

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 29/RP/2023

in

Petition No. 441/GT/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 24th March, 2025

IN THE MATTER OF:

Review of the Commission's order dated 27.4.2023 in Petition No. 441/GT/2020 pertaining to the tariff of Talcher STPS Stage-II (2000 MW) for the period 2019-24.

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. Andhra Pradesh Eastern Power Distribution Company Limited
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam – 530 013 - (AP)
2. Andhra Pradesh Southern Power Distribution Company Limited,
Corporate Office, Back Side Srinivasa Kalyana Mandapam
Tiruchhanur Road, Kesavayana Gunta, Tirupathi- 517 503 (AP)
3. Telangana State Northern Power Distribution Company Limited,
H.No. 2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda
Warangal – 506 001 (AP)
4. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office, Hyderabad (AP) – 500 063
5. Tamil Nadu Generation & Distribution Corporation Limited,
144, Anna Salai, Chennai – 600002
6. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle, Bangalore - 560 009
7. Mangalore Electricity Supply Company Limited,
MESCOM Bhavana, Corporate Office, Bejai, Kavour Cross Road,
Mangaluru-575004.



8. Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, No. 29, Vijayanagar, 2nd Stage,
Hinkal, Mysore-570017
9. Gulbarga Electricity Supply Company Limited,
Main Road, Gulbarga, Karnataka, Gulbarga-585 102
10. Hubli Electricity Supply Company Limited,
Corporate office, P.B. Road, Navanagar
Hubli – 580 025
11. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004
12. Electricity Department,
Puducherry 137, NSC Bose
Salai Puducherry- 605001
13. Grid Corporation of Orissa Limited,
Vidyut Bhavan, Janpath,
Bhubaneswar- 751022

..... Respondents

Parties Present:

Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Karthikeyan Murugan, Advocate NTPC

ORDER

Petition No. 441/GT/2020 was filed by the Review Petitioner, NTPC Limited, for approval of tariff of Talcher Super Thermal Power Station, Stage-II (2000 MW) (in short 'the generating station') for the period 2019-24, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations') and the Commission vide its order dated 27.4.2023 (in short, 'the impugned order') disposed of the said petition. Aggrieved by the impugned order, the Review Petitioner has filed the Review Petition on the ground that there is an error apparent on the face of the record on the following issues:

- (A) *Computation of Weighted Average price of coal resulting in a substantially lower Weighted Average price of Rs.1897.39/MT as against the claim of Rs.1944.33/MT;*
- (B) *Incorrect calculation of the cumulative depreciation at the end of FY 2023-2024, i.e., it has been taken as Rs.4,03,773.43 lakhs instead of Rs.4,50,615.55 lakhs;*



and

(C) *The manner of computation of Water Charges which has led to a disallowance of Rs.27.34 crores.*

Hearing dated 29.11.2023

2. The Review Petition was heard on 'admission', and the Commission, after hearing the oral submissions of the learned counsel for the Review Petitioner, admitted the Review Petition on 29.11.2023 on the issues raised in para 1 above and ordered notice on the Respondents, with directions to complete the pleadings in the matter. The Commission also directed the Review Petitioner to file an additional affidavit, correlating the submissions made in the Review Petition with the pleadings in the original petition (Petition No. 441/GT/2020), after serving a copy to the Respondents. In compliance thereof, the Review Petitioner has filed the additional affidavit during December, 2023. Reply has been filed by the Respondents KSEBL and TANGEDCO and the Review Petitioner has filed its separate rejoinders to the said replies.

Hearing dated 4.4.2024

3. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in support of the prayers in the Review Petition. However, the learned counsel for the Respondent TANGEDCO prayed that its reply may be considered while passing the order in the Review Petition. Accordingly, the order in the Review Petition was reserved.

Hearing dated 28.11.2024

4. However, as the order in the Review Petition could not be issued prior to the Members of the Commission, who formed part of the Coram, demitting office, the same was re-listed for hearing on 23.10.2024 but could not be taken up due to paucity of time. Thereafter, the Review Petition was heard through virtual mode on



28.11.2024, wherein the learned counsel for the Review Petitioner circulated notes of arguments and made detailed oral submissions in the matter. None appeared on behalf of the Respondents, despite notice. The Commission, after hearing the learned counsel for the Review Petitioner, permitted the parties to file their written submissions, if any, on or after serving a copy to the other side. Subject to the above, the order in the Review Petition was reserved.

5. Based on the submissions of the parties and the documents on record, we proceed to examine the issues raised in the Review Petition, as stated in the subsequent paragraphs.

A. Computation of Weighted Average price of coal resulting in a substantially lower Weighted Average price of Rs.1897.39/MT as against the claim of Rs.1944.33/MT

Submissions of the Review Petitioner

6. The Review Petitioner, in the Review Petition, has mainly submitted as under:

(a) The issue above has three subcomponents, first, the incorrect methodology considering blending ratio for calculation of the Weighted Average price of coal, the second, the non-consideration of the charges, i.e., diesel charges on imported coal, domestic rail, and third, on the other charges, such as stone picking charges, loco drivers charges, sampling charges, etc

(b) Because the decision of this Commission in para 123 of the impugned order has assumed the Weighted Average price of coal, considering the blending ratio to be 97.2: 2.8, is based on the average three months blending for the period October to December 2018, there is an error apparent on the face of record, since it is against the provisions of the Regulation 43(2) of the 2019 Tariff Regulations, providing for the calculation of Energy Charge Rate (ECR) based on the Weighted Average landed fuel cost of fuel.

(c) Because the actual coal procured from the domestic and imported sources for the period October 2018 to December 2018, which has yielded a blending ratio of 97.2:2.8, will never give the Weighted Average price of coal for the subsequent months. It is also a fact that due to a substantial shortage of domestic coal, NTPC had to rely on imported coal and blend the same to ensure the availability and supply of power to all the beneficiaries across its generating stations.

(d) Because this Commission, in its order dated 15.12.2017 in Petition No. 28/RP/2017 in Petition No. 322/GT/2014 [tariff of Sipat STPS, Stage-II (1000 MW)],



accepted that an assumed blending ratio is an error apparent on the face of the record. The Petitioner had claimed the Weighted Average price of coal (as received) as Rs 1944.33 /MT by considering the total landed cost of coal and total of net coal supplied in the period Oct'18 to Dec'18 as per Form-15 ($7650119009.12 / 3934382.25 = 1944.33$).

(e) Because on the second and third limb of computation of the Weighted Average landed cost of fuel, this Commission incorrectly disallowed the cost of diesel in transporting coal through domestic-rail and imported coal. Further, Other charges such as stone picking charges, Loco driver salary, sampling charges, etc., for both domestic and imported coal have been disallowed, resulting in a disallowance of approx. Rs 11.145 crores under the head 'Others' (Stone picking, Loco drivers' salary, Sampling charges, etc.)

(f) The station has the MGR track, to which the external railway track gets integrated at a point called the exchange yard, which is around 35 kms away. The MGR tracks were not electrified till January '2022. This led to the use of diesel locos to carry the imported coal from the exchange yard till the point of offloading in the plant. As mentioned, the MGR tracks were electrified (OHE), and overhead electrification was completed in January 2022, as enclosed in Annexure C. Hence the diesel charges incurred in case of imported coal may be allowed.

(g) Because the finding of this Commission at para 123 of the impugned order that the 2019 Tariff Regulations does not allow the 'Other charges' is an error apparent on the face of the record. The 2019 Tariff Regulations provide for the recovery of the landed cost of fuel as part of the ECR under Regulation 43(2) of the 2019 Tariff Regulations. There is no prohibition or differentiation given in the above regulation on the category of charges to be allowed or disallowed in the computation of the landed price of fuel.

(h) Because in an identical dispute between NTPC and one of its beneficiaries, i.e., Respondent KSEBL for the period 2014-19, the Commission vide order dated 11.7.2018 in Petition No.93/MP/2017 (KSEB vs NTPC & anr) inter-alia held that the claim of NTPC under other charges is not illegitimate.

(i) Because the '*other charges*,' such as disallowance of the diesel charges used in transporting the coal, are only the components that help at the Weighted Average price of coal and cannot obviously be prohibited under the 2019 Tariff Regulations. In this regard, it is a well-settled principle of law, as noted by the Hon'ble Supreme Court in Rajendra Prasad Gupta vs. Prakash Chandra Mishra (2011) 2 SCC 705, that as a matter of general principle, prohibition cannot be presumed. Reference may also be made to the following cases (i) New India Assurance Co. Ltd -v- R. Srinivasan (AIR 2000 S.C. 941) (ii) P.R.M. Abdul Huq – v- Katpadi Industries Ltd (AIR 1960 Mad. 482).

(j) Because the non-consideration of the above issues has led to a substantial disallowance and the Weighted Average cost of fuel has been worked out at Rs



1897.39/MT as against Rs 1944.33/MT

Reply of the Respondents TANGEDCO and KSEBL

7. Respondents TANGEDCO and KSEBL, vide reply affidavits dated 12.1.2024 and 19.1.2024, have mainly submitted the following:

(a) As per Regulation 34(2) of the 2019 Tariff Regulations, the cost of coal to be considered for calculating the working capital shall be only the landed cost of coal and not the cost of coal consumed for three months. Further the term 'working capital' means the fund actually deployed and is in circulation and is calculated by subtracting current liabilities from current assets. Hence, the cost considered for working capital shall be only the actual cost incurred based on the actual procurement and not on the consumption for specific three months. Therefore, the Commission has restricted the coal quantum based on the actual coal procurement.

(b) The station is a pit head station, and therefore, there is no possibility of blending 17.26% imported coal for all the months throughout the tariff period of five years during 2019-24. Hence, the claim of the Petitioner will be illegitimately burdening the beneficiaries and end consumers and hence shall be dismissed. Further, in the impugned order, the Commission has adopted the blending ratio at the receipt level. Whereas, in the present case, the actual procurement of imported coal itself is 2.8% only and NTPC has proceeded to claim 17.26% towards the cost of imported coal, which has been rightly disallowed by the Commission. Only the actual cost of procurement of coal ought to be allowed.

(c) As regards the disallowance of stone picking charges, loco driver charges, sampling charges, etc., the aforementioned expenses are covered under the O&M expenses of any thermal station. The Commission has also observed that the 2019 Tariff Regulations do not allow 'other charges. Hence, the claim of NTPC is tantamount to challenging the regulations and may not be allowed. Further, the unlawful enrichment to the generator due to the increase claimed will be around Rs. 805 lakhs for the five-year period.

Rejoinder of the Review Petitioner

8. The Review Petitioner, in its rejoinder affidavit, has mainly reiterated its submissions in the Review Petition. However, it has added that Regulation 43 (2) deals with the formula to calculate the ECR, while Regulation 34 (1) gives the formula to calculate the working capital, which is on a normative basis. While stating that there is no question of going by the ratio of the actual procured coal, the Review Petitioner has



pointed out that the blending ratio will not be the same throughout the tariff period of 5 years during 2019-24; however, since the landed price of coal is being found to determine the interest on working capital, a fair and correct formula should be used by this Commission in arriving at the said landed cost of fuel.

Analysis and Decision

9. The matter has been examined. As regards the Weighted Average price of coal, the Commission in the impugned order dated 27.4.2023, observed as under:

“123. It is observed that the Petitioner has used both the secondary oils i.e. LDO and HFO. Whereas, it has considered opening stock and value thereof in applicable form w.r.t. oil. As per the details submitted by the Petitioner, it is observed that HFO is the prominent secondary oil used by the Petitioner. Accordingly, in terms of Regulation 34(1)(a)(iii) of the 2019 Tariff Regulations, in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary oil is to be considered for allowing two months of secondary oil cost in the working capital. Accordingly, the cost of HFO and GCV thereof have been considered in the working capital. In regards to coal, it is noted that the Petitioner has claimed ‘Cost of Diesel in Transporting Coal through MGR system, if applicable’ and ‘Others (Stone picking charges, Loco Driver’s salary, Sampling charges etc.)’ for the coal supplied through Railways as well as imported coal. However, the 2019 Tariff Regulations do not allow ‘Others charges (Stone picking charges, Loco Driver’s salary, Sampling charges etc.)’. In addition, the diesel charges are applicable only for the coal supplied through MGR. It is also noted that Petitioner has claimed higher loss in GCV of imported coal i.e., difference in GCV (billed) and GCV (received), however, the GCV measurement and billing of imported coal are being done at the Petitioner premises and no justification has been provided by the Petitioner for such difference, the loss of GCV in imported coal is not considered. Further, even though quantity of imported coal is low i.e., ratio of coal procured through domestic sources and imported is around 97.2: 2.8, the Petitioner has claimed blending ratio in the range of 67.04 % to 17.26 %, which is inconsistent. Accordingly, the actual coal procured from domestic sources and imported during Oct, 2018 to Dec, 2018 i.e., blending ratio of 97.2: 2.8 has been considered to determine weighted average GCV and weighted average cost of coal for the period 2019-24. Considering the above, the weighted average price and GCV of coal and oil claimed and allowed are as follows:

	Claimed	Allowed
Weighted average price of coal (Rs. /MT)	1944.33	1897.39
Weighted average GCV of coal (kCal/kg) *	2706.77	2701.2
Weighted average price of oil (Rs. /KL)	42,043.54	42,043.54
Weighted average GCV of oil (kCal/Ltr.)	9998.00	9998.00

** Weighted average GCV of coal as received net of 85 kCal/kg.”*

10. From the observations of the Commission in para 123 of the impugned order as quoted above, it is evident that even though the quantity of imported coal is low, i.e., the ratio of coal procured through domestic sources and imported is around 97.2: 2.8, the Review Petitioner had claimed the blending ratio in the range of 67.04% to 17.26%,



which in our view, is inconsistent. Accordingly, the actual coal procured from domestic sources and imported during the period October 2018 to December 2018, i.e., a blending ratio of 97.2: 2.8, was considered to determine the Weighted average GCV and the Weighted average cost of coal for the period 2019-24. Therefore, the Commission, by a conscious decision, had considered the blending ratio of 97.2:2.8 for the period October 2018 to December 2018 for the purpose of the Weighted Average price of coal. In view of this, we find no error apparent on the face of the order.

11. As regards the Review Petitioner's prayer in respect of the diesel charges in transporting coal through domestic rail and imported coal, we note that the Commission, in para 123 of the impugned order, observed as *"In regards to coal, it is noted that the Petitioner has claimed 'Cost of Diesel in Transporting Coal through MGR system, if applicable' and 'Others (Stone picking charges, Loco Driver's salary, Sampling charges etc.,)' for the coal supplied through Railways, as well as imported coal. However, the 2019 Tariff Regulations do not allow 'Others charges (Stone picking charges, Loco Driver's salary, Sampling charges etc.,)'. In addition, the diesel charges are applicable only for the coal supplied through MGR. It is also noted that Petitioner has claimed higher loss in GCV of imported coal i.e., difference in GCV (billed) and GCV (received), however, the GCV measurement and billing of imported coal are being done at the Petitioner premises"*. Therefore, we observe that the Commission, by a conscious decision, had disallowed the claims of the Review Petitioner towards diesel charges on imported coal and coal transported through domestic rail because the billing of imported coal was done at the Review Petitioner's premises, and diesel charges are applicable only for coal supplied through MGR.

12. As regards the Review Petitioner's prayer in respect of 'Other Charges' such as Stone picking charges, Loco driver salary, sampling charges, etc., the Commission



disallowed the said charges in para 123 of the impugned order. We have examined the matter. We observe that the costs indicated by the Review Petitioner towards 'Other Charges' are in the nature of incidental costs involved in bringing coal up to the unloading point and may be allowed in terms of the 2019 Tariff Regulations. We also note that the Commission, in its order dated 11.7.2018 in Petition No. 93/MP/2017, observed as under:

"27. In the meeting held on 27.10.2017 between the Petitioner and MPL, the Petitioner informed that MPL has submitted all the invoices relating to the expenses coming under "Other Charges". However, no supporting details for the rates adopted in the invoices were furnished by MPL. In the said meeting, MPL stated that MPL has not made any deviation in Form-15, instead the transportation charges are divided into two parts for better clarity. MPL vide its affidavit dated 16.5.2018 has furnished the break-up of "Other Charges" and has submitted that by the very nature of the charges claimed by MPL under "Other Charges", these cannot form part of O&M expenditure. Accordingly, the expenses claimed under "Other Charges", being legitimate fuel handling expenses, the Commission may allow the generating stations to include the same under the fuel expenses. Therefore, it has stated that the contention of the Petitioner is devoid of merit and ought to be rejected. MPL has furnished category-wise breakup of the charges included under the head "Other Charges", namely documentation of coal, coal feeding through track hopper, maintenance of road for coal transportation and providing signage, coal dust handling, weigh bridge/RFID operation, coal sampling, toll tax, statutory stamping fees and lease Rent of DMGS (Damagoria siding).

28. The 2014 Tariff Regulations provides for computing the energy charges considering the landed price of fuel. Landed price would take into account charges paid to Coal Company, the transportation cost and all incidental costs involved in bringing coal upto the unloading point. The expenses indicated by NTPC and MPL are in the nature of incidental costs involved in bringing coal upto the unloading point.



These charges have been shown separately only to indicate them as charges paid in addition to what is paid to coal companies and transportation companies and are therefore, part of landed cost of fuel. Therefore, the claim under other charges is not illegitimate as pleaded by the Petitioner.”

In light of the above discussions and findings, the Commission is of the view that review in respect of ‘Other Charges’ is allowed. However, keeping in view that the truing-up of tariff for the period 2019-24 in respect of this generating station has been filed by the Review Petitioner before this Commission and is pending consideration, the Review Petitioner’s claim in respect of ‘Other Charges’ shall be considered while dealing with the petition for truing-up the tariff of the generating station for the period 2019-24. The Petitioner shall furnish the details regarding ‘Other Charges’ with cost break-up along with supporting documents at the time of truing-up of tariff. We direct accordingly.

B. Incorrect calculation of the cumulative depreciation at the end of 2023-24 i.e., it has been taken as Rs.403773.43 lakhs instead of Rs.450615.55 lakhs

Submissions of the Review Petitioner

13. The Review Petitioner has submitted that there is an error apparent on the face of the impugned order, as the cumulative depreciation at the end of 2023-24 has been taken in the table at Para 86 as Rs 403773.43 lacs instead of Rs 450615.55 lacs. Accordingly, the Review Petitioner has submitted that the review may be allowed, and the calculation error may be corrected in the impugned order. None of the Respondents have raised objections on this issue.

Analysis and Decision

14. We have examined the matter and the calculations thereunder and observe that



the correct figure of cumulative depreciation is Rs. 450615.55 lakhs instead of Rs. 403773.43 lakhs considered in the impugned order at the end of the year 2023-24. This, according to us, is an error apparent on the face of the impugned order and the inadvertent error is to be rectified. Accordingly, a review on this count is allowed. However, keeping in view that the truing-up of tariff for the period 2019-24 in respect of this generating station has been filed by the Review Petitioner before this Commission and is pending consideration, the inadvertent error in respect of the figure of cumulative depreciation shall be rectified while dealing with the petition for truing-up the tariff of the generating station for the period 2019-24. We direct accordingly.

C. The manner of computation of Water Charges which has led to a disallowance of Rs.27.34 crores

15. The Commission in the impugned order dated 27.4.2023, allowed water charges as under:

*“97. We have examined the matter. It is observed that the Commission vide its order dated 29.3.2023 has allowed Rs.3721.93 lakh in 2018-19 for the generating station. It is also noticed that the 2019 Tariff Regulations specifies 3.5 m³ / MWh and the water charges for 2018-19 are at Rs.6.72 / m³ and the water resources department specifies for 10% annual escalation. Considering the above and applicable NAPAF for the period 2019-24, the water charges allowed **on projection basis**, are as under:*

	Units	2019-20	2020-21	2021-22	2022-23	2023-24
Projected Gross Generation @ 85% load factor	MW Hr	14932800	14892000	14892000	14892000	14932800
Normative Specific Water Consumption as per MoEF&CC norm	Cubic Meter/MWh	3.5	3.5	3.5	3.5	3.5
Normative Water Consumption as per MoEF&CC norm	Cubic Meter	52264800	52122000	52122000	52122000	52264800
Rate of Water Charges based on 2018-19 approved rates	Rs. / Cubic Meter	7.39	8.13	8.94	9.84	10.82
Total Normative Water Charges	(in Rs. lakh)	3863.41	4238.14	4661.96	5128.15	5656.42

Submissions of the Review Petitioner

16. The Review Petitioner, in the Review Petition, has mainly submitted as under:



(a) Because the decision of this Commission in para 97 of the impugned order amounts to an error apparent on the face of the record. As against the claim of Rs 262.82 crores, which was based on the water allocation methodology and being actually paid by NTPC, this Commission permitted only Rs 235.48 crores, thereby, disallowing an amount of Rs 27.34 crores.

(b) The methodology assumed by this Commission of escalating the rate of Water charges prevalent in 2018-19 by 10% year-on-year is not provided for in Regulation 35(1)(6) of the 2019 Tariff Regulations. On the contrary, the Water charges are to be based on the type of plant, type of cooling water system, etc. NTPC provided the actual water charges based on the allocation. Even the Respondent KSEBL has admitted that the Tariff Regulations provide for allowing the actual Water charges, after prudence check. However, applying a 10% annual escalation on the charges prevalent in 2018-19 amounts to a normative determination that is not contemplated under the 2019 Tariff Regulations.

(c) The agreement between the Orissa State Irrigation department and NTPC Talcher station, clearly indicates that the fee will be charged as per the unit /quantity of **water drawn or allocated, whichever is higher**. The water agreement has been enclosed as Annexure E. Further, NTPC is bound by the terms and conditions of the Water agreement with the Orissa State, which may differ from State to State, and NTPC in order to get the uninterrupted supply of water for its station, has to abide the terms set in the agreement.

(d) NTPC has to pay the Water charges on an allocation basis to the State Government and hence has claimed the same. NTPC would also like to point out that there will always be a difference between the Water allocated and the actual/normative water consumption, as any station keeps a safety margin over and above the expected actual consumption, as there are several factors affecting the water consumption. Secondly, as per the water agreement, NTPC will have to pay over six times the penalty charge in cases of over-drawl. In addition to it, the excess drawl is permissible for a maximum period of six months, within which the licensee shall have to apply for a higher allocation of water, with reasons, and where the licensee fails to apply for such a higher allocation or where the licensee is refused for such higher allocation, the agreement shall be liable to cancellation, and the water supplied shall be stopped thereafter. Considering the factors above, it is very important to have an adequate margin of safety (allocation quantity) over actual/normative water consumption.

(e) In view of the above, it is most submitted that there is an apparent error on the face of the record in the Water charges for O&M expenses allowed in the impugned order, and the same needs to be rectified accordingly by considering the total water charges on allocation basis for the station for the period 2019-24 as NTPC is bound to honour the agreement with the State, in order to get uninterrupted supply of water to run its plant smoothly.



(f) Because in the alternative, this Commission ought to permit NTPC to raise this issue at the time of truing up, when the actual numbers would be available. If the same is higher than what has been allowed, the carrying cost also ought to be permitted

Reply of the Respondents TANGEDCO and KSEBL

17. The Respondents, in their rejoinder affidavit, mainly submitted the following:

(a) Regulation 35(1)(6) of the 2019 Tariff Regulations states that Water charges shall be allowed based on water consumption, depending upon the type of plant, type of cooling water system, etc., subject to prudence check and the details regarding the same shall be furnished with the petition. As per the above Regulation, the water charges shall be allowed based on the consumption of water depending on the type of plant, type of cooling water system, etc., and not based on the projection of the generating company.

(b) As per MOEFCC notification dated 7.12.2015, water consumption shall be 3.5 m³/ MWh for thermal generating stations. The base price of water has been derived from the impugned order for the same station for the period 2014-19, which is Rs. 6.72/ m³. Allowing 10% annual escalation on the charges prevalent in 2018-19 as mentioned in the agreement signed by NTPC with the Government of Odisha as per sub-rule 2(f) under Section 23(A) of the Odisha Gazette No.1716 dt: 24.9.2016, the rate of water has been arrived as Rs. 7.39/ m³ for 2019-20 and increased with 10% escalation every year. Hence, there is no mistake in the methodology adopted by the Commission in allowing the water charges, and the claim of NTPC may be disallowed.

(c) As regards NTPC's prayer to raise the issue at the time of truing up and to permit the carrying cost if the same is higher than what has been allowed., it is submitted that the water charges are approved based on the actual consumption and with a 10% escalation over the charges as per the agreement with the Odisha State Irrigation Department. Hence, there is no ground for review, and the claim may be dismissed.

(d) It is also noticed that the 2019 Tariff Regulations specifies water consumption at 3.5m³/MWh and the Water charges for 2018-19 are at 6.72/m³, and the Water Resources department specifies 10% annual escalation. Hence, there is no error in the methodology for the water charges approved by the Commission.

Rejoinder of the Review Petitioner

18. The Review Petitioner, in its rejoinder affidavit, mainly submitted as under:

(a) The agreement does not provide for the annual escalation of 10% as claimed by TANGEDCO. In fact, the agreement between the Orissa State Irrigation Department and NTPC clearly indicates that the fee will be charged as per the quantity of the water drawn or allocated, whichever is higher. Furthermore, NTPC



is bound by the terms and conditions of the Water agreement with the Orissa State, in order to get an uninterrupted supply of water, which is essential for generation. Hence the same ought to be allowed by this Commission.

(b) The methodology adopted by this Commission for the escalation of water charges from 2018-19 by 10% year on year is not provided for under Regulation 35 (1) (6) of the 2019 Tariff Regulations. The Regulation clearly without any iota of doubt, states that the water charges shall be allowed based on the water consumption based on other factors such as type of plant, cooling system, etc. Thus, having provided the actual water charges based on allocation, the same ought to be allowed by this Commission as envisaged under the Regulation. Whereas, applying the 10% annual escalation on the charges prevalent in 2018-19, amounts to a normative determination which is not contemplated by the Tariff Regulations, 2019.

(c) NTPC, in its submissions dated 29.12.2023 (Consolidated petition page No 155-156, has also stated that water charges should be considered taking projected generation@ 100 % load factor instead of 85% load factor.

(d) Thus, in view of the above, there is an apparent error on the face of the record in the Water charges for O&M expenses allowed in the impugned order, and the same needs to be rectified by considering the water charges on an allocation basis, since NTPC is duty bound to honour the agreement with the State Government in order to get uninterrupted supply of water to run its plant smoothly.

Analysis and Decision

19. We have examined the rival submissions. Proviso to Regulation 35(1)(6) of the 2019 Tariff Regulations provides as under:

“35(1)(6) The Water, Security Expenses and Capital Spares for thermal generating stations shall be allowed separately and after prudence check:

Provided that water charges shall be allowed based on water consumption depending upon type of plant, type of cooling water system etc., subject to prudence check. The details regarding the same shall be furnished along with the petition:

20. It is pertinent to mention that the Commission, in paragraph 129 of the order dated 29.3.2023 in Petition No. 392/GT/2020 (truing-up of the tariff of this generating station for the period 2014-19), observed as under:

“129. 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 (Stage I –



6921.98 MUs, 7252.27, 7011.26, 7045.40, 6449.85 MUs and Stage II-15296.35, 15229.80, 14361.34, 14446.13, 13403.08 MUs), as per the data of the respective RPC. Accordingly, the details of the water charges allowed for the generating station are as follows”
xxx

21. Therefore, the Commission, vide order dated 29.3.2023 in Petition No. 392/GT/2020 (truing-up of the tariff of this generating station for the period 2014-19), observed that 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. Regulation 35(1)(6) of the 2019 Tariff Regulations, inter alia, provides for a claim towards water charges, which shall be allowed based on water consumption depending upon the type of plant, type of cooling water system, etc., subject to prudence check. We further observe in para 97 of the impugned order that *“the Commission vide its order dated 29.3.2023 has allowed Rs.3721.93 lakh in 2018-19 for the generating station. It is also noticed that the 2019 Tariff Regulations specifies 3.5 m³ / MWh and the water charges for 2018-19 are at Rs.6.72 / m³ and the water resources department specifies for 10% annual escalation. Considering the above and applicable NAPAF for the period 2019-24, the water charges allowed on projection basis”*. Therefore, we observe that the total normative water charges have been allowed by the Commission on a projection basis considering the projected Gross Generation @ 85% load factor. It is further clarified that the aforesaid water charges on a projection basis, shall be allowed to the Petitioner to the extent of actual water consumption by this generating station at the time of truing-up of tariff for the period 2019-24. In view of this, we find no error apparent on the face of the order.

22. In addition to the above, the Commission observes that the Review Petitioner, in the review petition, has not raised objections with regard to any errors in the calculation of the water charges allowed but has instead sought a review of the methodology for calculating the water charges, based on the actual allocation, rather than on actual



consumption as per the Water Agreement between NTPC and the Orissa State Irrigation Department.. In view of the above we find no reason to review the impugned order on this count. 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. Accordingly, there is no error apparent on the face of the impugned order and the prayer of the Review Petitioner for review of the impugned order on this ground is rejected.

23. Issues (A), (B), and (C) are disposed of accordingly.

24. Review Petition No 29/RP/2023 is disposed of in terms of the above.

Sd/
(Harish Dudani)
Member

Sd/
(Ramesh Babu V.)
Member

Sd/
(Jishnu Barua)
Chairperson