

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. 49/2017

GRIDCO Ltd.	Petitioner
Vrs.		
Vedanta Ltd.& 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 17.04.2017 passed in Case No. 08 of 2017.

For Petitioner: Ms. Susmita Mohanty, Manager (PP), GRIDCO Ltd., Shri U. N. Mishra, CGM (PP), GRIDCO Ltd.

For Respondents: Shri S. Satyakam, Advocate on behalf of M/s. Vedanta Limited, Shri K. C. Nanda, DGM (Fin), WESCO Utility, Shri Umakanta Sahoo, GM(GO), SLDC, Sonali Pattnaik, Dy. Manager (Legal), DoE, GoO.

ORDER

Date of hearing: 31.10.2017

Date of order:15.05.2018

GRIDCO Ltd. has sought review of the Commission's order dated 17.04.2017 passed in Case No. 08/2017.

2. GRIDCO stated that at Para-17 of the impugned order dated 17.04.2017, the Commission has observed the followings:

“In normal case the PAFM of a generating station should be computed basing on the Regulations made by the appropriate Commission. However, the Commission in its order dated 12.06.2013 in Case No. 117/2009, 31/2010 and 56/2012 has observed that the 220 KV DC line running between M/s. Vedanta Ltd. and Budhipadar Grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which M/s. Vedanta has restricted generation from Unit-II. The Hon'ble APTEL in their judgement in Appeal No. 25/2014 dated 10.05.2016 has also preferred not to interfere in the above views of the Commission. Therefore, for calculating PAFM of the IPP, the carrying capacity of the line at 400 MW in sustainable mode should be taken into consideration. Accordingly, while calculating PAFM the installed capacity of the IPP (Unit-II) should be taken as 400 MW or actual injection whichever is higher. The aforesaid mechanism should be adopted for the period from November, 2010 till the transmission constraint was resolved. ”

The contents of the above mentioned Para-17 of the impugned order is an entirely new and important matter as far as the main application of M/s. Vedanta Ltd. in Case No. 08/2017 is concerned. M/s. Vedanta Ltd. had not prayed for consideration of 400 MW or actual injection as the installed capacity of the IPP Unit-II for calculation of PAFM. Instead, M/s. Vedanta Ltd. had prayed for calculation of PAFM as per CERC/OERC Regulation, which do not say to consider installed capacity of thermal unit based on the transmission constraint for determining the PAFM.

3. GRIDCO Ltd. has further submitted that the Commission had recognized the issue of transmission constraint in its tariff order dated 12.06.2013 but it was for a limited period upto 2012-13 in respect of auxiliary consumption and station heat rate only. This was not applicable for calculation of PAFM in any manner. Extending the same for calculation of PAFM is contradictory and untenable under law.
4. GRIDCO has further submitted that the Commission's tariff order dated 12.06.2013 for the power station of M/s. Vedanta Ltd. was challenged by M/s. Vedanta Ltd. before APTEL in Appeal No. 25/2014 and thereafter also by GRIDCO Ltd. in Appeal No. 179/2014 respectively, which were disposed of vide the judgment dated 10.05.2016. M/s. Vedanta Ltd. challenged the said judgment again before the APTEL through review petition, which was dismissed vide APTEL order dated 18.10.2016. Subsequently, it challenged the aforesaid APTEL judgments before the Hon'ble Supreme Court of India vide Civil Appeals, which were dismissed as withdrawn by the Apex Court vide order dated 10.03.2017. Therefore, once the tariff order of the Commission has reached its finality, the Commission has got no jurisdiction to reopen the same facts and pass orders to that effect. As such, this is a mistake or error apparent, on the face of the record, by the Commission.
5. GRIDCO Ltd. has further submitted that M/s. Vedanta Ltd. ought to have informed the Commission regarding withdrawal of its aforementioned Civil Appeal before the Hon'ble Supreme Court of India vide order dated 10.03.2017 which nullifies the issue of payment of Rs.164 Crores raised before the Commission in Case No. 08/2016. It is to be mentioned here that, GRIDCO Ltd. had paid an amount of Rs.164 Crore to M/s. Vedanta Ltd. based on interim orders of the APTEL dated 28.03.2017 & 29.11.2014 in Appeal No. 25/2014. Whereas, the final judgment dated 10.05.2016 does not stipulate any such consideration & instead upheld the OERC Tariff Order in its entirety wherein no specific direction regarding PAFM calculation is mentioned except quoting Regulation 21 (2) (a) of CERC Tariff Regulations, 2009. GRIDCO

Ltd. stated that this is also a reason for review of the impugned order of the Commission.

6. In view of the above, the petitioner GRIDCO Ltd. has prayed the Commission to review and revise the impugned order dated 17.04.2017 limited to Para-17, in the context of calculation of PAFM in respect of M/s. Vedanta Ltd. w.e.f. 10.11.2010 to 31.03.2015, considering the views of SLDC, the autonomous authority for determining the PAFM of various generators.
7. The respondent SLDC submitted that SLDC is responsible for preparation of day-ahead generation planning considering the declared generation availability of all the generators. In case a generator fails to inject power as per the declared capacity there will be a mismatch between availability and demand which may result in overdrawal from Grid. M/s. Vedanta Ltd. was submitting declared capacity as per the installed capacity and injecting less quantum of power with a plea of transmission constraint. The transmission constraint is not a factor for determination of PAFM as per the Regulation. M/s. Vedanta Ltd. should have furnished their declared capacity considering the constraints, if any, instead of declaring the availability as per the installed capacity. Hence, SLDC has computed the PAFM as per the actual injection.
8. SLDC has further submitted that as per the PPA and order dated 10.05.2016 of the APTEL passed in Appeal No. 179/2014, M/s. Vedanta Ltd. should make the power available to GRIDCO Ltd. at the Bus-bar to which transmission line of OPTCL are connected. Hence, it is the responsibility of M/s. Vedanta Ltd. to deliver power to GRIDCO Ltd. at Budhipadar Sub-station of OPTCL.
9. The respondent M/s. Vedanta Ltd. has submitted that the Commission, while adjudicating the Tariff Petition Nos. 117/2009, 31/2010 & 54/2012 for the Control Period 2010 to 2014, in its order dated 12.06.2013, has already observed and accepted the fact of transmission constraint in flow of power to GRIDCO via 220 KV D/c Budhipadar Line. The said order was appealed before the APTEL and the APTEL upheld the view of the Commission and dismissed the appeal. Further, the civil appeals in the Hon'ble Supreme Court against such dismissal were also dismissed as withdrawn without any directions from the Hon'ble Apex Court. Hence, the order dated 12.06.2013 passed in the said petitions has achieved finality. The petitioner GRIDCO Ltd. is now trying to twist the facts by stating that the Commission's order passed in Case No. 08/2017 amounts to reopening of facts that have been decided and hence is a mistake on error apparent. But, the issue of transmission constraint is

neither new nor suffers from any mistake. The observations of the Commission at Para-17 of the impugned order dated 17.04.2017 passed in Case No. 08/2017 is merely a modality/sub-set of the fact of transmission constraint which has already been accepted by the Commission in the said tariff order dated 12.06.2013. Hence, it is not an error as is being alleged by GRIDCO Ltd. The petitioner GRIDCO Ltd. had not raised any objection to this issue at that juncture, which clearly establishes the fact that GRIDCO Ltd. was aware of the transmission constraint issues and choose not to object the same.

10. M/s. Vedanta has further submitted that the Commission vide its order dated 12.06.2013 passed in Case Nos. 117/2009, 31/2010 & 54/2012 has determined the NAPAF for 4x600 MW power plant of M/s Vedanta Ltd. and GRIDCO had accepted the same at that juncture. In Case No. 08/2017 computation of Monthly Plant Availability Factor (PAFM) was a disputed issue for adjudication by the Commission. In their submissions in Case No. 08/2017, both GRIDCO Ltd. and SLDC have stated their views on computation of PAFM. However, M/s. Vedanta Ltd. has prayed the Commission to direct GRIDCO Ltd. to make the payment as per actual PAFM of the plant and direct SLDC to follow the procedure for calculating the PAFM as per CERC/OERC Regulations. It does not mean that the above prayer of the M/s. Vedanta Ltd. in any way limits the power of the Commission in making any observation it deems fit and proper in light of the fact and circumstances of the case. Computation of PAFM depends upon the declared capacity which in term depends on the transmission constraint. The Commission in Case No. 08/2017 has merely issues modalities to give effect to its previous direction, thus the question of error on record does not arise. If GRIDCO Ltd. feels aggrieved by the authority exercised by the Commission then they should file an appeal challenging the same and not a review. Mere disagreement with the view of the judgment cannot be the ground for invoking a review.
11. Replying to the submission of SLDC M/s. Vedanta Ltd. has stated that the present submission of SLDC is merely a representation of their submissions in Case No. 08/2017. There is nothing new in their submission. SLDC has misinterpreted the observations of the Commission in the impugned order passed in Case No. 08/2017. The Commission while dealing with the issue of calculation of PAFM has opined for consideration of installed capacity and carrying capacity of the then transmission line. Now SLDC has raised the fresh issue of declared capacity and ownership of the transmission line which was not the issue dealt in Case No. 08/2017. No new issue

can be raised in a review petition, if the same was not mentioned or brought forward in the petition from which such review arises much less by a party that is not the petitioner. Further, SLDC has rightly said that the transmission constraint is not a factor for determination of PAFM as per the Regulations. But determination of PAFM is the function of average declared capacity and installed capacity.

12. Heard the parties at length. The Commission has gone through the petition of GRIDCO Ltd. and the submission of the Respondent M/s. Vedanta Ltd. and SLDC for review of its order dated 17.04.2017 passed in Case No. 08/2017.
13. A review of the order can only be made on the following grounds:
 - (a) Discovery of new important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed
 - (b) Mistake or error apparent on the face of the record and
 - (c) For any other sufficient reason.
14. The Petitioner has pointed out that the content of Para-17 of the impugned order is an entirely new and important matter. The Commission while adjudicating the tariff petition on 12.06.2013 in Case Nos. 117/2009, 31/2010 & 54/2012 for control period 2010-14 had already observed and accepted the fact of transmission constraint in flow of power to GRIDCO via 220 KV D/C Budhipadar line. The said tariff order has attained its finality. Hence, it is not a new matter.
15. It is to be mentioned that the APTEL so also the Hon'ble Apex Court of India have upheld the said tariff order dated 12.06.2013 of the Commission. In this tariff order it was observed by the Commission that the 220 KV DC line running between M/s. Vedanta Ltd. and Budhipadar Grid Sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which M/s. Vedanta Ltd. has restricted generation from Unit-II, which has been deliberated in the order of the APTEL and the APTEL has upheld the aforementioned observations of the Commission. Therefore, keeping in view the transmission constraint, the Commission, at Para-17 of the impugned order, has considered the carrying capacity of the said 220 KV DC line as 400 MW in sustainable mode for calculating the PAFM of the IPP of M/s. Vedanta Ltd. till transmission constraint was resolved. However, in the same paragraph of the impugned order, the Commission has indicated that in normal case the PAFM of the generating station should be computed basing on the

regulations made by the appropriate Commission. Therefore, no apparent error is found out on the face of the record.

16. In view of the above observations, the Commission has no ground for review of its own order. Hence, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson