

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 125 of 2017

Dated : 09th May, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF :

NTPC Limited

NTPC Bhawan, SCOPE Complex
7, Institutional Area, Lodhi Road,
New Delhi – 110003

.... **APPELLANT**

Versus

1. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi- 110001
2. **Madhya Pradesh Power Management Company Limited**
Shakti Bhavan, Vidyut Nagar,
Jabalpur-482 008
3. **Maharashtra State Electricity Distribution Company Limited**
'Prakashgard', Bandra (East)
Mumbai-400 051
4. **Gujarat UrjaVikas Nigam Limited**
Sardar Patel Vidyut Bhawan
Race Course,
Baroda – 390007
5. **Chhattisgarh State Power Distribution Company Ltd**
Dhagania,
Raipur-492 013

6. **Electricity Department**

Govt. of Goa
Vidyut Bhavan,
Panaji, Goa - 403001

7. **Electricity Department**

Administration of Daman & Diu
Daman-396 210

8. **Electricity Department**

Administration of Dadra and Nagar Haveli
Silvassa - 396230

.... **RESPONDENTS**

Counsel for the Appellant(s)

: Mr. S. Venkatesh
Mr. Sandeep Rajpurohit
Mr. Vikas Maini
Ms. Nishtha Kumar
Mr. Somesh Srivastava
Ms. Ankita Bansa

Counsel for the Respondent(s)

: Mr. Ravin Dubey for R-2

J U D G M E N T

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. The Appellant - National Thermal Power Corporation Ltd (hereinafter referred to as '**NTPC**') is a generating company in terms of Section 2 (28) of the Electricity Act, 2003. It has power stations/projects at different places in different regions of the country. The present Appeal pertains to Vindhyachal Super Thermal Power Station Stage – III (1000 MW) (hereinafter referred to as '**VSTPS Stage–III**'). The Appeal is directed against the order dated 24.02.2017 in Petition No. 342/GT/2014 on the file of the Central Electricity Regulatory Commission (hereinafter referred to as '**CERC**').

2. The controversy came for consideration before CERC was with regard to projected capital expenditure towards installation of CCTV Surveillance System and installation of CCTV in Cable Gallery. The Appellant had claimed an additional expenditure of Rs.100 lakhs for the year 2015-2016, Rs.200 lakhs for the year 2016-2017, and Rs.200 lakhs for the year 2017-2018 towards CCTV Surveillance System for Stage III under Regulation 14(3)(iii) of 2014 Tariff Regulations. The Appellant seems to have proposed these expenditures for improving the safety and security of the plant equipment in line with the advice of top national security agencies. The Appellant also had claimed additional expenditure of Rs.100 lakhs for the year 2016-2017 and another Rs.100 lakhs for the year 2017-2018 for installation of CCTV in Stage III Cable Gallery which is also in line with Central Industrial Security Force (hereinafter referred to as '**CISF**') advice in order to keep watch so as to detect the fire, if any, at an initial stage as well as to monitor any movement inside the cable gallery during technical audit. This expenditure was not considered under Section 14(3)(iii) of the 2014 Tariff Regulations; but on the other hand, the Appellant was directed to meet the said expenditure through compensation allowance under Regulation 17 of the Tariff Regulations which is contrary to the recommendation made by the Assistant Commandant, CISF by a letter dated 02.02.2013 which was statutory in nature attracting Regulation 14(3)(iii).

3. The Appellant contends that the above said expenditure is not covered under Regulations 17 and there was no justification for CERC to disallow the said expenses on the ground that there was no documentary evidence placed on record by the Appellant. It also went wrong in opining that the Appellant was not clear as to the nature of directions given by the national security agency for requirement of the above said CCTV for Surveillance System as well as Cable Gallery. As a matter of fact, the Appellant was directed to submit certain additional information by CERC vide its Record of Proceedings dated 19.04.2016. The Appellant did submit the additional information and clarifications as required by CERC. However, no additional information qua CCTV Surveillance System and installation of CCTV in cable gallery was sought.

4. The second Respondent Madhya Pradesh Power Management Company Limited (hereinafter referred to as 'MPPMCL') objected to the claim of the Appellant on the grounds that the said expenditure has to be met from O & M and not as additional capital expenditure. Though the Appellant in its rejoinder to the reply of second Respondent explained the need of CCTV for Surveillance and cable gallery, no further objection pertaining to the so-called non-disclosure of details was raised; therefore, no additional submissions were made on this aspect.

5. By the impugned order, CERC disallowed the claim. Though the Appellant filed a review petition against the impugned order dated 24.02.2017, the same came to be rejected by the CERC. Under these circumstances, the Appellant has filed this Appeal against the impugned order dated 24.02.2017.

6. As against this, the second Respondent alone filed its reply. Contending that both the projects, i.e. CCTV Surveillance System and CCTV in Cable Gallery were not eligible to be considered under additional capital expenditure in terms of Regulation 14(3)(iii). Further, they contend that there is no evidence of any specific advice or “direction” for installation of CCTV Surveillance System and also CCTV in Cable Gallery. The letter dated 02.02.2013 written by CISF only refers to a technical audit done in 2009 advising installation of CCTV cameras in cable galleries of the power plant. Further, this letter does not seem to be so critical or urgent as evident from the laid back and relaxed approach of the Appellant in implementing the said advice. Further, there is lack of clarity in support of claim of additional capital expenditure proposed to be incurred, since CERC has to carry out prudence check as mandated in the Regulation 14(3)(iii) of Tariff Regulations 2014. Therefore, the letter dated 02.02.2013 from CISF is a request for update on the progress made regarding installation of CCTV in cable gallery. The second Respondent further contends that had the Appellant initiated timely action for installation of

CCTV in terms of recommendation of 2009, the additional expenditure incurred would have been treated in accordance with the provisions contained in Tariff Regulations of 2009.

7. The second Respondent contends that COD of Unit-1 was on 01.12.2006 and Unit II of VSTPS Stage–III on 15.07.2007. There is no proper explanation as to why said expenditure has not been covered in the original project cost and why it has been necessitated within two years after COD. They further contend that since the Appellant has deliberately delayed implementation of recommendations of CISF; CERC was justified in directing the said expenditure to be met from compensation allowance already approved for the project from 11th year onwards. Further, CERC was justified in disallowing the claim under Regulation 14(3)(iii) and had clearly clarified the reasons for rejecting the same in Review Order dated 03.10.2017. With these contentions, the second Respondent has sought for dismissal of the appeal.

8. Heard arguments of the learned counsel for the Appellant as well as the second Respondent at length.

9. During the course of arguments, the Appellant contended that though for VSTPS Stage–III, the additional capital expenditure under Regulation 14(3)(iii) was disallowed by CERC, the same came to be allowed in so far as Simhadri Super Power Thermal Power Station (1000

MW) for the period 2014-2019. In the original petition, NTPC had claimed projected additional capital expenditure of Rs.280 lakhs for the year 2015-2016 towards augmentation of fire fighting system; Commission had rejected the said claim vide order dated 27.06.2016. Further, a review petition came to be filed to review the order dated 27.06.2016. By order dated 27.01.2017 (para 13), the Commission allowed the said expenditure opining that the letter of Deputy Commandant, CISF falls within the scope of the Regulation 14(3)(iii) of Tariff Regulations. In this project, an additional capital expenditure of Rs.159 lakhs for 2016-2017 towards fire detection and protection system was projected. The claim was under Regulations 14(3)(ii) and 14(3)(iii). TANGEDCO, the Respondent in that case contended that the said expenses may be met out of the compensation allowance provided under Regulation 17 of the Tariff Regulations. NTPC also claimed additional capital expenditure towards IP security, i.e. Rs.300 lakhs for 2015-2016. This was also seriously contested by Respondent TANGEDCO. At para 30 of the Order dated 16.02.2017, CERC approved the additional expenditure of Rs.300 lakhs for 2015-2016 under Regulation 14(3)(iii).

10. The Appellant's counsel also placed reliance on the orders of CERC dated 08.08.2016 in Petition No. 219/GR/2014. This petition pertains to Ramagundam Super Thermal Power Station Stage-III (500 MW). Relevant portion of the order in this case reads as under:

“CCTV

15. *The petitioner has claimed actual additional capital expenditure of `6.12 lakhs in 2013-2014 for this asset and has submitted that the Commission vide order dated 7.5.2012 in Petition No. 256/2009 had allowed the projected additional capital expenditure of `106.31 lakh in 2009-10 and thereafter vide order dated 4.2.2014 in Petition No. 137/GT/2013 had allowed the actual capital expenditure of `9.09 lakh in 2011-12. The respondent, KSEB has submitted that the claim of the petitioner over and above the values approved by the Commission may be disallowed.*

16. *The matter has been examined. It is observed that no projected additional capital expenditure was allowed for the years 2012-13 and 2013-14 by Commission's order dated 4.2.2014 for this asset. However, considering the fact that the expenditure on CCTV is as per recommendations of the Intelligence Bureau (IB), Ministry of Home Affairs, Govt. of India, the actual additional capital expenditure of `6.12 lakh towards CCTV for 2013-14 is allowed.”*

11. The Appellant's counsel also relied upon (1961) 3 SCR 185 : AIR 1961 SC 1170 ; (1961) 1 LLJ 540 in the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Versus State of Uttar Pradesh & Others*. The reliance was in support of proposition that general provisions must yield to the special provision. Based on the principle laid down in this judgment of

the apex court, the Appellant contends that Regulation 17 is a general clause and Regulation 14 being special clause, Regulation 17 must yield to special provisions, i.e. Regulation 14.

12. The Second Respondent, in so far as Order dated 27.01.2017, contends that the ratio of the said order is not applicable to the facts of the present case since in the said order, there is no conclusive opinion of CERC that exercise of prudence check on the expenditure under Regulation 14(3) was bypassed and further contends that the prayer was allowed as a special case. In the said case also doubt has been raised as to whether the directions of Deputy Commandant, CISF is in terms of TAC guidelines established under Insurance Act of 1938 and whether the Petitioner has obtained any discount from the insurance company for augmentation of fire fighting system in terms of the said guidelines. Further, in the said case, NTPC was directed to place on record the compliance with the TAC guidelines.

13. Learned counsel for second Respondent so far as the Order dated 16.02.2017 in Petition No. 292/GT/2014, points out that at Para 30 of the said Order, there was no withholding of crucial details of scheme of installation of IP security cameras in the plant by the Petitioner generator for the exercise of prudence check by CERC. In so far as the Order dated 08.08.2016 in Petition No. 219/GT/2014, the ratio of the case is not

applicable to the facts of the present case since the claim of projected additional capital expenditure of Rs.6.12 lakhs for installation of CCTV cameras was in addition to previously approved capital expenditure for the said project. Therefore, there is no instance of withholding of critical information regarding the said expenditure from the State Commission or giving go by to prudence check. With these arguments, the second Respondent contending that the paramount consideration in order to approve the additional capital expenditure under Regulation 14(3)(iii) is being prudence check which could not be satisfactorily carried out by CERC on account of withholding of information by the Appellant; and that there is no reason to set aside the impugned order by allowing the present Appeal on consideration of facts and circumstances in which the said rejection was made by the Respondent CERC, sought for dismissal of the Appeal.

14. The points that would arise for our consideration are:

“Whether the Appeal deserves to be allowed?”, and “if so, on what ground?”

15. We have gone through the Appeal Papers in detail to appreciate the contentions raised by the parties. The relevant provisions required to be considered by us are Regulation 14 and Regulation 17 of the Tariff Regulation 2014, which read as under:

“3.

(2) **‘Additional Capitalisation’** means the capital expenditure incurred, or projected to be incurred after the date of commercial operation of the project and admitted by the Commission after prudence check, in accordance with provisions of Regulation 14 of these regulations;

... ..

(48). **‘Prudence Check’** means scrutiny of reasonableness of capital expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for determination of tariff. While carrying out the Prudence Check, the Commission shall look into whether the generating company or transmission licensee has been careful in its judgments and decisions for executing the project or has been careful and vigilant in executing the project;

14. Additional Capitalisation and De-capitalisation:

(1) The capital expenditure in respect of the new project or an existing project incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

... ..

(3) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following

counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

(i) *Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law*

... ..

(iii) *Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/internal security;*

(iv) *Deferred works relating to ash pond or ash handling system in the original scope of work;*

(v) *Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;*

(vi) *Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*

(vii) *Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal/lignite based stations or transmission system as the case may be. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration*

of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

... ..

Provided further that any capital expenditure other than that of the nature specified above in (i) to (iv) in case of coal/lignite based station shall be met out of compensation allowance:

... ..

17. Compensation Allowance:

(1) In case of coal-based or lignite-fired thermal generating station or a unit thereof, a separate compensation allowance shall be admissible to meet expenses on new assets of capital nature which are not admissible under Regulation 14 of these regulations, and in such an event, revision of the capital cost shall not be allowed on account of compensation allowance but the compensation allowance shall be allowed to be recovered separately.

(2) The Compensation Allowance shall be allowed in the following manner from the year following the year of completion of 10, 15, or 20 years of useful life:

Years of Operation	Compensation Allowance (Rs Lakh/MW/year)
0-10	Nil
11-15	0.20

16-20	0.50
21-25	1.00"

16. From reading of these two Regulations, it is clear that compensation allowance comes in to play only if new assets of capital nature which do not fall under Regulation 14. Reading of Regulation 17 clearly indicates it is a general provision. Reading of Regulation 14 makes it crystal clear that it is a special provision pertaining to existing project under certain circumstances as stated in the said Regulation.

17. The main argument of the second Respondent seems to be that since Regulation 14(3)(iii) refers to prudence check and the Appellant did not furnish information, CERC was justified in rejecting the said claim under 14(3)(iii) and rightly allowed the same under Regulation 17 of Tariff Regulation of 2014. On reading the definition of the Prudence Check, it would clearly indicate that all the facts and circumstances must be taken into consideration to arrive at a decision. We have to examine whether such exercise was properly done in this case. First and foremost objection that could be ascribed to Respondent – DISCOM is in the objections filed by MPPCL before the Commission.

18. It seems to be totally a different reason indicated at Para (v) of the Appeal Paper Book at Page 177, which reads as under:

“(v) *The petitioner has claimed additional capitalization of an amount of `500 Lakhs for CCTV Surveillance System for State III from FY 2015-16 to 2017-18 under Regulation 14(3)(iii) expenses on account of higher security of plant. The respondent herein strongly opposes the plea of the petitioner and humbly submits that vigilance and security is a operational and maintenance activity and hence, the expenditure on CCTV surveillance system has to be covered under the O&M expenses being allowed to the petitioner on normative basis. It is humbly requested that additional capitalization of CCTV Surveillance System may kindly be disallowed and the petitioner may directed to cater such expenses through regular O&M activity.*”

19. They actually contended that CCTV surveillance system has to be considered as a regular O&M activity and cannot be part of additional capitalisation attracting Regulation 14(3)(iii). It was not the contention of the Respondent that in order to exercise prudence check by the Commission, documents furnished by the Appellant were deficit/incomplete.

20. That apart, whether Appellant did produce the relevant documents in support of their claim? If so, whether the documents were insufficient?

21. At Annexure A/2 of Appeal Paper Book, the Appellant refers to a letter dated 02.02.2013 written from Central Industrial Security Force which reads as under:

“OFFICE OF THE ASSTT. COMMANDANT/FIRE
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HIM AFFAIRS)

CISF Unit VSTPS
Vindhyanagar
Date: 02 Feb-2013.

NO. CISF/FW/VSTPS(V)/2013-76

To

AGM (C & I)
VSTPS Vindhyanagar

**SUB: UPDATING OF FIRE WING ABOUT AIG /FIRE
OBSERVATION REGARDING INSTALLATION OF CCTV IN
CABLE GALLERY REG.**

During the Technical Audit of CISF Unit VSTPS Vindhyanagar carried out by AIG/Fire on 28.06.2009 it was suggested to install CCTV in cable gallery to keep watch on fire at the incipient stage and also to monitor any movement in side of cable gallery being vital installation. The same was communicated by this office letter No.CISF /VSTPP/Fire/AIG(Fire) /INSP/09-940 dated 26.11.2009 (The zerox of letter is herewith enclosed for ready reference). In compliance to above letter a joint visit consisting representative of fire wing safety department & C&I department was conducted in all the cable galleries of stage-I, II & III for assessing the required quantity of CCTV Camera in order to cover the entire area inside the cable gallery. The committee suggested to install 150 Nos of CCTV to cover all the cable galleries by its protocol dated 09.06.2010 (The zerox of signed protocol is enclosed for ready reference). Now AIG/FIRE wants the time frame under which compliance on the said point is to be made.

Therefore it is requested to update Fire Wing about the progress made regarding installation of CCTV in cable gallery and inform about the time frame under which the point is to be complied with.

Asstt. Commandant/Fire
CISF Unit VSTPS (V)

...”

22. Above letter clearly indicates that during the technical audit conducted by CISF on 28.06.2009 so far as the units in question of the Appellant, there was instruction to install CCTV in cable gallery to keep watch on fire at the incipient stage. According to them, this would also assist the Appellant to monitor any movement inside the cable gallery since it being a vital installation. No doubt, way back on 26.11.2009, CISF addressed a letter to the Appellant recommending installation of such equipment. To follow up the said recommendation, a joint inspection consisting of representatives of the Fire Wing of Safety Department and C&I Department was conducted in all the cable galleries of Stage I, II & III to assess how many number of CCTV are required to cover all the galleries. The outcome of the said exercise indicated 150 numbers of CCTVs are to be installed. They wrote a letter in 2013 to know how much time the Appellant needs to comply with the recommendations of CISF, since Fire Wing wanted to know the progress.

23. Learned counsel for the second Respondent raised an objection in the reply affidavit at Para 11 and 12 contending that since there is delay in making progress of installation of CCTVs in cable galleries as recommended by CISF, they are not entitled to these amounts, since additional expenditure, if any, incurred would have been treated in terms of Tariff Regulation of 2009.

24. At Para 14 of reply/objections, they contend that the COD of the plant is 15.07.2007 and its cut-off date was in March 2010. According to them, if at all the additional capital expenditure, after cut-off date was incurred, it would get covered in accordance with Regulation 9(2)(i) to (v) of the then Tariff Regulations of 2009. Since there was no expenditure on CCTV being one of the items listed, there was no provision akin to Regulation 14(3)(iii) of Tariff Regulations of 2014. Therefore, on account of delay in implementing the recommendations of CISF in terms of letter dated 26.11.2009, the Appellant is not entitled for the additional capital expenditure and therefore, Central Commission was justified in rejecting the same.

25. From the above-said letter at Annexure A/2, it is seen that there was recommendation to install CCTV in cable galley to keep watch on fire and also monitor any movement inside the cable gallery since the said cable gallery is a vital installation. After this letter, there was joint inspection in the cable galleries of Stage I, II & III by Fire Wing Safety Department and C&I Department. This must have been beyond 26.11.2009. Much later, the Committee suggested installing 150 numbers of CCTVs to cover all the cable galleries by its protocol dated 09.06.2010.

26. The process of installation of these CCTVs must have happened only after 09.06.2010. The fact remains that till 02.02.2013 the installation

of CCTVs was not completed. It seems to have happened only after 02.02.2013 and by that time the new Regulations of 2014 came into existence. One cannot think that the Appellant anticipated additional capital expenditure of this nature to be included in the Regulations of 2014 and therefore, they waited till new Regulations came. Even otherwise, there is no such ground raised by the Respondent. In order to carry out the CCTV Surveillance System and installation of CCTVs in cable galleries, several stages of clearances and approvals have to be taken up.

27. The points which would fall for our consideration are “whether such additional capital expenditure, after the cut-off date was incurred by the Appellant?” and “If so, whether in terms of Tariff Regulations of 2014 such expenditure could be allowed under Section 14(3)(iii)?”

28. It is also relevant to notice that Respondents have not denied that the expenditure of the present nature is not covered under Regulation 14(3)(iii). Their claim is that since during the prudence check, the Commission was not satisfied with the information provided by the Appellant, they are not entitled for their claim under Regulation 14(3)(iii); but they are entitled under a general provision, i.e. Regulation 17. In order to have prudence check, the material on record at Annexure A/2 of the Appeal Paper Book clearly indicates that this additional capital expenditure had to be incurred after cut-off date in March 2010. None can deny the

fact that it is not a safety measure. On the other hand, Regulation 14(3)(iii) indicate this type of expenditure on account of need for higher security and safety of the plant as directed by appropriate Government Agencies or statutory authorities could be allowed. One cannot deny that CISF is not a Statutory Authority or appropriate Government Agency. The letter at the above-said Annexure A/2 clearly indicates this Department discharges its duties under Ministry of Home Affairs.

29. There is one more relevant fact which has to be taken into consideration. During the pendency of the proceedings before the Commission, on 19.04.2016 the proceedings were recorded. Para 4 of Record of Proceedings reads as under:

“4. The Commission after hearing the parties directed the petitioner to file the following additional information on affidavit, by 13.5.2016, with advance copy to the respondents...”

In total, there were about 9 queries raised that were to be answered by the Appellant/Petitioner before the Commission which read as under:

- “(i) It is observed that spares amounting to `14.97 lakh and `3.52 lakh during 2012-13 were de-capitalised. Reason for this de-capitalisation during the same year shall be furnished;*
- (ii) Statement showing the year-wise details of depreciation un-recovered, if any, till 31.3.2014 on account of availability lower than NAPAF;*

- (iii) Reasons for not claiming any expenditure on projected basis towards augmentation of railway sidings & MGR system during 2012-13;*
- (iv) Details in respect of water charges such as contracted quantum of water and allocated quantity, actual water consumption from 2009-10 to 31.3.2014, 2014-15 and 1.4.2015 to 31.3.2016, along with rate of water charges, copy of notification(s) of water charges. Further actual water charges paid to the Water Reasons Department/State Government duly certified by Auditor, type of cooling water system and justification for any variation in allocated quantity of water vis-a-vis actual consumption;*
- (v) Details of estimated expenditure of ash dyke raising, along with the scope of work and justification for undertaking such expenditure;*
- (vi) Details as to how the fund for ash sale has been utilized along with a statement of Income from sale of ash and the expenditure incurred from ash fund till date;*
- (vii) Certificate to the effect that all assets of the gross block as on 1.4.2014 are in service. In case any asset has been taken out from the service, the same should be indicated along with the date of putting the asset in use, the date of taking out the asset from service;*
- (viii) Details of capital spares along with the details of consumption of capital spares for the last five years from 2009-10 to 2013-14 and list of spares consumed as per Form-17;*

(ix) *Confirmation as to whether ash dyke 3A & 3B are dedicated to the generating station and how many ash dykes are there in the generation station, height to which ash dyke shall be raised after 1st, 2nd & 3rd raising and how many years these raisings shall provide ash disposal.”*

30. Surprisingly, the Commission did not make any query about the information on why these safety measures have to be taken now and why they were not taken earlier and what is the material in support of the said requirement apart from Annexure A/2. We are certain that further information would have been furnished by the Appellant if only such query was raised. Later on, Commission could not have said that for want of information, they were not allowing additional capital expenditure under Regulation 14(3)(iii) and would allow under Regulation 17 (General Expenses).

31. It is well settled if special provision is available one should not take recourse to general provision. General provisions must yield to special provisions in such situation. Therefore, it is clear from the impugned order that the very process in assessing the claims was not properly appreciated by the Commission. If at all Commission needed some more information, they ought to have asked the Appellant for such information instead of opining that there is incomplete information. It is not in dispute in so far as other plants of the Appellant, similar claim as safety

measures was allowed by the very same Central Commission. Therefore, there is no doubt that if additional capital expenditure after cut-off date is spent towards higher security and safety of the plant in terms of Regulation as recommended by appropriate Government Agency or Statutory Authority, it shall fall under Regulation 14(3)(iii). In that view of the matter, and for the reasons mentioned above, we are of the opinion that the Respondent Commission proceeded on wrong assumption and denied the claim of the Appellant under Regulation 14(3)(iii) of 2014 Regulations.

32. Having regard to the submissions of both the parties and relevant regulations of the CERC, we are of the view that as per the prudent industrial practice, the installation of CCTV for surveillance and safety of vital installations is essential. As in the instant case, it has also been recommended by Government instrumentalities to install adequate numbers of CCTV for surveillance of the plant and ensuring safety measures for fire etc. in the cable galleries. Thus, the estimated projection for installation of requisite number of CCTVs by the Appellant requires consideration by the CERC without insisting much on the procedural information whatsoever. In fact, the Commission has to accord in-principle approval only for the proposal of the Appellant in this regard, and the actual amount would need to be allowed after prudence check in the true up exercise. As CERC has allowed similar expenditures in other thermal power plants of the Appellant, there does not appear any visible reason for

not allowing the same in the instant case. This is also required for CERC to take a consistent view in all the cases rather than adopting selective approach from case to case on same plea. We are therefore, of the considered view that CERC has passed the impugned order in an inconsistent way without adequate evaluation of the case in hand.

33. Hence, Appeal No. 125 of 2017 deserves to be allowed and the impugned order dated 24.02.2017 passed by the Central Electricity Regulatory Commission in Petition No. 342/GT/2014 is hereby set aside. The matter stands remanded back to the Central Commission for examining afresh and to pass consequential orders in accordance with law in terms of our findings stated supra.

34. Parties to bear their own costs.

35. Pronounced in the Open Court on this the 9th day of May, 2019.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

✓
REPORTABLE / NON-REPORTABLE

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