

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

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

Case No. 31/2022

M/s OHPC Ltd

.....Petitioner

Vrs.

M/s GRIDCO & Others

..... Respondents

In the matter of: An application u/s 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 24.3.2022 passed in Case No. 103 of 2021 regarding approval of Annual Revenue Requirement (ARR) and Generation Tariff of OHPC power stations for the FY 2022-23 under Section 62 and Section 86 of the Electricity Act, 2003 read with related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, OERC (Conduct of Business) Regulations, 2004 and provisions of approved PPAs between OHPC and GRIDCO.

For Petitioner: Shri D. N. Patra, General Manager, OHPC.

For Respondents: Ms. Susmita Mohanty, DGM (PP), GRIDCO, Ms Sonali Patnaik, ALO
I/c, Department of Energy are present.

ORDER

Date of hearing: 13.09.2022

Date of order:30.09.2022

Odisha Hydro Power Corporation Ltd (hereinafter stated in short as the OHPC) has filed the present review petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 seeking review of order dated 24.03.2022 passed by the Commission in Case No. 103 of 2021 in the matter of approval of ARR and generation tariff of the OHPC power stations for the FY 2022-23 under Section 62 and Section 86 of the Electricity Act, 2003 read with related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, OERC (Conduct of Business) Regulations, 2004 and provisions of approved PPAs between OHPC and GRIDCO. The Petitioner-OHPC has prayed for :

- a) Review/modify the order passed on 24.03.2022 in Case No.103 of 2021 and/or;
- b) Allow the depreciation as proposed in the Original Tariff Application of OHPC for the FY 2022-23 and also allow differential depreciation amounting to Rs.5.59

crore for FY 2021-22 in order to repay the principal of all normative loans, which shall enable OHPC to recover the 90% of the additional capitalisation within useful life of the project.

2. The submissions of the OHPC are stated concisely as follows:-

- a) The review petition has been filed by the OHPC under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Civil Procedure Code, 1908 and Regulation 70 of OERC (Conduct of Business) Regulations, 2004, for review of the order of the Commission dated 24.3.2022 in Case No.103 of 2021 wherein the Commission had determined the Annual Revenue Requirement and Generation Tariff of the OHPC power stations for FY 2022-23. In the said order, the Commission has not allowed depreciation to the extent of actual loan repayment of the respective power stations, where the depreciation computed @ 2.57% is lower than the actual repayment of loan.
- b) The Commission has deviated from its earlier principle adopted in each tariff order till FY 2020-21 by allowing depreciation upto actual loan repayment or 2.57% of the project cost whichever is higher. The Commission has not applied the same principle for FY 2021-22 and FY 2022-23 by disallowing the amount of depreciation of Rs.5.59 crore and Rs.6.14 crore respectively for these years.
- c) Regulation 23 of the OERC Generation Tariff Regulation 2020 provides that for existing plants of the OHPC, depreciation will be allowed at pre 1992 norms notified by Govt. of India on the book value of assets as per the directions of the Hon'ble High Court of Odisha. The similar provision was also there in the earlier Generation Tariff Regulations, 2014 of OERC. The depreciation is accordingly calculated @ 2.57%, though the depreciation rates provided in the OERC Generation Tariff Regulation varies from 3.34% to 15%. The Commission has therefore erred in limiting depreciation @ 2.57% of the project cost resulting in under recovery of the project cost as well as less RoE during useful life of the project and such shortfall in loan repayment has to be met from RoE. Hence, allowing depreciation @ 2.57% which is lower than the actual repayment of loan, will lead to lesser effective RoE from the prescribed norm of 15.5%.
- d) The OHPC calculates depreciation considering book value of assets i.e. historic cost of the projects as approved by the Commission and audited additional capitalisation which constitute the gross fixed assets to be depreciated during the useful life of assets. The depreciation rate of 2.57% is not mentioned in Regulation and the majority of the assets of Hydro Power Stations shall have depreciation rate of 5.28% as per the depreciation schedule given in the OERC Generation Tariff Regulations, 2020.

- e) As per the OERC Generation Tariff Regulations, 2020 there is assured recovery of 63% to 79% of asset value through depreciation @ 5.28% in initial 12 years or 15 years of operation of a project. The approval of depreciation @ 2.57% will deprive the OHPC to recover its principal loan repayment even in 12 years or 15 years.
 - f) In the approved PPA of UIHEP between the OHPC and the GRIDCO it is mentioned that the payment of depreciation and Advance Against Depreciation, if any, in a year is to be limited to actual loan repayment of the year and after repayment of full loan amount, depreciation may be recovered @ 3.6% per year till 90% of the capital cost. Therefore, as per the provision of PPA, payment of depreciation in a year is to be limited to actual loan repayment of the year. The Commission has allowed the same principle in the tariff orders of the OHPC for FY 2004-05 till FY 2020-21. Consequent upon approval of depreciation @ 2.57% of the project cost of UIHEP and some other power stations the actual loan repayment is higher leading to less approval of Rs.10.97 crore in total for both the years 2021-22 and 2022-23. By limiting the depreciation to 2.57% over the balance useful life period will lead to loan liability not being served and Rs.373.79 crore will remain unrecovered after the retirement UIHEP. Therefore, the Commission may consider allowing depreciation of UIHEP at least up to loan repayment and allowing interest on Govt. loan and normative loan.
 - g) There is less approval of depreciation for FY 2021-22 i.e. for the UIHEP to the tune of Rs.5.52 crore and for the RHEP to the tune of Rs.0.07 crore. Similarly, for FY 2022-23 there is less approval of depreciation of Rs.5.45 crore for UIHEP, Rs.0.25 crore for RHEP and Rs.0.44 crore for HHEP.
 - h) The OHPC prays the Commission for review of the order dated 24.3.2022 passed in Case No. 103 of 2021 and to allow the differential amount of depreciation in respect of the years FY 2021-22 and 2022-23 as stated above.
3. The submissions of the Respondent-GRIDCO are summarised as stated below:-
- a) The petitioner has claimed the additional depreciation of Rs.5.59 crore for the FY 2021-22. Since this claim pertains to the past period and not raised in the review petition in Case No. 65 of 2021 filed by the OHPC for review of the Commission's tariff order for the FY 2021-22, the same may not be consider in the present review application filed by it for review of the tariff order for the FY 2022-23.
 - b) For the FY 2021-22 and FY 2022-23, the Commission has approved depreciation @ 2.57% of the project cost for each generating stations as per Clause 23(4) of OERC Generation Tariff Regulations, 2020. However, the petitioner in its review

petition has selectively chosen the power plants (UIHEP, RHEP and HHEP) where loan repayment is more than the depreciation allowed. The petitioner has ignored the benefits derived out of higher depreciation allowed for other generating stations(UKHEP, BHEP & CHEP) where actual loan repayment is lower than the depreciation allowed. Considering the overall impact of approved depreciation as compared to the actual loan repayment, the petitioner has gained around Rs. 3.70 crore in terms of depreciation considering all the hydro stations of the petitioner for the FY 2022-23.

- c) From the comparison of the actual loan repayment obligation against the depreciation allowed in the ARR for last 10 years (from FY 2013-14 to FY 2022-23), it is found that the total loan repayment for the said period was Rs.535.19 crore as per the submission of the petitioner and the approved depreciation was Rs.617.89 crore resulting in an additional amount of Rs.82.70 crore above the loan requirement. Further, the Commission has also allowed cumulative RoE of Rs.779.74 crore for the said period and therefore, the contention of the petitioner that they have to sacrifice around 50% of their RoE for actual repayment of loan is erroneous.
 - d) The OHPC power stations except UIHEP have outlived their useful life period and hence the depreciation amount for different plants as per the actual loan repayment obligation may be considered instead of considering depreciation calculated @2.57%. The depreciation should not be allowed to be used to earn additional return over and above the RoE allowed by the Commission, since this approach leads to increase in overall tariff for the end consumers.
4. The Respondent Shri Soumya Ranjan Pattnaik, MLA, Khandapada has submitted that:
- a) The Commission while approving depreciation amount of the OHPC power station for the FY 2021-22 and 2022-23, have paid due consideration of the loan repayment amount as indicated in the generation tariff orders for those years. The petitioner has failed to discover any new and important matter or evidence which is relevant for the purpose of review of the Commission's order dated 24.3.2022. Since there is no error apparent on the face of record, the instant review petition does not fulfil the requirements of review under Order 47 Rule-1 of the Civil Procedure Code, 1908 and hence may be dismissed.
 - b) The petitioner has not given the life of the individual power stations, approved advanced depreciation for the previous years, accumulated depreciation and loan repayment amount allowed in various tariff orders since the CoD of projects and in other hand it has confused by submitting a hypothetical illustration in the petitioner to justify its claim which need not be entertained.

5. In reply to the queries/objections of the Respondents, the Petitioner-OHPC in its rejoinder has clarified with following averments:-
- a) The provisions of the OERC Generation Tariff Regulations, 2014 and that of 2020 are literally same and their applicability allowing depreciation in different tariff orders of the OHPC also remain same till FY 2020-21. Thereafter, for FY 2021-22 & 2022-23, the principle of allowing depreciation up to loan repayment or the depreciation @ 2.57% whichever is higher, has not been followed by the Commission. This is an apparent error on the face of the record.
 - b) The less approved depreciation amounting to Rs.5.59 crore for FY 2021-22 have been considered as deferred depreciation which has been claimed in present review application along with the balance depreciation claim of Rs.6.14 crore for FY 2022-23.
 - c) As per Regulation 16(3) of the OERC Generation Tariff Regulations, 2020 towards additional capital expenditure, out of the 90% depreciation initial 70% is recovered as repayment of loan principal under debt and balance 20% is recovered towards equity investment.
 - d) The submission of GRIDCO that the petitioner has been approved additional amount of Rs. 82.70 crore towards depreciation above the actual loan requirement in past 10 years is not justified. In event of non-achievement of design energy on account of poor hydrology the depreciation approved in past years has not been recovered. There is an outstanding of Rs.619 crore of energy dues from GRIDCO and such non-payment of energy bills by GRIDCO affects the recovery of depreciation and RoE. The amount of Rs.82.70 crore of additional depreciation, as computed by GRIDCO, may be considered towards recovery of equity.
 - e) The OHPC power stations except UIHEP have outlived their useful life period and therefore, depreciation amount for different plants may be considered as per the actual loan repayment obligation instead of allowing depreciation @2.57%. The project cost of each power station has been increased due to additional capitalisation on account of R&M and capital maintenance works and the OHPC has not recovered the 90% of the project cost of its power stations till date. The OHPC do not recover the approved depreciation since the amount build for energy charge and capacity charge is not equal to the approved ARR. Thus, accumulated depreciation recovered can be assessed after finalisation of truing up petition of individual power station. The OHPC have therefore computed depreciation @2.57% of project cost (historic cost + additional capitalisation – de-capitalisation) and compared with loan repayment. The higher value considered as

depreciation and accumulated depreciation shall not exceed 90% of the project cost.

- f) The depreciation and RoE are two separate and distinct components of Annual Fixed Cost (AFC) as per the OERC Generation Tariff Regulation, 2020. GRIDCO has misinterpreted the regulatory meaning of depreciation and RoE in connection to the methodology of recovery investment by the OHPC.
 - g) The Commission has deviated from its own principles of allowing depreciation or actual loan repayment whichever is higher, which was being followed for last 17 years. This may be considered as an error apparent on face of the record. The submission of the respondent that the petitioner has failed to discover any new and important matter or evidence which is relevant for the purpose of review of the OERC order dated 24.03.2022, may not be justified.
6. Heard the parties in extenso by virtual mode. The written notes of the arguments submitted by the parties are perused.

The Commission observed that the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 was notified in the Odisha Gazette on 10.10.2014. Prior to notification of this Regulation, determination of tariff in respect of the OHPC generating stations was being governed by the CERC (Terms and Conditions of Tariff) Regulations notified from time to time. In the CERC Regulations, there was the concept of Advance Against Depreciation (AAD) and the generating companies were entitled to get AAD wherever scheduled loan repayment exceeds the allowable depreciation as per the schedule. Accordingly, depreciation including AAD was being allowed in tariff of the OHPC stations from the very beginning.

7. The Commission further observes that the CERC in its Tariff Regulations, 2009 onwards had revised the rate of depreciation and removed the concept of Advance Against Depreciation. Accordingly, the OERC Generation Tariff Regulations, 2014 and that of 2020 also do not provide the concept of Advance Against Depreciation. However, in the OERC Generation Tariff Regulations, the rates of depreciation for most of the hydro electric machines and equipments are fixed at 5.28 % per annum. The OERC Generation Tariff Regulations further provides that for existing plants of the OHPC, as per the directions of the Hon'ble High Court of Orissa, the depreciation would be calculated at pre-1992 norms notified by Government of India on the book value of the assets. The pre-1992 rate of depreciation for most of the hydro electric machines and equipments was 2.57% per annum. Due to this difference in the rate of depreciation, considering the difficulties for repayment of loan, the OHPC power stations were being allowed Advance Against Depreciation over and above the

depreciation computed @ 2.57% upto the FY 2020-21 wherever principal loan repayment was more than the depreciation amount computed @2.57%.

8. Since, the OHPC generating stations are in operation for about 20-25 years after its formation and transfer of asset to it, there should not be any loan liability on those power stations. Therefore, the Commission while determining the tariff of the OHPC power stations for the FY 2021-22 and FY 2022-23 has not considered the Advance Against Depreciation and computed the depreciation @2.57% based on the provision of the Regulations. In view of the above, we do not accept the submissions of the Review Petitioner that it is an error apparent on face of the record for review of the impugned order. Hence, the Review application, as a whole, is unsustainable in the eye of law.
9. However, we cannot wink at the fact that the principal loan repayment is an essential aspect of consideration which is to be recovered through the depreciation in generation tariff. Therefore, the Commission in their past tariff orders of the OHPC had allowed Advance Against Depreciation to facilitate the loan repayment by the OHPC in respect of its power stations. It is the fact that the depreciation cannot be allowed beyond 90% of the capital cost. The OHPC has stated that the project cost of its power stations has been increased due to additional capitalisation on account of R&M and capital maintenance works and it has not recovered 90% of the project cost of its power stations till date. Therefore, in order to have a clear picture of project cost, depreciation & loan repayment for the past years and to address the difficulties of the OHPC as stated, we direct the OHPC to submit the station-wise and year-wise details of the project cost approved by the Commission and depreciation (including Advance Against Depreciation) allowed in tariff from the FY 1997-98 onwards alongwith the station-wise and year-wise loan repayment for the said period. For the earlier years, when the generation tariff of the OHPC power stations was not determined for individual station, the above data/information may be apportioned station-wise based on the project cost of individual power station as approved by the Commission. The OHPC shall furnish these information/data alongwith its ARR and Tariff application for the FY 2023-24 so that the Commission can take a pragmatic view on the claim of the OHPC in its present application, while determining the tariff of its power stations for the FY 2023-24.
10. Accordingly the present review petition is disposed of.

Sd/-
(S.K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson