



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: TP(R)-48/24-25

IN REGARD TO APPLICATION SUBMITTED BY DAMODAR VALLEY CORPORATION FOR REVIEW OF THE ORDER DATED 07.03.2024 PASSED BY THE COMMISSION IN CASE NO. TP-88/19-20 IN THE MATTER OF DETERMINATION OF TARIFF FOR DISTRIBUTION AND RETAIL SUPPLY OF ELECTRICITY IN DAMODAR VALLEY AREA IN THE STATE OF WEST BENGAL FOR THE PERIOD 2020-21 TO 2022-23.

PRESENT:

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 03.09.2024



Order of the West Bengal Electricity Regulatory Commission in the matter of Petition submitted by Damodar Valley Corporation review of the order dated 07.03.2024 passed by the Commission in Case No. TP-88/19-20 in the matter of determination of tariff for distribution and retail supply of electricity in Damodar Valley Area in the State of West Bengal for the period 2020-21 to 2022-23



FACTS IN BRIEF

1. This is in regard to the petition under section 94 (1) (f) of the Electricity Act, 2003 submitted by Damodar Valley Corporation (in short 'DVC') under regulation 1.7.5 and 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 seeking review and rectification of the order dated 07.03.2024 (impugned order) passed by the West Bengal Electricity Regulatory Commission (in short 'Commission') in Case No. TP-88/19-20.
2. By the order dated 07.03.2024 the Commission approved the Aggregate Revenue Requirement (ARR) the retail tariff of the consumers in Damodar Valley area in the State of West Bengal for the 7th Control Period i.e. Multi Year Tariff (MYT) order for the tariff period 2020-21 to 2022-23.
3. In their review petition DVC has submitted that there are errors apparent on the face of the record in the MYT order of the Commission and accordingly they are filing the review petition with a prayer to admit the petition and to review the MYT order to the extent indicated in the petition. DVC in their petition inter alia put forward the following issues for review:
 - A. Unjustified disallowance of interest cost on temporary financial accommodation
 - B. Disallowance of AMC charges for ULDC Scheme
 - C. Clarification on the new provisions of Green Tariff

OBSERVATIONS OF THE COMMISSION

4. Now the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of Section 114 and Order 47 Rule 1 of CPC according to which a person aggrieved by order of a Court can file review on the following grounds if no appeal against the said order has been filed.
 - a. Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him when the decree was passed or order made;
 - b. On account of some mistake or error apparent on the face of record; and



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c. For any other sufficient reason

In this connection reference could be made to the following judgements:

a. In **Lily Thomas & Ors. Vs. Union of India & Ors. [(2000) 6 SCC 224]** Judgement, the Hon'ble Supreme Court has 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.."

b. In **Union of India Vs. Sandur Manganese and Iron Ores Limited & Others {(2013) 8 SCC 337}**, the Hon'ble Supreme Court has 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 Persion Devi & Others Vs. Sumitri Devi & Others, this 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 of 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."

c. In **M/s. Goel Ganga Developers India Pvt. Ltd. Vs. Union of India 2018 SCC Online SC 930**, the Hon'ble Supreme Court has held as under:

" In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"

2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency"



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5. The issues sought by DVC on the items as mentioned in Paragraph 3 above are discussed below:

A. Unjustified disallowance of interest cost on temporary financial accommodation

Petitioner's submission:

DVC submits that the Commission in the impugned order dated 07.03.2024 has disallowed the entire claim of DVC made in terms of regulation 5.6.5.4 of WBERC (Terms and Conditions of Tariff) Regulations, 2011. In their review petition DVC has submitted that:

(a) In terms of regulation 5.6.5.4 the Commission may allow, if considered necessary, interest on temporary financial accommodation taken by the generating company/ licensee from any source to a reasonable extent of unrealized arrears from the consumers / beneficiaries. However, the Commission in the impugned order has disallowed the entire claim of DVC.

(b) There are short term borrowings that DVC has taken to meet the unrealized arrears from the consumers. DVC in their tariff petition has submitted the state wise break-up of the Delayed Payment Surcharge and the corresponding amount of interest on temporary financial accommodation attributable to the West Bengal distribution business.

(c) In the Tariff Order of DVC for distribution and retail supply in Jharkhand, DVC has been allowed interest on temporary financial accommodation to cover the shortfall revenue due to accumulation of arrears.

(d) The issue has also been dealt by Hon'ble Appellate Tribunal of Electricity (APTEL) in various cases like Appeal no. 153 of 2009 (NDPL versus DERC) and Appeal no. 177 and 178 of 2012 (BSES Rajdhani Vs. DERC). In those orders the Hon'ble APTEL had clearly pointed out that the distribution licensee is allowed for interest on working capital which is limited to two months of receivables. As such, if the receivable increase beyond two months, then additional working capital is required for which additional interest cost would be allowed.



(e) Income from delayed payment surcharge is already been treated as non-tariff income in the tariff order. As such any income which is recoverable from the consumers to compensate for the delay in payment is being reduced from the ARR. Accordingly, the corresponding increase in expense due to increase in the working capital also needs to be considered additionally as claimed. The Hon'ble APTEL has also held this opinion in the above mentioned judgment on the matter of allowing the impact of additional financing cost due to delay in recovery of revenue from the consumers. It is clear from the above judgement and submission made that the claim of petitioner in respect of interest on temporary financial accommodation is in order with the tariff regulation of the Commission, various judgements of Hon'ble APTEL as well as regulatory practices adopted in other states like Jharkhand.

Commission's view:

In paragraph 4.14.3 of the Tariff Order the Commission decides that the interest on temporary accommodation has not been considered in tariff determination stage and directs DVC to submit details of amount of loan, source of loan, date of drawl and amount of repayment during the year, if any, and other details in this respect as required under form 'C' in their APR petition for FY 2020-21 to 2022-23. Thus the issue has already been discussed in the impugned order and there is no merit to review the same under section 114 and order 47 Rule 1 of CPC.

B. Disallowance of AMC charges for ULDC Scheme

Petitioner's submission:

DVC in their Review Petition has submitted as follows:

(a) In the MYT petition for FY 2020-21 to 2022-23 DVC has not claimed any expenditure on account of AMC charges for ULDC scheme since the MYT tariff petition for the period was filed long back on 26.02.2020. At that time there was lack of clarity or certainty on these charges and recovery mechanism of the same. But in actual, DVC has incurred these expenses which are provided in the Annual Accounts under O&M expenditure. The same shall be claimed in the APR petition of FY 2020-21 to 2022-23 based on the audited actual figures for the respective years. DVC has prayed to consider the same as per the actual figures claimed in the APR petition.



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(b) DVC has been claiming this expense as in terms of the tariff approved by CERC order dated 14.12.2017, in petition no. 232/TT/2016 filed by Power Grid Corporation of India Ltd. (PGCIL), the ULDC charges billed by PGCIL excluded O&M charges related to communication assets established by PGCIL under ULDC scheme.

(c) In the latest order for the ULDC system in Case No. 181/TT/2018 dated 30.09.2019 in the matter of approval of tariff for Main SCADA EMS System (05 assets) under project – 'Expansion/ up-gradation of SCADA/ EMS System' of SLDCs of Eastern Region, CERC has maintained the similar principle by not allowing any Operational and Maintenance expenditure in the fixed charge of the system and the responsibility of the maintenance of the system is with the SLDC and petitioner is one of such entities responsible for the maintenance. As such, the O&M cost of this system has not been recovered under the CERC approved charges and is required to be recovered through the distribution cost through the respective State Commissions.

(d) In terms of CERC order for Operation and Maintenance of ULDC Scheme DVC has entered into contract with PGCIL and other vendors for maintenance of entire ULDC Scheme established by PGCIL for the system of DVC. Accordingly, DVC has claimed the AMC charges paid to PGCIL and other vendors in the tariff petition.

Commission's view:

Under paragraph 4.6.3 of the impugned order it has been decided that since there is no specific direction by CERC for O&M expenses of SCADA/EMS system of ULDC in the order on unified T&D network of DVC, the Commission does not admit any amount to be recovered from the retail distribution business for AMC charges paid for ULDC connection scheme. In this context it is also to be mentioned that any AMC charges borne by DVC on unified ULDC system of their part should be a part of O&M expenses of composite T&D network of DVC which is being determined by CERC. In retail tariff of DVC the Annual Fixed Cost admitted by CERC for the composite T&D network of DVC is considered as an input cost. Thus the Commission has already dealt with the issue in the tariff order and recorded its decision. Hence DVC's prayer for review is not accepted.

C. Clarifications on New Provisions of Green Tariff

Petitioner's submission:



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Commission in the impugned order has introduced a new provision called "Green Tariff" @ 50 paise/ kWh in view of the Green Open Access Rules and 'Go Green' initiatives taken by the Government. In this regard DVC has prayed for clarification on the following aspects on Green Tariff:

- (a) whether the energy supplied to the retail supply consumers under Green Tariff can also be accounted for the Renewable Purchase Obligation (RPO) Compliance of the distribution licensee;
- (b) whether the distribution licensee can purchase REC to supply power to consumers under 'Green Tariff'; and
- (c) whether the Green Tariff would be charged over the base tariff or over and above the base tariff plus Differential Energy Charge Rate and Marginal Variable Cost Adjustment (MVCA).

Commission's view:

Clarification on Green Energy sought by DVC does not come within the mischief of review under section 114 and order 27 Rule 1 of CPC.

6. Thus, the review prayer for the issue raised as in points A, B & C above are considered by applying prudence by the Commission and no ingredients for review are manifest in the relevant submissions. The Commission, keeping in mind that it is estopped from usurping appellate jurisdiction, does not find it fit to entertain the above prayers for review.

Issues raised in points A & B have no merit for consideration in the affirmative as it is found from due consideration of the said issues and keeping in mind that the Commission cannot sit in appeal on its own order or cannot substitute its view. The other issue such as C is found to be clarification on Green Energy which does not come within the mischief of review under section 114 and order 47 Rule 1 of CPC.

ORDER

7. Based on the foregoing analysis, issues raised in points A, B & C are decided in the negative since having no merit.
8. The review petition is thus disposed of.



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9. A copy of the order shall be posted in the website of the Commission.
10. DVC shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-

**(PULAK KUMAR TEWARI)
MEMBER**

Sd/-

**(MALLELA VENKATESWARA RAO)
CHAIRPERSON**

Date: 03.09.2024

Sd/-

(SECRETARY)