

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

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

Case No. 34/2017

GRIDCO Limited	Petitioner
Vrs.		
Shri G. N. Agrawal, Convener-cum-General Secretary, Sambalpur District Consumers Federation & others	Respondents

In the matter of: An application under Sections 94 (1) (f) & 62 (4) 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 and amendment of tariff Order dated 23.03.2017 passed in Case No. 63 of 2016.

For Petitioner: Shri U. N. Mishra, CGM (PP), GRIDCO Ltd., Shri S. K. Sahoo, DGM (Fin.), GRIDCO Ltd.,

For Respondents: Shri Ajit Panda, AGM, OPGC, Shri G. N. Agarwal, Shri Ananda Kumar Mohapatra, Shri Bibhu Swain on behalf of M/s. Swain & Sons Power Tech Pvt. Ltd., Shri R. P. Mahapatra, Shri Ramesh Satpathy, Shri Alekh Mallick and Ms. Niharika Pattnayak, ALO, DoE, GoO are present. Nobody is present on behalf of M/s. Ferro Alloys Limited, M/s. Arati Steel Limited, M/s. NOCCI & M/s. WISE, Pune.

ORDER

Date of hearing: 16.08.2017

Date of order: 09.11.2017

M/s. GRIDCO has filed the present petition under Section 94(f) and Section 62(4) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 and the provisions of order XLVII (47) Rule-1(c) of the Code of Civil Procedure, 1908 for review of Commission's order dated 23.3.2017 in case No.63 of 2016 wherein the Commission had approved the ARR and Bulk Supply Price for GRIDCO for FY 2017-18.

2. GRIDCO in its Application has sought Review of various aspects of the ARR & Bulk Supply Price Order of the Commission for FY 2017-18 that are summarized below in the Tabular form:

Sl.No.	Particulars	Underlying Issues/Financial Implication
1	Non-consideration of Revised ARR of Rs.10307.47 Crore	OERC did not consider Revised ARR of Rs.10307.47 Crore for FY 2017-18 as presented & submitted by GRIDCO on 08.02.2017. Due to this, Rs.10.90 Crore of expenses already incurred by GRIDCO was erroneously left out by the Hon'ble OERC which consists of Rs.2 Crore towards Revised cost of Tala Power, Rs.8.90 Crore paid towards Reactive Energy Charges.
2	Power & Power Cost from Barh-II STPS	1105.83 MU along with cost of Rs.704.30 Crore as proposed in ARR & BSP Application –FY 2017-18. Total Cost comprising FC of Rs. 305.87 Cr. & VC of Rs.398.43 Cr.
3	FSTPS-I&II	Approval of power procurement may be considered at technical minimum generation of 70% instead of 43.75%.
4	FSTPS-III	Approval of power procurement may be considered at technical minimum generation of 70% as GRIDCO resorts to procure from such high cost Stations during times of power deficits availability from other sources dries up for reasons beyond its control.
5	M/s. GMR Kamalnaga Energy Ltd. (M/s. GKEL)	Rs. 118.33 Crore (Due to non-consideration of the CERC approved Rate of 353 P/U & consideration of 275 P/U which results in a differential Procurement Rate of 78 P/U. Calculated on approved procurement of 1517.10 MU, the differential amount works out to Rs.118.33 Crore.
6	M/s. Vedanta Ltd.	OERC has approved Fixed Charges as 90.25 P/U for FY 2017-18 which was applicable for FY 2013-14. This ought to have been calculated as 116.90 P/U as per the MYT Application filed by M/s. Vedanta Limited for FY 2014-19. If the FC is approved as per M/s. Vedanta's MYT Application, then GRIDCO would land up in paying huge arrears as M/s. Vedanta Ltd. happens to be one of the major power suppliers to GRIDCO.
7	M/s. JITPL	Approval by OERC to draw 503.95 MU towards State share of 50% may not be feasible considering the present generation trend by M/s. JITPL. GRIDCO's realistic projection from M/s. JITPL may thereof be kept limited to 372 MU.
8	Dis-allowance of Pass Through Expenses (Power Purchase Related)	<ul style="list-style-type: none"> • NTPC Barh-II (Power Purchased during FY 2016-17) : Rs.357.33 Crore • NTPC stations (other than Barh-II) : Rs.279.49 Crore
9	Dis-allowance of Interest	Rs.201.64 Crore
10	Repayment of Principal	Rs.1054.63 Crore
11	Return on Equity (RoE)	Rs.92.27 Crore

3. Objectors in general stated that the present review petition of GRIDCO was devoid of merit and should be rejected. However, some objectors supported GRIDCO's review petition on the ground that if the amount claimed in the Review Petition is not allowed in the ARR of 2017-18 and is postponed, then the same will reappear in the ARR of 2018-19 causing heavy burden on tariff. Some objectors submitted some constructive

suggestions for improvement of GRIDCO's performance for consideration of the Commission.

4. The objectors stated that the Commission had already disallowed procurement of power from NTPC-Barh STPS. Further, when Govt. of India had not agreed for de-allocation of the allotment of costly power from this Station, the objectors wondered why the same is not being challenged in the court of law.
5. Objectors submitted that there was adequate power available in the State and therefore, there was no need to draw high cost power from FSTPS-III.
6. Objectors further stated that GRIDCO's submissions on the draft DSM Regulations were totally irrelevant as no order can be given by the Commission on these matters while passing orders for the present review petition. Further, OPGC stated that the Commission should not consider the prayer of GRIDCO to implement the draft Intra-State DSM Regulations retrospectively. The objector prayed the Commission for implementation of the Intra-State DSM Regulations prospectively with sufficient time to all the affected constituents of the State for getting acquainted with the procedural requirements.
7. Objectors stated that GRIDCO was a deemed trader and was availing loans from various financial institutions due to its inability to collect power dues from the DISCOMs and other purchasers. Further, even though GRIDCO has not been able to collect its dues for a long time, it has not filed any petition before the Commission for recovery of its dues.
8. Objectors stated that GRIDCO as a trader was entitled to collect a trading margin only. Since it is Govt. of Odisha Company, its financial requirement should be arranged by the State Govt. Objectors further stated that the petitioner was a trader and had no assets. Therefore, no RoE should be allowed to GRIDCO.
9. Heard the parties at length. The present review application has very limited scope and is to be dealt within the purview of Civil Procedure Code. Let us have a brief discussion on each issue one by one.
10. In initial application of GRIDCO, proposed ARR was Rs. 10, 293.12 Crore and BSP was 397.77 P/U. While replying to the Commission's queries on 13.01.2017, GRIDCO filed the revised ARR at Rs. 10, 307.47 Crore and BSP as 398.32 P/U. The additional amount due to this revised filing was Rs. 14.35 Crore consisting of Rs. 2 Cr. towards revised ECR of Tala HPS, Rs. 8.90 Cr. towards reactive energy charges

paid by GRIDCO and Rs. 3.45 Cr. towards SOC & MOC. The Commission have dealt with this matter in Para-251 & 273 of the current ARR & BSP Tariff Order on estimate basis. Actual payments are to be examined by Commission in truing up exercise be separately.

11. Regarding issue of Barh-II STPS the matter has been dealt with in Para-215 & 216 of our BSP Order for the current year. Similarly, the issue of technical minimum generation of 70% instead of 43.75% has been dealt in Para-212, 213 & 214 of our Order. Energy availability from FSTPS-I&II has been estimated as 1551.89 MU (14.18% State share) at the Normative Annual Plant Availability Factor (NAPAF) of 85%. However, considering the least cost power procurement methodology for state consumption, Commission has approved for procurement of 679.09 MU from FSTPS-I&II and no drawal from FSTPS-III. But full fixed cost has been allowed for these power stations for FY 2017-18. As submitted by GRIDCO, question of considering technical minimum generation of 70% or 43.75% therefore does not arise. Hence, it is not an error apparent on the face of the record as stated by GRIDCO.
12. On the issue of Power Purchase Cost of M/s. GMR Kamalanga Energy Ltd., the matter has been elaborately dealt with by the Commission in Para-241, 242 & 243 of the BSP Order of the current year. Since, these tariff matters are pending before CERC and Hon'ble Supreme Court, the Commission has fixed Rs. 2.75 P/U as a provisional tariff for drawal of power from this station which has been explained in those paras.
13. The issue of tariff of power to be procured from the M/s. Vedanta IPP has been dealt with by the Commission in Para-236 to 240 of the BSP Order for FY 2017-18. Since, Vedanta tariff matter is under consideration of the Commission separately, the Commission has stated that the tariff to M/s. Vedanta allowed in the BSP order is provisional and has also categorically stated that a final tariff will be given after disposal of the pending matter before the Commission.
14. On the issue of quantum of power to be drawn from M/s. JITPL, the Commission has dealt with the matter in Para-192 & 193 of the BSP Order for FY 2017-18. In the said Paras, the Commission have elaborately explained the reasons for estimating less drawal from M/s. JITPL.
15. With regard to disallowance of cost of power procurement from Barh-II for 2015-16 & 2016-17, the Commission has clearly explained the reasons for the same in Para-281 & 282 of the BSP Order. Regarding disallowance of arrear power purchase cost

of other power stations of NTPC, the Commission sought audited account for the relevant year to be made available for further decision.

16. Regarding disallowance of principal of the loan amounting to Rs. 1054.63 Crore and interest to the tune of Rs. 201.64 Crore, the matter has been considered by the Commission in Para-308 to 314 and Para-299 to 305 respectively. In summary the Commission have stated that for the time being repayment of the principal amount along with interest on State Govt. loans and Bonds may be deferred till the financial health of GRIDCO becomes sound. Similarly, the Commission have asked GRIDCO to repay the principal of loan other than the State Government from its trading surplus. Regarding interest on the loan other than the State Government loan, the Commission have explained the reasons for the same where they have allowed or disallowed it in case to case basis. So the prayer of the GRIDCO to review the matter on “sufficient reason basis” cannot be accepted.
17. With respect to claim of Return On Equity, the Commission have discussed the subject matter in Para-315 of the BSP Order where, the Commission have categorically put the reasons for disallowance of Return On Equity to GRIDCO since 2005 considering it as a trading licensee, which has no assets.
18. GRIDCO has raised during hearing of the review application that the Commission should emulate FOR model while finalising DSM Regulation. GRIDCO has also prayed to implement DSM Regulation w.e.f. 17.04.2014. These prayers have not been raised during the hearing of BSP Order dated 23.03.2017 which is sought to be reviewed. New additional facts not connected with the original application cannot be raised in a review application of this nature.
19. From the above discussion it is observed that the issues on which GRIDCO seeks review have already been considered by the Commission in their BSP order dated 23.03.2017 elaborately.
20. Further, as per Section 94(1) (f) of the Electricity Act, 2003, this Commission have 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)).

- 21. Similarly, 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.*
- 22. But no such error or sufficient ground has been pointed out by the Petitioner seeking the review of our judgement in the present case. Under the garb of review, one cannot be permitted to re-open the case and gain a full-fledged inning for making submissions for review on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. It has become almost an everyday experience that review applications are filed as a matter of routine exercise and there is no indication as to which grounds strictly it falls within 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 a prayer to review our order and, therefore, the same is rejected forthwith.
- 23. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson