

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

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

Case No. 39/2018

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 22.03.2018 passed in Case No. 74 of 2018.**

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 S. S. Nayak, Sr. GM, GRIDCO Ltd. and Ms. Niharika Pattanayak are present.

ORDER

Date of Hearing: 06.11.2018

Date of Order: 01.01.2019

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 22.03.2018 passed in Case No. 74/2017 regarding approval of Annual Revenue Requirement and generation tariff of OHPC stations for the FY 2018-19.

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 the following by the Commission while determining the Annual Revenue Requirement and Generation Tariff of OHPC power stations for the FY 2018-19.
 - Companies (India Accounting Standards) Rules, 2015, which has been amended as per Ministry of Corporate Affairs Notification No. GSR III (E) dated 16.02.2015 has not been considered in the tariff approval of OHPC for

FY 2018-19. Which means the impact of accounts prepared under IndAS has not been considered by the Commission.

- Relaxation of Norms of Auxiliary Energy Consumption (Auxiliary Equipment Consumption plus Transformer Loss), for reimbursement of electricity duty on auxiliary energy consumption by OHPC from GRIDCO.
3. OHPC further submits that the application for approval of ARR and Tariff for the financial year 2018-19 in respect of individual power stations of OHPC was filed before the Commission on 29.11.2017. In para 07 of the said application OHPC had submitted that the additional capitalization for an amount of Rs.62.91 cr. as per the audited accounts for FY 2016-17 was proposed by OHPC under table No. 7 for the original tariff application for the FY 2018-19 considering the effect of amended Companies (Ind AS) Rules of Ministry of Corporate Affairs Notification No. GSR III (E) dated 16.02.2015. Subsequently during submission of rejoinder the additional capitalization of Rs.62.91 crs. has been changed to Rs.59.72 Crs.
 4. OHPC had further prayed before the Commission for fixation of suitable percentage of Auxiliary Energy Consumption (AUX) for different power station of OHPC so that the ED paid on AUX may be reimbursed fully from GRIDCO. The Commission may kindly relax the norms of Auxiliary Energy Consumption and increase the same from 1% to actual. Accordingly, actual ED on Auxiliary Energy Consumption paid to Govt. may be allowed for reimbursement from GRIDCO and Salable Design Energy may also be kindly fixed for computation of ECR.
 5. The Commission had passed its order on 22.03.2018 approving additional capitalisation for an amount of Rs.4.83 cr. for determination of tariff for FY 2018-19 vide para 75 without considering the effect of amended Companies (Ind-AS) notification. Regarding the matter of relaxation of auxiliary consumption of different power stations, the Commission is determining auxiliary consumption as per Regulation 5.4(b)(i) of OERC Tariff Regulations, 2014. The normative Auxiliary Energy Consumption (AUX) for surface hydro generating stations with static excitation system is 1.00%.
 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 in sub para 3 of Paragraph 75 of the order , the Commission has discussed the submission of the Petitioner relating to additional capitalization and did not feel it appropriate to pass on the impact of the additional capitalization for an amount of Rs.62.91 cr. claimed by

OHPC in tariff for the FY 2018-19 considering the effect of amended Companies (Ind AS) Rules of Ministry of Corporate Affairs notification No. GSR III (E) dated 16.02.2015 and the Commission in Para 95 have dealt the question of Electricity Duty on Auxiliary consumption. Therefore, the present filing of OHPC cannot be considered as a review petition and is an Appeal under disguise.

7. GRIDCO as a Respondent has submitted that despite a huge additional capitalization investment in HHEP and UIHEP, GRIDCO have received less energy from the above two stations as against the respective saleable Design Energy for FY 2017-18. Regarding relaxation of norms of auxiliary consumption the Commission is determining the same as per the OERC Tariff Regulation, 2014 wherein the normative auxiliary energy consumption (AUX) for surface hydro generating station with static excitation system is 1.00%. Therefore, the normative auxiliary energy consumption may not be considered above 1.00%. In view of the above the review petition may not be considered and admitted for hearing. The written submissions of other respondents were not available on record for consideration.
8. 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 that is its 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. ('Batak 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. 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 than prayer to review our order and, therefore, does not merit consideration.

9. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson