

**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. Mohaptra, Member**

Case No. 11/2021

M/s. OPTCL	Petitioner
- Vrs. -		
Director (Regulatory Affair), OERC.....		Respondents

In the matter of: **Petition under section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulations 70 of the OERC (Conduct of Business) Regulations, 2004 along with other enabling provisions seeking review of order dated 28.12.2020 of the OERC passed in SoU Motu Proceeding in Case No. 83 of 2020 regarding vesting of SOUTHCO Utility in favour of TPCL.**

For Petitioner: Shri B K. Das, Sr. GM (RT&C), OPTCL

For Respondent: Shri Binod Nayak AGM (Com.) TPSODL, Ms. Sonali Patnaik, ALO, DoE, GoO

ORDER

Date of hearing: 06.07.2021

Date of order:03.11.2021

1. The Commission in exercise of power under section 21 (a) of the Electricity Act, 2003 had vested the utility SOUTHCO in TPSODL in Case No. 83 of 2020 with effect from the 1st day of January 2021 subject to completion of sale and delivery of the utility to TPSODL.
2. The Petitioner OPTCL in this present application has sought for review of the vesting order dated 28.12.2020 in accordance with section 94(1) (f) read with Section 86(1) (k) of the Electricity Act, 2003 and Regulations 70 (1) of the OERC (Conduct of Business) Regulations, 2004.
3. The petitioner has stated that that for the purpose of reviewing its own decisions, the Commission has the same powers as are vested in a Civil Court under the Code of Civil

Procedure, 1908. Review under the Civil Procedure Code is permissible as per order 47, Rule 1. Further stated that there exists sufficient reason for review of the aforesaid order dated 28.12.2020.

4. The petitioner has stated that during the hearing of the impugned order OPTCL had submitted to make suitable provisions in the vesting order for realization of OPTCL's arrear relating to transmission charges and DPS accrued on the date of vesting of SOUTHCO Utility. OPTCL had further submitted during the hearing that the DISCOMs may be directed to prepare asset register of completed works under various Government funded projects that OPTCL is executing for distribution companies.
5. The petitioner states that the Commission in para 47 (g) of the order dated 28.12.2020 had stated that the past arrears recovered from consumers, after deducting the incentive of TPSODL, shall be dealt with in manner specified in para 56 of that order. In case the Additional Serviceable Liabilities stated in para 56 of this Order are extinguished, then the past arrears recovered after deducting the incentive shall be paid to GRIDCO. After the past liabilities of GRIDCO are extinguished, the Past Arrears recovered after deducting the incentive shall be paid to OPTCL for outstanding transmission and SLDC charges of SOUTHCO Utility.
6. The petitioner has stated that as per Clause 11 (4) of the Department of Energy, Govt. of Odisha Notification No. 6892 Dtd.09.06.2005 "The Orissa Electricity Reforms (Transfer of Transmission Related Activities) Scheme, 2005" the transmission and other charges payable by the transferor (i.e. GRIDCO) to the transferee (i.e. OPTCL) shall be duly secured by first charges over the receivables of the transferor in favour of Transferee to ensure that the transmission services are available for transmission of electricity to the distribution licensees without interruption and to maintain the supply of electricity to public in the State.
7. The petitioner has stated that in view of this the charge of OPTCL is duly secured by a first charge over the receivable of GRIDCO in favour of OPTCL. DISCOMs are customers of OPTCL. OPTCL will bill the Distribution Companies for the use of transmission services on the basis of meter reading at the delivery point of DISCOMs with a copy to GRIDCO.

8. The petitioner has stated that the past liabilities of the Petitioner (OPTCL) may kindly be extinguished first instead of GRIDCO as the Petitioner is liable to get the transmission charges as the first charge.
9. The petitioner has stated that the transmission charge bills of OPTCL are raised on monthly basis. As per the orders of the Commission the due date is one month and the transmission charges payable is always treated as current liability.
10. The petitioner has stated that SOUTHCO has a huge outstanding liability towards unpaid transmission charges of OPTCL and DPS there on, amounting to Rs 103.52 Cr (outstanding transmission charges 46.81 crore and DPS 56.71 crore) as on 31.12.2020.
11. The petitioner has stated that SLDC is the nodal agency for keeping the energy accounting of the State. The monthly transmission charge bill is being issued to DISCOMs based on the units (kWh) certified by the SLDC only. Revision of energy is an on-going process and may happen as per the situational requirements which have been accepted by all the DISCOMs. Petitioner has further stated that the distribution activities in Southern Odisha is transferred from SOUTHCO to TPSODL, therefore, the successor company M/s. TPSODL is liable to honor all the revision towards past period without any dispute.

Reply by TPSODL

12. TPSODL has stated that in the vesting order at para 13 the Commission has observed that as per Section 21(a) of the Act, the utility shall vest in TPSODL free from any debt, mortgage and similar obligation. The liabilities shall attach to the purchase price in substitution for the utility of SOUTHCO. However the vesting order further provides that certain serviceable liabilities are being transferred to TPSODL along with mechanism for funding of such liabilities as provided in para 56 of Vesting Order."
13. TPSODL has pointed out that as per Para 47(g) of the vesting order "*The Past Arrears recovered from consumers, after deducting the incentive of TPSODL, shall be dealt with in manner specified in Para 56 of Vesting Order. In case the Additional Serviceable Liabilities are extinguished, then the Past Arrears recovered after deducting the incentive shall be paid to GRIDCO. After the past liabilities of GRIDCO are extinguished, the Past*

Arrears recovered after deducting the incentive shall be paid to OPTCL for outstanding transmission and SLDC charges of SOUTHCO Utility.”

14. TPSODL has stated that the last reconciliation of the dues was made up to 2014-15 excluding DPS of Rs.52.37 Cr. Thereafter no reconciliation has been made till date. TPSODL further states that the DPS now claimed by OPTCL is not the part of reconciliation up to the last reconciliation.
15. TPSODL has stated that with regard to the payment of outstanding Transmission charges bill, the interest of OPTCL is already taken care of as per direction in Para 47(g) of the Vesting order. After the past liabilities of GRIDCO are extinguished, the past arrears recovered after deducting the incentive shall be paid to OPTCL for outstanding transmission and SLDC charges of SOUTHCO Utility.
16. The Commission heard the petitioner and the respondent in detail. The Commission in the instant case observes that there is no such error apparent on the face of record and there is no new evidence put forward by OPTCL for review of the order. Further the issues raised by OPTCL are already taken care by the Commission in the vesting order of the Case No. 83/2020 relating to outstanding transmission charges and DPS, adjustment of transmission charges of past periods and any other dues of OPTCL liable for payment by erstwhile SOUTHCO. The present plea in another form is an appeal. The scope of review is very limited. Therefore the Commission now observes that no further issue survives for review in this order.
17. The Commission has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. Review under the Civil Procedure Code is permissible as per order 47, Rule 1 on the following grounds.
 - a. Discovery of new and 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; or
 - b. Some mistake or error apparent on the face of the record and; or
 - c. For any other sufficient reason.

18. 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.
19. As we find from the petition the petitioner has basically pointed out at the methodology adopted by the Commission.
20. 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. ('Batuk 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 prayer to review our Order.
21. Therefore, we hold that the present review petition is devoid of any merit and accordingly is disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson