

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

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

Case No. 38/2024

M/s. GRIDCO Ltd.

..... Petitioner

Vrs.

TPCODL & Others

..... Respondents

In the matter of: Application under Section 94 (1) (f) & (g) of the Electricity Act, 2003 read with Section 70 and 76 (1) of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47 Rule-1 along with Section 114 of the Code of Civil Procedure, 1908 seeking review of order dated 13.02.2024 in respect of ARR and Bulk Supply Price (BSP) for FY 2024-25 passed in Case no.115 of 2023 and Truing Up of expenses for FY 2022-23 in Case no.128 of 2023.

For Petitioner: Shri B.K. Das, CGM (PP)/c, Shri Lalit Mishra, DGM (Finance) R&T GRIDCO Ltd.

ORDER

Date of Hearing: 20.08.2024

Date of Order: 19.09.2024

The Petitioner GRIDCO has filed a present petition under Section 94 (1) (f) & (g) of the Electricity Act, 2003 read with Section 70 and 76 (1) of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47 Rule-1 along with Section 114 of the Code of Civil Procedure, 1908 seeking review of order dated 13.02.2024 in respect of ARR and Bulk Supply Price (BSP) for FY 2024-25 passed in Case no.115 of 2023 and Truing Up of expenses for FY 2022-23 in Case no.128 of 2023.

2. The Petitioner has prayed the Commission to:

- a) Admit and allow the present Review Petition for hearing matter on merits;
- b) Review the ARR & BSP order for FY 2024-25 and the Truing up order for FY 2022-23 issued on 13.02.2024 and rectify the omissions & grant relief as prayed in the petition;
- c) Consider the additional submissions in the matter of review of the ARR & BSP order for FY 2023-24 and Truing up order for FY 2021-22 as per the directives of the Commission in Case No.68/2023 and Case No.78 of 2022 in the present review petition filed for review of ARR & BSP order for FY 2024-25;
- d) Pass suitable order or direction as the Commission may deemed necessary in the interest of justice.

3. The Review Petitioner in this petition has submitted that there are errors apparent on the face of record in the Commission's order of ARR and Bulk Supply Price for FY 2024-25 passed in Case No. 115 of 2023 and Truing Up of expenses for FY 2022-23 in Case no.128 of 2023 which are required to be reviewed and modified and they are concisely stated as hereunder:

A. Disallowance against claim towards Finance Costs for FY 2024-25

- a) The Petitioner had claimed Rs.521.55 Crore towards interest cost obligations in its ARR & BSP Application for the FY 2024-25. The Commission has disallowed the interest obligations on loans availed by the Petitioner after FY 2015-16. As availing loan was quite inevitable and the most appropriate recourse for the Petitioner to pay its obligated dues to the generators and ensure continuous power supply to the State, the Petitioner is justified in availing loan finance for meeting the revenue deficit, created over the years to maintain/sustain bulk power procurement and bulk supply to the DISCOMs. Further, for supply of bulk power to the DISCOMs, the Petitioner had faced continuous cash deficit situation in absence of the cost reflective BSP during the past years
- b) The Financial charges including interest on SOD are quite inevitable and such action has to be taken to manage the short-term deficit arisen due to the time gap between the payment to generators within due date and the receipt of BSP dues from the DISCOMs. The finance charges are incurred on account of the LCs issued in favour of various generators as per the enabling Regulation, Ministry of Power notifications in force and as per the terms of the subsisting PPAs.
- c) The Petitioner had borrowed working capital loan/SOD facilities in the past years to avail rebate from generators and to reduce its late payment surcharge obligation which could otherwise have attracted the Delayed /Late Payment Surcharge (DPS/LPS) with further financial burden on the State consumers.
- d) The Hon'ble Supreme Court of India, vide order dated 05.10.2023 in Civil Appeal No.414 of 2007, have observed as under:

"29. However, in subsequent orders for subsequent years, the Appellate Tribunal held that the interest payable on the loan, being the cost, may be allowed to pass through. We have confirmed the view while dealing with the other impugned orders. The interest cannot be equated with the principal loan amount, as the interest will amount to the cost incurred by GRIDCO. However, the interest burden can be passed on to DISCOMS in proportion of their outstanding. Therefore, while passing a fresh order in terms of the final order, the Commission will have to allow the interest on the loan to pass through, as observed above, but the principal loan amount cannot be allowed to pass through.

x x x x

34. We may note here that while passing an order pursuant to the order of remand, all the contentions based on the findings of the Appellate Tribunal and the Commission for subsequent years, as approved by this Court, must be taken into consideration by the Commission. If, in subsequent orders as approved by this Court, different criteria or different principle was applied, submissions based on the same can always be canvassed in the proceedings pursuant to the order of remand.”

According to the above directives of the Hon’ble Supreme Court of India, the Commission may reconsider the finance costs incurred by the Petitioner-GRIDCO in the ARR for the FY 2024-25 and approve the projected finance costs to the tune of Rs.521.55 crore for the FY 2024-25.

B. Non-consideration of Finance Costs in the Truing Up Order dated 13.02.2024 for FY 2022-23 passed in Case no.128/2023

- a) In its Truing up Application for FY 2022-23, the Petitioner-GRIDCO had claimed Rs.493.91 Crore towards finance cost incurred. But the Commission has only considered the interest costs to the tune of Rs.39.53 crore on loans availed by the Petitioner up to FY 2014-15 and dis-approved the finance costs on loans availed during the subsequent period, i.e. from FY 2015-16 onwards. In absence of the Cost Reflective Tariff for a quite long period, the Petitioner was compelled to avail loans without having any other recourse i.e. non-availability of any reserves and surplus in any form or the other. In order to meet the revenue deficit due to non-recovery of the entire BSP dues in time the finance costs for the FY 2022-23 amounts to Rs.501.80 Cr.
- b) The Commission has approved revenue gap in the ARR orders in the past years and the truing up exercise were deferred over the years. There is no alternate mechanism for recovery of the truing up / regulatory gap since the inception of the Petitioner’s business. Thus, such revenue gaps accumulating over the years have resulted in revenue/cash deficits due to non-cost reflective tariff and all the above issues have compelled the Petitioner to resort to borrowings from various Banks over the years.
- c) The Hon’ble Supreme Court of India, vide order dated 05.10.2023 in Civil Appeal No. 414 of 2007, have categorically directed that the interest burden can be passed on to DISCOMs in proportion of their outstandings and therefore, while passing a fresh order in terms of the final order, the Commission will have to allow the interest on the loan to pass through, as observed above, but the principal loan amount cannot be allowed to pass through. As per the above directives of the Hon’ble Apex Court, the Commission may approve the uncontrollable finance cost as per audited accounts of

the Petitioner and allow the balance sum of Rs.454.38 Crore towards finance cost for the FY 2022-23 in order to enable GRIDCO to meet its obligations.

C. Non-consideration of Administrative and General (A & G) expenses of Rs.8.58 Cr. in Truing up order for FY 2022-23.

- a) In the Truing Up order for FY 2022-23 the Commission has disallowed A & G expenses of Rs.8.58 crore with the following observations:

“476. As regards the other expenses such as employee cost (Rs.16.47 Cr.), R&M (Rs.0.49 Cr.) and depreciation (Rs.0.25 Cr.), the Commission allows the expenses as reflected in the audited accounts for the FY 2022-23 submitted by GRIDCO with the truing up petition. The Commission considers A&G expenses as a controllable cost and allows Rs.5.59 Cr. as approved in the ARR for the FY 2022-23 year.”

- b) While approving the ARR & BSP for FY 2024-25, the Commission had considered the average of A&G expenses for the past five years from FY 2017-18 to FY 2022-23, excluding FY 2021-22 and factored the base year expense of Rs.8.68 Cr. for FY 2023-24 with inflation @5% and determined the A&G expenses to the tune of Rs.11.19 Cr. including license fees and ERPC membership fees/fund. The Commission is requested to revisit /re-consider the A&G expenses incurred by the Petitioner during FY 2022-23 in line with the approval accorded for the FY 2024-25 and approve the balance cost of Rs.8.58 Cr. as per audited accounts.

4. In its additional submission the Petitioner-GRIDCO has sought review of the order dated 23.03.2023 pertaining to ARR and BSP for FY 2023-24 in Case No.78 of 2022 & the Truing Up of expenses for the FY 2021-22 in Case No.79 of 2022 and has submitted that

A. Finance Cost for FY 2023-24 (Case No.78 of 2022)

- a) GRIDCO has claimed an amount of Rs.543.46 Cr. towards finance cost obligations in the ARR & BSP Application for FY 2023-24. But the Commission, vide its order dated 23.03.2023 passed in Case No.78 of 2022, has partially considered the interest costs to the tune of Rs.15.73 Cr. on loans availed by GRIDCO only up to FY 2014-15 and dis-approved the balance finance costs of Rs.527.73 Cr. on loans availed during the period, subsequent to FY 2015-16, whereas GRIDCO has incurred finance costs to the tune of Rs.612.55 Cr. during FY 2023-24.
- b) GRIDCO had availed loans over the years due to non-cost reflective Tariff, gap allowed in the ARR, deferral of truing up approval and moreover the non-funding of the deficit through tariff. These factors were continuing over the years and GRIDCO was constrained to source outside finance from Banks with the State Govt. guarantee.

- c) The Hon'ble Supreme Court have remanded the Civil Appeal No. 414 of 2027 to the Commission and directed for allowing the Finance Costs in proportion to the outstanding of DISCOMs and the Commission is yet to issue appropriate order adhering to the directives of the Hon'ble Apex Court. GRIDCO request the Commission to consider the balance finance costs of Rs.570.16 Crore (i.e. Rs. 585.89 Cr.- Rs.15.73 Cr.).

B. Administration and General Expenses for FY 2023-24 (Case No.78 of 2022)

- a) The Petitioner has claimed an amount of Rs.13.07 Cr. towards A&G expenses for FY 2023-24. A part of the amount towards the above expenses i.e. Rs.5.79 Cr. was considered and balance cost of Rs.7.28 Cr. was disapproved by the Commission.
- b) The Commission has changed the methodology for determination of base year expenses and have revised the A&G expenses for the FY 2024-25, considering the average of preceding five years audited figures from FY 2017-18 to FY 2022-23. The A&G expenses for the FY 2024-25 has been revised to the tune of Rs.11.19 Cr. against the approval of Rs.5.79 Cr. for the preceding FY 2023-24. The Petitioner has incurred Rs.120.32 Cr. (incl. Rs.110.32 Cr. towards diminution in the value of Investments of Equity during FY 2023-24 as per the accounting requirement) as per audited accounts.
- c) The Commission had not considered the revision of base figure of A&G expenses since FY 2012-13 which was continuing since then considering the base year expense of Rs.3.36 Cr. There has been significant increase in the business operations, requiring higher compliance and procedural costs, due to increased turnover and increased no. of legal cases before various forums such as OERC, CERC, Hon'ble APTEL, Hon'ble High Court and Hon'ble Supreme Court of India.
- d) In view of the above, the Petitioner has requested the Commission to consider the same principle for the FY 2023-24 as adopted for FY 2024-25 and approve the balance cost towards excess of actual A&G expenses of Rs.10.10 Cr. as per audited accounts (excl. the diminution in the value of Investments in Equity) over the approved figure of Rs.5.79 Cr. for the FY 2023-24.

C. Truing up for FY 2021-22 (Case No.79 of 2022)

(1) Finance Cost

- a) The Commission, vide its order dated 23.03.2023 in Case No.79 of 2022, has disposed of the Truing Up petition for FY 2021-22 along with the ARR & BSP order for FY 2023-24. The Commission, while disposing of the above petition, had directed to raise the genuine issues, if any, which are disallowed, with proper

justification and reasons for consideration in the ARR and BSP application for the FY 2024-25.

- b) The disallowances and non-inclusion of the uncontrollable costs in the Truing up order for the FY 2021-22 have impacted the Petitioner considerably as the deficit occurred during the FY 2021-22 could not be removed and compensated in the future years and the same attracts financial burden to the Petitioner. The Petitioner has no reserves and surplus to meet such deficits and thus it leads to further deficit along with need of financing with additional cost in the future years.
- c) GRIDCO had incurred finance costs to the tune of Rs.741.11 Cr. during FY 2021-22 as per audited accounts and the same was claimed in the Truing up for FY 2021-22. The Commission had partially allowed the interest costs to the tune of Rs.75.20 Cr. as approved by the Commission in the ARR for FY 2021-22.
- d) The State Govt. has declined to issue further guarantee for the fresh loans due to reduced regulatory asset on redetermination of the approved regulatory asset/gap up to FY 2014-15 by the Commission vide order dated 27.10.2021
- e) The Petitioner accordingly prays before the Commission to consider the balance finance costs of Rs.665.91 Cr. to reduce the continuing gap in revenue requirement for maintaining energy security in the State.

(2) Administration and General Expenses for FY 2021-22 (Case No.79 of 2022):

- a) GRIDCO had claimed an amount of Rs.31.41 Cr. towards A&G expenses for FY 2021-22. The Commission however considered a part of the above expenses and approved an amount of Rs.5.42 Cr. (being the amount approved in the ARR order). Thus, the above disallowance resulted in non-recovery of uncontrollable cost of Rs.25.99 Cr.
- b) Out of non-recovery of uncontrollable cost of Rs.25.99 Cr., an amount of Rs.23.26 Cr. was paid to PGCIL towards arrear DPS against the period from January, 2012 to March, 2014 and was accounted for in the Accounts for the FY 2021-22 under other expenses. GRIDCO has challenged the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as well as the subsequent Amendments of the said Regulations due to anomalies and moreover due to significant increase in POC charges attributable to the State of Odisha. The matter was initially registered before the Hon'ble Orissa High Court and subsequently transferred to the Hon'ble High Court of Delhi in W.P (C) No. 4867 of 2012, which is presently sub-judice before the Hon'ble High Court of Delhi along with other petitions filed by State Utilities of Bihar, Maharashtra and Jharkhand. However, on

an application filed by PGCIL, the Hon'ble High Court of Delhi vide order dated 30.07.2013, had directed as under:-

"15. Dealing next with the applications of the Power Grid Corporation, the claim made is for appropriate directions to the petitioners to pay the charges which they have to bear in terms of the impugned directions. This Court is of the opinion that with the dismissal of the petitioner's application, there really should be no need for such directions. Nevertheless, to put the matter beyond the pale of controversy; the writ petitioners are hereby directed to abide by the conditions in the impugned regulations, with regard to payments to the Power Grid Corporation. In case any of the Petitioners makes a request for payment of arrears of charges, the respondents should consider the same reasonably, and in the light of the applicable rules and regulations, including those pertaining to paying such amounts through installments, subject to prescribed conditions in that regard."

- c) As per the above directives, GRIDCO has made payment of the arrear outstanding from Jan'2012 to March'2014 to the tune of Rs.152.71 Cr. during FY 2013-14. The above amount was considered by the Commission as pass through and subsequently trued up in the past period. However, the Delayed Payment Surcharge was not paid by GRIDCO due to lack of clarity in this regard in the above order of the Hon'ble High Court of Delhi, as because there was no further financial implication due to deferment of such arrear towards DPS. The Hon'ble High Court of Delhi, vide their order dated 22.08.2019, had observed the following;

"Direction for payment of the transmission charges and delayed payment surcharge has already been mentioned in our orders dated 30.07.2013 and 02.11.2007 passed in these writ petitions. We are informed by the learned Senior Counsel appearing for Power Grid Corporation that other petitioners are paying these transmission charges and delayed payment surcharge, if any, as the case may be, to the Power Grid Corporation except Gridco Ltd."

- d) After lot of deliberations and obtaining legal opinion on above order, an amount of Rs.23.26 crores was paid towards DPS for the period from January, 2012 till March 2014 in FY 2021-22 but inadvertently this DPS payment by the petitioner GRIDCO was booked under Administration & General expenses in the annual accounts for the FY 2021-22 instead of under power purchase cost. However, the claim was submitted in the True up application for FY 2021-22 by GRIDCO. The Petitioner accordingly requests before the Commission to consider the balance A&G cost to the tune of Rs.25.99 Cr. including DPS payment of Rs.23.26 Cr. paid to PGCIL to meet the contractual obligations.

5. The response of the DISCOMs (TPWODL, TPNODL & TPCODL) on the instant petition of GRIDCO are summarized hereunder

a) The instant application filed by GRIDCO is not maintainable in the eyes of the law. As per the provisions under Order 47 Rule 1 of the Civil Procedure Code, 1908, review of an order is possible if it satisfies the following conditions;

- Discovery of new and important matters or evidence which after exercise of due diligence was not in the knowledge of the Applicant and could not be produced by him at the time when the decree or the order was passed.
- Some mistakes or error apparent on the face of the record and.
- For any other sufficient reason.

The reasons cited in the application do not satisfy the above-mentioned pre-conditions.

b) Regarding disallowance against claim towards interest & finance costs, the Commission at Para 453 of the common Order dated 13.02.2024 passed in Case No. 115 & 128 of 2023 has held as under:

“453. The Commission observed that GRIDCO, instead of collecting its dues from the erstwhile DISCOMs, availed loan from the commercial institutions and the Commission had taken a view not to allow interest on loan availed by GRIDCO after FY 2015-16. The Commission also continues to follow the same principle of not allowing any interest on the loans availed by GRIDCO after FY 2015-16, for arriving at the interest cost to be passed on in the ARR for FY 2024-25.”

c) In compliance to the Vesting Orders, the past arrears from the live as well as permanently disconnected consumers is being recovered on a continuous basis, as per the commitment, and the amount recovered has been remitted to the GRIDCO including the collection through One Time Settlement (OTS).

d) Against the target past arrear recovery commitment of Rs. 300 Cr. till FY 25-26, TPWODL has collected a total arrear of Rs. 400 Cr. till April 2024 and has remitted to GRIDCO after deducting incentive. Similarly, against the committed past arrear of amount Rs 400 Cr. till FY 2025-26, TPNODL has collected a total past arrear of Rs 626.37 Cr till May 2024 and remitted to GRIDCO after deducting incentive. TPWODL is also paying BSP surcharge to the GRIDCO as per the directions of the Commission. Accordingly, for FY 23-24, the TPWODL has given BSP surcharge to the tune of Rs. 330 Cr. to GRIDCO. Furthermore, in the recent RST Order, the BSP surcharge has been increased to Rs. 0.35/ unit to be paid quarterly.

e) In addition to the remittance of past arrears, BSP & BSP surcharge, GRIDCO is insulated with the surplus margin of 75 paise per unit (earlier 65 paise per unit) over & above the normal BSP on account of sale of power under TPA. The surplus amount of Rs. 377 Cr. was generated by the GRIDCO for FY 23-24 over & above the approved average power purchase cost (Rs. 3.10/ unit). Considering the revenue collected by

GRIDCO on account of past arrear collection including OTS, BSP, BSP surcharge & surplus margin after meeting TPA power, GRIDCO's liquidity may increase and be adequate to meet the disallowance of interest & finance costs.

- f) Regarding the non-consideration of finance cost and other claims in truing up Order, the Commission in its earlier review Orders had held that all the issues raised by the Applicant are merely the reiteration of the proposals given in the original petitions and hence not approved. The Commission at Para 475 of Tariff Order dated 13.02.2024 has held as under:

“475. The Commission has analyzed the claim of interest on loan in the truing up petitions of GRIDCO for the FY 2022-23. The Commission is not allowing the interest on the loan from State Government or any other source after the tariff orders from the FY 2015-16. The Commission also observed that passing on Tariff burden to the consumers of the State on account of the interest on the loan availed by GRIDCO due to default in collection of BSP and securitized dues of DISCOMs is unjustified. The Commission further observed that regarding the default of BSP dues by DISCOMs, GRIDCO and Govt. of Odisha could have played a proactive role by providing adequate administrative support and other required measures.”

The Commission may adopt a similar principle as taken in the truing up Orders dated 22.10.2021, 13.09.2022 & 07.08.2023.

- g) As regards A&G expenses, the Commission may adopt the similar principle as taken up in the truing up Orders dated 22.10.2021, 13.09.2022 & 07.08.2023. However, the Commission may conduct necessary prudence checks and make appropriate decisions in the matter.
- h) According to TPNODL, as per the Vesting Order, Treatment of Past Period True-up is as under;

“(a) Treatment of true-up of past period i.e. for period prior to taking over or Effective Date of TPNODL, if any, shall be done by the Commission in a manner that will not cause any financial gain or losses to TPNODL.”

Accordingly, the arrear BSP dues of GRIDCO prior to take over has been cleared by TPNODL from transfer of equity and also the securitized dues, NTPC Bond dues has also been remitted to GRIDCO. The outstanding liabilities due to GRIDCO prior to taken over has been cleared except DPS and GRIDCO liquidity position has improved.

- i) The pass through of interest and finance cost of GRIDCO arising due to loan availed during the period prior to take over not to be considered in the ARR & truing up of such expenses, otherwise it may lead to increase in BSP.

- j) The inefficiency of GRIDCO cannot be passed on to the consumers. Further, the past liabilities which have been denied by the Commission in previous orders cannot now be passed on to the DISCOMs which have been carved out of the Vesting orders.
 - k) According to TPCODL, the four DISCOMs have collected significant amount of past arrears amounting to Rs.1190.02 Cr. till Sept, 2023 against commitment of Rs.1000 Cr. and passed on the same to GRIDCO after deduction of incentive which it would be using for clearing its past dues.
 - l) The interest costs claimed by GRIDCO should not be considered, otherwise it will lead to passing on the inefficiencies and liabilities of the past to new DISCOMs.
6. We have heard the Review Petitioner and the Respondents at length in hybrid mode and also considered their arguments and written submissions.
 7. After a careful examination of all the contentions raised and the submissions made by the rival parties, we decide as below.
 8. Section 94 of the Electricity Act, 2003 empowers the Commission to review its decision, directions and orders. The exercise of the said power shall be the same as vested in a Civil Court under the Code of Civil Procedure, 1908. Accordingly, this Commission is also guided by the principles governing review as available in the Civil Procedure Code. Review under the Civil Procedure Code is permissible under Order XLVII Rule 1 on the following grounds:
 - i. *Discovery of new and important matter or evidence which after exercise of due diligence, was not within the knowledge of the Petitioner or could not be produced by him at the time when the decree or order was passed.*
 - ii. *Some mistake or error apparent on the face of the face of the record and*
 - iii. *For any other sufficient reason.*
 9. In *Sow Chandra Kanta & Another Vrs. Sheik Habib* (1975 SCC (4) 457), the Hon'ble Supreme Court held that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

In *P.N Eswara Iyer Vrs. The Registrar*, Supreme Court of India (1980 AIR 808) a constitution Bench of the Hon'ble Supreme Court reaffirmed the ratio in *Chandra Kanta* (1 Supra).

In *Shri Ravinder Kumar Vrs. Kamal Sen Gupta* (2008)⁸, the Hon'ble Apex Court held that unlike in appeal, scope of review is grossly circumscribed to such cases where review seeker has made a discovery of a new and important matter of evidence, which, after

exercise of due diligence, was not within his knowledge and could not be produced by him when the decree or order where some mistakes or errors apparent on the face of the record have been made or when the Court has overlooked some obvious facts on the basis of which decision could be made. The Court further held that for a review, one of the above three considerations should be established.

In *Devender Pal Singh Vrs. State of NCT of Delhi* (2003) 2 SCC 501, the Hon'ble Apex Court held that review is not a rehearing of appeal all over again and that scope of interference is very limited to aspects such as miscarriage of Justice."

10. Further, in *Lily Thomas & Others Vrs. Union of India & Others*. [(2000) 6 SCC 224], the Hon'ble Apex Court held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review....."

In *Union of India Vrs. Sandur Manganese and Iron Ores Limited & Others* [(2013) 8 SCC 337], the Hon'ble Apex Court held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view""

In *Parsion Devi & Others Vrs. Sumitri Devi & Others* [(1997) 8 SCC 715], the Hon'ble Apex Court held 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."

In *Arun Dev Upadhaya Vrs. Integrated Sales Service Limited and Another*, 2023 SAR (Civ) 932, the Hon'ble Apex Court have held that the scope of Review is limited to correcting errors apparent on the face of the record. It cannot be used as an appellate power to re-examine the merits of the case.

11. Keeping in view the limited scope of interference in review jurisdiction as per the dicta laid down by the authoritative pronouncements of the Hon'ble Apex Court as discussed above, we shall now consider the submissions made by the Representative of the Petitioner.

12. We observe that in its main Petition, the Review Petitioner has sought review of the common order dated 13.02.2024 passed by the Commission in Case No.115 of 2023 and Case No.128 of 2023 in the matter of ARR & BSP of GRIDCO for FY 2024-25 and in the matter of its Truing Up of expenses for the FY 2022-23 respectively. In the matter of both the cases, the Review Petitioner has raised the issue of disallowance of its claim towards interest cost on the loans availed by it after FY 2015-16. In the matter in Case No.128 of 2023, the Petitioner has raised the issue of non-consideration of its claim of Rs.13.07 Cr. towards A&G expenses in full and allowing only Rs.5.79 Cr. against the above claim in the truing up of its expenses for the FY 2022-23.
13. On the issue of non-consideration of interest cost on the loans availed after FY 2015-16, the Commission in the impugned order dated 13.02.2024, while determining the ARR & BSP of GRIDCO for the FY 2024-25, had observed as follows:

*“453. The Commission observed that GRIDCO, instead of collecting its dues from the erstwhile DISCOMs, availed loan from the commercial institutions and the Commission had taken a view not to allow interest on loan availed by GRIDCO after FY 2015-16. The Commission also continues to follow the same principle of not allowing any interest on the loans availed by GRIDCO after FY 2015-16, for arriving at the interest cost to be passed on in the ARR for FY 2024-25.*****”*

The Commission, vide its order dated 23.03.2015, while determining the ARR & BSP of GRIDCO for the FY 2015-16, had decided as under:

“292. Pass through of Interest on Loan in the ARR of GRIDCO for FY 2015-16

(a) Though the responsibility of collecting dues from the consumers and making prompt payment of BSP is primary responsibility of the DISCOMs, the Govt. and GRIDCO could have definitely played a more pro-active role in creating necessary climate of compliance by providing adequate administration and political support.

(b) The Commission feels that because of regular default of DISCOMs in payment of BSP dues, GRIDCO could have resorted to Power Regulation following due protocol. The Govt. could have given greater support through energizing Energy Police Stations, liquidating huge arrears of various government departments and installation of prepaid meters in Government Departments. The Government Scheme of prepaid meter unfortunately became a non-starter, thanks to the indifference of District Administration.

(c) In view of the above, the Commission feels that it will be unjustified to pass on the entire burden of interest to the consumers of the State. xxxxxxxxxx.”

Similarly, in the impugned order dated 13.04.2024 passed in Case No.128 of 2023 on the matter of truing up of the expenses of GRIDCO for FY 2022-23, the Commission has observed as follows:

“475. The Commission has analyzed the claim of interest on loan in the truing up petitions of GRIDCO for the FY 2022-23. The Commission is not allowing the interest on the loan from State Government or any other source after the tariff orders from the FY 2015-16. The Commission also observed that passing on Tariff burden to the consumers of the State on account of the interest on the loan availed by GRIDCO due to default in collection of BSP and securitized dues of DISCOMs is unjustified. The Commission further observed that regarding the default of BSP dues by DISCOMs, GRIDCO and Govt. of Odisha could have played a proactive role by providing adequate administrative support and other required measures. In view of these observations, the Commission allows only Rs.39.53 Cr. in this truing up petition towards interest on loan for the FY 2022-23 against Rs.493.91 Cr. as proposed by GRIDCO.”

In view of the above observations of the Commission, there is no error apparent on the face of the record in the matter of disallowing the interest cost in the impugned order towards the loan availed by the Review Petitioner after FY 2015-16.

Further, in its application, the Review Petitioner has referred the order dated 05.10.2023 of the Hon’ble Supreme Court of India in Civil Appeal No.414 of 2007. It is to mention here that the said order of the Hon’ble Supreme Court of India is pertaining to the financial years prior to the FY 2015-16 and in the ARR and BSP orders of GRIDCO for those years, the Commission has not decided with valid grounds for non-consideration of the interest cost on the loans availed after the FY 2015-16.

In the matter of non-consideration of full A&G expenses as claimed by GRIDCO in its truing up application for the FY 2022-23, para 476 of the impugned order may be referred to, wherein the Commission has observed as follows:

“476. As regards the other expenses such as employee cost (Rs.16.47 Cr.), R&M (Rs.0.49 Cr.) and depreciation (Rs.0.25 Cr.), the Commission allows the expenses as reflected in the audited accounts for the FY 2022-23 submitted by GRIDCO with the truing up petition. The Commission considers A&G expenses as a controllable cost and allows Rs.5.59 Cr. as approved in the ARR for the FY 2022-23 year.”

From the above, it is observed that the Commission has considered the A&G expenses as a controllable cost and has allowed an amount of Rs.5.59 Cr. in the truing up of expenses as approved for the FY 2022-23. This cannot be considered as an error apparent on the face of the record.

14. We observe that the Review Petitioner in its additional submissions, has sought review of the common order dated 23.03.2023 passed in Case No.78 of 2022 (pertaining to ARR & BSP for the FY 2023-24) and Case No.79 of 2022 (pertaining to truing up of the expenses of GRIDCO for the FY 2021-22). In the additional submissions, the Review Petitioner has

raised the same issues of non-consideration of interest cost on the loans availed after 2015-16 and reconsideration of A&G expenses. We find that the Review Petitioner has filed the original petition on 30.05.2024 and has sought for review of the impugned order dated 13.02.2024, with a prayer for condonation of delay of 16 days in filing the Petition. But in its additional submissions filed on 03.07.2024, the Review Petitioner has sought review of the Commission's order dated 23.03.2023, where there is a delay of more than one year and the Review Petitioner has not prayed for condonation of delay with satisfactory grounds. Besides, the Review Petitioner through this review application has made a lamentable endeavor to revisit the Commission's order dated 23.03.2023 passed in Case No.78 of 2022 (ARR & BSP for FY 2023-24) and Case No.79 of 2022 (Truing Up for FY 2021-22), which is impermissible under review jurisdiction and therefore, the Commission is not inclined to reopen and recall the above-mentioned order, as sought for. Further, the Review Petitioner has submitted that liberty was granted in the Commission's order dated 07.08.2023 passed in a review application in Case No. 68 of 2023 to re-agitate the genuine issues, which is not acceptable in another Review Petition. Be it clarified here that the liberty granted in favour of the Review Petitioner in the said order dated 07.08.2023 was subsequently agitated before this Commission in tariff hearing and was not accepted. In such scenario, the grounds of review on that score become futile.

15. For the reasons mentioned above, it appears that in its Review Petition, the Petitioner is merely trying to re-agitate the issues those were already decided in the impugned orders. We do not find any ground for review of the impugned order in the present Review Petition under Order 47 Rule 1 of the Code of Civil Procedure, 1908 or under Section 94 (1) (f) of the Electricity Act, 2003. Therefore, the present Review Petition is liable for rejection and stands dismissed. However, the Review Petitioner is at liberty to approach the Commission on the issue of additional cost towards payment of DPS/LPS to PGCIL with proper justification & supporting documents for consideration during approval of its ARR for the ensuing FY 2025-26, as the Review Petitioner has submitted that the amount was inadvertently booked under A&G expenses (instead of under power purchase cost) in its annual accounts for the FY 2021-22.
16. Accordingly, the Case is disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson