
- a) Review/modify the impugned order dated 30.09.2022 passed in Case No.18 of 2022.
 - b) Allow OPTCL for levying 100% transmission charges for FY 2021-22 and FY 2020-21 to all open access customers including the customers sourcing power from RE sources as per the ARR and Transmission Tariff order of OPTCL dated 26.03.2021 passed in Case No.73 of 2020 and order dated 21.04.2020 passed in Case No.72 of 2019 respectively.
2. The facts of the case as submitted by the Review-Petitioner are as under:
- a) The Review Petitioner/OPTCL is the State Transmission Utility (STU) and the Deemed Transmission Licensee authorized for carrying out the activities of Intra-State transmission of Electricity within the State of Odisha under Section 39 of the Electricity Act, 2003.
 - b) The Commission, vide its order dated 26.03.2021 in Case No.73 of 2020, has determined the ARR and Transmission Tariff of OPTCL for FY 2021-22 and has determined the ARR and Transmission Tariff of OPTCL for FY2020-21 vide order dated 21.04.2020 in Case No.72 of 2019. In both the above orders, there was no mention about levy of 20% concessional transmission charge for open access customers sourcing power from renewable source (except biomass and cogeneration).
 - c) The Commission has also issued BST Order dated 26.03.2021 in case No.72 of 2020 for GRIDCO and RST Order dated 26.03.2021 in case Nos.75, 76, 77 & 78 of 2020 for DISCOMs which are applicable for the FY 2021-22. At para 393 (v) of the aforesaid RST order, it was mentioned that concessional transmission & wheeling charges @20% of the prevailing rate will be applicable for STOA Customers availing power from RE sources (except Bio Mass and Co-generation).
 - d) The Commission has enforced its new Open Access Regulations, 2020 vide its Notification No.1239 dated 02.11.2020 effective from the date of its publication in Odisha Gazette (Extraordinary) No.1412 dated 18.11.2020 while making it applicable to open access customers using intra-State Transmission System and Distribution system in the State, when such system is used in conjunction with inter-State Transmission System vide Regulation 2 of the said Regulations.

- e) Vide Chapter-05 (Open Access charges) of the new Regulations, 2020, it has been stipulated that the transmission charges for use of transmission system shall be as specified at 20(2) of the Regulation which reads as follows:
- “Transmission Charges = $ATC / (ALS \times T \times 365)$ (in INR/MW-day) Where, ATC= Annual Transmission Charges determined by the Commission for the State transmission system for the concerned year. ALST= Average load projected to be served by the State transmission system in concerned year. Provided that transmission charges shall be payable on the basis of contracted capacity in case of long-term and medium-term open access consumers and on the basis of scheduled load in case of short-term open access consumers. For Open Access for a part of a day, the transmission charges shall be payable on pro-rata basis xxxxx”.
- f) The Review-Petitioner has been raising Open Access Charges to its customers as per the norms as envisaged in the new Open Access Charges Regulation, 2020. Thus, the Review-Petitioner, vide its letter dated 10.11.2021, asked SLDC (Nodal agency for Short Term Open Access Charges) to collect 100% transmission charges from all RE STOA Customers instead of 20% as the ARR & Tariff order of OPTCL, passed on 26.03.2021 in Case No.73/2020, is distinctly silent about 20% concessional transmission charges for RE STOA Customers (except for biomass and cogeneration).
- g) OPTCL received a letter No.1709 dated 01.01.2022 of the Secretary, OERC, addressed to Chief Load Despatcher, SLDC and endorsed to OPTCL, which stipulates to the effect that “20% of Transmission and wheeling charge is payable by the consumers drawing power through open access from Renewable sources excluding Co-generation and Bio-mass Power Plant”. This stipulation is reported to be based on the provisions in para 393(v) of the RST order for FY 2021-22 dated 26.03.2021. That letter also asserts therein that the above RST order is applicable to all stakeholders of power sector.
- h) Since it was intimated to comply with the above RST order after a lapse of eight months from 26.03.2021, the Review-Petitioner had prayed before this Commission in Case No.18 of 2022 for allowing levy of 100% transmission charge on all the open

access customers including those who are sourcing power from renewable sources for FY 2021-22 and FY 2020-21. While disposing of the Case No.18 of 2022, this Commission, vide para 17 of the order dated 30.09.2022 passed therein as held under:

“The order of any other year cannot be extrapolated to a particular year. Therefore, the open access order of FY 2022-23 is applicable for that year only and not retrospectively.”

- i) The Review Petitioner-OPTCL submits that there exists sufficient reasons for review of the order dated 30.09.2022 in Case No.18 of 2022 inasmuch as this Commission, vide their order dated 26.03.2021 in Case No.73 of 2020, has approved the ARR & Transmission Tariff of OPTCL @Rs.0.28/kWh for the FY 2021-22 effective from dated 04.04.2021 and in obedience to the above order, the Review Petitioner-OPTCL is claiming Transmission charges @Rs.0.28/Kwh from DISCOMs and other Open Access customers for the FY 2021-22.
- j) OPTCL during Transmission Tariff proceedings for FY 2021-22, had submitted that STOA charges received during FY 2018-19 & 2019-20 as Rs.47.0 Cr. and Rs.37.96 Cr. respectively based on the audited account. The Commission while issuing the ARR and Transmission Tariff order dated 26.03.2021 for the FY 2021-22 observed at para 211 as follows:

“The average of receipts excluding STOA charges for FY 2018-19 and 2019-20 (as shown in the above table) is computed at Rs.73.36 crore. The Commission by OERC (Terms and Conditions of Intra-State Open Access) Regulations, 2020 has rationalized the LTOA and STOA charges paid by the Open Access customers in line with the CERC (Open Access in Interstate Transmission), Regulations. In view of such developments, it is estimated that the receipts of STOA during the ensuing year 2021-22 would be substantially increase. The short-term open access charges as per audited accounts was Rs.47 crore and Rs.37.96 crore for FY 2018-19 and 2019-20 respectively. The Commission expects that after the revision of STOA it would be four times of the average charges received during the year FY 2018-19 and 2019-20. Taking such aspect into account commission determines Rs.169.92 crore towards STOA charges to be received during the FY

2021-22 in addition to other miscellaneous receivables of Rs.73.36 as estimated in the above table. Therefore, Commission allows total miscellaneous receipt of Rs.243.28 crore for FY 2021-22.”

- k) This Commission has determined the misc-receipt (excluding STOA) for 2021-22 as Rs.73.36 crores considering the average of the financial years 2018-19 and 2019-20 based on the audited report for the respective years and the STOA charges for 2021-22 was decided by increasing four times the average of STOA charges for FYs 2018-19 & 2019-20. The above average STOA charge includes only 1/4th of the transmission charge, but without any consideration of concessional charge @20% of the transmission charge for sourcing of RE power. The order dated 26.03.2021 as quoted above to realize four times of the STOA charges, disallows the same by the letter dated 01.01.2022 of Secretary, OERC. It creates an apparent error/anomaly which calls upon to review the issue.
- l) For FY 2020-21, the approved STOA charges by this Commission was Rs.114.44 crores as recorded in para 252 of OPTCL ARR order dated 21.04.2020 whereas actual STOA accrual for the said year is 64.43 crores (audited account). That means the STOA accrual is approximately 44% less. So, it is one of the reasons of less accrual of transmission charges on account of concession for RE STOA customers.
- m) The letter dated 01.01.2022 of the Secretary, OERC, for implementing concessional transmission charges for STOA customers towards sourcing of RE power referring to the RST order applicable for DISCOMs is opposed to the ARR order of OPTCL dated 26.03.2021 passed by the Commission in case No.73 of 2020. There is no such provision allowing concessional rate to STOA customer in the ARR order applicable to OPTCL or in the subsisting Open Access Regulations, 2020. Hence, the petitioner is seeking review of the order dated 30.09.2022 passed in Case No.18 of 2022.
- n) According to the Review-Petitioner, there was a transaction of 4072.369 MU energy under STOA of RE (except Biomass and Co-generation) during FY 2021-22. So, there is a financial burden of Rs.91.92 crores on the State consumers. Similarly, there is a financial burden of Rs.1.77 crores on the State consumers due to said RE transaction of 117.828 MU in FY 2020-21. Therefore, the Review-Petitioner being

aggrieved by the impugned order has filed this Review Petition seeking review of order dated 30.09.2022 on the aforementioned various grounds.

3. The Learned Counsel for the Review Petitioner has argued on the following points:
 - a) The letter dated 01.01.2022 issued by the Secretary, OERC opposes to the ARR order dated 26.03.2021 in Case No.73 of 2020 since there is no such provision for allowing concessional rate to STOA in the ARR order applicable to OPTCL or in the subsisting Open Access Regulations, 2020, and as such, there exists sufficient reason to review the Order.
 - b) The said letter dated 01.01.2022 of the Secretary, OERC disallows OPTCL to realise four times of the STOA charges as envisaged under the ARR & Transmission Tariff order dated 26.03.2021 passed in Case No.73 of 2020 and therefore, it creates an error apparent which requires review of the Order;
 - c) Based on the quantum of STOA transactions of RE (except Bio-mass and Co-generation for FY 2020-21 and FY 2021-22 as per the energy statement received from SLDC, there is financial burden on the State consumers;
 - d) That there is a legitimate cause of action in favour of the Review-Petitioner for reconsideration of the submissions dated 29.03.2022 and 04.06.2022 based on the observation made by the Commission at para-17 of the impugned Order and said relevant portion of the said para as relied upon by the Review-Petitioner, reads as follows:

“The order of any other year cannot be extrapolated to a particular year. Therefore, the open access order of FY 2022-23 is applicable for that year only and not retrospectively.”
4. Broadly, on the above grounds, the Review-Petitioner seeks to review of the order of this Commission dated 30.09.2022 passed in Case No.18 of 2022.
5. The Respondents TPWODL, TPNODL, TPCODL made their reply in justification of the order of this Commission dated 30.09.2022 in Case No.18 of 2022, on the grounds interalia that:
 - a) At para 17 of the impugned order dated 30.09.2022 passed in Case No.18 of 2022, the Commission has observed as follows:

“17. The Open Access Charges applications by DISCOMs are filed for a particular period and the Commission basing on that application issue order for that period and in the present case it is for respective financial year. The order of any other year cannot be extrapolated to a particular year. Therefore, the open access order of FY 2022-23 is applicable for that year only and not retrospectively. This has been clearly mentioned in that order. In view of the above, the claim of OPTCL for levying 100% of intra-state transmission charges for open access customers drawing from RE sources for the FY 2020-21 and FY 2021-22, in terms of open access charges order dated 24.03.2022 in Case No.112-115 of 2022 for the FY 2022-23, is unjustified. The Commission has taken pragmatic decision in assessing ARR for respective years based on feedbacks/submissions of the stakeholders during the process of hearing. The question of applicability of order of the FY 2022-23 retrospectively to the years 2020-21 and 2021-22 mutatis mutandis is pre-judicial. After specified time period as mentioned in the order is over the order loses its force. A new order takes its place. Every year the Commission issues transmission tariff order and open access charges order unfailingly for the ensuing financial year. The Petitioner is well-versed with it. Therefore, we cannot accept the prayer of OPTCL to give retrospective effect to open access charges order of the current year i.e. FY 2022-23 for 2020-21 to 2021-22. The Letter of the Secretary, OERC dated 01.01.2022 has only clarified the matter. OPTCL /SLDC is directed to bill the open access consumers availing RE power strictly as per the open access charges order of the relevant year.”

- b) As per Order 47 Rule 1 of the Civil Procedure Code, 1908, review of an order can be made on any of the following grounds:
 - Error apparent on the face of the record;
 - 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;
 - Any other sufficient reason.
- c) The Review-Petitioner has not pointed out any such error apparent on the face of the impugned order dated 30.09.2022 and neither established discovery of new and important matter nor evidence, so as to attract above provision of the CPC, 1908 for

review of the impugned order. However, on the grounds of review the petitioner has again presented the same matter for adjudication before this Commission on which the Commission has already taken the views of all the stake holders. Therefore, the Commission may decide admissibility of the present review petition.

- d) The regulatory mechanism provides for true up in case of any shortfall/surplus of the net ARR as per audited accounts to the extent of true up of uncontrollable parameters. It is not understood why OPTCL is insisting on retrospective applicability of 100% cross subsidy surcharge and not filing true up application in case it has suffered a shortfall in its net ARR for the financial years 2020-21 and 2021-22 on account of exemption on STOA charges for RE consumers allowed by the Commission.

6. The Respondent-Vedanta Ltd. filed its reply stating that:

- a) Primarily, the present Review Petition is not maintainable as there is no error apparent on the face of record. The entire grounds and pleadings including the prayers/issues of the present review petition were made by the OPTCL in its main petition (Case No.18 of 2022), which have been duly considered and adjudicated by this Commission in detail, vide the impugned order dated 30.09.2022, after hearing all the parties. Neither additional nor any fresh ground has been made by the Review-Petitioner which otherwise substantiates its pleadings for review of the impugned order and passing any modified order.
- b) It is a settled position of law that power of the Commission to review its decisions, directions and order as provided under section 94(1)(f) of the Electricity Act, 2003 has to be exercised in terms of Order 47 Rule 1 of the CPC, 1908. In this regard, the respondent M/s. Vedanta Ltd. has cited para 19 to 21 of the judgement of the Hon'ble Supreme Court of India in the case of *Kamlesh Verma v. Mayawati* reported in (2013) 8 SCC 320. By applying the above settled position of law, it is evident that the present proceeding for review is not maintainable as the Review-Petitioner has not demonstrated the applicability of the ingredients of Order 47 Rule 1 of the CPC, 1908. In terms of the observation made in the aforesaid judgement of the Hon'ble Supreme Court of India, the present review proceeding is not maintainable on several grounds,

inasmuch as OPTCL in the guise of a review petition is seeking to reargue the entire matter which is also not permissible in terms of the said judgement.

- c) OPTCL has sought review of the impugned order based on the ground of being 'sufficient reason'. But Hon'ble Supreme Court of India has time and again reiterated that the 'any other sufficient reason' shall necessarily mean a reason sufficient on ground, at least analogous to those specified in sub-rule (a) or (b) of Rule 1 of Order 47 of CPC, 1908. In this regard, reference can be made to the decision of the Hon'ble Supreme Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526; *Board of Control for Cricket in India v. Netaji Cricket Club*, (2005) 4 SCC 741.

The present review petition filed by OPTCL does not disclose as to sufficient reason analogous to the first two sub-rules of Order 47, based on which the Order passed by this Commission necessitates review.

- d) Further, the present review petition neither relates to any discovery of new and important matter or evidence which was not within the knowledge of the review petitioner or could not be produced by him at the time when the impugned order was passed nor any mistake or error apparent on the face of the impugned order has specifically been pointed out and nor any other sufficient reason or ground has been made out by the review petitioner. Hence, the present review petition is not maintainable and ought to be dismissed.
- e) Further, an order has to be seen in its entirety and should not be assailed based on certain portion of a paragraph only on peak and chose methodology. As such the review petitioner has relied upon certain portion of para 17 of the impugned order is wholly misconceived and does not warrant any consideration of this Commission.

- 7. The remaining Respondents have not filed any written replies/submissions.
- 8. In response to the submissions of the Respondents, the Review-Petitioner, in its rejoinder, has submitted the following:
 - a) The submissions of the Objectors-DISCOMs not to revisit the impugned order on the ground that the shortfall in receipt of STOA charges against approved quantum may be trued up on actual basis has no merit and may not be considered.

- b) The judgement of Hon'ble Supreme Court in case of *Kamlesh Verma v. Mayawati* reported in (2013) 8 SCC 320 cited by M/s. Vedanta Ltd. regarding maintainability of the review petition, is not applicable to the present case and also does not help its cause. The Hon'ble High Court of Madhya Pradesh in the case of *Principal Commissioner of Customs v. M.S.S. Foods Processors* reported in 2017 (7) G.S.T.L. 394 (M.P), held that review or rehearing of case can be done only when some mistake or an error apparent on the face of the record is discovered or for any other sufficient reason. Further, such mistake or error apparent must be prima facie visible without carrying out any detailed examination. Re-appreciation of evidence and rehearing of case without error apparent on the face of record not permissible and challenging an order in guise of review not permissible – Section 114 and Order 47 Rule 1 of CPC, 1908 – Article 226 of Constitution of India. This view was affirmed by the Apex Court. Further, reference may be made on paras 53 & 54 of the judgement of Hon'ble Supreme Court in the case of *Lily Thomas, Etc. Etc. v. Union of India & Ors* on 05.04.2020, (2000) 6 SCC 224.
- c) From the above judgement it is clear that OPTCL have sufficient reason for review of the impugned order dated 30.09.2022 passed in Case No.18 of 2022. The party aggrieved with the decision/order passed by the Court, may file review petition before the said court for re-examination of order. The order may be re-examined by the judges who have passed such order earlier. The review petition may be admitted or dismissed depending upon the material of facts relating to the said case. The review petition can be disposed of by the court by giving opportunity of hearing to the concerned parties.
9. Heard the parties through hybrid mode (both virtual and physical) and their written notes of submission are considered. We observe that the question that arises for consideration in this Review Petition is as follows:
- “Whether any ground for review is made out on the strength of the points urged by the Review Petitioner”?
10. Let us discuss this issue now. The petition has been filed under Section 94(1)(f) of the Electricity Act, 2003 for review of the order dated 30.09.2022. Let us refer to the said Section.

“94. Powers of Appropriate Commission:

(1) The Appropriate Commission shall, for the purposed of any inquiry or proceedings under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(a) to (e)

(f) reviewing its decisions, directions and orders;

11. The above Section confers powers to this Commission to review its own orders or decisions which are akin to the powers vested in a Civil Court under the Civil Procedure Code for review of its order/judgement.
12. The Civil Court while reviewing its order has to follow the provisions of Order 47 Rule -1 of the Civil Procedure Code, 1908. This is reproduced hereunder:

“1. Application for review of judgment: (1) Any person considering himself aggrieved-

- a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- b) By a decree or order from which no appeal is allowed, or
- c) By a decision on a reference from a court of Small causes,
- d) And who from the discovery of new and important matter of evidence which, after 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 the order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order”.

13. The very same provision would apply to this Commission as well.
14. In view of the above provisions, the Review is maintainable only on the following grounds:
 - a) Discovery of a new and important matter of evidence which even after exercise of due diligence was not within the knowledge of the Petitioner;
 - b) Discovery of new and important matter of evidence which even after exercise of due diligence could not be produced by the Petitioner during the original proceedings which culminated in the final order passed;

- c) Order made on account of some mistake or error apparent on the face of the record or any other sufficient reason.
15. Admittedly, the ground (a) and (b) would not apply to the present case. The learned Counsel for the Review-Petitioner has argued the Review Petition on the basis of the ground(c).
 16. In the light of the above, it has to be considered as to whether the ground raised by the Review Petitioner in this Review Petition is sufficient to invite the restrictive jurisdiction of this Commission to review its order dated 30.09.2022 passed in Case No.18 of 2022.
 17. 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.
 18. The authorities on this issue are quoted below:
 - (a) Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhary (Smit) reported in (1995) 1 SC 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 Miss 2008 SC 719;

(l) State of West Bengal Vs. Kamal Sengupta (2008)8 SCC612.

19. The ratio decided by the Hon'ble Supreme Court 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 jural 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 Reviewproceeding 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 Rule1 has to be interpreted in the light of the other specified grounds.
20. In the light of the above mandates laid down by the Hon’ble Supreme Court, let us now discuss each of the grounds urged in this Review Petition.
21. The main contention of the Review Petitioner is that this Commission has not taken into consideration all the contentions raised by it.
22. We observe that Regulation 20 of the OERC (Terms and Conditions of Intra-State Open Access) Regulations, 2020 provides for methodology for determination of Intra-State transmission charges as a part of Open Access charges. The Commission in exercising power under Section 39 (2) (d) of the Electricity Act, 2003 determines such intra-State transmission charge as a part of the open access charges following the methodology prescribed under OERC Open Access Regulations, 2020. This intra-State transmission charge is determined by the Commission on year-to-year basis after hearing the stakeholders under OERC (Conduct of Business) Regulations, 2004.

Accordingly, OERC had determined the intra-State transmission charge as a part of open access charges for FY 2020-21 and 2021-22 which stipulates that 20% transmission and wheeling charge is payable by the consumers drawing power from renewable sources excluding co-generation and bio-mass plant through open access. Such determination of intra-State transmission charge is applicable for the respective years as mentioned above.

The Secretary, OERC had also clarified the above in his letter No. 1709 dated 01.01.2022. The contention of the Petitioner that the determination of above intra-State transmission charge had resulted in an additional financial burden of Rs.1.77 Crore for FY 2020-21 and Rs.91.22 Crores for FY 2021-22 for the Petitioner does not lend force to his review petition. The shortfall of revenue in any component of ARR is a subject matter of truing up which is dealt under OERC Transmission Tariff Regulations, 2015. That exercise has also been completed by the Commission based on the truing up application of the Petitioner for the respective years. Raising this issue again in the review petition is misplaced and we can't accept the same.

23. Regarding application of intra-State transmission charge determined for FY 2022-23 and applicability of the same retrospectively for FY 2020-21 & FY 2021-22, we have given our findings in para 17 of the impugned order dated 30.09.2022 passed in Case No. 18/2022 as quoted below:

“17. *The Open Access Charges applications by DISCOMs are filed for a particular period and the Commission basing on that application issue order for that period and in the present case it is for respective financial year. The order of any other year cannot be extrapolated to a particular year. Therefore, the open access order of FY 2022-23 is applicable for that year only and not retrospectively. This has been clearly mentioned in that order. In view of the above, the claim of OPTCL for levying 100% of intra-state transmission charges for open access customers drawing from RE sources for the FY 2020-21 and FY 2021-22, in terms of open access charges order dated 24.03.2022 in Case No.112-115 of 2022 for the FY 2022-23, is unjustified. The Commission has taken pragmatic decision in assessing ARR for respective years based on feedbacks/submissions of the stakeholders during the process of hearing. The question of applicability of order of the FY 2022-23 retrospectively to the years 2020-21 and 2021-22 mutatis mutandis is pre-judicial. After specified time period as mentioned in the order is over the order loses its force. A new order takes its place. Every year the Commission issues transmission tariff order and open access charges order unfailingly for the ensuing financial year. The Petitioner is well-versed with it. Therefore, we cannot accept the prayer of OPTCL to give retrospective effect to open access charges order of the current year i.e. FY 2022-23 for 2020-21 to 2021-22. The Letter of the Secretary, OERC dated 01.01.2022 has only clarified the matter. OPTCL /SLDC is directed to bill the open access consumers availing RE power strictly as per the open access charges order of the relevant year.*”

24. We observe that the Review-Petitioner, on the grounds of review, has again presented the same matter for adjudication by the Commission with the similar prayer. The issues raised

by the Review Petitioner in this Review Petition have already been addressed and decided in the impugned order. As held by the Hon'ble Supreme Court, the Review Petitioner cannot re-agitate the entire matter on merits as if this is a fresh case. From the forgoing discussions, it is found that neither the petitioner has produced any new or important matter nor any evidence which was not considered by the Commission while passing the impugned order dated 30.09.2022 in Case No.18 of 2022 and there is no mistake or error apparent on the face of the record calling for review of the said order. Therefore, the Commission is of the view that the review petition is untenable and deserves to be rejected.

25. In the result, the instant Review Petition is dismissed.

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

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson