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ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
CASE NO: TP(R)-47/ 24-25

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 2023-24, 2024-25 AND 2025-26 IN CASE NO. TP-106/22-23 DATED 11.03.2024

PRESENT
DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 09.12.2024



CASE 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 11.03.2024 in Case No. TP – 106/22-23 (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 8th Control Period for the Financial Years 2023 – 24, 2024 – 25 and 2025 – 26.
- 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. DPL in their petition inter-alia has put forward the following issues for review:
 - a) Apportioned expenses of Service Department & Central Workshop
 - b) Employee Expenses
 - c) Normative O&M Expenses
 - d) Interest on Loan
 - e) Non-Tariff Income
 - f) Utilization of Biomass
 - g) Base Price of Trans Damodar Mining Pvt. Ltd ("TDCM")
 - h) GST on Coal Price of TDCM

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) Apportioned expenses of Service Department & Central Workshop:

Submission of DPL:

Review Petitioner has submitted that the Commission has considered the allocation ratio 56.18% and 17% for Service Department & Central Workshop respectively in accordance with the FPPCA and APR order dated 16.02.2017.

Further stated that, in compliance of the direction of the Commission in the meeting dated 25.01.2021, Review Petitioner submitted petition for review of the allocation ratio. The order is still awaited.

Now, Review Petitioner has requested the Commission to allow the ratio 76.95% and 95.90% for Service Department and Central Workshop respectively upon the study report and suggestion of M/s. Excellence Enhancement Centre for FY 2020-21.

Observation of the Commission:

It has been held by the Hon'ble Apex Court in the decision in Lily Thomas (supra) that error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence (para 58). In the above issue, there is no error in the face of the impugned Tariff Order. Principles taken by the Commission in para 4.3.4 of the impugned Tariff Order dated 11.03.2024 is self explanatory which has been questioned by the Review Petitioner. As per Order 47 Rule 1 of CPC, the review of such principle does not come under the review principles as laid down in section 114 of the CPC.

b) Employee Expenses:

Submission of DPL:

The Review Petitioner has submitted that the Commission in the Tariff Order for the years 2023 – 24, 2024 – 25, and 2025 – 26 has admitted the Dearness



Allowance under Employee Expenses as a percentage of basic pay in proportion to its projection in the Tariff application. Govt. of West Bengal has revised the Dearness Allowances and accordingly Review Petitioner also revised it with effect from 01.01.2024. Therefore, in the ensuing years higher expenses will be incurred as compared to the approved expenses on account of Dearness Allowances. Therefore, it is requested to the Commission to admit the Dearness Allowances at revised rate to reduce the further financial burden on Review Petitioner.

Observation of the Commission:

The Commission in the impugned Tariff Order had admitted the percentage of Dearness Allowances as projected by Review Petitioner in the Tariff application submitted on 27.02.2023 after due analysis as elaborated in paragraph 4.3 of the said order. Now the Review Petitioner is claiming Dearness Allowances @20% given to its employees with effect from 01.01.2024 in the instant Review Petition which is clearly 'an appeal in disguise' with reference to the discussions in paragraph 3.0 of this order. Hence, the issue raised by the Review Petitioner on this count is rejected.

c) Normative O&M Expenses:

Submission of DPL:

Review Petitioner submitted that it has filed a Petition for Review of Norms for O&M Expenses on Unit – VIII based on the trend of expenses for previous years and O&M norms approved by the Commission for 2 x 250 MW of Santaldih TPS for the FYs 2023-24, 2024-25 and 2025-26 as the same are comparable units.

It is further submitted that the Commission in the previous Tariff Order has approved the allocation of Employee expenses pertaining to Central Workshop & Service Department to the Power Plant, over & above the normative ratio of Man/MW. Review Petitioner prayed that the Commission may consider the same principle and methodology. As per Review Petitioner, actual O&M expenses is higher as compared to the approved Normative O&M expenses.



Review Petitioner has requested to approve the revised Normative O&M Expenses as prayed in the Petition for revision of Norms and further also allow apportionment of expenses of Service Department and Central Workshop over and above Normative O&M Expenses in line with the methodology adopted for employee expenses.

Observation of the Commission:

The Commission has considered the submissions made by the Review Petitioner. Perusal of impugned Tariff Order makes it clear that the Review Petitioner has already raised these issues and the Commission has analysed and considered them on merits and taken the view in paragraph 4.4 of the impugned Tariff Order.

In light of the above discussion, it is clear that the Review Petitioner is essentially seeking re-examination of the issue on merit which is beyond the scope of review as held by the Hon'ble Supreme Court in catena of the Judgments as referred at para 3.0 above. The review on this ground fails and is accordingly rejected.

d) Interest on Loan:

Submission of DPL:

Review Petitioner has stated that in Form – C they have provided details of loans including Short-term loans. Further, it is submitted that Review Petitioner has availed Long-term loan at 8.65% interest rate from West Bengal Infrastructure Development Corporation Limited (WBIDFC). The rate of interest is revised at 8.75% from 01.12.2022 by WBIDFC. Review Petitioner in the instant petition has submitted communication from WBIDFC dated 17.11.2022 regarding revision of the interest rate. Based on the above, Review Petitioner requests the Commission to consider the same and approve the weighted average rate of Interest on Normative loan at 8.75%.

Observation of the Commission:



As already reiterated in the earlier part of the order, the review cannot be used for substitution of a view already taken with a new view. Therefore, the review on the ground is not maintainable.

e) Non-Tariff Income

Submission of DPL:

Review Petitioner inadvertently claimed Rs. 14.23 lakh towards Sale of Scrap for the FY 2023-24, 2024-25 and 2025-26 based on its annual accounts and the Commission has also approved the same. Review Petitioner submits that the amount of Rs. 14.23 lakhs reflected in audited accounts towards Sale of Scrap is pertaining to Unit – 1 to 6. The Commission has considered the approved provisional Capital Cost of Unit – VII and Unit – VIII for approval of the components of ARR instead of the actual GFA base including residual value of Unit 1 to 6 as shown in audited accounts of Review Petitioner. Therefore, considering the Profit/Loss towards sale of Scrap pertaining to Unit – 1 to 6 for determination of Net ARR of Review Petitioner for Unit-VII and Unit-VIII has resulted lower ARR. So, Review Petitioner has requested to exclude the Sale of Scrap pertaining to Unit-1 to Unit-6 from the approved Non-Tariff Income of Unit – 7 and Unit – 8.

Observation of the Commission:

Review on the ground of inadvertent error by the Review Petitioner is clearly 'an appeal in disguise' with reference to the discussions in paragraph 3.0 of this order. Hence, the issue raised by the Review Petitioner on this count is rejected.

f) Utilization of Biomass

Submission of DPL:

It is submitted that the Commission has considered the utilization of Biomass at 5% for FY 2023-24, 7% for FY 2024-25 and 7% for FY 2025-26 as per the notification for "Revised Policy for Biomass Utilization for Power Generation through co-firing in Coal Based Power Plants" issued by the Ministry of Power, Government of India vide letter no 11/86/2017-th11 dated 08.10.2021.



Review Petitioner submitted that the Bio-pellet Firing in Trial mode has been completed in Unit – 7 on 15th and 16th April 2024. Total 20 MT of Bio-pellets were fired through Mill at 7.5% mixture with Mill coal consumption which amounted to 1.5% Bio-pellet feeding suitable to total coal flow at 270 MW.

It is further submitted that Review Petitioner is in the process of implementing the steps needed for starting Bio-Pellet feeding on continuous basis in line with the Ministry of Environment, Forest and Climate Change (MoEFCC) requirements and estimated timeline for implementing the same is not less than 12 months.

Review Petitioner has prayed to the Commission to grant time for uses of Biomass as fuel for its generating unit.

Observation of the Commission:

The Review Petitioner is seeking to revisit decision on merit which is a subject matter of appeal and falls outside the purview of review. The Commission has already referred the Judgments of Hon'ble Supreme Court in the matters of (i) Lily Thomas & Ors. vs. Union of India & Ors. {(2000) 6 SCC 224}; and (ii) Union of India Vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}; and (iii) M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India 2018 [SCC Online SC 930] at Paragraph 3.0 above which lays down the principle that the review cannot be an appeal in disguise. The Commission's decision in the impugned Tariff Order being a considered one in light of the "Revised Policy for Biomass Utilization for Power Generation through Co-firing in Coal Based Power Plants" issued by Ministry of Power, Government of India, vide letter No. 11/86/2017-Th11 dated 08.10.2021, is well explained in paragraph 3.7.2 of the impugned Tariff Order. Therefore, the Commission does not find that this ground meets the requirement of review and accordingly, the review on this ground is rejected.

g) Base Price of Trans Damodar Coal Mine (TDCM)

Submission of DPL:

The Commission has approved Rs. 100 per MT towards the ROM/ Basic Price for coal received from TDCM. However, Ministry of Coal, GOI vide



communication dated 17 October 2023 has notified the computation method for escalation of reserve price of TDCM allocated to Review Petitioner. Based on the formula the base price for the FY 2023-24 is computed as Rs. 128.91 per MT. The said communication dated 17 October 2023 and payment voucher dated 19.04.2024 are submitted with the instant review petition to substantiate the claim. Review Petitioner has requested the Commission to approve Rs. 128.91 per MT as base price of coal from TDCM for FY 2023 – 24.

Observation of the Commission:

The Commission has already recorded in paragraph 3.7.3.1 (iv) of the impugned Tariff Order that Order No: 98-POW-13012(11)/5/2021-SECTION (POWER) Dated 08.06.2022 of DoP, GoWB & Letter No: File No. 54022/01/2014-CA-III Dated 27.06.2016 of Ministry of Coal, Gol provides that Rs. 100/MT payable to Review Petitioner along with other statutory charges and incidental costs related to equivalent grade of ECL - Raniganj (WB).

In the above mentioned order dated 08.06.2022 of DoP, GoWB, submitted by Review Petitioner along with the Tariff application, Rs. 100 per MT is considered as fixed premium/Base Price. The Commission has also considered the same in paragraph 3.7.3.1 (iv) and Table 3.7(1) of the impugned Tariff Order.

Now, Review Petitioner is claiming Base Price / Fixed Reserve Price @ Rs. 128.91 in the instant Review Petition which is clearly 'an appeal in disguise' with reference to the discussions in paragraph 3.0 of this order. Hence, the issue raised by the Review Petitioner on this count is rejected.

h) GST on Coal Price of TDCM

Submission of DPL:

Review Petitioner has claimed Rs 1995.80 per MT and 1897.86 per MT towards the coal cost of TDCM for G9 and G12 grade respectively whereas the Commission has considered Rs 645.31 per MT and Rs. 555.01 per MT.



Review Petitioner stated that the Commission has considered Rs. 100/MT as Base Price and Other Statutory Charges including 5% GST on said price. Review Petitioner submitted that they had to pay charges for coal mining services as per agreement for Mine operation with TDCM. Based on the agreement, TDCM raised invoices which falls under SAC code – 998622 and the GST is 18%. Review Petitioner has attached copy of invoice raised by TDCM and Coal Mining Service Agreement with the instant review petition.

Review Petitioner submitted that the difference on account of actual Base Price of TDCM paid by Review Petitioner and the approved amount by the Commission shall result in under recovery of actual GST paid by Review Petitioner. Therefore, Review Petitioner requests the Commission to consider the same and allow the GST being statutory payment as actual for TDCM related services.

Observation of the Commission:

Review Petitioner in Form D (b) of the Tariff application had projected (i) coal cost; (ii) Handling, sampling and such other similar charges; (iii) Transportation cost as follows:

Table 4(h): Cost of captive coal projected by DPL in Tariff application
(Rs/MT)

Description	2023 – 24		2024 – 25		2025 – 26	
	G9	G12	G9	G12	G9	G12
Amount charged by the coal company	1995.80	1897.86	2105.57	2002.24	2210.85	2102.35
Handling, sampling and such other similar charges	63.00	63.00	66.46	66.46	69.78	69.78
Transportation cost	366.43	366.43	386.59	386.59	405.91	405.91

There was no break up of above cost for 'Amount charged by the coal company' in the Tariff application of Review Petitioner. In Table 3.7(1) of the impugned Tariff Order, the Commission has determined the 'Amount charged by the coal company' with break-up of different elements based on the documents mentioned in paragraph 3.7.3.1 of the impugned Tariff Order including letter dated 27.06.2016 of Ministry of Coal, Government of India regarding cost of captive mine to be pass through in tariff.



It is the responsibility of the Review Petitioner to submit all necessary supporting documents along with the tariff application. As already reiterated in the earlier part of the order, the review cannot be used for substitution of a view already taken with a new view.

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

- 5.0 Thus, the Commission observes that the review sought for on the issues raised in points 'a' to 'h' 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 Review Petitioner in the instant review petition.
- 7.0 The review petition is disposed of maintaining the decisions already taken in the Tariff Order dated 11.03.2024 in Case No. TP – 106/ 22-23. Let a copy of the order be served upon Review Petitioner.
- 8.0 A copy of the order shall be posted in the website of the Commission.
- 9.0 Review Petitioner 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/-

(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 09.12.2024

Sd/-
SECRETARY