



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

THURSDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

Review Petition No.2 of 2019

In

O.P.NO.47 of 2017

&

Review Petition No.1 of 2020

In

O.P.No.47 of 2017

Review Petition No.2 of 2019

Between:

Andhra Pradesh Power Development Company Limited (APPDCL)
.. Petitioner

And

1. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)
2. Eastern Power Distribution Company of Andhra Pradesh Ltd. (APEPDCL)

.. Respondents

Review Petition No.1 of 2020

Between:

1. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)

2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
(APEPDCL)

.. Petitioners

And

Andhra Pradesh Power Development Company Limited (APPDCL)

.. Respondent

These two Review Petitions have come up for hearing finally on 24-02-2021 in the presence of Sri K. Gopal Chowdary, learned Counsel for the petitioner in R.P.No.2/2019 and also appearing for the respondent in R.P.No.1/2020 and Sri P. Shiva Rao, learned Counsel for the petitioners in R.P.No.1/2020 and also appearing for the respondents in R.P.No.2/2019 and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

The petitioner in Review Petition No.2 of 2019 (APPDCL) filed O.P.No.47 of 2017 under Section 62 of the Electricity Act 2003, ('the Act' for brevity), for determination of tariff from 5-2-2015 for the rest of the control period of FY 2014-19 for supply of electricity generated from Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS) Stage-I

(2x800 W) to the respondents-Discoms at the rates proposed by it or as determined by the Commission. By order dated 2-3-2019, the Commission disposed of the said O.P. in the following terms:

- (a) The Commission approved Rs.10,761 crores as against the petitioner's claim of Rs.12,630 crores in the original petition and the revised claim of Rs.12,551 crores.
- (b) The Commission approved Rs.6,936 crores as against the petitioner's claim of Rs.8,122.84 crores towards fixed cost for the period from 5-2-2015 for the rest of the control period of 2014-19, with the year-wise fixed cost approved against the petitioner's claim as under:

FY	Filed by the petitioner (Rs. Cr)	Approved by the Commission (Rs. Cr)
2014-15	203.16	144.71
2015-16	1747.79	1443.25
2016-17	2172.09	1795.86
2017-18	1995.07	1782.29
2018-19	2004.73	1769.90
Total	8122.84	6936.01

- (c) The advice of the Comptroller and Auditor General that the refund of liquidated damages was a violation of the terms and conditions of the Agreement and was not in the best financial interest of the petitioner may be considered by the petitioner to pursue the required remedial measures to get back the refunded amount from Bharat Heavy Electricals Limited. If the petitioner secures any such refund from Bharat Heavy Electricals Limited, the same should be immediately reported

to the Commission for considering any factoring of the same into the capital cost.

- (d) The fixed charges are determined duly considering the applicable normative availability of the plant. The same are adjustable to actual availability.
- (e) Variable charges, Income tax shall be paid as per the terms and conditions of the PPA consented by the Commission.
- (f) The parties (either or both of them) are at liberty to approach the Commission with an appropriate petition for adjudication and determination of any of the disputes/differences between them relating to the issues specified in para 12 of the order of the Commission in O.P.No.21 of 2016 between the parties decided on 13-7-2018 and about the operating parameters applicable during the operation of the units under sub-critical mode or supercritical mode.

Review Petition No.2 of 2019 sought review of the order in the O.P. on three counts viz., (i) Land Development Cost (ii) Employee Cost of APPDCL and the establishment and general expenses of AP Genco towards supervision and incidental expenses during the construction and (iii) Expenditure incurred towards Sea Water Intake and Outfall (SWIO).

With regard to Land Development Cost, it is stated that the Commission allowed Rs.93.3 crores, being 2/3rd of the total land cost of Rs.140 crores as part of the capital cost for Stage-I of the project, but however the land development cost of Rs.67.33 crores, being 2/3rd of the total land development cost of Rs.101 crores, was not separately

included in the cost of land and the capital cost and that the same should have been allowed separately and additionally over and above the mandatory package.

As regards the Employee Cost of the petitioner-APPDCL and the establishment and general expenses of AP Genco towards Supervision and incidental expenses during the construction, the petitioner relied upon Clause 21 of the CERC Regulations and stated that the incidental expenditure during construction is to be considered as a part of Capital Cost. It is further stated that APPDCL, a subsidiary of AP Genco, entered into an agreement with AP Genco for payment of Rs.169 crores towards expenditure for salaries and other incidental expenditure for supervision and establishment charges during the construction period; that the said amount is to be allowed as part of the Capital Cost and not as a part of mandatory package; that Rs.50 crores was incurred towards Establishment and general charges by APPDCL during the construction period and that therefore, on this count, in all, Rs.219 crores is to be allowed additionally towards Capital Cost.

With regard to the Sea Water Intake and Outfall (SWIO) system, it is stated that the sea water received from the water pump house is being

used through CW Pumps; that water is cooled through NDCT (Natural Draft Cooling Towers) and most of the water is recycled and that to maintain the cycle of concentration, small amount of water is let out into the sea (called "Blow Down") and fresh water is added to the system. That for the other requirements of the water, i.e., DM water, Service Water and Potable Water, the source of water is also sea water; that because of high salinity, the sea water is converted into sweet water by Reverse Osmosis method in SWRO (Sea Water Reverse Osmosis) and BWRO (Brackish Water Reverse Osmosis) Systems; that the water coming after SWRO is used for Service Water and Potable Water; that the water coming after BWRO is used for production of DM water through Mixed Bed Exchangers and that in the said process huge amount of rejected water will be generated with high TDS which will be sent back to sea in a deeper area through blow down line from the plant. It is further stated that as there are no other water sources nearby, and being the coastal plant, sea water alone could be considered as source of water; that as the sea is approximately 5 K.M. away from the plant, water needs to be pumped to the plant and therefore a pump house has been constructed with 3 pumps (provision for 5 pumps was made in Stage-I keeping in view of Stage-1 and Stage-2 requirements) and

associated accessories, that power supply for the pump house was envisaged from SDSTPS through 11 KV Overhead lines and that from the pump house, large dia sized pipes were laid for transporting of water from the pump house to the plant and also return line (Blow down & Reject) for transporting blow down and rejected water from RO systems. That the water system inside the plant was covered under BOP package, that the external water system like Fore Bay Channel, Pump House with all pumps, motors, switchgear etc., and piping from Pump House to the Plant and return water line from the Plant to the Sea is very essential and that the entire external water system is not a part of BOP package. Accordingly, the review petitioner claimed that Rs.268 crores incurred towards SWIO system merits consideration additionally as part of Capital Cost.

In the reply filed by the respondents-Discoms, it is stated that as per the Explanatory Memorandum for developing Benchmarks of Capital Cost of Thermal Power Stations of Unit sizes 500 W, 600 MW, 660 MW and 800 MW issued by the CERC, the capital cost packages were classified into two packages viz., mandatory package and optional packages and that the mandatory package includes the equipment which are part of the power stations irrespective of their location,

configuration etc. It is further stated that the CERC, in its order dated 4-6-2012 at Annexure-II provided for benchmark capital for thermal plants which clearly laid down the costs that are to be included in the mandatory package and the costs that are to be excluded. That in the rejoinder filed in the O.P. by the petitioner-APPDCL, it has claimed an amount of Rs.472 crores under the heads (i) Sea Water Intake and Outfall (SWIO), (ii) External Coal Conveying System and (iii) Start Up Fuel (Rs.268 cr + 156 cr + Rs.48 cr, respectively), and that the same were considered under the Mandatory Package and Project Specific Cost by the Commission in its analysis in the order passed in the O.P., and that the Development charges and other costs of Rs.101 crores, Supervision cost of Rs.169 crores and General Charges of Rs.50 crores have been considered as part of Mandatory Package/Hard Cost since the petitioner-APPDCL has not raised any objection in its rejoinder to the counter filed by the respondents in respect of these costs and that therefore the petitioner cannot agitate the same in the present review petition.

With regard to Rs.67.33 crores claimed by the review petitioner representing $2/3^{\text{rd}}$ of the land development cost of Rs.101 crores, the respondents stated that as per the governing conditions indicated under

Point 14.0 (A)(3) of the Explanatory Memorandum of the CERC for developing Benchmarks of Capital Cost of Thermal Power Stations, the cost of land does not form part of the Benchmark Capital Cost/Hard Cost of the project. That as per Sl.No.2.13 at Section IIA of Part-I, Form-2 of CERC Explanatory Memorandum and Part-I Form-5B thereof, it was clearly indicated that the site development charges form part of Civil Works under Mandatory Package and not under the Optional Packages and that Issue No.17 of the CERC's order dealing with 'Packages not considered in the Report' included certain mandatory packages like Site Levelling, Station Piping, Generator Bus Duct, Startup Power Cost, Construction Power Cost and it was clarified at Para 21.2 that Mandatory Packages have been factored.

With regard to the claim of Rs.219 crores representing the costs incurred during the construction period towards salaries and incidental expenditure for supervision and establishment charges and general charges of the petitioner-APPDCL, the respondents stated that the governing conditions of the Benchmark Norms of Capital Cost of Thermal Power Stations indicated at Clause 14.0(A)(4) of the Explanatory Memorandum issued by the CERC, clearly laid down that the cost of erection, testing and commissioning and other incidental

expenses including preparation, site supervision etc., are factored into the benchmark norms of capital cost and that therefore the supervision charges cannot be added separately. The respondents relied upon Clause 3.2 of the Explanatory Memorandum dealing with 'Scope of Assignment' in this regard. The respondents also relied upon the Scaling down factors in case of Greenfield Vs. Brownfield projects/Additional units at one location', dealt with as Issue No.7 by the CERC in its order dated 4-6-2012 and prayed the Commission to reject the claim for Rs.219/- crores as the said expenditure has been factored in the Mandatory Package.

As regards the expenditure incurred towards SWIO, the respondents relied upon the 'Data Collection Process' and 'Data Inputs' under Clauses 5.2.1 and Clause 7.1, respectively, of the Explanatory Memorandum issued by the CERC and stated that the Commission has rightly considered the SWIO under 'external water supply system' included under the head 'water system' in the facts and circumstances of the case and that therefore the same need not be specifically allowed over and above the mandatory package.

The petitioners-Discoms in Review Petition No.1 of 2020, sought review of the order in the said O.P. on the following two grounds:

- (i) That the Startup Fuel Cost of Rs.48 crores falls within the ambit of Construction & Pre-Commissioning Expenses at 3.0 of Form-5B at Part-I of CERC order dated 4-6-2012 in the matter of **Benchmark Capital Cost (Hard Cost) for Thermal Power Stations with coal as fuel** which are the expenses common to all the Thermal Power Plants and that therefore the same shall not be allowed separately over and above the mandatory package.
- (ii) That the expenditure of Rs.17 crores towards civil works viz., Guest House, Street Lighting, BT Road for ash transportation and Rs.5 crores towards Ash Pond Garlanding and surrounding Road, totalling to Rs.22 crores also falls within the mandatory package.

In support of their first ground, the petitioners relied on the order dated 21-09-2015 in Petition No.69/GT/2013 wherein while approving the generation tariff of Mauda STPS Stage-I (2 x 500 MW) of M/s. NTPC Ltd., the CERC has allowed the Startup Fuel Cost under the Hard Cost

of Benchmark Capital Cost (December 2011) but not additionally over and above the Mandatory Package/Hard Cost.

As regards their second ground, the petitioners relied on the order dated 4-6-2012 of the CERC in the matter of **Benchmark Capital Cost (Hard Cost) for Thermal Power Statins with Coal as Fuel** and submitted that while dealing with Issue No.7 pertaining to Scaling-down factors, the CERC clarified that the difference between the Greenfield and Brownfield projects worked out was on account of the fact that the Greenfield project required newly established Guest House; that as per Annexure-II of the order of the CERC relating to Benchmark Hard Cost, it was clearly stated that the Hard Cost covers Grounding and Lighting packages; and that at Point 2.13 of Part-I Form-5B of the order 4-6-2012 of the CERC, the expenditure towards Road & Drainage and Area Development for Ash Disposal were considered under Civil Works under the head of Mandatory Package only.

The review petitioners accordingly prayed for reduction of Rs.70 crores in the capital cost out of Rs.10,761.40 crores.

The respondent-APPDCL filed its reply wherein, with regard to Startup Fuel Cost, it has stated that the CERC, in para 6.2 of its order

dated 4-6-2012, explained that the Benchmarks evolved by it were only to enable identification of outliers requiring detailed or further prudence check and to provide a tool for management by exception for saving the resources and time for carrying out prudence check while admitting the capital cost and that therefore the same is not binding for limiting the capital to be allowed to that provided in the model benchmark. It is stated that the Commission has specifically considered the issue and held in para 9(v)(i) of the order under review that the Startup Fuel Cost is not one of the costs included in the mandatory package. It is further stated that the reliance placed by petitioners on the order dated 29-1-2015 of the CERC in Petition No.69/GT/2013 for contending that the Startup Fuel Cost was considered under the Benchmark Hard Cost for that project is wholly misconceived as the CERC has considered and allowed the actual capital cost including the Startup Fuel Cost over and above the Benchmark Capital Cost. It is further stated that the reference to Part-I Form 5B of the order dated 4-6-2012 of the CERC is wholly misconceived as the said Form no where mentions any mandatory package and that the said Form is a suggested format to be given by the generating company setting out the original estimates under each head

and the actuals and therefore it is not at all applicable in the present case.

With regard to the claim for Rs.17 crores towards Cost of Guest House, Street Lighting, BT road and Ash transportation and Rs.5 crores towards Cost of Ash Pond Garlanding and surrounding Road, the respondent stated that the said costs were admitted and accepted by the petitioners and therefore the same cannot be the subject matters for review.

The petitioner in R.P.No.2 of 2019 filed an additional affidavit seeking to substantiate its plea regarding the expenditure of Rs.101 crores towards 'land development'.

The respondents/licensees have filed a reply to the additional affidavit.

Having regard to the respective pleadings of the parties, the following Points arise for consideration:

1. Whether the points raised by the petitioners in R.P.No.2 of 2019 fall within the parameters of review and if so, whether the petitioners are entitled to any relief ?

2. Whether the points raised by the petitioners in R.P.No.1 of 2020 fall within the parameters of review and if so, whether the petitioners are entitled to any relief ?

We have heard Sri K. Gopal Chowdary, learned Counsel for the petitioner in R.P.No.2/2019 and also appearing for the respondent in R.P.No.1/2020 and Sri P. Shiva Rao, learned Counsel for the petitioners in R.P.No.1/2020 and also appearing for the respondents in R.P.No.2/2019 and perused the record.

Before discussing the Points, it is necessary to discuss the scope of Review under Section 94(1)(f) of the Act. This aspect was thoroughly discussed by this Commission in its common order dated 4-8-2020 in R.P.No.1/2019 in O.P.No.30/2018 and R.P.No.3/2019 in O.P.Nos.28 and 29 of 2018 in **M/s. Tirumala Cotton & Agro Products Pvt. Ltd. and another Vs. M/s. Transmission Corporation of A.P. Ltd. and others.**

It is useful to reproduce the relevant portion of the order hereunder :

“ Section 94(1)(f) of the Electricity Act (for short “the Act”)” confers power of review of its decisions, directions and orders on the Commission. However, neither the Act nor the Rules framed thereunder indicated any parameters for exercise of this power. In the absence of any indicia, it is not only apt but also permissible to follow the law laid down by the constitutional courts in this regard.

In *Sow Chandra Kanta & Another Vs. Sheik Habib* (1975 SCC (4) 457) the Hon'ble Supreme Court held that a review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. In *P.N. Eswara Iyer vs. The Registrar, Supreme Court of India* (1980 AIR 808) a constitution bench of the Supreme Court reaffirmed the ratio in *Chandra Kanta* (1 supra). In *Shri Ravinder Kumar Vs. Kamal Sen Gupta* (2008) 8, the Hon'ble Apex Court held that unlike in appeal, scope of review is grossly circumscribed to such cases where review seeker has made a discovery of a new and important matter of evidence, which, after exercise of due diligence, was not within his knowledge and could not be produced by him when the decree or order where some mistakes or errors apparent on the face of the record have been made or when the court has overlooked some obvious facts on the basis of which decision could be made. The court further held that for a review, one of the above three considerations should be established.

In *Devender Pal Singh vs. State of NCT of Delhi* (2003) 2 SCC 501, the Apex Court held that review is not a rehearing of appeal all over again and that scope of interference is very limited to aspects such as miscarriage of justice.”

Keeping in view the limited scope of review jurisdiction as explained in the above quoted order, we shall consider the Points framed supra.

Re Point No.1: As noted supra, the petitioner in R.P.No.2/2019 sought review on three counts, namely, (i) Land Development Cost

(ii) Employees Cost of APPDCL and the Establishment and general expenses of A.P. Genco towards supervision and the incidental expenses during construction and (iii) Expenditure incurred towards SWIO.

(i) Land Development Cost: It is the pleaded case of the review petitioner that while allowing the land cost of Rs.93.30 crores as part of Capital Cost for Stage-I of the project, the Commission has not separately included the land development cost of Rs.67.33 crores being 2/3rd of the total land development cost of Rs.101 crores in the cost of land and the Capital Cost. Sri Gopal Chowdary, the learned Counsel for the petitioner submitted that the Benchmark capital cost indicated by the CERC in its order dated 4-6-2012 is not a mandatory fixation and that the same is only a tool to guide prudence check by enabling identification of outlying issues and management by exception without intending to replicate micro detailing. In support of his submission, he has relied upon paras 6.1 and 10.1 of the order of the CERC. The learned Counsel further submitted that the said submission putforth in the rejoinder of the petitioner having been extracted, the Commission did not consider and decide the said issue at all. The learned Counsel also submitted that though the Commission has shown in the Table under

para-9 of the order the petitioner's claim of Rs.101 crores as development charges and others both in the O.P. as well as rejoinder, it has not assigned any reason for not allowing the said cost or part thereof under Capital Cost. The learned Counsel further submitted that the CERC in the Table at para-10 (@144-145) of the Explanatory Memorandum purports to validate the Benchmark costs with purported actual cost as of January 2009 and that by the time the said order was prepared, Krishnapatnam project was not even grounded and that therefore the CERC did not have the benefit of availability of actual cost for Krishnapatnam project for comparison/validation.

On the suggestion of the Commission during hearing, additional material has been filed on behalf of the petitioner. After the hearings were concluded, the CGM has filed additional affidavit inter alia indicating the break-up of the said amount of Rs.101 crores. Except this affidavit, no supporting material proving the incurring of the expenditure has been filed.

Be that as it may, the respondents have strongly opposed the petitioner's claim for inclusion of land development cost under the Capital Cost. They have heavily relied upon the following portion of the order dated 4-6-2012 of the CERC :

Issue No.17:

21. Packages not considered in the Report: (a) Certain mandatory packages like Site Leveling, Station Piping, Generator Bus duct, Startup Power Cost, Construction Power cost have not been considered in the CERC report.

(b) Few other optional packages like Extra High Voltage cables package (400/220/132KV as per requirement), Gypsum Handling Package, Lime Handling package, overhead lines/sub-stations for power supply to remote loads outside the plant like makeup water needs to be considered.

(c) Factors like diversions of existing overhead lines from project site to clear the land should also be considered.

(d) Off-late water availability has been a major concern for NTPC projects. Because of this at times we are required to create a storage capacity for one to three months, which again requires construction of Reservoir/Weir/Annicut/Barrage and these needs to be considered by CERC.

They have also relied upon para-21.2 of the said order, which reads as follows:

“Mandatory packages have been factored. Optional packages and specific issues like diversion of lines, impact due to water availability will be dealt based on facts of case and deviations caused.”

It is pleaded in the reply to the review petition that the review petitioner in the rejoinder filed in O.P.No.47/2017 has indicated only three items as special features/facilities that are required in the petitioner's case which are not included in the Benchmark Norms of the CERC order and that they are : (i) Sea Water Intake and Outfall –

Rs.268 crores; (ii) External coal conveying system – Rs.156 crores; and (iii) Startup Fuel (furnace oil) – Rs.48 crores. Sri P. Shiva Rao, strongly urged that having not specifically pleaded before this Commission in the O.P. that the land development cost is a special feature/facility falling outside the Benchmark costs fixed by the CERC, the petitioner is not entitled to seek inclusion of the said claim and that too by way of a review petition.

We have carefully considered the respective submissions of the learned Counsel for the parties.

In the CERC order dated 4-6-2012, the CERC in para 6.1 and 6.2 clarified that the model or benchmark numbers so derived from the model are intended to be used for the purpose of prudence check as provided in 2009 Tariff Regulations and that while carrying out prudence check, the model will be used to identify the outliers as possible cases for carrying out further/detailed prudence check and assessing the reasonableness of the capital cost. Therefore we are in agreement with the submission of Sri Gopal Chowdary that if a case is made out that a particular feature/facility is peculiar to a project, the Commission has to carry out prudence check and include the additional cost in the Capital Cost if it is satisfied on such check. It is of relevance to note that in the

said order, the CERC has not considered inclusion of certain expenditures like site levelling, station piping etc., in the capital cost but they were treated as part of mandatory package. As extracted supra, the CERC also held that while mandatory packages have been factored, optional packages and specific issues like diversion of lines, impact due to water availability, will be dealt based on facts of the case and deviations caused.

No doubt in its petition, the petitioner claimed Rs.101 crores towards development charges and others. However, in its rejoinder, the petitioner has specifically pleaded that only three items which constitute special features/facilities and which are not included in the Benchmark costs of CERC order are to be considered. Interestingly, the petitioner has not included the land development cost as one of those special features/facilities. Indeed, in the entire rejoinder, there is no whisper about the land development cost. When the petitioner has not raised any specific plea apart from showing some amount under the purported development charges and on the contrary it has pressed other items for inclusion, it clearly implies that the petitioner was not interested in making the said claim. Therefore, absence of any discussion on this aspect by the Commission does not constitute an error apparent on the

face of the record requiring review. When the petitioner has specifically pleaded the above mentioned items only to be included in its rejoinder, it also implies that it has given up the other claims, if any, not included in the CERC package. Further, as pleaded by the respondent, in its order dated 4-6-2012, the CERC has treated site levelling as a part of mandatory package and was not separately considered for inclusion in Capital Cost under Issue No.17. Therefore, we are of the opinion that the order does not require any review with respect to this item.

(ii) Employees Cost of APPDCL and the establishment and general expenses of A.P. Genco towards supervision and the incidental expenses during construction:

The review petitioner pleaded that as per Clause 21 of CERC Regulations, incidental expenditure during construction is to be considered as part of Capital Cost; that APPDCL as a subsidiary of A.P. Genco, entered into an agreement with the latter for payment of Rs.169 crores towards expenditure for salaries and other incidental expenses for supervision and establishment charges during construction period and such amount is to be allowed as part of the Capital Cost and the same is not part of Mandatory Package and that in addition, establishment cost of Rs.50 crores towards Establishment and general charges of APPDCL was incurred during construction period which is to be allowed. The

petitioner accordingly submitted that the sum of Rs.219 crores is to be additionally allowed towards Capital Cost on this count.

Opposing the above plea, the respondents/Discoms have heavily relied upon the petitioner's rejoinder dated 4-5-2018 filed in O.P.No.47 of 2017 wherein it was clearly submitted that only three items have not been included in the Benchmark Costs of the CERC order viz., (i) SWIO (Rs.268 crores) (ii) External Coal Conveying System (Rs.156 crores) and (iii) Startup Fuel (Rs.48 crores). The respondents/Discoms further averred that having considered the aforementioned averments in the rejoinder, this Commission in its order dated 2-3-2019 in O.P.No.47 of 2017 treated the Supervision Cost and Establishment and general charges as part of Mandatory Package/Hard Cost and that therefore the petitioner is not entitled to claim additional amounts under this head contradicting its own specific stand taken in the rejoinder. The respondents also relied upon the conditions indicated at para-14.0(A)(4) of the Explanatory Memorandum of the CERC wherein it is observed that the cost of erection, testing and commissioning and other incidental expenses including preparation, site supervision etc., are factored into the Benchmark Norms of Capital Cost and therefore supervision charges cannot be added separately as claimed by the petitioner. The

respondent also referred to and relied upon para-3.2 of the Explanatory Memorandum of the CERC and stated that the expenditure towards cost of erection, testing and commissioning and other incidental expenses including site preparation and supervision etc., are factored into Hard Cost of Thermal Plant. The respondents also relied upon Issue No.7 of the order dated 4-6-2012 of the CERC under which the distinction between Greenfield and Brownfield projects was explained. The following part of the said order has been referred to and relied upon by the respondents :

“In case of expansion projects, where earlier phase was completed long back, resources mobilized for earlier phase were de-mobilized. These resources include developed quarries, already deployed skilled/unskilled manpower, stores, deployed tools and tackles, other miscellaneous enabling works etc., which are not available to the contractor (mainly in civil packages) as they were de-mobilized, thereby, making it effectively as costly as a green field work.

The difference, as worked out, between the two costs is on account of :

- (i)
- (ii)
- (iii)
- (iv) In brownfield project, the available engineering experience at existing location is utilized thereby reducing the cost while in Greenfield project, these needs to be established anew.”

The respondents therefore vehemently opposed the petitioner's claim of adding supervision charges of Rs.169 crores and Establishment and general expenditure of Rs.50 crores.

Para-14.0(A) of the Explanatory Memorandum of the CERC laid down the governing conditions pertaining to Benchmark Norms of Capital Cost of Thermal Power Stations to be specified in terms of sub-clause (2) of Clause 7 of the CERC (Terms and Conditions of Tariff) Regulations 2009. It is inter alia laid down in the said governing conditions that the Benchmark Norms of Capital Cost represent the Hard Cost of the project which do not include the cost of land, financing cost, interest during construction, taxes and duties, right of way charges, cost of R&R etc., which would be additional. It is also indicated therein that the cost of erection, testing and commissioning and other incidental expenses including preparation, site supervision etc., are factored into the Benchmark Norms of Capital Cost. It is thus clear from the above mentioned CERC Explanatory Memorandum that incidental expenses including preparation and site supervision etc., are factored into Benchmark Norms of Capital Cost. Indeed, para-14(A)(3) clearly indicates what are the items that are not included in the Benchmark

Norms. Employees cost and establishment and general expenses which are now claimed by the petitioner are not included in those items. Moreover, as pleaded by the respondents, the petitioner in para-6 of its rejoinder filed in O.P.No.47/2017 averred as under :

The following special features/facilities are required in the Applicant's case which are not included in the benchmark costs of the CERC order:

Sea water intake and outfall	Rs.268 Cr.
External coal conveying system	Rs.156 Cr.
Startup Fuel (furnace oil)	Rs. 48 Cr.

	Rs.472 Cr.

From the specific averments as extracted above, it is quite evident that it is not the pleaded case of the petitioner that the Employee cost and establishment and general expenses are not included in the Benchmark costs by the CERC. The fact that the petitioner has only singled out the above three items as special features/facilities that require to be considered, shows that the present claim which does not figure in the said three items, is a pure afterthought. For the aforementioned reasons, we are of the opinion that the order in O.P.No.47/2017 as regards non-inclusion of Employee Cost of APPDCL and the

establishment and general expenses of AP Genco towards supervision and incidental expenses during the construction in the capital cost, does not require any review.

(iii) Sea Water Intake and Outfall (SWIO): Coming to the claim for inclusion of SWIO system, the Commission in its order in O.P.No.47/2017 has excluded this expenditure from the capital cost on the following reasons:

“ ... As can be seen at item No.2.3 in Form-5B (an annexure to the CERC order dated 4.6.2012), ‘Water System’ is mentioned under which, ‘external water supply system’ is included among other things. Whether the water is fetched from the nearby canal/river or from sea is a different aspect. Since the ‘external water supply system’ is included under ‘water system’ it can be reasonably presumed that the expenditure incurred towards sea water intake and outfall system is covered under ‘external water supply system’ and hence it need not be specifically allowed over and above the mandatory package.”

As could be seen from the above, the Commission spoke its mind by giving specific reasons for not accepting the petitioner’s claim for inclusion of cost allegedly spent under this head. The finding of the Commission is based on the Explanatory Memorandum of the CERC. This Commission is of the opinion that the above findings of the

Commission do not suffer from any error apparent on the face of the record. Even assuming that the reasoning of the Commission suffers from any error, every error need not be corrected under Review unless such errors constitute errors apparent on the face of the record. As the object of Review is not to rehear the case as held in **Devender Pal Singh Vs. State of NCT of Delhi (supra)**, if the petitioner feels that the reasoning or the finding of this Commission is not correct, it has to only seek its further remedies before the higher fora. Instead of availing such remedies, the petitioner is virtually seeking rehearing of the O.P. which is not permissible in law. Therefore, the order in O.P.No.47/2017 does not require any Review on the above aspects discussed.

Review Petition No.1 of 2020:

With respect to R.P.No.1 of 2020, as noted earlier, the licensees are seeking review on two grounds, namely, exclusion of Startup fuel cost of Rs.48 crores and expenditure of Rs.17 crores towards civil works viz., Guest House, Street Lighting, B.T. Road for Ash transportation and Rs.5 crores towards Ash Pond Garlanding and surrounding Road, totalling Rs.22 crores. The case of the licensees is that the above expenditure falls within the Mandatory Package. As regards the Startup Fuel, the licensees relied upon the order dated 21-09-2015 in Petition

No.69/GT/2013 of the CERC. We have carefully perused the said order, the relevant portion of which reads as under:

“We have considered the submission of the parties on the issue of abnormal increase in the start-up fuel and pre-commissioning expenses. Pursuant to the hearing of the petition on 13.1.2015, the Commission had directed the petitioner to furnish details of actual expenditure of Rs.144.33 crore on Start-up fuel along with details of computation of coal and secondary fuel oil and their price, units generated, activities undertaken and revenue earned from sale of infirm power upto COD in the prescribed format as specified by the Commission. In response, the petitioner vide affidavit dated 3-3-2015 has submitted these details. On scrutiny of the details submitted by the petitioner, it is noticed that the capitalization of Rs.144.33 crore as on COD of Unit-II/generating station is based on actual cost of fuel consumption and adjustment of revenue earned from the sale of infirm power from synchronization to COD of the generating station. It is further observed that the capitalization towards Start-up fuel cost & Pre-commissioning expenses upto the COD of Unit-I is Rs.64.08 crore. Accordingly, considering the submissions of the petitioner, the Start-up fuel cost & Pre-commissioning expenses of Rs.64.08 crore as on COD of Unit-I and Rs.144.36 crore as on COD of Unit-II is found reasonable and the same is allowed in the capital cost of Unit-I and Unit-II of generating station.

.....

The total capital cost (hard cost) of the generating station as on COD, excluding IDC & FC works out as Rs.4824.36 crore (Rs.4.82 crore/MW). It is therefore evident that the capital cost of Phase-I of (Unit-I & Unit-II) of the generating station as on COD is marginally higher than the

benchmark capital cost of Rs.4.71 crore/MW, based on December 2011 Price level, specified in the Commission's order dated 4.6.2012. The reason for this marginally higher capital cost is on account of the inclusion of expenditure on net Start-up fuel cost & Pre-commissioning expenses. the increase in establishment cost and the escalation in prices due to time overrun, since December 2011. In this background, the hard cost of project as on COD can be considered to be reasonable." (Emphasis added)

On a reading of the aforementioned order of the CERC, we wonder how it could be made the basis by the licensees to claim exclusion of Startup Fuel from the capital cost. As could be seen from the aforementioned order, the CERC, instead of excluding the Start-up fuel, has included the said cost under the Capital Cost of Unit-I and II. Indeed, the CERC justified marginally higher capital cost per MW than the Benchmark capital cost of the particular station considered by it on account of inclusion of the expenditure on net Start-up fuel cost and pre-commissioning expenses. Therefore, the CERC order which purportedly constituted the sole basis for exclusion of Start-up fuel, instead of helping the licensees' cause, runs against their interests and justifies the order under Review which included Start-up fuel cost under Capital Cost.

As regards expenditure of Rs.22 crores referred to above, as rightly pointed out by Sri K. Gopal Chowdary, the Table in para-9 of the order under Review clearly shows that the licensees have agreed for inclusion of Rs.5 crores towards Ash Pond Garlanding and surrounding Road and Rs.17 crores towards civil works like Guest House, Street Lighting, B.T. Road for Ash transportation. During the hearing, Sri P. Shiva Rao, has not disputed this undeniable fact. Hence the Review Petition in respect of these items is wholly misconceived and unsustainable.

In the result, both the Review Petitions are dismissed. No costs.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member