

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 157 of 2006

Dated : February 27, 2007

Present:

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

N.T.P.C.

-Appellant

V/s.

C.E.R.C &Ors.,

-Respondents

Counsel for appellant : Mr. M.G. Ramachandran with
Mr. Anand K. Ganesan

Counsel for respondents : Mr. Pradeep Misra for UPPCL

JUDGMENT

This appeal is directed against the order of the Central Electricity Regulatory Commission (for short 'CERC'), dated June 2, 2006 in Petition No. 38 of 2001, whereby the CERC has determined the tariff for the period April 1, 2001 to March 31, 2004, for generation and sale of electricity of Rihand Super Thermal Power Station of the appellant.

It is submitted by the learned counsel for the appellant that the Regulations framed by the CERC under Section 58 of the Electricity Regulatory Commission Act, 1998, called Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 (for short 'Regulations 2001'), and notified on March 26, 2001, are based upon operational and financial norms laid down by the Commission by its

orders, dated January 4, 2000; December 15, 2000 and December 21, 2000. It is contended that these orders are discriminatory and do not provide a level playing field. Consequently, it was canvassed that the tariff order based on these norms, needs to be set aside. In essence, the Regulations are being challenged by the appellant in the garb of mounting a challenge against the aforesaid orders of the Commission dated January 4, 2000; December 15, 2000 and December 21, 2000.

It needs to be pointed out that the Regulations were framed by the Regulatory Commission under the authority of subordinate legislative functions conferred on it by Sections 58 of the Electricity Regulatory Commission Act, 1998.

In Judgment, dated December 6, 2006, rendered by us in Appeal Nos. 51, 52 and 53 etc., of 2006, it was held that we cannot go into the validity of the Regulations in exercise of our appellate power. In this view of the matter, the submission of the learned counsel for the appellant needs to be rejected.

It was next contended that the impugned order makes inadequate provision for employees cost. Similar submission was advanced by the learned counsel in Appeal Nos. 81, 82, 83 etc., of 2005. But the same was

rejected, on the ground that the employees' cost was determined by the CERC in accordance with the Regulations of 2001. The CERC has laid down specific methodology to arrive at the admissible O & M expenses. Since the CERC has determined the employees cost in accordance with the Regulations, we do not find any force in the submission of the learned counsel for the appellant. Accordingly, the contention of the appellant is rejected.

The learned counsel for the appellant also submitted that the decision of the CERC in disallowing incentives and ex-gratia payment to the employees as part of the O & M expenses is not in accordance with law. The contention of the learned counsel is untenable. There is no justification for the appellant to recover the cost of incentives and ex-gratia payment to employees through tariff, when the tariff already allows incentives for higher performance and productivity to the appellant. Similar view was taken by us in Appeal Nos. 81, 82, 83 etc., of 2005 and there is no reason to depart from it.

The appellant finally tried to rake up the question relating to interest on loan and foreign exchange rate variation (FERV). We find that the question does not arise in this appeal. It has been found by the CERC that

the cumulative repayment up to March 31, 2001, is in excess of the normative loan. The interest on loan component was found to be zero. Therefore, the CERC was right in holding that no FERV is permissible. We do not find any reason to differ with the view of the Commission.

In the circumstances, therefore, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

(A.A.Khan)
Technical Member

(Anil Dev Singh)
Chairperson

Dated: February 27, 2007