

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: Shri B. K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No. 123/2010

In the matter of: Review Petition against the Order dtd. 20.03.2010 passed in Case
Nos. 41, 42 & 43 of 2007.

1. Western Electricity Supply Company of Orissa Ltd. (WESCO)
 2. North Eastern Electricity Supply Company of Orissa Ltd. (NESCO)
 3. Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO)
- **Petitioners**

Vrs.

1. GRIDCO Ltd., Janpath, Bhubaneswar
 2. Govt. of Orissa, DoO, Bhubaneswar
- **Respondents**

For Petitioner: Shri A K Bohra, CEO (Com), CSO, WESCO, NESCO & SOUTHCO,
Piyush Mohanty, AM (Fin), WESCO, Shri S K Routray, DMF (Com.),
SOUTHCO, Shri B N Mallick, DGM (Fin.), SOUTHCO are present.

For Respondents: Shri R C Mishra, Sr. GM (F), GRIDCO, Shri S C Mohanty, Legal
Consultant, Dept. of Energy, Shri A K Mohantray, GM (R&T), OPTCL
are present.

Date of Hearing: 01.10.2010

Date of Order: 20.12.2010

O R D E R

1. The petitioners in this petition have submitted that there are errors apparent on the face of the record on certain issues which needs to be rectified. The petition relates mainly to the two issues.
- 2.

Settlement of Power Bonds

The Business Plan Order dtd. 20.03.2010 at Para 68 and 69 mentions that the matter of the adjustment of accounts by the DISCOMs in their audited accounts is pending

before the Hon'ble Supreme Court of India and Commission would take a view after pronouncement of the Order of the Apex Court.

In the subsequent para of the said order Commission has directed DISCOMs to reflect the NTPC Bond payable in their audited accounts till the case is finalised.

The Petitioner has submitted that the said direction is an error apparent on the face of the record, which needs to be suitably modified.

Power Purchase

In Para 45 of the Business Plan Order the Commission deemed appropriate to accept the actual power purchase figures by the petitioners for the 1st year of the Business Plan i.e. FY 2008-09. However, according to the petitioners in Para 50 the Commission disallowed the actual power purchase by the Petitioners for the FY 2008-09.

3. In view of the above two submission petitioners have sought to review the Business Plan order and modify the direction towards power bond liability and actual power purchase cost for the truing up for the year 2008-09 and 2009-10.
4. The said petition for review of the Business Plan Order was also filed with a delay of 48 days and the Commission asked the petitioners to file application for condonation of delay on grounds stated thereon. The matter was subsequently heard by the Commission for condonation of delay and also on question of admission on 01.10.2010. Delay in filing the review petition is condoned.
5. GRIDCO's representative Shri R C Mishra, Sr. GM (Finance) in the hearing opposed such petition by the three DISCOMs and reiterated that the direction of the Commission in the Business Plan Order dtd.20.03.2010 should be carried out by DISCOMs in letter and spirit.

Govt. of Orissa's representative Shri S. C. Mohanty, Legal Consultant submitted that Govt. of Orissa endorses the direction given by the OERC in the matter.

Commission's observation

6. After hearing of the parties and perusal of the case records we observed that as regard to the question of power bonds there is no stay or interim restraint order of the Hon'ble Supreme Court or any other superior Forum on servicing of bonds and interests thereon. The Commission has accordingly stated in para 69 of the Business Plan Order dtd. 20.03.2010 that final decision of the Commission shall be subject to

the judgment of the Hon'ble Supreme Court. The statement of the Commission in para 70 of the Business Plan Order does not contradict the aforesaid statement in para 69 inasmuch as in the absence of any stay or restraint order, the direction has been given to reflect the bond liabilities in the audited accounts 'til the case is finalized'.

As regards the Power Purchase Figures the Commission has in para 50 of the Business Plan Order dtd. 20.03.2010 has not disallowed the actual power purchase figure for FY 2008-09 as a basis for accurate future projections of power purchase. On the other hand the Commission has accepted & approved the actual figures given by the DISCOMs themselves for FY 2008-2009 and the DISCOMs own projections for FY 2009-10, 2010-11, 2011-12 and FY 2012-2013. The Commission has further clarified that power purchase approved for FY 2008-09 and 2009-10 in the ARR of DISCOMs for those year will be the basis of truing up as these figures were approved earlier for tariff propose in the respective year. The figures approved for 2008-09 & 2009-10 in the Business Plan are used for projections of power purchase of subsequent years such as FY 2010-11 & FY 2011-12 etc.

7. The Commission is of the view that it has taken into consideration all the facts and submissions made by the DISCOMs while pronouncing the Business Plan order dtd. 20.03.2010. A review of the said order could only be made in the event of following occurrences:

- (i) There has to be discovery of new or important facts or evidence
- (ii) The error has to be apparent and not to be detected by a process of reasoning
- (iii) The review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

In the light of the position of law as set forth in the last foregoing paragraph the Commission is of the view that even if the delay in filing the review petition is condoned, the review sought for does not satisfy the above mentioned tests and in particular there is no error apparent on the face of the record.

8. Again the present review petition is not in conformity with the Hon'ble Supreme Court's order in case of Parison Devi and others Vrs. Sumitri Devi and others. The relevant extract of such judgment is quoted below: -

Under Order 47 Rule 1 CPC a Judgment may be open to review inter-alia if there is a mistake or an error apparent on the face of the record.

An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule-1 of CPC, 1908. In exercise of the jurisdiction under Order 47 Rule-1 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be “an appeal in disguise”

9. Hence, the Commission holds that this is not a fit case for admission of review and the petition is accordingly rejected.

Sd/-

(B.K. Misra)
Member

Sd/-

(K.C. Badu)
Member

Sd/-

(B. K Das)
Chairperson