

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

Quorum
Smt. Neerja Mathur, Member
Petition No. 218/2016
Date of Order: 04.10.2016

In the matter of:

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 in the matter of true up of Annual Revenue Requirement for the year 2014-15, Review of the Annual Revenue Requirement for the year 2015-16 and approval of the Annual Revenue Requirement for the MYT Control Period FY 2016-17 to FY 2018-19 and Determination of Tariff for the year 2016-17.

And in the matter of:

DNH Power Distribution Corporation Limited

.... Petitioner

Present

For the Petitioner

Shri Sandeep Rajpurohit, Advocate

ORDER

Shri Sandeep Rajpurohit, Learned Counsel for the Petitioner sought the review of the impugned Tariff Order dated 07.04.2016 on the following issues:-

- a. provision of a claim period of 6 months in Bank Guarantee submitted / to be submitted by the consumers.
- b. reduction in power factor incentive on demand & energy charges from 1% to 0.5%.
- c. revision of demand charges of HT (B) consumers from Rs 275/kVA/month to Rs 375/kVA/month for FY 2016-17.

The Learned Counsel for the Petitioner submitted that Clause 6.10 (2) of the JERC (Electricity Supply Code) Regulations, 2010 provides that:-

“(2) Consumer shall have the option to make advance payment and in such an event security amount shall be proportionately fixed. The procedure for determination of

security deposit, for different categories of consumers, shall be determined by the licensee and approved by the Commission. The deposit shall be accepted in the form of cash, Cheque or draft in case of LT consumers and in the form of draft or banker's Cheque in case of HT/EHT consumers. The Licensee shall maintain separate head of account of such security deposits. On termination of the agreement, the security deposit will be refunded to the consumer after adjustment of the amount, if any, remaining payable by him."

The Learned Counsel further submitted that a claim period of 6 months should be provided in the Bank Guarantee after the expiry of the Bank Guarantee. Even the Letter of Credit (LC) given by the Distribution Licensees to generating companies shall have a claim period which extends beyond the expiry of the Letter of Credit.

The Learned Counsel further submitted that the Consumers Grievances Redressal Forum (CGRF) vide its Order dated 18.12.2015 held that Bank Guarantee given by the consumer to the Distribution Licensee was incorrect because its format and the period for which the Bank Guarantee was required was not approved or specified by the Commission.

The Learned Counsel requested the Commission to approve a format of the Bank Guarantee for all consumers and also add a provision for validity and specific claim period of 6 months in Bank Guarantee beyond its expiry date in Clause 6.10 (2) of the JERC (Electricity Supply Code) Regulations, 2010.

The Petitioner submitted that power factor incentive @ 1% on demand and energy charges for each increase of 0.01% in power factor above 0.95 (lagging) has put an additional burden of Rs 78.33 cr as incentive during FY 2015-16 on them. This has resulted in an additional burden on finances of the DNH Power Distribution Corporation Limited (DNHPDCL) and may even lead to a situation of financial crunch in future years. The Petitioner has requested for reduction in rate of incentive from 1% to 0.5%.

The Petitioner requested the Commission that the demand charges for HT (B) consumers for FY 2016-17 which were reduced from Rs 375/kVA/Month to Rs 275/kVA/month be revised back to Rs 375/kVA/month. It was pointed out by the Petitioner that while deciding reduction in demand charges for HT (b) consumers it has considered the difficulties faced by the Power Intensive Industries. At the same time concerns of the Licensees also need to be considered.

The Commission has considered the submissions made by the Petitioner. It has also examined the records placed before it along with relevant provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder.

The application and the scope of the review of an Order are circumscribed under Order 47 Rule 1 of the Code of the 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 implications. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with powers for reviewing its decisions, directions and orders under Section 94 (1) (f) of the said Act. The present Petition, made before the Commission for the review of its Order, therefore, drives 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.

Section 94 (1) (f) provides as under:-

“(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.”

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 provision.

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 Commission noted that the issue pertaining to amendment of Clause 6.10 (2) of the JERC (Electricity Supply Code) Regulations, 2010 to incorporate a provision for validity and claim period of 6 months beyond its expiry date in a Bank Guarantee to be submitted by the consumers to the Distribution Licensees as Security Deposit was not raised in their Petition for determination of tariff for Wheeling and Retail Supply Tariff for FY 2016-17. This issue was also not raised by the Petitioner during the Public Hearing for determination of its tariff in Petition No. 193/2016 for Wheeling and Retail Supply Tariff for FY 2016-17. It appears that the Petitioner has raised this issue for the first time in the present Review Petition. It is a settled law that an issue which is not raised in the Petition for adjudication subsequently cannot be raised in the Petition. Thus, the Commission is of the view that the Petitioner has failed to make any case for review on this issue.

On the issue of reduction in the power factor incentive on demand and energy charges from 1% to 0.5%, the Commission is of the view that there is no error apparent on the face of the record because it has taken a conscious decision to increase the incentive for maintaining better power factor as could be seen from the impugned Tariff Order of 01.04.2015 quoted below:-

“ 10.5.2 Power Factor Incentive

In order to equate incentive for better power factor with the surcharge for poor power factor, the Commission decided to revise the incentive for better power factor as follows:-

For HT Consumers – The monthly average power factor of the supply shall be maintained by the consumer not less than 90% (0.90 lagging). If the monthly average power factor of a consumer falls below 90% (0.9 lagging), such consumer shall pay a surcharge in addition to this normal tariff @ 1% on billed (demand) and energy charges for each fall of 0.01 in power factor up to 0.7 (lagging).

In case the monthly average power factor of the consumer is more than 95% (0.95 lagging), a power factor incentive @ 1% on demand and energy charges shall be given for each increase of 0.01% in power factor above 0.95 (lagging).”

The Commission observed that a revenue surplus of Rs. 325.72 cr at the end of FY 2015-16 had been worked out by the Commission after proposed tariff at the time of determination of tariff for FY 2015-16 and the surplus considered by it till FY 2015-16 at the time of review of tariff for FY 2015-16 was Rs. 463.43 crores. It also noted that the Commission has approved revised revenue surplus of Rs. 489.29 crore till FY 2016-17 at the time of determination of tariff for FY 2016-17.

Thus the Petitioner’s contention that additional burden on the finances of DNHPDCL on account of incentive payable by it to consumers for maintaining high power factor

might even lead to a situation of financial crunch in future years did not seem to be well founded.

On the issue of reduction in demand charges for HT (B) consumers for FY 2016-17 the Commission is of the considered view that after due consideration of relevant factors it had decided to reduce the demand charges from Rs 375/ kVA/month to Rs 275/kVA/month. The relevant para of the impugned Order in Petition No. 193/2016 is reproduced as hereunder:-

*“In view of the cumulative revenue gap/ (surplus) of Rs. (684.22) Crores at the end of FY 2016-17, the Commission decides to reduce the energy charge of HT (A)-I and HT (A)-II by Rs. 0.80 per kWh and HT (B) category by 0.70 per kWh. **Further, looking into difficulties faced by the power intensive industries, the Commission also decides to reduce the Demand charges of HT (B) category from RS 375 per kVA per month to Rs. 275 per kVA per month.**”*

Further, the Commission determines the tariff for a financial year keeping in view various expenses as well as revenue, and a review and true-up is subsequently carried out in accordance with the prevailing Regulations. The financial impact on account of actual expenditure being more/less than the anticipated expenditure is duly considered by the Commission at the time of review/true-up. The norms for tariff, once decided after due process, cannot be changed during the currency of the tariff period.

The Commission is of the view that filing of such a Review Petition seeking change in norms for certain components of tariff such as reduction in rate of power factor incentive and reduction in demand charges for a particular category of consumers on account of actual expenditure of such items being more than the approved rates is not legally tenable. The norms for tariff once decided after due process cannot be changed during the currency of the Multi Year Tariff Period.

On the basis of the records placed before the Commission in the present review petition and the averments made before the Commission, the Petitioner has not been able to make out any case which would endorse a case for review of the Commission's impugned Order dated 07.04.2016. Further, the 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 the Commission's impugned Tariff Order dated 07.04.2016. The said issues were decided by the Commission based upon the provisions of the Electricity Act, 2003 and the 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

CERTIFIED COPY

Sd/-
(KEERTI TEWARI)
SECRETARY