



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. TP (R) – 46/ 22 - 23**

IN REGARD TO THE 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 READ WITH ORDER 47 RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908 FOR REVIEW OF THE TARIFF ORDER OF HALDIA ENERGY LIMITED FOR THE YEARS 2020 – 21, 2021 – 22 AND 2022 – 23 IN CASE NO TP-91/20-21 DATED 07.07.2022

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

DATE: 01.03.2023



Facts in brief:

- 1.0 Haldia Energy Limited (HEL) has submitted a petition in terms of 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 read with Order 47 rule 1 of the Code of Civil Procedure, 1908 seeking review of the order dated 07.07.2022 in Case No. TP – 91/20 – 21 (hereinafter referred as 'Tariff Order') passed by the West Bengal Electricity Regulatory Commission (for short 'the Commission') in regard to the Multi Year Tariff Application of HEL for dedicated 400 KV Double Circuit Line for the years 2020 – 21, 2021 – 22 and 2022 – 23.
- 2.0 In their review petition, HEL has submitted that there are inadvertent errors and oversight by the Commission and accordingly 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. HEL in their petition inter-alia has put forward the following issues for review:
 - A. Disallowance of O&M expenses.
 - B. Disallowance of Insurance and Rates & Taxes.

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 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
 - (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]** Judgment, 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 HEL on the items mentioned in paragraph 2.0 above have been discussed below:

A. Review on Operation & Maintenance (O&M) Expenses:

Submission of HEL:

In the review petition HEL stated that the Commission has determined the O&M expenses for the years 2020 – 21, 2021 – 22 and 2022 – 23 by applying inflation impact over the admitted value for 2019 – 20 approved in the Tariff Order for the 6th Control Period. HEL has stated that the Commission has admitted Rs. 316.69 lakh, Rs. 329.43 lakh and Rs. 342.68 lakh as O&M Expenses for the years 2020 – 21, 2021 – 22 and



2022 – 23 respectively in place of the claimed amount of Rs. 1573.60 lakh, Rs. 1960.40 lakh and Rs. 2063.40 lakh for the respective years. HEL has further submitted that, the Commission has erred by not considering the actual O&M expenditure incurred in the previous years despite having the detailed information, as the years were already over.

In this respect, HEL has also referred to their review petitions against the Tariff Order for 2017 – 18 and Tariff Order for 2018 – 19 and 2019 – 20, where the basis of computation of O&M expenses during the said years based on a benchmark cost for 2017 – 18 was challenged.

Accordingly, HEL prayed to review the O&M expenses allowed in the Tariff Order for 2020 – 21, 2021 – 22 and 2022 – 23 by considering latest data of actual O&M expenses claimed in the MYT Petition for the 7th Control Period.

Observation of the Commission:

O&M expenses comprising of Repair & Maintenance expenses and Administrative & General Expenses, is controllable in nature in terms of the WBERC Tariff Regulations. Unlike uncontrollable items, actual expenditure for controllable items is not a pass through in tariff.

In the Tariff Order for 2017 – 18, the Commission had set the benchmark for O&M expenses and thereafter in the Tariff Order for 2018 – 19 and 2019 – 20 had admitted the O&M expenses by applying hybrid inflation rate over the admitted figures of 2017 – 18. Similarly, the Commission determined the admissible O&M expenses for 2020 – 21, 2021 – 22 and 2022 – 23 by applying inflation rate over the admitted O&M expenses for 2019 – 20. The matter is deliberated under paragraph 3.4.4 of the Tariff Order.

HEL has prayed to review the decision taken by the Commission in the Tariff Order. The commission considered the submission and materials put up by the utility before the commission and reached to the finding merit. Power of review is exercised for correction of mistake but not to substitute the view. Thus, this 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.

It is also pertinent to mention that the Commission has already disposed of the review petitions for Tariff Order for 2017 – 18 in Case no TP(R) – 42/22 – 23 dated 27.09.2022



and for Tariff Order for 2018 – 19 and 2019 – 20 in Case No. TP(R) – 45/ 22 – 23 dated 20.12.2022 affirming the decisions already taken in the Tariff Order for 2017 – 18.

B. Review on Insurance and Rates & Taxes:

Submission of HEL:

HEL has submitted that the Commission has admitted Rs. 37.49 lakh, Rs. 39.00 lakh and Rs. 40.57 lakh as Insurance cost and Rs. 3.42 lakh, Rs. 3.56 lakh and Rs. 3.70 lakh as Rates and Taxes for the years 2020 – 21, 2021 – 22 and 2022 – 23 respectively in place of claimed expenditures of Rs. 133.50 lakh, Rs. 144.20 lakh and Rs. 155.70 lakh for Insurance cost and Rs. 6.60 lakh, Rs. 7.10 lakh and Rs. 7.60 lakh for rates and taxes for the respective years.

In this regard, HEL submitted that Insurance costs and Rates & Taxes are uncontrollable in nature and prayed before the Commission to allow the same as per their claim.

Observation of the Commission:

In paragraph 3.4.6 of the Tariff Order, it has been clearly mentioned that as insurance and rates & taxes are uncontrollable elements and are subject to truing up at the time of APR following the provisions of WBERC Tariff Regulations as amended from time to time.

Hence, no further review on the matter is required instead the issue shall be taken into consideration during truing up.

- 5.0 Thus, the review sought for on the issue raised in point 'A' above is prayer to review ratio of prudence adopted by the Commission and has no substance for review and the Commission keeping in mind that it is estopped from encroaching into the jurisdiction of the Hon'ble Appellate Authority does not propose to entertain the above prayers for review. Further, the review sought for on the issues as in point 'B' is to be dealt with during the truing up stage as per the APR petition of HEL for the concerned years.



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 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of the Tariff Order of Haldia Energy Limited for the year 2020 – 21, 2021 - 22 and 2022 - 23 in Case No TP – 91/20 - 21 dated 07.07.2022



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 to entertain the review application on the issues raised by HEL in the instant review petition and thereby directs the review petition to be disposed off affirming the decisions already taken in the Tariff Order dated 07.07.2022 in Case No. TP – 91/ 20 - 21.
- 7.0 A copy of the order shall be posted in the website of the Commission.
- 8.0 HEL 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: 01.03.2023

Sd/-
SECRETARY