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with order 47 Rule 1 of the CPC for the review of the order passed on 23.09.2020 in Case Nos. 70/2019, 74/2019, 75/2019, 76/2019, 77/2019, 78/2019, 79/2019 and 80/2019, with regard to the Retail supply of tariff & Open Access Charges for the FY 2020-21

2. The petitioner is a company manufacturing MS steel ingot having grid connectivity with Rourkela Grid substation at 33KV and is availing supply from WESCO with demand of 5100KV. According to the petitioner, during the last 15 years due to continuous hike of electricity tariff, 41 no of industries have been closed and as such consumption has reduced to 6.18 Crore kWh from 13.71 crore kWh and thereby GRIDCO was compelled to export their remaining 7.53 crore kWh at much lower rate, causing the revenue loss of Rs.417 crores to WESCO. It is claimed that in Odisha the effective price/tariff is Rs.6.10 per unit as against price of Rs.5.05 in the state of Chattishgarh Rs.5.10 in the State of Jharkhand, Rs.3.75 in the case of DVC Jharkhand and Rs.4.20 in the case of Jindal, Jharkhand. According to the petitioner, the hike in tariff is adverse to all steel industries, including that of the petitioner, where the consumption is at 70-80% load factor, particularly when GRIDCO is exporting surplus power at a much lower rate and urged the Commission to pass orders as under:-
 - A To Pass a tariff with a cumulative incentive of Rs.1.75 per unit minimum as compared to present tariff for the HT industries with 70-80% load factor
 - B To direct GRIDCO to supply power to HT industries with 70-80 % load factor through Open access through a special Mechanism and Special incentive.
 - C To pass any appropriate orders keeping larger interest of the state, in consideration.
3. The opposite parties, defended the order, sought to be reviewed and urged to reject the application and to pass appropriate order. We have heard the parties, through virtual mode.
4. That the commission (OERC) has the jurisdiction to regulate tariff within the meaning of section 62 of the Electricity Act 2003 is not bone of contention. As held in
(a) V.S. Rice and Oil Mills v. State of A.P (1964) 7 SCR,(b) K Ramanathan v. State of Tamil Nadu (1985) 2 SCC,(c) Deepak Theatre v. State of Punjab, 1992 Supp (1) SCC 684(d) State of U.P. v. Maharaja Dharmander Prasad Singh (1989) 2 SCC 505(e) Hotel & Restaurant Association v. Star India (P) Ltd (2006) 13 SCC 753

the following guidelines can be summed up:-

- (a) The word "regulate" is wide enough to confer power on the authority to regulate either by increasing the rate, or decreasing the rate and to arrange for its equitable distribution and its availability at fair prices.
- (b) The power to regulate does not necessarily mean the power to prohibit only. The power to regulate carries with it full powers over the things, subject to regulation and in the absence of restrictive words, the powers must be regarded as plenary over the entire subject. It implies the power to rule or guiding principle to be followed and involves adoption of rule and guiding principle to be followed.
- (c) The Power to regulate a particular business implies the power to prescribe and enforce all the proper rules and regulations as may be deemed necessary to conduct the business.
- (d) The party in which the discretion is vested to regulate can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed.
- (e) The Power to regulate with the obligations and functions that go with and are incidental to it, are not spent or exhausted with the grant of permission. The power of regulation which stretches beyond the mere grant of permission, takes within its sweep the power, in appropriate cases, to revoke or cancel the permission as incidental or supplemental to the power to grant.

5. The Commission in its order dated 22.04.2020 vide Case No. 71 of 2019 has observed as follows:

“340. It is observed from above table that the Commission has estimated the net revenue requirement of GRIDCO to the tune of Rs.8274.98 Crore after adjustment of miscellaneous receipts of Rs.47.70 Crore and GRIDCO would recover Rs.7614.83 Crore from the DISCOM Utilities through Bulk Supply Price during the FY 2020-21 leaving a negative gap of Rs.660.15 Crore. XXXXXXXX

The gap in the ARR has been allowed by the Commission to provide relief to the consumers of the State considering COVID-19 situation prevailing now. If the situation improves during the current financial year, the Commission may revisit the gap on an application of GRIDCO.”

Further at Para 358 of the said order, the Commission has observed as follows:

“358. Considering the COVID-19 situation there has been no hike in BSP for the FY 2020- 21. However, if the situation improves during the course of the current financial year, the revision of BSP may be considered by the Commission at appropriate time under Section 62 (4) of the Act.”

6. GRIDCO filed the application on 21.8.2020 with a prayer for revisiting gap in its ARR. Consequent to this, the Commission heard the matter on 19.09.2020 and passed the order on 23.9.2020 in Case No. 71 of 2019 revising the ARR and Bulk Supply Price of GRIDCO which was made effective in the State from 1st October, 2020, as per Annexure B of the order.

“52. The Commission observed that due to the impact of the Covid-19 pandemic starting from the month of March till date, industrial/commercial demand had substantially fallen in the second fortnight of March and the trend continued in the month of April, 2020. In view of the above, the Commission had taken a conscious view not to increase the BSP in its order dated 22.04.2020 that led to the deficit revenue gap of Rs.660.15 crore for the FY 2020-21. However, the demand has started picking up slowly with opening up of commercial and industrial activities from the month of May, 2020 onwards. By July, 2020 the demand has risen almost to the previous year's level. We feel that substantial deferment of cost will lead to tariff shock to the consumers in future. Therefore, the regulatory gap left in the ARR needs reconsideration. We decide to allow part of the revenue gap to be passed on to the DISCOMs in the form of rise in BSP now. While reviewing the gap in the ARR of GRIDCO, now we find that GRIDCO has earned a trading revenue of Rs.90.59 Crore during the period from April to August, 2020. GRIDCO has also received an amount of Rs.85 Crore as relief in the bill provided by CPSUs. These revenues need to be factored in.”

7. That order sought to be reviewed has suffered from any infirmity or that it is perverse is not the case advanced. The only contention raised is that it is adverse to the interest of the petitioner. Be it mentioned here that OERC is not the appellate authority to redress the grievance, as put forth by the petitioner. The contention that other neighboring states are selling power at a lower rate, cannot be a ground to review the order under challenge. Though not urged, the legislature in its wisdom has created State Commissions conferring them the jurisdiction to decide Tariff applicable to the respective states. What is prevalent in the state of Odisha may be different in other states. Be it mentioned here that the commission passed the order sought to be reviewed after hearing the parties and after revisiting the requirement under the jurisdiction conferred under Section 62 of the Electricity Act. The order was passed to overcome the deficit of Rs.660.15 Crore It cannot be lost sight of the fact that deficit has to be recovered. Nothing is free.

8. **Rule 1 Order XLVII of Code of Civil Procedure 1908 "Application for review of judgment"**

(1) Any person considering himself aggrieved-

- (a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation:-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

9. The Apex Court in *M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh* represented by the Deputy Commissioner of Commercial Taxes, Anantapur, [AIR 1964 1372] held that "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of

law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

10. The petitioner through his pleading or through his submissions could not make out the discovery of any new or any important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order made, or that on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the commission passing the order. We also do not find any sufficient ground to review the order under challenge.
11. The review application to review of the order passed on 23.09.2020 in Case Nos. 70/2019, 74/2019, 75/2019, 76/2019, 77/2019, 78/2019, 79/2019 and 80/2019, with regard to the Retail supply of tariff & Open Access Charges for the FY 2020-21, merits no consideration and the same is dismissed.

Sd/-

(G.Mohapatra)
Member

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson