



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: TP(R) – 35 / 21 – 22

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 2020 – 21 AND 2021 - 22 IN CASE NO TP – 93/20-21 DATED 16.07.2021.

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') 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, 2013 seeking review of the order dated 16.07.2021 in Case No. TP – 93/20–21 (hereinafter referred as 'Tariff Order') passed by the West Bengal Electricity Regulatory Commission (Commission) in regard to the Multi Year Tariff Application of DPL under seventh control period for the years 2020 – 2021 and 2021 – 22.
- 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. Station Heat Rate.
 - B. Heat Value of Coal for Financial year 2020-21.
 - C. Non-consideration of re-deployed employee during computation of Employee cost.
 - D. Allocation of expenses for Service Department and Central Workshop.
 - E. Stay on recovery / adjustment of variable 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 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 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. Station Heat Rate:

Submission of DPL:

DPL has submitted that they are facing operational issues to adhere to the normative Station Heat Rate specified in Tariff Regulations. DPL had highlighted the issue in their tariff petition, but the Commission in the Tariff Order observed that it could not deviate



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from the parameters provided under the Tariff Regulations. DPL, in this review petition, prays to revise the normative Station Heat Rate considering the difficulties faced by DPL by using the Commission's power under regulation 8.12 of the Tariff Regulations.

Observation of the Commission:

The matter regarding consideration of the normative Station Heat Rate had been elaborated in para 3.4.2 and 3.4.4 of the 7th MYT order.

The Commission has specified different normative parameters under Schedule -9A of the Tariff Regulations duly followed by the conditions of previous publication in terms of sub-section (3) of section 181 of the Electricity Act, 2003. Regulation 8.12 of the Tariff Regulation empowers the Commission to revise the Schedule. But, that too requires notification as well as adherence to the procedure adopted during previous publication as specified under the Electricity Act, 2003. The prayer under consideration does not come within the mischief of order 47 Rule 1 of CPC.

Hence, DPL's prayer to review the decision and to consider a relaxed Heat rate does not come under the scope of review.

B. Heat Value of Coal for Financial year 2020-21:

Submission of DPL:

DPL has submitted that the Commission has computed fuel cost considering much higher value of GCV of coal in financial year 2020-21, whereas the actual "as received GCV" of coal during the period under consideration was much lower as submitted under MFCA computations by DPL during the year. DPL prayed to review the Tariff Order to such extent by taking note of the heat value submitted in MFCA.

Observation of the Commission:

The Commission in the Tariff Order had observed that proposed GCV value by DPL is significantly lower and thus decided to consider minimum GCV value of the respective Grade of coal as notified by Coal India Limited for determination of fuel cost. DPL was also directed to arrange measurement of the GCV of coal through third party sampling and submit the report in APR petition. The matter was elaborated in para 3.4.6 of the Tariff Order.



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The prayer of DPL to review the decision taken by the Commission in the tariff order, and to consider lower heat value as per MFCA report submitted, , 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.

C. Non-consideration of re-deployed employee during computation of Employee cost:

Submission of DPL:

It is submitted that the Commission has not considered the actual number of manpower engaged by them as submitted in the tariff petition for computation of employee cost. DPL also submitted that the Commission, in the Tariff Order for the 4th Control Period, had directed to deploy the surplus manpower from the allowable manpower of already decommissioned Units III, IV and V. Accordingly, such redeployments were carried out by DPL in its distribution business and generating units as per the requirement. In view of the above, DPL prayed to consider the actual number of manpower engaged by them for computation of employee cost.

Observation of the Commission:

The Commission in the Tariff Order has allowed number of employees considering the normative Man/MW ratio as the number of manpower of any generating station is limited to man/MW norms specified in Tariff Regulations.

However, employee cost is an uncontrollable element under Tariff Regulations and is subject to truing up at APR stage based on actual audited figures and to the extent found fit by the Commission.

Hence, at this stage the Commission considers that the order is not reviewable.

D. Allocation of expenses for Service Department and Central Workshop:

Submission of DPL:

It is submitted that the Commission has considered allocation percentages for Service Department and Central Workshop as 17% and 56.18% only respectively, whereas after dismantling of Coke Oven Plant on 01.02.2019 and transfer of distribution



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business to WBSEDCL, the allocation for Central Workshop and Service Department comes to 90% and 96.32% respectively as per the report of the cost accountant firm. It is stated that the same is reflected in their Annual Accounts for 2018-19. DPL submitted that the Commission has erred by not considering the figures available under Audited Annual Accounts.

DPL further submitted that as no document was sought for by the Commission, so they did not submit the cost accountant report during tariff petition.

Observation of the Commission:

It is the responsibility of the petitioner to submit all necessary supporting documents along with the tariff petition. Therefore, the stand taken by DPL that they did not submit cost accountant report during tariff determination as the same was not sought for by the Commission, has no merit.

Under the circumstances, the Commission decides that there is no scope for review at this stage.

E. Stay on recovery / adjustment of variable charges as directed under para 6.5 of the Tariff order:

Submission of DPL:

DPL proposes to stay the direction of the Commission under para 6.5 of the impugned order regarding adjustment of over /under recovery in 6 equal monthly installments and prays for final annual adjustment during FCA.

The major reason submitted by DPL is that, coal consumption from its own captive mine is much lower than the projection made in the tariff order under seventh control period. Thus, the actual variable cost was much higher. It is also submitted that the tariff order of 7th control period was issued on 16.07.2021, as a result of which they could recover the fuel cost for FY 2020-21 and FY 2021-22 (April to June) based on the tariff order of 2019-20. Moreover, they have claimed MFCA considering captive coal at the rate of 'CIL coal rate' in line with the tariff order of 2019-20.

Observation of the Commission:



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The Commission had determined variable cost considering Rs. 100/tonne as base price of captive coal in line with Government of India's letter dated 27.06.2016, which has been elaborated in paragraph 3.4.9 of the Tariff order. The generating company has to recover tariff as per the Tariff order only. Accordingly, the Commission in paragraph 6.5 has directed DPL to adjust any over-recovery / under-recovery.

The prayer of DPL for stay of recovery/adjustment of variable charge does not come under the scope of review under section 94(1)(f) of the Electricity Act '2003 read with Order 47 Rule of CPC.

- 5.0 Thus, the Commission observes that the review sought for on the issues raised in points 'A' to 'E' above devoid of any merit for review and the Commission does not consider to entertain 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 scope for review the tariff order on the issues raised by DPL in the instant review petition.
- 7.0 The review petition is disposed off maintaining the decisions already taken in the Tariff Order dated 16.07.2021 in Case No. TP – 93/ 20 – 21. 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**