CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri R. Krishnamoorthy, Member
3. Shri S. Jayaraman, Member
4. Shri V. S. Verma, Member

IA No. 21/2009
In
Petition No. 96/2002

In the matter of

Approval of tariff for the period 1.4.2000 to 31.3.2001 in respect of Farakka STPS

And in the matter of

National Thermal Power Corporation Ltd. **Petitioner**

Vs

1. West Bengal State Electricity Board, Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board
4. Grid Corporation of Orissa Ltd., Bhubaneshwar
5. Damodar Valley Corporation, Kolkata
6. Power Deptt., Government Sikkim, Gangtok
7. Assam State Electricity Board, Guwahati
8. Transmission Corporation of Andhra Pradesh, Hyderabad
9. Madhya Pradesh State Electricity Board, Jabalpur
10. Tamil Nadu State Electricity Board, Chennai
11. Kerala State Electricity Board, Trivandrum
12. Karnataka Power Transmission Corporation Ltd., Bangalore
13. Uttar Pradesh Power Corporation Ltd., Lucknow
14. Gujarat Electricity Board, Vadodara
15. Union Territory of Pondicherry, Pondicherry
16. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
17. Haryana Vidhut Prasaran Nigam Ltd., Panchkula
18. Power Department, UT of Chandigarh, Chandigarh **Respondents**

IA No 20/2009
In
Petition No. 128/2002

In the matter of
Approval of tariff for the period 1.4.1998 to 31.3.2001 in respect of National Capital Thermal Power Station, Dadri

And in the matter of

National Thermal Power Corporation Ltd. **Petitioner**

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
3. Delhi Transco Ltd., New Delhi
4. Haryana Vidhut Prasaran Nigam Ltd., Panchkula
5. Punjab State Electricity Board, Patiala
6. Himachal Pradesh State Electricity Board, Shimla
7. Power Development Department, Govt. of J&K, Jammu
8. Power Department, UT of Chandigarh, Chandigarh
9. Uttranchal Power Corporation Ltd., Dehradun **Respondents**

Following were present

1. Shri M.G.Ramachandran, Advocate, NTPC
2. Shri V.K.Padha, NTPC
3. Shri D.Kar, NTPC
4. Shri Rajnesh, NTPC
5. Shri Manoj Saxena, NTPC
6. Shri S.D.Jha, NTPC
7. Shri S.K.Samui, NTPC
8. Shri.V.Kumar, NTPC
9. Shri Pradip Mishra, Advocate, UPPCL
10. Shri R.B.Sharma, Advocate, BSEB

ORDER
(Date of Hearing 28.7.2009)

These two petitions raise similar questions of law and therefore, were heard together and are being disposed of through this common order. For the purpose of understanding of the issues we refer to the facts in Petition No. 96/2002.

IA No 21/2009 in Petition No. 96/2002

2. In this petition the petitioner sought approval of tariff of Farakka STPS for the period from 1.4.2000 to 31.3.2001. The tariff was determined by order dated 23.4.2004. In the said order dated 23.4.2004, the Commission, while approving tariff, considered actual repayment of loan for arriving at interest on loan permissible. This was the approach consistently adopted by the Commission. However, the tariff approved by the said order dated 23.4.2004 was revised under order dated 2.1.2008 in compliance with the judgment dated 14.11.2006 of the Appellate Tribunal in Appeal No. 96/2005, wherein the Appellate Tribunal decided that the Commission was required to adopt normative debt repayment methodology for computation of interest on loan liability of the respondents. In the order dated 2.1.2008, opening loan as on 1.4.2000 was arrived at by considering actual cumulative loan repayment up to 31.3.2000 of Rs.96741 lakh.

3. After approval of revised tariff, the petitioner wrote a letter dated 30.1.2008 wherein it was stated that there was a clerical error in regard to computation of cumulative repayment of loan up to up to 31.3.2000. The petitioner urged that cumulative repayment up to 31.3.2000 and opening balance of loan as on 1.4.2000 had to be determined on normative basis and not on actual basis, in accordance with Ministry of Power's tariff notification dated 7.5.1999 applicable to the generating station. The petitioner stated that normative loan repayment up to 31.3.2000 was Rs. 90417 lakh against the actual repayment of Rs. 96741 lakh considered by the Commission. The petitioner sought correction of the said order dated 2.1.2008 on

the ground that it was a clerical error in the order. However, no relief was given to the petitioner based on the letter dated 30.1.2008.

4. The petitioner filed an appeal, being Appeal No. 39/2008 against the Commission's order dated 2.1.2008 before the Appellate Tribunal. The Appellate Tribunal in its order dated 27.11.2008 directed the Commission to consider the petitioner's letter dated 30.1.2008 for appropriate orders after hearing the appellant.

5. Consequent to the Appellant Tribunal's remand order, the petitioner was heard along with the respondents. The letter dated 30.1.2008 was disposed of in terms of order dated 31.3.2009 with an observation that the applicant could approach the Commission through an appropriate application in accordance with law, since in accordance with the established procedure, the Commission was not taking any cognizance of the .informal communications addressed to its Secretariat. The relevant extracts of the Commission's order dated 31.3.2009 are placed below:

> "9. It is noted that the Appellate Tribunal has remanded the matter to the Commission for reconsideration in the light of the petitioner's letter with a further direction to pass appropriate order, "in accordance with the law", after affording an opportunity of hearing to the parties. The Appellate Tribunal has further directed the Commission to take a view on the petitioner's letter "after considering all the aspects of the issue." These observations of the Appellate Tribunal provide the necessary guidelines. The petitioner, through its letter has sought correction of opening balance of loan, termed as clerical mistake, without explaining the basis on which it has arrived at the amount. Acceptance of the petitioner's request as contained in the letter dated 30.1.2008 may have its serious implications on tariff for the subsequent periods, since it will increase the amount of loan recoverable in future years and thereby liability of the respondents to pay interest. This will have civil consequences for the respondents-beneficiaries. It also needs to be pointed out that even a copy of the letter has not been furnished to them. The Commission is a quasi-judicial body. In adversarial proceedings like determination of tariff, it is required to act in accordance with the principles of

natural justice. The Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 envisage making of applications for different purposes. These regulations do not provide for taking cognisance of matters which are likely to affect other parties, based on letters received. Therefore, the Commission generally, in such matters, does not act based on letters written by any of the parties. If a party feels aggrieved by an order of the Commission it is required to make an appropriate application in accordance with law. As we are mandated by the remand order of the Appellate Tribunal to consider the letter and dispose it of in accordance with the law and after considering all the relevant aspects of the issue, we consider it proper that procedural requirements of law are complied with before a decision is taken on merits of the petitioner's request.

10. Under the above circumstances, and on being guided by the observations of the Appellate Tribunal in the order dated 13.1.2009 ibid, we point out that the petitioner may make an appropriate application in accordance with law, in case it feels aggrieved by any aspect of the order dated 2.1.2008. With these observations, the letter dated 30.1.2008 stands disposed of."

6. The present interlocutory application has been made consequent to the above order, for correction of the "mistake" pointed out in the letter dated 30.1.2008 and also for making consequential changes in tariff for the year 2000-01 approved by the said order dated 2.1.2008, in exercise of the Commission's inherent powers to do complete justice to the parties and all other powers which are ancillary or consequential to and necessary for discharge of functions by the Commission.

7. We heard Shri M. G. Ramchandaran, Advocate, for the petitioner and Shri Pradip Mishra and Shri R. B. Sharma, Advocates, for the respondents.

8. Learned counsel for the petitioner submitted that the interlocutory application was filed in terms of Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, (the Conduct of Business

Regulations) which invests the Commission with inherent powers to correct any mistake or error in the order. Learned counsel referred to the judgments of the Hon'ble Supreme Court [Grindlays Bank vs Central Government Industrial Tribunal – 1980 Supp SCC 429 and State of West Bengal and others vs Kamal Sengupta – (2008)8 SCC 612] in support of the petitioner's claim that the Commission had ancillary and/or incidental powers to correct the mistakes in the order to do justice between the parties. Learned counsel submitted that through the interlocutory application the petitioner had only pointed out to the arithmetical mistakes/errors in the order and these errors or mistakes could be corrected by the Commission by virtue of powers analogous to the powers conferred on the civil courts under Section 152 of the Civil Procedure Code. Learned counsel reiterated that cumulative repayment of loan amount up to 31.3.2001 and loan outstanding as on 1.4.2001 should be re-worked on normative basis.

9. Learned counsel for the second respondent, BSEB, Shri R. B. Sharma raised preliminary objection on the maintainability of the interlocutory application and submitted that while the power of the Commission under Regulation 111 was undisputed, the said power was could not be invoked in the facts and circumstances of the case before the Commission and that the petitioner did not have the remedy sought to be availed of through the interlocutory application. Learned counsel relied on the observations of the Commission in order dated 10.6.2008 in Review 46/2008 (in Petition No.149/2004) and argued that the only remedy available to the petitioner was to file an application for review of the order sought to rectified now, rather than making the interlocutory application. Learned counsel further submitted that the

petitioner through the present interlocutory application had sought to re-open the whole gamut of issues. Learned counsel summed up his argument on maintainability of the application by stating that either the petitioner should make an application for review or the Commission should treat the interlocutory application as application for review and consider the application in accordance with the procedure applicable to review proceedings.

10. Shri Pradip Mishra, learned counsel for the first respondent, UPPCL, in the accompanying Petition No.128/2002 adopted the arguments made by learned counsel for BSEB on the issue of maintainability of the interlocutory application. He submitted that Regulation 111 could not be invoked by the petitioner. On merits, learned counsel submitted that the Commission had worked out the interest on loan on normative basis. He pointed out that this amounted to implementation of the directions of the Appellate Tribunal. According to learned counsel, consideration of actual repayment up to 31.3.2000 could not be said to be case of arithmetical or clerical error. Learned counsel further submitted that the cumulative repayment of loan up to the date preceding the date of approval of tariff and already considered by the Commission, could not be reopened. Learned counsel pointed out to the observations of the Hon'ble Supreme Court in the judgment dated 3.3.2009 in Civil Appeal No.1110/2007 (UPPCL vs NTPC), and submitted that the claim of the petitioner could not be considered at this belated stage.

11. Learned counsel for the petitioner submitted that the interlocutory application should not be treated as the application for review as the petitioner has sought to

invoke the inherent powers of the Commission under the Conduct of Business Regulations and had not invoked the review jurisdiction. He further submitted that the judgment dated 3.3.2009 of the Hon'ble Supreme Court in Civil Appeal No.1110/2007 would not be applicable to the instant case as the facts of the case before the Hon'ble Supreme Court were different.

12. We have given our anxious thought to the rival contentions. In the first instance, we proceed to consider the question of maintainability of the interlocutory application.

13. Rule 3, Order XX of the Code of Civil Procedure (the Code) lays down that once the judgment has been signed, it "shall not afterwards be altered or added to, save as provided by Section 152 or on review".

14. It may be pointed out that the proceedings before the Commission are not strictly regulated under the Code except to the extent laid down under Section 94 of the Act. Nevertheless, the basic principles are extendable to the proceedings before the Commission. The provisions of Rule 3, Order XX of the Code are based on the well known principle of civil jurisprudence that the court after passing the judgment becomes *functus officio* and has got no power to revive its own judgment. The principle has been considered by the Hon'ble Supreme Court in its recent judgment titled the Deputy Director Land Acquisition vs Malla Atchinadu and others (AIR 2007 SC 740), wherein the Hon'ble Court held as
under:

> "45. The general rule is clear that once an order is passed and entered or otherwise perfected in accordance with the practice of the Court, the Court which passed the order is functus officio and cannot set aside or alter the order however wrong it may appear to be. That can only be done on appeal……."

15. Earlier, the Hon'ble Supreme Court in UP SRTC vs Imtiaz Hussain [(2006) 1 SCC 380] also laid down a similar proposition of law, by holding that –

> "The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues or remedies provided in respect of the same and the very court or the tribunal, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein".

16. In yet another recent judgment, the Hon'ble Supreme Court in Narpat Singh vs Rajasthan Financial Corporation AIR 2008 SC 77 has pointed out that no IA lies after a case is finally disposed of and that an IA is maintainable only in a pending case. The extract from the judgement of the Hon'ble Supreme Court are placed below:

> "IAs No. 15-16 for clarification and direction of Court's order dated 3.5.2007 are totally misconceived. Moreover, ordinarily no I.A lies after a case is finally disposed of. Ordinarily, an I.A is maintainable only in a pending case. Once a case is finally disposed of the Court becomes functus officio, and thereafter an I.A. lies ordinarily only for correcting clerical or accidental mistakes. The same are accordingly dismissed".

17. In the light of the above principle, the Commission cannot revisit the tariff already decided in the order dated 9.5.2006, unless the conditions laid down under Rule 3 order XX of the Code are satisfied. Therefore, the order can be revisited

either for correction of ministerial or clerical errors under Section 152 of the Code, or on review.

18. It was contended by learned counsel for the petitioner that the Commission can intervene in the matter in terms of powers analogous to Section 152 of the Code.

19. In Jayalakshmi Coelho v. Oswald Joseph Coelho, [(2001) 4 SCC 181], the Hon'ble Supreme Court held that the inherent powers under Section 152 are available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 of the Code may or may not strictly apply to any particular proceeding. However, the exact scope of Section 152 has been considered by the Hon'ble Supreme Court in some cases wherein it has been held that the power is available only for correction of accidental or unintended errors in the judgment or order. In Jayalakshmi Coelho vs Oswald Joseph Coelho (supra) it was held that:

> "13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice……."
>
> "14. In a matter where it is clear that something which the court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the court to rectify such mistake. But before exercise of such power the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise,

that is to say, while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. ……"

20. A similar view was expressed by the Hon'ble Supreme Court in the case of State of Punjab Vs Darshan Singh [(2004) 1 SCC 328], wherein it held that:

"12. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid

sections, modify, alter or add to the terms of its original judgment, decree or order".

21. The judgment of the Hon'ble Supreme Court in Dwaraka Das Versus State of M.P. and Another [(1999) 3 SCC 500] is also to the same effect, as noted from the portions of the judgment extracted below:

> "6. Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be.It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondent-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the Court had rejected the claim of the appellant insofar as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30-11-1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State."

22. What constitutes a clerical or arithmetical error was also considered by the Hon'ble Supreme Court in Master Construction Co. (P) Ltd v. State of Orissa (AIR 1966 SC 1047). The Hon'ble Supreme Court in this case held as under:

> "An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. But, however wide the said expressions are construed, they cannot countenance a reargument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance."

23. In UP SRTC vs Imtiazh Hussain (supra), the Hon'ble Supreme Court held that the powers under Section 152 cannot be equated with power of review or cannot be used to modify any part of its order, in the following words:

> "The powers under section 152 CPC are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgement earlier referred, modify in its entirety or any portion or part of it".

24. In our considered view the contention of the petitioner that it was a case of rectification of clerical or ministerial error is misplaced. The petitioner has claimed that non-consideration of normative repayment of loan of Rs. 90417 lakh as on 1.4.2000 in the order dated 2.1.2008 and consideration of actual repayment of Rs. 96741 lakh on that date was a ministerial or clerical error and has sought rectification thereof. We may point out that it was only through a deliberate decision of the Commission that actual repayment of loan was considered in the order dated 2.1.2008. Such an approach has been followed in all cases of determination of tariff

for the period prior to 1.4.2001.This cannot be said to be a case of accidental or inadvertent slip requiring any correction. Acceptance of prayer of the petitioner involves recalculation of tariff not only for the year 2000-01 but also of the subsequent years, already settled. Through the interlocutory application, the petitioner has thus sought reopening of the tariff of Farakka STPS which amounts unsettling the settled position. In the light of the settled legal position noticed above, it would follow that the application cannot be entertained under Section 152 of the Code as it would amount to review of substantive decision of the Commission. Regulation 111 of the Conduct of Business Regulations which is in pari material with Section 151 of the Code, is of no avail to the petitioner since no substantive relief can be granted thereunder. The applicant, however, does not intend to seek review of the said order dated 2.1.2008. Therefore, the second condition of Rule 3, Order XX is also not met.

25. Based on the above discussion, the present application, IA No.21/2009 is not maintainable and is dismissed accordingly.

IA No 20/2009 in Petition No. 128/2002

26. The issues arising in this case for our consideration are similar to those in IA No. 21/2009 in Petition No. 96/2002, considered and decided hereinabove. For the view we have taken, we dismiss IA No 20/2009 as not maintainable..

Sd/-	Sd/-	Sd/-	Sd/-
(V. S. VERMA)	**(S. JAYARAMAN)**	**(R. KRISHNAMOORTHY)**	**(DR. PRAMOD DEO)**
MEMBER	**MEMBER**	**MEMBER**	**CHAIRPERSON**

New Delhi dated 8th September 2009