

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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**Present:      Shri U. N. Behera, Chairperson  
                    Shri S. K. Parhi, Member  
                    Shri G. Mohapatra, Member**

**Case No. 30/2021**

Shri. Ananda Kumar Mohapatra	.....	Petitioner
- Vrs. -		
OPTCL & others	.....	Respondent

**In the matter of:**      **Application under Section 94(1) (f) read with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004 and order 47 Rule-1 of CPC, 1908 seeking review of order dated 26.03.2021 of OERC passed in Case Nos. 73 of 2020 regarding ARR & Transmission Tariff for FY 2020.**

**For Petitioner:**      Shri Ananda Kumar Mohapatra

**For Respondent:**      Shri Malaya Ranjan Das, DGM, OPTCL, Shri R. P. Mahapatra, Shri Ramesh Chandra Satpathy.

**ORDER**

**Date of hearing: 03.08.2021**

**Date of order: 29.10.2021**

1. This Petition has been filed by Shri Ananda Mohapatra seeking the review of OERC Transmission Tariff order for FY 2021-2022 passed in Case No. 73 of 2020 dt. 26.03.2021.
2. The petitioner has stated that as per the OERC Transmission Tariff Regulation, 2014 depreciation shall not be allowed on assets funded by transmission system user and capital subsidy/ grants. The Petitioner has stated that there is excess depreciation allowed in the Transmission Tariff order due to non-consideration & non-segregation of salvage value of the assets. The assets created from various schemes, grants and subsidies in the GFA (Gross Fixed Asset) have not been segregated. The CAG in its report has stated that a sum of Rs 1423.30 Cr has been infused by State & Union Govt under the heading

“Grants & Subsidies for operational & management expenses” in the state utilities till FY 2017-18. This needs to be excluded while calculating depreciation.

3. The Petitioner has stated that the depreciation approved in determination of the Transmission Tariff order violates the provisions of the OERC Transmission Tariff Regulation, 2014 with respect to salvage value of the assets, cumulative depreciation and gross depreciable value of the assets.
4. The Petitioner has stated that while determining the Transmission tariff there is non-consideration of income from other business of the Licensee OPTCL as per the Regulation 8.42 of OERC (Transmission Tariff) Regulation 2014.
5. The Petitioner has stated that the DISCOMS are the prime beneficiaries of the Transmission Tariff order but the DISCOMS were not the respondents of the same Transmission Tariff proceedings in Case No. 73/2020.
6. The Petitioner in its additional submission has stated that the Transmission tariff order has violated the provisions of section 61(a) of the Act, National tariff policy, Indian Accounting Standard, etc. Petitioner has quoted certain provisions of the Regulations of CERC, Regulations of PSERC and other SERC in determination of Transmission Tariff to support his objections.
7. The petitioner has therefore prayed to admit four DISCOMS as respondents in this case and to re-determine the transmission tariff of OPTCL by reviewing the said order.
8. The Respondent OPTCL has stated that in exercise of the power conferred under Section 94(3) of the Electricity Act, 2003 and to protect the interest of the consumers, the Commission has appointed World Institute of Sustainable Energy (WISE), Pune as Consumer Counsel for objective analysis of the Licensee’s Aggregate Revenue Requirement and for the proposal for determination of Transmission Tariff for FY 2021-22.
9. Respondent has stated that the Commission had undertaken adequate consultative process before pronouncing the ARR order. The Commission had convened the State Advisory Committee (SAC) meeting through virtual mode on 22.02.2021 to discuss about the Aggregate Revenue Requirement applications and tariff proposals of licensee for FY

2021-22, the Members of SAC, special invitees, the representatives of Department of Energy, Government of Odisha, OHPC, OPGC, SLDC and licensees actively participated in the discussion and offered their valuable suggestions and views on the matter for consideration of the Commission.

10. The Respondent has stated that the Petitioner has not mentioned any facts and figure to substantiate the mistake or error apparent on the face of the record relating to depreciation. The Respondent further stated that the Petitioner is only trying to highlight the various provisions in the OERC Transmission Tariff Regulation 2014 and assuming that the Commission has not followed it correctly.
11. The Respondent has stated that OPTCL has been claiming depreciation in its ARR from 2015-16 onwards. However, upto 2016-17 the Commission has calculated the depreciation on Historical cost as per the Pre-92 rate of depreciation. After implementation of the IND-AS accounting standard from 2017-18 the Commission has calculated the depreciation on the Deemed cost as per the OERC Transmission Tariff Regulation, 2014 .
12. The Respondent has stated that the AG (O) report relating to “Function of power sector PSUs” takes into account the fund released to OPTCL for Distribution Scheme which are not accounted for as deferred income. The Respondent has further stated that the accounts of the government grant/subsidies and the beneficiaries assets are guided by IND AS 20. Complying to the same the deferred income is recognized as liability for the company for assets created out of grant/subsidies. The deferred income and gross fixed assets are both reduced in a financial year to the extent of depreciation. Therefore, while calculating depreciation, assets created under the funding of government and other beneficiaries are excluded.
13. The Respondent has stated that Income from other Business as per the Regulations 8.42 could not be anticipated in advance. However, if earned in FY 2021-22, the same may be trued up as per Regulations.
14. The DISCOMs were not the objectors in the Case No. 73 of 2020. Therefore, DISCOMs should not be parties in the review petition filed by the Petitioner.

15. The Respondent has stated that the Petitioner in its additional submission has highlighted some of the Regulations being followed by CERC and other SERCs. The Respondent has further stated that the Commission has approved the ARR and Transmission Tariff of OPTCL for the FY 2021-22 considering principles laid down in OERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2014 and also the provisions of the Tariff Policy. OPTCL, therefore, has stated that the Rules and Regulations of CERC and other SERC has no role to play in the determination of Transmission Tariff of OPTCL.
16. The Commission heard the Petitioner and the respondents. The petitioner has filed this petition with a prayer to review the Transmission Tariff order in Case No. 73 of 2020 dated 26.03 2021.
17. The Commission in this regard observes that as per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:
  - (a) Error apparent on the face of the record;
  - (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
  - (c) Any other sufficient reason.
18. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence.
19. As we find from the petition, the petitioner has basically pointed out the methodology adopted by the Commission while calculating cost and revenue under various heads during approval of the ARR as per OERC Transmission Tariff Regulation, 2014. The petitioner has stated that in the ARR excess depreciation has been determined by not excluding assets created out of the contribution of assets by Transmission system Users and Capital Subsidies/Grants. As regards, Income from other Business in ARR the petitioner has stated that income from other business of OPTCL has not been taken into consideration while determining the transmission charges of OPTCL.

20. The Commission in this regard observes that the determination of ARR is a comprehensive process wherein the suggestions, objections and opinions are invited from all the stakeholders. Thereafter the tariffs are determined taking into account the Electricity Act, 2003, Tariff Policy, National Electricity Policy and applicable Regulations. The issues of depreciation and income from other business have been adequately discussed in Para 196-200 and 209-211 respectively. We find no apparent error in those paragraphs. This review petition filed by the petitioner lacks any valid argument and is merely a weak analysis of the Regulation which merits no review. We find no substantial material or ground to review the said orders. It is very well settled that review can only be made on specific grounds and not merely repeating the prayers made earlier.
21. We are citing two important decisions here. “Error apparent on the face of the record” must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. (AIR 1995 SC 455). That no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. (‘Batuk K. Vyas vrs. Surat Borough Municipality,’ AIR 1953 Bombay 133 (R)). But no such error has been pointed out by the Petitioner seeking the review of our judgment. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and there is no indication as to which grounds strictly it falls within the narrow limits of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition appears more to be an appeal than prayer to review our Order.
22. The present review petition is devoid of any merit and accordingly is dismissed.

Sd/-  
**(G. Mohapatra)**  
**Member**

Sd/-  
**(S.K. Parhi)**  
**Member**

Sd/-  
**(U.N. Behera)**  
**Chairperson**