

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.99 of 2011

Dated: 2nd Jan, 2013

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

In the Matter of:

**M/s. 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-110 001**
- 2. West Bengal State Electricity Distribution Company Ltd
Vidyut Bhawan, Block DJ,
Sector-11, Salt Lake City,
Kolkata-700 091**
- 3. Bihar State Electricity Board
Vidyut Bhawan, Bailey Road,
Patna-800 001**
- 4. Jharkhand State Electricity Board,
Engineering Building,
HER, Dhurwa, Ranchi-834 004**
- 5. GRIDCO Limited
24, Janpath,
Bhubaneswar-751 007**

- 6. Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700 054**
- 7. Power Department
Govt of Sikkim, Kazi Road,
Gangtok, Sikkim-737 101**
- 8. Tamilnadu Generation and Distribution Co. Ltd.,
NPKRP Maaligail,
144, Anna Salai, Chennai-600 002**
- 9. Union Territory of Puducherry
Electricity Department
58, Subhash Chandra Bose Salai,
Puducherry-605001**
- 10. Uttar Pradesh Power Corp. Ltd (UPPCL)
Shakti Bhawan, 14, Ashok Marg
Lucknow-226 001**
- 11. Power Development Department (J&K),
Govt of J&K Secretariat,
Srinagar-190 009**
- 12. Electricity Department,
Union Territory of Chandigarh
Addl. Office Building
Sector-9D, Chandigarh-160 009**
- 13. Madhya Pradesh Power Trading Corpn Ltd.,
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482 008**
- 14. Maharashtra State Electricity Distribution Co. Ltd.
'Prakashgad', Bandra (East)
Mumbai-400 051**

15. **Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course, Baroda-390007**
16. **Electricity Department
Administration of Daman & Diu (DD)
Daman-396 210**
17. **Electricity Department
Administration of Dadra and Nagar Haveli (DNH)
Silvassa, Via-VAPI-396 230**
18. **BSES Rajdhani Power Ltd., (BRPL)
BSES Bhawan, Nehru Place
New Delhi-110 019**
19. **BSES Yamuna Power Ltd., (BYPL)
Shakti Kiran Building,
Kakardooma, Delhi-110 092**
20. **North Delhi Power Limited.,
33KV Sub Station Bldg.
Hudson Lane, Kingsway Camp,
New Delhi-110 009**

.....Respondent(s)

Counsel for the Appellant(s) : Mr. M G Ramachandran, Sr Adv.
Mr. Anand K Ganesan
Ms. Swapna Seshadri,
Ms. Sugatika Sahoo
Ms. Sneha Venkataramani

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. R B Sharma
Mr. Manoj Dubey

J U D G M E N T

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

1. The following questions of law will arise in the present Appeal:
 - (a) **Whether the Central Commission was right in not allowing the NTPC to retain the value of unserviceable Wagons and bogies in the capital base for the purpose of tariff, under the Act, 2003?**
 - (b) **Whether the capital cost to be considered for computing value of maintenance spares for calculating the interest on working capital should include the amount of initial spares or not ?**
2. These are the questions posed before this Tribunal in this Appeal.
3. NTPC has filed this Appeal as against the order dated 20.1.2011 passed in Petition No.195 of 2009 on the revision of fixed-up charges and the order passed on 1.6.2011 in Review Petition No.1 of 2011 by Central Commission.

4. The relevant facts for considering the questions posed as above are as follows:

- (a) The NPTC which is a Central Government enterprise is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries all over India.
- (b) NTPC, at present owns a number of generating stations situated in different parts of India. One of the Generating Stations of NTPC is the Talcher Super Thermal Power Station, Stage-I located in the State of Orissa.
- (c) On 31.8.2009, the Appellant filed a Petition in Petition No.195 of 2009 for revision of the fixed charges after considering the impact of additional capital expenditure incurred by NTPC during the period 2004-09.
- (d) The Central Commission disposed the Petition in Petition No.195 of 2009 by the order dated 20.1.2011. In that order, the Central Commission did not allow the claim in respect of some of the issues. Therefore, the NTPC filed a Review Petition to allow those claims. However, the

Central Commission by the order dated 1.6.2011, allowed some claims but rejected the other claims.

(e) Hence, the Appellant has filed this Appeal as against both the order dated 20.1.2011 and 1.6.2011 in respect of those issues.

5. These Appeals would relate to limited aspect of (1) Retention of value of de-capitalized wagons and bogies for the purpose of tariff and (2) Inclusion of value of initial spares in the historical capital cost for the purpose of calculation of value of maintenance spares in computation of working capital.

6. On these issues the following submissions have been made by the Appellant:

(a) The Central Commission has not allowed the NTPC to retain for tariff purposes in the capital base the capital value of wagons which was de-capitalized in the books of accounts for accounting purposes in the circumstances when the wagons to be substituted in place of unserviceable wagons are not being allowed to be capitalized for tariff purposes under the Tariff Regulations, 2009.

(b) While determining the interest on working capital as per Regulations 21 (v) of the Tariff Regulations,

2004, the Central Commission has deducted the value of initial spares from the capital cost to work out the value of maintenance spares thereby reducing the amount of working capital to be allowed to NTPC. This order is against the ratio which was decided by this Tribunal in Appeal No.169 of 2010 in respect of another generating Station of the Appellant.

7. On these grounds, the Learned Counsel for the Appellant has made elaborate arguments.
8. The learned counsel for the Respondent in justification of the impugned orders made reply submissions thereby defending the impugned order.
9. In the light of the rival contentions, the following questions of law which have been framed above would arise for consideration:
 - (a) **Whether the Central Commission was right in not allowing the NTPC to retain the value of unserviceable Capital Wagons and bogies which were de-capitalized in books of accounts in the capital base for the purpose of tariff?**

- (b) **Whether the capital cost to be considered for computing value of maintenance spares for calculating the interest on working capital should include the amount of initial spares or not ?**

10. The **First Issue** is relating to not allowing the NTPC to treat de-capitalization of wagons and bogies as exclusion. On this issue, the Central Commission vide the impugned has decided as under:

*“(c) **De-capitalization of unserviceable assets:** The Petitioner’s claim for exclusion of de-capitalized unserviceable assets amounting to Rs.500.42 lakhs for the period 2004-09 has been discussed as under:*

.....

*(iii)**Assets against which procurement action is in process:** The petitioner has de-capitalized assets amount to (-) Rs.38.66 lakh and (-) Rs.142.08 lakh for the years 2005-06 and 2007-08 respectively, in respect of assets like wagons, TATA Crane 1055 BLC, TATA Crane 955 ALC, bogie, ION liquidography system, on account of these becoming unserviceable. The Petitioner has sought exclusion under this head and the justification submitted by the Petitioner is as under:*

“Procurement action for capitalization against the same is in progress. De-capitalization of these cranes may be considered at the time of capitalization.”

In view of the fact that these assets have become unserviceable and do not render useful service to the

generating station, the Petitioner's claim for exclusion has not been allowed under this head."

11. The Contention of the Appellant on this issue is that the Central Commission did not allow the retention of the capital value of the wagons and bogies for the purpose of tariff under the Electricity Act, 2003 even when these assets had become unserviceable. The details of these assets are as under:

"8 no of wagons used for transportation of coal amounting to Rs.121.91 lakhs which have become unserviceable.

A Bogey of the value of Rs.23.61 lakhs which was never capitalized for the purpose of tariff, as alleged".

12. In respect of both the above items, the Central Commission in its impugned order dated 20.1.2011 has clearly held that these assets do not render any useful service to the generating stations. The Appellant raised the issue in the Review Petition contending that the bogie of value of Rs.23.61 lakhs which is for the purpose of tariff was not capitalized and the same has got to be reviewed. This issue has again been dealt by the Central Commission and clearly stated as under:

"On examination of the claim of the petitioner for additional capital expenditure in Petition No.72/2000, it was noticed that there was no reference to the claim for capitalisation of the asset "bogie" in the said petition. In view of this, the Commission came to the conclusion that de-capitalised "bogie" form part of the capital cost of the generating station and the claim for exclusion for de-capitalisation could not be permitted."

13. The observations made by the Central Commission would reveal that the Appellant, NTPC stated before the Central Commission that the bogey of the value of Rs.23.61 lakhs is capitalized for the purpose of tariff and the de-capitalization of this asset can be considered at the time of capitalization when its substitute asset is in position. However, the Appellant subsequently revised its affidavit and stated in the fresh Affidavit that the capitalization of bogey during the year 1999-2000 was not allowed by the Central Commission in Petition No.72/2000. The claim of the Appellant was verified by the Central Commission which in turn found that there was no reference to non- capitalization of the assets of the bogies in the earlier Petition and hence rejected the claim of the Appellant on this issue. Therefore, there is no merit in the contentions of the Appellant on this issue.
14. As a matter of fact, the Central Commission while considering the capitalization of the expenditure in the Petition No.195 of 2009 had directed the Appellant to furnish some details like the year of put to use, capitalization amount and the amount of depreciation recovered till date etc., In response to such a direction, the Appellant had not submitted those details.
15. On the other hand, it merely stated that the Central Commission has not allowed capitalization of these

assets during the year 1999-2000 against Petition No.72/2000. Accordingly, no depreciation has been recovered on these assets presently de-capitalized.

16. This order in Petition No.72/2000 has never been appealed. Therefore, the submission made by the Appellant on this issue has no merit. Accordingly, this issue is decided as against the Appellant.

17. The issue regarding retention of the value of unserviceable assets which have been de-capitalized in the books of accounts, in the capital base for the purchase of tariff has been decided by this Tribunal in Judgment dated 21.12.2012 in Appeal No.58 of 2011 in which the following was decided:

(a) According to Tariff Regulations, 2004, any expenditure on replacement of old assets can be considered after writing off the gross value of the original assets from the original Project cost. When the unserviceable assets/equipments have been written off and discarded, the cost of the same could not be allowed to form the part of the Capital Cost for determination of tariff.

(b) The Central Commission has correctly disallowed the negative entry on account of de-capitalisation of unserviceable assets/equipments

claimed by NTPC in the capital base for determination of tariff.

18. The **next Issue** is relating to Exclusion of the value of initial spares for determination of amount of maintenance spares while computing interest on working capital.
19. As pointed out by the Learned Counsel for the Appellant, this issue has already been decided by this Tribunal and ordered in favour of the NTPC by various judgments of this Tribunal. One of the recent judgments is rendered in Appeal No.169 of 2010 dated 31.5.2011. The relevant portion of the judgment on this issue is as follows:

“15. Admittedly, the Central Commission has not followed this Regulation quoted above which states the value of the maintenance spares should be taken at 1% of the historical cost escalated at 6% per annum from the date of commercial operation. This would make it clear that the Central Commission excluded the cost of initial spares from the historical capital cost on which the working capital is calculated even though such cost of initial spares duly formed part of capital cost as per the Regulation 21 (v) (a) (iv) of the Tariff Regulation.

16. Therefore, the findings on this issue in the impugned order are set aside. The Central Commission is directed to pass a consequential order in the light of the Regulations referred to above. Accordingly, this issue is decided.”

20. Therefore, in view of the above judgment, we deem it appropriate to hold that the findings on this issue in the impugned order are not correct and therefore, the same is set-aside.

21. The Central Commission may pass consequential orders in the light of the said judgment on the basis of the relevant Regulations as quoted in the said judgment.

22. Summary of Our Findings

(a) **The First Issue is relating to de-capitalization in respect of certain assets in capital cost is rejected and the same is decided as against the Appellant.**

(b) **The Second Issue relating to the exclusion of the value of the initial spares is decided in favour of the Appellant.**

23. In view of the above findings, the Appeal is partly allowed. The Central Commission is directed to pass consequential orders in terms of the judgment given in the Appeal.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 2nd Jan, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~