

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Smt. Neerja Mathur, Member
Petition No. 206/2016
Date of Order: 26.07.2016

In the matter of:

Review Petition against Tariff Order (Case No. 197/2016) issued in respect of Annual Performance Review for the FY 2015-16, Aggregate Revenue Requirement for the 1st MYT Control Period (FY 2016-17 to FY 2018-19) and Wheeling and Retail Supply Tariff for FY 2016-17 for Electricity Department, Goa on 18th April, 2016 filed u/s 94 (1) (f) of Electricity Act, 2003 and Regulation 74 (a) of JERC (Conduct of Business) Regulations, 2009

And in the matter of:

1. Tropical Mushrooms (Goa) Pvt. Ltd., 373, D B Marg, Miramar, Panaji, Goa – 403 001. ...**Petitioner No. 1**
2. M/s Zuari Foods & Farms Pvt. Ltd., 373, D B Marg, Miramar, Panaji, Goa 403 001. ... **Petitioner No. 2**

And in the matter of:

1. The Electricity Department, Vidyut Bhavan, Panaji, Goa ... **Respondent No. 1**
2. The Director, Directorate of Agriculture, Krishi Bhavan, Tonca, Caranzalem, Goa ...**Respondent No. 2**

Present

For the Petitioner

1. Dr. Sangam Kurade, Managing Director
2. Shri P.K. Anvekar, Consultant,

ORDER

M/s Tropical Mushrooms (Goa) Pvt. Ltd. and M/s Zuari Foods & Farms Pvt. Ltd., Goa (Petitioner No. 1 and Petitioner No. 2) have filed the present Review Petition for review of the impugned Tariff Order in Petition No. 197/2016 dated April 18, 2016 for Annual Performance Review (APR) for FY 2015-16, Aggregate Revenue Requirement (ARR) for the 1st MYT control period (2016-17 to FY 2018-19) and Wheeling and Retail Supply Tariff for FY 2016-17.

The Commission admitted the said Review Petition on 07th June, 2016 and heard the same on 14th July, 2016 and 26th July, 2016.

The Review Petition has been filed subsequent to the said impugned Tariff Order dated April 18, 2016. According to the Petitioner, the said impugned Tariff Order dated April 18, 2016 passed by the Commission suffered from mistakes/ errors, which are required to be corrected and there are sufficient reasons for reviewing and/or modifying the Tariff Order.

Shri P.K. Anvekar, Consultant for the Review Petitioners submitted that during the public hearing, the Petitioners had pleaded that the increase in tariff for mushroom cultivators suggested by Electricity Department – Goa was very steep and prayed to the Commission to consider a reasonable tariff increase for the said tariff category.

Shri P.K. Anvekar further submitted that the Petitioner had also objected to the creation of a separate category within the “Agriculture” category without undertaking any analysis of the existing consumer base with regard to the purpose of use of electricity and socio economic impact on the said consumers. He said that they were classified under HTAG/Agriculture and LTAG/Agriculture tariff category. The Commission vide the impugned Tariff Order dated April 18, 2016 created a separate category within the “Agriculture” category as “Allied agriculture” category for certain agriculture activities, and Mushroom cultivation was also brought within this new category of HT and LT Allied Agriculture. The Commission also increased the tariff for the Allied Agriculture category approximately by 30%.

Shri P.K. Anvekar further submitted that the Commission has approved tariff increase for only three categories of consumers i.e. Low Tension-AG/LT-AGA (Allied Activities)/High Tension-AG/HT-AG (Allied Activities), Military Engineering Services / Defence Establishments and Hoardings/Signboards. Whereas the energy charges for High Tension -Ferro/SM/PI/SR have been marginally increased by 13%, their demand charges have been reduced by 23%. Thus the impact on the total cost of electricity would be minimum. He said that the increase in tariff for LT-AGA (Allied Activities)/ HT-AGA (Allied Activities), has resulted in a tariff shock. Such increase in tariff will lead to significant increase in the cost of mushroom cultivation making this business unviable. It will also compel the mushroom growers to shift their activity to neighbouring State of Maharashtra where mushroom cultivation is kept under “Agriculture” tariff category.

Shri P.K. Anvekar further submitted that in the impugned Tariff Order all vegetable growers except mushroom growers are categorized under “Agriculture”. Mushroom is also a vegetable therefore there appears to be no logic for bringing mushroom cultivation within “Allied agriculture” activities. As per the Electricity Act, 2003 consumers categorization has to be done based on the purpose of supply.

Shri P.K. Anvekar further submitted that creation of a new sub-category within agriculture category is arbitrary and it lacks legal force. However, during the final hearing the Review Petitioner submitted that he is not against creation of a separate category for mushroom cultivation (allied agriculture) and any increase in its tariff. But he is aggrieved by the steep increase in the tariff for mushroom cultivation.

The Review Petitioner further submitted that tariff may be increased gradually to avoid tariff shock.

The Commission has considered the submissions made by the Review Petitioner. It has also examined the records placed before them along with relevant provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder. The Commission’s power to review its own Orders flow from Section 94 (1) (f) of the Electricity Act, 2003, and are the same as these conferred on a Civil Court

by the Code of Civil Procedure (CPC). These have been spelt out in Section 114, read with Order 47 Rule 1 of the CPC.

Section 94 of the Electricity Act, 2003 provides that:

Quote

“(1)The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(f) reviewing its decisions, directions and orders.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate....”

Section 62 of Electricity Act, 2003 provides that:

Quote

“(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for -

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:”

The provisions relating to review of an Order constitute an exception to the general Rule to the effect that once a judgment is signed and pronounced, it cannot be altered. Therefore, the Orders are not generally interfered with, till there are circumstances as defined under the law, which make it necessary for a Court to alter or modify or reverse its original judgment. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1 of Code of Civil Procedure. The Power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by law expressly or by necessary implication.

With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with powers for reviewing its decision, directions and Orders under Section 94 (1) (f) of the Electricity Act, 2003. The instant application, made before the Commission, for the review of its

decision, directions and Orders, therefore, derives its scope and authority from the aforesaid section of the Electricity Act, 2003 read with Order 47, Rule 1 of the Code of Civil Procedure.

The above mentioned provisions of CPC mandate that a Court of review may allow a review only on three specific grounds which are as under:-

- i. Discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
- ii. Mistake or errors apparent on the face of the record; or
- iii. For any other sufficient reasons which is analogous to the above two grounds

Under Order 47, Rule 1, CPC, Order/Judgment may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of record. An error, which is not self-evident, has to be detected by process of reasoning and such an error 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 the above said provisions.

An error apparent on the face of the record may not be defined precisely and exhaustively, as there is an element of indefiniteness inherited in the term so used and it must be left to the Court to determine judicially, on the basis of the fact of each case. However, an error must be one which speaks for itself and is glaring and difficult to be ignored. The error is not one limited to one of facts but also includes obvious error of law. Whether, the error may have crept by oversight or by mistake may need to be established. The exercise of review of judgment under Order 47, Rule 1 is not permissible for an erroneous judgment so as to render the judgment as "reheard and corrected". The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by a higher forum, the latter can be corrected by exercise of review jurisdiction. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.

On the question of scope of review the Supreme Court in the case of **Aribam Tuleshwar**

Sharma Vs. Aribam Pishak Sharma (AIR 1979 SC 1047) held that-

"It may be exercised where some mistake or an error apparent on the face of the record is found. It may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all errors committed by the Subordinate Court."The Supreme Court while discussing the scope and jurisdiction of mistake apparent on the face of the record has held that:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of CPC. The review petition has to be entertained only on the ground of an error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and

would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1 of CPC is similar to the jurisdiction available to the High Court while seeking review of the order under Article 226.”

The Commission noticed that the Review Petitioner has not shown anything to indicate that the Commission has left in its Order that can be addressed as an error apparent on the face of the record to justify the review of the impugned Tariff Order dated 18th April, 2016. The Commission had deliberated on the issue of creation of a separate category for mushroom cultivation in the impugned Tariff Order and took a conscious decision to create a new separate category and determined the tariff for the said category after due consideration of all the facts placed before it. It is pertinent to mention here that the power of review can be exercised only within the domain prescribed under Order 47 Rule 1 of CPC for rectification of an error apparent and glaring on the face which would warrant reconsideration of the judgment / order so pronounced. Further, the error should be such that its continuance would strike at the roots of justice. However, there is not even a whisper regarding any error in the Order in the Review Petition and therefore the Commission is of the view that the issues raised in the Review Petition do not qualify for review.

The Commission feels that a new separate category of Agriculture (Allied Activities) which includes Mushroom cultivation is rightly created and legally tenable as per the Section 62(3) of Electricity Act, 2003. Further the Commission has fixed the tariff for this category after considering comments / objections from the consumers / stakeholders etc.

On the basis of the records placed before the Commission in the present review petition and the averments made before the Commission, the Review Petitioner has not been able to make out any case which would endorse a case for review of the Commission's impugned Order dated April, 18, 2016. Further, the Review Petitioner has failed to show that there is any error apparent on the face of the record which would justify the review. The Commission opines that the issues which were raised by the Review Petitioner and enumerated in this Order have already been heard and deliberated at the time of issuance of Commission's impugned Tariff Order dated April 18, 2016. The said issues were decided by the Commission based upon the provisions of Electricity Act, 2003 and rules and regulations made there under. Hence, the Commission feels that the Review Petitioner has no case.

In such circumstances, the Review Petition is liable to be dismissed.

Ordered accordingly.

Sd/-
(NEERJA MATHUR)
MEMBER

Sd/-
(S.K.CHATURVEDI)
CHAIRPERSON

CERTIFIED COPY

Sd/-
(KEERTI TEWARI)
SECRETARY