

**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. 50/2021

M/s Jindal Steel & Power

.....Petitioner

- Vs. -

TPCODL

.....Respondent

In the matter of: **An application under section u/s 94(1) (f) of the Electricity Act, 2003 reads with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004 and order 47 Rule-1 of Code of Civil Procedure, 1908 for review of the order passed by the Commission on dated 26.03.2021 for approval of the ARR & determination of the Wheeling Tariff (WT) & RST for DISCOMs in case nos. 75,76,77 & 78 of 2020 for FY 2021-22.**

For Petitioner: Shri A. K Sahani, the authorized representative of M/s. Jindal Steel & Power Limited,

For Respondent: Shri K. C. Nanda, DGM (F.), TPWODL, Shri Vidyadhar Wagle, TPCODL, Shri Pratap Mohanty, Sr. GM (Regulatory & Legal) TPNODL, Shri Binod Nayak, Asst. GM (Comm.) TPSODL

ORDER

Date of hearing:03.08.2021

Date of order:25.10.2021

The present Petition has been filed seeking the review of OERC Wheeling Tariff (WT), Retail Supply Tariff (RST) order for DISCOMs dtd.26.03.2021 for FY2021-2022. The Petitioner is an emergency Power supply consumer under the jurisdiction of the TPCODL with contract demand of 20MVA and also an Open Access consumer of power supply at 400kV voltage level.

2. The Petitioner has stated that there is a wrong accounting done for Non-Tariff income (Miscellaneous Receipts) for Rs 505.23 Cr in the ARR for DISCOMs in the order, which is violation to the Regulation no 7.59 and 7.60 of OERC WT & RST Regulations, 2014

and resulted in increase of 23 paisa/unit in both Average Cost of Supply(ACoS) and Average RST .

3. The Petitioner has stated that there are errors in the Table -81 of RST order for FY 2021-22.
4. The Petitioner has stated that the change in Billing Method for EHT & HT consumers from kWh billing to apparent power kVAh billing without change of the effective Tariff is a double shock for EHT & HT consumers excluding the industrial consumers having CD of 1 MW and above.
5. The Petitioner has stated that while calculating surcharge Regulation 2 (vi) & (vii) of OERC Regulations, 2005 has not been properly followed.
6. The Petitioner has stated that there should be a constant endeavour on part of the Commission to reduce the cross subsidy surcharge on yearly basis, however from the RST order it is seen that the cross subsidy surcharge has not reduced which is in violation of Regulation 2 (vi).
7. The Petitioner has stated that the Commission should promote the development of the power trading market as per Section 66 of Electricity Act, 2003 by fixing open access charges including cross subsidy surcharges at reasonable levels in order to encourage competition in the power market.
8. The Petitioner has stated that due to very high Cross Subsidy surcharge of TPCODL, the total cost of the energy is very high, therefore, purchase of RTC power through open access is not affordable.
9. The Petitioner has stated that when Interest on Security Deposits has reduced to 4.25% in the RST order FY 2021-22 as against 5.4% for FY 2020-21, DPS level has remained constant. It should have also reduced.
10. The Respondent TPWODL has stated that the Commission had introduced kVAh billing system to give benefit to both the consumers as well as the licensees in maintaining system stability, ensuring power quality and achieving loss reduction.
11. The Respondent has stated that the contentions of the petitioner relating to introduction of kVAh billing that the DISCOMs will generate more at the cost of safety of the system are false, improper and without any basis as in this regard The Hon'ble APTEL has dealt the issue of kVAh billing on several occasions. In this regard the order of Hon'ble APTEL in

Prime Ispat Ltd. and Another vs. Chhattisgarh State Electricity Regulatory Commission and others (A.No.263 of 2014,decided on 10.04.2015) may be referred.

12. The Respondent has stated that the Commission has dealt with the issue of interest on SD at para-446 of the order and it can be well inferred that the interest on available SD of the consumer has been fixed at par with the bank rate as per RBI notification. It is stated that there is no relation of interest on SD with DPS which has been provisioned for regular payment of the dues within time and the licensee intends that all the consumers should avail rebate on prompt payment along with other benefits.
13. The Respondent has stated that the contentions of the petitioner are erroneous, improper and purely misconceived as the ARR of all the DISCOMs have been approved in Annexure-A, where the Non-Tariff Income (Miscellaneous Receipts) has been duly deducted from the Total Distribution Cost as per the norms of OERC Regulations, 2014.
14. The Respondent has stated that the average cost of supply is the total cost required by the distribution licensee to deliver its power at consumer's premises, not the cost after factoring other income. Further stated that for determining tariff the Non-Tariff income needs to be deducted and the Commission has correctly deducted the other income from total distribution cost in the RST order (as per Annexure-A of RST order).
15. The Respondent has stated that the contention of the petitioner that the Cross Subsidy Surcharge is not reduced rather increased is not correct, The Respondent stated that the leviable Cross Subsidy Surcharge of DISCOMs has been reduced by 37% from the computed value which is presented in the table -40 & table 41 of the RST order.
16. The Respondent TPSODL has stated that the table-81 of the RST order has a typographical error and this table does not form part of recovery of wheeling cost. Further it is stated that for recovery of wheeling cost the Commission has made it correctly in Table-39 and 41 of the RST order and the recovery of wheeling cost has correctly been placed in Annexure-C of the RST order which is in line with table-41.
17. The Respondents TPNODL, TPSODL & TPCODL are of the same view as that of TPWODL in the matter of kVAh billing, Non-Tariff income, Average Cost of Supply, Cross Subsidy Surcharge, Interest on SD, and Meter rent.
18. Heard the parties in detail. We find that there are some typographical errors in Table – 81 of the order but it has no bearing on the calculation of wheeling charge. We direct the

Secretary of the Commission to rectify the typographical errors. Regarding other points for which review has been sought we refer our order in Case No. 51, 52 & 53/2021 dated 21.10.2021 where prayers are similar to the present petition.

“All the points raised by the Petitioners have been suitably answered in the Tariff Order for FY 2021-22. The deduction towards non-tariff income has been made in the Annexure-A of the tariff order. The issue of reduction of cross subsidy surcharge has been suitably dealt at Para 392 of the said order. The issue of kVAh billing has also been dealt with appropriately at para 374 of the order. Similarly, all other issues have been properly discussed in our order. However, the Petitioners could not show us any instance where there is an apparent error or any issue which attract review of the order. The Petitioners have sought revision of the tariff order on the grounds which were already discussed during the tariff proceeding. The review petition appears to us like an appeal to revisit our order to grant them some relief which is beyond the scope of review petition.”

19. We have nothing more to add in this regard in the present order. 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.
20. 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.
21. 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.
22. 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 selfevident 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 except one has been pointed out by the Petitioners seeking the review of our judgement. 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.

23. Accordingly, the cases are disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson