

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SHAILASHREE VIHAR,
BHUBANESWAR-751021**

**Present : Shri S. P. Nanda, Chairperson
 Shri S. P. Swain, Member
 Shri A. K. Das, Member**

Case No. 30/2016

M/s. OHPC Ltd.	Petitioner
Vrs.		
DoE, GoO & Others	Respondents

n the matter of: **An application under S.94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC Conduct of Business Regulations, 2004 and O.47R-1© of the CPC, 1908 for review of Order dated 21.03.2016 of the OERC in Case No.52 of 2015 regarding ARR & Generation Tariff of OHPC Stations for FY 2016-17.**

For Petitioner: Shri B. K. Behera, Director (Fin.), OHPC, Shri A. K. Mishra, Director (O), OHPC.

For Respondents: Sri G. N. Agrawal, Convenor-cum-Gen. Secy, Sambalpur District Consumers Federation, Shri L. R. Dash, GM, GRIDCO Ltd., Ms. Niharika Pattnayak, ALO, DoE, GoO, S. Bhuyan, COO, NESCO Utility, Ramesh Chandra Satpathy, Secretary, National Institute of Indian Labour, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, L.D. Upadhyaya, AGM (Com.), SOUTHCO Utility are present. Nobody present on behalf of Shri Prashanta Kumar Das, President, State Public Interest Protection Council, M/s Swain & Sons Power Tech Private Limited.

ORDER

Hearing Date: 26.07.2016

Date of Order:01.08.2016

The OHPC has filed the above noted case u/S. 94 (1) (f) of the Electricity Act, 2003 and Reg. 70 (1) of the OERC (Conduct of Business) Regulations, 2004 read with 0.47R-1 of the CPC, 1908 for review of order dated 21.03.2016 passed by the Commission in Case No. 52/2015 regarding approval of ARR and generation tariff of its hydro power stations for FY 2016-17.

2. The case was taken up on 26.07.2016 for hearing on question of admissibility and as well as on merit. During hearing the representative of the petitioner stated that OHPC has filed the review petition as there are errors apparent on the face of the record and there are sufficient cause limited to non-consideration of up-valuation of Rs. 766.20 Cr. in the form of convertible bonds carrying interest @7% and restructuring of the

UIHEP Govt. loan as per Notification No. 5843 dated 03.07.2015. The petitioner seeks review of the order passed in Case No. 52/2015 on the following issues:-

- i. Section 25 (i) of the Reform Act, 1995 does not impose any restriction to exercise any amending power so far as the funds allotted by the State Govt. is concerned. It only imposes restriction upon the licensee to adhere to the Regulation laid down by the Govt. for a period of one year or to make further change with approval of the Govt. The observation of the Commission at Para 75 (a) of the order is error on the face of the record.
- ii. The observation of the Commission in para 75 (b) is erroneous. This state as follows: *“The up-valuation of the assets of OHPC and GRIDCO had been kept in abeyance by the Government vide its notification dated 29.01.2003 till the power sector turns around. Therefore, it is not in the larger interest of the State to pass on the effect of up-valuation on the consumers of Odisha by raising electricity tariff.”*

This is because Government had kept in abeyance the up-valuation upto 2014-15 and the effect of up-valuation is due to OHPC from 2015-16 onwards.

- iii. The OHPC further submitted that the Commission has not sought any data from OHPC to justify the present higher valuation of assets. The bond issued to State Government cannot be serviced from reserve and surplus which is against the accounting principles. The OHPC is undergoing massive R&M&U activities for which massive fund is required. Those can be met from the earmarked balance available in the bank.
3. Shri Ramesh Chandra Satpathy has submitted that all the issues raised by the review petitioner-OHPC now has already been dealt by the Commission by taking into consideration of the same while passing the order on ARR & Generation Tariff application of OHPC for FY 2016-17. Therefore, the review application of OHPC is appeal in disguise and liable to be dismissed at limine.
 4. The Commission desired to know the views of Government and also clarification if the proposed review sought is with the approval of top management because of divergent views expressed in different forums and allowed time upto 29.07.2016 to file reply. No reply has been received from any corner. After hearing the parties and perusal of the case records, we observe that as per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court

under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others.

As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:

- (a) Error apparent on the face of the record;
- (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
- (c) Any other sufficient reason.

Error contemplated under the rule must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence.

The power to review on the grounds raised by OHPC cannot be confused with the grounds of appeal in disguise raising similar issues again and again. Only the Superior Court of law can examine the context and conclusions arrived by any subordinate Court to ascertain the validity of application of law. Once arrived unless otherwise raised in accordance with law, a repetition of old and overruled arguments is not enough to reopen concluded adjudications.

We are citing two important decisions here. *“Error apparent on the face of the record” must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.* (AIR 1995 SC 455).

That no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. (‘Batuk K. Vyas vrs. Surat Borough Municipality,’ AIR 1953 Bombay 133 (R)).

But no such error has been brought before us by the Petitioner seeking the review of our order dated 21.03.2016 passed by the Commission in Case No. 52/2015. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and there is no indication as to which grounds strictly it falls with the narrow limits of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition appears more to be an appeal in disguise than prayer to review our Order.

The Hon’ble Supreme Court in *Ajit Kumar Rath Vrs. State of Orissa* (1999) 9 SCC 596 has held that the expression “any other sufficient reason” used in order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

None of the points raised by the Review Petitioner falls under the scope of review as prescribed under Order 47 Rule 1 of the Civil Procedure Code. Therefore the review petition is not maintainable as the same relief was sought for at the time of hearing of the main Case No.52 of 2015 and had been negatived and also we find no error apparent on the face of the record.

5. Accordingly, with the above observation, the review petition filed by M/s. OHPC for review of order dated 21.03.2016 passed in Case Nos. 52/2015 is dismissed as devoid of any merit.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson