

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

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

Case No. 36/2017

M/s. Grasim Industries Limited	Petitioner
Vrs.		
SOUTHCO Utility & 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 of Order dated 23.03.2017 passed in Case No. 72 of 2016 approval of wheeling charges, surcharges and additional surcharges for FY 2017-18 of SOUTHCO Utility.

For Petitioner: Shri R. P. Mahapatra, authorized representative of M/s. Grasim Industries Limited, Shri S. K. Swain, M/s. Grasim Industries Limited.

For Respondent: Shri B. P. Mishra, CGM (RT&C), OPTCL, Shri S. N. Pahi, GM (RT&C), OPTCL, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, Shri Chittaranjan Swain, DGM (Com.), CESU, Shri B. K. Nayak, Advocate, on behalf of SOUTHCO Utility, Shri Laxmidhar Upadhaya, AGM (Com.), SOUTHCO Utility and Ms. Niharika Pattnayak, ALO, DoE, GoO.

Nobody is present on behalf of NESCO Utility & M/s. WISE, Pune.

ORDER

Date of hearing: 16.08.2017

Date of order: 05.02.2018

The petitioner M/s. Grasim Industries Limited, who was an objector to the application of SOUTHCO Utility for approval of Transmission/Wheeling Charges & Surcharges applicable to open access customers for the FY 2017-18 in Case No. 72 of 2016, has filed this review petition against the Commission's common order dated 23.03.2017 passed in Case Nos. 70, 71, 72 & 73 of 2016.

2. The petitioner has submitted that the Commission at Para-14 of its order dated 11.04.2016 passed in Case Nos. 61-64 of 2015 while determining the cross subsidy surcharge and wheeling charge for FY 2016-17 had observed as follows:-

“As per mandate of the Electricity Act, 2003 under Section 42 the cross subsidy surcharge is to be reduced progressively. The Commission is authorized to evolve a methodology for such reduction. Basing on the suggestions during the hearing in the last year, so also in the current proceeding, the Commission have considered the reduction in cross subsidy in past years. The cross subsidy surcharge has been reduced by the Commission from 70% level in 2015-16 of the computed value (based on the formula prescribed in the Tariff Policy and now termed as leviable surcharge) to 65% this year.”

Similarly, the Commission at Para 332 of the impugned order dated 23.03.2017 passed in Case Nos. 70-73 of 2016 for the FY 2017-18 has stated as follows:-

“As per mandate of the Electricity Act, 2003 under Section 42, the cross-subsidy surcharge is to be reduced progressively”

But for EHT consumers under SOUTHCO Utility, the cross-subsidy surcharge approved by the Commission for the FY 2017-18 is 194.94 paise/unit against 191.03 paise/unit approved for the FY 2016-17, which is an error apparent in the face of the record. This is to be progressively reduced, in view of the statutory provisions and orders of the Commission. However, the leviable surcharge for the FY 2017-18 was determined again as 65% of the computed value for the FY 2017-18, instead of reducing the same to 50% of the computed value as submitted by the petitioner during the hearing on 18.02.2017

3. Further, at Para 9 of the order dated 11.04.2016 passed in Case Nos. 61 to 64 of 2015 and Para 325 of the order dated 23.03.2017 passed in Case Nos. 70 - 73 of 2016, the Commission has confirmed that it will be guided by the new Tariff Policy notified by the Ministry of Power, Govt. of India on 28.01.2016. The first proviso of this new tariff policy reads as follows:

“Provide that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access”

This matter was raised during the hearing as mentioned at Para 255 of the impugned order dated 23.03.2017 passed in Case Nos. 70-73 of 2016. But, the Commission has neither adopted this provision of the Tariff Policy nor has passed any orders in this regard, which is also an error apparent on the face of the record.

4. In view of the above, the petitioner M/s. Grashim Industries Limited, has prayed the Commission to re-determine the cross-subsidy surcharges payable by the open access customers for the FY 2017-18, based on the applicable formula as provided in Para 8.5.1 of the Tariff Policy notified by the GoI on 28.01.2016 with reduction by 50% of the computed value in place of 65% adopted in the impugned order or as 20% of the

tariff applicable to the category of consumers, seeking open access, whichever is lower.

5. The respondent SOUTHCO Utility submitted that the primary objective for fixing cross-subsidy surcharge is to compensate the loss sustained by the distribution licensee due to exit of an subsidizing consumer from its system, who opts to purchase power from generator/other distribution licensee. In that context while determining the cross subsidy surcharge, cost of supply to that category of consumer and average cost of supply of the licensee to all the consumers of the licensee are taken into account while determining the loss factor. The methodology prescribed in the tariff policy is guiding in nature which depends upon the consumer mix, geographical conditions, cost of power purchase and other variable factors. In the prevailing Single Buyer Model in our state, the utilities purchase all the power from GRIDCO, the bulk trader and sale it to the consumers. The BSP is determined differently for different DISCOMs / Utilities in order to maintain uniformity in Retail Supply Tariff (RST) throughout the State irrespective of consumer mix and operational area of DISCOMs. These aspects are taken into consideration by the Commission while determining the cross-subsidy surcharge for subsidizing consumers. The rate of cross-subsidy surcharge has been fixed by the Commission by adopting the guidelines given under the Tariff Policy 2016 and taking into account the various ground realities prevailing in the State.
6. As regard to the contention of the petitioner on the progressive reduction of the cross subsidy, SOUTHCO Utility has submitted that while determining the cross-subsidy, the Commission has managed to keep cross-subsidy among the subsidizing and subsidised category of consumer in the State within $\pm 20\%$ of the average cost of supply. The Commission has also clarified that the said cross-subsidy is meant only for determining the RST in the State applicable to all the consumer (except BPL and Agriculture) and the same should not be confused with the cross-subsidy surcharge payable by open access consumers to the utility. The Commission has determined the cross-subsidy surcharge keeping in view the mandate of the Section 42 of the Electricity Act, 2003 which speaks about progressive reduction of the same. In this regard the Commission is authorised to determine its own method taking into account the prevailing factors of the State such as its consumers mix, geographical condition, demographical transitions etc.

7. From Para 13 and 14 of the Commission's order dated 11.04.2016 passed in Case Nos. 61-64 of 2015 it is clearly evident that the actual computed cross-subsidy on EHT consumers was 293.89 paise/unit for FY 2016-17 for SOUTHCO Utility, but the leviable cross-subsidy surcharge was fixed at 191.03 paise/unit. Similarly, while fixing the open access charges for the FY 2017-18 the Commission in Para-332 of its order dated 23.03.2017 passed in Case Nos. 70-73 of 2016 has observed as follows:-

“As per mandate of the Electricity Act, 2003 under Section 42 the cross subsidy surcharge is to be reduced progressively. The Commission is authorized to evolve a methodology for such reduction. Basing on the suggestions during the hearing in the last year so also in the current proceeding, the Commission have fixed leviable surcharge at 65% of the computed value of the same for this year.”

In the said order the Commission has computed the surcharge for EHT consumers for the FY 2017-18 as to 299.90 paise/unit for SOUTHCO Utility whereas the leviable cross-subsidy surcharge was fixed at 194.94 paise/unit. Thus, the cross-subsidy surcharge has, though, fixed at 65% of the computed value for both the year, but due to increase in tariff the leviable cross subsidy surcharge for the FY 2017-18 has increased. In other words while in the previous financial year, 65% of 293.89 paise/unit was taken as cross-subsidy surcharge, in the current financial year 65% of 299.90 paise/unit has been taken as cross-subsidy surcharge. So, it is in accordance with the provisions of Section 42 of the Electricity Act, 2003.

In view of the above it is submitted that there was no error apparent on the face of the record and the present petition for review of order dated 23.03.2017 passed in the Case No. 72 of 2016 approving wheeling charge, cross subsidy surcharges and additional surcharges for FY 2017-18 of SOUTHCO Utility is not maintainable.

8. The SOUTHCO Utility has further submitted that Para 8.5.1 of Tariff Policy may please be read with Para 8.2.1 of policy document, which is as follows:-

“8.2.1 The following aspects would need to be considered in determining tariffs:

All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system up-gradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be

purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.”

Para 8.5.1 of the National Tariff Policy may please be read as follows:

“8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition , the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to be benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time bound manner, is used to bring about competition in the larger interest of consumers.”

So, National Tariff Policy is a comprehensive policy document which may be read in totality rather than in a piecemeal manner. One way it fixed the benchmark in regard to policy, in other way emphasised to look into the ground realities by compensating distribution licensee in terms of revenues for 24 hour power supply and necessary and reasonable O&M and investment for system up-gradation.

9. SOUTHCO Utility submitted that in view of the aforesaid facts as well as settled positions of law, the instant application filed for review of order dated 23.03.2017 to the extent of revisiting the cross subsidy surcharge, being devoid of any merit and without proper substantiation of grounds of review, is liable to be dismissed.
10. The respondent WESCO Utility has submitted its reply similar to that submitted by the SOUTHCO Utility.
11. In replying to the submissions of the respondents, the petitioner has submitted that as per Section 42 (2) of the Electricity Act, 2003 the cross-subsidies shall be progressively reduced in the manner as may be specified by the State Commission, and also in view of the observations of the Commission at Para 14 of its order dated 11.04.2016 passed in Case Nos. 61 - 64 of 2015 as mentioned in that paragraph. However, the petitioner agrees with the submission of SOUTHCO Utility that Para-8.5.1 of the Tariff Policy regarding computation of cross-subsidy surcharge may be read with Para 8.2.1 of the policy, which relates to the aspects for consideration in determining the tariff. But the petitioner stated that the Commission has to

progressively reduce the cross-subsidy surcharge and abide by the mandatory provision in Para 8.5.1 of the said policy that “Surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access”. The petitioner further stated that the submissions of WESCO Utility are not related to determination of cross-subsidy surcharge under Section 42 of the Electricity Act, 2003.

12. Heard the parties and their written notes of submission are taken into record. The Commission observed that the submissions of the petitioner are not new. The same was raised during the proceedings of the Case Nos. 70, 71, 72 & 73 of 2016 and considering all the matters, the Commission has passed the impugned order. Accordingly, while fixing the open access charges for the FY 2017-18, the Commission in Para 332 of the impugned order dated 23.03.2017 has observed the followings:

“As per mandate of the Electricity Act, 2003 under Section 42 the cross subsidy surcharge is to be reduced progressively. The Commission is authorized to evolve a methodology for such reduction. Basing on the suggestions during the hearing in the last year so also in the current proceeding, the Commission have fixed leviable surcharge at 65% of the computed value of the same for this year.”

13. In the FY 2017-18 the average cost of supply has been increased from 480.40 paise per unit (FY 2016-17) to 488.26 Paise per unit due to increase in cost of power purchase by the DISCOMs and other cost. For this reason the computed value of cross subsidy surcharge which was 293.89 paise per unit for FY 2016-17 has increased to 299.90 paise per unit in FY 2017-18. Though the Commission has kept the leviable cross subsidy surcharge at the same level of 65% of the computed value for 2017-18 as that of 2016-17, the per unit leviable surcharge has increased in 2017-18 due to increase for tariff. So it is not an error apparent as submitted by the Petitioner.
14. Further, 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.

But no such error has been pointed out by the Petitioner seeking the review of impugned order. The present petition appears more to be an appeal than prayer for review of the order. The review petition is therefore rejected.

15. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson