CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

<u>Petition No. 11/RP/2013</u>
<u>in</u>
<u>Petition No. 269/2009</u>

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member

Date of Hearing: 31.10.2013
Date of Order: 20.11.2013

In the matter of

Review of order dated 28.5.2013 in Petition No 269/2009 for Talcher Super Thermal Power Station, Stage-II (2000 MW) for determination of tariff of the period 1.4.2009 to 31.3.2014

And in the matter of

NTPC Ltd., New Delhi …**Petitioner**

Vs

1. (a) Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
   (b) AP Eastern Power Distribution Company Ltd, Visakhapatnam
   (c) AP Southern Power Distribution Company Ltd, Tirupathi
   (d) AP Northern Power Distribution Company Ltd, Warangal
   (e) AP Central Power Distribution Company Ltd, Hyderabad

2. Tamil Nadu Generation and Distribution Corporation Ltd, Chennai

3. (a) Karnataka Power Transmission Corporation Ltd, Bangalore
   (b) Bangalore Electricity Supply Company Ltd, Bangalore
   (c) Mangalore Electricity Supply Company Ltd, Mangalore
   (d) Chamundeshwari Electricity Supply Corporation Ltd, Mysore
   (e) Gulbarga Electricity Supply Company Ltd, Gulbarga
   (f) Hubli Electricity Supply Company Ltd, Hubli

4. Kerala State Electricity Board, Thiruvananthapuram

5. Electricity Department, Government of Puducherry, Puducherry

6. Grid Corporation of Orissa Ltd, Bhubaneshwar …**Respondents**

Parties present

1. Shri S.K.Mandal, NTPC
2. Shri Naresh Anand, NTPC
3. Shri S.K.Sharma, NTPC
4. Shri Parimal Piyush, NTPC
5. Shri Rohit Chhabra, NTPC
6. Shri R.B.Sharma, Advocate, GRIDCO
7. Shri S. Vallinayagam , Advocate, TANGEDCO

ORDER

This petition has been filed to seek review of order 28.5.2013 in Petition No 269/2009 whereby the Commission approved tariff for Talcher Super Thermal Power Station, Stage-II (2000 MW) (the generating station) for the period 1.4.2009 to 31.3.2014 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations), as amended.

2. The Commission vide notification dated 21.6.2011 published certain amendments to the tariff regulations, which included amendment of Regulation 9 dealing with capitalization of projected/additional expenditure. In accordance with the amended regulations, the additional capital expenditure incurred by the generating company after the cut-off date on augmentation of Fuel Receipt System can, in the discretion of the Commission, be allowed to be capitalized.

3. The petitioner filed an affidavit dated 19.10.2012 in Petition No 269/2009 to claim capitalization of expenditure incurred in connection with Fuel Receipt System (including ₹4528 lakh on purchase of additional wagons and locomotives) under clause (2) of Regulation 9 of the tariff regulations, as amended. The details of the expenditure claimed for capitalization in this regard are as under:

Ser No	Item of Expenditure	Actual/Projected Capital Expenditure *(₹ in lakh)*	
		2010-11	**2011-12**
1.	MGR – Talcher Connectivity	149.00	0.00
2.	12.5 km MGR to Kaniha Mines	0.00	3769.00
3.	3.5 km MGR to Kaniha Mines	767.00	0.00
4.	Additional locos & Wagons	2124.00	2404.00
5.	Land for Left out Portion of MGR	300.00	300.00
6.	Ballastless Track	0,00	1300.00
7.	Interlocking at Exchange Yard	0.00	379.00

4. The petitioner gave the following justification in support of its claim for capitalization of the expenditure incurred on procurement of additional wagons and locomotives:

> *"Purchase of loco to reduce cycle time of rakes. Copy of letter of CEA dated 22.2.2008 recommending the procurement of these addl. Locos & Wagons is enclosed. As coal from linked mine not available, additional locos & wagons reqd for procurement of coal from non-linked mines. Some old wagons condemned & de-capitalization approved by the Hon'ble Commission."*

5. The tariff for the generating station was approved by the Commission vide order dated 28.5.2013, as already noted. While approving the tariff, the Commission allowed capitalization of the expenditure in connection with MGR system to Kaniha mines used for transportation of coal. The Commission, after prudence check, disallowed the petitioner's claim for capitalization of the expenditure on additional wagons and locomotives as the Commission noticed that coal receipt from linked mine (Kaniha coal mine) would increase in future for which MGR system would be available. Accordingly, the Commission considered that the provision for additional rolling stock / wagons would only burden the beneficiaries. Based on this consideration, the Commission disallowed the petitioner's claim. The detailed discussion leading to acceptance and rejection of the petitioner's claims in the said order dated 28.5.2013 is extracted below:

"31 A total expenditure of ₹4685 lakh for 2010-12 (₹ 149.00 lakh towards MGR–Talcher connectivity for 2010-11, ₹3769.00 lakh towards 12.5 km MGR to Kaniha Mines and ₹ 767.00 lakh towards 3.5 km MGR to Kaniha Mines) has been claimed for installation of MGR system. As regards MGR-Talcher connectivity, the petitioner has submitted that the work got delayed because of delay in link mine development by CIL and the revised estimate given by East Coast railway is for balance work only. With regard to the work of 12.5 km MGR to Kaniha mines, the petitioner has submitted that the delay in the work is due to problem of acquisition of land and that the linked mine developed by CIL affected the progress of the work. It has also submitted that physical possession of private land for 12.5 kms package is yet to be obtained and entire money has been submitted, the disbursement of which is going on. It has further submitted that R&R plan is yet to be approved by the State Authorities. Kaniha mines are the linked mines for the generating station. The said work is within the scope of work and the development of linked mine was delayed by CIL thereby affecting the progress of the work. Also due to problems in land acquisition for MGR system and the R&R plan yet to be approved by the State Government, the petitioner has taken all efforts to arrange coal from other sources like the IB valley through Rail network and import of coal. Considering the above facts in totality, we are of the view that the claim of the petitioner for capitalization of expenditure is justified. Hence the same is allowed in terms of Regulation 9(2)(vii) of the 2009 Tariff Regulations.

32. The petitioner has claimed total expenditure of ₹4528 lakh (₹2124 lakh for 2010-11 and ₹2404 lakh for 2011-12) towards the purchase of additional locos and wagons to reduce cycle time of rakes. The petitioner has submitted that CEA vide its letter dated 22.2.2008 had recommended the procurement of these additional wagons and locos as coal from linked mine is not available. It has also submitted de-capitalization of some old condemned wagons have been approved by the Commission. The respondent GRIDCO in its reply dated 2.6.2011 has submitted that the requisite amount of coal to the generating station would never be met from the Kaniha coal mines in the past and therefore additional assets in rolling stock would most likely be idle assets for which beneficiaries would not like to pay .It has further submitted that CEA has incorporated the additional rolling stock under R&M and hence the petitioner is required to file a separate application under Regulation 10 of the 209 Tariff Regulations. It has thus prayed that the claim of the petitioner may be taken out of the petition. In response, the petitioner has submitted that the requirement of additional rolling stock is to cater to the increased coal requirement due to higher PLF and to meet the demand of additional power to the respondents. It has also submitted that CEA had approved the procurement and therefore Regulation 10 has no relevance. We have examined the matter. It is noticed that MGR system to Kaniha Mines is being installed to receive coal from the linked mines. With the current arrangement of coal receiving system for the generating station, it is noticed that the generating station has been achieving 85% PLF. Based on the additional capitalization allowed for MGR system to Kaniha mines as stated in the above para, the coal for the generating station would be received through MGR from the linked mines (Kaniha) in future. In view of this, we do not feel the requirement of additional rolling stock/wagons at this stage, which would only burden the beneficiaries. Accordingly, the prayer of the petitioner for capitalization of the said expenditure under this head is not allowed.

33. The petitioner has claimed total expenditure of ₹600 lakh (₹300 lakh each for the years 2010-11 and 2011-12) towards land for left out portion of MGR system. The petitioner has submitted that due to delay in land acquisition problem and mine development by CIL, the work, which is under the original scope of work and approved before cut-off date, was delayed. The work is for left *out MGR line to Kaniha mines which are the linked mines for the generating station. Moreover, development of mine work by CIL and R&R problem had also delayed the said work. Since the land is required for MGR system, we allow the expenditure in terms of Regulation 9 (2)(vii) of the 2009 Tariff Regulations.*

34. The petitioner has claimed expenditure of ₹1300 lakh during 2011-12 towards Ballastless track which is required to protect the track from water logging and coal sludge resulting from water sprinkling and rain and improper drainage which normally keep the track submerged. The petitioner has also submitted that the track structure needs to be strengthened for uninterrupted coal movement from wharf wall and the proposed silos and this requirement has arisen when flooding of track and was observed during rainy period. It has further submitted that this shall abate the derailment of locos. Considering the fact that the expenditure is linked to the MGR system, we allow the same under Regulation 9 (2)(vii) of the 2009 Tariff Regulations.

35. The petitioner has claimed expenditure of ₹379 lakh during 2011-12 towards interlocking at exchange yard. The petitioner has submitted that the same is required for safety of Indian Railway rakes, reduction of time to increase coal receipt without the need of banking of loco. Considering the fact that the expenditure is linked to the MGR system, we allow the same under Regulation 9(2)(vii) of the 2009 Tariff Regulations."

6. The petitioner has sought review of the Commission's decision as it feels aggrieved by rejection of the claim for capitalization of additional wagons and locomotives. The petitioner has averred that there are errors apparent on the face of record in rejection of its claim for capitalization of the expenditure incurred on additional locomotives and wagons and otherwise also there are sufficient reasons for review of the order. In the Review Petition the petitioner has given detailed justification, as under, in support of the need for additional wagons and locomotives and thereby its claim for capitalization:

"9 It is submitted that the fuel for Talcher Station is being arranged from different sources, domestic coal is being received from IB valley, Lingaraj OCP, Talcher coal field etc., and the requirement of Locos and Wagons have to be considered in accordance with the above.

10. That for purchase of Wagons & Locos, technical approval was obtained from CEA. In CEA approval dated 22nd February 2008, the following has been mentioned regarding the requirement of the procurement of additional locos & wagons:

....."The proposal has been examined in light of the information furnished by NTPC and the discussions held at

Talcher STPS with power station engineers. The proposal is recommended for procurement of the additional rolling stock to help in meeting daily requirement of coal for this station………"

11. That the wharf-well length of 680 meters at Lingaraj mine enables loading of rake of 42 wagon size. In the absence of required number of wagons, the Power Plant was operating 4 rakes (3 rakes of 35 wagons and 1 rake of 32 wagons) to optimize cycle time. The number of wagons in rakes being less than 42 resulted in less receipt of coal then required. Moreover, the requirement of wagons further increased due to additional quantum of coal transportation on account of poor quality of the coal supplied.

12 Accordingly, to improve and optimize cycle time for receipt of required quantity of coal from Lingaraj mine to sustain 85% of PAF, additional locos and wagons were required for the station.

13 That the MGR system of the instant station is linked with Lingaraj mine as well as newly developed linked Kaniha mines. The Lingaraj mine is at a distance of 30 km and Kaniha mine at 8 km from the station and their routes are two different branch lines. The Kaniha Mines are in the final stages of completion to commence supply of coal and when the coal supply commences from Kaniha Mines, the supplies hitherto made from mines other than Lingaraj will cease.

14 NTPC submits that owing to expected withdrawal of coal supply from other mines of MCL through IR (Indian Rail) rakes by Railways/ MCL on start up of supply from Kaniha mines, the requirement of additional locomotives and wagons for ensuring enhanced transport of coal from Lingaraj and Kaniha mines through MGR will be necessary and the capital expenditure on Locos and Wagons have been proposed to meet the above requirements. It is submitted that when the coal supply from other mines ceases, the Railways Wagons and Locos leased by Indian Railways shall be withdrawn.

15. That locos wagons are necessary to optimize the cycle time in view of the emerging shift in coal source (replacing Railway wagons) to fulfil the requirement for coal receipt from linked Kaniha mines as well as Lingaraj mines by MGR system

16. That NTPC has placed the above relevant facts before Hon'ble Commission is submission dated 15.03.2011, 23.03.2011 and 13.01.2011 and rejoinder to reply dated 05.07.2011 and in the order dated 28.05.2013, the above aspects have not been considered.

17.. NTPC further submitted that even at present also, the domestic coal is not becoming sufficient for generation at 85% PLF and hence *import <u>coal to the tune of 20% is blended.</u> Import coal is received from Paradeep port which is approx. 200 km from the station and it requires deployment of NTPC locos for the purpose of coal transportation from the port.*

18. In view of coal receipt at Talcher station brought out in para 11 to para 17, the receipt of coal from MGR system without additional wagons would not meet the availability of coal at station with the existing number of wagons. The mere availability of MGR system (i.e. track etc.) cannot be the basis for disallowance of the expenditure against the procurement of locos and wagons, as without providing for Locos and Wagons required for MGR system, the MGR system cannot be used."

7. We have heard the representatives of the petitioner and learned counsel for GRIDCO and TANGEDCO and have perused the records. The petitioner has since filed the written submissions on 14.11.2013, though there is no direction to the effect.

8. The power of the Commission to review its order under clause (f) of sub-section (1) of Section 94 of the Electricity Act is analogous to the power of a Civil Court under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure. The Commission can review its order on any of the grounds enumerated in Order 47, Rule 1, but not otherwise. The principles that can be culled out from various judgments of the Hon'ble Supreme Court on exercise of power of review by the Civil Court are summarized hereunder:

(i) An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power of review.

(ii) An order cannot be corrected in guise of power of review merely because it is erroneous in law or on the ground that a different view could have been taken by the Court on a point of fact or law.

(iii) While exercising the power of review, the Court cannot sit in appeal over its own order/judgment.

(iv) While considering an application for review, the court has to confine its adjudication with reference to material which was available at the time of initial decision.

9. In the light of the above principles, we shall now consider whether order dated 28.5.2013 suffers from any patent mistake or an error apparent so as to warrant its review. The Commission in para 32 of the order sought to be reviewed took note of the averments made by the petitioner in the affidavit dated 19.10.2012 in support of its claim for capitalization of additional wagons and locomotives. The Commission also noticed the response of the petitioner on the objections raised by GRIDCO, one of the respondents in the petition. On consideration of the material available record, the Commission rejected the petitioner’s claim. The rejection of the claim after due deliberation of the petitioner’s plea and counter-plea of the respondents cannot be said to be the case of error apparent on the face of record necessitating review of the order. The petitioner has sought to re-agitate the claim in the guise of review. The petitioner has now given the additional facts and grounds to substantiate its claim for capitalization. Such a course is not open to the petitioner as the Commission while considering the application has to limit itself to the material which was available when the order dated 28.5.2013 was passed. For all these reasons, the review petition is liable to be dismissed.

10. Incidentally, one of the grounds pressed by the petitioner in support of its plea for capitalization of additional wagons and locomotives is the factum of de-capitalization of the wagons and locomotives procured earlier. In this regard it needs

to be pointed out that MGR system for transportation of coal from Kaniha mine, which will be main source of supply of coal for the generating station has been augmented and capitalization of the expenditure has already been allowed by the Commission. Therefore, there is no justification for capitalization of additional wagons and locomotives on the mere ground that wagons and locomotives earlier in use were de-capitalized on their becoming obsolete.

11. In view of the foregoing, the review petition is not maintainable and is hereby dismissed. No order as to costs.

Sd/-	***Sd/-***	***Sd/-***	***Sd/-***
(A.K.Singhal)	**(M. Deena Dayalan)**	**(V.S. Verma)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Member**	**Chairperson**