

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 25/2010
against
Petition No. 32/2009**

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S. Jayaraman, Member**
- 3. Shri V.S.Verma, Member**

DATE OF HEARING: 27.7.2010

DATE OF ORDER: 23.9.2010

In the matter of

Review of order dated 18.12.2009 in Petition No.32/2009 pertaining to the determination of impact of additional capital expenditure incurred during the period 2004-05 to 2007-08 in respect of Anta GPS (419.33 MW)

And in the matter of

NTPC Ltd, New Delhi
Vs

.....Petitioner

1. Uttar Pradesh Power Corporation Limited, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd, Delhi
6. Haryana Power Purchase Centre, Panchkula
7. BSES-Rajdhani Power Ltd, New Delhi
8. Punjab State Electricity Board, Patiala
9. Himachal Pradesh State Electricity Board, Shimla
10. Electricity Department, Union Territory of Chandigarh, Chandigarh
11. Uttarakhand Power Corporation Ltd, Dehradun
12. Power Development Department, Govt of J&K, Jammu
13. BSES-Yamuna Power Ltd, Delhi

...Respondents

The following were present:

1. Shri D.G.Salpekar, NTPC
2. Shri S.K.Jain, NTPC

ORDER

This application has been made by the petitioner, NTPC Ltd, a generating company, seeking review of the Commission's order dated 18.12.2009, in Petition No.32/2009, determining the impact of additional capital expenditure incurred during the period 2004-08 in respect of Anta GPS (419.33 MW) (hereinafter referred to as "the generating station, limited to the question of disallowance of Rs.18.49 lakh towards capitalization of Battery Bank during the year 2007-08.

2. Briefly, the facts are that the petitioner made an application for determination of impact of additional capital expenditure for the period 2004-08 and the Commission by order dated 18.12.2009, revised the tariff of the generating station. While approving tariff, the Commission did not allow the capitalization of Rs. 18.49 lakh incurred by the petitioner during the year 2007-08, towards replacement of Battery bank. The relevant portion of the Commission's order rejecting the claim is as under:

*“(vi) **Battery Bank:** The petitioner has incurred expenditure of Rs. 18.49 lakh in respect of the asset and the justification submitted is as under:*

“The original Equipments were installed & capitalized along with main plant in the years 1989-90-91. The equipments had outlived their life hence replaced with new one. The subject package is covered under Renovation & Modernization scheme of Anta GPS mentioned at Sl.No.10 of the proposed R&M Scheme. The old one has been de-capitalised as given below.”

The replacement of lead acid batteries being a regular feature is covered under O&M expenses of the generating station. Since, capitalization of such minor expenditure is not permissible under this head, the corresponding de-capitalization amount of Rs. 4.32 lakh for the replaced asset has also not been considered.”

3. Aggrieved by the said order, the petitioner has sought review on the ground of error apparent on the record, in regard to the disallowance of capitalization of the expenditure on battery bank.

4. The petitioner has submitted that there are sufficient reasons to review the order, as the expenditure of Rs. 18.49 lakh on Battery bank was of a capital nature. The petitioner has also submitted that the Battery bank was purchased and installed at the generating station during the year 1989-91, i.e at the time of commissioning of the main plant and equipment and the batteries were of M/s Hoppecke, Germany and M/s Exide, India make. These batteries are of Plante type which having useful life of about 15 years and during this period, normal maintenance was carried out on battery bank, the expenditure for which has been booked under O&M. However, in order to ensure safe and reliable operation of the generating station, the complete battery bank has to be replaced after useful life and accordingly, in the case of this generating station, for Steam turbine (+) 24 Volt, 2 x 1200 AH & (-) 24 Volt, 2 x 325 AH and for the generating station which supplies 220 Volt, 1 x 700 AH, the battery banks were replaced under R&M. For this generating station, it was a one time capital expenditure for replacement of an asset on completion of its useful life of 18 years. Hence, the de-capitalization value of Rs. 4.32 lakh for the original asset was also submitted in the petition.

5. The petitioner has submitted that the Commission has erred in the treatment of the expenditure on replacement of this Battery bank in the nature of O&M expenditure. It was also submitted that the capitalization on the replacement of Battery bank was not akin to O&M of lead acid batteries, which are incurred on a year to year basis and this would be clear from the fact that the expenditure on this count was incurred during the year 1989-91, at the time of commercial operation of the generating station and the benefit of the same had accrued to the beneficiaries during the last 18 years. Since, this item has been charged for the first time after 18 years of commercial operation, it may not be treated as regular O&M expenditure, the petitioner submitted. As the existing Battery bank had outlived its utility and the replaced Battery bank would have enduring benefit, there was full justification for capitalization of the expenditure.

6. Heard the representative of the petitioner, on merits.

7. In order to appreciate the scope of the present application, it is necessary to advert to the basic provisions governing review of order and reiterate the settled principles on the subject evolved through the judgments of the superior courts.

8. In accordance with Rule 1 Order 47 of the Code of Civil Procedure, a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

9. In *MMB Catholicos Vs M.P. Athanasius* (AIR 1954 SC 526), it was held by the Supreme Court that the “misconception” of the Court must be regarded as sufficient reason analogous to an error apparent on the face of record for the purpose of review under order 47 of the Code. In *Grindlays Bank Vs Central Industrial Tribunal* (AIR 1981 SC 606), the Supreme Court held that when a review is sought due to procedural defect, the inadvertent error committed by the tribunal must be corrected *ex debito justitiatae* to prevent the abuse of its process and such power inheres in every court or tribunal. In *Ms. Rukmabai Vs Ganpat Rao* (AIR 1932 Nagpur 177) it was held that the omission to consider important facts which are on record and which the Judge himself immediately on passing his order realised that he had overlooked and which in his opinion would have led him to pass an order materially different, is a justified ground for entertaining an application for review. The Federal Court in *Jamna Quer Vs Lal Bahadur* (AIR 1950 FC 131) expounded the law in the terms that “where there is an error on the face of the record, whether error occurred of reason of the counsel’s mistake or it crept in by reason of oversight on the part of the court, is not a circumstance which can affect the exercise of jurisdiction of the court to review its decision.” In the light of these reported

decisions of the superior courts, it can be safely concluded that omission of the court to consider an important fact is a ground for review.

10. The petitioner's plea for review is to be considered in the light of above noted legal position. The ground urged by the petitioner in its review petition is that the expenditure of Rs 18.49 lakh on Battery bank was of a capital nature and in order to ensure safe and reliable operation of the generating station, the complete battery bank had to be replaced after useful life. It has also been submitted that the expenditure was incurred in the year 1989-91 at the time of commercial operation of the generating station. We notice that in the original petition, the petitioner had submitted that the original equipments (battery bank) were installed and capitalized along with the main plant in the years 1989-91 and as the equipments had outlived its useful life, the same was replaced with new ones. Moreover, on the verification of the asset list pertaining to assets of O&M nature submitted by the petitioner in its earlier petition, based on which the O&M norm of the generating station for the period 2004-09 was enhanced, it was noticed that battery banks and STG are not covered under O&M expenses for the generating station. These facts have been overlooked by the Commission at the time of passing the order dated 18.12.2009. In our considered opinion, the ground taken in the review petition falls within the scope of Order 47 Rule 1 and the judicial decisions noted above and can be considered to be an error apparent on the face of the record.

11. In view of the above discussions, the prayer of the petitioner for review of order dated 18.12.2009 is allowed. Accordingly, we allow the capitalization of Rs.18.49 lakh incurred by the petitioner during the year 2007-08 on replacement of battery bank in terms of Regulation 18(2)(iv) of the 2004 regulations, along with the corresponding de-capitalization amount of Rs. 4.32 lakh for the replaced asset in terms of Note 4 under Regulation 18 of the 2004 regulations.

12. Consequent on the above, the additional capital expenditure allowed vide order dated 18.12.2009, is revised as under:

(Rs. in lakh)

| Nature of capitalization | 2004-05 | 2005-06 | 2006-07 | 2007-08 |
|--|----------------|----------------|----------------|----------------|
| Liabilities to meet award of arbitration or for compliance of order or decree of a court – 18(2)(ii) | 0.00 | 3.10 | 0.00 | 0.00 |
| On account of change in law – 18(2)(iii) | 143.03 | 22.43 | 0.00 | 0.00 |
| Any additional works/ services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost - 18(2)(iv) | 29.35 | 25.38 | 1774.86 | 1203.64* |
| Total before adjustment of exclusion not allowed | 172.38 | 50.91 | 1774.86 | 1203.64 |
| Add: Exclusion not allowed | 0 | 0 | 0 | 0 |
| Less : Un-discharged liabilities | 0 | 0 | 0 | 1.91 |
| Additional capital expenditure allowed | 172.38 | 50.91 | 1774.86 | 1201.73 |

* Rs.1189.47 lakh **plus** Rs.18.49 lakh **minus** Rs.4.32 lakh.

Capital cost

13. The capital cost admitted for the purpose of tariff, in order dated 18.12.2009, has been revised as under:

| <i>(Rs. in lakh)</i> | | | | | |
|--------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Opening Capital Cost | 45937.81 | 46110.19 | 46161.10 | 47935.96 | 49137.69 |
| Additional capital expenditure | 172.38 | 50.91 | 1774.86 | 1201.73 | 0.00 |
| Closing Capital Cost | 46110.19 | 46161.10 | 47935.96 | 49137.69 | 49137.69 |
| Average Capital Cost | 46024.00 | 46135.64 | 47048.53 | 48536.83 | 49137.69 |

14. Due to the revision of capital cost as above, the computations in respect of Return on Equity, Interest on loan and Depreciation, in order dated 18.12.2009, has been revised as under:

(a) Return on Equity

| <i>(Rs. in lakh)</i> | | | | | |
|--|----------------|----------------|----------------|----------------|----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Equity opening | 22968.91 | 23020.62 | 23035.89 | 23568.35 | 23928.87 |
| Equity due to additional capital expenditure | 51.71 | 15.27 | 532.46 | 360.52 | 0.00 |
| Equity closing | 23020.62 | 23035.89 | 23568.35 | 23928.87 | 23928.87 |
| Average equity | 22994.76 | 23028.26 | 23302.12 | 23748.61 | 23928.87 |
| Return on Equity | 3219.27 | 3223.96 | 3262.30 | 3324.81 | 3350.04 |

(b) Interest on loan

| <i>(Rs. in lakh)</i> | | | | | |
|--|----------------|----------------|----------------|----------------|----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Gross Loan opening | 22968.91 | 23089.57 | 23125.20 | 24367.61 | 25208.82 |
| Cumulative repayment of deemed loan upto previous year | 22583.66 | 23089.57 | 23125.20 | 24050.07 | 25208.82 |
| Net loan opening | 385.25 | 0.00 | 0.00 | 317.53 | 0.00 |
| Addition of loan due to additional capital expenditure | 120.66 | 35.63 | 1242.40 | 841.21 | 0.00 |
| Repayment of loan during the year | 505.91 | 35.63 | 924.87 | 1158.75 | 0.00 |
| Net loan closing | 0.00 | 0.00 | 317.53 | 0.00 | 0.00 |
| Average loan | 192.62 | 0.00 | 158.77 | 158.77 | 0.00 |
| Weighted average rate of interest | 8.0800% | 8.0584% | 8.1047% | 5.7992% | 5.6810% |
| Interest on loan | 15.56 | 0.00 | 12.87 | 9.21 | 0.00 |

(c) Depreciation

| (Rs. in lakh) | | | | | |
|---------------------------|---------------|---------------|---------------|----------------|----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Opening Capital Cost | 45937.81 | 46110.19 | 46161.10 | 47935.96 | 49137.69 |
| Closing Capital Cost | 46110.19 | 46161.10 | 47935.96 | 49137.69 | 49137.69 |
| Average Capital Cost | 46024.00 | 46135.64 | 47048.53 | 48536.83 | 49137.69 |
| Depreciable value @ 90% | 41319.75 | 41420.23 | 42241.82 | 43581.29 | 44122.07 |
| Balance depreciable value | 5010.12 | 4381.08 | 4448.62 | 5268.97 | 4658.23 |
| Balance useful life | 6.81 | 5.81 | 4.81 | 3.81 | 2.81 |
| Depreciation | 735.70 | 754.06 | 924.87 | 1382.93 | 1657.73 |

Interest on working capital

15. The “receivables” component of the working capital has been revised for the reason of revision of return on equity, interest on loan etc. The necessary details in support of calculation of interest on working capital are as under:

| (Rs. in lakh) | | | | | |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Fuel Cost (Gas) – 1 month | 3266.62 | 3266.62 | 3266.62 | 3275.57 | 3266.62 |
| Liquid Fuel Cost (Naptha) – ½ month | 710.06 | 710.06 | 710.06 | 712.01 | 710.06 |
| O&M expenses | 272.56 | 283.40 | 294.93 | 306.46 | 318.69 |
| Maintenance Spares | 665.24 | 705.15 | 747.46 | 792.31 | 839.84 |
| Receivables | 7960.06 | 7984.26 | 8046.30 | 8176.79 | 8233.63 |
| Total Working Capital | 12874.54 | 12949.48 | 13065.37 | 13263.13 | 13368.85 |
| Rate of interest | 10.2500% | 10.2500% | 10.2500% | 10.2500% | 10.2500% |
| Interest on working capital | 1319.64 | 1327.32 | 1339.20 | 1359.47 | 1370.31 |

Annual Fixed Charges

16. The annual fixed charges in order dated 18.12.2009 stands revised as under:

| (Rs. in lakh) | | | | | |
|------------------------------|---------|---------|---------|---------|---------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Interest on loan | 15.56 | 0.00 | 12.87 | 9.21 | 0.00 |
| Interest on working capital | 1319.64 | 1327.32 | 1339.20 | 1359.47 | 1370.31 |
| Depreciation | 735.70 | 754.06 | 924.87 | 1382.93 | 1657.73 |
| Advance Against Depreciation | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

| | | | | | |
|------------------|----------------|----------------|----------------|----------------|-----------------|
| Return on equity | 3219.27 | 3223.96 | 3262.30 | 3324.81 | 3350.04 |
| O&M expenses | 3270.77 | 3400.77 | 3539.15 | 3677.52 | 3824.29 |
| Total | 8560.94 | 8706.11 | 9078.39 | 9753.94 | 10202.37 |

17. The petitioner shall claim the difference between the fixed charges approved by order dated 18.12.2009 and those approved now in three monthly installments.

18. Review Petition is disposed of as above, in the admission stage.

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[Dr. PRAMOD DEO]
CHAIRPERSON