

**Before The Appellate Tribunal For Electricity
(Appellate Jurisdiction)**

Appeal No. 30 of 2007

Dated 27th April, 2007

Present - **Hon'ble Mr. A. A. Khan, Technical Member**
Hon'ble Mrs. Justice Manju Goel, Judicial Member

M.P. Power Trading Co. Ltd. Appellant(s)

Versus

Central Electricity Regulatory Commission & 7 Ors. Respondent(s)

For the Appellant : Mr. Sakesh Kumar

For the Respondents : Mr. M.G. Ramachandran, Adv
Mr. Anand K. Ganeshan for Resp No. 2 (NTPC)
Ms. Yogmaya Agnihotri for Resp No. 5 (CSEB)

ORDER

Heard.

The present appeal is directed against the order dated 27.09.2006 in Petition No. 94 of 2002 passed by the Central Electricity Regulatory Commission, the Respondent No. 1 herein, by which the Respondent No. 1 has re-determined the O&M charges for the period from 01.04.2000 to 31.03.2001, consequent upon the direction of this Tribunal vide Order dated 14.07.2006.

The Respondent No. 2 NTPC filed Petition No. 77 of 2000 for approval of revised fixed charges due to additional capitalization in respect of Gandhar Gas

Power Station for the period from 1997-1998 to 2000-2001. The Respondent No. 1 vide Order dated 10.04.2002 directed NTPC to file fresh petition for determination of Tariff for various generating stations for the period from 01.04.2000 to 31.03.2001 based on the terms and conditions earlier decided by the Central Government. NTPC accordingly filed petition No. 94 of 2002 for approval of Tariff for Gandhar Gas Power Station for the period for 01.04.2000 to 31.03.2001. NTPC claimed O&M expenses for the financial year 01.04.2000 to 31.03.2001 based on actual expenses incurred during the same period which worked out to 2,654 lakhs. NTPC, however, amended the petition No. 94 of 2002 and claimed O&M expenses on the basis of previous year's (i.e. 1999-2000) actual expense escalated by 10 per cent following the decision of the Central Commission in the Order passed in the case of other generating stations. The CERC rejected NTPC's claim for O&M expenses based on actual expenses of the preceding year (1999-2000) escalated by 10 per cent and allowed O&M expenses based on actual expenses for the period of 01.04.2000 to 31.03.2001. NTPC filed an appeal bearing No. 94 of 2005 before this Tribunal against this said order of the CERC. This Tribunal allowed the appeal and remitted the matter to CERC for determining the O&M expenses of the Gandhar Gas Power Station on the basis of formula based on escalation factor. The Central Commission thereafter issued the impugned Order dated 27.09.2006. The part of the order which is in issue is as under: -

" O&M expenses:

9. The petitioner had claimed O&M expenses of Rs. 5627 lakhs based on the actual O&M expenses of Rs. 5115 lakhs for the year 1999-2000, and escalating those at the rate of 10%. The petitioner's claim in this regard has been upheld by the Appellate Tribunal. Accordingly, the claim of the petitioner is accepted and an amount of Rs. 5627 lakhs is allowed on account of O&M expenses for the year 2000-2001".

The order is challenged on the plea that the CERC has made a mistake in the implementation of this Tribunal's Order in as much as the CERC was required to apply escalation as has been applied by the Government of India in Notification dated 28.04.1997 which is the basis of escalation factor. Appearing for the Appellant, Mr. Sakesh Kumar drew our attention to the Notification dated 28.04.1997 which was communicated with a covering letter of the same date. The letter is extracted below: -

"New Delhi

Dated: 28.04.1997

To,

As per list enclosed

Subject: Terms & Conditions and Tariff of power supplied from Gandhar Gas Power Station (657.39 MW).

Sir,

1. The Tariff Notification for power generated and supplied from the above mentioned Power Station of the National Thermal Power Corporation (NTPC) at Gandhar is enclosed. This Notification is being issued under Section 43A (2) of the Electricity (Supply) Act, 1948.
2. The fixed charges have been determined based on the amounts capitalized in the accounts of NTPC up to 31.03.1996.

3. The Tariff determined would have effect from 17.03.1994 (i.e. date of synchronization of GT-I) and shall remain in force till 31.03.2000.

Yours faithfully,

(B.K. Misra)

OSD-TARIFF

Encl: a/a"

Mr. Sakesh Kumar contends that since by this Notification the escalation factor for the year 1997-98 the fixed charges has been determined on the basis of the amount capitalized in the accounts of NTPC up to 31.03.1996, the escalation factor will have to be based on the actual cost of the year prior to the previous year and not of the previous year. This interpretation of the Notification dated 28.04.1997 is not agreed to by Mr. M.G. Ramachandran appearing for NTPC. Mr. Sakesh Kumar is unable to give any logic behind taking the actual cost for the year prior to the previous year rather than actual cost of the previous year for applying the escalation factor. The letter extracted above does not actually lay down the type of formula which Mr. Sakesh Kumar wants to read into it. Since, the Notification was issued on 28.04.1997 it can be well expected that the accounts of NTPC up to the end of financial year i.e. (31.03.1997) had not been finalized and therefore, the latest figures available with the Government for determining the fixed charges was only of 31.03.1996. This position is further clarified when the enclosure i.e. the Notification is read carefully. In the Notification the Clause regarding the fixed charges is as under: -

"2. **Payment of Fixed Charges:**

The fixed charges as per Clause 1 (a) above shall be paid by the Beneficiaries to NTPC each month in accordance with the following formula:

Each Beneficiary will pay –

$$\text{Fixed Charges} = \frac{\text{FC}}{12} \times \frac{\text{EB}}{\text{ES}}$$

Where, FC = Annual Fixed Charges payable by Beneficiaries at 220 KV/400KV bus bar of GPS as indicated in Clause 1 (a) above.

EB = Monthly energy sale from GPS at 220KV/400KV bus bar of GPS to each beneficiary individually as per Regional Energy Account.

ES = Total monthly energy sale from GPS at 220KV/400KV bus bar of GPS.

The fixed charges referred to in Clause 1 (a) and 2 above have been determined based on the amounts capitalized in the accounts up to 31st March, 1996. The impact of additional capital expenditure capitalized in each financial year during the tariff period shall be determined by Central Government immediately on finalization of accounts (emphasized supplied)."

According to Mr. Sakesh Kumar for the year 01.04.2000 to 31.03.2001, the actual O&M expenses for the year to be taken should have been of the year 1998-99 rather than of the year 1999-2000. There is no rationale for such

submission. As soon as the finalized accounts are available of the immediately preceding year the escalation factor has to be adopted on the basis of O&M expenses of the immediately preceding year.

It appears to us that the objection to the mode of application of escalation factor adopted by the Respondent No. 1 is misconceived.

The appeal is accordingly dismissed.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. A. A. Khan)
Technical Member