

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI**

Case No. 21 of 2024

Tata Power Company Limited (TPCL)..... Petitioner

Versus

Tata Steel Limited (TSL)..... Respondent

**CORAM: HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECHNICAL)**

For the Petitioner :Mr. Ashutosh Srivastava, Advocate, Mr. Kartikay
Trivedi, Advocate

For the Respondent :Mr. P.A.S. Pati, Advocate

ORDER

Date – 27th February, 2025

1. The Petitioner-Tata Power Company Limited (TPCL) has filed the instant petition under clause A-41 of JSERC (Conduct of Business), Regulations, 2016, Section 94 (1) (f) of the Electricity Act 2003 for review of Commission case (Tariff) No. 11 of 2023 for true-up for FY 2022-23, Annual Performance Review for FY 2023-24 with respect to Unit-II& Unit-III (2*120 MW) of Jojobera Power plant.
2. Considering the submission of the petitioner and on the matter as facts available on record, the issues prayed have been discussed and dealt as hereunder: -

A. Error in Computation of Discount Under Shakti Scheme for FY 2022-23 and FY 2023-24.

Submissions of the Petitioner

3. The Counsel for the petitioner has submitted that this Hon'ble Commission in the Impugned Order, inadvertently not considered the calorific value of primary fuel (CVPF) and proportion of Shakti WIV Coal supplied under Round 2 & Round 3 for true-up for FY 2022-23 and the APR for FY 2023-24.
4. This Hon'ble Commission has allowed a Shakti Scheme discount of Rs. 3.52 crore and Rs. 3.47 crore for Unit-2 and Unit-3, respectively for FY 2022-23, instead of the Rs. 3.32 crore and Rs. 3.30 crore claimed by the Petitioner. Similarly, for FY 2023-24, the Commission allowed Rs. 4.09 crore and Rs. 3.79 crore for Unit-2 and Unit-3, respectively, instead of the Rs. 3.87 crore and Rs. 3.58 crore claimed by the Petitioner. This discrepancy in determining the discount amount has resulted in an additional total discount of Rs. 0.37 crore in FY 2022-23 and Rs. 0.42 crore in FY 2023-24, which the Petitioner is required to pass on to consumers.
5. Accordingly, the Counsel for the petitioner prayed to review the Impugned

Order and allow the differential Shakti Discount for FY 2022-23 and FY 2023-24 as per following table.

Shakti Scheme Discount (Rs. Cr.) as claimed by Petitioner in Review Petition for FY 2022-23& FY 2023-24.

| Particulars | UoM | FY 22-23 | | FY 23-24 | |
|--|--------|----------|--------|----------|--------|
| | | Unit 2 | Unit 3 | Unit 2 | Unit 3 |
| Shakti Discount claimed in the Petition | Rs Cr. | 3.32 | 3.30 | 3.87 | 3.58 |
| Shakti Discount allowed | Rs Cr. | 3.52 | 3.47 | 4.09 | 3.79 |
| Differential Shakti Discount claimed now | RsCr. | 0.20 | 0.17 | 0.22 | 0.21 |

Submissions of the Respondent

6. The Respondent has supported the Petitioner's contention regarding the incorrect computation of Shakti discount for FY 2022-23 and FY 2023-24. The Respondent has agreed that the Commission may have considered the Shakti discount.

Commission's Observation and findings

7. Based on the above submission and finding the Commission has observed that there is an inadvertent error in the computation of Shakti Discount for FY 2022-23 & FY 2023-24 as such the Commission after prudent check has re-calculated the Shakti Discount and allow the review on the aforesaid issue as per the table below:

Table 55 (Revised): Shakti Scheme Discount (Rs. Cr.) as approved by the Commission for FY 2022-23.

| Particulars | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
|--|-------------|-------------------------------------|--------------|-------------|-------------------------------------|--------------|
| | | Unit 2 | | | Unit 3 | |
| Sales due to ECL (Shakti 2) Coal | 101.23 | 102.99 | 101.23 | 47.07 | 47.89 | 47.07 |
| Sales due to CCL (Shakti 2) Coal | 72.41 | 74.10 | 72.41 | 84.02 | 85.98 | 84.02 |
| Sales due to CCL (Shakti 2) WIV Coal | 232.23 | 237.27 | 232.23 | 238.90 | 244.08 | 238.90 |
| Sales due to MCL (Shakti 2) Coal | 81.66 | 83.88 | 81.66 | 103.79 | 106.58 | 103.79 |
| Discount Amount (@ Rs. 0.04/kWh Discount Rate) for shakti 2 | 1.18 | 1.04 | 1.18 | 1.07 | 0.96 | 1.07 |
| Sales due to CCL Coal (Shakti 3) | 113.75 | 116.38 | 113.75 | 112.29 | 114.88 | 112.29 |
| Discount Amount (@ Rs. | 2.14 | 2.48 | 2.14 | 2.23 | 2.51 | 2.23 |

| Particulars | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
|---|-------------|-------------------------------------|--------------|-------------|-------------------------------------|--------------|
| 0.07/kWh Discount Rate) for Shakti 3 | | | | | | |
| Total Shakti Discount | 3.32 | 3.52 | 3.32 | 3.30 | 3.47 | 3.30 |

Shakti Scheme Discount (Rs. Crore) as approved by the Commission for FY 2023-24.

| Particulars | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
|--|---------------|-------------------------------------|--------------|---------------|-------------------------------------|--------------|
| | Unit 2 | | | Unit 3 | | |
| Sales due to ECL (Shakti 2) Coal | 67.09 | 68.31 | 67.09 | 65.25 | 66.46 | 65.25 |
| Sales due to CCL (Shakti 2) Coal | 84.29 | 86.28 | 84.29 | 94.53 | 96.76 | 94.53 |
| Sales due to CCL (Shakti 2) WIV Coal | 95.27 | 97.34 | 95.27 | 61.63 | 62.96 | 61.63 |
| Sales due to MCL (Shakti 2) Coal | 101.55 | 104.62 | 101.55 | 91.52 | 94.28 | 91.52 |
| Discount Amount (@ Rs. 0.04/kWh Discount Rate) for shakti 2 | 1.18 | 1.04 | 1.18 | 1.17 | 1.03 | 1.17 |
| Sales due to CCL Coal (Shakti 3) | 330.74 | 338.51 | 330.74 | 324.01 | 331.67 | 324.01 |
| Discount Amount (@ Rs. 0.07/kWh Discount Rate) for Shakti 3 | 2.69 | 3.05 | 2.69 | 2.42 | 2.76 | 2.42 |
| Total Shakti Discount | 3.87 | 4.09 | 3.87 | 3.58 | 3.79 | 3.58 |

B. Incorrect Computation of R&M Expenses for FY 2022-23 and FY 2023-24.

Submissions of the Petitioner

8. The Petitioner has submitted that the Commission, in the Impugned Order, erred in computing the R&M Expenses for FY 2022-23 and FY 2023-24. The Petitioner contended that the Commission incorrectly did not consider the cumulative inflation factor from the base year (FY 2020-21) to the respective years of the Control Period. Specifically, the Commission missed to consider the inflation factor for FY 2021-22 while computing the R&M Expenses for FY 2022-23 and the inflation factors for FY 2021-22 and FY 2022-23 while computing the R&M Expenses for FY 2023-24.
9. The Petitioner has further submitted that it had relied on Regulation 15.40, 15.41, and 15.42 of the JSERC Generation Tariff Regulations 2020, submitting that the O&M expenses, including R&M Expenses, should be determined at the beginning of the Control Period and should not be trued up annually, except for the inflation factor, which is subject to true-up based on actuals.
10. The Petitioner provided the following tables to illustrate the correct computation of R&M Expenses for FY 2022-23 and FY 2023-24:

Differential Claim of R&M expenses for FY 2022-23.

| S. No. | Particulars | Reference | FY 2022-23 | |
|----------|--|---------------------------|-------------|-------------|
| | | | Unit 2 | Unit 3 |
| a | Approved Opening GFA | MYT Order dated 4.11.22 | 499.96 | 488.65 |
| b | Approved Inflation for FY 21-22 | MYT Order dated 4.11.22 | 8.67% | 8.67% |
| c | Approved Inflation for FY 22-23 | Impugned order | 6.87% | 6.87% |
| d | Approved K-Factor | Review Order dated 9.1.24 | 3.46% | 3.30% |
| e | R&M Expenses claimed now | $f=a*(1+b)*(1+c)*d$ | 20.09 | 18.73 |
| f | Allowed R&M Expenses | Impugned order | 18.15 | 17.31 |
| g | Differential Claimed now in Review Petition in Rs. Cr | $g=e-f$ | 1.94 | 1.42 |

Differential Claim of R&M expenses for FY 2023-24.

| S. No. | Particulars | Reference | FY 2022-23 | |
|----------|--|---------------------------|-------------|-------------|
| | | | Unit 2 | Unit 3 |
| a | Approved Opening GFA | MYT Order dated 4.11.22 | 504.75 | 490.47 |
| b | Approved Inflation for FY 21-22 | MYT Order dated 4.11.22 | 8.67% | 8.67% |
| c | Approved Inflation for FY 22-23 | Impugned order | 6.87% | 6.87% |
| d | Approved Inflation for FY 23-24 | Impugned order | 5.98% | 5.98% |
| e | Approved K-Factor | Review Order dated 9.1.24 | 3.46% | 3.30% |
| f | R&M Expenses claimed now | $e=a*(1+b)*(1+c)*(1+d)*e$ | 21.50 | 19.92 |
| g | Allowed R&M Expenses | Impugned order | 18.01 | 17.18 |
| h | Differential Claimed now in Review Petition in Rs. Cr | $h=f-g$ | 3.49 | 2.74 |

Submissions of the Respondent

11. The Respondent has supported the Petitioner's contention regarding the incorrect computation of R&M Expenses for FY 2022-23 and FY 2023-24. The Respondent agreed that the Commission should have considered the cumulative inflation factor from the base year (FY 2020-21) to the respective years of the Control Period while computing the R&M Expenses.

Rejoinder Submission of the Petitioner

12. The Petitioner has reiterated its submissions regarding the incorrect computation of R&M Expenses and emphasized that the Commission should have considered the cumulative inflation factor from the base year (FY 2020-21) to the respective years of the Control Period.

13. The Petitioner also reiterated that the R&M Expenses is a controllable parameter, and the same need not be reviewed during the Control Period except for the inflation factor, which is subject to true-up based on actuals.

Commission's Observation and findings

14. The Commission acknowledges the validity of the Petitioner's submission, supported by the Respondent, that the R&M Expenses should be calculated by applying the cumulative inflation factor from the base year (FY 2020-21) to the respective years of the Control Period.

15. In this regard, the Commission, in accordance with clause 15.40, 15.41, and 15.42 of the JSERC (Terms and condition of Generation Tariff) Regulations 2020, determined the R&M Expenses for each year at the beginning of the Control Period. This was done by considering the projected opening GFA

allowed for each year of the Control Period, the approved 'K' factor, the actual inflation factor for FY 2021-22, and a projected inflation factor of 3.47% for the remaining years. Based on these parameters, the Commission arrived at the cumulative inflation factor for each year and accordingly determined the R&M Expenses in the MYT Order at the start of the Control Period FY 2021-22 to FY 2025-26.

16. Based on the above submission and the Commission after due diligence has considered the inflation factor as 6.93% (actual), 6.87% (actual) and 5.98% (based on estimation) for FY 2021-22, FY 2022-23 and FY 2023-24 respectively. Accordingly, the Commission has recalculated the R&M expenses as follows:

Table 34 (Revised): R&M Expenses for Unit-II for FY 2022-23.

| Particulars | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
|-----------------------------------|--------------|--|--------------|--------------|--|--------------|
| | | Unit 2 | | | Unit 3 | |
| Opening GFA | | 490.89 | 490.89 | | 490.89 | 490.89 |
| Inflation for FY 2021-22 | | | 6.93% | | | 6.93% |
| Inflation for FY 2022-23 | | 6.87% | 6.87% | | 6.87% | 6.87% |
| K-Factor | | 3.46% | 3.46% | | 3.30% | 3.30% |
| Normative R&M Expenses | 20.21 | 18.14 | 19.40 | 18.85 | 17.31 | 18.51 |

Table 97 (Revised): R&M Expenses for Unit-III for FY 2023-24.

| Particulars | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
|-----------------------------------|--------------|--|--------------|--------------|--|--------------|
| | | Unit 2 | | | Unit 3 | |
| Opening GFA | | 491.27 | 491.27 | | 490.89 | 491.27 |
| Inflation for FY 2021-22 | | | 6.93% | | | 6.93% |
| Inflation for FY 2022-23 | | | 6.87% | | | 6.87% |
| Inflation for FY 2023-24 | | 5.98% | 5.98% | | 5.98% | 5.98% |
| K-Factor | | 3.46% | 3.46% | | 3.46% | 3.30% |
| Normative R&M Expenses | 21.50 | 18.01 | 20.58 | 19.92 | 17.18 | 19.63 |

C. Non-Consideration of submission for sharing of savings in R&M Expenses for Unit 3

Submissions of the Petitioner

17. The Petitioner has submitted that the Commission, while conducting the true-up for FY 2022-23, erred in not considering the submissions of the Petitioner regarding the sharing of savings in R&M Expenses for Unit 3. The Petitioner argued that the annual shutdown of Unit 3 had to be deferred to the next financial year due to the power requirements of the Respondent, which is an uncontrollable factor akin to a Force Majeure event.
18. The Petitioner has placed reliance on clause 6.16 of the Generation Tariff Regulations 2020, which permits the pass-through of variations in performance parameters on account of Force Majeure events.
19. The Petitioner contended that the Commission in terms of above should have

considered the actual R&M Expenses for Unit 3 as equal to the normative R&M Expenses, as approved in the MYT Order. This would prevent the Petitioner from sharing savings in R&M Expenses that are due to factors beyond its control.

20. The Petitioner provided the following table to illustrate the sharing of savings in O&M Expenses for Unit 3:

Deferential O&M Savings for Unit-III for FY 2022-23

| Sharing of Savings in Unit 3 | UoM | Unit 3 |
|---|---------------|-----------------|
| Sharing of Savings in O&M Expenses Claimed | Rs. Cr | 0.56 |
| Sharing of Savings in O&M Expenses approved | Rs. Cr | 3.05 |
| Differential O&M Savings claimed now | Rs. Cr | (-) 2.49 |

Submissions of the Respondent

21. The Respondent has opposed the Petitioner’s contention and has argued that the issue raised by the Petitioner is similar to the issue raised in a previous Review Petition against the true-up order of FY 2021-22, and therefore, the same should not be allowed.
22. The Respondent further contended that the Petitioner’s request for invoking the power to relax under Force Majeure conditions is not justified, as the deferment of the annual shutdown of Unit 3 does not constitute a Force Majeure event.

Rejoinder Submission of the Petitioner

23. The Petitioner reiterated that the deferment of the annual shutdown of Unit 3 due to the power requirements of the Respondent is an uncontrollable factor akin to a Force Majeure event. The Petitioner argued that the Commission should have considered the actual R&M Expenses for Unit 3 as equal to the normative R&M Expenses in terms of clause 6.16.

Commission’s Observation and findings

24. The Commission finds no merit in the Petitioner's claims regarding the true-up for FY 2022-23. The assertion that the deferred annual shutdown of Unit 3 constitutes a Force Majeure event is not substantiated with sufficient evidence. Force Majeure events are typically characterized by unforeseen and extraordinary circumstances beyond the reasonable control of the entity, whereas the deferment of maintenance due to power requirements is a foreseeable operational decision rather than an uncontrollable external factor.
25. Furthermore, the Petitioner's reliance on Clause 6.16 of the Generation Tariff Regulations 2020 is misplaced. The said provision allows for pass-through of variations in performance parameters only when genuine Force Majeure events disrupt operations, which is not the case here. The decision to postpone R&M activities was within the operational discretion of the Petitioner and should not be used as a basis to seek exemption from sharing savings.
26. Additionally, the Commission has consistently upheld the principle that cost-efficiency gains should be passed on to consumers. Accepting the Petitioner's request to consider actual R&M expenses as equal to normative values, despite lower actual expenditure, would lead to unjust enrichment at the

expense of end consumers. The MYT framework is designed to incentivize operational prudence, and allowing such a deviation would set a problematic precedent, undermining regulatory discipline.

27. In light of the aforesaid findings and discussions, the Commission finds no new grounds or evidence to warrant a reconsideration. Accordingly, the petitioner's prayer for the review of **Issue No. C** is hereby **rejected**.

CONCLUSION

28. In view of the above, the revised Gain in Operation and Maintenance for FY 2022-23 as approved by the Commission are summarized below.

Table 51 (Revised): Gain in Operation & Maintenance (Rs. Crore) as approved by the Commission.

| Particulars | UoM | Unit-II | | Unit-III | |
|--|----------------|---|--------------|----------|--------------|
| | | Petition | Approved Now | Petition | Approved Now |
| Normative O&M Expenses | Rs. Cr | 50.60 | 49.22 | 49.77 | 47.39 |
| Actual O&M Expenses | Rs. Cr | 52.34 | 39.07 | 35.79 | 40.53 |
| Gain/(Loss) | Rs. Cr | (1.74) | 10.15 | 13.98 | 6.87 |
| Consolidated Gain to be shared with Beneficiaries (50% of Gain) | Rs. Cr. | (10.15+6.87)=17.02, (50% of 17.02=8.51) | | | |
| Gain to be shared with Beneficiaries (50:50) | | 4.25 | | 4.25 | |

29. Accordingly, the Table no. 58, Table No. 61, Table No 62, Table No. 63, Table No. 64 and Table No. 111 of the order dated June 06, 2024 has been modify as follows.

Table 58 (Revised): Annual Revenue Requirement (Rs. Crore) as approved by the Commission for FY 2022-23

| Particulars | Unit-II | | | | Unit-III | | | |
|---|---------------|---------------|-------------------------------------|---------------|---------------|---------------|-------------------------------------|---------------|
| | APR | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | APR | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
| ARR after Availability | 367.75 | 372.05 | 360.34 | 361.65 | 370.23 | 375.81 | 365.65 | 366.45 |
| Less: Discount as per [SHAKTI 2&3] | 3.03 | 3.32 | 3.52 | 3.32 | 3.03 | 3.30 | 3.47 | 3.30 |
| Less: Gain on Operational Parameters[25%] | | 2.38 | 2.38 | 2.38 | | 2.49 | 2.49 | 2.49 |
| Less: Gain on O&M Expense [50%] | | 3.31 | 4.45 | 4.25 | | 3.31 | 3.05 | 4.25 |
| Less: Non-Tariff Income | | 1.86 | 1.86 | 1.86 | | 1.91 | 1.91 | 1.91 |
| Net ARR | 364.72 | 361.17 | 348.13 | 349.83 | 367.20 | 364.79 | 354.73 | 354.50 |

Table 61 (Revised): Gap/(Surplus) as approved by the Commission

| Particulars | Unit-II | | | Unit-III | | |
|----------------------------|--------------|-------------------------------------|--------------|--------------|-------------------------------------|--------------|
| | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
| Net ARR | 361.17 | 348.13 | 349.83 | 364.79 | 354.73 | 354.50 |
| Revenue from Sale of Power | 346.76 | 346.76 | 346.76 | 350.32 | 350.32 | 350.32 |
| Gap/(Surplus) | 14.42 | 1.37 | 3.08 | 14.47 | 4.41 | 4.18 |

Table 62 (Revised): Carrying Cost(Rs. Crore) for Unit-II as approved by the Commission

| Particulars | Approved on Tariff Order 06.06.2024 | Approved Now | Approved on Tariff Order 06.06.2024 | Approved Now |
|--|---|-----------------|---|-----------------|
| Opening Balance | 0 | 0 | 1.37 | 3.08 |
| Addition During the FY | 1.37 | 3.08 | 0 | 0 |
| Adjustment during the FY | 0 | 0 | 0 | 0 |
| Closing Balance | 1.37 | 3.08 | 1.37 | 3.08 |
| Interest Rate | 11.65% | 11.65% | 10.50% | 10.50% |
| Carrying Cost for respective FY | 0.08 | 0.18 | 0.14 | 0.32 |

Table 63 (Revised): Carrying Cost(Rs. Crore) for Unit-III as approved by the Commission

| Particulars | Approved on Tariff Order 06.06.2024 | Approved Now | Approved on Tariff Order 06.06.2024 | Approved Now |
|--|---|-----------------|---|-----------------|
| Opening Balance | 0 | 0 | 4.41 | 4.18 |
| Addition During the FY | 4.41 | 4.18 | 0 | 0 |
| Adjustment during the FY | 0 | 0 | 0 | 0 |
| Closing Balance | 4.41 | 4.18 | 4.41 | 4.18 |
| Interest Rate | 11.65% | 11.65% | 10.50% | 10.50% |
| Carrying Cost for respective FY | 0.26 | 0.24 | 0.46 | 0.44 |

Table 64 (Revised): Carrying Cost (Rs. Cr.) on Revenue Gap/(Surplus) for Unit-II & Unit-III as approved by the Commission

| Particulars | Unit-II | | Unit-III | |
|--|--|-----------------|---|------------------|
| | Approved on Tariff Order 06.06.2024 | Approved Now | Approved on Tariff Order 06.06.2024 | Approve d Now |
| Opening Gap/Surplus for FY 2022-23 | - | - | - | - |
| Gap/(Surplus) addition during the FY 2022-23 | 1.37 | 3.08 | 4.41 | 4.18 |
| Closing Gap/ (Surplus) for FY 2022-23 | 1.37 | 3.08 | 4.41 | 4.18 |
| Carrying Cost of FY 2022-23 | 0.08 | 0.18 | 0.26 | 0.24 |
| Carrying Cost of FY 2023-24 | 0.14 | 0.32 | 0.46 | 0.44 |
| Net Gap/(Surplus) | 1.60 | 3.58 | 5.13 | 4.86 |

Table 111 (Revised): Annual Revenue Requirement (Rs. Crore) as approved by the Commission for FY 2023-24

| Particulars | Unit-II | | | | Unit-III | | | |
|---------------------------------------|---------------|---------------|--|-----------------|---------------|---------------|--|-----------------|
| | MYT | Petition | Approved on Tariff Order 06.06.2024 | Approved Now | MYT | Petition | Approved on Tariff Order 06.06.2024 | Approved Now |
| ARR after Availability | 328.30 | 374.62 | 359.82 | 362.51 | 331.86 | 364.37 | 351.35 | 353.45 |
| Less: Discount as per [SHAKTI 2&3] | 3.63 | 3.87 | 4.09 | 3.87 | 3.63 | 3.58 | 3.79 | 3.58 |
| Net ARR | 324.67 | 370.76 | 355.73 | 358.64 | 328.22 | 360.78 | 347.56 | 349.86 |

30. The review petition stands disposed off.

Sd/-
Member (Tech.)

Sd/-
Member (Law)