

**Before the Appellant Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal Nos. 129 of 2008 and  
54, 58, 59, 61, 73 & 92 of 2009**

**Dated 8<sup>th</sup> December, 2010**

**Present:**       **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of**

**N.T.P.C. Limited**

**... Appellant(s)**

**Versus**

**C.E.R.C. & Ors.**

**... Respondent(s)**

Counsel for the Appellant(s):       Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan

Counsel for the Respondent(s)       Mr. Pradeep Misra  
Mr. Daleep Kr. Dhyani for UPPCL & MPPTC  
(in 129/08, 73/09, 54, 57/10)  
Mr. M.A. Chinnasamy & Mr. K. Krishna  
Kumar for R-7 (in 92/10)  
Mr. Nikhil Nayyar & Mr. Swapnil Verma for  
R-1 (in 58, 61, 73/09) & 92/10-  
Mr. S. Vallinayagam for R-8 (in 129/08)  
Mr. R.B. Sharma for R-3 (in 129/08)  
Mr. Vivek Narayan Sharma for R-6 (in  
54/10)

**ORDER**

All these Appeals relate to the determination of tariff and Additional capitalization in the generation stations of the Appellant, NTPC for various periods.

Out of these Appeals, it is pointed out, the issues raised in Appeal Nos. 129/08, 58/09 and 54/10 have already been dealt with by this Tribunal earlier and decided covering those issues. This is

not disputed by the Learned Counsel for the Respondents. In Appeal No. 129/08, the following issues have been raised by the Appellant:

- (i) Exclusion of part of the capital expenditure validly incurred, but pending actual disbursement/payment from the capital cost for the purpose of tariff.
- (ii) Disallowance of expenses towards RLA.

Out of these two issues, the issue at (i) relating to exclusion of the part of the capital expenditure validly incurred, has been decided in favour of the Appellant by this Tribunal in the earlier orders. So far as second issue, namely disallowance of expenditure towards RLA is concerned, the Tribunal has held against the Appellant. As such these issues have already been covered by the earlier judgment, namely in Appeal Nos. 133 and 135, etc. of 2008 dated 16.03.2009 reported in 2009 ELR APTEL 337.in the case of NTPC Limited versus CERC & Ors. The said finding has been reiterated in another judgment of this Tribunal in Appeal Nos. 151 and 152 of 2007 dated 10.12.2008. Therefore, we deem it fit to allow Appeal No. 129/08 in terms of the judgments rendered by this Tribunal in Appeal Nos. 133 and 135 of 2008 and

Appeal Nos. 151 & 152 of 2007. Accordingly, the issue No. (i) is decided in favour of the Appellant.

The issue at S.No. (ii) above raised by the Appellant, as referred to above, is rejected in terms of the judgment of this Tribunal in Appeal Nos., 133 and 135 of 2008 and in Appeals No. 151 and 152 of 2007.

In regard to Appeal No. 58/09, the Appellant has raised the following issues:

- (i) Exclusion of part of the capital expenditure validly incurred, but pending actual disbursement/payment from the capital cost for the purpose of tariff;
- (ii) Equating depreciation with normative loan repayment;
- (iii) Disallowance of cost of maintenance spares; and
- (iv) Disallowance of cost of capital applying the principle of cut-off date.

The first two issues have been covered by the judgment of this Tribunal in Appeal Nos. 133 and 135 of 2008 dated 16.03.2009 and Appeal Nos. 139 and 140, etc. of 2006 dated 13.05.2007. As far as the third and fourth issues namely

disallowance of cost of maintenance spares and disallowance of cost of capital applying the principle of cut-off date, the same are covered in the judgments rendered by this Tribunal in Appeal Nos., 139, 140, etc of 2006 dated 13.06.2007 and Appeal No. 54/09 by the judgment dated 21.08.2009 and Appeal No. 66/08 dated 18.08.2010. This fact has not been disputed by the Respondents. Therefore, Appeal No. 58/09 is also allowed in terms of the judgments passed earlier by this Tribunal, referred to above.

The issues raised in Appeal No. 54/10 are as follows:

- (a) Exclusion of the part of the capital expenditure validly incurred, but pending actual disbursement from the capital cost for the purpose of tariff;
- (b) Equating depreciation with normative loan repayment;
- (c) Disallowance of cost of maintenance spares.

With reference to the first issue, this has already been covered by the judgment of this Tribunal in Appeal Nos. 133 and 135 etc of 2008 dated 16.03.2009 and in Appeal Nos. 151 and 152 of 2007 dated 10.12.2008.

In regard to the second issue the Tribunal in its earlier judgments in Appeal No. 133 & 135 of 2008 dated 16.03.09 and in

Appeals No. 138, 140 of 2006 dated 13.06.1007 has already dealt with and as such the issue has been decided and covered in favour of the Appellant.

In respect of the third issue, namely disallowance of cost of maintenance spares, the Tribunal allowed the claim in respect of this issue by its judgment in Appeals No. 138, 140 etc of 2006 dated 13.06.2007 and Appeal No. 54/09 dated 21.08.2009. These factual details have not been disputed by the Respondent parties.

Under those circumstances, we deem it fit to dispose of these appeals namely Appeal No. 129/08, 58/09 and 54/10 in terms of the judgments rendered by this Tribunal in various appeals mentioned above. Accordingly, the same are disposed of.

In regard to other appeals, namely Appeal No. 61/09, 73/09, 59/10 and 92/10, the Learned Counsel for the Respondents submit that these matters have to be separately argued as the issues raised in those appeals have not been covered.

Therefore, post these appeals namely Appeal No. 61/09, 73/09, 59/10 and 92/10 on **04.01.2011** for further hearing.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson