

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 29 OF 2015

Dated: 22nd March, 2016

**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

VERSUS

- 1. Central Electricity Regulatory Commission**
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
- 2. Madhya Pradesh Power Trading Company Limited**
Shakti Bhawan, Vidyut Nagar,
Jabalpur – 482008
- 3. Maharashtra State Electricity Distribution Company Ltd.**
Pradashgad, Bandra (East),
Mumbai – 400051
- 4. Gujarat UrjaVikas Nigam Ltd.**
Sardar Patel VidyutBhawan, Race Course Road,
Vadodra-390 007
- 5. Chattisgarh State Electricity Board,**
P.O. Sundar Nagar, Danganiya,
Raipur – 492913
- 6. Electricity Department, Government of Goa.**
Government of Goa, VidyutBhawan,
Panaji, Goa – 403001
- 7. Electricity Department,**
Administration of Daman & Dui - 396210

8. Electricity Department,

Administration of Dadra and Nagar Haveli
Silvassa-396230

..... Respondents

Counsel for the Appellant ... Mr. M.G. Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s)... Mr. M.S. Ramalingam
Mr. S.C. Srivastava, Chief Engr.
for R-1/CERC

Mr. Rishabh Donnel Singh
for R-2/MPPTCL

J U D G M E N T**PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by NTPC Limited (in short, the '**Appellant**'), a generating company, against the Impugned Order, dated 5.11.2014, passed by the Central Electricity Regulatory Commission (in short the '**Central Commission**') in Petition No. 230/GT/2013, wherein the Central Commission has revised the tariff applicable for the generation and supply of electricity by the Appellant from its Korba Super Thermal Power Station, Stage I & II (2100 MW) for the tariff period from 1.4.2009 to 31.3.2014.

2. In the impugned order, dated 5.11.2014, passed by the Central Commission, the Appellant is aggrieved of the following aspects:

- A. Disallowance of capital expenditure incurred on Ash Handling System amounting to Rs. 2965.56 lakhs, as against the 5661.53 claimed on the ground that the same is covered by Special Allowance;
- B. Disallowance of Capital Expenditure on Procurement and installation of Energy Meter amounting to Rs 25.89 Lakhs on

the ground that the benefit in reduction of auxiliary consumption is not being passed onto the beneficiaries;

- C. Disallowance of Capital Expenditure on modification of Fire Water Pipeline amounting to Rs 253 Lakhs on the ground that the cost incurred is covered under the compensation allowance and/or Special Allowance;
- D. Disallowance of capital expenditure on implementation of the RGMO amounting to Rs 51.73 Lakhs, as against the Rs. 98.75 lakhs claimed, on the ground that the cost incurred is covered under the Special Allowance;
- E. Disallowance of the exclusion claimed in respect of de-capitalisation of the spares amounting to Rs 2379.01 Lakhs which were acquired after the tariff year 1997-98 and were never a part of the capital cost;
- F. Disallowance of the exclusion claimed in respect of de-capitalisation of the Miscellaneous Bought Out Assets (MBOAs) amounting to Rs 5.47 lakhs which were never a part of the capital cost; and
- G. Computational error in the calculation of the pro-rated additional capital expenditure for the work of Ash Handling System and the implementation of the Restricted Governor Mode of Operation (RGMO).

3. During the hearing of the instant appeal, Mr. M.G. Ramachandran, learned counsel for the Appellant submitted that initially in the appeal there were afore-stated seven issues, which were mentioned in his written submissions, dated 11.02.2016. The first four issues have been decided by this Appellate Tribunal, vide its judgment, dated 12.5.2015, against the Appellant, Issue No.5 & 6 have been allowed by the Central Commission, vide Review order, dated 18.3.2015, in Review Petition No. 3 of 2015. **The only issue before us is issue No. 'G', relating to computational error in**

the calculation of pro-rated additional capital expenditure for the work of ash handling system and implementation of Restricted Governor Mode of Operation (RGMO).

4. The relevant facts for the purpose of deciding this Appeal, are as under:

- (a) that the Appellant is a Central Government Enterprise and a Company incorporated under the Companies Act, 1956 and is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. The Appellant, 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 Respondents No. 2 to 8 are regulated under the provisions of the Electricity Act by the Central Commission, the Respondent No.1 herein. Thus, the Appellant is a Government owned generating company. Respondent No.1/Central Commission is entitled to discharge various functions as per the Electricity Act, 2003. Respondent Nos. 2 to 8 are the distribution licensees;
- (b) that one of the generating stations of Appellant/NTPC is the Korba Super Thermal Power Station, Stage I & II (2100 MW) located in the State of Chhattisgarh and the electricity generated from the Korba Station is supplied to Respondents No. 2 to 8;
- (c) that the Appellant, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the 'Tariff Regulations, 2009'), filed a Petition, being No. 264 of 2009 for determination of the tariff for Korba Stage I & II for the period 1.4.2009 to 31.3.2014, which had been decided by the Central Commission, vide its order, dated 12.10.2012, and tariff for the said project for the said

period i.e. 1.4.2009 to 31.3.2014 had been determined. In that order, the Central Commission, while dealing with the claim for capital expenditure on Ash Handling System and the Procurement and installation of Energy Meters deferred works relating to ash pond or ash handling system in the original scope of work Regulation 9(2)(iii) of the Tariff Regulations, 2009;

- (d) that on 2.4.2013, NTPC filed the Petition No. 230/GT/2013 (Impugned Petition) for revision of the annual fixed charges for the Korba Stage I & II on the basis of actual capital expenditure incurred for FYs 2009-10, 2010-11 and 2011-12 and the projected expenditure for the years 2012-13 and 2013-14, as per Regulation 6(1) of the Tariff Regulations, 2009, which has been decided by the impugned order, dated 5.11.2014, passed by the Central Commission;

5. We have heard Mr. M.G. Ramachandran, learned counsel for the Appellant, Mr. M.S. Ramalingam, learned counsel for the Respondent No.1/CERC and Mr. Rishabh Donnel Singh, learned counsel for the Respondent No.2/MPPTCL, and gone through the written submissions filed by the rival parties. We have deeply gone through the material available on record including the impugned order passed by the Central Commission.

6. The main contention of the Appellant is that the Central Commission has erred in calculating the pro-rated additional capital expenditure for the Ash Handling System and the implementation of the Restricted Governor Mode of Operation (RGMO) on the basis that the 4 units of Korba, Stage I and II, namely Units 1 to 4, were eligible for availing Special Allowance for the entire control period i.e. 2009-14.

7. The next contention of the Appellant is that the Central Commission has failed to consider that Unit 3 had completed the useful life of 25 years in FY 2009-10 and Unit 4 in FY 2013-14.

8. According to the Appellant, in these circumstances, it is not correct to calculate the pro-rated capital expenditure for the entire control period i.e. 2009-14. The Central Commission, in any event, ought to have calculated the said charges on a year-wise basis, subject to the number of Units having completed the useful life of 25 years.

9. The learned counsel for the Respondents, taking us through the relevant part and findings recorded in the impugned order have justified the same and submitted that the appeal is devoid of merits and is liable to be dismissed.

10. **OUR CONSIDERATION AND CONCLUSION:**

- (a) We find from the order, dated 12.10.2012, in Petition No. 264 of 2009, passed by the Central Commission that the Central Commission had allowed the expenditure for Rs. 6885.72 lakhs during 2009-10 towards ash handling system for all six units of generating stations. Against this, the Appellant had claimed actual/projected capital expenditure of Rs. 5661.53 lakhs towards ash handling system. These expenditure have been claimed under Regulation 9(2)(iii) of the Tariff Regulations, 2009 which provides deferred works relating to ash pond or ash handling system in the original scope of work.
- (b) We find from the record that since, Unit I to IV have completed their useful life of 25 years during the year 2008-09 to 2013-14; hence, there remains no deferred work for ash handling system under the original scope of work. Once the useful life of the Units has expired, it could not be entitled for claim of capitalization under original scope of work. Further, special allowance has also been allowed as compensation for meeting the requirement of expenses including renovation and modernization beyond useful life. Accordingly, the Central

Commission has allowed the add-cap expenditure for these Units. However, the expenditure on ash handling system has been pro-rated based on the capacity of Unit V & VI which are yet to complete their useful life and allowed Rs. 2695.97 lakhs.

- (c) Further, we find that NTPC had claimed expenditure of Rs. 98.75 lakhs under Regulation 9(2)(iii) of the Tariff Regulations, 2009 under change in law towards implementation of Restricted Governor Mode of Operation (RGMO). Unit I to IV of the station have completed their useful life of 25 years during the year 2008-09 to 2013-14 and the Appellant has been allowed special allowance as compensation for meeting the requirement of expenses including renovation and modernization. The Central Commission has taken the view that implementation of RGMO in Unit 1, 2, 3 & 4 shall be met from the special allowance because the claim is not justified under additional capitalization beyond useful life. However, the expenditure on RGMO for Unit 5 & 6 have been allowed on pro-rata basis by the Central Commission. We find that this claim of the Appellant is also unjust because special allowance has already been allowed to the Appellant to take care of expenditure of such nature beyond useful life of the Units.
- (d) After going through the material on record and the impugned order, we observe that the Central Commission has not erred in calculating the pro-rated additional capital expenditure for the Ash Handling System and the implementation of the Restricted Governor Mode of Operation (RGMO) on the basis that the 4 units of Korba, Stage I and II, namely Units 1 to 4, were eligible for availing Special Allowance for the entire control period i.e. 2009-14. We are also unable to accept the contention of the Appellant that the Central Commission has failed to consider that Unit 3 had completed the useful life of 25 years in FY 2009-10 and Unit 4 in FY 2013-14. The Central Commission

has rightly, legally and properly calculated the pro-rated additional capital expenditure for the entire control period i.e. 2009-14. We do not find any justification or merit in this contention of the Appellant that the Central Commission ought to have calculated the said charges on a year-wise basis, subject to the number of Units having completed the useful life of 25 years. The contention of the Appellant does not find support from the relevant regulations of the Central Commission or the provision of the Electricity Act, 2003, etc.

- (e) In view of the above discussions, we do not find any merit in the said contentions of the Appellant and we are constrained to uphold the impugned order as the same suffers from no illegality or any kind of perversity. **Consequently, the sole issue regarding computational error in the calculation of the pro-rated additional capital expenditure for the work of Ash Handling System and the implementation of the Restricted Governor Mode of Operation (RGMO) is decided against the Appellant.**

ORDER

The instant Appeal, being Appeal No. 29 of 2015, filed by the Appellant/ NTPC Limited, is hereby dismissed and the Impugned Order, dated 5.11.2014, passed by the Central Electricity Regulatory Commission, in Petition No. 230/GT/2013, is hereby upheld. There shall be no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 22ND DAY OF MARCH, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ **REPORTABLE/NON-REPORTABLE**

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