

**ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SAILASHREE VIHAR
BHUBANESWAR - 751021**

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

Case No. 51/2021

M/s. Odisha Industries Association	.....	Petitioner
Vrs.		
CEO, TPCODL & Others	.....	Respondents

In the matter of: **An application under Section 94 (1) (f) of Electricity Act 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule-1 of Code of Civil Procedure, 1908 for review of the order passed by the Commission dated 26.03.2021 for approval of the ARR & Determination of the Wheeling Tariff and RST for DISCOMs in Case No. 75, 76, 77 & 78 of 2020 for FY 2021-22.**

And

Case No. 52/2021

Association of Industrial Entrepreneurs of Bhubaneswar	.....	Petitioner
Vrs.		
CEO, TPCODL & Others	.....	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) Regulations, 2004 and Order 47 Rule-1 of Code of Civil Procedure, 1908 for review of the order passed by the Commission dated 26.03.2021 for approval of the ARR & Determination of the Wheeling Tariff and RST for DISCOMs in Case Nos. 75, 76, 77 & 78 of 2020 for FY 2021-22.**

AND

Case No. 53/2021

M/s. Odisha Assembly of Small & Medium Enterprises, Cuttack	.....	Petitioner
Vrs.		
CEO, TPCODL & Others	.....	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) Regulations, 2004 and Order 47 Rule-1 of Code of Civil Procedure, 1908 for review of the order passed by the Commission dated 26.03.2021 for approval of the ARR & Determination of the Wheeling Tariff and RST for DISCOMs in Case Nos. 75, 76, 77 & 78 of 2020 for FY 2021-22.**

For Petitioners: Shri Ananda Mohapatra, Shri A. K Sahani, the authorized representative of M/s. Jindal Steel & Power Limited, M/s. Odisha Industries Association, M/s. Association of Industries Entrepreneurs of Bhubaneswar and Odisha Assembly of Small & Medium Enterprises, Cuttack,

For Respondents: 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, Shri Ramesh Chandra Satpathy, Shri R. P. Mahapatra, Shri Bibhu Charan Swain, Shri P. K. Pradhan and Shri Pravakar Dora are present. Nobody is present on behalf of DoE, GoO, M/s. Grinity Power Tech Pvt. Limited, 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, Shri Sankar Prasad Dash. SOUTHCO Bijuli Upvokta Sangha, Shri Panchanana Jena, M/s. Odisha Cold Storage Association, M/s. Narayan Cashew Industry, M/s. Gopalpur Ports Ltd., M/s. Gopalpur Light House, M/s. Suntek Industries, Shri Aditya Narayan Mishra, Advocate, M/s. Harika Chemicals Pvt. Ltd., M/s. Chilika Cashew Industry, M/s. Saraf Agencies Pvt. Ltd., President of Southern Odisha Electrical Contractors Association, M/s. United Electricals & Engineering (P) Ltd.

ORDER

Date of Hearing: 03.08.2021

Date of Order: 18.10.2021

The present applications have been filed by Odisha Industries Association, Jagatpur Cuttack, Shri Mahendra Patra, General Secretary, Association of Industrial Entrepreneurs of Bhubaneswar and Shri Abhilash Dash, Additional Secretary General, Odisha Assembly of Small and Medium Enterprises, Cuttack. The petitions are similar in nature. Therefore, the Commission has decided all the three petitions analogously. The Petitioners have sought the review of wheeling and Retail Supply Tariff order for DISCOMs passed by the Commission in Case Nos. 75, 76, 77 & 78 of 2020 dated 26.03.2021 for FY 2021-22.

2. The review Petitioners have sought the review of our order on the following grounds:

- The non-tariff income of Rs.505.23 crores has not been accounted in the average cost of supply and as a result average RST has increased by 23 paise per unit.
- The cross subsidy surcharge should have been reduced from year to year basis as per Section 42 (2) of the Electricity Act, 2003 but it is seen that the Cross subsidy surcharge for TPCODL from FY 2015-16 to FY 2021-22 has not reduced.
- The kVAh billing should be withdrawn because the existing RST order has provision for power factor incentive and penalty. If kVAh billing is introduced then SI, MI and other HT consumers who were not in the power factor fold will be badly affected.
- The interest on security deposit has reduced to 4.25% for FY 2021-22 from 5.4% in 2020-21 whereas DPS continues to remain constant @1.25% per month.
- The DISCOMs are not taking adequate measures to contain AT&C loss. The AT&C loss and T&D loss figures submitted by DISCOMs are fabricated.
- The licensees are not honouring the tariff orders and Regulations of the Commission. The MMFC /demand charges are not prepared in the bill as per recorded kVA demand. The OYT benefits given in the tariff order are not extended to the consumers. The DISCOMs are not attaching the reliability index calculation and voltage variation report with the bill as ordered by the Commission. Therefore, the reliability surcharge bill is illegal.

3. Therefore, in summary the Petitioners have prayed the Commission as follows:

- (a) kVAh billing may be withdrawn.
- (b) Open Access charges should be recalculated and order may be passed accordingly.
- (c) Present DPS may be reduced as interest on Security Deposit is reduced.
- (d) Meter rent should be on the landed cost of the meter.
- (e) Demand charges/MMFC of consumers affected during COVID-19 restriction should be billed as per recorded demand.

- (f) MMFC/Demand charges should be as per tariff orders strictly.
 - (g) Amount paid by the consumers against Reliability Surcharge should be refunded.
 - (h) OYT scheme should be extended to the consumers as per tariff orders.
 - (i) TOD benefit should be extended to all intending consumers by the DISCOMs.
 - (j) Allied Agricultural Activities and Allied Agro-Industrial Activities consumers should be billed as per RST order.
 - (k) Remunerative benefit should be extended to all such consumers.
 - (l) Orders passed by the Forums should be implemented first and then DISCOMs may move to higher Forum if they so desire.
4. The Respondents TPCODL, TPNODL, TPSODL and TPWODL have provided replies to the issues raised by the Petitioners as follows:
- (a) The instant petitions are not maintainable under law in view of the fact that the same do not satisfy any ground for review of RST order dated 26.03.2021. The prayers made by the Petitioners would reveal that the Petitioners have filed appeals in the guise of review petitions. Thus the same is liable to be dismissed. The Petitioners were not interveners in the original proceeding. Therefore, they have no locus standi to file the review petition.
 - (b) The ARR of all the DISCOMs has been approved in Annexure-A of the tariff order where non-tariff income has been duly deducted from total distribution cost. This is as per norms of OERC (Terms and Conditions of Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2014. Ultimately the Commission has determined RST after considering non-tariff income.
 - (c) The Commission has appropriately calculated the cross subsidy surcharge as per Regulation 23 of OERC Open Access Regulation, 2020. The same is available at Para 388 of the Tariff order for FY 2021-22. The cross subsidy surcharge may increase or decrease in absolute term. However, the Commission is allowing cross subsidy surcharge at 63% of computed value which was previously 75%, 70%, 65% etc. Therefore, requirement of the Act in this regard is fulfilled.

- (d) The prime objective of kVAh billing is to encourage the consumers to maintain near unity factor to achieve loss reduction, improve voltage profile etc. The observation of the Commission in the tariff order in this regard clearly establishes the fact that kVAh billing system would give benefit to the consumer as well as the licensee in maintaining system stability, ensuring power quality and achieving loss reduction. Hon'ble APTEL has dealt with the issue of kVAh billing in several occasions. In Prime Ispat Ltd. and another Vrs. Chhattisgarh State Electricity Regulatory Commission and Others (Appeal No. 263/2014 decided on 10.04.2015) the issue of kVAh billing is thoroughly discussed wherein Hon'ble APTEL has stated about its benefits. The contention of the Petitioner that in kVAh billing the bill amount has increased is baseless. This is because at unity power factor kWh = kVAh. In the instant case if power factor is less than unity then only kVAh will be more than kWh.
- (e) The Commission has dealt with the issue of interest on security deposit at para 446 of the tariff order. From that it can be well inferred that the interest on available security deposit of the consumer has been fixed at par with bank rate as per RBI notification. There is no relation of it with DPS which has been provided for regular payment of the dues within time frame. DPS has been fixed at a very lower rate. Earlier the rate of DPS was 1.5% at present the DPS is fixed at 1.25%. The licensee intends that all its consumers should avail rebate on prompt payment along with other allowable benefit.
- (f) The meter rent is being reviewed by the Commission from time to time on the basis of the landed cost of the meter. Meter rent for three phase tri-vector meter is fixed at Rs.1000 per month since FY 2007-08. There is no change in the meter rent during the span of 13-14 years. Hence there is no infirmity in fixing the meter rent at Rs.1000 for three phase static tri-vector meter.
- (g) Demand charges /MMFC are levied towards the cost incurred by the Licensee for keeping reserved the specified load for the consumers. Hence, Covid-19 pandemic is not a valid ground for revision of demand charges on the basis of actual load. It may be relevant to submit that the adverse impact of Covid-19 restriction has been felt on large scale in every sector. The licensee is also affected in terms of collection of revenue. Further, the licensee has been making routine expenditure towards maintenance of the system. Hence any

revision in the demand charges for consumers having load more than 110 KVA would have adverse implication upon the business of the licensee.

- (h) The rest of the contention raised by the Petitioners are in nature of implementation of the RST order of the Commission which are not maintainable in a review proceeding. Hence, the said contention is liable to be dismissed.
 - (i) In view of the settled position of law the instant applications filed by the Petitioners for review or revision of RST order for FY 2021-22 is liable to be dismissed on the grounds of maintainability as well as merit.
5. Heard the parties in detail. 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.
6. 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.
7. 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.

8. 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.
9. 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 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 with 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.

10. Accordingly, the cases are disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson