

BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

REVIEW PETITION NO. 25/RP/2024

IN

PETITION NO. 387/GT/2020

Coram: Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Date of order: 17th March 2025

IN THE MATTER OF: Petition for Review of the Order dated 19.5.2024 passed by the Commission in Petition No. 387/GT/2020 in the matter of truing up of tariff of Talcher Super Thermal Power Station Stage-I (1000 MW) for the period 2014-19.

AND

IN THE MATTER OF:

NTPC Limited
NTPC Bhawan, Core-7,
Scope Complex, 7, Institutional Area,
Lodhi Road New Delhi-110003

...Review Petitioner

Vs

1. West Bengal State Electricity Distribution Corporation Limited
Vidyut Bhavan, Block-DJ,
Sector-II, Salt Lake City
Kolkatta-700091

2. Bihar State Power Holding Company Limited
Vidyut Bhavan, Bailey Road,
Patna-800001

3. Jharkhand Urja Vikas Nigam Limited
Engineering Bhawan, Heavy Engineering Corporation
Dhurwa Ranchi-834004

4. Grid Corporation of Orissa Limited
Vidyut Bhawan, Janpath,
Bhubaneshwar-751007



5. Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054

6. The Energy and Power Department
Government of Sikkim, Kazi Road, Gangtok,
Sikkim-737101

7. Assam Power Distribution Company Limited
Bijulee Bhawan, Paltan Bazar
Guwahati-781001

8. Tamil Nadu Generation and Distribution Corporation Limited
NPKRP Maaligai, 144, Anna Salai,
Chennai-600002.

... Respondents

Parties present:

Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri. Kathikeyan Murugan, Advocate, NTPC
Ms. Sanjeevami Mishra, Advocate, NTPC
Shri Rudraksh, Bhushan, NTPC
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Aashish Gupta, Advocate, BSPHCL
Shri Chiranjeev Marwah, Advocate, BSPHCL
Shri Puneeth Ganapathy, Advocate, BSPHCL
Shri R. Kathiravan, TANGEDCO

Order

Petition no. 387/GT/2020 has been filed by the Petitioner, NTPC Limited, for the truing-up of the tariff of Talcher Super Thermal Power Station Stage-I (1000 MW) (in short 'the generating station') for the period 2014-19, in terms of Regulation 8(1) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations'). The Commission, vide its order dated 19.05.2024 (in short, the 'impugned order'), disposed of the said petition. Aggrieved thereby, the Review Petitioner has filed the Review Petition no. 25/RP/2024



on the ground that there is an error apparent on the face of the record on the following issues:

- a) Review the disallowance of Water Charges of Rs. 22.59 Crores paid under the Water Agreement by TSTPS-1
- b) Review the incorrect methodology adopted in TSTPS-I for calculating the Weighted Average Price of Coal, leading to an understatement of costs.

Hearing dated 08.08.2024

1. The Review Petition was heard on 'admission' on 8.8.2024. The learned counsel for the Review Petitioner submitted that the petition seeks a review of the impugned order dated 19.5.2024 regarding the above issues. The learned counsel for the Respondent, BSPHCL, sought time to file a reply. After hearing the parties, the Commission admitted the petition and directed completion of pleadings within the stipulated timelines.

Hearing dated 27.09.2024

2. During the hearing dated 27.09.2024, the learned counsel for the Review Petitioner and the Respondent, BSPHCL, made detailed oral submissions in the matter. After hearing the parties, the Commission, while reserving its order in the Review Petition, permitted the Respondent TANGEDCO to file its short note of arguments on or before 17.10.2024 as requested after serving a copy to the Petitioner, who may file its reply to the short note of arguments, if any, by 24.10.2024.

Submissions of the Review Petitioner

Issue of disallowance of water charges

3. The Review Petitioner has submitted that the Commission considered the actual water consumption for each of the years in 2014-19, but the actual payment (as per



water allocation) has not been considered. It is further submitted that the water allocation agreement was executed in compliance with the applicable rules and provisions of the respective State Water Boards/Irrigation Departments governing the jurisdiction where the concerned station is situated. In the present case, the review petitioner, NTPC, entered into an agreement with the Orissa State Irrigation Department, thereby binding itself to the terms and conditions stipulated therein. Pursuant to the said agreement, NTPC is required to make water charge payments based on the allocated quantity, with no discretion to reduce such payments. However, NTPC retains the discretion to regulate its water allocation, which is determined by considering various factors, such as peak seasonal demand, availability, and other relevant parameters.

4. In this regard, upon observing that actual water consumption was lower than 120 cusecs during the agreement period from April 2013 to March 2016, NTPC, in the exercise of its discretion, reduced the contractual allocation to 105 cusecs for the subsequent period, i.e., from May 2016 to April 2019. It is further submitted that all generating stations maintain a safety margin over and above the estimated actual consumption to mitigate risks associated with discrepancies between allocation and consumption. This is done to avoid heavy penalties and prevent adverse consequences on station operations. Further, in the event of overdrawl beyond the permitted limit, the generator would be required to apply for an increased allocation. In case it is not allowed, the agreement may be subject to cancellation due to overdrawing. Accordingly, maintaining an appropriate safety margin is necessary to ensure operational stability and compliance with regulatory requirements.



Issue of Weighted Average Price of Coal

5. It is respectfully submitted that the Commission has allowed the weighted average price of coal for the purpose of IOWC at Rs 1961.73/MT. However, the price appears to have been arrived at by considering the blending ratio of coal, and the same needs to be rectified by considering the total landed cost of coal divided by the total net coal supplied in the period January 2014 to March 2015. NTPC had claimed the Weighted average price of coal (as received) at Rs. 2249.40/MT for the period January 2014 to March 2014, as per FORM-15. The methodology for computing the weighted average price of coal for the 2014–19 period has already been clarified by this Commission in its Order dated 15.12.2017 in Petition No. 28/RP/2017 (Sipat STPS Stage II), and NTPC has adopted the same methodology in its submission. However, the Commission has allowed a weighted average price of Rs. 1961.73/MT for the purpose of IOWC, which appears to have been derived by applying the ‘blending ratio of coal.’ In view of the foregoing, it is respectfully prayed that the calculation be rectified in accordance with the ‘total landed cost method’ as per the clarified methodology.

Reply of the Respondent No. 2, Bihar State Power Holding Company Limited (BSPHCL)

The Respondent BSPHCL, in its reply dated 28.08.2024, has submitted as under:

Issue of disallowance of water charges

6. the Review Petition should be dismissed at the outset as it does not meet the legal requirements for a review for the following reasons:



- (a) Allowance of water charges on the basis of water consumption is strictly in terms of Regulation 29(2) of the 2014 Tariff Regulations. The proviso to Regulation 29(2) clearly requires water charges to be allowed based on 'water consumption' and not on the allocated quantity or the actual payment made by the petitioner.
- (b) Further, pursuant to the terms of its agreement with the Government of Orissa, the Petitioner is required to pay water charges on the basis of allocation and does not retain any discretion to seek a reduction in payment.
- (c) In this regard, reliance may be placed on the following data recorded pertaining to the previous tariff period (2009-2014) in an order dated 16.02.2017 in Petition No. 293/GT/2014:

	2009-10	2010-11	2011-12	2012-13	2013-14
Allocated Water Quantity for station Stage-1 & II (Cusec)	75	80	85	120	120
Actual Water drawl Station Stage I & II (Cusec)	79.63	70.65	75.47	80.32	82.19

- (d) Evidently, despite being aware of the trend of its actual water consumption, Petitioner had sought allocation of much higher quantities of water (i.e., 120 cusecs in 2014-15, 2015-16, and 105 cusecs in 2016-17, 2017-18 and 2018-19). Further, the Petitioner's statement that "any station keeps a safety margin over and above the expected actual consumption as there are several factors affecting water consumption" is bereft of any particulars or reasoning (i.e., there is no quantum of "safety margin" specified, no justification on prudence provided, and no identification of the "several factors" affecting water consumption set out).



RE: WEIGHTED AVERAGE PRICE OF COAL

7. It is submitted that the contentions of the petitioner regarding the methodology adopted for arriving at the Weighted Average Price of Coal are entirely misconceived and misleading on the following grounds:

- (a) Upon comparison of the Petitioner's claimed cost of coal with the cost of coal claimed by the Petitioner in various tariff petitions pertaining to TSTPS (viz. 281/GT/2014, 293/GT/2014, and 392/GT/2020), the Commission has noted that "the month-wise landed cost, and the weighted average cost thereof claimed were at variance". Pertinently, the Petitioner has not furnished any reasons for the same. Further, it was apparent from the Petitioner's own claims in the three petitions that the blending ratio had been applied by the Petitioner in the computation of the cost of coal. The Petitioner has also not demonstrated that this Commission's reasoning with respect to the conduct of the Petitioner in three other tariff petitions, is factually incorrect.
- (b) Regulation 28(2) of the 2014 Tariff Regulations requires the cost of fuel for the "three months preceding the first month for which tariff is to be determined" to be considered for the determination of IWC.
- (c) In any event, the finding of this Hon'ble Commission is based on the prior treatment of coal cost claimed by the Petitioner for the same plant in its Tariff Petition No. 281/GT/2014 for 2014-19. Pertinently, the methodology used in a tariff petition cannot be subsequently changed in the Truing Up stage for the same plant as held in BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission, 2022 SCC OnLine SC 1450,



- (d) Additionally, this Commission has prudently determined the weighted average cost of coal by specifically factoring in the blending ratio while noting that the blending ratio should be applied as the same accounts for the price of coal "actually required for generation but not the excess quantity of coal procured at higher price"
- (e) The Impugned Order prudently limits the recovery of coal cost to that actually used in the generation of electricity.
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Rejoinder of the Petitioner to the above reply of BSPHCL

The Petitioner vide its affidavit dated 09.09.2024 in its rejoinder has submitted as under:

RE: Disallowance of water charges

8. As per Regulation 29(2) first proviso, "water charges shall be allowed based on water consumption." It is also submitted that, in the present petition, the actual consumption is as per the allocation. Once the actual water consumption is allowed, the actual payment made towards it ought to be allowed in line with the said Regulation.
9. Further, the payment towards water charges is being made by NTPC based on actual allocation and not actual consumption under the Water Agreement between NTPC and the Orissa State Irrigation Department. Since NTPC has no discretion to reduce the payment of water charges based on actual consumption, it is obligated to bear the expenses for the water allocated and has accordingly claimed the same.
10. Further, there will always be a difference between water allocation and water consumption since any station keeps a safety margin over and above the expected actual consumption, as there are several factors affecting water consumption, such



as the operating load, weather conditions, etc. Furthermore, the Government of Odisha is very strict about over drawl and imposes very heavy penalties for the same. In light of the above, the water allocation taken is higher than normal consumption. It is also submitted that the Water Agreement clearly states that the fee will be charged as per unit/quantity of water drawn or allocated whichever is higher.

11. NTPC had rightly submitted before the Commission the Water agreement and the cost incurred towards water charges under the Water Agreement. Therefore, the contention of Respondent No. 2 that NTPC did not provide requisite data to substantiate its claim for water charges in line with the actual payment made is wrong and denied.

RE: Weighted average price of coal

12. The Commission has compared the data submitted at the tariff stage with the data submitted at the true-up stage after the due audit and has held that there are discrepancies in the data. While this is the case, it cannot be contended that the difference in data submitted at the tariff stage with the data submitted at the true up stage be grounds for a discrepancy.

13. Furthermore, NTPC in the present petition has adopted the formula and calculations used by the Central Commission in Petition No. 28/RP/2017 in Petition No. 322/GT/2014, wherein the Central Commission clarified the methodology to be adopted for calculation of the weighted average price of coal. On account of this, it is submitted that the Commission has incorrectly calculated the weighted average price of coal and the same needs to be rectified by the Commission by exercise of its review powers.



14. In light of the aforementioned points, the reply filed by Respondent No. 2 is without any merits and is liable to be rejected.

Analysis and Decision

Issue of disallowance of water charges

15. The matter has been examined. With regard to the Petitioner's prayer for review of the disallowance of water charges in the impugned order, it is to be mentioned that the Commission at paragraph 129 in the order dated 29.3.2023 in Petition No. 392/GT/2020 with IA No.39/2021 truing-up of tariff of Talcher Super Thermal Power Station, Stage-II (2000 MW) for the period 2014-19 has observed that *'in terms of the first proviso to Regulation 29(2) of the 2014 Tariff Regulations, the water charges allowed are determined for Talcher STPS- Stage-I & II, based on actual consumption of water as submitted by the Petitioner. Further, as the actual water consumption is proportionate to the electricity generated, the water charges allowed are apportioned to Stages-I & II, on the basis of their actual generation, considering the generation during the period from 2014-15 to 2018-19'*. Further, it is observed that the Petitioner, in the instant review petition, has not raised any objections regarding errors in the calculation of allowed water charges. Instead, the Petitioner has sought a review of the methodology for calculating water charges based on actual allocation rather than actual consumption, as per the Water Agreement between NTPC and the Orissa State Irrigation Department. However, this aspect does not fall within the purview of the present review petition. As such, the Review Petition has a limited purpose and



cannot be an appeal in disguise. It is a settled position in terms of the judgment of the Hon'ble Supreme Court in *Parsion Devi v Sumitra Devi* (1997 8 SCC 715) that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC 1908 and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring the court to exercise its power of review. These principles of review have also been enunciated by the Hon'ble Supreme Court in its judgment in *Kamlesh Verma v. Mayawati and ors.* (AIR 2006 SC 75). We, therefore, find no reason to entertain the Review on this count. Accordingly, the prayer of the Review Petitioner for review of the impugned order is rejected as there is no error apparent on the face of the impugned order.

Issue of Weighted Average Price of Coal

16. The matter has been examined. With regard to the Petitioner's prayer for review of the Weighted Average Price of Coal allowed in the impugned order, it is to be mentioned that the Commission at paragraph 141 of the impugned order has observed as under:

“141. Regulation 30(6) of the 2014 Tariff Regulations provides for the computation of formulae for ECR, which is a function Landed Price of Primary Fuel (LPPF), and the same is mentioned as the weighted average landed price of primary fuel in Rupees per kg, during the month and in case of blending of fuel from different sources, the same shall be arrived in proportion to blending ratio and the same account for the price of coal is arrived for the coal actually required for generation



but not the excess quantity of coal procured at higher price. However, it appears that the Petitioner has computed the month-wise landed cost of coal in terms of the above in Petition nos. 281/GT/2014, 283/GT/2014, and 392/GT/2020, but not so in Petition No. 387/GT/2020 (this petition), i.e., without consideration of blending ratio. As regards the weighted average cost of coal claimed for the three months in Petition No. 392/GT/2020 and 387/GT/2020, it appears that the Petitioner has considered the simple average but not the weighted average month-wise landed cost of coal arrived, after accounting for the blending ratio.”

Further, it is also noticed that the Petitioner has not filed the instant review petition raising any error in the calculations of the weighted average landed price of coal, but to review the methodology of calculation of the weighted average landed price of coal. However, this aspect does not fall within the purview of the present review petition. As such, the Review Petition has a limited purpose and cannot be an appeal in disguise. It is a settled proposition of law as enunciated in terms of the judgment of the Hon’ble Supreme Court in *Parsion Devi v Sumitra Devi* (1997 8 SCC 715) that the review proceedings are not by way of an appeal and have to strictly confine to the scope and ambit of Order 47 Rule 1 of CPC 1908 and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring the court to exercise its power of review. These principles of review have also been enunciated by the Hon’ble Supreme Court in its judgment in *Kamlesh Verma v. Mayawati and ors.* (AIR 2006 SC 75). We, therefore, find no reason to allow the Review on this count.



Accordingly, the prayer of the Review Petitioner for review of the impugned order has no merits as there is no error apparent on the face of the impugned order.

17. Petition No. 25/RP/2024 in Petition No. 387/GT/2020 stands disposed of at the admission stage.

**Sd/
(Harish Dudani)
Member**

**Sd/
(Ramesh Babu V)
Member**

**Sd/
(Jishnu Barua)
Chairperson**

