

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

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

Case No. 29/2021

M/s. Ananda Kumar Mohapatra	Petitioner
- Vrs. -		
TPCODL, TPNODL, TPSODL, TPWODL & Others	Respondents

In the matter of: **Application under Section 94(1)(f) read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule-1 of the CPC, 1908 seeking review of order dated 26.03.2021 of OERC passed in Case Nos. 75 to 78 of 2020 relating to RST for FY 2021-22.**

For Petitioner: Shri Ananda Kumar Mohapatra.

For Respondents: Shri K. C. Nanda, DGM (F.), TPWODL, Shri Vidyadhar Wagle, CEO, TPCODL, Shri Bhaskar Sarkar, CEO, TPNODL, Shri Milind Prabhakar Kulkarne, Chief-Operation Services, TPSODL, Ms. Sonali Patnaik, ALO, DoE, GoO, Shri A. K Sahani, Shri Ramesh Chandra Satpathy, Er. (Dr.) P. K. Pradhan, Shri Pravakar Dora, Shri Bibhu Charan Swain on behalf of M/s. Grinity Power Tech Pvt. Ltd. and Shri R. P. Mahapatra are present.

Nobody is present on behalf of M/s. Top Tech Steels (P) Ltd., M/s. Shree Salsar Casting Pvt. Ltd., M/s. D.D. Iron & Steel Pvt. Ltd., M/s. Bajaranga Steel and Alloys Ltd., M/s. Maa Girija Ispat Pvt. Ltd., M/s. Shri Radha Krishna Ispat (P) Ltd., M/s. Refulgent Ispat Pvt. Ltd., M/s. Scan Steels Ltd., M/s. Indian Energy Exchange, Sundargarh District Employees Association, Sambalpur District Consumers Federation, Prayas, M/s. Balasore Alloys Ltd., M/s. Visa Steel Ltd., M/s. Tata Steel Ltd., Odisha Consumers Association, Shri Prashant Kumar Panda, M/s. Maa Bana Devi Poultry Pvt. Ltd., Grahak Panchayat, M/s. Pragati Milk Products Pvt. Ltd., Odisha Retired Power Engineers' Forum and Confederation of Citizen Association, East Coast Railway, Prayas, Confederation of Citizen Association, Bhubaneswar.

ORDER

Date of hearing: 03.08.2021

Date of order: 29.09.2021

1. This petition has been filed by Shri Ananda Kumar Mohapatra seeking the review of OERC Retail Supply Tariff orders for FY-2021-2022 passed in Case Nos. 75, 76, 77 & 78 of 2020 dated 26.03.2021.

2. The Petitioner has sought the review on the following grounds:

- (a) The Petitioner has stated that non-tariff income (Miscellaneous Receipts) of Rs.505.23 Cr. has not been factored in while determining the average cost of supply. The components of non-tariff income have not been specified by DISCOMs. Non-consideration of above miscellaneous receipt or non-tariff income has resulted in average RST increase of 23 paise per unit. The average cost of supply should be balanced with average revenue. Accordingly, the tariff should be determined.
- (b) The Commission has approved an average cost of supply @ 548.40 paise per unit with total cost of Rs.12037.58 Cr. which shall be recovered by selling 21950.22 MU of power. But this revenue will not be recovered because the cost of supply has been erroneously calculated.
- (c) The Odisha model of tariff determination is not seen elsewhere because they do not have power trader like GRIDCO. Other States deduct miscellaneous receipt from the distribution cost.
- (d) The allocation of cost towards wheeling business given in the Table 81 does not match with the information given in the Table 39 which deals with determination of wheeling charge. This may be rectified.
- (e) Freezing of loss reduction target which affects normative sales is violative of the OERC Retail Supply Tariff Regulations, 2014. This is because financial gains arising out of achieving less loss level than that of normative loss is not shared with the consumers. The Petitioner has stated that as per Regulation 7.12 of OERC Regulations, 2014, the DISCOMs have reduced the T&D loss more by 1.45% than the normative loss target approved by the Commission for the FY-2020. The financial gains derived by the DISCOMs from above 1.45% loss reduction is Rs. 213.15 Cr, calculated @147.00 Cr per 1% loss reduction but this has not been shared with DISCOMs in the RST Order.
- (f) The gross depreciation has been arrived at Rs.325.20 Cr. on the GFA of Rs.8551.03 Cr. which includes audited GFA as on 01.04.2020 plus addition of assets during FY 2020-21. However, no disclosure has been made on the amount of assets created under Government grant and from beneficiaries.

- (g) The R&M cost has been allowed arbitrarily @ 5.4% of wrong base of gross fixed asset. The actual audited cost of R&M for the last three financial years are merely 20% of the R&M cost allowed in the relevant RST orders.
 - (h) The change over of kWh billing to kVAh billing without change in tariff is a double shock to the consumers.
 - (i) The DISCOMs are not respondents in the the ARR and BSP order proceeding of GRIDCO though power purchase constitute 70% of the ARR of DISCOMs. Petitioner has stated that with regard to differential BSP the good performer TPWODL has been punished by determining the exceedingly higher BSP of 337 P/U in comparison to TPCODL & NESCO Utility. The differential BSP determined for TPWODL is 54 P/U higher than TPCODL & 17 P/U higher than NESCO Utility. The Petitioner has further stated that it is necessary to determine the power purchase cost of DISCOMs reasonably so that the retail tariff shall be reasonable.
 - (j) The Commission has failed to protect the interest of the consumers as specified under Section 61 (d) of the Act.
3. One of the intervener UCCI has stated that MSME have been affected by tariff rise and the economic operations of these industries are not commercially viable as they don't have CGP and are fully dependent upon the Electricity Supply of DISCOM. They have further stated that the tariff of MSME has increased from Rs.2 to Rs.6.05 in last 17 years. There is more than 200% increase in electricity tariff in last 17 years which is almost 11% to 12% in each year. The introduction of kVAh billing is a double tariff shock for them.
 4. UCCI has further submitted that Hotel Industries should be considered under either LT Industrial (S) Supply or LT Industrial (M) Supply and should be charged at a relatively lower tariff of Rs.6.20 per kWh rather than being charged at Rs.7.60 per kWh tariff which is causing lots of difficulty for Hotel Industries.
 5. M/s. UCCI has stated that the Commission should extend the deferment of demand charges for FY 2021-22 as allowed in FY 2020-21 vide notification dated DIR(T)-405/2020/452 dated 22.04.2020 considering the COVID-19 situation. In the present situation majority of MSMEs have negligible cash flows due to continuous lockdown.

6. Another intervener Shri P K Pradhan has stated that the Commission for the first time have approved kVAh billing instead of kWh billing in case of HT & EHT consumers without considering its impact. In the ARR for FY 2020-21 the incentive for higher power factor i.e. 97% and above has been withdrawn for HT category consumer. As a result there will be an increased billing of around 197 MU which amounts to Rs.115.26 crore. These amounts have not been considered while calculating total revenue of DISCOMs. The increased billing will also help in reducing T&D loss by 1% which has not been factored in while calculating and approving the AT&C loss.
7. Shri Pradhan has further stated that tariff for agricultural use may be set at different levels for different parts of the States depending on the condition of the ground water table to prevent excessive depletion of ground water.
8. One of the Respondent TPCODL has stated that in the tariff order the Revenue Gap has been found out after considering the Non-Tariff income. Therefore the observation of the Petitioner has no bearing in the Tariff order. In the table 81 for cost allocation of wheeling business there are some clerical errors which have no bearing on the wheeling tariff. This is because wheeling tariff has been correctly worked out in the Annexure-C of the Tariff order.
9. TPCODL has stated that the Commission while determining the Bulk Supply Price (BSP) for various DISCOMs has applied the principle of “Capacity to pay” of each DISCOM. The BSPs have been determined in a manner to enable each DISCOM to (i) meet its expenses and stipulated returns (ii) meet Power Purchase Cost with the estimated revenues from Tariff. TPCODL has submitted that the methodology of differential power purchase cost to various DISCOMs is fair when the same tariff is applicable for various DISCOMs across the state and such balancing act is imperative to take care of the differences in the various parameters.
10. TPCODL has stated that the methodology adopted by the Commission is appropriate and does not violate any provisions in the regulations, rules and provisions of the Electricity Act 2003. He further submitted that tariff to various categories can be set by the Commission as it deems fit within the ambit of the Electricity Act and Tariff Policy 2016.
11. TPCODL has stated that it has commenced its operation on 1st June 2021. The operations are governed by the Vesting order of the Commission. As per the Vesting order the consumers are insulated from variation of AT&C loss by TPCODL.

12. TPCODL has stated that the Commission in the tariff order permitted R&M expenditure on the basis of the Tariff Regulation, which TPCODL feels may be inadequate, given the requirements. The actual expenditure of the past, incurred by erstwhile CESU, does not have any relevance in determination of the R&M expenditure for FY 2021-22.
13. TPCODL has submitted that the petitioner has not provided any data relating to double shock of tariff to EHT and HT consumers. TPCODL has further submitted that while introducing tariff on “kVAh” basis, the Commission has done away with the penalties and incentives for PF. The net impact on consumers can be ascertained only after passage of time when the “kVAh” billing is made applicable.
14. TPCODL has stated that they are aware that Power Purchase made by GRIDCO is through Long Term arrangements /PPAs that have been tied up in the past and inherited by TPCODL by vesting order. The tariffs under the PPA have either been approved by the CERC or OERC or have been discovered by competitive bidding.
15. TPCODL has stated that the Petitioner’s objection to non-submission of Non-Tariff Income for determination of ARR is grossly incorrect. TPCODL in its ARR has submitted item wise details of Non-Tariff Income and also the basis of projection for FY 2021-22 in paragraph 4.9 and extract 4-10 in ARR petition.
16. Another Respondent TPSODL has also given the same view as of TPCODL in the matter of the introduction of kVAh billing. They have submitted that the prime objective of kVAh billing is to encourage the consumers to maintain near unity power factor to achieve loss reduction, improve voltage profile etc.
17. TPSODL has stated that all open access transaction will be maintained in the kWh sale only and kVAh based sale shall be converted into kWh based on the power factor for the month provided in the energy bills if necessary and for load factor purpose kWh reading shall be taken into consideration. TPSODL has stated that the Commission has taken due care while designing the tariff in new billing methodology and revenues for the DISCOMs.
18. TPSODL has stated that the deferment of the Demand charges as awarded in the last year was due to COVID -19 pandemic which resulted in complete lockdown across India and the economic activities of the country as whole was abruptly stopped. In the

ensuing year, the situation has changed and industries are allowed to operate, hence it is not justified to compare the situation of the last year with current year.

19. The other two DISCOMS TPWODL and TPNODL have the same view as of TPCODL in the matter of deduction of Non-Tariff Income in the ARR order for DISCOMS. TPWODL has further stated that the Commission is allowing depreciation as per pre-92 rates on opening GFA of the licensee. As regards to assets created out of grants/subsidy, same are being excluded from the GFA while calculating depreciation.
20. The Commission heard the Petitioner, Interveners and respondents. The petitioner has filed this petition with a prayer to review the RST order in Case Nos. 75, 76, 77 and 78 of 2020 dated 26.03 2021 and re-determine the wheeling and retail supply tariff for FY 2021-22 considering the prayer of the petitioner.
21. As we find from the petition, the petitioner has basically pointed out the methodology adopted by the Commission while calculating cost and revenue under various heads during approval of the ARR. The petitioner has also questioned the determination of BSP for DISCOMs, calculation of cross-subsidy surcharge, miscellaneous receipt, distribution loss, AT&C loss, depreciation and newly introduced kVAh billing. The Commission in this regard observes that the determination of ARR is a comprehensive process wherein the suggestions, objections and opinions are invited from all the stakeholders. Thereafter, the tariffs are determined taking into account the Electricity Act, 2003, Tariff Policy, National Electricity Policy and applicable Regulations. The petitioner and all the interveners were also a part of such process and were heard during the tariff proceedings. This petition is nothing but reiteration of the objections filed earlier, which were considered by the Commission before passing the RST order. However, in Para 476 Table -81 of the impugned order for cost allocation towards wheeling business there are some typographical errors. But these errors have no bearing on the wheeling tariff since those have been correctly calculated at Annexure-C of the order and accordingly notified. While determining ARR the Miscellaneous Revenue has also been duly deducted as evident from Annexure –A of our Order. We direct the Secretary of the Commission to correct those typographical errors in the order.
22. Other than this we find no substantial material or ground to review the said orders. As it appears the claims/arguments put forth by the petitioner are not based upon facts.

The petitioner has resorted to wrong and distorted facts with an intention to create a misleading situation and confusion. The review petitioner should refrain himself from making such false claims. However, we are not going into detailed analysis of the above as the scope of the review petition is limited. It is very well settled that review can only be made on specific grounds and not merely repeating the prayers made earlier.

23. 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.
24. 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.
25. 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 except para 476 Table 81. 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.
26. The review petition is accordingly disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson