

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 94 of 2006**

**Dated: March 30, 2007**

Present:

**Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

NTPC Limited,  
NTPC Bhawan, Scope Complex,  
7, Institutional Area, Lodi Road,  
New Delhi.

..... Appellant

V/s.

1. Central Electricity Regulatory Commission  
Through its Secretary,  
7<sup>th</sup> Floor, Core-3, Scope Complex,  
Lodhi Road, New Delhi-110 003.
2. Uttar Pradesh Power Corporation Ltd.,  
Shakti Bhawan, 14 Ashoka Marg,  
Lucknow - 226 001.
3. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer, Rajasthan.
4. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath, Jaipur 302 005  
Rajasthan.
5. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area, Jodhpur,  
Rajasthan.
6. Delhi Transco Limited,  
Kotla Road,  
New Delhi.

7. Punjab State Electricity Board,  
The Mall,  
Patiala- 147 001.
8. Haryana Vidyut Prasaran Nigam Limited,  
Shakti Bhawan, Sector VI, Panchkula  
Haryana-134 109.
9. Haryana Power Generation Company Limited,  
Shakti Bhawan, Sector VI, Panchkula,  
Haryana-134 109.
10. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan,  
Shimla – 171 004,  
Himachal Pradesh.
11. Power Development Department,  
Through its Commissioner,  
Government of Jammu & Kashmir,  
Mini Secretariat, Jammu.
12. The Chief Engineer-cum-Secretary,  
Engineering Department,  
Chandigarh Administration,  
Sector-9, Chandigarh.
13. Uttaranchal Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun-248 001.
14. Madhya Pradesh State Electricity Board,  
Shakti Bhawan, Vidyut Nagar,  
Jabalpur 482 008.
15. Maharashtra State Electricity Distribution Co. Ltd.,  
Prakashgad, Bandra (East),  
Mumbai 400 051.
16. Gujarat Urja Vikas Nigam Ltd. (GUVNL),  
Vidyut Bhawan, Race Course,  
Vadodara – 390 007

17. Chattisgarh State Electricity Board,  
P.O. Sundar Nagar,  
Danganiya,  
Raipur.
18. Government of Goa,  
Through its Chief Engineer (Electricals),  
Electricity Department,  
Vidyut Bhawan,  
Panaji, Goa
19. Electricity Department,  
Administration of Daman & Diu,  
Daman – 396 210.
20. Electricity Department,  
Administration of Dadra & Nagar Haveli,  
Silvasa.
21. Transmission Corporation of Andhra Pradesh,  
Vidyut Soudha, Khairatabad  
Hyderabad-500 049.
22. A.P. Eastern Power Distribution Co. Ltd.,  
(APEPDCL),  
Sai Shakti Bhavan,  
30-14-09, Near Saraswathi Park,  
Visakhapatnam.
23. A.P. Southern Power Distribution Co. Ltd.,  
(APSPDCL),  
H. No. 193-93 (M) Upstairs,  
Renigunta Road, Tirupathi
24. A.P. Northern Power Distribution Co. Ltd.,  
(APNPDCL),  
Opp. NIT Petrol Pump,  
Chaitanyapuri, Warangal
25. A.P. Central Power Distribution Co. Ltd.,  
(APCPDCL),  
Singareni Bhavan,  
Red Hills, Hyderabad.

26. Karnataka Power Transmission Corpn. Ltd.  
Cauvery Bhawan,  
Bangalore- 560 009.
27. Bangalore Electricity Supply Co. Ltd.,  
Krishna Rajendra Circle,  
Bangalore- 560 009.
28. Mangalore Electricity Supply Co. Ltd.,  
Paradigm Plaza, A.B. Shetty Circle,  
Mangalore-575 001.
29. Chamundeshwari Electricity Supply Corporation Ltd.  
927, L.J. Avenue, New Kantharajours Road,  
Saraswathi Puram,  
Mysore-570 009.
30. Gulbarga Electricity Supply Co. Ltd.,  
Main Road, Gulbarga,  
Karnataka.
31. Hubli Electricity Supply Co. Ltd.,  
IInd Floor, Eureka Junction,  
T.B. Road, Hubli – 560 029.
32. Kerala State Electricity Board,  
Vaidyuthi Bhavan,  
Pattam,  
Trivandrum-695 004.
33. Government of Pondicherry,  
Through its Superintendent Engineer,  
Electricity Department,  
Pondicherry-605 001.
34. Tamil Nadu Electricity Board  
No. 800, Anna Salai,  
Chennai-600 002.
35. Grid Corporation of Orissa Ltd.,  
Vidyut Bhawan, Janpath,  
Bhubaneshwar – 751007.

36. Damodar Valley Corporation,  
DVC Tower, VIP Road,  
Calcutta- 700 054
37. Bihar State Electricity Board,  
Vidyut Bhawan, Bailey Road,  
Patna-800 021.
38. West Bengal State Electricity Board,  
Vidyut Bhawan, Block 'DJ',  
Sector-11, Salt Lake City,  
Calcutta-700 091.
39. Government of Sikkim,  
Through its Commissioner & Secretary,  
Department of Power,  
Gangtok-737 101.
40. Jharkhand State Electricity  
Engineering Bhawan, HEC,  
Dhurwa, Ranchi – 834 004. ... Respondents

Counsel for Appellant(s) : Mr. M.G. Ramachandran

Counsel for Respondent(s) : Ms. Yogmaya Agnihotri for CSEB  
Mr. Pradeep Misra for U.P.P.C.L.  
Mr. R.B. Sharma for BSEB

Mr. S.K. Dubey for DTL (Rep.)  
Mr. T.P.S. Bawa for PSEB (Rep.)  
Mr. D. Khandelwal, ED, (Rep.)

### **JUDGMENT**

**Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

This appeal has been filed by the Appellant, N.T.P.C. Ltd.  
against the order of the Central Electricity Regulatory

Commission (for short 'CERC') dated April 26, 2006, whereby the CERC has rejected the claim of the appellant for booking the capital expenditure for establishing its Corporate Offices and various other offices in the tariff. The appellant is aggrieved of the order of the CERC rejecting the claim of the appellant.

2. The case of the appellant is that it has incurred capital expenditure to the tune of Rs. 370.30 crores as on April 1, 2004 for establishing its Corporate Office, Regional Offices, Transport & Custom Clearance offices, but the CERC has refused to take this amount into consideration for computation of tariff of the generating stations.

3. The capital expenditure incurred by the appellant on establishing the offices at corporate and regional levels etc. amounting to Rs. 370.30 crores as on April 1, 2004 cannot be taken into consideration for the determination of generation tariff of the generating stations. We have arrived at this

conclusion keeping in view the following historical background and the long delay in raising the claim:-

(a) The claim was made for the first time by the appellant by filing a petition, being Petition No. 74 of 2005 before the CERC on June 29, 2005. This petition was allowed to be withdrawn by the CERC with liberty to file a fresh petition.

(b) It was on January 9, 2006 that the appellant filed a fresh Petition, being Petition No. 3/2006 claiming capital cost of Rs. 370.30 crores as on March 31, 2004 for being taken into consideration for determination of tariff.

(c) It needs to be noted that the Government of India issued a Notification dated March 30, 1992 under Section 43 A (2) of the Electricity (Supply) Act, 1948 prescribing the operating norms for all generating stations whose financial packages were approved by the Central Electricity Authority (for short 'CEA') on or after March 30, 1992. These norms did not provide for considering capital cost incurred by the appellant on establishment of its Corporate Office or offices away from the generating stations for determination of tariff.

(d) Even in the several Tariff Notifications issued by the Central Government under Section 43 A (2) of the Electricity (Supply) Act, 1948 for determination of tariff for each of the generating stations of the NTPC, whose financial packages were approved by the CEA before March 30, 1992, no provision was made for taking into consideration the capital expenditure incurred by the appellant on establishment of Corporate office or any other field Offices not being part of the generating stations/Project for the purpose of calculating the tariff of the generating stations.

(e) After the enactment of the Electricity Regulatory Commissions Act, 1998 (for short, 'the Act of 1998'), which came into effect from March 25, 1998, the power to fix tariff of the generating companies owned or controlled by the Central Government were transferred from the Central Government to Central Electricity Regulatory Commission. The Central Electricity Regulatory Commission notified the Central Electricity Regulatory Commissions (Terms and Conditions of Tariff) Regulations, 2001 applicable to the generating

companies coming within the jurisdiction of the CERC. The Regulations were applicable for the period April 1, 2001 to March 31, 2004.

(f) The appellant for the tariff period, 2001-2004 did not claim any capital expenditure incurred by it on establishment of Corporate/Regional Offices or field Offices for determination of tariff for supply of electricity generated at its generating stations.

(g) The Act of 1998 was replaced by the Electricity Act, 2003. On March 26, 2004, the CERC framed Regulations called The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004. The appellant filed ARR for the period 2004-2009 but did not claim capital cost of the aforesaid offices for the purpose of determination of tariff. It was only sometime in 2005 that the appellant claimed capital cost for the determination of tariff of the aforesaid offices. In other words, the appellant did not claim capital expenditure incurred by it on establishment of Offices for

being taken into consideration for determination of tariff upto the year, 2004.

4. In the circumstances, therefore, it is too late in a day to claim the capital expenditure of Rs. 370.30 crores as on April 1, 2004 for determination of tariff. This controversy cannot be permitted to be raked up at such a belated stage. The question whether the appellant can claim capital expenditure incurred after 2004 on establishment of offices for managing the stations, is left open as it cannot be considered in this Appeal since the appellant has claimed capital expenditure as on April 1, 2004.

5. Accordingly, the appeal fails and is hereby dismissed.

**(Justice Anil Dev Singh)  
Chairperson**

**( A.A. Khan)  
Technical Member**

**Dated: March 30, 2007**