

**ODISHA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN,**  
**UNIT – VIII, BHUBANESWAR – 751 012**  
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**Present : Shri S. P Nanda, Chairperson**  
**Shri B. K Misra, Member**  
**Shri S. P Swain, Member**

**Case Nos. 49/2012**

**M/s. Shalivahana Green Energy Ltd.**

**..... Petitioner**

**Vrs.**

**GRIDCO & Another**

**.....Respondents**

**In the matter of: An application under Section 94 (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 for review of the Order dtd. 04.04.2012 passed by the Commission in Case No. 29/2011.**

For the Petitioner: Shri R. P. Mohapatra, the authorized representative.

For the Respondents: Shri Ranjit Das, Sr. GM (PP), GRIDCO

**Date of Order: .11.2012**

**Case No. 67/2012**

**M/s AVN Power Projects (P) Ltd.**

**... Petitioner**

**- Vrs. -**

**GRIDCO & others**

**... Respondents**

**In the Matter of : An Application for review of the order dated 04.04.2012 of the Commission passed in Case no. 29/2011, under Section. 94 (f) of the Electricity Act, 2003, read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004, regarding approval of Power Purchase Agreement (PPA) executed between GRIDCO Ltd. and petitioner.**

For the Petitioner: Shri Bibhu Charan Swain, the authorized representative.

For the Respondents: Shri Ranjit Das, Sr.GM(PP), GRIDCO,  
Shri R.P.Mohapatra, the authorized representative of M/s. Shalivahan Green Energy Ltd.,  
Nobody is present on behalf of M/s.Andhavarapu Power Projects Pvt.Ltd., M/s.Rake Power Ltd.,M/s. Prasad Bio-Energy (P) Ltd., M/s. Starlight Energy Ltd.,M/s.Swarnayothi Agro & Export Ltd. and M/s.OREDA.

**Date of Hearing: 31.08.2012 & 18.09.2012**

**Date of Order: 12.11.2012**

**ORDER**

1. Both the cases were heard by the Commission in different dates i.e. on 31.08.2012 Case No.49 of 2012 and on 18.09.2012 Case No.67 of 2012 and interim orders were passed in both the cases awaiting the written note of submissions of the parties. Parties in both the cases have filed their written note of submissions within the time given by the Commission. As both the cases are similar in nature, the Commission disposed of both the cases by this common order.
2. The fact of the case is that M/s. Shalivahana Green Energy Ltd. has filed a review petition before this Commission for reviewing the Order in Case No. 29 of 2011 dtd. 04.04.2012 regarding approval of Power Purchase Agreement (PPA) executed between GRIDCO and the Petitioner. The Commission in the said order had made certain observation regarding the impasse between GRIDCO and the Petitioner with regard to the PPA signed between them. The Petitioner had raised several disagreements with GRIDCO regarding the executed PPA at a later stage. The Commission advised both the Developer and GRIDCO to have project specific PPAs with incorporation of details such as capital cost, interconnection point, delivery point, energy accounting and billing procedure etc. instead of having PPA which is more generic in nature. The Petitioner submitted that the observation of the Commission that the although the Developers have signed PPAs with GRIDCO but at the same time have objected on number of points of the PPA is an error apparent on the face of the record, because these observations of the Commission have not been countered by GRIDCO at any stage. The Petitioner also stated that observation of the Commission that it would be a fallacy to get into such minute details of the PPA and write down a new PPA between GRIDCO and Petitioner is also an error apparent in the Order. This is because the petitioner had earlier made submissions before the Commission about the contravention of the statute by GRIDCO while framing the PPAs. The Commission has obligation to approve the PPAs in discharge of its function under Section 86 (1) (b) of the Electricity Act, 2003 as well as Section 21 of the Orissa Electricity Reform Act, 1995. Though the Commission had recorded the prayer of the Biomass Developers for framing a model PPA and observed in the interim order that it would decide on the matter shortly but this has not happened till

date. The Petitioner also pointed out that the advice of the Commission in the Order under proposed review that both the Developer and GRIDCO to have project specific PPA instead of PPAs of generic nature is an error. This is because project specific tariff is not applicable to Biomass Power Projects.

3. The Respondent GRIDCO submitted that after passing of the final Order in Case No. 29/2011 dtd. 04.04.2012 it had asked all the 8 nos. Biomass Power Developer except the present petitioner to submit the latest status report of their proposed Biomass project as per the implementation agreement. GRIDCO is in the process of amending the existing PPA of M/s. Shalivahana Green Energy Ltd. executed on 30.12.2010 to a project specific PPA incorporating details of the project such as capital cost, interconnection point, voltage of delivery and billing procedure etc. as directed by the Commission. GRIDCO has, therefore, prayed that review of the Order dtd. 04.04.2012 is not required and the petition should be rejected.
4. The Commission is well aware of the point raised by the Petitioner that Biomass Developer are entitled for generic tariff and not project specific tariff. It is clarified that incorporation of details in a project specific PPA will not lead to alteration of generic tariff. The Commission has taken into account the apprehension of the Biomass Developers in terms of interconnection and delivery point of the Project, voltage of delivery, energy accounting and billing procedure etc. which are project specific in nature. GRIDCO and Developer should, therefore, agree on those points in the PPA so that there is no scope for future litigation. These problems cannot be addressed by signing a model PPA which is only generic in nature. The Commission is of the view that apart from incorporating general and common points in the generic PPA which is a kind of model and has guideline value the actual PPA should incorporate specific details such as interconnection points, delivery point, voltage of injection and billing procedure etc.
5. The present Petitioner has already commissioned its project and has started injecting power to the GRID. Therefore, there would be no problem in signing a project specific PPA with GRIDCO. The signed PPA should be submitted to the Commission for approval. The Commission has already revised generic tariff for Biomass Developer in Case No. 151-155 of 2010 dated 23.09.2011 in which year-wise levelized fixed tariff and variable tariff have been determined by the Commission for the projects which are commissioned during the first control period i.e. FY 2010-11 to

FY 2012-13. The PPA of the M/s. Shalivahana Green Energy Ltd. should also mention levelized tariff as agreed with GRIDCO. Since the subject project has been commissioned during the control period, the Commission do not find any difficulty for the parties to sign project specific PPA and to mention the levelized fixed tariff and the variable tariff from the commercial date of operation upto 13<sup>th</sup> Financial Year of operation, or up to FY 2023-24 whichever is earlier in line with Commission's review order dated 23.09.2011. The project specific PPA should also clearly mention whether the effective variable tariff shall factor the benefit of accelerated depreciation or not?

6. In the light of the above observation the Commission is of the view that there is no merit in the present petition as there is no error apparent in our Order in Case No. 29/2011 dtd. 04.04.2012. The grounds of the prayer have been extensively dealt by the Commission in the Order in question. The observation of the Hon'ble Supreme Court in case of Parison Devi and Others vrs. Sumitree Devi and Others is noteworthy here.

*“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”.*

7. In the light of the above observation of the Hon'ble Apex Court the Petition of M/s. Shalivahana Green Energy Ltd. is dismissed.
8. M/s. AVN Power Projects Pvt. Ltd. whose case has been registered as Case No. 67/2012 has prayed to club his case in the present review petition in Case No. 49/2012. In view of our Order in the review petition the said case is also dismissed.
9. Accordingly, both the cases are disposed of.

**Sd/-**  
**(S. P. Swain)**  
**Member**

**Sd/-**  
**(B. K. Misra)**  
**Member**

**Sd/-**  
**(S. P. Nanda)**  
**Chairperson**