

**ORDER OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

ON

Petition for review vide TP (R) -2/01-02 (Review) Filed by the Dishergarh Power Supply Co. Ltd. Under section 12 read with section 23 of the ERC Act And the CBR of the Commission.

Present: Justice (Retd.) S. K. Phaujdar, Chairperson.

Shri A. K. Jain, Member (Finance & Accounts).

For the review petitioner:

Shri A. Dasgupta, Director and Chief Executive, DPSC.

Shri S. Radhakrishnan, Secretary and General Manager (Com.), DPSC.

Shri Manoj Roy, Advocate for DPSC.

Dated. 7th December, 2001

This is review petition for the review of the tariff orders of this Commission dated 10th August, 2001, recorded on the tariff petitions of the Dishergarh Power Supply Co. Ltd. for the years 2000-01 and 2001-02 vide Tariff Petition Nos. TP-3/00-01 and TP-3/01-02.

As per Regulation under 29(10) of the CBR framed by the Commission, the petition was heard on the question of admission of the review petition on 3.12.2001. Section 12 of the ERC Act, read with Section 23 of the said Act, empowers the Commission to review its own order and under these provisions, the Commission exercises all the powers of the Civil Court in the matters enlisted in section 12 including the power of review. It is, thus, clear that the law dictates the Commission to take up the review petition only as per the provisions of CPC.

Under the CPC, review is provided for in section 114 and the procedure therefor is indicated in order 47. Without going to the legal details, we may indicate here that under the law a review is permissible at the instance of a person who has a right of appeal but has not appealed against the order to be reviewed. Review petition may be entertained at the instance of such person who from the discovery of new and important matters 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 order was issued 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 order made against him.

The review petition has been pressed in the instant case in view of certain observations of the Commission in paragraph 12.2 of the original order dt. 10.8.2001. It was stated that in terms of the observations more details have been given on the concerned matters and a review is thus necessary. In addition to this submission of Shri A. Dasgupta, the Ld. Advocate, Shri M. Roy, referred to the provisions of Order 47, Rule-1 to say that the materials now produced could not be gathered at the time of the original hearing even after due diligence as the regulatory regime was a new one and the procedure was new to the DPSC.

In this connection, we may refer to the original order in paragraph 12.2 which spoke of review and scrutiny in respect of reasonable return and consequent tariff. Reasonable return, under the law,

depended on capital assets and this aspect was dealt with in paragraph 10.2 of the original order dt. 10.8.2001. We had indicated in this paragraph, our disapproval of inefficiency as pointed out in the earlier parts of the order and we had reduced the value of the net assets on adhoc basis keeping it open for reconsideration directing the utility to give full details and justification along with cost benefit analysis. It was further directed in very clear terms that such report was to be submitted along with tariff petition for the year 2002-03 and only then, the Commission would take a final view.

The observations in paragraph 12.2 may not be read in isolation and must be read along with the observations and directions given in paragraph 10.2 and these two paragraphs, when read together, would repel the submission of Shri Dasgupta and Shri Roy that the Commission had permitted a review or that the order of the Commission dt. 10.8.2001 was not a final one. Our order was clear that the final view on the original cost of net assets would be re-opened for assessment only when the tariff petition for 2002-03 was taken up and that too, if the DPSC came up with the required information. In our opinion, therefore, the review application may not be accepted on the aforesaid grounds. It is, accordingly rejected.

However, on the question of payment of fee, we propose to exercise our discretionary powers under Regulation 53 of the CBR framed by the commission. In exercise of that power, we feel that if the total prescribed fee is realized from the DPSC, the cost ultimately would be burdened on the consumers, and accordingly, we remit the fees for review except for a sum of Rs. 10,000/- for this occasion only. The rest of the fee paid by DPSC on the review petition be returned to them on proper receipt. We make it clear that the remission has been given in the instant matter as a special case and can not be treated as precedent in future.

Sd/- (A. K. Jain)
Member (F&A).
7.12.2001

Sd/- (S. K. Phaujdar)
Chairperson.
7.12.2001

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