

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

**Present: Shri U. N. Behera, Chairperson
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member**

Case No. 07/2020

M/s. OPTCL	Petitioner
Vrs.		
M/s. Rail Vikas Nigam Limited	Respondent

In the matter of: **Application under S. 94(1)(f) of the Electricity Act, 2003 read with Reg.70 of the OERC(Conduct of Business) Regulations, 2004 for review of order dated 25.09.2019 of the Commission passed in Case No.88 of 2017.**

For Petitioner: **Shri P. K. Mohanty, Sr. Advocate and Shri L. N. Mohapatra, Advocate on behalf of OPTCL.**

For Respondent: **Nobody is present.**

ORDER

Date of hearing: 12.01.2021

Date of order:16.06.2021

The petitioner, M/s. OPTCL has filed this petition for review of the order dt.25.09.2019 passed in Case No. 88 of 2017 by the Commission. The facts of the case are briefly described below:

2. The petitioner has submitted that in addition to review petition, they have filed a separate petition under Section 5 of Indian Limitation Act, 1963 seeking condonation of delay in filing the present review petition with reference to the provisions in Regulation 70 of the OERC (Conduct of Business) Regulation, 2004. In the condonation of delay petition, the Petitioner has prayed the Commission to condone the delay of 42 days beyond the permissible period of 90 days. The Petitioner submits that the Commission in their order dated 25.09.2019 has held as under:

“14. Now, the matter has been raised before us by the petitioner. The observation of the Commission in Para-50 of Case No. 63/2006 & 03/2007 is relevant here and extracted below:- Further, in case of Engineering Department of State Govt. supervision charges in the shape of pro-rata charges are being inbuilt into the estimate by the Engineering departments in the State Govt. under Orissa PWD Code ranging from 16% to 17% as per the table of breakup given below:-

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xxxxxxxx The Commission further held at Para-52 as follows:- “We, therefore, hold that – (2) when the dedicated lines/system is constructed by OPTCL as per the request of User, 16% departmental charge which also includes testing fee of the Electrical Inspector shall be made applicable. The total estimated cost including 16% departmental charge need to be approved by the Commission. The above charges shall be made applicable in respect of the work for which agreement is to be signed on or after the date of this order and past cases shall not be reopened.

15. In the meeting held on 08.03.2016 under the Chairmanship of Chief Secretary at Para-5 of minutes, the submission of OPTCL that they levy 22% supervision charges to all other departments of State Government and NHAI has been merely recorded. Reason of fixing such level of charges has been given by OPTCL neither before us nor in the meeting held under the Chairmanship of Chief Secretary. No decision on this matter has been taken in that meeting either. Therefore, in view of our earlier observation, we find that 16% departmental charges to be levied in this case is justified.”
3. The petitioner further submits that the above order dated 25.09.2019 of the Commission is contrary to the findings of Hon’ble APTEL made in their order dt.14.12.2012 passed in Appeal No. 30/2012.
4. The petitioner submits that Hon’ble APTEL in their order dt.14.12.2012 passed in Appeal No. 30 of 2012 had observed that the conclusion reached in para 57(f)(i) & (ii) of the order dated 26.04.2011 passed by OERC in Case No. 63/2006 and 03/2007, which reads as below was unauthorised.

Para 23 & 24 of the order dt.14.12.2012 passed by the ATE in Appeal No.30 2012.

“23. Thus the Appellant has requested for review of supervision charges from 6% to 16%. Clearly the request was related to the works to be taken up by the consumers and not the works which were to be taken up by the Appellant Now let us examine the directions given in the Review Order impugned herein.

- (i) In case dedicated EHT lines/system is constructed and charged by the ‘User’ itself, OPTCL is entitled for 6% supervision charge. Testing fee of Electrical Inspector is not included and this should be borne by the User as additionality.*
- (ii) In case dedicated lines/system is designed, erected and commissioned by OPTCL on behalf of the user, then OPTCL shall charge 16% departmental charge (including testing fee of the Electrical Inspector). The total capital cost including departmental charge payable by the user shall be approved by the Commission.*

“24. Conjoint reading of the Commission’s order dt.22.07.2006, review petition and Commission’s Review order dt.26.04.2011 would make it amply clear that the direction at (ii) was neither given in order dd.22.07.2006 nor prayed for in the review petition. The issue relating to supervision charge with respect of works taken up by the Appellant on behalf of consumer was not a issue before the Commission in case No.35 of 2005. It was also not an issue raised by the Appellant in the Review Petition.

Therefore, the Commission did not have power to give ruling on this issue in review orders discussed in para-18 above.

Therefore, the conclusion reached by OERC on 16% departmental charges as concluded in Para-15 of its order dt.25.09.2019 was uncalled for and suffers errors apparent on the face of it.

5. The petitioner submits that the Railway authorities were charging about 40% of the total cost estimated by the petitioner for crossing of the line as its blockade charges in which the Railways has also specified their claim of 22% as departmental and 18% as GST on such 22%. This has not been considered by the Commission while finalising the order dt.25.09.2019 although the petitioner had submitted the facts during the hearing of the Case No. 88 of 2017. Thus the petitioner submits that there is justifiable reasons to review the order dt.25.09.2019. The petitioner therefore has prayed for review of the matter in the light of principles laid down in order 74 Rule-1 of CPC read with Section 94(i)(f) of the Electricity Act, 2003.
6. The respondent, M/s. Rail Vikas Nigam Ltd. (M/s.RVNL) has submitted that the reasons of delay submitted by the petitioner such as examination by the Committee of senior officials, obtaining legal opinion etc. cannot be construed to be sufficient explanation for condonation of delay. The delay in filing thus occurred is due to the wilful negligence of the authorities of the petitioner and their callousness towards proceedings, hence should not be admitted and dismissed with cost. Further, since the respondent was not able to place his argument online due to technical snag during the virtual court proceedings held on 12.01.2021, they requested the Commission to allow them to file written submission.
7. Heard the parties. The delay in filing the review petition is condoned considering the difficulties stated by the Petitioner. The written notes of submission are taken into records. The petitioner has filed this review petition mentioning the observations of Hon'ble APTEL and requested the Commission to allow 22% as departmental charge in place of 16% in case the lines/systems is designed, erected and commissioned by OPTCL on behalf of the user. Regarding the rate of supervision charges and departmental charges, we had given our first findings in Case No. 63/2006 and 03/2007 dt.26.04.2011, which was a review order arising out of Case No. 36 of 2005. Again the matter was discussed in detail in Case No. 88 of 2017 filed by M/s. RVNL (respondent in this case) in which the Commission has taken note of the observation

of Hon'ble APTEL as mentioned by OPTCL in the present petition and has stated as follows:

“13. xxxxxxxx

That the review order was challenged by OPTCL before the Hon'ble APTEL in appeal No. 30/2012 and Hon'ble APTEL held that since the matter of supervision charges with respect to works taken up by OPTCL on behalf of consumer was not an issue before the Commission in Case No. 35/2005 which was sought to be reviewed, the Commission did not have powers to give ruling on this issue. We will abide by that order of the Hon'ble APTEL.”

8. Therefore, reasons cited by OPTCL for review are not new, but those have already been discussed in our order in Case No. 88/2017 which is sought to be reviewed. Hon'ble APTEL has not commented on the firmness of our observation on the quantum of supervision charges. Rather, Hon'ble APTEL has categorically stated that since this issue was not in the original order and no party has raised this issue, the Commission could not give findings on this issue in a review order of this nature. The Commission has already accepted the order of the Hon'ble APTEL with reverence.
9. In the order in Case No. 88/2017 we have not justified our observation on the present subject matter in review Case Nos. 63/2006 and 3/2007. We have merely made a reference to our earlier observation in that review order which is coincidentally the subject matter in Case No. 88/2017. The matter was de novo considered by the Commission basing on the pleadings of the parties.
10. 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 the impugned order. The Commission has already considered the matter under prayer and have passed orders considering all legitimate factors. The present petition appears more to be an appeal than prayer for review of the order. The review petition is therefore rejected.

11. Accordingly, the case is disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson