

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/MP/2021

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 30th December, 2022

In the matter of

Petition under Sections 79(1)(a) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 7 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 for payment of compensation.

And

In the matter of

NTPC Limited
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road, New Delhi – 110003.

...Petitioner

Vs

1. Southern Regional Power Committee,
Race Course Cross Road, Bengaluru,
Karnataka – 560009.
2. AP Eastern Distribution Company Limited,
Corporate Office, P&T Colony, Seethammadhara,
Vishakhapatnam, Andhra Pradesh – 530013.
3. AP Southern Distribution Company Limited,
Corporate Office, Back Side Srinivasa Kalyana Mandapam,
Tiruchhanur Road, Keasavayana Gunta, Tirupati,
Andhra Pradesh - 517503.
4. Telangana State Northern Power Distribution Company Limited,
H. No. 2-5-31/2, Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal, Telangana – 506001.
5. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office, Hyderabad,
Telangana – 506063.
6. Tamil Nadu Generation & Distribution Corporation Limited,
144, Anna Salai, Chennai, Tamil Nadu – 600002



7. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle, Bengaluru,
Karnataka – 560009.

8. Mangalore Electricity Supply Company,
MESCOM Bhawana, Corporate Office, Bejai,
Kavoor Cross Road, Mangaluru, Karnataka – 575004.

9. Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, No. 29, Vijaynagar, 2nd Stage, Hinkal,
Mysore, Karnataka – 570017.

10. Gulbarga Electricity Supply Company Limited,
Main Road, Gulbarga, Karnataka -585102.

11. Hubli Electricity Supply Company Limited,
Corporate Office, P.B. Road, Navanagar,
Hubli, Karnataka – 580025.

12. Kerala State Electricity Board Limited,
Vaidyuthi Bhavnam, Pattom,
Thiruvananthapuram, Kerala – 695004.

...Respondents

Parties present:

Shri Sidhharth Joshi, Advocate, NTPC
Ms. Simran Saluja, Advocate, NTPC
Shri V.V. Siva Kumar, NTPC
Shri S. Vallinayagam, Advocate, TANGEDCO
Ms. B. Rajeswari, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Ms. R. Alamelu, TANGEDCO
Shri Ahaan Mohan, Advocate, Karnataka Discoms
Ms. Anusha Das J, SRPC

ORDER

The Petitioner, NTPC Limited has filed this Petition under Section 79 (1) (a) and (f) of the Electricity Act, 2003 read with Regulation 7 of the Indian Electricity Grid Code, 2010 (in short, 'the IEGC, 2010'), seeking the following relief(s):

'(a) Direct the Respondents to pay compensation to the Petitioner for degradation of parameters due to part load operation for KSTPS for FY 2017-18;

(b) To create an appropriate mechanism to remit the compensation to the Petitioner in terms of the approved Heat Rate;

(c) Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case.'



Submissions of the Petitioner, NTPC

2. The Petitioner, in support of the above prayers, has mainly submitted the following:

- (a) Kudgi Super Thermal Power Station (KSTPS) was planned during the period 2009-14. The guaranteed design gross turbine cycle heat rate and the design boiler efficiency was designed and envisaged keeping in mind the parameters provided in the then prevailing Tariff Regulations i.e the 2009 Tariff Regulations, applicable for the period 2009-14.
- (b) The design heat rate as awarded for KSTPS is 2144.89 kCal/kWh which is much lower than the ceiling limit of 2176 kCal/kWh, as provided under Regulation 26-B of the 2009 Tariff Regulations. Unit-1 of KSTPS achieved commercial operation (COD) on 31.7.2017, Unit-2 on 31.12.2017 and Unit-3 on 15.9.2018. The Commission vide its order dated 8.1.2020 in Petition No. 199/GT/2017 had determined the normative heat rate of 2210.66 kCal/kWh for KSTPS, in terms of Regulation 36(c)(b)(i) of the 2014 Tariff Regulations.
- (c) Prior to the issuance of the tariff order dated 8.1.2020, the Petitioner was billing the beneficiaries, considering the normative Station Heat Rate (SHR) of 104.5% of design heat rate (1.045×2144.89 kCal/kWh). The compensation entitlement for the generating station has been provided under Regulation 6.3 B of the IEGC, 2010, read with the mechanism for compensation for degradation of heat rate, auxiliary consumption and secondary fuel oil consumption, due to part load operation and multiple start/stop of units as approved by the Commission in its order dated 5.5.2017 (in short 'the compensation mechanism').
- (d) The Petitioner had complied with order dated 8.1.2020, wherein, the normative SHR of KSTPS was determined as 2210.66 kCal/kWh and revised the billing and the benefit of reduced ECR was already passed on to the Respondent beneficiaries. Due to the determination of Gross Station Heat Rate ('GSHR') by order dated 8.1.2020, the Petitioner is now entitled for compensation for degradation, as per the said compensation mechanism.
- (e) The issue was taken up with the beneficiaries (Respondent Nos. 2 to 12) during the 47th meeting of Commercial Sub-Committee of Southern Regional Power Committee held on 24.2.2021. However, no resolution was agreed during the said meeting as the Respondents had outrightly rejected the claim of Petitioner for compensation towards the degradation of



parameters due to part load operation for KSTPS for 2017-18, on the premise that the compensation cannot be revisited on retrospective basis.

- (f) The tariff order dated 8.1.2020 was duly complied with by the Petitioner and dues amounting to Rs. 54.48 crore was immediately passed on to the Respondent beneficiaries. The said order is also binding on the Respondent beneficiaries. As a sequitur, as per GSHR determined by the Commission, if there is any consequential impact of the change in the normative SHR, then the generating station is duly entitled to get the same, which in this case is compensation amounting to Rs. 12.65 crore. The Respondents have subverted the claim of the Petitioner, on a fallacious premise, that the compensation mechanism does not envisage any retrospective settlement.
- (g) The compensation mechanism does not prohibit the Petitioner to seek compensation for the degradation of parameters due to part load operation for KSTPS in 2017-18. This Commission, in certain scenarios had barred retrospective adjustment. However, the compensation mechanism is not such a case, as no embargo exists therein. In this regard, reliance is placed on the proviso to Regulation 13.3 of the CERC (Ancillary Services Operations) Regulations, 2015. However, no such embargo has been stipulated in the IEGC, 2010 or the compensation mechanism notified therein. Therefore, the Petitioner is liable to be compensated for the degradation.
- (h) The Respondents have failed to appreciate that the compensation mechanism and GSHR emanate from Tariff Regulations. Therefore, the necessary and logical corollary to clause 4.1 (i) of the compensation mechanism is that the tariff orders needs to be necessarily factored in while determining the compensation payable to a generating company as per Regulation 6.3 B of IEGC, 2010.
- (i) The detailed operating procedure dated 5.5.2017 in terms of Regulation 6.3 B of the IEGC, 2010 unequivocally provides that the entire compensation mechanism is based on the Tariff Regulations. The following key provisions of the compensation mechanism are relevant:
 - (ii) *Clause 4.1 (i) provides that the compensation mechanism is based on the relevant provisions of the IEGC, 2010 and Tariff Regulations of the Commission as notified from time to time. The natural sequitur of the said clause is that, basis the GSHR determined by the Commission the compensation, if any, shall be computed.*
 - (iii) *Clause 4.1 (ii) to (xv) elaborates on the formulae on which the compensation shall be computed. In the said formulae, no independent GSHR has been prescribed and by virtue of clause 4.1(i) of the*



mechanism, it is the GSHR as determined by the Commission, is to be applied.

- (j) The Respondent beneficiaries have failed to appreciate that the compensation for degradation of parameters due to part load operation for KSTPS in 2017-18 was zero, which was based on the provisional normative gross heat rate of 2241.41 kCal/kWh. As the normative GSHR was determined as 2210.66 kCal/kWh for the period 2014-19. Vide order dated 8.1.2020, the compensation amount receivable for 2017-18 works out to Rs 12.65 crore.
- (k) The change in ECR of the generating station is on account of the change in the normative parameters only. The Petitioner has requested the Respondents to consider the change in GSHR in the computation of compensation amount in 2017-18 as per order dated 8.1.2020. However, the Respondents have failed to accede to this request on hyper technical grounds.
- (l) Had the order dated 8.1.2020, been passed in the last month/day of the year i.e. before the annual reconciliation, the same could have enabled the Petitioner to claim compensation in 2017-18, at the end of the said year. The timing of a statutory order should not have an impact on the receivables of the generator.
- (m) The ambit and scope of 'power to relax' provisions of a delegated legislation have been interpreted by various Courts and APTEL in a catena of cases. It is settled position of law that 'power to relax' can be invoked if the Regulations in any manner cause hardship to a party. Reliance has been placed on the judgments of the (i) Hon'ble High Court of Rajasthan judgment in Hari Singh v. State of Rajasthan, 1992 SCC OnLine Raj 210, (ii) APTEL judgment dated 21.3.2018 in Appeal Nos. 107 & 117 of 2015 in HPPC Vs. HERC (iii) APTEL judgment dated 20.9.2012 in Appeal No. 189 of 2015, in TPCL Vs. JSERC & anr and (iv) APTEL judgment dated 24.3.2015 in Appeal Nos. 55, 77, 194, 63, 143 & 158 of 2013, 259 of 2012 and 43 of 2014 in BYPL Vs CERC & ors

Reply of the Respondent TANGEDCO

3. The Respondent TANGEDCO vide its reply affidavit dated 4.12.2021 has raised preliminary objections on the 'admissibility' of the petition and mainly submitted the following:

- (a) The Petitioner is claiming compensation for degradation in terms of the normative heat rate approved for the generating station retrospectively for



the period 2017-18, based on the GSHR determined vide order dated 8.1.2020. Per contra, the Petitioner, in Petition No. 199/GT/2017 claimed that gross turbine heat rate and boiler efficiency for station be decided on the basis of prevailing 2009 Tariff Regulations.

- (b) KSTPS was commissioned during the 2014-19 tariff period and therefore, GSHR has to be calculated as per Regulation 35(C)(b)(i) of the 2014 Tariff Regulations, which states that where the boiler efficiency is below 86% for the sub-bituminous Indian coal, the same shall be considered as 86% for computation of SHR.
- (c) After the order dated 8.1.2020, the Petitioner has applied the approved GSHR retrospectively, for the previous years and informed the beneficiaries, including TANGEDCO to pay a sum of Rs. 12.65 crore as compensation claim for the period 2017-18, in accordance with the detailed procedure issued by the Commission on 5.5.2017. In this regard, bill dated 5.10.2020 for Rs. 1.38 crore from the Petitioner was not admitted.
- (d) The issue was discussed in that 46th SRPC CSC meeting, and it was pointed out, that GSHR 2210.66 kCal/kWh has been considered by the Commission for the purpose of tariff. The part load compensation neither from part of tariff nor the Tariff Regulations. The part load compensation computation for heat rate degradation is according to the 4th amendment of IEGC, 2010 and the revision of compensation statement on account of order dated 8.1.2020 may not be considered. Moreover, in various Regulations of this Commission viz. Ancillary Service-RRAS, DSM, SCED etc., it has been mentioned that no retrospective settlement of fixed or variable charges shall be undertaken, even if the fixed or variable charges are revised at a later date. However, if all the beneficiaries are agreeable for revision of the part load compensation statement for 2017-18, the revised statement would be issued.
- (e) During the 47th CSC meeting held on 24.2.2021, the issue was again discussed. Respondents PCKL, Karnataka, KSBL and Telangana State PCC did not agree for the revision of compensation and retrospective settlement i.e., revision of compensation due to part load operation with revised parameters is not envisaged in IEGC, 2010/compensation mechanism. In the said meeting, SRPC observed that the intent of RRAS/SECD Regulations is analogous to the IEGC, 2010/ compensation mechanism, as in all these Regulations, decisions are to be carried out based on the MOD of generators during that time. Due to the consideration of high SHR by KSTPS, ECR was high and accordingly, MOD was prepared by the beneficiaries and they were to requisite the energy as per their requirement. The KSTPS might have been scheduled at low PLF due to less requisition of the beneficiaries on account of high ECR. Now, as per



the revised SHR, the ECR works out to be lower than earlier. If the lower ECR had been considered during that time, KSTPS would have been scheduled more and question of part load compensation would not have been there.

- (g) Revision of compensation due to part load operation considering the revised normative parameters, used for the purpose of tariff determination, may not be appropriate as the decisions taken by the beneficiaries, during the period (during the real time scheduling) were based on the ECR furnished by the generators. The said meeting concluded with the decision that the Petitioner may approach the Commission for clarification or revision of compensation, due to part load operation of KSTPS for 2017-18, based on the order dated 8.1.2020.
- (h) No records were available in support of design heat rate. Hence, as per Form II and Form 5E of Petition No. 199/GT/2017, the turbine heat rate is 1819.3 kCal/kWh, and the boiler efficiency is 85% from which SHR was arrived. Based on Regulation 35(C)(b)(i) of the 2014 Tariff Regulations, the same shall be considered as 86% and 89% respectively. For sub-bituminous Indian coal and bituminous imported coal for computation of SHR, the boiler efficiency was taken as 86%
- (i) The SHR was computed as $1819.3/0.86=2115.47$ kCal/kWh and after considering the operating margin of 4.5%, the SHR was worked out and allowed as 2210.67 kCal/kWh (2115.47×1.045) vide order dated 8.1.2020. The Petitioner was billing the beneficiaries considering the SHR parameter of 2241.41 kcal/kWh, since the commissioning of Unit-1, on 31.7.2017. After issuance of order dated 8.1.2020, the Petitioner had raised bills adopting the approved GSHR of 2210.67 kCal/kWh.
- (j) The issue of considering a higher heat rate of 2241.41 kCal/kWh than that of 2210.67 kCal/kWh, for the period from 2017, till the passing of order dated 8.1.2020, squarely lies on the Petitioner. Had the Petitioner adopted the GSHR eligible as per the prevalent Tariff Regulations, there would not have been any role for the Commission to restrict the claim to eligible norms.
- (k) The observations of SRPC in the 47th CSC meeting are explanatory as to why the claim of the Petitioner is not admissible. It has been rightly been pointed out by SRPC that the claim for compensation of retrospective basis is not admissible for the reason that the generating station might have got scheduled if lesser GSHR had been adopted and there is no retrospective payment in case of revision of ECR in RRAS, DSM and SECD Regulations. Moreover, the adoption of higher GSHR was only at the discretion of the Petitioner against the admissible GSHR as per the 2014 Tariff Regulations.



Hearing dated 7.12.2021

4. The matter was heard on 'admission' through virtual hearing on 7.12.2021, wherein, the learned counsel for the Petitioner made oral submissions and prayed for admission of the petition. The learned counsel for the Respondent No.6, TANGEDCO referred to the preliminary reply and submitted that the petition was not 'maintainable' as the fourth amendment to the IEGC, 2010 does not provide for any retrospective settlement of compensation for de-gradation of parameters due to plant load operation. He also submitted that on account of high ECR, KSTPS might have been scheduled at low PLF, due to less requisition of beneficiaries. and after hearing the parties, the Commission directed the parties to file their submissions on the 'admissibility' and reserved its order on 'admissibility' of the petition.

Reply of the Respondent Karnataka Discoms

5. The Respondent Karnataka Discoms vide reply affidavit dated 27.12.2021 has mainly submitted as under:

- (a) Since KSTPS was scheduled and operationalized during the 2014-19 tariff period, the GSHR is to be calculated in terms of Regulation 36(C)(b)(i) of the 2014 Tariff Regulations.
- (c) The exercise of the power to relax is, in general and cannot be invoked to relax a provision, the application of which would cause the party seeking invocation hardship due to its commissions or omissions. Reliance placed on APTEL order dated 24.3.2015 in Appeal Nos. 55, 77, 194, 63, 143 & 158 of 2013, 259 of 2012 and 43 of 2014 in BYPL v CERC & others.
- (d) The Commission, in its order dated 20.9.2017 in Petition No.130/MP/2015 had refused to exercise the power to relax, as the party seeking the relaxation, caused hardship due to its own actions. In the present case, the Petitioner had approached the Commission as a result of its own deviations from the 2014 Tariff Regulations. No case has been made out for the exercise of power to relax under IEGC, 2010 as the same is directly from the Petitioner's own commissions and omissions.



- (e) A concomitant of the Petitioner's submissions seeking the exercise of such general and extraordinary powers is that, it is not entitled to any relief from the Commission without the exercise of such powers. The Commission has already rejected the principle of retrospective settlement of fixed or variable charges, even in cases where fixed or variable charges are revised later. The grant of the relief sought by the Petitioner through the exercise of such powers would violate the provisions, intent, and spirit of the regulatory and statutory framework.
- (f) The Hon'ble Supreme Court in *State of Orissa and Ors v Sukanti Mohapatra and Ors* [1993 SCC (2) 486], while dealing with the exercise of extraordinary powers to relax, analogous to the powers contained in Part 7 of the IEGC, 2010, noted that the power to relax cannot be exercised in such a manner so as to override the letter and spirit of the Regulations and to undermine the letter, spirit, and intent of the regulatory framework as a whole.
- (g) The decision to adopt a GSHR of 2241.42 kCal/kWh and deviate from the GSHR under the 2014 Tariff Regulations was a voluntary act of the Petitioner. The compensation, now claimed through this Petition, is based on the difference between the amount which the Petitioner received from the beneficiaries prior to order dated 8.1.2020, based on the previous GSHR as determined by the Petitioner, i.e., 2241.42 kCal/kWh, and the amount which would have been due under the GSHR determined by the Commission under the said Regulations, i.e., 2210.67 kCal/kWh. Furthermore, the degradation cited to justify the compensation is from normative values, the first determined by the Petitioner itself and then finally by the order dated 8.1.2020.
- (h) The grant of the Petitioner's claim for compensation would result in retrospective settlement which contradicts the spirit of provisions of various other Regulations which reject retrospective settlements of fixed and variable charges, even under scenarios where the fixed or variable charges have been revised at a later date. The Commission has clearly held that a change in ECR would not result in retrospective payment as a result of said change. This was also the view of the SRPC, as enumerated in its 46th and 47th meetings.
- (j) The Petitioner, has stated that it has already complied with the order dated 8.1.2020 and revised its billing and passed on the benefits of the reduced ECR to its beneficiaries. The "benefits" alluded to by the Petitioner are, in fact, amounts received from the beneficiaries as per the high ECR. The said high ECR was caused by the high GSHR claimed by the Petitioner in its provisional billings and it was required to return the excess amounts as the high GSHR previously claimed was disallowed by said order dated 8.1.2020.



- (k) The decisions carried out by SLDCs are based on the MOD during real time grid operations. Due to the high GSHR of KSTPS, its ECR was also high and, hence, KSTPS was placed accordingly in the MOD list. KSTPS was, possibly scheduled at a lower PLF due to lower requisition of power by the beneficiaries due to its high ECR. Subsequent to the revision of the GSHR by the order dated 8.1.2020, the ECR was reduced and is, hence, now lower than the value as determined based on the Petitioner's earlier higher GSHR considered during scheduling.
- (l) The Petitioner adopted the GSHR as determined by the order dated 8.1.2020, i.e. 2210.67 kCal/kWh, instead of the values determined on its own, i.e., 2241.42 kCal/kWh and the same would have impacted the ECR. Consequently, the scheduling and, hence, PLF of the KSTPS would have also been impacted. Had the Petitioner supplied the revised lower GSHR at that point, a lower ECR would have been considered during that time and KSTPS would have been scheduled accordingly. Therefore, the question of part load compensation would not have been arisen.
- (m) The revision of compensation sought by the Petitioner due to part load operation based on the revised normative parameters used for the purpose of tariff determination is not appropriate as the decisions taken by the beneficiaries during that period, i.e., during real time scheduling, were based on then available GSHR and, hence, ECR as furnished by the generators at the time.
- (n) In the 34th SRPC meeting held on 11.8.2018, the technical coordination sub-committee, noted that variable cost furnished by ISGS by 15th April of every year (for the previous year) would be considered for compensation. Any implication due to change in ECR (landed price, GCV etc.) subsequently would be required to be borne by the generator/beneficiaries as applicable. Therefore, extending said principle to the present matter, the loss cited by the Petitioner must be borne by it.
- (o) The compensation payment for degradation of heat rate and auxiliary consumption is dependent on allocation. The post facto allocation is unacceptable and any order which has financial implications cannot be said to have retrospective effect, as this would go against the principles of natural justice.
- (p) Part load compensation is not a part of tariff as per the 2014 Tariff Regulations. The compensation payment for degradation of heat rate and auxiliary consumption falls under the IEGC, (Fourth Amendment) Regulations, 2016.
- (q) There is no provision for retrospective revision of the compensation charge



due to change caused by revision of tariff orders, as is the present case. Clause 6.3B of the 4th amendment to IEGC, 2010 provides that CGS or ISGS may be compensated depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of SHR, auxiliary energy consumption and secondary fuel oil consumption etc. on a monthly basis duly supported by relevant data verified by RLDC or SLDC as the case may be. Therefore, compensation shall be settled on monthly basis, with reconciliation of the compensation is to take place at the end of the financial year in due consideration of the actual weighted average of operational parameters.

Rejoinder of the Petitioner, NTPC

Rejoinder to the reply of Respondent TANGEDCO

6. The Petitioner, in its rejoinder to the reply of Respondent TANGEDCO and Karnataka Discoms, has, mainly submitted the following:

(a) The prayer of the Petitioner to constitute an appropriate mechanism to remit the compensation to the Petitioner in terms of the normative heat rate approved by order dated 8.1.2020, is beyond the scope and subject matter of the present proceedings. The said order had attained finality and therefore any contentions qua the proceedings cannot be raised at this stage.

(a) At the time of filing Petition No.199/GT/2017, the Petitioner was well within its rights to claim SHR of 2241.41 kCal/kWh under Regulation 54 of the 2014 Tariff Regulations. The consequence of rejection shall also be applied upon the beneficiaries as they have also enjoyed the benefit of a lower SHR decided by the Commission. The same can be evidenced from the fact that the Petitioner had duly revised its earlier invoices on 6.2.2020 for the period 2017-18 and 2018-19 in terms of the order dated 8.1.2020. The amount of Rs. 54.48 crore has also been passed on to the beneficiaries including the Respondent, TANGEDCO.

(b) The Petitioner had revised its invoices for the periods 2017-2018 and 2018-2019, and subsequently raised part load compensation invoices to the Respondent beneficiaries for 2017-18, as per the procedure envisaged under the compensation mechanism.

(c) The Respondent TANGEDCO, in the CSC meeting dated 24.2.2021 had suggested that the Petitioner may approach the Commission seeking clarification on the compensation payable on account of degradation, as it would be difficult for it to effectively continue making the payments. SRPC also



suggested that the Petitioner may approach the Commission for clarification on the issue on compensation payable to the Petitioner. Accordingly, the Petitioner has filed this Petition on 29.7.2021.

(d) The Respondent TANGEDCO is taking an inconsistent stand in different proceedings for the same subject matter. It is a trite law that the parties are barred from taking inconsistent stands before the court of law. Reliance placed on the following judgments of the Hon'ble Supreme Court: Joint Action Committee of Air Line Pilots' Assn. of India v DGCA (2011) 5 SCC 435: Suzuki Parasrampurua Suiting (P) Ltd. V. Official Liquidator, (2018) 10 SCC 707.

Rejoinder to the Reply of the Respondent, Karnataka Discoms

(e) Regulation 7.2 of the IEGC, 2010 allows the Commission to adopt any procedure in conformity of the Act as it may deem fit, to deal with any special circumstances or class of matters. On a conjoint reading of the facts in the present matter, the situation falls under the category of such special circumstances and is therefore entitled to claim compensation in terms of detailed operating procedure and compensation mechanism.

(f) Regulation 7.3 of IEGC, 2010 states that the Commission has the power to deal with any matter under for which no Regulations have been admittedly framed. There has been no specific procedure prescribed under the compensation mechanism wherein due to the fixation of normative parameters a party can claim a retrospective compensation.

(g) The circumstances in the present case is exceptional and admittedly, no precedent exists, wherein the Commission has created a mechanism for a generator, to claim compensation on account of parameters for degradation of GSHR on a retrospective basis, since the norms were fixed by the Commission after the relevant year was over.

(h) The Petitioner has approached the Commission after exhausting all the remedies available under the provisions of the Act and IEGC, 2010. It is not out of place to mention that the Petitioner has approached the Commission only at the instance of the recommendations made by the Respondents in the 46th and 47th meeting of SRPC. The Committee categorically and unequivocally was of the view that at present the detailed operating procedure does not provide for retrospective adjustment of compensation and the Petitioner was requested to approach the Commission for guidance in the matter. The final view of the committee has also been affirmed by the Respondent beneficiaries, demonstrating that the case of the Petitioner squarely falls under Regulation 7 (1), (2) and (3) of IEGC, 2010 which is applied for instances where there is no procedure provided. Hence, it is incorrect for the Karnataka Discoms to say that the present Petition is not maintainable.



(i) The reliance made by the Respondents Karnataka Discoms, to the judgment of the Hon'ble Supreme Court in State of Orissa & ors v Sukanti Mohapatra & ors (1993) 2 SCC 486, does not apply in the present case.

(j) The compensation has risen due to fixation of normative SHR after the relevant period. The reliance placed by the Respondent Karnataka Discoms on the 34th SRPC meeting held on 11.8.2018 is highly erroneous, as in the said meeting, deliberation was on clause 5(ii) of the compensation mechanism and not the scope of clause 4 of the compensation mechanism as in the present case. The minutes of meeting does not also state anything on the normative parameters. The same is only upon the implication of coal quality and not operational efficiency of a power plant (KSTPS in the present case).

Hearing dated 15.7.2022

7. Since the order in the present petition could not be passed prior to the Chairperson Shri P. K. Pujari demitting office, the matter was re-listed for hearing on 15.7.2022. During the hearing, the learned counsel for the Petitioner and the learned counsel for Respondents submitted that since pleadings in the matter have been completed, the Commission may reserve its order. Accordingly, order in the petition was reserved on 'admissibility'.

Analysis and Decision

8. We have examined the matter. The Petitioner is mainly aggrieved by the rejection of its claim for Rs. 12.65 crore towards degradation of parameters due to part load operation of KSTPS for 2017-18. While pointing out that the compensation mechanism does not prohibit seeking compensation for part load operation, the Petitioner has submitted that the detailed operating procedure dated 5.5.2017 read with Regulation 6.3B of the IEGC, 2010 unequivocally provides that the compensation mechanism is based on the Tariff Regulations. *Per contra*, the Respondent TANGEDCO and the Respondent Karnataka Discoms, while pointing out that part load compensation neither forms part of tariff nor the Tariff Regulations, have submitted that payment of compensation, with retrospective effect, due to part



load operation, with revised parameters, is not envisaged under the IEGC, 2010 or the compensation mechanism. The Respondent Karnataka Discoms have also submitted that the decision to adopt the GSHR in deviation from the 2014 Tariff Regulations was a voluntary act of the Petitioner and therefore, due to change in ECR, no retrospective payment is permissible.

9. Regulation 7 of the IEGC, 2010 provides for the following:

“(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the power of the Commission to pass such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations including summary procedures, if the Commission, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for so dealing with such a matter or class of matters.

(3) Nothing in these Regulations shall bar the Commission to deal with any matter or exercise any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

(4) The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person”.

10. Regulation 6.3B of the IEGC, 2010 provides as under:

“Where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be compensated depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be.”

11. The Detailed Operating Procedure [Appendix I] and the Compensation Mechanism [Appendix II] in terms of sub-clause (6) of Regulation 6.3B of the IEGC, 2010, is as extracted below:



“4.1 Compensation for degradation of Heat rate (SHR) and Auxiliary Energy Compensation (AEC)

(i) The mechanism is based on relevant provisions of Grid Code and Tariff Regulations of the Commission, as notified from time to time.

(ii) The Compensation shall be worked out for a month on cumulative basis considering degradation in SHR and AEC based on Average Unit Loading subject to reconciliation at the end of the year.

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(vi) Average Unit loading shall be used for getting increase in SHR and AEC in accordance with the Regulations and for gas based generating station as per step (v) above.

Provided that no compensation for SHR degradation or increase in AEC shall be payable if the Average unit loading for the generating station for the computation period works out more than or equal to 85%.

5. Calculation of Compensation, Billing and Submission of Data by the Generator.

(i) Generating station shall calculate the compensation as specified in these procedures and bill the same to beneficiaries along with its monthly bill which shall be subject to adjustment based on compensation statement issued by RPC Secretariat subsequently.

(ii) Generating station shall submit the requisite data along with compensation calculation to RPC secretariat as prescribed in Annexure-I to Appendix II for a month by 15th day of the following month. The data to be submitted is for the month and reconciled up to the month.”

12. It is evident from the above, that the compensation mechanism read with Regulation 6.3B of the IEGC, 2010, provides that the compensation for degradation of heat rate, is based on the provisions of the Grid Code and the Tariff Regulations of this Commission. As regards the contention of the Respondents that there is no provision for retrospective adjustments under the IEGC, 2010, we notice that the provisions of Clause 7(3) of the IEGC, provides the Commission with the power to deal with any matter or exercise any power, as deemed fit, in the interest of justice. Moreover, the Commission's order dated 8.1.2020, which also determined the GSHR of the generating station, based on which compensation has been claimed by the Petitioner, is effective from the date of COD of Unit-I (31.7.2017) of the generating station, till 31.3.2019. Seen in this background, the prayer of the Petitioner assumes significance. In our view, the Petitioner has made out a *prima facie* case for



consideration and the same can be decided, only after hearing the parties, on merits. Accordingly, we hold that the petition filed by the Petitioner is 'maintainable'.

13. Having held that the Petition is maintainable, as above, we 'admit' the same and direct the Respondents to file their replies, on merits, on or before **20.1.2023**, after serving copies to the Petitioner, who may, file its rejoinder, if any, by **3.2.2023**. The parties shall ensure that pleadings are completed within the due dates mentioned and no extension of time shall be granted for any reason.

14. Matter shall be listed for hearing on **7.2.2023**.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

