

**ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751021**

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

Case No. 75/2021

GRIDCO	Petitioner
Vrs.		
TPCODL & Others	Respondents

In the matter of: Application under S.94(1)(f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 and provisions of Order 47 Rule -1 & Section 114 of the Code of Civil Procedure, 1908 for review of Order dated 26.03.2021 of the Commission passed in Case No. 72 of 2020.

For Petitioner: Shri Lalit Mishra

For Respondents: Shri Vidyadhar Wagle, TPCODL, Shri K. C. Nanda, DGM (Fin.), TPWODL, Ms. Malancha Ghose, RA, TPNODL, Shri Biond Nayak, Asst. GM (Comm.), TPSODL, the representative of OPTCL, SLDC, Shri Ananda Mohapatra, Shri R. P. Mahapatra.

Nobody is present on behalf of DoE, GoO, M/s. Visa steel Limited, M/s. Grinity Power Tech Pvt. Ltd., Shri Ramesh Chandra Satpathy, M/s. Inidan Energy Exchange, M/s. Vedanta Limited and OPGC Ltd.

ORDER

Date of Hearing: 26.10.2021

Date of Order: 29.10.2021

- The petitioner has come up with application to review the order dated 26.03.2021 passed in Case No. 72 of 2020 regarding ARR and BSP for FY 2021-22.
2. The matter is taken up for hearing on condonation of delay of 160 days for filing of review petition and on question of admission as well as on merit, if delay is condoned through video conferencing. Heard the parties.
 3. During hearing the representative of the petitioner submits that GRIDCO has filed the above review petition for review of order dated 26.03.2021 of the Commission passed in Case No. 72 of 2020 as the Commission while disposing of the above case

regarding ARR and BSP for FY 2021-22 has not allowed some of the cost which requires reconsideration of such issues as follows:

- i. None-consideration of 75% installed capacity of power cost of Unit-III & IV of OPGC Ltd.
 - ii. None-consideration of revised rate of TEESTA hydro power station
 - iii. Disallowance of fixed cost of power procurement from FSTPS-I, II & III, KhTPS-I & II
 - iv. None-consideration of State share of power of power of north Karanpura (660 MW) & Barh-I (660 MW) stations of NTPC during FY 2021-22
 - v. Omission to allow pass through cost of NTPC stations
 - vi. Omission to consider claim towards finance costs.
4. For the aforesaid reasons, the petitioner prays the Commission to allow the review petition u/S. 96 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order-47 Rule-1 of CPC, 1908.
5. We find that all the above points raised in the review petition have already been discussed in our ARR and BSP order for FY 2021-22. We do not find any apparent error in our order relating to them. After hearing of the parties and perusal of the case records, we refer Civil Procedure Code, **1908 Rule 1 Order XLVII "Application for review of judgment"** where review is possible.

1. *Any person considering himself aggrieved-*

- a. *by a decree or order from which an appeal is allowed, but from no appeal has been preferred,*
- b. *by a decree or order from which no appeal is allowed, or*
- c. *by a decision on a reference from a Court of Small Causes and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

2. *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party*

except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation:-*The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.*

6. A review is judicial re-examination of the order. Law is quite settled that there is a distinction between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out in order to make out ground to review an order. Our view is fortified by the case law reported in M/s. Thungabhadra Industries Ltd. (in all the [Appeals](#)) v. [The Government of Andhra Pradesh](#) represented by the Deputy Commissioner of Commercial Taxes, Anantapur, [AIR 1964 SC 1372]
7. The petitioner through his pleading or through his submissions could not make out the discovery of any new or any important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order made, or that on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the order passed. We also do not find any sufficient ground to review the order under challenge. The review application is found not maintainable.
8. The application to review the order passed in Case No. 72/2020 is dismissed, at the stage of admission as it has no merit for consideration.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson