

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

Appeal No. 47 of 2014

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 Ltd.

NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110 003

... Appellant(s)

Versus

1. Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110 001.

2. Tata Power Delhi Distribution Ltd.

Tata Power Delhi Distribution House,
Hudson Lines, Kingsway Camp,
Delhi – 110 009.

3. BSES Rajdhani Power Ltd. (BRPL)

BSES Bhawan, Nehru Place,
New Delhi – 110 019.

4. BSES Yamuna Power Ltd. (BYPL)

Shakti Kiran Building,
Karkardooma,
Delhi – 110 092.

5. New Delhi Municipal Council

Palika Kendra Building,
Opposite Jantar Mantar,
Parliament Street,
New Delhi – 110 001.

6. Military Engineering Service

Delhi Cantonment,
New Delhi – 110 010.

... Respondent(s)

Counsel for the Appellant(s)

:

Mr. M. G. Ramachandran,
Mrs. Swapna Seshadri
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bordhan
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. K. S. Dhingra for R.1
Mr. Alok Shankar, Mr. Alok Shankar
and Mr.Vaibhav Choudhary for R.2
Mr. R. B. Sharma for R.3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUIDICIAL MEMBER

This is an appeal filed under Section 111 of the Electricity Act, 2003 against the order dated 16.12.2013 passed by the learned Central Electricity Regulatory Commission (in short the "**Central Commission**") in Petition No.18 of 2013 whereby the Central Commission has revised the tariff of the appellant/NTPC for the period 01.04.2009 to 31.03.2014 for Badarpur Thermal Power Station (hereinafter referred to as '**Badarpur Station**') as a part of the truing up exercise.

- 2) The appellant is aggrieved against the Impugned Order on the following aspects:
- A) Disallowance of Rs.973.50 lakhs on replacement of Condenser Tubes claimed for the tariff year 2011-12
 - B) Disallowance of (i) Rs.3822.00 Lakhs for augmentation of (ii) Electric Static Precipitators (ESP), Rs.1272.00 Lakhs for Renovation & Modernization of 220 kV switchyard, (iii) Rs.49.66 Lakhs for replacement of existing lighting fixtures, (iv) Rs.68.10 lakhs for replacement of goods lift, (v) Rs.36.01 lakhs for supply & Installation of ILMS and (vi) Rs.100.00 lakhs for repair & refurbishment of CHP coal Hopper claimed for the Tariff year 2012-13 and 2013-14
 - C) Disallowance of Rs.34.69 lakhs claimed as Additional Capitalization in respect of the Energy Management System claimed for the tariff year 2011-12
 - D) Disallowance of (i) Rs.8.48 lakhs claimed as Additional Capitalization in respect of Supply and Erection of Weigh bridge and (ii) Rs.6.89 lakhs claimed in respect of Cable Drag Chain System claimed for the tariff year 2011-12
 - E) Disallowance of (i) Rs.60.58 lakhs claimed as Additional Capitalization for replacement of Finned Economizer 'J' bends and (ii) Rs.4.95 lakhs towards the procurement of Electric Hoist of 5 Ton capacity claimed for the tariff year 2009-10.
- 3) The learned Central Commission, according to the appellant, in the Impugned Order, has disallowed the above claims on the following grounds :
- (i) That the Capitalization claimed for Assets (A) & (B) above under Regulation 10 of Tariff Regulations, 2009 having been duly put to use should be deferred till the completion of the entire Renovation & Modernisation (R&M) works;

- (ii) Capitalization claimed for asset at No. (C) above under Regulation 10 is not admissible as it does not result in passing on the benefits to the consumers; and
 - (iii) Capitalization claimed for Assets (D) & (E) above under Regulation 10 of the Tariff Regulations, 2009 are in the nature of O&M expenses or minor assets.
- 4) According to the appellant, the Impugned Order of the Central Commission on the said aspects is erroneous for the following reasons:
- 4.1) That it is well settled that once an asset has been commissioned and put to use, the capital value of the assets are to be serviced through tariff. The tariff related to such capital value of the assets cannot be postponed on the ground that the Renovation and Modernization (R&M) scheme as a whole should be completed. Hence, the Central Commission is wrong in deferring the consideration of the capitalization of the specific assets during the relevant period, 2009-14 to the subsequent tariff period to be given after completion of the R&M.
 - 4.2) That the Impugned Order of the Central Commission is contrary to the Central Commission's order dated 21.01.2011 in Petition No.127 of 2009 in the case of Anta gas Power Station.
 - 4.3) That the Energy Management System installation was as per the Bureau of Energy Efficiency guidelines under the Energy Conservation and therefore the value of such Energy Management System should be allowed for service through tariff which is also consistent with the order dated 12.09.2012 of the Central Commission in Petition No.227 of 2009 relating to Vindhyachal Stage-I Thermal Power Station and order dated 02.08.2012 in Petition No.254 of 2009 relating to Rihand Stage-II Generating Station.
 - 4.4) That the assets such as Weigh Bridge relating to Dry Ash evacuation system, cable drag chain system etc. cannot be treated as minor assets, when these are significant capital assets and therefore, ought to have been considered by the Central Commission.
 - 4.5) That the assets such as 'J' bends and Electric Hoist are assets of capital nature with enduring benefits and therefore cannot be treated as covered under operational and maintenance expenses.
 - 4.6) That the appellant is a Government of India undertaking and a Company incorporated under the Companies Act, 1956. The appellant is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. The

Badarpur station (705 MW) is one of the generating stations of NTPC and the electricity generated from it is supplied to respondent Nos. 2 to 6 herein.

- 4.7) That the respondent No.1 is the Central Electricity Regulatory Commission which is empowered to discharge functions as per the provisions of the Electricity Act, 2003 including the determination of tariff etc.
- 5) The relevant facts for the purpose of deciding this appeal are as under:
- 5.1) That between 1973-1981, five units of Badarpur Station were commissioned by Government of India.
- 5.2) That on 01.06.2006, the ownership of Badarpur Station was transferred to and vested with the appellant, NTPC.
- 5.3) That on 01.04.2009, the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009 (hereinafter referred to as “**Tariff Regulations 2009**”) were notified by the Central Commission in regard to tariff for the period from 01.04.2009 to 31.03.2014.
- 5.4) That on 29.12.2009, the appellant/petitioner filed Petition No. 332 of 2009 before the Central Commission for determination of tariff for Badarpur Station for the period 01.04.2009 to 31.03.2014 which was disposed of by the Central Commission’s order dated 23.05.2012 in which the Central Commission did not fully allow the additional capitalization claimed by NTPC.
- 5.5) That thereafter NTPC filed Review Petition No.18 of 2012 before the Central Commission for review of the order dated 23.05.2012. The Central Commission vide Review Order dated 08.12.2013 granted some additional relief to the appellant.
- 5.6) That the appellant on 05.10.2012 filed Petition No.18/GT/2013 (Impugned Petition) before the Central Commission for truing up and revision of tariff for Badarpur Station for the period 01.04.2009 to 31.03.2014 based on the projected additional capitalization and actual capital expenditure. The said Impugned Petition has been disposed of by the Central Commission by Impugned Order dated 16.12.2013 which has been assailed by the appellant, NTPC before us through this appeal.
- 6) We have heard Mr. M. G. Ramachandran, Mrs. Swapna Seshadri, Ms. Ranjitha Ramachandran, learned counsel for the appellant, NTPC and Mr. K. S. Dhingra learned counsel for Respondent No.1, CERC and Mr. R. B. Sharma, learned counsel for Respondent No.3, BSES Rajdhani Power Ltd. We have gone through the written

submissions filed by the rival parties and perused the material available on record including the Impugned Order.

7) The following issues have been raised by the appellant:

- A) Deferment of the claim amounting to Rs.973.50 lakhs on replacement of Condenser Tubes claimed for the tariff year 2011-12
- B) Deferment of the claim amounting to Rs. 5347.77 Lakhs consisting of (i) Rs.3822.00 Lakhs for augmentation of (ii) Electric Static Precipitators (ESP), Rs.1272.00 Lakhs for Renovation & Modernization of 220 kV switchyard, (iii) Rs.49.66 Lakhs for replacement of existing lighting fixtures, (iv) Rs.68.10 lakhs for replacement of goods lift, (v) Rs.36.01 lakhs for supply & Installation of ILMS and (vi) Rs.100.00 lakhs for repair & refurbishment of CHP coal Hopper claimed for the Tariff year 2012-13 and 2013-14
- C) Disallowance of Rs.34.69 lakhs claimed as Additional Capitalization in respect of the Energy Management System claimed for the tariff year 2011-12
- D) Disallowance of (i) Rs.8.48 lakhs claimed as Additional Capitalization in respect of Supply and Erection of Weigh bridge and (ii) Rs.6.89 lakhs claimed in respect of Cable Drag Chain System claimed for the tariff year 2011-12
- E) Disallowance of (i) Rs.60.58 lakhs claimed as Additional Capitalization for replacement of Finned Economizer 'J' bends and (ii) Rs.4.95 lakhs towards the procurement of Electric Hoist of 5 Ton capacity claimed for the tariff year 2009-10.

7.1) **Issue No.(A) : Relating to deferment of replacement of Condenser Tubes:**

On this issue, the learned counsel for the rival parties agree to the fact that this issue has been decided against the appellant, NTPC by judgment dated 10.09.2015 passed by this Appellate Tribunal in Appeal No. 250 of 2013 in *National Thermal Power Corporation Ltd. Vs. Central Electricity Regulatory Commission & Ors.*

We do not find merit in the contentions of the appellant on this issue No.(A) relating to deferment and since the said issue is covered by our earlier judgment dated 10.09.2015, this issue is decided against the appellant.

7.2) **Issue No.(B) : Deferment of augmentation of Electric Static Precipitators etc.:**

On this issue again both the parties agree to the situations that this issue is covered by judgment dated 17.04.2015 passed by this Appellate Tribunal in Appeal No.245 of 2013 in *National Thermal Power Corporation Ltd. Vs. Central Electricity Regulatory Commission & Ors.*

7.2.1) The learned counsel for the respondent, Commission, has distinguished our judgment dated 17.04.2014 in Appeal No.245 of 2013, drawing our attention to paragraph 16.5 to 16.7 of the judgment submitting that this Appellate Tribunal did not find any case having been made out for true up of the expenditure actually incurred on 1 GT-4 and this Appellate Tribunal while dealing with the true up of 1 GT-1 and projected capital expenditure of the other 2 GTs which were proposed to be renovated during FY 2013-14 could not be allowed in the true up petition under proviso to Regulation 6(1) as the true up can only be for the expenditure actually incurred. The reported matter was relating to the generating turbine of the plant of the NTPC and in that situation this Appellate Tribunal granted liberty to the appellant to present its case GT-wise for additional capital expenditure incurred on R&M during the period 2012-13, 2013-14 during the true up of additional capital expenditure exercise to be carried out by the Central commission for the control period 2009-14. After going through our judgment dated 17.04.2014, we find that the said judgment is not applicable to the matter in hand before us. Hence this issue No.(B) is decided against the appellant.

7.2.2) This Appellate Tribunal in judgment dated 10.09.2015, in Appeal No. 250 of 2013 has upheld the order of the Central Commission to defer capitalization of expenditure to the next tariff period 2009-14 under similar circumstances. We in that judgment have held as under:

“10.13 Further, we are unable to accept this contention of the Appellant that the determination of tariff under the cost plus mechanism requires all the assets to be serviced because only those assets which have been admitted by the Central Commission, subject to prudence check, can be serviced.

10.14 Further, we are also unable to accept the contention of the Appellant that any scheme or mechanism or methodology once allowed in the tariff petition, cannot be disallowed in a true-up petition because the Central Commission, in the impugned order, has not disallowed the R&M but deferred to the next tariff period i.e. 2014-19 at the instance of the Appellant that the Appellant was not in a position to complete the scheme during 2009-14 tariff period. The Central Commission, in the impugned order, has not changed any scheme or methodology while dealing with the true up petition and passing the impugned order. Once the Central Commission, at the instance of the Appellant considering urgency or assurance of the Appellant, exercised its ‘Power to Relax’ in regulation 44 of the Tariff Regulations, 2009 allowed additional capitalization but subsequently, when the Appellant itself informed that the completion of the same R&M works was not

possible in the present tariff period i.e. 2009-14, but will be done only in the next tariff period i.e. 2014-19, the Central Commission has passed the impugned order. Thus, the impugned order on legal scrutiny is found to be correct, just and legal one requiring no interference from us in this Appeal.

10.15 Thus, the Central Commission is legally right and justified in deferring the additional capitalization incurred in respect of certain capital assets only on completion of the R&M activities of the GTs. In view of the above discussions, both these issues are decided against the Appellant and the present Appeal is liable to be dismissed.”

7.3) **Issue No.(C) : Relating to disallowance claimed on Energy Management System:**

Again the learned counsel for the rival parties agreed to the fact that this issue has been decided against the appellant, NTPC by this Appellate Tribunal vide judgment dated 09.05.2014 in Appeal No.173 of 2013. Hence, we decide this issue against the appellant.

The expenditure of Energy Management system was not allowed to be capitalized by the learned Central Commission in its order dated 28.05.2013 in Petition No.269 of 2009 in the matter of *National Thermal Power Corporation Ltd. Vs. Transmission Corporation of Andhra Pradesh Ltd. & Ors.* wherein the appellant had sought approval of tariff for the period 2009-14 in respect of Talcher Super Power Station, Stage-II. The appellant feeling aggrieved by order dated 28.05.2013 filed Appeal No.173 of 2013 before this Appellate Tribunal and this Appellate Tribunal vide judgment dated 09.05.2014 upheld the view of the Central Commission because the additional capitalization is determined in terms of Regulation 9(2) of the Tariff Regulation 2009 which does not cover the capitalization of expenditure on the Energy Management System. Hence, we decide this issue No.(C) against the appellant.

7.4) **Issue No.(D) & (E) : Relating to disallowance claimed as additional capitalization in respect of supply and Erection of Weigh bridge etc. and replacement of Finned Economizer ‘J’ bends etc.:**

Since both these issue are inter connected, we are taking and deciding them up together. On these issues, following contentions are made by the appellant:

- 7.4.1) That the disallowances made by the Central Commission are contrary to the settled legal position. The Commission is bound by its regulations as held by a Constitution Bench in the matter *PTC India Limited Vs Central Electricity Regulatory Commission (2010) 4 SCC 603* and also held by this Appellate Tribunal vide its order dated

01.03.2012 in Appeal No.131 of 2011 in the case of Haryana Power Generation Corporation Ltd. Vs. Haryana Electricity Regulatory Commission.

- 7.4.2) That the statutory provisions should be applied on its term without adding or subtracting conditions or wordings as detailed in a Standard Book of G.P.Singh's Principle of Statutory Interpretation, 13th Edition at pages 64 to 67.
- 7.4.3) That the learned Central Commission has added conditions for application of Regulation 10 of Tariff Regulations 2009 regarding benefits being passed on to the beneficiaries or completion of entire R&M works. There is no condition under Regulation 10 that the claim under Regulation 10 will be admissible only if the benefit is passed on to the beneficiaries. Such a condition has been introduced by the Central Commission in the Impugned Order.
- 7.4.4) Similarly, there is no condition in the Regulation that the capitalization of assets put to use will be allowed only upon the completion of R&M works as a whole.
- 7.4.5) That the capitalization claimed in respect of augmentation of Electro Static Precipitators {forming part of Asset (B)} was allowed to be capitalized in order to comply with the emission norms statutorily prescribed which need to be considered under Change in Law, specified in Regulation 9(2)(ii) of Tariff Regulations, 2009. Further there is no condition in the said Tariff Regulations to postpone or defer the consideration of the expenditure till Renovation and modernization is complete. In fact, consideration of expenditure under Change in Law has no relation as to whether there is any Renovation or Modernization program. Such expenditure which is to be incurred in pursuance to a mandate of law needs to be allowed whenever incurred and cannot be deferred. Hence, the Central Commission has applied exterior considerations not provided in the Tariff Regulations 2009 rejecting the above claims.
- 7.4.6) That the expenditures for Energy Monitoring System {Asset (C)} was claimed as per the requirements of the Central Electricity Authority vide Notification dated 17.03.2006 and, therefore, the same was on account of statutory mandate i.e. Change in Law. In such a situation, the passing on the benefit to the beneficiaries is not a relevant consideration because Regulation 9(2)(ii) of Tariff Regulations 2009 is specific and provides for giving effect *ipso facto* to a Change in Law without any other or further condition.
- 7.4.7) That the installation of online energy meters is required for energy audits as well as conservation of various system/equipments, as per the Bureau of Energy Efficiency

Guidelines in the light of Energy Conservation Act of 2001. The Energy Monitoring System not only holds in conservation of energy of the system but in turn also helps to minimize pollution/stack emission level which benefits the environment.

- 7.4.8) That once the methodology is adopted at the time of tariff determination, it should not be changed at the stage of review or true up as held in *Karnataka Power Transmission Company Ltd. Vs. Karnataka Electricity Regulatory Commission & Ors.* in judgment dated 04.12.2007 in Appeal No.100 of 2007 and in the case of *North Delhi Power Ltd. Vs. Delhi Electricity Regulatory Commission 2007* ELR (APTEL) 193.
- 7.4.9) That the Impugned Order is an order passed on a mid-term review of financials. The tariff was determined by an earlier order dated 23.05.2012, in which order, the expenditures on asset (B) were duly considered and allowed. The Central Commission in the tariff order dated 23.05.2012, had specifically allowed the claim of additional capital expenditures on the capital assets, based on the Tariff Regulations 2009. The Central Commission allowed the projected capitalization based on assets put to use accepting the justification put forth by NTPC and allowed the claim of capital expenditure. No stipulations of completion of entire R&M works were then allowed.
- 7.4.10) That in the Impugned Order, the Central Commission is not entitled to change the methodology and disallow such expenditure. The review/true up is not a stage for the Central Commission to change the methodology.
- 7.4.11) That the Tariff Regulations 2009 provide for prudence check at the initial stage. Once approved during 2009-14 main order, only the amount of expenditure is to be trued up through the true up Petition.
- 7.4.12) That once the asset is put to use for generation, the capitalization is to be allowed. The servicing of the capital expenditure through tariff is not to be deferred after the asset is put to use, as held by this Appellate Tribunal in judgment dated 06.09.2013 in Appeal No. 2 of 2013 in the case of *Haryana Vidyut Prasaran Nigam Ltd. Vs. Haryana Electricity Regulatory Commission & Ors.*
- 7.4.13) That in its own Statement of Reasons for the amendment dated 21.06.2011 of Tariff Regulations 2009, the Central Commission has stated as under:

“21. ...

Regulation 7 which deals with capital cost and Regulation 9 which deals with additional capitalization talk about “expenditure incurred or projected to be incurred” and read with Regulation

3(2), it would mean that capital expenditure or additional capital expenditure where funds have actually been deployed and paid in case shall be admitted in tariff. In other words, commitments or liabilities where payments have not been released would not be allowed in tariff.”

- 7.4.14) Thus the Statement of Reasons clearly provides for additional capitalization to be serviced in tariff if paid in cash. The scheme of the Tariff Regulations 2009 do not provide for servicing of expenditure in a package. Even in the past the servicing of expenditure is to start when a scheme is put to use.
- 7.4.15) That the Central Commission had allowed similar expenditure in other stations of the appellant but has disallowed the same in the Impugned Order, which is not valid. The Central Commission should maintain the consistency/uniformity in its approach.
- 7.4.16) The Central Commission in its decision dated 22.08.2013 passed in Petition No. 1/RP/2013 in *SJVN Ltd. Vs. Punjab State Power Corporation Ltd. & Ors.* held that denying the benefit of tariff for the assets which have been capitalized and put to use, would result in denying recovery of cost of supply of electricity by the generator.
- 7.4.17) That as regards the disallowance of capital expenditure claimed in respect of Energy Management System, a claim against the same head was allowed in Rihand-II Station in Central Commission's order dated 02.08.2012 in Petition No.254 of 2009 and in Vindhyachal-I Station vide Central Commission's order dated 12.09.2012 in Petition No.227 of 2009. On the same parity, the Central Commission ought to have allowed the capital expenditure claimed in the present case. There is no reason for adopting a different course in the present case.
- 7.4.18) That subsequent to the admission of the present appeal, being Appeal No.47 of 2014, this Appellate Tribunal has passed an order dated 17.04.2014 in Appeal No.245 of 2013 in the case of another generating station of the appellant, NTPC, namely Kawas Gas Power Station wherein liberty was granted to NTPC to claim the additional capitalization actually incurred during the period 2012-13 and 2013-14 during the truing up for the control period 2009-14.
- 7.4.19) That the Central Commission has not dealt with the nature of capital expenditure incurred by NTPC in terms of Assets (D) and (E) and has disallowed

the claim only on the general basis that assets on which such expenditure is claimed are minor assets or that they are covered under the normal O&M expenses.

- 7.4.20) That the Central Commission has not considered as per the Ministry of Environment and Forest Notification dated 14.09.1999 regarding utilization of ash, the weigh bridge {forming part of Asset (D)} was required to be installed near the dry ash evacuation system for weighing of the fly ash. Accordingly, the capital expenditure towards the supply and erection of the weigh bridge is pursuant to the requirements under the said notification and was to be considered under change in law under Regulation 9(2)(ii) of the Tariff Regulations 2009 and such expenditure cannot be treated as expenditure related to minor assets.
- 7.4.21) That the cable drag chain system (part of Asset D) was installed for ensuring increased reliability of the equipment feeding coal to the units. The drag chain system was installed to replace the obsolete technology of conveyor tripper movement through the cable reeling drum. This is an essential capital expenditure giving long term benefit to the station and is not a routine repair or O&M expenditure. On this point there is no reasoning in the Impugned Order.
- 7.4.22) That similarly the expenditure for replacement of 'J' bends {Asset E} was a one time expenses for increasing boiler reliability and availability as the same was essential for preventing the frequent rupturing of condenser and tubes and the subsequent depositions inside boiler tubes. The expenditure of such assets cannot be considered as a part of O&M expenses because O&M expenses by its very nature involve only day to day expenditure, the benefit of which does not last more than the tariff year for which the expenditure is incurred. Any expenditure incurred on capital assets which gives enduring benefit cannot be rejected on the grounds that it is covered under the normal O&M expenses.
- 7.4.23) That the Electric Hoist (Asset E) was specifically installed to keep the trash rack before the CW Pump in clean conditions by removing debris from the cooling water received at the generating station. This asset provides an enduring service in the operation of the generating station and the same is not in the nature of O&M expenses having effectiveness of only one year.
- 8) **Per contra**, the respondents have attempted to defend the Impugned Order submitting that the Central Commission has recorded correct and legal findings

on these issues in the Impugned Order. Further, there is no illegality or perversity or irregularity of any kind whatsoever in the Impugned Order.

9) **Our consideration and conclusion :**

9.1) The learned Central Commission has legally and correctly disallowed the said claims relating to actual capital expenditure of Rs.8.48 Lacs for S&E Weigh Bridge and Rs.6.89 Lacs for Cable Chain Drag system during FY 2011-12 on the ground of the asset being minor in nature and not covered under Regulation 9(2) of Tariff Regulations 2009. The relevant part of the Impugned Order on this issue is as under:

“63. The petitioner has claimed actual capital expenditure of 8.47 lakh for S&E Weigh-Bridge and 6.89 lakh for cable chain drag system during 2011-12. Since the asset is minor in nature, the expenditure on this count has not been allowed.”

9.2) We find that the Central Commission has also rightly and correctly disallowed Rs.60.58 lakh claimed as additional capitalization for replacement of Finned Economizer ‘J’ Bends and Rs.4.95 lakh towards the procurement of Electric Hoist of 5 Ton capacity during FY 2009-10 on the ground of the said expenditure being in the nature of operation and maintenance expenses and the same cannot be capitalized. The relevant part of the Impugned Order on this point is as under:

“Finned Economizer J bends

43. The petitioner has claimed actual expenditure of 60.58 lakh for replacement of ‘J’ bends under the Regulation 10 of the 2009 Tariff Regulations. The petitioner vide its affidavit dated 18.1.2013 has submitted that the quality of intake raw water has deteriorated drastically during the years and is now almost sewerage and this has resulted in frequent rupturing of condenser tubes and subsequently increasing depositions inside boiler tubes. It has also submitted that due to this reason frequent boiler tube leakages were occurring and for increasing boiler reliability & availability, replacement of ‘J’ bends was required and was carried out as a onetime activity. We are of the view that ‘J’ bends are capital spares and should be booked under O&M expenses as the petitioner has been allowed expenditure on capital spares

in the normative O&M expense. In view of this, the expenditure claimed has not been allowed to be capitalized.

Electric Hoist 5 Ton capacity

44. The petitioner has claimed actual expenditure of 4.95 Lakh towards the procurement of Electric Hoist of 5 Ton capacity under Regulation 10 of the 2009 Tariff Regulations. The petitioner vide its affidavit dated 18.1.2013 has submitted that the Electric Hoist has been installed to keep the Trash Rack before the CW Pump in clean conditions by removing debris from the cooling water received at the generating station. This asset is required for running & maintenance of the generating station. In view of this, we are of the considered view that the expenditure for the purpose of maintenance should be booked under O&M expenses allowed for the generating station. Accordingly, the expenditure claimed has not been allowed to be capitalized.”

- 9.3) The contention of the appellant that determination of tariff under cost plus mechanism requires all the assets to be serviced is lucrative but not acceptable because only those assets which have been admitted by the Central Commission, subject to prudence check, can be serviced.
- 9.4) Further we feel that the power under Regulation 9(2) of Tariff Regulations 2009 is discretionary power vested in the Commission. The Commission may, in its discretion, while allowing the additional capitalization, order that the benefits of the additional capitalization be shared with the beneficiaries and in the event of such denial by the appellant, the additional capitalization can be refused at the discretion of the Commission.
- 9.5) We note that the Central Commission in its earlier order dated 23.05.2012 in Petition No.332 of 2009 had already taken view that the projected capital expenditure for the main plant package under CEA approved scheme for FY 2011-12, 2012-13 and 2013-14 could not be allowed since the benefit of the R&M would be passed on to the beneficiaries during 2014-15 after major part of the expenditure was incurred during the next tariff period. For the same reason, the actual or projected capital expenditure under the CEA approved scheme (main plant package) for the said period, on the above items, has not been allowed in the Impugned Order too.

- 9.6) We further observe that tariff period 2014-19 has already commenced and hence, the appellant has the liberty to approach the Central Commission for truing up of the expenditure in accordance with Regulation 6 of the Tariff Regulations 2009.
- 9.7) On the point of 'J' bends, the Commission held that the 'J' bends were in the nature of capital spares and as such capitalization of expenditure was not allowed by the Central Commission recording in the Impugned Order as under:
- “43. The petitioner has ... We are of the view that 'J' bends are capital spares and should be booked under O&M expenses as the petitioner has been allowed expenditure on capital spares in the normative O&M expense. In view of this, the expenditure claimed has not been allowed to be capitalized. “*
- 9.8) There are two types of spares namely the initial spares and maintenance spares or capital spares. Only the initial spares are included in the capital cost in accordance with Regulation 7(1) of the Tariff Regulations 2009. Since expenditure on replacement of 'J' bend was not the expenditure on initial spares, capitalization of the expenditure has not been allowed.
- 9.9) After going through the Impugned Order and the material on record, we find that the Regulation 9(2) of the Tariff Regulations 2009 provides for the items of expenditure that can be capitalized after the cutoff date and it does not provide for capitalization of maintenance for capital spares. Consequently, the expenditure on capitalized 'J' bend does not fall within the scope of Regulation 9(2) of Tariff Regulations 2009 and as such cannot be allowed to be capitalized there under. The normative O&M expenses allowed under Tariff Regulations 2009 include the expenses on account of capital spares and accordingly, expenditure on replacement of 'J' bends was to be booked under O&M expenses. Hence, the expenditure claimed has not been allowed to be capitalized by the Central Commission. The same is the legal position with regard to procurement of Electric Hoist 5 Ton.
- 9.10) The appellant claimed capital expenditure of Rs.8.47 Lakhs for supply and erection of Weigh Bridge and Rs.6.89 Lakhs for Cable Chain Drag System during 2011-12. Since these items are of minor nature, their capitalization is not covered under Regulation 9(2) of Tariff Regulations 2009 and accordingly the said expenditure was not allowed to be capitalized on the ground that asset

being minor in nature and further proviso to Regulation 9(2) of Tariff Regulations 2009 expressly excludes capitalization of minor assets.

- 9.11) From the Impugned Order, we see that the learned Central Commission has not changed any methodology and all the claims made by the Central Commission on these two issues have been legally, justly and correctly disallowed. It is true that review/true up is not a stage for the Central Commission to change the methodology but no such methodology has been changed in the Impugned order so far as the facts and circumstances of the case are concerned. No one is entitled to any concession which have been already granted to a person just on the ground that the same be continued to be allowed in future because every order is to be passed on the merits of its own case.
- 9.12) In view of the above discussion, we do not find any substance or merits in the contentions of the appellant on issue No.(D) and (C) and all the findings recorded in the Impugned Order, by the Central Commission are liable to be upheld. Consequently, both these issues are decided against the appellant.
- 9.13) Since all the above issues have been decided against the appellant, the instant appeal fails.

ORDER

The instant appeal, being Appeal No.47 of 2014, is hereby dismissed and the Impugned Order dated 16.12.2013 passed by the Central Commission in Petition No.18 of 2013 is hereby upheld.

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~~