

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

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri Sushanta Ku. Ray Mohapatra, Member**

Case No. 65/2021

OHPC Petitioner

Vrs.

Shri Ananda Mohapatra & 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 for review of order dated 26.03.2021 passed in Case No. 70/2020 regarding approval of Annual Revenue Requirement and Generation Tariff of OHPC power stations for the FY 2021-22 under section 62 & 86 of the Electricity Act, 2003 read with related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and OERC (Conduct of Business) Regulations, 2004.

For Petitioner: Shri Durga Prasad Nanda, Sr. Advocate.

For Respondents: The representative of GRIDCO Ltd, Shri R. P. Mahapatra and Ms. Sonali Patnaik, ALO I/c. DoE, GoO.
Nobody represented on behalf of Shri Ramesh Chandra Satpathy and Shri Ananda Kumar Mohapatra.

ORDER

Date of hearing: 26.07.2022

Date of order: 05.09.2022

This petition has been filed by Odisha Hydro Power Corporation Ltd (OHPC) under Section 94(1)(f) of the electricity Act, 2003 read with the Order 47 Rule 1 of Civil Procedure Code, 1908 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 for review of the Order dated 26.03.2021 passed by the Commission in Case No. 70 of 2020 in the matter of approval of ARR and Generation Tariff of OHPC Power Stations for the FY 2021-22 under section 62 & 86 of the Electricity Act, 2003 read with related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and OERC (Conduct of Business) Regulations, 2004.

2. The petitioner has prayed for –
 - (a) Review/modify the impugned order passed on 23.03.2021 in Case No.70 of 2020 and/or;
 - (b) Allow total claim of Rs.48.09 crore towards income tax as reimbursement claim from GRIDCO in the Tariff of OHPC for FY 2021-22;
 - (c) To recall the directive/observation made in Para 223 of the order dated 26.03.2021 in Case No.70 of 2020.
 - (d) Allow the non-tariff income of Rs.25 crore as Regulatory asset and allow the same to be a pass through in the ARR of OHPC within a period of maximum of 3 years;
 - (e) To recall the order in deducting Rs.25 crore from calculated Annual Fixed Cost while determining the approved ARR for FY 2021-22.
 - (f) To recall the directive/observation made in Para 202 of the order dated 26.03.2021 in Case No.70 of 2020.
3. The Petitioner has requested for condoning the delay of 29 days in filing the present review petition, keeping in view of the recent pandemic situation and order dated 27.04.2021 of the Hon'ble Apex Court regarding extension of the period of limitation in filing petitions/applications etc. although as per Order 47 Rule 1 of the Civil Procedure Code, 1908 read with regulation 70 of the OERC (Conduct of Business) Regulation, 2004 the applicant was required to file the present review application within 90 days i.e. on or before 24.06.2021.
4. The petitioner has raised two issues in the present review petition i.e. (a) deduction of non-tariff income of Rs.25 crore in the approved ARR of OHPC for the FY 2021-22 and (b) less approval of reimbursement of income tax on income from core business.
5. The Petitioner has stated that as per Regulation 21 (1) of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, income tax of the generating company shall be recovered from the beneficiaries which will exclude income tax on other income streams (income from non-generation and non-transmission business). Accordingly in its ARR application for the FY 2021-22, OHPC had claimed reimbursement of Rs.48.2469 Crore towards payment of income tax for the FY 2019-20 on the income from core business. However, the Commission in the impugned order had approved only Rs.42.90 Crore towards reimbursement of

income tax from GRIDCO. In this regard Para-223 of the impugned order dated 26.03.2021 is reproduced hereunder:

“The Commission has examined the Audited Accounts of OHPC for FY 2019-20. It is revealed from the audited balance sheet that out of total profit before tax (PBIT) of Rs.246.60 cr. interest of Rs.118.78 cr. has been earned on fixed deposits(non-core activities). Applying the applicable tax rate (of 34.9444%) on this amount the tax amount comes to Rs.46.84 cr. on non-core activities. Thus after excluding Rs.46.84 cr. from the total income tax of Rs.89.75 cr. paid during FY 2019-20, the balance of Rs.42.90 cr. is the tax on core business. Therefore, the Commission approves Rs.42.90 cr. towards income tax as reimbursement claim from GRIDCO.”

6. The petitioner has submitted that they have paid income tax amounting to Rs.89.76 Crore for the FY 2019-20, which includes Rs.41.67 Crore on the income of Rs.118.6849 Crore (interest on Bank deposit) and Rs.0.4567 Crore (other non-tariff income) at the Tax rate of 34.9444%. Hence, income tax on the income from core business would be Rs.48.09 Crore (Rs.89.76 Core- Rs.41.67 Crore) which needs to be reimbursed by GRIDCO. But in the impugned order, the Commission had approved only Rs.42.90 Crore towards reimbursement of income tax which is an error apparent on the face of the record and hence review is required.
7. The petitioner has further submitted that the Commission in the impugned order has deducted non-tariff income amounting to Rs.25 Crore from the ARR of OHPC for the FY 2021-22. The petitioner has stated that Regulation 26 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 stipulates as follows:

“NON-TARIFF INCOME

- (1) *The amount of Non-Tariff Income of the Generating Company as approved by the Commission in accordance with Regulation 41 shall be deducted while determining its Annual Fixed Charge:*
Provided that the Generating Company shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission.
- (2) *The Non-Tariff Income shall include: (a) Income from rent of land or buildings; (b) Income from sale of scrap; (c) Income from investments; (d) Income from sale of ash/rejected coal; (e) Interest income on advances to suppliers/contractors; (f) Net Income from supply of electricity by the Generating Company to the housing colonies of its operating staff and supply of electricity by the Generating Company for construction works at the generating Station, after adjusting the expenses incurred for supply of such electricity; (g) Income from rental from staff quarters; (h) Income from rental from contractors; (i) Income from hire charges from contractors and others; (j) Income from advertisements; (k) Income from sale of tender documents; (l) Any other Non-Tariff Income.*

Provided that all supply of electricity by the Generating Company to the housing colonies of its operating staff and for construction works at the generating station, shall be metered and billed separately;

Provided also that the tariff for supply of electricity by the Generating Company to the housing colonies of its operating staff and supply of electricity by the Generating Company for construction works at the generating station, shall be the same as the tariff approved by the Commission for the supply of electricity to the respective consumer category by the distribution licensee for that area of supply."

8. The petitioner submitted that the above regulation provides that the amount of non-tariff income of the generating company as approved by the Commission in accordance with Regulation 41 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 shall be deducted while determining its Annual Fixed Charge. Regulation 41 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 stipulates that;

"The non-tariff net income in case of generating station from rent of land or buildings, sale of scrap and advertisements shall be shared between the beneficiaries and the generating company, in the ratio 50:50."

9. The Petitioner has stated that notwithstanding the aforesaid Regulations, the Commission in the impugned order dated 26.03.2021 in Case No. 70 of 2020 have erroneously deducted non-tariff income of Rs.25 crore from the ARR of OHPC for the FY 2021-22. During the process of determination of ARR for FY 2021-22, at no point of time, the Commission has sought details about non-tariff income earned from rent of land or buildings, sale of scrap and advertisements. The Petitioner has submitted that the OHPC has earned maximum up to Rs.0.46 Crore towards income from rent. The 50% of this amount of non-tariff income to be shared with beneficiary as per Regulation, which amounts to Rs.0.23 Crore, is to be deducted from the ARR of OHPC. But the Commission has erroneously deducted Rs.25 Crore from the ARR. This is an error apparent on the record which needs to be reviewed by the Commission.
10. In view of the above, the petitioner has prayed the Commission to review the impugned order dated 26.03.2021 and allow claim of Rs.48.09 Crore towards reimbursement of income tax instead of Rs.42.90 Crore. Further, the petitioner has prayed to recall the order in deducting Rs.25 Crore from the ARR for the FY 2021-22 and allow this Rs.25 Crore as regulatory assets and pass the same through ARR of OHPC within the period of maximum 3 years.
11. The respondent Shri Ananda Kumar Mohapatra has submitted that Section 61 (a) of the Electricity Act, 2003 specifies the appropriate Commission shall specify the

terms and conditions for determination of tariff, and in doing so, shall be guided by the principles and methodology specified by Central Commission for determination of tariff applicable to generating companies and transmission licensees. But in the matter of income tax, the Regulations 19 & 21 of OERC Generation Tariff Regulations, 2020 contradicts the Regulations 15 & 31 of CERC Generation Tariff Regulations, 2019. As per Regulation 15 of CERC Generation Tariff Regulations, 2019, income tax is not a component of Annual Fixed Cost (AFC) whereas as per Regulation 19 of OERC Generation Tariff Regulations, 2020 income tax is a component of AFC. Similarly, as per Regulation 31 of CERC Generation Tariff Regulations, 2019, the base rate of ROE shall be grossed up with the effective tax rate of the financial year and the effective tax rate shall be considered on the basis of actual tax paid on the income from the business of generation, whereas as per Regulation 21 of OERC Generation Tariff Regulations, 2020, the income tax of the generating company shall be recovered from the beneficiaries, which shall exclude the tax on other income streams i.e. income from non-generation business. The CERC Regulations do not specify direct recovery of income tax from the beneficiaries but specify to recover the same through grossing up with effective tax rate. Therefore the approval of flat recovery of income tax amounting to Rs.42.90 Crore in favour of OHPC in the impugned order is unlawful and does not uphold the principle of cost-based tariff as income tax is not a cost to the company but it is the reduction of profit of the company. Therefore, the Commission should set-aside the Regulations 19 & 21 of OERC Generation Tariff Regulations, 2020 by exercising its power to relax as per Regulation 49. Shri Mohapatra has computed the RoE of OHPC as Rs.87.07 Crore (by grossing up the RoE with effective tax rate as per the CERC Generation Tariff Regulation in place of the approved RoE of Rs.79.61 Crore for the FY 2021-22 and stated that the RoE of OHPC shall be inflated by tax effect for a sum of Rs.7.46 Crore only. Hence reimbursement of income tax amounting to Rs.42.90 Crore in the ARR of OHPC for the FY 2021-22 should be disallowed and above inflated RoE should be allowed.

12. Shri Mohapatra has further submitted that OHPC has not disclosed item-wise non-tariff income as per OERC Generation Tariff Regulations, 2020. In the impugned order, the Commission had considered the non-tariff income of Rs.210.09 Crore from the audited accounts of OHPC, but there is no mention about component wise details. In its ARR application OHPC had only disclosed the non-tariff income of Rs.118.78

Crore from its investment in fixed deposit without any details of the balance non-tariff income of Rs.91.31 Crore. The billing towards colony supply at different power stations of OHPC is being made at the rate of the effective RST as notified by the Commission in its Regulations. OHPC earns a good amount of non-tariff income (i.e. differential amount between RST and Generation Tariff) towards supply of power to the colonies, street lights and construction works etc., which have not been considered by the Commission while calculating the AFC of OHPC power stations. Hence, that needs to be revisited and revised. At Para-202 of the impugned order, the Commission has considered Rs.30.00 Crore of non-tariff income to be factored in the AFC, whereas at Table No-46 under Para-203, the Commission have considered only Rs.25.00 Crore as non-tariff income for determination of generation tariff for the FY 2021-22. This is an error apparent on the face of record resulting in higher generation tariff which also affects BSP & RST at higher side. Further, the entire income of Rs.118.78 Crore earned by OHPC from fixed deposits does not qualify for the sharing in the ratio 50:50 between the beneficiary and the generating company. Therefore, the entire amount of Rs.118.78 crore should be deducted from the AFC of OHPC, which has not been considered by the Commission.

13. Shri Mohapatra has further raised the issue of the payment of Rs.27.42 crore for procurement of additional 20% of the power from Machhakund power station and stated that it is violation of Section 86(b) of the Act as no prior approval of the Commission was taken before executing the supplementary agreement with APGENCO and hence the same may be disallowed. Shri Mohapatra has also raised the issue of the sale of 16.644 MU saleable energy of HHEP to CSPDCL and stated that GRIDCO did not factor the revenue of Rs.3 crore for sale of such power CSPDCL which would have reduced average tariff of HHEP to 125.42 p/u from existing tariff of 126.46 p/u. This is also a non-tariff income of OHPC and the same may be considered by the Commission for determination of AFC of Hirakud power station.
14. The respondent Shri Ramesh Chandra Satapathy has submitted that OHPC has not given details of the non-tariff income as per OERC Generation Tariff Regulations, 2020. The details of scarps materials from different generation units for last ten years should be produced by OHPC. Further, OHPC has not disclosed its revenue from collection of electricity dues towards supply of power to the outside consumers at each of its generating units. As per the balance sheet of OHPC for the year ending

31.03.2020, OHPC has received Rs.9.96 crore from supply of power to the staff quarters and other organisations. Further, OHPC has not collected the water consumption bills from DoWR on account of consumption of water by the user industries since FY 2010-11 which should be collected immediately. The respondent has prayed for not to accept the review of OHPC and to collect outstanding dues from Government of Odisha and adjust such amount towards expenses, if any.

15. The respondent Shri R.P. Mahapatra has submitted that the submission of OHPC relating to non-tariff income is erroneous. Hence, the prayer of OHPC for allowing total claim of Rs.48.09 Crore towards reimbursement of income tax, in place of Rs.42.90 Crore as allowed by the Commission, is to be rejected. He has further submitted that as per OERC Generation Tariff Regulations, 2020, the non-tariff income of the generating company as detailed in Regulation 26 (2) shall be deducted from the AFC based on Regulation 19 (1). However, only 50% of the non-tariff income on account of (a) rent of land or buildings, (b) sale of scrap and (c) advertisements, shall be shared between the beneficiaries and generating company. From the 'other income' as indicated in Note-29 of the independent auditor's report on OHPC accounts, it can be found that:

	(Rs. in Lakhs)
(a) Total Other Income	21,009.18
(b) Less Interest on Bank Deposits	11,878.49
(c) Less Reimbursement from GRIDCO on A/c of Income Tax	<u>5,995.07</u>
(d) Other Income {a- (b+c)}	3,135.62
(e) Less: 50% of Other Income as per Regulation 41 (45.67 Lakhs/2)	<u>(-) 22.84</u>
(f) Net Other Income	3,122.78
Or Say	Rs.31.23 Crore

Shri R. P. Mahapatra stated that the Commission has deducted only Rs.25 Crore from the AFC of OHPC for the FY 2021-22, in place of Rs.31.23 Crore, with a consideration that existing tariff is not impacted appreciably. Hence, there is no mistake to be corrected. However, additional deductions amounting to Rs.6.23 Crore beyond already deducted amount of Rs.25 Crore are to be made from the AFC of OHPC next year. Shri Mahapatra has further stated that OHPC has not taken any action for its other income relating to loss of generation due to drawal of water by the industries from the reservoirs.

16. The respondent GRIDCO has submitted the following:

- (a) The income shown under 'other income' category in note 29 of the audited accounts of OHPC is Rs.210.18 crore. But OHPC had filed different figure in its ARR application for FY 2021-22 mentioning non-core income of Rs.118.78 crore considering of FD interest only, maintaining total revenue of Rs.681.65 crore as per profit and loss statement, thus over stating the core income. OHPC had categorised its income for ARR purpose, treating the FD interest of Rs.118.78 cr. as the only non-core income, and transferring the balance non-core income of Rs.91.31 cr. under core income. This income of Rs.91.31 cr. seems to be non-core in nature as it does not relate to generation and sale of energy. Hence, the tax liability on the entire non-core income of Rs.210.09 cr. should not be passed on to the consumers of the State, rather the petitioner needs to absorb the tax liability on such non-core income as per Regulation 21 of OERC Generation Tariff Regulations 2020.
- (b) In the ARR filing for FY 2021-22, the petitioner had not proposed any amount towards non-tariff income even though there was other income accrued during FY 2019-20 & 2018-19 to the tune of Rs.210.09 crore and Rs.172.08 crore respectively. In accordance with proviso to Regulation 26(1) of OERC Generation Tariff Regulations, 2020, OHPC should have submitted full details of its non-tariff income. The interest earned by OHPC on investment in bank is Rs.118.78 crore. The Commission have therefore prudently considered the non-tariff income of Rs.25 crore while determining the ARR of the petitioner for FY 2021-22 in order to avoid undue tariff burden on the consumers of the State. GRIDCO stated that the review petition filed by OHPC is not maintainable and liable to be rejected as the impugned order is well within the ambit of OERC Generation Tariff Regulations, 2020.
17. In its rejoinder the Petitioner-OHPC has submitted that the effective rate of tax will be as per the Finance Act applicable for the relevant financial year and shall be based on the estimated profit i.e. gross revenue from core business minus expenses incurred to earn such revenue. The effective tax rate applicable to OHPC was 34.944%, not 8.57% as calculated by the respondent Sri Ananda Mohapatra. If grossed up, the RoE should be calculated taking the tax rate of 34.944% and total RoE would be Rs.122.37 crore $\{Rs.79.61/(1-0.34944)\}$ instead of Rs.79.61 crore. However, in present review application OHPC has revised its claim from Rs.48.2469 crore to Rs.48.09 crore towards reimbursement of income tax after considering additional

non-tariff income of Rs.0.4567 crore.

18. The Petitioner has further submitted the following in response to objections raised by the respondents:

- (a) OHPC has earned maximum upto Rs.0.3665 crore from 'rent of land or buildings', Rs.0.090148 crore from 'sale of scrap' and nil from advertisement, totalling to Rs.0.4567 crore. As per OERC Generation Tariff Regulations, 2020, these non-tariff incomes shall be shared between the beneficiaries and generating company in the ratio 50:50 basis. Accordingly, Rs.0.2283 crore can only be deducted from the AFC of OHPC.
- (b) The operating staff of RHEP, UIHEP, UKHEP and BHEP are availing colony supply from the power stations on payment of electricity dues at the quarter wise rates fixed by OHPC as per the practice adopted previously. However, the net income from supply of electricity to the housing colonies of its operating staff and for construction works at generating stations is not a deductible non-tariff income as per Regulation 41 and 26(1) of OERC Generation Tariff Regulations, 2020.
- (c) As per Regulation 62 of CERC Tariff Regulations, 2019, interest on bank deposit is not a part of non-tariff income. The CERC in its order of statement of reasons on the Tariff Regulations, 2019, has stated that "XXXXXXXXXX. After carefully considering the submissions, it has been decided to revise the Regulation by restricting the non-tariff income only from rent of land or buildings, sale of scrap and advertisement. Similarly, as per Regulation 46 of KSERC Tariff Regulations, 2018, the interest earned from investments made out of return on investment by the generation business/company shall not be included in other income. The major portion of interest earned on bank deposit of OHPC for FY 2019-20 is contributed by the interest earned from accumulated RoE and depreciation.
- (d) As per the independent Auditor's report, the total other income is Rs.210.09 crore and this entire amount does not qualify to be the non-tariff income. Because a major part of this income is from interest earning of accumulated funds viz. RoE, depreciation, un-utilised O&M expenditure, interest on working capital etc. Hence, the total bank interest of Rs.118.78 crore does not qualify to be non-tariff income. 'Other Income' as shown in the Auditor's report of OHPC may be segregated as given below:

(Rs. in Crore)		
a)	Total Other Income	210.09
b)	Less: Interest on Bank Deposits	118.78
c)	Less: Reimbursement of Income Tax from GRIDCO	59.95
d)	Less: Dam share from DOWR (considered as deduction from O&M expenses)	10.08
e)	Less: other income to be shared by GRIDCO and OHPC as per Regulation 41	0.46
	Balance {a-(b+c+d+e)}	20.82

The balance income of Rs.20.82 crore shown above shall be treated as core income as it includes items like proceeds from sale of tender papers, recovery of electricity charges from contractor etc. and accrued in course of the petitioner's core business.

(e) The issues of sale of power to CSPDCL from Hirakud power station, recovery of compensation from industries towards water consumption and agreement with AP towards additional 20% of Machhkund power as raised by some respondents are not the subject matter of the review petition. However, the petitioner has stated that the revenue collected from CSPDCL is considered as deemed revenue and has been deducted from ARR. If design energy of Hirakud Power Station is reduced to the extent of power supplied to CSPDCL and in that case energy charge of HHEP, Burla would have increased. Regarding recovery of compensation from the industries for water consumption, OHPC has stated that there are five cases pending before the Hon'ble High Court where the parties have challenged the notice of OHPC levying cost of loss of power generation on the basis of allocated quantity. OHPC is regularly raising energy compensation bills to the user industries. OHPC has already intimated about the defaulter industries to the Department of Water Resources as it is the administrative department. Regarding the agreement towards additional 20% of Machhkund power, OHPC has stated that the Commission after due scrutiny and through public hearing has approved Rs.27.42 crore to be reimbursed by OHPC from GRIDCO as the cost is incurred by OHPC to acquire 20% additional share of Machhkund Power.

19. Heard the petitioner and respondents in virtual mode. Their written notes of submissions and oral arguments are taken into record. It is observed that the Review Petitioner has raised the following two issues for review against the approval of the Commission in the impugned order dated 26.03.2021 in case No.70 of 2020 relating to approval of ARR and Generation Tariff of OHPC stations for the FY 2021-22.

- An amount of Rs.48.09 crore to be reimbursed from GRIDCO towards Income Tax payment on income from core business against the approval of Rs.42.90 crore.
 - Deduction of Rs.25.00 crore from the AFC for the FY 2021-22 towards non-tariff income is to be allowed in the ARR of the Petitioner.
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. Before starting the deliberation with regard to maintainability of the review application, it appears expedient to clarify the question of competency of this Commission, presently functioning with one Acting Chairperson and one Member instead of the full fledged Commission with regular Chairperson and two other Members.

The embargo under Section 9(4) of the Orissa Electricity Reform Act, 1995 in the matter of hearing of the Review Petition by three Members of the Commission appears to have been clarified by the Hon'ble APTEL in their order dated 11.03.2022 in Appeal No. 38 of 2022 & IA Nos. 256, 257 & 258 of 2022 in the following words:-

- “6. *During the hearing, it was brought out that there is a vacancy in the office of the Chairperson of the State Commission, though, hopefully it is expected to be filled up in near future. Be that as it may, it is admitted on all sides that on the relevant dates the Commission comprised only of two Members, the Member (Law) being senior having been officiating as Chairperson. Undoubtedly, Section 9(4) of Odisha Electricity Reforms Act, 1995, has prescribed the quorum of all three Members of the Commission sitting in review jurisdiction, but it cannot be ignored that on the relevant date(s) the Commission comprised only of two members. In these circumstances, the doctrine of necessity would allow the Commission to continue discharging its statutory functions rather than abdicating its responsibility.*
- 7. *In our considered view, Section 93 of the Electricity Act expressly saves and protects the impugned order from criticism of the kind levelled by the appellant here, the provision reading thus:*
Section 93. (Vacancies, etc. not to invalidate proceedings):

No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.”

From the above observations of the Hon’ble APTEL, we hold that the Commission at present consisting of two members, of whom one is Officiating as Chairperson is competent to hear the Review Petition.

22. The Hon’ble Supreme court in the matter of Board of Control for Cricket in India V. Netaji Cricket Club, (2005) 4 SCC 741 held that an erroneous order suffering from mistake of law/facts is susceptible to a review. In the judgement, it has been espoused with the following words:-

“89. *Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

90. *Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.*

91. *It is true that in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [(1955) 1 SCR 520: AIR 1954 SC 526] this Court made observations as regards limitations in the application of review of its order stating: (SCR p. 529)*

“Before going into the merits of the case it is as well to bear in mind the scope of the applications for review which has given rise to the present appeal. It is needless to emphasise that the scope of an applications for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words ‘any other sufficient reason’ must mean ‘a reason sufficient on grounds, at least analogous to those specified in the rule.’”, but the said rule is not universal.

92. *Yet again in Lily Thomas (supra) (2000) 6 SCC 224 (Para -52), this Court has laid down the laws in the following terms:*

- “52. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgement would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.”
23. In the background of Review Jurisdiction available in Law and in the light of above stated authoritative enunciation, the Commission has looked into the grounds urged in this review petition. We find that the Petitioner now in this review petition has stated the details of its other income and has pointed out the mistake in calculation of reimbursement of income tax which it had failed to submit during the hearing of the impugned order. Therefore, in view of aforementioned discussions on the scope of review, this review application is sustainable on the grounds which are the subject matter of discussions in the following paragraphs.
24. The Commission observed that as per Regulation 21 of the OERC Generation Tariff Regulations, 2020, Income Tax of the generating company shall be recovered from the beneficiaries, which shall exclude the income tax on other income streams (income from non-generation sources). Further, Regulation 26 (2) of the OERC Generation Tariff Regulations, 2020 describes the sources of non-tariff income (income from non-generation business). In its original application in Case No. 70 of 2020, the Review Petitioner had not submitted the details about its non-generation income and only the income from investment in fixed deposit amounting to Rs.118.78 crore was furnished, hence the income tax for reimbursement was calculated as Rs.42.90 crore after considering deduction towards income tax from non-generation activities out of the total payable income tax of Rs.89.76 crore. Now in the present review petition (at Annexure-III), the petitioner has furnished details of its other income amounting to Rs.210.09 crore. Accordingly, the income from non-generation sources is computed to Rs.139.83 crore as given in the table below for the purpose of computation of income tax for reimbursement.

Calculation of Income Tax for Reimbursement

Sl. No.	Particulars	Amount (Rs. in crore)
1	Total Other Income (for FY 2019-20)	210.09
2	Less : Reimbursement of Income Tax from GRIDCO	(-) 59.95
3	Less : Dam Share from DOWR (against O&M expenses)	(-) 10.08
4	Less : 50% of the other income to be shared between GRIDCO and OHPC as per Regulation 41 (Income from rent of land or buildings, sale of scrap and advertisement)	(-) 0.23
5	Net other income (i.e. non-tariff income) on which Income Tax should not be reimbursed	139.83
6	Income tax @ 34.9444% on the above net other income as shown above (Item No. 5)	48.86
7	Total income tax paid by OHPC	89.76
8	Income tax on Generation Business (which is to be reimbursed as per Regulation 26) (item 7 – item 6)	40.90

As calculated in the above table, Rs.40.90 crore shall be reimbursed by GRIDCO to OHPC for the FY 2021-22 towards income tax as per Regulation 26 of the OERC Generation Tariff Regulation, 2020. In the impugned order dated 26.03.2021, an amount of Rs.42.90 crore was approved towards reimbursement of income tax due to non-submission of details of other income by the petitioner. Hence the Commission directs GRIDCO to reimburse Rs.40.90 crore to OHPC instead of Rs.42.90 crore towards reimbursement of income tax for the FY 2021-22. In case the amount has already been reimbursed the same shall be adjusted in future year.

25. It is further observed that as per Regulation 41 of the OERC Generation Tariff Regulation, 2020, the non-tariff net income in case of generating station from rent of land or buildings, sale of scrap and advertisements shall be shared between the beneficiaries and the generating company, in the ratio 50:50. In the impugned order dated 26.03.2021, a lump sum amount of Rs.25.00 crore was deducted from the ARR of OHPC towards sharing of non-tariff income as OHPC had not furnished the details of the non-tariff income in its original application in Case No.70 of 2019. In the present review petition OHPC has furnished the details of non-tariff income from rent of land or buildings, sale of scrap and advertisements for FY 2019-20 (at Annexure-II of its application) amounting to a total of Rs.0.46 crore (Rent of land and building: Rs.0.37 crore & Sale of scrap: Rs.0.09 crore). As per Regulation 41 of OERC Generation Tariff Regulation, 2020, 50% of non-tariff income i.e. Rs.0.23 crore (0.5xRs.0.46 crore) is to be deducted from the ARR of the petitioner against which an amount of Rs.25.00 crore has been deducted from the ARR of OHPC in the

impugned order for the FY 2021-22. The OHPC has prayed for recovery of the excess deduction of Rs.24.77 crore (Rs.25.00 Cr. – Rs.0.23 Cr.) within a period of coming three years. In the light of the discussions made in the foregoing paragraphs and taking into consideration the workability of the matter, this Commission allows for recovery of Rs.24.77 crore in the ARR of OHPC spread over next five years starting from the FY 2023-24 to ensure minimum financial burden on the consumers.

26. As a matter of caution, in future the Petitioner shall submit their ARR and Tariff application complete in all respect containing the details of income from other sources i.e. non-tariff income with evidential documents. Had they submitted the full details of their non-tariff income in the ARR application as per Proviso of 26 (1) of OERC Generation Regulation, 2020, the filling of present review petition would not have arisen.
27. With the above observations and directions, the review petition is disposed of.

Sd/-
(Sushanta Ku. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson