

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

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

**Case No. 11/2022**

M/s OHPC Ltd	.....Petitioner
Vrs.	
M/s DoE, GoO & Others	..... Respondent

**In the matter of:**    **Application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 for review of order dated 03.11.2021 of the Commission passed in Case No.55 of 2020 regarding approval of true up of ARR and tariff of individual power stations of OHPC from FY 1996-97 to 2015-16 in terms of Section 61 of the Electricity Act, 2003 and Regulation 34 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 & Regulation 6 of the CERC (Terms and Conditions of Tariff) Regulations, 2009.**

**For Petitioner:**        The representative of OHPC.

**For Respondents:**    Ms. Sonali Pattnaik, I/C. ALO, DoE, GoO, Shri Prasant Kumar Das, CGM (PP) & Ms. Madhusmita Mishra, GRIDCO Ltd., Shri V. Wagle, Head Regulatory Affairs, TPCODL, Shri K. C. Nanda, GM(Fin.), TPWODL, Shri Pratap Kumar Mohanty, Sr.GM, TPNODL, Shri Binod Nayak, Asst. G.M (Commerce), TPSODL and Shri R. P. Mahapatra are present.

**ORDER**

**Date of hearing: 19.07.2022**

**Date of order:08.08.2022**

1.     The petitioner, Odisha Hydro Power Corporation Ltd (OHPC) has filed the application under Section 94(1)(f) of the Electricity Act, 2003 and under Order 47 Rule-1 of the Code of Civil Procedure Code, 1908 read with the Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 for review of the Order dated 03.11.2021 passed by the Commission in Case No. 55 of 2020 in the matter of truing up of ARR and Tariff of individual power stations of OHPC from the FY 1996-97 to FY 2015-16.
2.     The Petitioner has stated that as per Order 47 Rule 1 of the Civil Procedure Code, 1908 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004,

the petitioner was required to file the present review application within 90 days i.e. on or before 01.02.2022. But keeping in view of the recent pandemic, Hon'ble the Apex Court vide their order dated 10.01.2022 had been pleased to extend the period of limitation for filing petitions till 28.02.2022 and accordingly, the present application was filed.

3. Petitioner has stated that under Order 47 Rule 1 of the Civil Procedure Code, 1908, 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.

4. The petitioner has submitted that the Commission at Para-90 of the impugned order dated 03.11.2021 has observed as follows:

*“In view of this the Commission observes that the OHPC is not entitled to any truing up for the period before the notification of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations 2014 as there was no provision in the CERC Tariff Regulation for truing up under which the Generation Tariff was regulated for the period before 2014. After the notification of OERC Generation Tariff Regulation 2014, truing up is guided as per the provisions of Regulation 2014. Since the truing up is only allowed for the Capitalisation and additional capitalisation it is further observed that the Commission in the ARR allows the capitalisation including additional capitalisation as reflected in the available audited accounts. Therefore there is no further scope for any truing up of these elements. Since the Regulations 2014 do not have any provision for truing up of other elements of expenses and revenue we are not inclined to carry out any truing up on these elements.”*

5. According to the Petitioner, the Commission has dismissed the truing up petition in Case No.55/2020 on the ground of absence of any provision regarding truing up in the CERC Regulations prior to 2014 and the Commission has held that truing up can only be allowed for the capitalisation and additional capitalisation as per the OERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2014 and the Commission in the ARR of OHPC has been allowing the capitalisation including additional capitalisation each year after the year 2014 as reflected in the available audited accounts. Hence, there is no scope for any truing up of the ARR of OHPC.
6. The petitioner has stated that the Commission at para 6.2 of its ARR and Tariff order of OHPC for FY 2004-05, with reference to the Section 61 of the Electricity Act, 2003, have indicated that the SERC inter alia shall be guided by the principles and

methodology specified by the Central Commission for determination of the tariff applicable to the generating companies. Further, at Para-6.4 of the said order, the Commission have stated that “we direct that for the FY 2005-06 onwards, OHPC shall submit their Annual Revenue Requirement and Tariff in respect of each of the power stations separately in line with CERC Regulations”.

From the above observations of the Commission, it is evident that the OERC Generation Tariff Regulations is required to be guided by the principles and methodology adopted in the CERC Regulations notified from time to time.

7. The petitioner submitted that the Regulation 34 (2) and (4) of the CERC (Terms and Conditions of Tariff) Regulations, 2004 in the matter of additional capitalization, stipulates that;

“x x x x x

*(2) Subject to the provision of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission subjected to prudence check:*

- (i) Deferred liabilities relating to works/services within the original scope of work;*
- (ii) Liabilities to meet award of arbitration or in compliance of the order or decree of a court;*
- (iii) On account of change in law; and*
- (iv) Any additional works/service which has become necessary for efficient and successful operation of plant but not included in the original capital cost*

x x x x x

*(4) Impact of additional capitalization in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut off date.”*

8. The petitioner has further submitted that the Regulation 6 of the CERC (Terms and Conditions of Tariff) Regulations, 2009 depicts as follows:

*“(1) The Commission shall carry out truing up exercise along with tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.03.2014, as admitted by the Commission after prudence check at the time of truing up.*

X x x x x x

*(3) The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors*

X x x x x x x x x x ”

9. The petitioner has stated that notwithstanding to the aforesaid Regulations, the Commission, while passing the impugned order dated 3.11.2021 in Case No. 55 of 2020 in the matter of truing up of ARR and Tariff of OHPC power stations for the period from FY 1996-97 to FY 2015-16, have erroneously dismissed the petition under the plea of absence of any provision regarding truing up in CERC Regulations for the period prior to 2014. The petitioner has stated that while passing the impugned order dated 3.11.2021, the Commission has not looked into the above mentioned provisions the CERC Tariff Regulations, 2004 and that of year 2009.
10. The petitioner has further submitted that on the above background, the petitioner, in the present review petition, has revised and recomputed its truing up claim limited to only additional capitalization and its effect on three components of ARR i.e., RoE, Depreciation and Interest on normative loan for the period from FY 2004-05 to FY 2015-16.
11. Petitioner has stated that the Commission in its order dated 23.06.2003 has accepted the gross fixed assets of OHPC as on 1.4.1996 at Rs 479.80 crore. The Commission further in its order dated 10.06.2005 while determining ARR for FY 2004-05 has provisionally approved the project cost of UIHEP at Rs 1195.42 crore and later in tariff order for FY 2008-09 has revised it to Rs 1194.79 Crore after deduction of Rs.0.63 Crore towards earning from infirm power.
12. The petitioner stated the Commission has recognised the up-valuation of fixed assets of old power stations at a valuation of Rs 1196.80 Crore and for the purpose of determination of tariff for FY 2005-06 & 2006-07, the capital cost of old OHPC stations have been determined on the basis of historical cost of Rs 472.00 Crore as on 1.4.1996 with subsequent capital addition of Rs 81.84 Crore on account of R&M of units 1 & 2 at Burla, totalling to Rs 553.84 Crore as on 31.3.2003.
13. The petitioner stated that since the Commission has approved the tariff of old stations considering historical cost of Rs 479.80 Crore, the petitioner has also computed the true up gap considering such historical cost approved by the Commission. The petitioner further stated that the capital addition of corporate office is apportioned among the hydro projects based on their respective design energy which is added to the audited figures of the respective units.
14. The petitioner has stated that the Commission has been allowing the RoE on the new capital addition/new investment made after 1996. The petitioner has considered RoE

at the rates as approved by the Commission and accordingly for true up value towards RoE from FY 2005-6 to 2015-16 has been calculated at Rs 158.62 Crore.

15. The petitioner has stated that the Commission has been allowing the depreciation at the rate of 2.57% of the project cost for the respective year or actual repayment of loan whichever is more. OHPC has accordingly claimed Rs 60.06 Crore towards depreciation for truing up of its ARR from FY 2005-06 to FY 2015-16.
16. The petitioner has stated that they have computed normative interest and finance charges based on the debt:equity ratio. The following table shows the percentage debt and interest rate.

<b>Particulars</b>	<b>Debt (%)</b>	<b>Interest Rate (%)</b>
RHEP	70	9.80
UKHEP	70	9.80
BHEP	70	9.60
UIHEP	75	7.00
HHEP	75	8.75
CHEP	75% ( FY 2010-11 & 2011-12) and 70% onwards	9.80

17. Accordingly, the petitioner has proposed true up amount of Rs 863.82 Crore towards interest on loan for the period from FY 2005-06 to FY 2015-16. In addition, the petitioner has claimed the truing up gap of Rs 65.58 Crore for FY 2004-05 against the components of RoE, Depreciation and Interest on Loan.
18. The petitioner has therefore prayed the Commission to review/modify the impugned order dated 03.11.2021 passed by the Commission in Case No. 55 of 2020 with regard to truing up impact only in respect of additional capitalisation, recalling the directive/observation made in Para 90 & 91 of the said order and approve the truing up impact amounting to Rs 1148.08 Crore. in respect of additional capitalisation only for the period from FY 2004-05 to FY 2015-16.
19. The Respondent, Shri R P Mahapatra has submitted that the two member Commission heard the instant review petition on 19.07.2022 inviting reference to the judgement of the Hon'ble APTEL dated 11.03.2022 in Appeal No.38 of 2022. But such judgement was given by Hon'ble APTEL based on the urgency of the situation and an interim application was filed before the Commission in Case No. 02/2022, which was heard by the two members of the Commission. Since there was no urgency in the present case, the Commission had to defer the hearing of the Case No. 11 of 2022 till the Full Bench of the Commission is constituted.

20. The Respondent GRIDCO has stated that the present review petition filed by the petitioner is not maintainable in absence of any cogent reasons in justifying review of the order dated 03.11.2021 passed by the Commission in Case No.55 of 2020. Further the conditions for review of an order as provided under Order 47, Rule 1 of Civil Procedure Code, 1908 are not satisfied in this case. Hence, the present review application is not maintainable in the eyes of law being devoid of any merit.
21. GRIDCO has stated that the original true up petition was filed for the period from FY 1996–1997 to FY 2015-16, whereas the instant review petition has been filed for the period from FY 2004-05 to FY 2015-16. In the original petition, the petitioner had claimed an amount of Rs 1579.68 Cr. for truing up of for the period from FY 1996-97 to FY 2015-16, whereas in the instant review of petition of the petitioner has claimed an amount of Rs 1148.08 Cr. for the period from FY 2004-05 to FY 2015-16. The petitioner in the present petition has produced new figures and methodology while claiming true up amount for the period from FY 2004-05 to FY 2015-16.
22. GRIDCO further stated that there has been considerable deviation in the ARR amount mentioned in the review petition from the original true up petition due to the fact that the petitioner had considered more elements of expenses in the original true up petition than the instant review petition. In the instant review petition only RoE, interest of loan and depreciation have been considered with exclusion of the elements such as O&M expenses, interest on working capital, selling and distribution expenses and income tax paid, which were included in the original application. Therefore, such change of methodology may not be allowed to be addressed through review petition.
23. GRIDCO has stated that as per the CERC (Terms and Conditions of Tariff) Regulation, 2009, OHPC was required to file its tariff petition along with true up petition with respect to the capital expenditure including additional capital expenditure as admitted by the Commission. The petitioner has violated the applicable provisions of CERC Regulations for by not filing any true up petition on time and no proper justification is given by the petitioner for such a substantial delay. Further, the petitioner in the instant review petition has not given any reason for exclusion of its claim for truing up for the period from FY 1996-97 to 2003-04 which was claimed in the original petition.
24. GRIDCO has further submitted that the ARR of OHPC is around Rs. 500 Crore whereas its claim in the true up petition is more than two times of its ARR. GRIDCO already has an accumulated deficit of around Rs.7886 Cr. as on 31.3.2022 and the

huge claim of OHPC on its true up application, if allowed, shall have substantial impact on BSP & RST and such additional burden shall ultimately be passed to the consumers of State.

25. In view of the above submissions, the Respondent GRIDCO has prayed the Commission to reject the instant review petition.
26. The Respondent TPWODL has submitted that the instant application of OHPC is not maintainable in the eyes of law under the provisions of Order 47 Rule 1 Civil Procedure Code, 1908. The reasons cited in the application do not satisfy any of the preconditions of the CPC. The original review petition was filed by the petitioner for the period of FY 1996-97 to 2015-16 whereas the present review petition is filed for the time period of FY 2004-05 to 2015-16. Moreover, the methodology adopted in the present review petition is also different from earlier one as the components considered in the present one are different from the earlier one.
27. TPWODL further stated that OHPC has relied open the CERC (Terms and Conditions of Tariff) Regulations, 2009 while filing the review petition. This Regulations came into force since 2009 and OHPC preferred to file the application with considerable delay of around 11 years. Further, the petitioner is also preferred not to file the truing up petition for the subsequent years after FY 2015-16 till date.
28. According to TPWODL, the petitioner in its original truing up application had claimed a deficit of Rs 1579.68 Crore for the period 1996-97 to 2015-16. Out of such deficit Rs 1072.90 Crore was for FY 2005-06 to 2015-16. As per the TPWODL analysis based on original petition in Case No. 55/2020, OHPC is having a surplus of Rs. 1141.25 Crore for the period from FY 2005-06 to FY 2015-16 basing upon actual audited account vis-a-vis approved parameter. Now the petitioner in its present review petition has adopted a different methodology in preparing the truing up amount and claimed a deficit of Rs 1148.08 Crore for FY 2004-05 to FY 2015-16. Since OHPC now pleading for truing up for a separate period all together with different mechanism and different claim amount than the original petition, the present review petition does not satisfy the provisions of Order 47 Rule 1 of the Civil Procedure Code, 1908 and hence, the review petition is void and an appeal in disguise.
29. TPWODL has further stated that since the distribution license has been vested with TPWODL w.e.f. 1.1.2021, as per the terms of vesting order and segregation of books of accounts of TPWODL and WESCO utility, the present truing up claim of Rs

1148.08 Crore, if approved, will reflect on BST and ultimately burden the consumers of the State. The past burden may not be passed on to the TPWODL in terms of the vesting order.

30. The petitioner OHPC in its rejoinder, replying to the issues raised by the respondents, has submitted that the observation of the OERC in the impugned order that OHPC is not entitled to any truing up before the notification of the OERC (Terms and Conditions for Determination of Generation Tariff ) Regulation, 2014 as there was no provision in CERC Tariff Regulations for truing up prior to 2014, is not correct since there was provisions for truing up in both CERC Tariff Regulations, 2004 & CERC Tariff Regulations, 2009. This is an error apparent on the record.
31. As regards the change in the components of ARR towards truing up in the present review petition, OHPC has stated that since the Commission in the impugned order have opined for truing up of the capitalisation and additional capitalisation only, OHPC in the present review petition has changed the methodology considering the opinion of the Commission and hence the truing up gap is recomputed in respect of the items such as RoE, depreciation and interest on loan, which have incidental impact on account of capitalisation and additional capitalisation resulting in the claim of Rs 1148.08 Crore. The present review application has been filed considering only the components incidental to the capitalisation and additional capitalisation from FY 2004-05 onwards as per Regulation 34 of CERC Regulation 2004 and Regulation 6 of the OERC Regulations, 2009.
32. As regards to the delay in filing of truing up petition, OHPC has stated that the Commission in its order has not rejected the original true up application on the ground of delay in filing the petition. Hence, the same cannot be disputed again in the present review petition. In this regard Hon'ble the Supreme Court of India in the case of Collector Land Acquisition, Anantnag & Anr. Vrs. Mst. Katiji & Ors {1987 SCC (2) 107} have noted that "the expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice- that being the life purpose for existence of the institution of courts". Therefore, the rejection of the petition on the ground of delay alone will defeat the ends of justice.
33. On the contention of GRIDCO that any additional burden arising as a result of such truing up of OHPC after a period of about 20 years, shall have substantial impact on the financial position of GRIDCO, OHPC has stated that since the Regulations allow



a generating company to get the benefit through trueing up exercise, it is not justified to deny OHPC to avail such benefits.

34. We have carefully considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondents.
35. At the outset, there appears propriety to clarify on the point of competency of the Commission presently functioning with an Officiating Chairperson and another Member instead of the Chairperson and two full time 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.”*

Though it is submitted by the Respondent Shri R P Mohapatra that the Commission functioning with Officiating Chairperson and Co-Member may invoke review only under urgency, the submission of Shri Mohapatra appears to be illusory as restriction of invoking review jurisdiction to urgency is unsustainable as the power of review is invoked only to correct an error apparent on the face of record must be such an error which might strike one mere looking at the record and would not require any long drawn process of reasoning on points where there may be two opinions. The concept of invoking review jurisdiction only on urgency has not been contemplated in the language used in Order 47 Rule 1 of the Code of Civil Procedure, 1908. Under such scenario, the contention of Shri R P Mohapatra that this

Commission functioning with Officiating Chairperson and Member is divested of authority of hearing review application is unsustainable and the contention is not accepted.

From the aforesaid observations of the Hon'ble APTEL and the above stated discussions, 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.

36. Commission observes that under Section 94(1)(f) of the Electricity Act 2003, read with Order XLVII Rule 1 of Civil Procedure Code (CPC), a review of an order can be undertaken only on the following grounds:
  - (i) Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
  - (ii) On account of some mistake or error apparent on the face of the record, or
  - (iii) For any other sufficient reason.
37. In the light of the above, it has to be considered as to whether the grounds raised by the Review Petitioner in this Review Petition are sufficient to invoke jurisdiction of this Commission to review its Order dated 03.11.2021.
38. Before considering the said issue, it would be appropriate to refer to various decisions rendered by the Hon'ble Supreme Court laying down the position of law with regard to exercise of the powers for review.
39. The authorities on this issue are quoted below:
  - (a) Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhary (Smt) reported in (1995) SCC (1) 170 : AIR 1995 SC 455;
  - (b) M/s. Northern India Caterers (India) Ltd., Vs Lt. Governor of Delhi reported in (1980) 2 SCC 167;
  - (c) Haridas Das Vs Usha Rani Banik (Smt) and Ors reported in (2006) 4 SCC 78;
  - (d) Thungabhadra Industries Ltd., Vs Govt of A.P (1964) 5 SCR 174 : AIR 1964 SC 1372;
  - (e) Ariban Tuleshwar Sharma V Aribam Pishak Sharma (1979) 4 SCC 389 : AIR 1979 SC 1047;
  - (f) Satyanarayan Laxminarayan Hegde Vs Mallikarjun Bhavanappa Tirmuale

(1960) 1 SCR 890 : AIR 1960 SC 137;

- (g) Sajjan Singh Vs State of Rajasthan (1965) 1 SCR 933: AIR 1965 SC 845;
- (h) O.N Mohindroo Vs Distt Judge, Delhi (1971) 2 SCR 11 : 1971 3 SCC 5
- (i) Sow Chandra Kante Vs Sheikh Habib (1975) 1 SCC 674: (1975) 3 SCR 933;
- (j) Parsion Devi Vs. Sumitri Devi (1997) 8 SCC 715;
- (k) S Bhagirathi Ammal Vs Palani Roman Catholic Mission (2009) 10 SCC 464;
- (l) State of West Bengal Vs. Kamal Sengupta (2008) 8 SCC 612.

40. The ratio decided by the Hon'ble Supreme Court of India giving guidelines for exercise of the Power of Review, could be culled out which are as follows:

- (a) It is well settled that the Review Proceedings are not by way of an Appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC;
- (b) The Review jurisdiction cannot be exercised on the ground that the decision was erroneous on merits. That would be the province of the Court of Appeal. A power of Review is not to be confused with Appellate power which may enable an Appellate Authority to correct all matter of errors committed by the subordinate Court. This power has not been conferred in the review jurisdiction;
- (c) An error apparent on the face of record must be such an error which might strike one mere looking at the record and would not require any long drawn process of reasoning on points where there may be two opinions;
- (d) An error which has to be established only by lengthy and complicated arguments during the long drawn process of reasoning cannot said to be an error apparent on face of the record;
- (e) The party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose of rehearing a fresh decision of the case. The principle is that the judgment pronounced by the Court is final. Departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
- (f) If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it would be difficult to hold that there is an error apparent on the face of the record.

- (g) The parameters are prescribed in order 47 Rule 1 CPC. It permits the party to press for a re-hearing on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The former part of the rule deals with a situation attributable to the applicant and the latter to a jurat action which is manifestly incorrect or on which two conclusions are not possible;
  - (h) There is a distinction between a mere erroneous decision and a decision which could be characterized by error apparent. The review is by no means an Appeal in disguise whereby an erroneous decision is re-heard and corrected. Review lies only on a patent error.
  - (i) Whatever, the nature of the proceedings, it is beyond dispute that a Review proceedings cannot be equated with the original hearing of the case. The finality of the judgment delivered by the Court will not be reconsidered except “where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility;
  - (j) Where the order in question is appealable and the aggrieved party has adequate and efficacious remedy by recourse to Appeal, the original Courts should exercise the power to review its order with the greatest circumspection;
  - (k) An error contemplated under the Rule must be such which is apparent on the face of the record. It cannot be an error which has to be fished out and searched.
  - (l) Expression “any other sufficient reason” appearing in order 47 Rule 1 has to be interpreted in the light of the other specified grounds.
41. In the background of review jurisdiction available in law and in the light of above mandates, Commission has looked into the grounds urged in this Review Petition.
42. The review Petitioner M/s. OHPC Ltd. has argued that the Commission has dismissed the truing up petition in Case No.55/2020 on the ground of absence of any provision regarding truing up in the CERC Regulations prior to 2014, which is not correct. There are provisions for truing up of capitalisation and additional capitalisation in CERC (Terms and Conditions of Tariff) Regulations, 2004 and CERC (Terms and Conditions of Tariff) Regulations, 2009. The petitioner relied upon Regulation 34 (2) and (4) of the CERC (Terms and Conditions of Tariff)

Regulations, 2004. The Commission observed that the Regulations 34 (2) & (4) are on the matter of additional capitalisation only and the Commission have already allowed OHPC for additional capitalisation in respect of renovation & modernisation and capital maintenance of the generating units of its different power stations.

43. The Commission further observed that the petitioner has relied upon Regulation 6 of CERC (Terms and Conditions of Tariff) Regulations, 2009 which is depicted below:

“6. Truing up of Capital Expenditure and Tariff.

- (1) *The Commission shall carry out truing up exercise along with tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.03.2014, as admitted by the Commission after prudence check at the time of truing up.*

*Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.*

- (2) *The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix 1 to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub-stations thereof by 31.10.2014;*

- (3) *The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors*

*X x x x x x x x x x x x ”*

44. The Commission observed that CERC Tariff Regulations provides for determination of the tariff for the generating station or transmission licensee for a block period of five years and truing up of the capitalisation/additional capitalisation is being made by CERC on separate application filed by the generating company or the transmission licensee as the case may be. However, in case of OHPC generating stations, ARR & Tariff application is being filed by OHPC each year considering the capitalisation/additional capitalisation incurred and to be incurred during the year which is being approved by the Commission in the tariff orders. Therefore, there is no scope for the truing up of capitalisation/additional capitalisation as the same is being taken up in OHPC tariff orders each year. In other words, there is no scope for re-truing up of capitalisation/additional capitalisation as the same is being taken up in OHPC tariff orders each year. This is further buttressed up by OERC Regulation 2.13 of the Generation Tariff Regulations, 2014, which states that “*the existing generation plants of OHPC and OPGC may file an application each year for truing up of its*

*generating stations of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to last day of the previous year(s) and determination of revenue gap/surplus for the ensuing year, within the time limit as specified by the Commission. XXXXXXXX.”*

45. Accordingly, the Commission in the impugned order have not accepted the plea of truing up of the ARR of OHPC in respect of capitalisation/additional capitalisation for the period prior to the notification of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations 2014 basing on the fact that when capitalisation and additional capitalisation have already been allowed and there is no scope for re-truing up under CERC Regulations on the same. A relief on the same cause cannot be granted twice.
46. The Commission further observed that Regulation 6 (2) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 stipulates to make the application for carrying out truing up exercise for the period from 01.04.2009 to 31.03.2014 by 31.10.2014. Be it clarified here that the Petitioner has not moved any application for truing up before the stipulated dated i.e. 31.10.2014 as enshrined in Regulation 6(2) of the CERC (Terms and Conditions of Tariff) Regulations, 2009. OHPC in its application has quoted Regulation 6(1) & 6(3), but has not quoted Regulation 6(2). Further, in original petition in Case No.55 of 2020, OHPC has claimed an amount of Rs. 1579.68 Crore towards truing up of all the components of tariff for the period from FY 1996-97 to FY 2015-16, whereas in the present review petition it has claimed an amount of Rs. 1148.08 crore towards truing up of only three components such as RoE, Depreciation and Interest on Loan for a different period i.e. from FY 2004-05 to FY 2015-16 arising out of proposed capitalisation/ additional capitalisation adopting a different methodology.
47. In view of the above, the Commission cannot come to a different conclusion than that was arrived at by it in its order dated 03.11.2021 passed in Case No.55 of 2020. In other words, the Commission after appreciation of whole scenario does not find any logic in taking a view other than that already stated in the impugned order dated 03.11.2021.
48. So, the Petitioner has not been able to make out any case which would endorse a case for review of the Commission's order dated 03.11.2021 issued regarding approval of true up of ARR and Tariff of individual power stations of OHPC from FY 1996-97 to

2015-16. The petitioner has failed to show that there is any apparent error on the face of the record, which would justify the review. Nor the petitioner is able to bring out any new evidence which would require reconsideration of the Commission's order dated 03.11.2021. The Commission opines that the issues which are raised by the Petitioner in its review application and enumerated in this order, have already been heard and deliberated in detail in the Commission's order dated 03.11.2021 in Case No.55 of 2020.

49. Therefore, all the contentions of the petitioner are untenable and this petition is liable to be dismissed. Accordingly, the review application stands dismissed.

Sd/-  
**(Sushanta Ray Mohapatra)**  
**Member**

Sd/-  
**(G. Mohapatra)**  
**Officiating Chairperson**