ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012
*** *** ***

Present : **Shri S.P Nanda, Chairperson**
Shri B.K. Misra, Member
Shri S. P. Swain, Member

Case No.65 of 2012

GRIDCO Ltd., Janpath, Bhubaneswar - 751 022 .... Petitioner

Vrs.

M/s Shalivahana Green Energy Ltd.,
7th Floor, Minerva Complex,
94 SD Road, Secunderabad - 500 003
Mis Andhavarapu Power Projects Pvt. Ltd.,
Varam Residency, 1st Flooor, Srikakulam - 532005 A.P. .... Respondent

In the matter of : **An application of GRIDCO Limited under Section 86 of the Electricity Act, 2003 and other enabling provisions to re-determine the tariff of the Biomass power plants executed PP A with GRIDCO for sale of power from their proposed projects in the State.**

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

For the Respondent: Shri R P Mohapatra authorized representatives of
Mis Shalivahana Green Energy Ltd.
Shri Bibhu Charan Swain authorized representatives of
m/S A VN Power Projects Pvt. Ltd and
M/s Rashmee Power Ltd

Date of Hearing: 18.9.2012 **Date of Order :13.12.2012**

ORDER

1. A petition has been filed by GRIDCO to re-determine and lower the present applicable tariff for Biomass Power Plants to be set up in Odisha. GRIDCO in support of such

petition has mentioned that the revised cost of Biomass fuel determined at Rs.2316/MT with 5% annual escalation for FY 2011-12 is in the higher side. The Commission in its Order dated 23.9.2011 in Case No.151-155 of 2010 revised the tariff for Biomass Plants to be set up in Odisha owing to the revision in Biomass fuel cost at Rs.2316/MT.

2. GRIDCO submitted that such revision of Biomass fuel is in the higher side as compared to those in other States like Madhya Pradesh, Andhra Pradesh, Uttar Pradesh, Maharashtra, Rajasthan, Tamil Nadu etc. This rate is also higher than the rate proposed by the Consultant, WISE, Pune at Rs.1785/MT. The study of OREDA on the basis of which the revision has been made depended on information relating to price of Rice Husk only as Biomass fuel from the mills. OREDA did not consider other fuels such as Palmolive Stem, Coffee Husk, Chilly Stick, Coconut Shell Powder, Coconut chipping material, Groundnut shell etc. The Biomass Developers should also explore use of different types of non-fossil fuel such as Crop Residues, Agro Industrial Residues, Forest Residues etc., as major portion of Rice Husk used by the millers as fuel for the Boilers to produce Par-boiled rice and at the time of heavy demand, millers offer the same at a very high rate. The rate submitted by OREDA for Rice Husk at the season time is not appropriate for consideration of the Tariff of Bio-mass project.

3. GRIDCO further submitted that it has received a letter from President, "All Odisha Rice Millers Association" on the average rate of Rice Husk in different areas ranging from Rs.1500/MT to Rs.2800/MT inclusive of transport.

4. GRIDCO further prayed that the Biomass Developers should explore the use of different types of non-fossil fuels, actively taking up energy plantation in Govt. base lands with support from Government and submit the fuel management plan considering all types of available Biomass Plants. The Commission may, therefore, consider to reassess the cost of all the Biomass fuels available in the State and revise the tariff downwards for the power procured from Biomass plants for sale to GRIDCO for FY 2012-13 onwards taking into consideration the accelerated depreciation and CDM benefits to be shared between parties and taking Rice Husk price as per All Odisha Rice Millers Association at Rs.1500/MT.

5. Accordingly, notices were served on the Respondents and the date of hearing was fixed for 18.9.2012.

6. Respondent M/s Shalivahan Green Energy Limited in its counter stated that the Biomass Plant of the Respondent has already been commissioned in December, 2011 and therefore, it is not a forthcoming project and the application for downward revision of tariff should not be applicable to it. GRIDCO has submitted the said petition based on theoretical considerations without obtaining the data relating to the availability of Biomass fuel other than Rice Husk. GRIDCO should provide data relating to availability of alternate Biomass fuel and the cost of the same. The general tariff determined by the Commission is applicable for the control period for three financial years commencing from FY 2010-11 and shall cover upto the end of 2012- 13. The Commission should determine generic tariff for the next control period only and the generic levellised fixed component of tariff for Biomass Plant commissioned during the first control period shall remain unchanged for the tariff period (13 years from the date of commissioning). The variable component of tariff shall, however, be re-determined. The CERC (Terms and Conditions for Tariff Determination for Renewable Energy Sources) Regulations, 2012 notified on 06.02.2012 has provided Biomass fuel price for different States linked to Index formula for each year of operation. CERC has also determined net levellised fixed tariff (upon adjusting for accelerated depreciation) (if availed) at Rs.5.29 KWH. The tariff approved by OERC dated 23.9.2011 is at Rs.5.01/ KWH for the FY 2012-13. Therefore, the tariff for Biomass Plants needs to be revised upwards and the petition for downward revision is misplaced.

7. M/s AVN Power Projects Pvt Ltd. submitted that the present application of GRIDCO for redetermination of Biomass tariff actually is in disguise of a review of Commission's order dated 23.9.2011 in case No.151-155/ 2010 and also review of order dated 04.4.2012 in Case No.112 of 2011. GRIDCO has also filed the review petition after expiry of 90 days w.e.f. 04.4.2012, therefore, the same is liable to be rejected. GRIDCO in the present petition has only relied on the letter of All Odisha Rice Millers Association which is confusing as there is no specific rate of rice husk. GRIDCO had taken much time to rethink on the matter of revision of Biomass tariff based on biomass pricing and GCV.

Therefore, this letter of the Association is an afterthought. GRIDCO also did not make any observation on the report of OREDA based on which the review has been made. Any downward revision of the Biomass tariff by the Commission would render the project commercially unviable. It was, therefore, submitted by the respondent that the petition of GRIOCO for review of generic tariff of Biomass Plant should be rejected as it has no merit.

8. M/s Rashmi Power Private Limited also made similar submissions as that of M/s AVN Power Projects Pvt. Ltd and has pleaded not to consider the review of generic tariff of Biomass Power Plants and reject the petition of GRIDCO.

9. M/s Shalivahan Green Energy Limited represented through Mr. R. P. Mohapatra in a further submission submitted that the petitioner has not given any data about the price and availability of alternate Biomass fuel. The letter of All Odisha Rice Millers Association is vague. The letter indicates that the price of Biomass fuel can be as high as Rs.2800/MT whereas Commission in its re-determination for Tariff for Biomass Plant in its Order dated 23.9.2011 has considered the cost of fuel at Rs.2316/MT. The present Biomass Tariff is valid for the control or review period upto the end of 2012- 13 and any revision of Biomass Tariff can only be done for the next Control Period starting from FY 2013-14. The petition of GRIDCO is not supported by any provision of the Electricity Act, 2003 or OERC Regulations. As regards the CDM benefits, the Developer has to incur a lot of expenditure for getting CDM benefit and hence the entire CDM benefit may be retained by the Project Developer. The benefit of the accelerated depreciation can only be adjusted from the applicable tariff if the Developer has availed such benefit.

Commission's Observations

Heard the matter at length from the Petitioner and the Respondents. We have also gone through their submissions.

10. This petition is filed by GRIDCO which pertains to revision of the Biomass tariff determined by the Commission in Case No.l51-155 of 2010 dtd. 23.09.2011. GRIDCO in its petition has submitted to revise the tariff of Biomass Power Plant by considering a

lower price for the biomass fuel. In the petition GRIDCO has submitted that Commission has revised the tariff of Biomass Power Plants upward by accepting a higher fuel cost at Rs.2316/MT which is based on the study made by OREDA. GRIOCO has contended that OREDA in its study had collected information and price of Rice Husk only. However, there are other cheaper Biomass fuels available in our State such as Crop Residue, Agro Industrial Residue and Forest Residue which OREDA had not considered. GRIDCO has also obtained a letter from the President, All Odisha Rice Millers Association which says that the average rate of Rice Husk in different areas vary from Rs.l500/MT to Rs.2800/MT. The present tariff of Biomass sources of energy is, therefore, higher than the tariff applicable in many other States of the country.

11. The Respondents on the other hand vehemently opposed to any suggestion of downward revision of Biomass tariff and have pointed out to the fallacy of the letter given by All Odisha Rice Millers Association. They have also argued that no revision of Biomass tariff should be made for the present control period ending FY 20I2-13 and any revision is to be made it should be done only for the next control period.

12. We have gone into the details of the prayer of GRIDCO and objections made by the Respondents and are of the view that review of any order can only be made on the grounds of discovery of new facts, error apparent or omission of any important fact. The petition of GRIDCO is merely based on a letter received from All Odisha Rice Millers Association mentioning about rate of Rice Husk ranging from Rs.1500/MT to Rs.2800/MT. GRIDCO in its petition has also suggested that the Biomass Developers should use other non-fossil fuels besides Rice Husk to optimize the Biomass fuel cost. However, GRIDCO has not given any price of such fuel based on any study or report of a reputed organization/institution. On the other hand OREDA in its report relied on information received from 55 millers covering 9 districts and determined the average selling price of Paddy Husk at Rs.2316/MT. Based on such recommendation of OREDA in its report, we revised the Biomass fuel cost and subsequently the Biomass tariff in our Order dated 23.9.2011 in Case No.l51-155 of 2010. The arguments placed by GRIDCO for downward revision of Biomass fuel and consequent revision of tariff do not hold much substance in order to be considered for any review of our order dated 23.9.2012.

13. We are, therefore, of the view that there is no merit in the present petition of GRIDCO as there is no error apparent in our Order in Case No.151-155 of 2010 dtd. 23.09.2011. The grounds of the prayer have been extensively dealt by us in the Order in question. The observations 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-I of CPC, 1908. In exercise of the jurisdiction under Order 47 Rule-I 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 ".

14. In the light of the above observation of the Hon'ble Apex Court the Petition of M/s GRIDCO Ltd. is dismissed.

15. Accordingly, the case is disposed of.

Sd/-	**Sd/-**	**Sd/-**
(S. P. Swain)	**(B.K. Misra)**	**(S.P. Nanda)**
Member	**Member**	**Chairperson**