

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

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

Case No. 31/2016

M/s. GRIDCO Ltd.	Petitioner
Vrs.		
Shri M. V. Rao & Others	Respondents

In 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.47 Rule 1 of the CPC, 1908 for review of Order dated 21.03.2016 passed in Case No.54 of 2015 regarding ARR & BSP for FY 2016-17.**

For Petitioner: Shri M. S. Sahoo, AGM (El.), GRIDCO Ltd., Shri S. K. Saha, DUME, GRIDCO Ltd.

For Respondents: Shri Ramesh Chandra Satpathy, Secretary, National Institute of Indian Labour, Shri G. N. Agrawal, Convenor-cum-Gen. Secy, Sambalpur District Consumers Federation, Sri Ananda Kumar Mohapatra, Ms. Niharika Pattnayak, ALO, DoE, GoO, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, Shri Alekh Chandra Mallick, L. D. Upadhyaya, AGM (Com.), SOUTHCO Utility, Shri S. K. Puri, GM (RT&C), OPTCL are present. Nobody present on behalf of M/s. FACOR, NOCCI, M/s. Aditya Birla Chemicals (India) Limited, State Public Interest Protection Council, Cuttack, M/s. UCCI, Ms. NOCCI, M/s. Swain & Sons Power Tech Pvt. Ltd., M/s. Vedanta Limited.

ORDER

Hearing Date: 26.07.2016

Date of Order: 01.08.2016

GRIDCO Limited 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 and 0.47 Rule-1 of the CPC, 1908 for review of order dated 21.03.2016 passed by the Commission in Case No. 54/2015.

2. The above review petition is taken up on 26.07.2016 for hearing on admissibility as well as on merit. During hearing the representative of GRIDCO Ltd. has submitted that the Commission has not taken into consideration of various claims made by them while approving ARR & BSP application of GRIDCO Ltd. for FY 2016-17. Over and

above there are certain key developments had taken place like Union Budget, 2016 dated 29.02.2016 prior to the promulgation of the BSP order for FY 2016-17 having definite financial bearings on the ARR & BSP of GRIDCO Ltd.. The same should have been considered by the Commission.

The following issues have not been considered by the Commission while passing the ARR & BSP tariff order for FY 2016-17:-

- i. Disallowance of power purchase cost from NTPC-Barh STPs in BSP for FY 2016-17.
 - ii. Additional financial burden due to levy of increased clean environment cess @ Rs. 400/MT of Coal.
 - iii. A&G Expenses
 - iv. (a) Interest of GRIDCO under UDAY Scheme.
(b) Interest on OHPC Bond
 - v. Increase of coal price by 6.30%
 - vi. Repayment of loan principal due during FY 2016-17.
 - vii. RoE in FY 2016-17 etc.
3. Shri Ramesh Chandra Satpathy has submitted that the review petition of GRIDCO Ltd. should not be admitted for hearing as the tariff order has already been implemented from 1st April, 2016 and the consumers have paid the revised tariff, any change of tariff of GRIDCO Ltd. will adversely affect the entire tariff order of the Commission for FY 2016-17 right from the generation to distribution. All the issues raised in this review petition were discussed and the Commission had also taken all the issues into consideration and has passed its reasoned order in detail. In the said tariff order GRIDCO Ltd. is directed not to purchase high cost power from NTPC-Barh STP. The electricity consumers of the State should not be burdened for purchase of high cost power by GRIDCO from NTPC-Barh STPs. Regarding the clean environment cess Rs. 400/MT coal GRIDCO should approach the Central Govt. to pass on the said cess to the State Govt. directly as the coal is produced/procured from the State of Odisha. Therefore, the Commission may not admit the review petition to revise BSP of GRIDCO for FY 2016-17 as because all the issues raised now have also raised in its original tariff application for FY 2016-17 and the same had already been taken into consideration by the Commission. The review petition of GRIDCO is an appeal in disguise which needs to be dismissed at liminie.

4. Shri A. C. Mallick and Shri G. N. Agarwal have supported the review petition submitted by GRIDCO. Further Mr. Mallick submitted that omissions if not addressed in the tariff of FY 2016-17 will reappear in the ARR of next year FY 2017-18 and its bearing will cause an increase in tariff in the next year as a burden on future consumers. He also pointed out that generation beyond normative power by the use of imported coal is a double taxing as higher tariff is paid.
5. Shri Ananda Kumar Mohapatra submitted that the CMD, GRIDCO Ltd. is a member of OPGC Board which has moved to the Hon'ble APTEL challenging the said tariff order of the OERC passed in Case No. 53/2015 but GRIDCO has now come here for review of their tariff orders for FY 2016-17 which is appeal in disguise and liable to be dismissed.

The Commission desired to know the views of Government and directed to file reply, if any, within 29.07.16 to the Law Officer present. No such reply has been filed till date.

6. After hearing the parties and perusal of the case records and the submissions made during hearing we observed 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 GRIDCO 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. (‘Batak 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. 54/2015. 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.54 of 2015 and this was negated. We also find no error apparent on the face of the record.

7. Accordingly, with the above observation, the review petition filed by M/s. GRIDCO for review of order dated 21.03.2016 passed in Case Nos. 54/2015 is not maintainable and dismissed as devoid of any merit.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson