

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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**Present:      Shri U. N. Behera, Chairperson  
                  Shri A. K. Das, Member  
                  Shri S. K. Parhi, Member**

**Case No. 32/2017**

OHPC Limited	.....	Petitioner
Vrs.		
Shri G. N. Agrawal, Covener-cum-General secretary, Sambalpur District Consumers Federation & others	.....	Respondents

**In the matter of:**      **An application under Sections 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 and under Order 47 Rule 1 (c) of CPC 1908 for review of Order dated 23.03.2017 passed in Case No. 61 of 2016.**

**For Petitioner:**      Shri Pravakar Mohanty, Director (Fin.), Shri Sanjib Kumar Tripathy, Director (O) and Shri Prabodh Kumar Pradhan, DGM, OHPC Ltd.

**For Respondent:**      Shri G. N. Agarwal, Shri Ananda Kumar Mohapatra, Shri Ramesh Chandra Satpathy, Shri R. P. Mahapatra, Shri L.R.Dash, Sr. GM, GRIDCO Ltd. and Ms. Niharika Pattnayak are present. Nobody is present on behalf of Shri Aditya Kumar Mishra & M/s. WISE, Pune.

**ORDER**

**Date of Hearing: 16.08.2017**

**Date of Order: 23.10.2017**

The present petition has been filed by OHPC Ltd. under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 for review of order dated 23.03.2017 passed in Case No. 61/2016 regarding approval of Annual Revenue Requirement and Generation tariff of OHPC stations for the FY 2017-18.

2. OHPC submits that the present review petition is filed on the basis of errors apparent on the face of the record as well as sufficient cause limited to the non-consideration of total reimbursement of income tax from GRIDCO stating the same as income generated from non-core business.
3. OHPC further submits that the application for approval of ARR and Tariff for the financial year 2017-18 in respect of individual power stations of OHPC was filed before the Commission on 29.11.2016. In para 14 of the said application OHPC had

- submitted to reimburse an amount of Rs.40.704 crore from GRIDCO in the tariff of OHPC for FY 2017-18 towards income tax as per the audited accounts of FY 2015-16.
4. The Commission had passed its order approving reimbursement of income tax amounting to Rs.10.91 crores as against the claim of OHPC amounting to Rs.40.704 crores. The Commission in its observation had stated that only the income from business profession is considered towards calculation of income tax.
  5. OHPC has filed this review petition to allow the income tax paid by OHPC considering the interest income from GRIDCO as the core business income of OHPC.
  6. Responding to the Petition the Respondents Mr. R P Mohapatra submitted that the Commission may not admit the case for review in view of the fact that the Commission had disallowed reimbursement of income tax paid on the DPS income from GRIDCO which was justified. The Respondent GRIDCO also agrees with the observations of the Commission at Para 122 and 123 in the tariff order of the OHPC for FY 2017-18 and hence the review petition filed by OHPC may not be admitted. There was no specific comments on the matter from other respondents in this case.
  7. Heard the parties. 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.

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 pointed out by the Petitioner seeking the review of our judgement. The Commission in their tariff order for OHPC for FY 2017-18 in para 122 and 123 have already considered the matter under prayer and have passed order considering all legitimate factors. It is found that review applications are filed mechanically as a matter of routine without specifying the specific grounds under the narrow limits of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition appears more to be an appeal than prayer for review of the order. The review petition is therefore rejected.

8. The case is disposed of accordingly.

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(A. K. Das)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**

