ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012
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Present: **Shri B. K. Das, Chairperson**
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No. 128/2010

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

GRIDCO Ltd., Janpath, Bhubaneswar …. **Petitioner**

Vrs.

1. Western Electricity Supply Company of Orissa Ltd. (WESCO)
2. North Eastern Electricity Supply Company of Orissa Litd. (NESCO)
3. Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO)
4. Central Electricity Supply Utility of Orissa (CESU), Bhubaneswar
5. Govt. of Orissa, DoE, Bhubaneswar
6. Orissa Power Transmission Corporation Ltd. (OPTCL), Bhubaneswar

…. **Respondents**

For Petitioner: Shri R C Mishra, Sr. GM (F), GRIDCO is present.

For Respondents: Shri A K Bohra, CEO (Com), CSO, WESCO, NESCO & SOUTHCO, Piyush Mohanty, AM (Fin), WESCO, Shri B N Mallick, DGM (Fin.), SOUTHCO, Shri B K Lenka, COO, CESU, Shri S.C. Mohanty, Legal Consultant, DoE and Shri A.K. Mohanty, GM(R&T), OPTCL are present.

Date of Hearing: 01.10.2010 **Date of Order: 14.12.2010**

O R D E R

1. The petitioner in this case is GRIDCO Limited which has filed an application u/S.94(1)(f) of the Electricity Act, 2003 seeking the review of the Commission order dtd.20.03.2010 in the approval of the Business Plan of DISCOMs for the period for FY 2008-09 to 2012-13. GRIDCO in the said petition has sought review on the following aspects of the Commission’s order dtd.20.03.2010.

2. CAPEX requirement of the DISCOMs:

GRIDCO has submitted that Government of Orissa have taken a decision to provide DISCOMs a minimum budgetary allocation of Rs.2450 crore during the period from FY 2010-11 to 2012-13 (three years) through a subordinate interest free loan. This would help soften the impact on the finances of the DISCOMs as they would not be required to pay the interest. GRIDCO has submitted that direction may be given to the DISCOMs to bring in loan capital to the tune of Rs.2550 core towards their 51% of the shares in each of the three DISCOMs. They should either bring in loan capital or arrange loan for the DISCOMs in proportion to the loan capital to be invested by the State Govt.

GRIDCO has further submitted that the procedure laid down for release of funds stipulates that the funds would be routed through GRIDCO. GRIDCO is apprehensive that the onus of default in servicing loan repayment should be with DISCOMs and not with GRIDCO. In order to safeguard such default the Commission may issue orders to ensure security mechanism before the disbursement of funds to DISCOMs. DISCOMs should follow a transparent procedure of bidding and selection of bidders for award of contract by a procurement committee. The recommendations of the procurement committee should be approved by the Board of Directors of DISCOMs. The DISCOMs should file DPR with cost benefit analysis only on projects intended for loss reduction and capacity expansion.

3. Shareholding pattern in DISCOMs is held at the rate of 49% by GRIDCO and 51% by Reliance infrastructure and not 49% by State Govt. as mentioned in the Order.

4. Energy Demand:

As regards the energy demand approved in the Business Plan order the power procurement by DISCOMs would be more than the approved figures since the distribution loss of DISCOMs is higher than the approved loss figures.

DISCOMs should, therefore, restrict their drawal to the approved quantum. In case DISCOMs draw more power than the approved quantum they should pay the cost of such differential power to GRIDCO on monthly basis along with the BSP bill of next month. This should have been mentioned in the Business Plan Order.

5. Distribution and AT&C loss (%) level:

The DISCOMs have failed to achieve the target of AT&C loss (%) level given by the Commission. The non-achievement is not factored into the ARR of DISCOMs hence consumers of the State are deprived of benefit of AT&C loss reduction.

DISCOMs have no bearing on the unachieved part of the distribution loss and it is only in terms of defaulting to GRIDCO and the State Government and also not meeting entire cost as approved in the ARR. GRIDCO's finances are consequently put into pressure to procure costlier power due to non achievement of distribution loss targets. On the other hand GRIDCO is being directed to release escrow for payment of salary, O&M and repayment of loan availed by DISCOMs.

Approved AT&C loss percentage in the Business Plan period should be the criteria for the purpose of calculation of incentive and penalty at the year end.

6. Collection efficiency:

In the Business Plan order the collection efficiency is capped at 99% by FY 2012-13 but whether collection of arrears is included in such target is not mentioned. DISCOMs should report collection of current and arrears separately. Commission may fix the target of AT&C loss for each category of consumers on the basis of LT, HT & EHT for better monitoring and accountability.

7. Infusion of Equity into the DISCOMs:

GRIDCO submitted to direct the DISCOMs to increase their equity share capital base by offering the share to existing shareholders which would help DISCOMs to avail fund for their CAPEX requirement. This would help DISCOMs to improve debt equity ratio and enhance their capacities to borrow more and earn higher ROE on the enhanced equity base.

8. Receivables of GRIDCO from DISCOMs : In the Business Plan order Commission has not addressed the receivables of GRIDCO from DISCOMs to the tune of Rs.4090/- cr. as on 31.03.2010.

GRIDCO has thus prayed the Commission to consider the above issues and review the order dtd.20.03.2010 to safeguard the interest of GRIDCO.

9. Shri A.K. Bohra, CEO (Commerce), CSO of NESCO, WESCO and SOUTHCO opposed the petition of GRIDCO and said that companies are doing their best to reduce AT&C loss levels. They have also taken adequate steps to increase their collection efficiency.

10. Govt. of Orissa’s representative Shri S.C. Mohanty, Legal Consultant submitted that orders of the Commission shall be followed by the DISCOMs to improve the sector’s health.

Commission’s Observation and Order

11. The Commission has gone into details of the prayer of GRIDCO to review the Business Plan order of the Commission dtd.20.03.2010 on certain grounds. GRIDCO

in its prayer has raised certain issues regarding the funding of the CAPEX requirement of the DISCOMs by the majority share holder Reliance Infra, funding by Govt. of Orissa and its modalities of transfer, recovery of high cost power exceeding approved drawal by DISCOMs, performance parameters in terms of AT&C loss level and collection efficiency and infusion of equity into DISCOMs. We observe that while passing the Business Plan order dtd.20.03.2010, all the facts and materials were taken into account and no new material facts have been brought out. Further, in the meantime in part compliance of the Business Plan order dtd.20.03.2010, State Govt. has already decided investment of Rs.2400 cr. during a period of 4 years starting from 2010-2011 to 2013-14 and the modalities have been outlined in their letter No.R&R-I-06/2010-9230/En. Dtd. The 21st October, 2010.

12. The review of the order could only be made on the following grounds:

(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.

a) The grounds of prayer in the review petition have been extensively dealt in the Commission's order in question and review petitions do not satisfy any of the above conditions.

b) The review petitions are 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"

13. Since the petition of GRIDCO does not satisfy the essential ingredients for review as analysed above and after taking into account the steps initiated by Govt. for implementation of CAPEX programme, the Commission does not consider it a fit case for review, hence rejected. The Commission have already fixed the annual target of overall collection efficiency, distribution loss and AT & C loss, target for the business period ending 2012-13 on normative basis and at this stage there is no need to revisit the same. Truing up exercise will be carried out in due course based on the various parameters approved / to be approved in the respective ARR of the distribution companies.

14. With these observations the case is disposed of.

(B.K. Misra) **Member**	**(K.C. Badu)** **Member**	**(B. K Das)** **Chairperson**

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