



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: TP(R) – 31 / 20 – 21

IN REGARD TO PETITION UNDER SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 3.3 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, FOR REVIEW OF THE TARIFF ORDER OF THE DURGAPUR PROJECTS LIMITED FOR THE YEARS 2018 – 19 (FROM 01.01.2019 TO 31.03.2019) AND 2019 - 20 IN CASE NO TP – 87/19 - 20 (PART-II) DATED 13.11.2020.

PRESENT:

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

DATE: 22.08.2023



Facts in brief:

- 1.0 The Durgapur Projects Limited (DPL) has submitted an application (in short 'review petition') seeking review of the order dated 13.11.2020 in Case No. TP-87/19-20 (Part-II) (hereinafter referred as 'Tariff Order') passed by the West Bengal Electricity Regulatory Commission (in short 'Commission') in regard to the Multi Year Tariff Application of DPL under sixth control period for the years 2018-19 (from 01.01.2019 to 31.03.2019) and 2019-20.
- 2.0 In their review petition, DPL has submitted that they are filing the review petition with a prayer to admit the petition and review the Tariff order to the extent indicated in the petition. DPL in their petition inter-alia has put forward the following issues for review:
 - A. Allowing actual Fuel Cost.
 - B. Merit Order Despatch considering DPL units combinedly.
 - C. Replacing MFCA with the work MVCA.
 - D. O&M charges.

Observations of the Commission:

- 3.0 Now, the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of section 114 read with Order 47 Rule 1 of CPC. According to the relevant provision, a person aggrieved by order of a Court can prefer review on the following grounds, if no appeal against the said order has been filed:
 - (a) 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 when the decree was passed or order made, or
 - (b) On account of some mistake or error apparent on the face of record, or
 - (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 Parsion 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 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"

4.0 The review sought by DPL on the items mentioned in paragraph 2.0 above have been discussed below:

A. Allowing actual Fuel Cost:

Submission of DPL:

Due to non-excavation of coal from own captive mine, actual fuel cost was higher than the energy charge rate approved in the Tariff order. But, DPL could not realize the same through MFCA since 01.01.2019 (date of restructuring) in absence of issuance of tariff order for DPL Generating stations. Thus, DPL requested to consider the fact at the time of issuance of APR and FCA orders for the concerned period.



Observation of the Commission:

The Commission has determined the energy charges for DPL units based on the details of coal submitted by DPL in their tariff petition. Fuel cost is uncontrollable in nature and is subject to triuing up at APR/ FCA stage. It appears that DPL has not sought for any specific relief in their application. No mistake or error has been found in the face of the order. DPL has not submitted any new fact which was not known at the time of their submission of MYT petition. Thus, it does not come under the scope of review under section 94 (1) (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC.

B. Merit Order Despatch considering DPL units combinedly:

Submission of DPL:

Due to constraint arising out of the existing design of DPL's switchyard, SLDC provides monthly implemented schedule and resultant achieved availability of DPL on overall basis. Thus, DPL has requested the Commission to adopt single energy charge rate by incorporating charges of Unit VII and Unit VIII in para 7.9 of the Tariff Order and to consider such overall charge for merit order despatch purpose.

Observation of the Commission:

As the unit size, SHR, etc. are different for Unit #VII & Unit #VIII, the Commission, keeping in view the interest of the Consumers, have specified separate energy charges for Unit #VII & Unit #VIII. The prayer of DPL is to review the decision taken by the Commission in the tariff order on merit and thus, do not come under the scope of review under section 94 (1) (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC.

It may further be noted that SLDC is presently providing unit wise monthly implemented schedule and resultant achieved availability of DPL. Hence, no further review on the matter is required

C. Replacing MFCA with the word MVCA:



Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, for review of the Tariff Order of the Durgapur Projects Limited for the years 2018 – 19 (from 01.01.2019 to 31.03.2019) and 2019 - 20 in Case No TP – 87/19 - 20 (Part-II) dated 13.11.2020.



Submission of DPL:

It is submitted that in para 7.6 of the Tariff Order the term 'MFCA' in the 2nd sentence needs to be replaced by 'MVCA' as DPL was a Distribution Licensee with embedded generation during the period 2018 – 19 (i.e., up to 31.12.2018).

Observation of the Commission:

The tariff order for the 6th control period consisting of the financial years 2018 – 19 and 2019 – 20 of DPL was issued by the Commission considering DPL as a distribution licensee till 31.12.2018 and a generating company from 01.01.2019 in line with DPL's restructuring scheme, as a special case. The tariff order dated 30.11.2020 for which DPL has submitted the review petition is for the generation business of DPL w.e.f 01.01.2019 and thus there is no error in using the term MFCA.

Hence, no review /change of term is required.

D. O&M Charges:

Submission of DPL:

DPL submitted that, they were allowed to claim apportioned expenditure of service department and central workshop under A&G expenses of its distribution business. Now, DPL becomes a generating company w.e.f. 01.01.2019 and like all generating company its O&M expense has now been limited to the norms specified in Tariff Regulations. Under these circumstances DPL requested to incorporate necessary provision in regulation for admission of apportioned expenses of Service Department and Central Workshop to DPL.

Observation of the Commission:

The Commission has determined the O&M expenses of DPL generating station as per the norms specified in the Tariff Regulations. The prayer of DPL to incorporate necessary provision in the Tariff Regulation tantamounts to amendment to the Tariff Regulation. Hence, the proposal of DPL to incorporate special provision in the Tariff Regulation to accommodate its central workshop expenses is not under the scope of review u/s 94(1)(f).



Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, for review of the Tariff Order of the Durgapur Projects Limited for the years 2018 – 19 (from 01.01.2019 to 31.03.2019) and 2019 - 20 in Case No TP – 87/19 - 20 (Part-II) dated 13.11.2020.



- 5.0 Thus, the review sought for on the issues raised in points 'A' to 'D' above has no merit for review and the Commission does not consider the above prayers for review.

Order:

- 6.0 On the basis of observations given above, the Commission finds that there is no error on the face of the order and thus, there is no merit in the application for review,
- 7.0 The review petition is thus disposed off maintaining the decisions already taken in the Tariff Order dated 13.11.2020 in Case No. TP – 87/ 19 – 20 (Part-II). Let a copy of the order be served upon DPL.
- 8.0 A copy of the order shall be posted in the website of the Commission.
- 9.0 DPL 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

Dated: 22.08.2023

Sd/-
SECRETARY