

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

Present: Shri S. C. Mahapatra, Chairperson
Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member

Case No. 68/2023

GRIDCO Ltd.	Petitioner
Vrs.		
TPCODL & Others	Respondents

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 and Order 47 Rule 1 & Section 114 of the CPC, 1908 for review of Order dated 23.03.2023 of the Commission passed in Case No.78 of 2022 (Bulk Supply Price for FY 2023-24 and Truing up Expenses for FY 2021-22 passed in Case No.79 of 2022.**

For Petitioner: Shri Lalit Mishra, DGM (Fin.) R&T and Shri B. K. Das, Sr. GM., GRIDCO Ltd.

For Respondents: None

ORDER

Date of Hearing: 01.08.2023

Date of Order:07.08.2023

The Petitioner has filed the present application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 and under Order 47 Rule 1 and Section 114 of the Code of Civil Procedure, 1908 for review of Order dated 23.03.2023 of the Commission passed in Case No.78 of 2022 (Bulk Supply Price for FY 2023-24 and Truing up Expenses for FY 2021-22 passed in Case No.79 of 2022.

2. The Petitioner-GRIDCO has made the prayer in his application which runs as follows:

- (i) The Commission may be pleased to allow the condonation for delay, admit and allow the present petition;
- (ii) Review and/or revise the Aggregate Revenue Requirement (ARR) and the Bulk Supply Price (BSP) order for FY 2023-24 dated 23.03.2023, rectify the errors and omissions and grant the relief as pointed out specifically in the present petition;
- (iii) Review and/or revise the Truing Up order for FY 2021-22 dated 23.03.2023, rectify the errors and omissions and grant the relief as pointed out specifically in the present petition;

- (iv) Pass any other suitable order or direction as the Commission may deem necessary in the interest of justice.
3. The Petitioner-GRIDCO, on the matter of review of ARR & BSP order dated 23.03.2023 for FY 2023-24, has pleaded as follows:
- A. NON-CONSIDERATION OF PASS-THROUGH COST OF NTPC STATION OF KBUNL**
- a) The Commission in the ARR for the FY 2023-24 did not allow the claim of GRIDCO amounting to Rs.295.00 Crore towards power purchase cost of M/s. KBUNL based on the one-time settlement, as pass through in its ARR for FY 2023-24, The Commission further directed for recovery of the outstanding amount from trading revenue. This is based on the fact that the Commission has not approved the PPA executed between GRIDCO and M/s. KBUNL for purchase of power by GRIDCO from M/s. KBUNL for State consumption
- The relevant excerpt of the order is extracted as follows:
- “415.XXXX The Commission further observed that GRIDCO has claimed an amount of Rs.295.00 Crore as pass through in its ARR for FY 2023-24, which has been paid/ to be paid by GRIDCO towards power purchase cost of M/s. KBUNL based on the one-time settlement reached between GRIDCO and M/s. KBUNL/ NTPC on 21.05.2022. Since, the Commission has not approved the PPA executed between GRIDCO and M/s. KBUNL for purchase of power by GRIDCO from M/s. KBUNL for State consumption, the Commission does not allow the said claim of GRIDCO as pass through in its ARR for FY 2023-24. GRIDCO may adjust the said amount from the revenue earned from trading of surplus power available to it.”*
- b) The Commission, vide its earlier Order dated 04.10.2021, disapproved the PPA executed between the parties and directed GRIDCO to take steps for de-allocation of State share from M/s. KBUNL in co-ordination with the State Government.
- c) The Petitioner has been successful in allocating the same in favour of the state of Tamil Nadu as per MoP, GOI notification dated 28.03.2022 effective from 30.03.2022. However, the share of KBUNL is now back in the Portfolio of GRIDCO as Tamil Nadu to surrender the same after two years of allocation of power i.e. upto 29.05.2024. Hence, the power is back to GRIDCO from 29.05.2023.
- d) The Petitioner has paid an amount of Rs 295 Cr. to KBUNL as per the MoM dated 21.05.2022. Accordingly, in view of the above onetime settlement reached between both the parties, it was requested to allow Rs.295 Cr. in the ARR and BSP Application vide Case No. 78 of 2022. This was directed to be adjusted from trading revenue.
- e) The trading revenue is also meant for recovery of other commitments including recovery of past losses, amortization of regulatory assets, etc. in addition to the above cost paid to KBUNL. GRIDCO submitted that during the FY 2022-23, the Petitioner has incurred loss after meeting the power cost, other uncontrollable costs and revenue from trading of power. Therefore, the Petitioner has no other source to meet the liabilities paid to KBUNL which has been disallowed in the ARR for the FY 2023-24.
- B. DISALLOWANCE AGAINST CLAIM TOWARDS FINANCE COSTS (Non consideration of Interest Cost Rs. 527.73Crore for FY 2023-24):**
- a) GRIDCO has claimed Rs.543.46 Crore towards finance obligations in the ARR & BSP Application for FY 2023-24. The Commission has partially considered the

- interest costs on loans availed by the Petitioner only up to FY 2015-16 and disapproved the finance costs on loans availed in the period, subsequent to FY 2015-16. There are numerable reasons for availing finance for meeting the revenue deficit, arisen over the years which may be considered as the most appropriate recourse for the Petitioner, being the “State Designated Entity” for ensuring energy security for the State. Petitioner is obligated to meet the deficit situations, which continued over long years because of the non-approval of the Cost Reflective Tariff during the past years in order to set the BSP at a lower rate, thus it resulted in non-recovery of even the uncontrollable power procurement costs paid for the generators. Petitioner stated that it has been compelled to resort to avail loans without having any other recourse because of non-availability of any reserves and surplus in any form or the other, and also due to absence of adequate revenue from trading, etc. in order to meet the revenue gap/deficit on year on year basis.
- b) GRIDCO is obligated towards various covenants towards the PPAs executed to avail the state share of power and accordingly, took the onus for the payment towards power procurement through borrowings, which were due to be serviced even in the event of non-recovery of the uncontrollable costs from the approved BSP to meet the contractual obligations.
 - c) There was severe financial crunch caused to the Petitioner due to the shortfall in payment of BSP by the erstwhile DISCOMs/Utilities as well as due to the Revenue gap allowed by the Commission, delay in approval of truing up and non-amortization of Regulatory asset/gap through tariff.
 - d) It is the fact that there was lower energy demand by the DISCOMs during FY 2019-20 and FY 2020-21 due to Covid pandemic resulting in lower recovery of Capacity Charges of costly stations due to their less drawal. The Petitioner sustained huge losses during these two years even to the tune of Rs.1352.14 crore and Rs. 1512.83 crore during FY 2019-20 and FY 2020-21 respectively, which necessitated for borrowings to meet the above deficit. Moreover, the Petitioner has been constrained to avail finance from the external financing over the years.
 - e) GRIDCO was forced to avail loans during FY 2015-16 and subsequent FYs, backed by State Govt. guarantee, in order to meet the revenue deficit as well as the repayment obligations of previous loans. Petitioner stated that there was finance costs of Rs. 501.80 crore during FY 2022-23 as detailed below:

Particulars	Amount (Rs. Crore)
Interest in borrowings	447.05
Interest on SOD (Short term Over Draft)	7.91
LC Commission, bank charges	2.05
Guarantee Commission	36.90
Fair value Adjustment as per IND AS	7.89
Total	501.80

- f) GRIDCO had borrowed working capital loan/SOD facilities in the past years to avail rebate from generators, to reduce its late payment surcharge obligation which could otherwise have attracted the Late Payment Surcharge (LPS) with an increasing burden on the State consumers.
- g) The Petitioner requests the Commission to consider the above-mentioned reasons for availing loans and also the benefits of the working capital financing for availing rebate and avoiding the LPSE obligations. Moreover, the loans were required to meet its contractual obligations to meet the repayment obligations and the servicing

of finance costs. Due to such reasons the Commission may allow the balance uncontrollable finance costs of Rs.527.73Crore as follows:

Sl. No.	Particulars	Amount (Rs. Crore)
1	Finance Costs Claimed by GRIDCO in the ARR & BSP Application for FY 2023-24	543.46
2	Finance Costs Allowed by the Hon'ble OERC	15.73
3	Balance Finance Costs on Loans from Banks / FIs to be considered & allowed by the Hon'ble OERC (As claimed in this Petition) (1-2)	527.73

C. Non consideration of A & G Cost of Rs. 7.28 Crore for FY 2023-24.

- a) GRIDCO had projected A&G cost of Rs.13.07 for the FY 2023-24. The Commission in the tariff order for FY 2023-24 has partially allowed the A & G cost to the tune of Rs.5.79 crore. The relevant extract of the order is submitted below:

“443. During Financial Year 2023-24, GRIDCO has proposed an amount of Rs. 13.07 crore under the head Administrative and General Expenses, inclusive of an amount of Rs.1.90 crore towards license fee payable to OERC, Professional charges of Rs. 7.07crore, communication expenses of Rs 0.05 crore, conveyance and travelling Rs.1.39 crore and Miscellaneous expenses of Rs. 2.54 crore. The Commission considers the approved cost of Rs.3.53 crore towards normal A&G last year and factoring in the expected annual inflation of (+) 5.0% for FY 2023-24, the amount works out to Rs.3.71 crore. Over and above the amount, the licence fee applicable for FY 2023-24 amounting to Rs.1.90 Crore and ERPC membership fees/ Fund of Rs.0.18 crore are also allowed.”

- b) The A&G Cost for the FY 2023-24 is approved by the Commission, by factoring the approved figure for the previous FY 2022-23 with the inflation rate of 5.0%. This approach has been consistently followed by the Commission while approving the A&G Cost for previous years also.
- c) GRIDCO has incurred A&G expenses to the tune of Rs.14.66 Crore during FY 2022-23 and the expenses have been duly audited by the Statutory Auditors. The details of the A&G expenses in the ARR application were also given.
- d) The Commission has discounted the projected expenses without considering the past year's actual audited figures. The petitioner has endeavoured to control the A&G expenses which is a very miniscule % of its annual turnover. The increase in the A&G expenses may be attributed to the fees to Advocates because of more no. of cases pending before various forums, Consultancy fees, Annual license Fees etc. Moreover, the legal fees have gone up considerably over the years due to more no. of cases being taken up before various legal forums on commercial disputes to protect the interest of the Petitioner. Since, such expenses are increasing at fast rate and therefore, the annual increase rate of 5 % is quite minimal to meet the expenses.

D. PAYMENT SECUTITY MECHANISM FOR BSP SURCHARGE

- a) The Commission in the ARR & BSP order for the FY 2023-24 has imposed BSP surcharge on TPWODL @30 paise/kWh over and above the BSP on the total energy purchased from GRIDCO excluding the energy purchased towards sale to the industries above 80% load factor under tripartite agreement with payment on quarterly basis attracting no surcharge or DPS.

- b) The Commission may now issue appropriate directives for payment of the surcharge and allow GRIDCO to invoke LC in case of any shortfall in remittance as GRIDCO is required to meet the contractual obligations towards power procurement costs in time, in the interest of the sector.
4. The Petitioner-GRIDCO, on the matter of review of the Truing-up order dated 23.03.2023 for FY 2021-22 passed in Case No.79/2022, has stated that the Commission may consider to allow Power Procurement Cost, Employee Cost, R&M Cost, and Depreciation as per audited accounts. Further, the Commission has ignored the audited figure while approving the A & G cost and Finance Cost in the truing up order for FY 2021-22. On each of the above items, the Petitioner has pleaded as follows:

A. Interest Cost of Rs. 665.91 Crore.

- a) GRIDCO has claimed Rs.543.46 Crore towards finance obligations in the ARR & BSP Application for FY 2023-24. The Commission allowed Rs. 15.73 crores in the ARR. The Commission has partially considered the interest costs on loans availed by the Petitioner only up to FY 2015-16 arbitrarily and disapproved the finance costs on loans availed in the period, subsequent to FY 2015-16.
- b) GRIDCO, being the “State Designated Entity” for ensuring energy security for the State, is obligated to meet the deficit situations, which continued over long years because of the non-approval of the Cost Reflective Tariff during the past years in order to set the BSP at a lower rate, thus resulted in non-recovery of even the uncontrollable power procurement costs paid for the generators.
- c) There was severe financial crunch caused to the Petitioner due to the shortfall in payment of BSP by the erstwhile DISCOMs/Utilities as well as due to the Revenue gap allowed by Hon’ble Commission, delay in approval of truing up and non-amortization of Regulatory asset/gap through tariff.
- d) GRIDCO had submitted for allowing the balance uncontrollable finance costs of Rs.527.73 Crore to be incurred during FY 2023-24 in order to enable to adhere to the contractual obligations to the lending agencies.
- e) The Commission may consider that the petitioner had availed the SOD facilities for timely payment to various generators for availing rebate within the rebate period on payment of power procurement obligations during the FY 2021-22 and incurred expenses to the tune of Rs.5.86 crore which is uncontrollable in nature.

Further, the GRIDCO has incurred LC Commission due to issuance of LC in favour of various Central and State Generators as per the guidelines issued by MoP Govt. of India vide notification dated 28.06.2019. In addition to above, the Petitioner has also paid Rs. 33.71 crore towards guarantee Commission fees to the State Govt. for availing term loans from banks. It may be appreciated that the State Govt. Guarantee has been quite favorable to GRIDCO in order to avail finance from banks at concessional rate of interest which has resulted in interest savings for the benefit of State consumers at large.

- f) There has been severe financial crunch which has caused revenue deficit to the Petitioner due to shortfall in payment of BSP by the DISCOMs/Utilities during the pre-vesting period and also due to non-approval of cost reflective tariff over the years. The Commission has not considered the contractual obligations of GRIDCO towards Banks and other Financial Institutions and on the other hand has partially allowed the Finance Costs in different years in the ARR and BSP orders for GRIDCO.

- g) Due to the partial approval towards the uncontrollable Finance Costs and moreover due to non-cost reflective tariff over the years as well as non-payment of BSP dues by the erstwhile Distribution Utilities in time, GRIDCO was forced to avail loans since long backed by State Govt. guarantee. Thus, the disallowances of finance costs on loans availed during FY 2015-16 and in subsequent FYs, are quite inappropriate, as the Petitioner was constrained to take loans in order to meet the revenue deficit as well as the repayment obligations of previous loans because of any appropriate measures.
- h) GRIDCO has borrowed working capital loan in the past years to avail rebate from generators, to reduce its late payment surcharge obligation which could otherwise have attracted the Late Payment Surcharge (LPS) resulted in higher cost of supply to the end consumers. Accordingly benefits of the working capital financing may be considered and the uncontrollable finance costs while approving the interest on loans availed by the petitioner may be allowed.
- i) Historically there has been several reasons like non cost reflective tariffs, deficiency of sufficient fund in the erstwhile DISCOMs' escrow account for payment of BSP dues of the Petitioner, huge receivables from DISCOMs, mandate to supply power to DISCOMs as a bulk supplier due to which the petitioner was on the verge of falling into debt trap where its revenues were not sufficient to recover its cost as well as the repayment obligations.
- j) The Commission has not allowed in full, the ARR approved for the respective FY through BSP recovery, leaving a huge gap, which was to be recovered through trading revenue from sale of surplus power. It may be considered that such proposition of trading revenue has rarely occurred due to subdued trading market in the past couple of years, and moreover the same was considered in the total revenue of respective year to recover the power procurement and other costs. A Summary of the disallowances is reflected in the following table:

ARR Disallowance by OERC

(Figure in Rs. Cr.)

Financial Year	ARR proposed	ARR Approved	Disallowances	Gap Allowed	Costs as per Accounts
2015-16	9319.80	7049.94	2269.86	(+) 0.36	6968.05
2016-17	9235.09	6660.52	2574.57	(+)42.42	7133.50
2017-18	10293.13	6962.97	3330.16	(+) 6.18	8048.72
2018-19	9382.98	7374.66	2008.32	(-) 184.32	8256.04
2019-20	9134.19	7702.90	1431.29	(-) 172.94	8935.59
2020-21	11243.71	8274.38	2969.33	(-) 250.60	10117.49
2021-22	10745.43	8245.47	2499.96	(+)12.10	10661.80
2022-23	10945.36	9235.11	1710.25	(-) 21.16	12,884.03

- k) Due to above mentioned uncontrollable factors, the Petitioner was constrained to borrow funds from external sources and approval of the balance finance cost of Rs. 665.91 Crore towards finance costs for the FY 2021-22 will be in the greater interest of justice.

B. Non consideration of A & G Cost Rs. 25.99 Crore for FY 2021-22

- a) The Commission has approved the A&G expenses by factoring the previous year's approved figure ignoring the audited figures towards Professional Charges, Communication Expenses, conveyance travelling, license Fee Charges & Miscellaneous expenses filed by the Petitioner
 - b) The Commission has not considered the justifications put forth by GRIDCO for the higher cost, while approving the A&G expenses as the increase in costs is on account of increase in Professional fee relating to legal cases pending before various forums and other expenses incurred during the year. Limiting the A & G expenses in the tariff Order and subsequently considering the same during truing up exercise seems to be erroneous and does not have any absolute bearing to the expenses to limit the quantum as the expenses are uncontrollable and required for continuing its operation withholding the business interest of the Petitioner.
 - c) The Commission had changed the methodology during FY 2015-16 for approval of the A& G expenses on the basis of audited accounts of previous two year preceding to the Tariff year to the new method based on the approved figure for the FY2014-15 as the base year. The revised methodology so formulated by the Commission has not considered the actual cost incurred by the Petitioner vis-a-vis the projection made in the ARR application
 - d) GRIDCO has incurred A& G cost for meeting various incidental expenses during the normal course of business including legal expenses, licensee fee, professional Fee, Audit Fee, other compliance costs which would be a miniscule % of the turnover. Thus, any irrational deduction of the uncontrollable expenses would never bring sustainability for the Petitioner as the legal expenses have been incurred for securing the interest of the Petitioner against the unlawful actions by the other stakeholders in the form of claims requiring lawful disposal and also to secure its own interest while serving the state consumers at large. Moreover, as the Petitioner has to face various commercial disputes raised by the stakeholders before various forums, legal expenses would be inevitable and needs to be fully allowed without any disallowances.
5. We have heard the Review Petitioner on the issue of admissibility of the present Review Petition condoning the delay as sought for.
6. Now, we first examine whether the present review petition can be admitted in the light of the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908. Order 47 Rule 1 of the Code of Civil Procedure, 1908 provides as follows:
- “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, and who, from the discovery 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 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."

7. In *Parsion Devi & Others Vrs. Sumitri Devi & Other* [(1997) 8 SCC 715], the Hon'ble Supreme Court observed as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has limited purpose and cannot be allowed to be "an appeal in disguise."

8. Keeping in view the limited scope of interference in Review jurisdiction as per the authoritative pronouncements indicated above, we now examine the submissions of the Petitioner. The main contentions raised by the Review Petitioner which may be relevant to the present move are as under:

- a) As regards non-consideration of pass-through cost of NTPC station of KBUNL for FY 2023-24, GRIDCO stated that the Commission in the ARR for the FY 2023-24 has not allowed the claim of GRIDCO amounting to Rs.295.00 Crore towards past power purchase cost of M/s. KBUNL which was finalized based on the one-time settlement, as pass through in its ARR for FY 2023-24 and directed for adjustment of said amount revenue earned by trading surplus power available. The reason for non-consideration of the same was that the Commission has not approved the PPA executed between GRIDCO and M/s. KBUNL for purchase of power by GRIDCO from M/s. KBUNL for State consumption.

The Commission vide its Order dated 04.10.2021 had disapproved the PPA executed between GRIDCO and NTPC in respect of the thermal power station of M/s. KBUNL and had directed to take steps for de-allocation of State share from M/s. KBUNL in co-ordination with the State Government. Prior to issue of the impugned order, GRIDCO has submitted that State share from M/s. KBUNL was allocated in favour of the State of Tamil Nadu as per MoP, GOI notification dated 28.03.2022 (effective from 30.03.2022) for a period of two years. Now the share of KBUNL has come back to the portfolio of GRIDCO as Tamil Nadu surrendered the same after two years of allocation of power. GRIDCO has submitted that KBUNL has been paid Rs.295 crore towards power purchase dues, which was decided as one time settlement of past dues as per the MoM dated 21.05.2022 (meeting held between GRIDCO, KBUNL/NTPC and Government of Odisha). Accordingly, GRIDCO had requested the Commission to allow this amount in the ARR of GRIDCO for the FY 2023-24. The Commission had disapproved the same in the impugned order as the PPA executed between GRIDCO and M/s. KBUNL was not allowed by the Commission for purchase of such high cost power for State consumption on the request of GRIDCO and GRIDCO was directed to pay such dues from its trading revenue. GRIDCO has further submitted that last year it has incurred loss after meeting the power purchase cost and other uncontrollable cost and the trading revenue is being utilized for other commitments including amortization of regulatory assets etc. Therefore, the petitioner has no other sources to meet the liabilities towards payment of power purchase cost of KBUNL.

- b) As regards dis-allowance of finance costs, GRIDCO states that out of the proposed amount of Rs.543.46 Crore towards interest cost for FY 2023-24, the Commission has allowed only Rs.15.73 crores in the ARR considering the loans availed by the Petitioner only up to FY 2015-16 and disapproved the finance costs on loans availed after FY 2015-16. As per GRIDCO, being the "State Designated Entity" for

ensuring energy security for the State, it is obligated to meet the deficit situations, which continued over long years because of the non-approval of the Cost Reflective Tariff during the past years, thus resulted in non-recovery of even the uncontrollable power procurement costs paid to the generators. Further, there was severe financial crunch caused to the Petitioner due to the shortfall in payment of BSP by the erstwhile DISCOMs/Utilities as well as due to the Revenue gap allowed by the Commission, delay in approval of truing up and non- amortization of Regulatory asset/gap through tariff. Therefore, GRIDCO has prayed for allowing the balance interest uncontrollable finance cost of Rs.527.73 Crore for the FY 2023-24 in order to enable it to adhere to the contractual obligations to the lending agencies.

- c) As regards non-consideration of A & G Cost of Rs.7.28 Crore for FY 2023-24 GRIDCO has submitted that A&G Cost for the FY 2023-24 out of the proposed A&G cost of Rs.13.07 Crore, the Commission has allowed only Rs.7.38 crore, by factoring the approved figure for the previous FY 2022-23 with the inflation rate of 5.0%. The above approach has been consistently followed by the Commission while approving the A&G Cost. However, GRIDCO has incurred A&G expenses to the tune of Rs.14.66 Crore during FY 2022-23 and the expenses have been duly audited by the Statutory Auditors. GRIDCO has prayed to allow the balance uncontrollable A&G expenses of Rs.7.28 Crore for the FY 2023-24.
- d) As regards Payment security mechanism for BSP surcharge, the Petitioner stated that the Commission in the ARR & BSP order for the FY 2023-24 has imposed BSP surcharge on TPWODL @30paise/kWh over and above the BSP on the total energy purchased from GRIDCO excluding the energy purchased towards sale to the industries above 80% load factor under tripartite agreement with payment on quarterly basis attracting no surcharge or DPS.
According to the Petitioner, the Commission may issue appropriate directives to the DISCOMs for payment of the aforesaid surcharge and allow GRIDCO to invoke LC in case of any shortfall in remittance of the same, as GRIDCO is required to meet the contractual obligations towards power procurement costs in time.
- e) Regarding Review of the Truing up order dated 23.03.2023 for FY 2021-22 passed in Case No.79/2022, the Petitioner has prayed to allow the followings:

- i. As regards the disallowed Interest Cost of Rs. 665.91 Crore in the truing up order for FY 2021-22, GRIDCO states that it was constrained to take loans in order to meet the revenue deficit as well as the repayment obligations of previous loans. The reasons being the uncontrollable Finance Costs, non-cost reflective tariff over the years and non-payment of BSP dues by the erstwhile Distribution Utilities in time, GRIDCO was forced to avail loans in past backed by State Government guarantee to meet revenue deficit and repayment obligation of previous loans. Thus, the disallowances of finance costs of Rs.665.91 Crore by the Commission on loans availed after FY 2015-16 is not justified.

Moreover the Commission has not allowed in full, the ARR approved for the respective FY through BSP recovery, leaving a huge gap, which was to be recovered through trading revenue from sale of surplus power. It may be considered that such proposition of trading revenue has rarely occurred due to subdued trading market in the past couple of years, and moreover the same was considered in the total revenue of respective year to recover the power procurement and other costs. Due to uncontrollable factors, the Petitioner was constrained to borrow funds from external sources

- ii. As regards non consideration of A & G Cost Rs. 25.99 Crore for FY 2021-22, GRIDCO has stated that the Commission has approved the A&G expenses by

factoring the previous year's approved figure ignoring the audited figures towards Professional Charges, Communication Expenses, conveyance & travelling expenses, license Fee Charges & Miscellaneous expenses filed by the Petitioner.

9. We consider and have perused the ARR & BSP order dated 23.03.2023 passed in Case No.78 of 2022 & the truing-up order dated 23.03.2023 passed in Case No.79/2022. The Commission, vide the said orders with regard to above issues raised by the Petitioner in its review petition, observe as follows:-

GRIDCO has raised primarily three issues for review in respect of the impugned ARR & BSP order dated 23.03.2023 for FY 2023-24 relating to (a) non- approval of the onetime settlement cost of KBUNL amounting to Rs. 295 crore, (b) non-approval of proposed interest cost of loans availed by GRIDCO and (c) non-approval of the proposed A&G cost. In respect of the truing up order dated 23.03.2023 for FY 2021-22, the Petitioner has raised the non-approval of the proposed interest cost and A&G Cost. The said truing up order of FY 2021-22 was also pronounced along with the above ARR and BSP order for the FY 2023-24. We found that in the above impugned order, the Commission has given ample reasons and justifications for all the approvals and disapprovals of the items raised by GRIDCO in the instant review petition.

We further observe that the submissions made by GRIDCO in the present review petition raising all the aforesaid issues, except the issue of payment security mechanism for BSP Surcharge, are merely the reiteration of the proposals given in the original petitions. We find no error apparent on the face of the record or new facts, omissions or non-consideration of any material placed before the commission during the hearing of the original petitions. The Review Petitioner is merely trying to re-agitate the very same issues which has already been adjudicated by this Commission in the impugned orders which are reasoned orders. Thus, the present review petition appears to be an appeal in disguise and hence, is not permissible under the purview of review jurisdiction.

10. As regard to the issue of payment security mechanism for BSP Surcharge, we observe that GRIDCO requested the Commission to issue appropriate directives to DISCOMs for payment of such surcharge. This matter is not an error apparent on the face of the record and not to be considered as a mistake in the impugned order, hence not under the purview of review jurisdiction. However, it is to mention here that the issue was raised by GRIDCO in the performance review meeting held on 17.07.2023 and the Commission, in this matter, had advised GRIDCO to resolve this issue amicably with the DISCOMs along with such other small bilateral issues.
11. For the reasons mentioned above, we do not find any ground for admission of the present Review Petition under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Hence, the present Review Petition is dismissed.

However, the review petitioner is at liberty to raise the genuine issues, if any, with proper justification and reasons in its ARR and BSP application for the FY 2024-25.

12. The Review Petition is disposed of in terms of the above.

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

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson

