

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

Appeal No. 163 of 2006

Dated: December 16 , 2009.

**Present:- Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member**

IN THE MATTER OF:

Appeal No. 163 of 2006.

National Hydroelectric Power Corporation Ltd.
NHPC Office Complex
Sector-33
Faridabad (Haryana) 121003

.....Appellant(s)

vs

1. The Chairman
Punjab State Electricity Board
The Mall, Near Kali Badi Mandir
Patiala-147001 (Punjab)
2. The Chairperson
Haryana Vidut Prasaran Nigam Ltd.
Shakti Bhavan, Sector-6
Panchkula-134109 (Haryana)
3. The Chairman & Managing Director
Delhi Transco Ltd., Shakti Sadan
Rouse Avenue Kotla Road
New Delhi-110002

4. The Chairman
Uttar Pradesh Power Corporation Ltd.
Shakti Bhavan, 14, Ashok Marg
Lucknow-226001 (UP)
5. The Managing Director
Jaipur Vidyut Vitaran Nigam Ltd.
Vidyut Bhawan, Janpath
Jaipur-302005
6. The Chairman
Rajasthan Rajya Vidyut Prasaran Nigam Ltd.(PRVPNL)
Jaipur Vidyut Vitran Nigam Ltd.(JPVVNL)
Jodhpur Vidyut Vitaran Nigam Ltd. (JDVVNL)
Ajmer Vidyut Vitaran Nigam Ltd.(AVVNL)
Jyoti Nagar, Jaipur-302005(Rajasthan)
7. Chairman-cum-Managing Director
Power Transmission Corporation of Uttaranchal Ltd.
(Erstwhile UPCL)
Urja Bhawan, Kanwali Road
Dehradun-248001 (Uttarakhand))
8. The Managing Director
Jodhpur Vidyut Vitaran Nigam Ltd.
New Power House, Industrial Area
Jodhpur-342003 (Rajasthan)
9. The Chairman
Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House
Shimla-171004 (Himachal Pradesh)

10. The Managing Director
Ajmer Vidyut Vitaran Nigam Ltd.
Old Power House, Hatthi Bhatta
Jaipur road,
Ajmer-305001 (Rajasthan)
 11. Chief Engineer & Secretary
Engineering Deptt. Ist floor,
UT Secretariat Sector-9-D
Chandigarh-160009
 12. The Principal Secretary
Power Development Department
New Secretariat
Srinagar (J&K)
 13. Central Electricity Regulatory Commission
3rd and 4th floors, Chanderlok Building
38, Janpath,
New Delhi-110001
- ...Respondents

Counsel for appellant(s): Mr. Sachin Datta
 Ms Shaila Arora
 Ms Lakshmi Ramamurthy

Counsel for respondent (s): Mr. Pradeep Misra
 Mr. Daleep Kumar Dhayani for
 Res.No. 1,2&4
 Mr. S.N. Kalita, Dy.Chief(Fin)
 Mr. B. Sreekumr for CERC
 Mr. Manoj Kumar Sharma
 Mr. Suraj Singh
 Mr. T.Rout, JC(Legal)

J U D G M E N T

This Appeal challenges order dated May 09, 2006 passed by the Central Electricity Regulatory Commission (CERC in short) in Petition No. 30 of 2005 whereby the Commission had determined tariff in respect of Tanakpur Hydroelectric Power Project for the period April 01, 2004 to March 31, 2009. Appellant has agitated two issues before us which are similar to the issues raised by the same appellant in Appeal No. 130 of 2006.

2. The two issues involved in the present appeal are as under:

- (i) *Has the Commission erred in coming to the conclusion that when depreciation recovered in a year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation?*

(ii) *Has the Commission erred in concluding that because there is zero loan repayment during 2005-06, therefore it is a case of moratorium?*

3. In Appeal No. 130 of 2006 this Tribunal has decided the same issues as under:

“31. Even up to the end of FY 2005-06 the Appellant had made cumulative repayments over and above the depreciation and Advance Against Depreciation to pre-pay loans with higher interests. Had the loans not been pre-paid, installments would certainly had to be made during the year 2005-06 also. It can be argued that had there been no moratorium for the M-Series Bonds, the rate of interest would have been lesser. However, it is also a fact that the Appellant has discharged costlier loans earlier by organizing funds over and above the cumulative depreciation and AAD in earlier years. We feel that this aspect merits consideration. However, Regulations do not provide for dealing such a situation and, therefore, we cannot interfere with the decision of the Commission who

have decided this issue as per the then prevailing Regulations. We decide that as moratorium has been availed by the Appellant and admittedly no repayment has been made during 2005-06, the depreciation provided for in the tariff during the year of moratorium is to be treated as repayment during the year and the interest on loan capital has to be calculated accordingly.”

“36. We are unable to agree with the view of the Commission that when depreciation exceeds the actual repayment the difference between depreciation and repayment amount be taken as normative repayment of loan as regulations only state that whenever the repayment amount exceeds the depreciation recovered, excess amount is to be allowed as Advance Against Depreciation. In our earlier judgment cited above this Tribunal has ruled that depreciation is an expense and not an item allowed for repayment of loan. In our view the Commission, in the absence of any Regulation to this effect, has erred in coming to the conclusion that when

depreciation recovered in an year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation.”

4. Our aforementioned decision in Appeal No. 130 of 2006 shall also apply *mutatis mutandis* in this Appeal wherein two identical issues are the subject matter of the Appeal.

5. Appeal is allowed in part to the extent indicated in para 36 of our judgment in Appeal No. 130 of 2006 reproduced in para 3 above but with no order as to costs.

6. Pronounced in the open court on the 16th day of December, 2009.

(H.L. Bajaj)
Technical Member

(Mrs. Justice Manju Goel)
Judicial Member