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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PAMIDIGHANTAM SRI NARASIMHA; J., ALOK ARADHE; J.
CIVIL APPEAL NO. 6388 OF 2025; MAY 7, 2026

DELHI ELECTRICITY REGULATORY COMMISSION
versus
TATA POWER DELHI DISTRIBUTION LIMITED

Electricity Act, 2003 – Section 61(d), 62, and 125 – DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011 – Regulations 4.1 and 6.32 – Recovery of Capital Cost through Depreciation – Useful Life vs. Regulatory Operational Framework - The Supreme Court held that tariff determination under Section 61(d) of the Electricity Act, 2003 requires balancing a utility's reasonable cost recovery against the paramount obligation to safeguard consumer interests - Consumers cannot be compelled to pay for services they do not receive - Where a power plant ceases to supply electricity to consumers after the expiration of its approved Power Purchase Agreement (PPA) period, the utility cannot pass through the remaining capital cost or depreciation to the retail consumers for the period beyond its actual operation, even if the technical useful life of the asset is longer. *[Para 20]*

Harmonious Construction of Tariff Regulations - Regulation 6.32 of the DERC Regulations, 2011, which prescribes the calculation of depreciation over the useful life of an asset, cannot be read in isolation - It must be construed harmoniously with Regulation 4.1, which confines tariff entitlement strictly to the operational period approved or adopted by the Commission in the PPA - Regulation 6.32 does not confer an absolute or unconditional right upon a generating utility to recover depreciation from retail consumers when the asset is no longer utilized for supplying electricity to them - True-up proceedings are intended to give effect to the established tariff framework and cannot be weaponized to reopen, reconfigure, or circumvent regulatory approval conditions that have already attained finality between the parties. *[Relied on BSES Rajdhani Power Ltd. & Anr. v. Union of India & Ors., 2025 SCC OnLine SC 1637; Paras 19 - 25]*

For Appellant(s): Mr. Jayant K. Mehta, Sr. Adv. Mr. Dhananjay Baijal, AOR Ms. Mansvini Jain, Adv. Mr. Tilak Singh, Adv.

For Respondent(s): Mr. Kapil Sibal, Sr. Adv. Mr. Amit Kapur, Adv. Mr. Anupam Varma, Adv. Mr. Rahul Kinra, Adv. Mr. Aditya Gupta, Adv. Mr. Girdhar Gopal Khattar, Adv. Mr. Yash Srivastava, Adv. Mr. Pukhrambam Ramesh Kumar, AOR Mr. Karun Shamra, Adv. Ms. Anupama Ngangom, Adv. Ms. Rajkumari Divyasana, Adv.

J U D G M E N T

ALOK ARADHE, J.

1. This appeal under Section 125 of the Electricity Act, 2003, (2003 Act) preferred by Delhi Electricity Regulatory Commission (Commission) challenges the correctness and legality of the judgment and order dated 10.02.2025 passed by the Appellate Tribunal for Electricity (APTEL). By the impugned judgment, APTEL has set aside the order dated 11.11.2019 passed by the Commission and issued the direction that entire capital cost of Rithala Combined Cycle Power Plant at Rithala, Delhi (the Plant) be permitted to be recovered through depreciation over a period of fifteen years

notwithstanding the admitted fact that the Plant ceased to supply electricity to the consumers from and after March-2018.

2. The facts giving rise to this litigation though substantially not in dispute, are required to be set out, in order to appreciate the competing legal submissions advanced before us.

FACTUAL MATRIX

3. The respondent, Tata Power Delhi Distribution Limited (TPDDL) is a joint venture entity between the Tata Power Company Limited and Delhi Power Company Limited. On 11.06.2017, TPDDL moved a proposal for allotment of land at Rithala for setting up a temporary 108-megawatts Gas-based Power Plant with operational tenure expressly limited to 5 to 6 years, following which the land would revert to the Delhi Development Authority (DDA). The genesis of the project lay in the pressing and urgent need to augment power supply in the National Capital Territory of Delhi in the lead-up to the Commonwealth Games 2010. The Plant was conceived as a short-term measure to address peak demand and accordingly, approval was structured within a limited operational horizon. On 24.07.2007, TPDDL addressed the letter to the DDA seeking change of land use specifically for a short-term 5 to 6 years operational span of the Plant.

4. On 17.05.2008, TPDDL intimated Commission of its intention to establish and operate the Plant. The Commission sometime in April-2009 granted in principle approval for the scheme based on TPDDL's proposal submitted in the year 2008. On 27.07.2009, Generation and Distribution divisions of TPDDL executed an intra company "Terms and conditions for sale and purchase of power for the Plant". The TPDDL on 21.08.2009 filed a petition namely, petition no. 11 of 2009, before the Commission under Section 62 read with Section 86 (1)(b) of the 2003 Act, seeking approval of the said terms and conditions. A second petition namely, petition no. 7 of 2010, was filed on 26.02.2010, seeking approval for the use of 6 acres land for setting up 108-megawatts Power Generation Plant at Rithala, New Delhi. A third petition namely, petition no. 6 of 2013, was filed by TPDDL on 23.11.2012, seeking determination of the final generation tariff from the Plant.

5. The Plant achieved commercial operation in open cycle mode on 04.02.2011 and in combined cycle mode on 04.09.2011. The Commission disposed of all the three petitions filed by TPDDL by a common order dated 31.08.2017, the details of which are as follows:

(i) The Commission allowed petition no. 11 of 2009 to the extent of permission granted by Government of National Capital Territory of Delhi (GNCTD) for a period of six years from the year of commissioning of the Plant in combined cycle mode, thereby fixing the operation and supply period up to March-2018.

(ii) The Commission allowed petition no. 7 of 2010 subject to the condition that any profits from the Plant would be governed by provisions of DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005.

(iii) The Commission allowed petition no. 6 of 2013 and approved the fixed charges and operational parameters required for computation of energy charges and directed the TPDDL to file true-up petitions for finalisation of generation tariff for the respective years.

6. The Commission by its order dated 31.08.2017, determined the capital cost of the Plant at ₹197.70 crores after applying appropriate benchmarking and prudence checks as against the TPDDL's claimed capital cost of ₹320.17 crores. It is noteworthy that the said capital cost determination was made in the backdrop of six years operational framework. The Commission accepted a technical useful life of the Plant of fifteen years based on experts certification, and it restricted the operational and tariff recovery framework to a period of six years. The Plant was thus allowed to operate for supply purposes only till March-2018. The TPDDL did not challenge the aforesaid order by way of an appeal and therefore the order dated 31.08.2017 has become final and binding inter-parties.

7. Subsequently, TPDDL filed a petition namely, petition no. 51 of 2017, seeking true-up of expenditure for Financial Years 20102011 to 2016-2017 and the annual requirements for Financial Year 2017-2018. The Commission, by an order dated 11.11.2019, allowed depreciation at the rate of 6% per annum in respect of the Plant only up to Financial Year 2017-2018 resulting in cumulative depreciation of ₹83.34 crores. The remaining capital cost of approximately ₹94.59 crores together with carrying cost, was not allowed to be passed through in tariff, on the ground that Plant has ceased to supply electricity to the consumers after March-2018.

8. The aforesaid order of the Commission was challenged by TPDDL in an appeal. The APTEL by an order dated 10.02.2025 *inter alia* held that the Commission itself had fixed the useful life of the Plant at fifteen years and had computed the capital cost on that basis. Therefore, the depreciation cost cannot be restricted only to six years. The APTEL further held that Regulation 6.32 of the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011 (2011 Regulations) mandated depreciation over the useful life and did not admit of any exception. The APTEL, therefore, set aside the order of the Commission and remanded the matter to it with a direction to allow recovery of entire capital cost of the Plant by way of depreciation over the useful life of the Plant for fifteen years.

9. Aggrieved by the said judgment the Commission has preferred the present appeal.

SUBMISSIONS

10. Learned senior counsel for the Commission submitted that APTEL erred in not appreciating that TPDDL cannot recover the capital cost of the Plant either from the distribution licensee or from the retail consumers of Delhi, in respect of electricity not supplied and to fasten the liability on the consumers for a period beyond March-2018 is contrary to Section 61 (d) of the 2003 Act. It is contended that APTEL misapplied Regulation 6.32 of 2011 Regulations and ought to have appreciated that TPDDL was free to exploit the Plant beyond six years to recover its capital cost. It is, therefore, submitted that the impugned order be set aside and the appeal be allowed.

11. Learned senior counsel for the TPDDL, on the other hand, submitted that TPDDL is entitled to recover depreciation in terms of Regulation 6.32 of 2011 Regulations, as the same does not restrict depreciation only to the operational life or the duration of the Power Purchase Agreement (PPA). It is contended that TPDDL is only seeking to recover balance recovery of depreciable capital cost of the Plant. It is urged that Commission must abide by and implement the directions of APTEL to secure accountability and disproportionate increase and long pending regulatory

asset depict a regulatory failure which has serious consequences on all stakeholders and the ultimate burden is only on the consumer[1]. It is urged that the order of the APTEL does not call for any interference in this appeal.

ISSUES

12. We have considered the rival submissions on both sides and have perused the record. Section 125 of the 2003 Act provides for a remedy of appeal to an aggrieved person from the decision or order of APTEL to this Court, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908.

13. Upon consideration of the pleadings, the record of the proceedings before the Commission and APTEL, and the submissions of learned counsel for the parties, following substantial questions of law arise for determination in this appeal:

(i) Whether the depreciation under the applicable tariff regulations must necessarily be allowed over the entire technical useful life of an asset irrespective of the period during which the asset is actually utilised for supply of electricity?

(ii) Whether Regulation 6.32 of 2011 Regulations confers an absolute right upon the generating utility to recover entire capital cost over the useful life of the asset, even where the asset ceases to supply electricity to the consumer?

(iii) Whether the APTEL erred in law in disregarding the regulatory framework and approval conditions which limited the operational and recovery period of the Plant to six years?

STATUTORY FRAMEWORK

14. Before proceeding further, it is useful to set out the statutory and regulatory provisions that have bearing on the questions which arise for consideration in this appeal.

15. Section 61 of the 2003 Act governs the determination of tariff. Section 61(d) specifically provides that in specifying the terms and conditions for the determination of tariff, the Appropriate Commission shall be guided, *inter alia*, by the object of safeguarding consumers' interests and at the same time, recovery of the cost of electricity in a reasonable manner. This provision establishes consumer welfare not as a peripheral consideration but as a central and guiding statutory principle in tariff determination.

16. Section 62 of the 2003 Act empowers the Commission to determine tariff for supply of electricity by a generating company to a distribution licensee, in accordance with the provisions of the 2003 Act and the Regulations made thereunder.

17. Regulations 6.30 to 6.32 of the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011 provides as follows:

"6.30 Depreciation shall be calculated for each year of the Control Period, on the amount of Capital Cost of the Fixed Assets as admitted by the Commission; Provided that depreciation shall not be allowed on assets funded by any capital subsidy/grant.

[1] BSES Rajdhani Power Ltd. & Anr. v. Union of India & Ors., 2025 SCC OnLine SC 1637

6.31 Depreciation for each year of the Contral Period shall be determined based on the methodology as specified in these Regulations along with the rates and other terms specified in Appexdix-1 of these Regulations.

6.32 Depreciation shall be calculated annually, based on the straight line method, over the useful life of the asset. The base value for the purpose of depreciation shall be capital cost of the asset as admitted by the Commission. Provided that, the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the date of commercial operation shall be spread over the balance useful life of the assets."

18. Regulation 4.1 of the 2011 Regulations mandates that the tariff for supply of electricity by the generating company to the distribution licensee shall be in accordance with the PPA or any other arrangement for such period as may be approved or adopted by the Commission, to the extent of the existing installed capacity as contained in the PPA.

ANALYSIS AND FINDINGS

Question No. (i)

19. The Commission while computing the capital cost of the Plant for determination of final generation tariff, by an order dated 31.08.2017, found that useful life of the Plant is fifteen years. However, the Commission vide order dated 31.08.2017, approved the PPA which restricted the period of operation and supply up to March-2018, i.e., for a period of six years. Admittedly, a sum ₹83.34 crores has been approved as depreciation for the aforesaid period of six years.

20. The tariff determination is not merely a mathematical exercise but a regulatory balancing act. The object of enabling reasonable cost recovery for utilities must be weighed against and calibrated with, paramount obligation to safeguard consumer interest. In the instant case, admittedly, electricity has not been supplied to the consumers beyond March-2018. The consumers cannot be required to pay for a service which they no longer received. Under the PPA, TPDDL had to supply electricity only for a period of six years. It is also pertinent to note that the Commission on 04.09.2012, had clarified to the Managing Director of TPDDL that the plant could be treated as a merchant generator which is free to sell the power anywhere other than to the distribution utilities in Delhi or outside the State or to captive consumers within the State. There was no legal impediment to either sale of the Plant or sale of electricity as a merchant generator. Therefore, TPDDL cannot be permitted to burden the consumers with tariff charges beyond March-2018. Therefore, the first substantial question of law is answered in the negative.

Question No. (ii)

21. Regulation 6.32 of 2011 Regulations prescribes the methodology of calculating depreciation over the useful life of the asset. It is a settled canon of statutory interpretation that no provision has to be read in isolation. Regulation 6.32 of 2011 Regulations must be construed harmoniously with Regulation 4.1 of 2011 Regulations, which mandates that the tariff for supply of electricity by a generating company to a distribution licensee is to be determined in accordance with PPA or any other arrangement for such period as may be approved or adopted by the Commission, to the extent of existing installed capacity contained in the PPA. Regulation 4.1 of 2011 Regulations confines tariff entitlement to the period approved in the PPA. The order dated 31.08.2017 fixed the operational and recovery framework

of the plant up to March-2018. The 2011 Regulations have to be read in conjunction with Section 61(d) of the 2003 Act which places the consumer interest at the centre of tariff Regulation. Thus, Regulation 6.32 of the 2011 Regulations does not, and cannot, override the broader statutory and regulatory framework and the same does not confer an absolute and unconditional right upon the generating utility to recover depreciation from the consumers even for a period when the asset is free to supply electricity. For the aforementioned reasons, the substantial question of law no. (ii) is also answered in the negative.

Question No. (iii)

22. The GNCTD granted permission on a temporary basis for a period 5 to 6 years. The TPDDL was directed to obtain all necessary regulatory approvals before commencing generation. The Commission in its order dated 31.08.2017, which was not challenged by TPDDL, approved the PPA only for a period of six years from the date of commercial operation till March-2018. The APTEL ought to have appreciated that distinction between 15 years technical useful life and 6 years regulatory recovery period is not merely semantic but the tariff framework drew the distinction clearly. The APTEL's approach is inconsistent with the order dated 31.08.2017, which was accepted by TPDDL and had attained finality. The True-up proceedings are intended to give effect to tariff framework and not to reopen or reconfigure it. The APTEL erred, therefore, in disregarding the regulatory framework and conditions of approval. Therefore, the third substantial question of law, is answered in the affirmative.

23. For the foregoing reasons, the substantial questions of law which arise for consideration in this appeal, are answered in favour of the Commission and against the TPDDL. The impugned judgment dated 10.02.2025 passed by the APTEL is set aside and order dated 11.11.2019 passed by the Commission is restored.

24. In the result, appeal is allowed. There shall be no order as to costs.

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