

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

*** ** **

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

Case No. 44/2020

OPTCL

- Vs. -

GRIDCO & Others

..... Petitioner

..... Respondents

In the matter of: **Application under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004 for review of Order dated 21.04.2020 passed in Case No. 72/2019 (Transmission Tariff Order for FY 2020-21)**

For Petitioner: Shri Kulamani Biswal, Advocate and Shri B. R. Mishra, Sr. GM, OPTCL

For Respondent: Shri L. N. Mohapatra, Advocate, Shri G. S. Panigrahi, Consultant(Law), GRIDCO, Shri R. P. Mahapatra, Ms. Niharika Pattnaik, ALO, DoE, Shri Naveen Singh and Shri Vijay Chhibber, IAS (Retd.), Director, Electric Power Transmission Association

Nobody is present on behalf of Shri Ramesh Chandra Satpathy, M/s. Utkal Chamber of Commerce and Industries Limited, M/s. CCPPO, M/s. Grinity Power Tech Pvt. Ltd., M/s. Visa Steel Limited, M/s. Vedanta Limited and NOCCI.

ORDER

Date of hearing: 13.10.2020

Date of order:03.11.2021

This Petition has been filed by Odisha Power Transmission Corporation Limited seeking review of Transmission Tariff of OPTCL for FY 2020-21 determined by the Commission vide its order dated 21.04.2020 passed in case No.72/2019.

2. The Petitioner has submitted that there exists sufficient reason for review of the aforesaid order dated 21.04.2020.
3. The Petitioner has stated that OPTCL had proposed Rs.3.25 crore towards Conveyance allowance, conveyance reimbursement and other employee cost under the head miscellaneous cost which has not been considered by the Commission. The above

expenditures are part of the employee cost and have been paid on monthly basis, this portion of employee cost is not a new one and rather being paid every year.

4. The Petitioner has stated that in absence of the projection of actuarial valuation report for the year an estimated projection of Rs.167.63 crore was projected for the ARR of FY 2020-21 towards Pension, Gratuity and Leave liability based on the last valuation report by the actuary for the FY 2018-19. In the meantime the actuary has submitted the valuation report towards Projected liabilities for the FY 2020-21 for Rs.195.31 crore and the petitioner has submitted to allow the same in the review petition.
5. The Petitioner has stated that during the FY 2019-20 OPTCL has added 8 Nos. of Grid Substations, 364.385 CKT lines and 1651 MVA to its assets. Out of the existing assets around 32% of the grid substations and 26% of the transmission lines are more than 25 and 35 years old respectively. These sub stations and lines have outlived their useful life and hence requiring more R&M expenses. Further, the petitioner has submitted to allow an additional amount of Rs.25.37 crore towards R&M in order to operate the system effectively, maintain uninterrupted and quality power supply in the State, through repair and maintenance of lines, substations, telecommunication equipment, IT infrastructure and civil maintenance etc. which are necessary in a routine manner.
6. The Petitioner has stated that in the ARR proposal the total amount of loan considered for calculation of interest was Rs.489.29 crore to arrive at interest on loan of Rs.53.25 crore. The Commission in the tariff order approved the total interest cost of Rs.26.28 crore considering the total average loan amount of Rs.260.08 crore. The petitioner submitted that at present the average rate of interest of REC loan and PFC Loan is 11% as against the average rate considered by the Commission at 10.63% that is on the lower side. The petitioner has accordingly submitted to allow interest cost of Rs.53.25 crore including interest of Rs.26.00 crore on state government non-convertible bonds of Rs.200.00 crore in this review petition.
7. The Petitioner has submitted that the depreciation is to be determined in line with Regulation 2014, Clause 8.38 i.e. on the original book value of the assets considering applicable depreciation rate, not on deemed cost so that the cost of the assets can be recovered fully. Besides Rs.1.57 crore as amortization of leasehold assets may also be

considered. Accordingly the petitioner has submitted to allow additional depreciation of Rs.11.43 crore.

8. The Petitioner has stated that the Commission allowed Rs.211.70 crore under miscellaneous receipt in the ARR out of which the short term open access charges was allowed at Rs.114.44 crore. The petitioner has submitted that the observation of the Commission regarding rationalization of the LTOA and STOA charges is a welcome step. The target submitted during the ARR application can only be achieved after rationalization of STOA charges which was yet to be notified by the Commission. The petitioner submitted to review the order dated 21.04.2020 and reduce the STOA income to 1/4th of the projected income of Rs.114.44 crore as approved in the ARR. Accordingly the miscellaneous income will be reduced to such extent.

GRIDCO Submission

9. The Respondent has stated that the submission made by the petitioner are in order and the legitimate costs proposed by OPTCL in the review petition for the FY 2020-21 may be considered, subject to prudence check by the Commission.`

R. P. Mahapatra Submission

10. Sri Mahapatra has stated that no details towards conveyance expenditure of employees were submitted by the Petitioner at the time of Application for Determination of ARR & Transmission Tariff for the FY 2020-21. Therefore, the Commission has correctly disallowed this and there is no justification to review the order to include Rs 3.25Cr towards conveyance expenditure of employees.
11. Sri Mahapatra has stated that the Petitioner has submitted the actuarial valuation report for the first time during the review petition application. Further the objector has stated that OPTCL did not raise the issue of actuarial valuation report either during the hearing or in its reply to issues raised by the objectors during hearing, therefore, there is no justification to consider the valuation report and revise the provision under "Terminal Benefits" and any extra expenditure may be covered in the True up petition.
12. Sri Mahapatra has stated that the Repair & Maintenance expenses based on OERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2014

works out to Rs.100.35 Cr. for the FY 2020-21, calculated @ 2.5% on pre-up valued assets. The submission of OPTCL to allow Rs.140.59 Cr towards Repair & Maintenance expenses for the FY 2020-21 is therefore not tenable.

13. Sri Mahapatra has stated that OPTCL is not preparing any Renovation and Modernization Scheme, based on remaining life assessment for life extension and comprehensive renovation. OPTCL is only replacing equipments of Capital Nature under Repair & Maintenance scheme. This appears to be a willful practice of OPTCL as it recovers the entire cost of these Capital Equipments within one year. The Commission may disallow the cost of equipments of Capital Nature under Repair & Maintenance and direct OPTCL to prepare Renovation & Modernisation schemes after Remaining Life studies for all the EHT Sub-stations and Lines which have outlived the useful life. OPTCL is wilfully avoiding to prepare such schemes. The Commission may consider imposing penalty on OPTCL for such inaction.
14. Sri Mahapatra has stated that the security guards are normally outsourced and cannot perform patrolling duty to detect defect/fault in the EHT lines, the very purpose of patrolling of EHT lines are defeated. Therefore, the submission of OPTCL to provide Rs 53.67 Cr towards watch and ward is totally unacceptable.
15. Sri Mahapatra has stated that in case the interest payment is more than the amount allowed namely Rs.26.28 Cr, OPTCL may claim the same through Truing Up petition based on audited accounts.
16. Sri Mahapatra has stated that in case the depreciation is more than the amount allowed OPTCL may claim the same through Truing Up petition based on audited accounts. He further stated that Amortization of leasehold assets cannot be considered towards depreciation.
17. Sri Mahapatra has stated that the submission of OPTCL, to reduce the projected income towards STOA from Rs.114.44 Cr. to Rs.28.61 Cr. is not based on any rational data and does not merit consideration.
18. The objector has stated that the rejoinder of OPTCL clearly establishes that the details of miscellaneous under other employee cost was not submitted by OPTCL in its application

for determination of ARR and Transmission Tariff, therefore there is no justification to review the order on this account.

19. The objector has stated that all submissions should have been made with the application by the petitioner, any submission made after the hearing is not acceptable by the Commission. Further stated that since the submission of OPTCL regarding actuarial valuation was not raised even during the hearing, the actuarial valuation report cannot be considered in the review petition.

Rejoinder to submission of Shri R. P. Mahapatra

20. The Petitioner has stated that in application for determination of Transmission Tariff for the FY 2020-21 in clause (ix) of the employees cost under the head miscellaneous the expenditure towards conveyance expenditure of employees which is paid as allowance to non-executives and reimbursement to executives is mentioned. OPTCL stated that during FY 2019-20 OPTCL has incurred Rs.1.92 crore towards conveyance allowance and Rs.1.28 crore towards conveyance re-imbursement.
21. The Petitioner has stated that the actuary valuation report of independent actuary was not received while submitting the ARR and transmission tariff proposal for provision for Pension, Gratuity, Leave salary etc. The projected liability for the FY 20-21 is Rs.195.21 crore after obtaining the actuary valuation report, which has been communicated to the Commission.
22. The Petitioner has stated that as per the Regulation 8.15 the repair and maintenance expenses would be allowed at the rate of 2.5% of Gross Fixed Assets (GFA) only on assets owned by the transmission company for each year of the control period. The Petitioner has further stated that OPTCL is not agreeing with the calculation of the objector as there is some conceptual difference in calculation of pre up-valued assets to which OPTCL do not agree.
23. The Petitioner has stated that OPTCL is taking measures for Comprehensive Renovation Plan for enhancement of life span of existing EHT lines and sub-station equipments. Further, Petitioner has stated that the statement of the objector that the replacement of

old/defective/obsolete equipment before expiry of the useful life for the sake of Comprehensive Renovation of the substation/line is not logical.

24. The Petitioner rejects the notion pointed out by the objector relating to inclusion of items of capital nature in R&M works.
25. The Petitioner has stated that OPTCL is not agreeing with the observation of the objector for adjustment of depreciation and miscellaneous receipts in trueing up, as it will affect the cash flow of OPTCL in the current year itself.
26. The Commission heard the Petitioner and respondents. The petitioner has filed this petition with a prayer to review the Transmission Tariff order dated 21.04.2020 passed in Case No. 72/2019.
27. As we find from the petition, the petitioner has basically pointed out at the methodology adopted by the Commission while calculating cost and revenue under various heads during approval of the ARR. The petitioner has sought additional cost towards employee cost, R&M expenses, depreciation and interest & finance charges. The petitioner has also prayed to consider lower miscellaneous receipts as was approved in the ARR. The Commission in the said order dated 21.04.2020 passed in Case No.72/2019 has dealt extensively the items for which additional expenses has been sought in the present petition. The Commission has dealt the issue of employee cost in para 210 to 225, the repair and maintenance expenses in para 226 to 228, depreciation in para 239 to 241 interest and finance charges in para 233 to 237 and miscellaneous receipt in para 250 to 252. We find no apparent error in those paragraphs. In this regard the Commission observes that the determination of ARR is a comprehensive process wherein the suggestions, objections and opinions are invited from all the stakeholders. Thereafter the transmission charges are determined taking into account the Electricity Act, 2003, National Tariff Policy, National Electricity Policy and applicable Regulations. This petition is filed basically to seek additional approval in various items of expenditure on various grounds which to our opinion do not merit any reconsideration. It is well settled that review can only be made on specific grounds and not merely repeating the prayers made earlier.

28. The Commission in this regard observes that 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.
29. 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.
30. As we find from the petition the petitioner has basically pointed out at the methodology adopted by the Commission.

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. (‘Batur 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 judgment. 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 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.

31. The present review petition being devoid of any merit is accordingly dismissed.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson