Appellant. It is pointed out by the Respondent NTPC that the benefits of efficiency improvement on Renovation and Modernization of units of the Talcher Station had been passed on to the Appellant by providing all the generation from improved norms. The following data would indicate that the benefits of efficiency improvement and Renovation and Modernization of units have been provided as under:**

**“GRIDCO has contended that the NTPC is not sharing any of the benefits of R&M works carried on at the Talcher Station with GRIDCO. NTPC submits that the benefits of efficiency improvement on R&M of units of the Talcher Station has been passed on to the sole beneficiary i.e. GRIDCO by providing all**

**the generation from improved norms as summarized below:**

<b>SN</b>	<b>Parameters</b>	<b>At the time of takeover</b>	<b>Operation Norms 2007-09 (w.e.f 1.10.07)</b>
<b>1.</b>	<b>PLF (%)</b>	<b>26</b>	<b>80</b>
<b>2.</b>	<b>Heat Rate (kcal/kwh)</b>	<b>4170</b>	<b>2975</b>
<b>3.</b>	<b>Sp. Oil Cons. (ml/kwh)</b>	<b>14.02</b>	<b>2.0</b>
<b>4.</b>	<b>Aux. Power Cons.(%)</b>	<b>13.63</b>	<b>10.50</b>

**(iii) It is also noticed that NTPC informed the Appellant about the cost benefit analysis with respect to the Renovation and Modernization of Talcher Station through letter dated 22.8.2007 which indicates that savings to the tune of Rs.1380 crores upto March 2007 and further savings of Rs.1689 crores upto 2020-21.**

**(iv) Clause 2.3 of the Tariff Regulation is relevant.**

**The same is quoted as below:**

***“2.3 Notwithstanding anything contained in this notification,***

***(a) the operational norms except those relating to “Target Availability” and “Plant Load Factor” as contained in the existing tariff notifications for individual power stations issued by the Central Government under proviso to Section 43 A(2) of the Electricity (Supply) Act, 1948 in respect of the existing stations of NTPC shall continue to apply for those stations.***

***(b) The operational norms except those relating to “Target Availability” and “Plant Load Factor” for the existing and***

***the new stations of NTPC and NLC for which no tariff notifications has been issued by the Central Government but Power Purchase Agreements (PPAs)/Bulk Power Supply Agreements (BPSAs) exist on the date of issue of this notification, shall be governed by the respective PPAs/BPSAs signed by the Generating Company with the beneficiaries.***

- (c) The Generating Company may approach the Commission fro relaxation of “Target Availability” in exceptional circumstances with due justification. The Commission on being satisfied of the reasons and justification furnished by the Generating Company may grant such***

*relaxation as may be considered appropriate.”*

- (v) **In view of the exclusion contained in Clause 2.3(b) of the Tariff Regulation, the Power Purchase Agreement/Bulk Power Supply Agreement which exist on the date of issue of the Notification would govern the situation. In the case of the Talcher Station, there was an existing Power Purchase Agreement dated 8.3.1995. These agreements specifically deal with the operating parameters such as auxiliary consumption, heat rate, specific oil consumption etc. As a matter of fact the Central Commission in the past, revised various parameters like “Target Availability”, heat rate, specific oil consumption and auxiliary power consumption**

**based upon efficiency improvement in the power station due to Renovation and Modernization carried on by the NTPC.**

**(vi) This issue had already been considered by the Tribunal in the case of UP Power Corporation limited Vs. NTPC Limited, decided on 31.5.2007, reported in 2007 APTEL 77in which the implication of Clause 2.3 and 2.4 of he Tariff Regulation, 2001 has been considered and it has been held as follows:**

***“14. We are of the view that the presence of the non-obstante clause gives sub-clauses (a), (b) and (c) of clause 2.3 an overriding effect over the rest of the provisions of the “notification” of Regulations, 2001. In other***

***words in the instant case, clause 2.3 when given effect will render all other provisions including clause 2.4 along with its associated 'Explanation' and regulation 1.11 specifying the prescribed norms to be ceiling norms, inoperative in the case of conflict.***

***15. It may be pointed out that neither the Ministry of power notification dated 02.11.1992 nor the BPS Agreement contain any provision that operational norms were to be considered on the basis of "actual or normative whichever is lower". From the forgoing it is abundantly clear that Clause 2.4 will be applicable for determination of tariff for generating stations which became operational on or after 01.4.2001."***



**(vii) The purpose of fixing the normative tariff is to ensure that the Generating Company's performance at a required level in order to receive the full tariff and the Generating Company is subjected to disincentive for not performing to the stated level and in case of better performance, its efficiency gain to be retained by the Generating Company. Once the norms are fixed, NTPC is obliged only to perform on those norms. In the present case, the grievance of the Appellant is not that the NTPC has not performed upto the normative level but that in case NTPC performs better than the normative level, the benefit of the same should be given to the Appellant. In view of the data prevailing as above, the benefits of efficiency improvements**

**consequent upon Renovation and Modernization of the units of the Talcher Station had been passed on to the sole beneficiary, namely, Appellant. Therefore, there cannot be any grievance as such. This contention raised by the Appellant has no merit.**

**viii) Learned Counsel for the Appellant has referred to clause 3 of CERC Tariff Regulations, 2004 stipulating that the operational norms specified under these Regulations are the ceiling norms and shall not preclude the generating capacity and the beneficiaries from agreeing to improved norms. In case such improved norms are agreed to by the generating company and the beneficiaries, such improved norms shall be applicable for determination of tariff. Admittedly no improved norms have been agreed to between**

**the Appellant and Respondent No. 2. Thus this provision is of no help to the Appellant. In view of this, the contention raised by the Appellant has no merit.**

**Issue. III:**

**Objections of the Appellant to the capitalization of spares and Renovation and Modernization works allowed by the Central Commission:**

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- (i) **According to the Appellant, the Central Commission ought not to have allowed capitalization of spares as claimed by the NTPC as there is no provision in the Tariff Regulation for allowing additional capitalization for capital spares. With regard to this objection, it is contended by the Respondent that the Central Commission allowed the capitalization of spares by Rs680.33 lakhs only in accordance with the**

**Tariff Regulations. In this context, it would be appropriate to refer to Regulations 18.2 (iv) of 2004 Regulations which is reproduced below:**

***“2. Subject to the provisions of Clause (3) of this Regulation the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission subject to prudence check.”***

***“(iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost;”***

**(ii) It is true that the Tariff Regulations do not provide for individual items but the Tariff Regulations provide for the Heads of items. The procurement of capital spares has been necessary from the point of view of reliable operation of the plant as it is pointed out that the initial spares were not available at the time of take-over of the station. That apart, during this period, the Central Commission has de-capitalized spares worth Rs.1297.36 lakhs as compared to the capitalization of Rs.680.33 lakhs resulting in reduction of capital cost as allowed by the Central Commission at the time of take-over of the station by NTPC from Orissa State Electricity Board, the predecessor of the Appellant.**

**(iii) With regard to the objection regarding the capitalization of Rs.621.06 lakhs, it is submitted by the Respondent that this amount pertains to raising of Ash dyke, new ash pond, erection of ash disposal pipeline at the ash pond area which has been incurred for utilization of ash and protection of the environment. This has been correctly adhered by the Commission under Regulation 18(2)(v). In addition to this expenditure of Rs. 903.46 lakhs has been incurred for erection of pipe lines from plant to mines, pollution control monitoring equipment, development of ash brick storage yard, etc. to meet the requirement of Energy Conservation Act, 2001, the Environmental Action Plan and the obligations laid down by the Ministry of Environment and Pollution Control Board. NTPC also submitted**

**that 100% ash utilization by the year 2014 by way of filling has been taken up in terms of the direction of the Hon'ble Supreme Court. Thus in our opinion claim of expenditure of Rs. 903.46 lakhs on account of change in law as admissible under Regulation 18(2)(iii) has been correctly allowed by the Central Commission.**

**ISSUE NO.IV:**

**(i) The 4<sup>th</sup> issue is relating to the other miscellaneous and general issues. The Appellant has raised several other miscellaneous issues including the issue of Statutory Tariff Policy, Tariff uncertainty etc. According to the Appellant, the Central Commission has not followed the National Tariff Policy and its own Regulations. It is also submitted that the Central**

**Commission has given the benefit to the NTPC by substantially relaxing the various parameters. This is being denied by the Respondent.**

**(ii) As indicated above, the Central Commission has put the NTPC on strict prudence check and has been revising other parameters like Target Availability, heat rate, specific oil consumption and auxiliary power consumption based upon the efficiency improvement in the power station due to Renovation and Modernization carried on by the NTPC.**

**(iii) According to the Respondent, while the benefits of improved reliability, availability on sustainable basis, and the saving in power unit cost of energy have accrued to the Appellant as compared to the**



**power unit cost at the time of take-over, during all these years, NTPC had not been paid for actual Operation Maintenance expenditure incurred for achieving the aforesaid improvements. The data available would indicate that the actual Operation and Maintenance expenditure incurred by NTPC for the Tariff Period 2000-04 and 2004-09 is Rs.34,376 lakhs and Rs.43,384 lakhs as against the Operation & Maintenance Expenditure allowed by the Central Commission of Rs.26,946 lakhs and Rs.36,829 lakhs respectively resulting in loss of Rs.13,985 lakhs to the NTPC on account of Operation & Maintenance expenditure during the Tariff Period 2000 and 2009.**

**11. As indicated above, all these issues which were raised before the Central Commission have been**

**considered properly and correct finding has been given on these issues by the Central Commission.**

**SUMMARY OF FINDINGS:**

**12 i) Restoration of lost capacity/re-rating of generating units:**

**The Central Commission has already decided this issue by its order 25.9.2006 and again after detailed analysis by its order dated 4.3.2008 and retained the unit rating as 60 MW for the four units against 62.5 MW claimed by the Appellant. The Central Commission has taken a comprehensive view of the matter and may re-rate the capacity as and when it considers appropriate.**

**ii) Non-sharing of benefits of efficiency by the Respondent NTPC with the Appellant**

**The Appellant's claim is that the benefits of efficiency improvement consequent upon the Renovation and Modernization should be shared by NTPC with the Appellant. It is noted that the Central Commission has already revised the norms with effect from 01.10.2007 and the benefit as a result of improvement in operating norms consequent to Renovation and Modernization of the units is already being passed on to the Appellant. Regarding sharing the benefits, according to Tariff Regulations the gains due to efficiency improvement beyond the norms can be retained by the Respondent-NTPC. Clause 3 of the Tariff Regulations referred to by the Appellant states that the operational norms specified under the Regulations are the**

**ceiling norms and shall not preclude the generating company and the beneficiaries from agreeing to improved norms. Thus, in case such improved norms are agreed to between the generating company and the beneficiaries, such improved norms shall be applicable for determination of tariff. Admittedly, no improved norms have been agreed to between the Appellant and Respondent-NTPC. In view of this the Appellant's contention on this issue has no merit.**

**iii) Capitalization of spare and Renovation & Modernization works:**

**Regulation 18.2 (iv) of the Central Commission's Tariff Regulations of 2004 provides for capital expenditure on any**

**additional works/services which become necessary for efficient and successful operation of the generating station, but not included in the original project cost to be admitted by the Central Commission after the cut off date. The procurement of capital spares has become necessary from the point of view of reliable operation of the plant as the initial spares were not available at the time of taking over the power station by the Respondent-NTPC. The Central Commission has also decapitalized spares worth Rs. 1297.36 lakhs as compared to capitalization of Rs. 680.33 lakhs resulting into reduction of capital cost. Regarding capitalization of Rs. 621.06 lakh incurred on ash dyke etc., it was incurred for utilization of ash and**

**environment protection has been correctly allowed under Regulation 18(2)(v). The capital expenditure of Rs. 903.46 lakh has been incurred to meet the requirements of Energy Conservation Act, 2001 and environmental Action Plan laid down by the Ministry of Environment and Pollution Control Board. Thus this expenditure has been correctly allowed by the Central Commission under Regulation 18(2)(iii).**

- iv) Other Issues: The Appellant has also raised other issues stating that the Central Commission has given the benefit to NTPC by substantially relaxing the various parameters. This is not correct as all these points raised before the Central Commission have been considered properly and correct finding has**

**been given in these issues by the Central Commission.**

**13. In view of the above, we find that there is no merit in this Appeal. Consequently, the Appeal is liable to be dismissed as we do not find any infirmity in the findings rendered by the Central Commission. Accordingly, the same is dismissed. No orders as to cost.**

**(Justice P.S Datta) (Rakesh Nath) (Justice M. Karpaga Vinayagam)  
Judicial Member Technical Member Chairperson**

**Dated: 12<sup>th</sup> January, 2011**

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**Reportable/Non-Reportable**