

**Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal No. 174 OF 2014

Dated : 30th November, 2015

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:

NTPC Limited

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

... Appellant(s)

Versus

- 1. Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi – 110 001.
- 2. Uttar Pradesh Power Corp. Ltd. (UPPCL)**
Shakti Bhawan,
14, Ashok Marg,
Lucknow – 226 001.
- 3. Jaipur Vidyut Vitran Nigam Ltd. (JVVN)**
Vidyut Bhawan Janpath,
Jaipur – 302 005 (Rajasthan).
- 4. Ajmer Vidyut Vitran Nigam Ltd. (AVVN)**
Old Power House,
Hathi Bhata, Jaipur Road,
Ajmer – 305 001 (Rajasthan).
- 5. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVN)**
New Power House, Industrial Area,
Jodhpur – 342 003 (Rajasthan).
- 6. Tata Power Delhi Distribution Ltd. (TPDDL)**
33 KV Substation, Hudson Lines,
Kingsway Camp,
Delhi – 110 009.

- 7. BSES Rajdhani Power Ltd. (BRPL)**
BSES Bhawan, Nehru Place,
New Delhi – 110 019.
- 8. BSES Yamuna Power Ltd. (BYPL)**
Shakti Kiran Building,
Karkardooma, Delhi – 110 092.
- 9. Haryana Power Purchase Center (HPPC)**
Shakti Bhawan,
Sector – VI, Panchkula,
Haryana – 134 109.
- 10. Punjab State power Corporation Ltd. (PSPCL)**
The Mall,
Patiala – 147 001.
- 11. Himachal Pradesh State Electricity Board Ltd. (HPSEB)**
Kumar Housing Complex Building-II,
Vidyut Bhavan,
Shimla – 171 004.
- 12. Power Development Department**
Govt. of Jammu & Kashmir
Secretariat,
Srinagar – 190 009.
- 13. Electricity Department (Chandigarh)**
Union Territory of Chandigarh,
Addl. Office Building, Sector – 9D,
Chandigarh – 160 009.
- 14. Uttarakhand Power Corporation Ltd. (UPCL)**
Urja Bhawan,
Kanawali Road,
Dehradun – 248 001.

... Respondent(s)

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Ms. Poorva Saigal,
Ms. Anushree Bardhan, Ms. Ranjitha
Ramachandran and Mr. Subham Arya

Counsel for the Respondent(s) : Mr. Pradeep Misra, Mr. Shashank Pandit
Mr. R. B. Sharma, Mr. M.S. Ramalingam
Mr. Pawan P. Shah, Mr. S. Shaw, Mr. Manoj
Kumar Sharma, Mr. R.B.Singh, Mr. Suraj Singh
Mr. Parinay Deep Shah and Mr. Anand K.
Srivastava

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The present appeal has been filed under Section 111 of the Electricity Act, 2003, against the order dated 15.05.2014, passed by the Central Electricity Regulatory Commission (hereinafter called the '**Central Commission**'), in True up Petition No. 188/GT/2013, whereby the learned Central Commission has revised the tariff of the Singrauli Super Thermal Power Station (2000 MW) of NTPC Ltd. (hereinafter referred to as the '**appellant**') for the period from 01.04.2009 to 31.03.2014.

2) In the present appeal, the appellant has challenged the following aspects of the Impugned Order of the Central Commission:

- (i) Disallowance of Rs.2,079.01 Lakhs claimed for the Generator Transformers (GT) on the ground that the cost incurred is covered under the Compensation Allowance and/or Special Allowance allowed.
- (ii) Disallowance of Rs.90.61 Lakhs claimed for the GT 21 kV Bus Duct on the ground that the cost incurred is covered under the Compensation Allowance and/or Special Allowance allowed.
- (iii) Value of decapitalised spares which are part of capital cost considered as (-) Rs.464.75 Lakhs instead of (-) Rs.384.29 Lakhs.
- (iv) Allowing the rate of interest of 8.5230% and 8.7281% against the rate of interest of 8.54% and 8.7481% as claimed by NTPC in Form-13 of Mid term true up petition for loan from the Life Insurance Corporation of India.

3) The appellant, NTPC is a Government of India undertaking and a Company incorporated under the Companies Act, 1956. The appellant, NTPC being a generating company owned and controlled by the Central Government is covered by clause (a) of sub-section 1 of Section 79 of the Electricity Act, 2003. The generation and sale of power by the appellant to the Respondent Nos. 2 to

14 is regulated under the provisions of the Electricity Act 2003 by the Respondent No.1, which is the Central Commission. The Respondent Nos. 2 to 14 are the distribution licensees.

- 4) The relevant facts for the purpose of deciding this appeal are as under:
- (i) That the appellant filed Petition Nos.225 of 2009 before the Central Commission on 09.10.2009 for determination of tariff of the Singrauli Station for the period 01.04.2009 to 31.03.2014. The NTPC filed an amended Petition taking into consideration the revised figures on 25.03.2011, as per the order of the Central Commission dated 21.01.2011 in Petition No.189 of 2009. The Central Commission vide order dated 07.08.2012 decided the Petition Nos.225 of 2009 and determined the tariff of the Singrauli Station of NTPC for the tariff period 01.04.2009 to 31.03.2014.
 - (ii) That on 01.10.2012, NTPC filed an appeal, being Appeal No. 232 of 2012, before this Appellate Tribunal against the tariff order dated 07.08.2012, which was initially pending before this Appellate Tribunal but now has been dismissed by this Tribunal.
 - (iii) That the appellant, NTPC on 13.02.2013 filed the impugned Petition No.188/GT/2013 for revision of the annual fixed charges for Singrauli Station on the basis of actual capital expenditure incurred for the years 2009-10, 2010-11 and 2011-12 and the projected expenditure for the years 2012-13 and 2013-14 in accordance with Regulation 6(1) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009 (hereinafter called the '**Tariff Regulations 2009**'). The learned Central Commission, vide Impugned Order 15.05.2014, has decided the said Petition No. 188/GT/2013 and revised the tariff for Singrauli Station for the period from 01.04.2009 to

31.03.2014 but disallowed some of the claims of the NTPC which have been mentioned above.

- (iv) That the appellant, NTPC on 03.07.2014 filed review petition, being Petition No.16/RP/2014, before the Central Commission seeking review of the Impugned Order dated 15.05.2014, which has been disposed of by the Central Commission, vide review order dated 01.10.2014, whereby the Central Commission allowed for the rectification of the error in computation of the decapitalised value of spares as a part of the capital cost for 2011-12.

- 5) We have heard Mr. M. G. Ramachandran, learned counsel for the appellant and Mr. Pradeep Misra, Mr. R. B. Sharma, Mr. M. S. Ramalingam, Mr. Suraj Singh, learned counsels for the respondents. We have also gone through the written submissions submitted by rival parties and also gone through the material on record including the Impugned Order passed by the Central Commission.

- 6) The following issues arise for our consideration in this appeal:
 - (a) Whether the Central Commission has rightly and legally disallowed the capital expenditure of Rs.2,079.01 Lakhs claimed for the generator transformers and Rs.90.61 Lakhs claimed for the GT 21 kV Bus Duct on the ground that the cost incurred is covered under the compensation allowance and/or special allowance under Regulation 19(e) and 10(4) of the Tariff Regulations 2009 respectively.

 - (b) Whether the Central Commission has correctly held that the expenditure incurred by the appellant, NTPC is in the nature of a replacement falling under the head renovation and modernization.

- (c) Whether the Central Commission is right in not exercising its power to relax under Regulation 44 of the Tariff Regulations 2009 to allow for the capitalization of the above mentioned assets.
- (d) Whether the Central Commission is justified in allowing the rate of interest of 8.5230% and 8.7281% from the Life Insurance Corporation of India as against the 8.54% and 8.7481% claimed by NTPC in Form 13 of true up petition for loan?

Our issue-wise consideration:

- 7) **Issue Nos.(a), (b) & (c)** : On these issues, the appellant has made the following contentions:
- (i) that the Central Commission disallowed the said capital expenditure of Rs.2,079.01 Lakhs and Rs.90.61 Lakhs claimed by the appellant, NTPC on the Generator Transformers and the 21 kV Bus Duct required for the change in orientation of the LV bushing in the new Generator Transformers on the ground that the same would be covered by the special allowance and compensation allowance for the Singrauli Station for renovation and modernization.
 - (ii) That the Central Commission did not take into consideration the fact that the Generator Transformers and the Bus Ducts were capitalized during FY 2009-10 and 2011-12 i.e. before Units 6 & 7 of the Singrauli station completed the requisite 25 years for availing the special allowance under Regulation 10(4) of the Tariff Regulations 2009. Units 6 & 7 of the Singrauli Station completed 25 years in FY 2012-13 and 2013-14 respectively, and the assets were capitalized between 2009-10 and 2011-12. Accordingly, the expenditure for the said assets cannot be said to be covered by the special allowance under Regulation 10(4) of the Tariff Regulations 2009.

- (iii) That the expenditure on Generator Transformers and GT Bus Duct were required to be made during the life of 25 years of the Station for proper operation and could not be said to be a part of the renovation and modernization expenses after the 25 years period.
- (iv) That the Generator Transformer is a major component in the working of a generating station, failure of which would lead to a substantial loss in generation. In the circumstances, the Generator Transformers cannot be construed to be a minor asset, the expenditure for which can be covered under Regulation 19(e) of the Tariff Regulations 2009, providing for compensation allowance. The compensation allowance provided in Regulation 19(e) is grossly inadequate to cover the significant additional capitalization required for the efficient operation of the generating station and sustaining the performance level in line with the provisions of Tariff Regulations 2009.
- (v) That the Central Commission has disallowed the claim on the assumption that Singrauli Station was achieving 85% Plant Availability Factor. The Central Commission ought to have considered the necessity of the Generator Transformers and accompanying Bus Ducts instead of examining the question as to how NTPC had achieved 85% Plant Availability Factor.
- (vi) That the older Generator Transformers (Oil Forced Water Forced (OFWF) Type) of the Singrauli Station were commissioned in 1986-87 and it was on account of the history of failure of similar transformers in the Station and the generation of high fault gases, that the Original Equipment Manufacturer (OEM) expressed inability to rewind the Generator Transformers as the manufacturing of diabole type winding used in these Generator Transformers has been discontinued and recommended the OFAF cooling system so as to assure optimum functioning of the

transformer. In these circumstances, it became necessary for NTPC to commission and capitalize the new Generator Transformers. The new Generator Transformers specifically required 21 kV Bus Duct on account of change in the orientation of LV bushing.

- (vii) That the Central Commission in any event ought to have exercised its 'power to relax' under Regulations 44 of the Tariff Regulations 2009 to allow the expenditure on Generator Transformers and GT Bus Ducts. It is well settled principle of law that if the claim is initiated under the wrong provision of the Tariff Regulations 2009, the same does not by itself vitiate the powers of the Central Commission to grant the necessary relief so long that the power does exist and can be traced to a source available in law as held in *P. K. Palanisamy Vs. N. Arumugham and Anr. (2009) 9 SCC 173*, *N. Mani Vs. Sangeetha Theatre (2004) 12 SCC 278* and in *T. Nagappa Vs. Y. R. Muralidhar (2008) 5 SCC 633*.
- (viii) That the transformers, such as installed by the appellant, NTPC are considered part of transmission system equipment within the meaning of Regulation 2(40) of the Tariff Regulations 2009. In this case, the transformers had been installed by the generating company and not by the transmission licensee. The transformer, wherever installed by Powergrid Corporation of India (CTU) is allowable for capitalization under Regulations 9(2)(v) as additional capital expenditure of Tariff Regulations 2009. Accordingly, the Generator transformers installed by a generating company, which serves the purpose of stepping up of generation voltage and matching the same with the transmission system voltage, should also be allowed to be capitalized.
- (ix) That the Generator Transformers are essentially to match the generation voltage with the transmission system voltage, they function like any grid/transmission system equipment and their installation in generating station by generator, instead of the transmission licensee/CTU was

taken more for convenience and commercial expediency and the nature of the asset does not get changed. Accordingly, if additional capital expenditure is permissible for a transmission licenses/CTU, the same should be allowed in the case of a generating company also.

- 8) **Per contra**, following are the contentions made on behalf of the respondents:
- (i) That in justification of these claims, the appellant contended that there is a history of failure of similar Generator Transformers in Singrauli and generation of high fault gases, hence, it was necessary to replace these Generator Transformers for ensuring the required target availability. Thus, the appellant in anticipation of the failure of these Generator Transformers wanted to replace these Generator Transformers with the new Generator Transformers and also wanted replacement before FY 2011-12 as after FY 2011-12 the respective generating units would be completing their useful life of 25 years and are liable for special allowance under Regulation 10(4) of Tariff Regulations 2009. The appellant had earlier filed an amended Petition on 25.03.2011 before the Central Commission, being No. 225 of 2009 (main tariff petition) for approval of tariff of Singrauli STPS for the tariff period 2009-14 along with additional capital expenditure projected to be incurred during FY 2009-14 tariff period. In the said Petition, the appellant had not claimed capitalization of Rs.2,079.01 Lac for Generator Transformers (GTs) and Rs.90.61 Lac for GT 21 KV Bus Duct. The tariff in the said tariff Petition, being Petition No.225 of 2009, was approved by the Central Commission vide its order dated 07.08.2012 and during all this period the appellant had not claimed any expenditure on Generator Transformers and on GT 21 KV Bus Duct. It may further be mentioned here that the appellant had also filed an appeal, being Appeal No. 232 of 2012, against the said tariff order dated 07.08.2012 in Petition No.225 of 2009 which appeal has subsequently been dismissed by this Appellate Tribunal.

- (ii) That the learned Central Commission in Paragraph 15 of the Impugned Order has noticed that the dispute relating to new claims including expenditure on Generator Transformers and for GT 21 KV Bus Duct, is pending before the Hon'ble High Court of Delhi. Further the Central Commission has examined the justification advance by the appellant in Paragraphs 20, 21 and 22 of the Impugned order and disallowed the said claim under 'change in law' head.
- (iii) That it is apparent from the Impugned Order that most people, like the appellant, and the original equipment manufacturer are making a guess work of the problem and did not explain the undue haste in the replacement of the Generator Transformers. The additional expenditure has to be allowed only according to Regulation 9 of the Tariff Regulations 2009 which will apply to both existing and new power projects as held by this Appellate Tribunal in its judgment dated 27.01.2014 in Appeal No.44 of 2012. Further, this issue is also covered by judgment dated 08.05.2014 in Appeal No. 173 of 2013 passed by this Appellate Tribunal, disallowing the capital expenditure on purchase of Generator Transformers,
- (iv) That the appellant has not pressed for exercise of the 'power to relax' by the Central Commission during the hearing of the petition and the same is not permissible now. Moreover, the approval of the capital expenditure incurred under Regulation 9(2) of the Tariff Regulations 2009 is at the discretion of the Commission. The appellant has also tried to establish some kind of equivalence in the installation of transformers by the CTU and the generating companies for the purpose of additional capitalization. This equivalence cannot be established as the generating company is entitled to a separate compensation allowance to meet the expenses of the new assets of capital nature whereas the CTU is not

entitled for any such compensation allowance and thus no parallel can be drawn as these two issues are quite distinguishable. Hence, the Impugned order on this issue is in accordance with the regulatory provisions as interpreted by this Appellate Tribunal in its various judgments.

- (v) That the above claim of the appellant for additional capitalization does not fall under the purview of Regulation 9 of Tariff Regulations 2009. This Appellate Tribunal has clearly observed in its judgment dated 27.01.2014 in Appeal No. 44 of 2012 that additional capitalization has to be allowed only according to Regulation 9 of the Tariff Regulations 2009 which will apply to both existing and new power projects. The learned Central Commission vide Impugned Order date 15.05.2014 had denied the additional capitalization claim for cost incurred on account of Generator Transformers and GT 21 KV Bus Duct under 'change in law'. The learned Central Commission on its due diligence declared the said claims to fall under the nature of replacement which falls under the head Renovation and Modernization (R&M) and directed the appellant to recoup/deduct the above expenses from the special allowance, granted under Regulation 10(4) of the Tariff Regulations 2009, in order to meet the R&M expenses for Stage-I and Stage-II Units for the period 2009-14 since all the units would be completing 25 years of useful life from their respective dates of commercial operation. However, the appellant in the present case has challenged it by claiming that the learned Central Commission did not consider that the Generator Transformers and Bus Duct were capitalized during FY 2009-10 to FY 2011-12 i.e. before units 6 & 7 of the Singrauli station completed the requisite 25 years for availing the special allowance under Regulation 10(4) of Tariff Regulations 2009. The units, in respect of which the expenditure was claimed, would also complete 25 years in the period for which such allowance was granted (2009-14) whereas the last unit was

commissioned in 1988. The 25 years is not a straight jacket formula in respect of which the units required renovation and therefore, the maintenance of the same can be said to be included in the special allowance created vide Central Commission's order dated 07.08.2012.

- 9) **Our consideration and conclusion on issue No.(a), (b) & (C) :** Since these issues are interwoven, we are taking up and deciding them together.

We have detailed above the rival contentions on these issues which we don't think proper to reiterate here once again. Before we proceed towards our own conclusion, we deem it proper to reproduce the relevant part of the Impugned Order, which is necessary in order to enable us to examine the correctness and legality of the impugned Order on these issues. The relevant parts of the Impugned Order are quoted below:

"15. It could be observed from the above that the total additional capital expenditure claimed by the petitioner during 2009-14 in this petition is 11760.54 Lakh as against the additional capital expenditure of 8770.00 Lakh allowed in order dated 7.8.2012 in Petition No.225/2009. Thus, there is an increase of 2990.54 Lakh in the claim of the petitioner in this petition. It is noticed that the increase in the claim for additional capital expenditure of 2990.54Lakh is on account of new claims to the tune of 3048.54 Lakh, comprising of 2079.01 Lakh for Generator Transformer, Stage-II" with de-capitalization of 78.02 Lakh, 90.61 Lakh for GT 21 kV bus duct", 330.80 Lakh for Renovation of relay panel of CHP Stage-II" 77.65 Lakh for "Retrofitting of microprocessor based conversion kit in stock make gravimetric feeders in 3x200 MW units", 13.39 Lakh for chlorine leak detection system" and balance payment of 32.94 Lakh for "Ash Dyke Package Lagoon Stage-I" and 7.79 Lakh on account of LD, etc. for "Liquid waste treatment plant" the dispute for which is pending before the Hon'ble High Court of Delhi. However, there is reduction in the claim of 58.00 Lakh by the petitioner under the head "Environment and Ash Utilization" in this petition."

"New Items/Works claimed under Regulation 9(2)(ii)-Change in Law

20. The petitioner has claimed capitalization of 2079.01 Lakh during 2009-10 along with de-capitalization of (-) 78.02 Lakh during 2009-10 for Generator Transformer Stage-II, 90.61 Lakh (44.42 Lakh during

2009-10 and 46.19 Lakh during 2011-12) for GT 21 kV bus duct under "Change-in-law". In justification of its claim for GTs, the petitioner has submitted that the DGA results for all these GTs have shown high concentration of dissolved gasses and that the Original Equipment Manufacturer (OEM) had opined that the possible cause for this would be the OFWF type cooling arrangement and had recommended its replacement with OFAF design cooling arrangement. It has further submitted that the last two GTs were replaced in August, 2011 and May 2011 for 2079.01 Lakh. The petitioner has also submitted that for 21 kV bus-ducts, the orientation of LV bushing of new GT was different from the old one and in order to accommodate the new GT, bus-duct was procured. The respondent BSES Rajdhani Power Limited in its reply has objected to the capitalization of this expenditure and has submitted that the expenditure on additional capitalization of this nature are not covered under Regulation 9(2) (ii) of the 2009 Tariff Regulations, and are to be met by the petitioner from the Compensation Allowance specially allowed to the generating station under Regulation 19(e) of the 2009 Tariff Regulations.

21. We have examined the submissions of the parties. The capitalization of Generator Transformer Stage-II and 21 kV bus-ducts cannot be considered under 'Change-in-law' as such items are in the nature of "replacement" which fall under the head 'Renovation and Modernization'(F&M). Further, it is noticed from the operating parameters of the generating station as submitted by the petitioner in the table below, that during last 5 years, the average availability is above the normative availability of 85%, except for the years 2008-09 and 2011-12.

| | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | Average |
|---------------------|---------|---------|---------|---------|---------|---------|
| Availability Factor | 83.865% | 85.742% | 90.279% | 83.054% | 87.234% | 86.035% |
| Plant Load Factor | 90.716% | 92.833% | 96.536% | 88.953% | 92.432% | 92.294% |

22. We notice that the GTs were capitalized during 2009-10 and were put in operation in August, 2010 and May, 2011 respectively. The Commission in its order dated 7.8.2012 had allowed Special Allowance of 30151.30 Lakh to the petitioner under Regulation 10(4) of the 2009 Tariff Regulations in order to meet the expenses on Renovation & Modernization for Stage-I and Stage-II units during the period 2009-14 since all the units would be completing 25 years of useful life from their respective dates of commercial operation. Further, the petitioner has also been allowed Compensation Allowance of 3055.00 Lakh under regulation 19(e) of the 2009 Tariff Regulations in order to meet the expenses on new assets of capital nature including assets of

minor nature. Since, Special Allowance allowed to the petitioner is towards the replacement of old, obsolete and under-performing components of the generating station which may arise after expiry of useful life, the additional capital expenditure for replacement of GTs and 21 kV bus-ducts, etc. shall be incurred by the petitioner from the said Special Allowance allowed. In view of this, the expenditure of 2079.01 Lakh for GTs and 90.61 Lakh for 21 kV bus-ducts is not allowed under this head. The corresponding de-capitalization of (-) 78.02 Lakh during 2009-10 has accordingly been ignored.”

- 10) Now we proceed to decide whether the Central Commission has rightly and legally disallowed the said capital expenditure for the Generator Transformers and GT 21 kV Bus Ducts on the ground that the cost incurred is covered under the compensation allowance provided under Regulation 19(e) and/or special allowance under the Regulation 10(4) of the Tariff Regulation 2009, respectively.

- 11) In justification of these claims, the appellant emphasises that there is a history of failure of similar Generator Transformers in Singrauli and generation of high fault gases and hence, it was necessary to replace these Generator Transformers for ensuring the required target availability. According to the appellant, the learned Central Commission did not take into consideration the fact that Generator Transformers and Bus Ducts were capitalized during FY 2009-10 and 2011-12 i.e. before Units 6 & 7 of the Singrauli Station completed the requisite useful life of 25 years for availing the special allowance under Regulation 10(4) of the Tariff Regulations 2009. We may mention here that Units 6 & 7, of the Singrauli station of the appellant completed useful life of 25 years in the next succeeding years namely 2012-13 and 2013-14 respectively. It is true that the assets were capitalized between 2009-10 and 2011-12, thus the justification of the appellant is that due to history of failure of similar Generator Transformers in Singrauli power station of the appellant and generation of high fault gases, it was necessary to replace these older Generator Transformers for ensuring the required target availability and the appellant in anticipation of failure of these Generator Transformers wanted to replace these Generator Transformers with the new Generator Transformers

and the said older Generator Transformers were accordingly replaced before FY 2011-12, by the new Generator Transformers as after the FY 2011-12 these Generating units of the appellant were completing their useful life of 25 years and were also liable for special allowance under Regulation 10(4) of Tariff Regulations 2009.

- 12) Thus the main grievance of the appellant on these issues is that the Central Commission erred in not considering the fact that these Generator Transformers and Bus Ducts were capitalized during FY 2009-10 and 2011-12 i.e. before Units 6 & 7 of Singrauli Station completed the requisite 25 years for availing the special allowance under Regulation 10(4) of the Tariff Regulations 2009. The admitted fact by the appellant is that the units 6 & 7 of the Singrauli Station of the appellant completed their useful life of 25 years just thereafter in FY 2012-13 and 2013-14 respectively.

- 13) We may mention here that the appellant had earlier filed an amended Petition, being Petition No.225 of 2009 (main tariff petition) for approval of tariff of Singrauli Super Thermal Power Station for the tariff period 2009-2014 along with additional capital expenditure projected to be incurred during FY 2009-14 tariff period, in the said tariff petition, the appellant had not claimed capitalization of the said Generator Transformers and Bus Ducts. The tariff in the said tariff Petition No.225 of 2009 was approved by the Central Commission vide its order dated 07.08.2012 and during this period throughout the appellant had not claimed any expenditure on Generator Transformers and GT 21 Bus Ducts. We may further mention here that the appellant feeling aggrieved by order dated 07.08.2012 of the Central Commission filed an appeal, being Appeal No.232 of 2012 against the said tariff order dated 07.08.2012 before this Appellate Tribunal and the said appeal has subsequently been admittedly dismissed by this Appellate Tribunal. The dispute regarding new claims including the expenditure on Generator

Transformers and for 21 kV Bus Ducts is pending before the Hon'ble Delhi High Court.

- 14) According to the appellant, the expenditure on the Generator Transformers and GT Bus Ducts were required to be made during the 25 years useful life of the station for proper operation and the same could not be said to be a part of the renovation and modernization expenses after the 25 years useful life of the said units, namely Units 6 & 7 of the appellant. According to the appellant, the Generator Transformer is a major component in the working of a generating station, failure of which would lead to a subsequent loss in generation and hence, the same cannot be construed to be a minor asset and ultimately cannot be covered under compensation allowance, provided under Regulation 19(e) of the Tariff Regulations 2009 because such compensation allowance is grossly inadequate to cover the significant additional capitalization for efficient operation of a generating station and sustaining the performance level in lines with the provisions of Tariff Regulations 2009. According to the appellant, though the claim made by the appellant under Regulation 9(2) of the Tariff Regulations 2009, the learned Central Commission ought to have exercised its 'power to relax' under Regulation 44 of Tariff Regulations 2009 to allow the said expenditure but the State Commission did not exercise the right to relax.

- 15) Contrary to these main contentions of the appellant, the emphasis of the respondents on these points is that the appellant as well as original equipment manufacturer are simply making a guess work of the problem and without explaining it they made the undue haste in the replacement of the said Generator Transformers. The additional expenditure has to be allowed only according to the Regulation 9 of the Tariff Regulations 2009 which would apply to both existing and new power projects as held by this Appellate Tribunal vide judgment dated 27.01.2014 in Appeal No. 44 of 2012.

- 16) After considering these rival contentions on these issues, we do not find any force or merit in the contentions of the appellant because it appears to us to be not a case of the nature where the Central Commission should have exercised its 'power to relax' under Regulation 44 of the Tariff Regulations 2009 because that point was never raised by the appellant before the Central Commission. Apart from it, we find that these Generator Transformers and Bus Ducts were capitalized during FY 2009-10 and 2011-12, i.e. before Units 6 & 7 of the station completed their useful life of 25 years for availing the special allowance under Regulation 10(4) of the Tariff Regulations 2009, particularly when the established and admitted fact is that these two units, being Units 6 & 7 of Singrauli Station of the appellant, completed their useful life of 25 years just after one year in FY 2012-13 and 2013-14, respectively. Thus the assets were capitalized between 2009-10 and 2011-12. The settled law on the point is that the additional capitalized expenditure has to be allowed only under Regulation 9 of the Tariff Regulations 2009 which is applicable to both existing and new projects as held by this Appellate Tribunal in judgment dated 27.01.2014 in Appeal No. 44 of 2012 and this issue is fully covered by judgment dated 08.05.2014 in Appeal No. 173 of 2013 passed by this Appellate Tribunal while disallowing the capital expenditure on purchase of Generator Transformers.
- 17) We do not find any merit in this contention of the appellant that the transformers installed by the PGCIL/CTU are just like the transformers installed by the appellant/NTPC, a power generator and since the transformer installed by PGCIL/CTU is liable for capitalization under Regulation 9(2)(V) as additional capital expenditure under Tariff Regulation 2009 and accordingly, the Generator Transformer installed by the generating company like the NTPC which serves the purpose of stepping up of generation voltage and matching the same with the transmission system voltage should also be allowed to be capitalized. This contention appears to be lucrative but is not legally acceptable because the generating company like the NTPC herein is entitled to a separate compensation allowance under Regulation 19(e) of the Tariff

Regulations 2009 to meet the expenses of the new assets of capital nature whereas the PGCIL/CTU is not entitled for any such compensation allowance and there is no parallel between the two. The learned Central Commission vide Impugned Order dated 15.05.2014 has rightly denied the capitalization of the appellant for the cost incurred on account of Generator Transformers and GT 21 kV Bus Ducts under 'change in law' as provided under Regulation 9(2) of the Tariff Regulations 2009. The learned Central Commission on its due diligence had also legally declared the said claim to fall under the nature of replacement which falls under the head 'Renovation and Modernization' (R&M) and rightly and legally directed the appellant to recoup/deduct the expenses from the special allowance granted under Regulation 10(4) of the Tariff Regulations 2009 in order to meet the R&M expenses for Stage-I and Stage-II Units for the period 2009-14 since all the units would be completing 25 years of useful life from their respective dates of commercial operation. In view of the above discussions, we do not find any illegality or perversity in the findings recorded in the Impugned Order on these issues and we approve the same. Consequently, these issues are decided against the appellant.

18) **Issue No.(d)** : On this issue, following contentions have been made by the appellant:

- (i) That the rate of interest of 8.5230% was the rate of interest in the main tariff order but the Central Commission has wrongly reduced it in the true up petition.
- (ii) That while calculating the interest on loan, the Central Commission did not take into account the submissions made by NTPC in its Affidavit dated 05.07.2013 as regards the difference between the rate of interest for the loan from LIC of India as provided in Form-8 (8.5230% and 8.7281% respectively) and indicated in Form-13 (8.54% and 8.7481%

respectively). The difference was on account of payments of upfront fees of 0.20% and the applicable service tax.

- (iii) That the Central Commission while approving the tariff for Singrauli station for the period 01.04.2009 and 31.03.2014 vide its order dated 07.08.2012 in Petition No. 225 of 2009, had taken the rate of interest as 8.54% and 8.7481%, respectively while calculating the weighted average rate of interest on loan. Having considered rate of interest as 8.54% and 8.7481% in the main tariff order, it is not now open to the Central Commission to deviate from the determined methodology and hold otherwise.
- (iv) That it is a settled principle of law that in the true up proceedings (impugned order dated 15.05.2014), it is not open for the Central Commission to change the methodology or principle already decided in the main tariff order (order dated 07.08.2012) as held in *Karnataka Power Transmission Company Limited v Karnataka Electricity Regulatory Commission & Ors.* (judgment dated 4.12.2007 in Appeal No. 100 of 2007) and *North Delhi Power Limited v Delhi Electricity Regulatory Commission 2007 ELR (APTEL 193).*

19) **Per contra**, following are the contentions raised by the respondents on issue No.(d), relating to rate of interest:

- (i) That the appellant has alleged that the Commission has disallowed rate of interest 8.54% and 8.7481% for the loan from LIC and committed error in the calculation of tariff and rate of interest on loan. It is noted from the Review Petition that alleged claim of the higher interest is owing to the fact that additional charge of 0.2% has been added by the appellant petitioner on the fixed interest rate of LIC. The appellant

petitioner has not identified the relevant regulation of Tariff Regulations 2009 under which the additional claim has been preferred.

- (ii) That the computation of interest on loan is strictly in accordance with the Regulations. The appellant, however, filed the Review Petition before the Central Commission and the Review Petition has partly been allowed by the Central Commission on the error in decapitalised value of spares. Hence, there remains no grievance to the appellant.

20) **Our consideration and conclusion on issue No.(d):**

Before reaching our conclusion we deem it necessary to reproduce the relevant part of the Impugned Order, which is as under:

“Interest on Loan

53. *Regulation 16 of the 2009 Tariff Regulations provides that:*

(1) The Loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.

(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year.

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project.

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered.

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:12.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute.

Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.”

- 21) It is evident from the perusal of Regulation 16 of the Tariff Regulations 2009 that there is no provision for including upfront or process fee and the computation of the interest on loan has been legally and correctly made by the Central Commission in accordance with this Regulation 16 of Tariff Regulations 2009. We find no error or illegality in the calculation of the interest on loan by the Central commission while passing the Impugned Order. We have also gone through the tariff order dated 07.08.2012 in Petition No. 225 of 2009 and we are of the opinion that no illegality has been committed by Central Commission on this score and the Central Commission has nowhere deviated from the determined methodology or principle decided in the main tariff order. After perusal of the Impugned Order on this issue and the relevant

Regulation 16, we find that the upfront or process fee has to be given only once while processing the loan. In view of this discussion, we decide this issue No.(d) against the appellant while affirming the view taken by the Central Commission in the Impugned Order on this issue.

- 22) Since all the four issues have been decided against the appellant, this appeal is worthy of dismissal.

ORDER

The instant appeal, being Appeal No.174 of 2014, is hereby dismissed without any cost and the Impugned order dated 15.05.2014 of Central Commission in the true up petition, being Petition No.188/GT/2013, is hereby up held.

Pronounced in the open court on this **30th day of November, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~