

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Shri Ashok Basu, Chairman
2. Shri G.S. Rajamani, Member
3. Shri K.N. Sinha, Member

Review Petition No.119/2002

in

Petition No.89/2000

And in the matter of

Review of the Commission's order dated 24.6.2002 in Petition No. 89/2000 in the matter of transmission tariff for Panki-Mainpuri LILO and associated bays at Kanpur S/S in Northern Region

And in the matter of

Power Grid Corporation of India Ltd.

... **Petitioner**

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd
2. Himachal Pradesh State Electricity Board
3. Punjab State Electricity Board
4. Haryana Vidyut Prasaran Nigam Ltd
5. Power Development Dept., J&K
6. Uttar Pradesh Power Corporation Ltd
7. Delhi Power Supply Co. Ltd
8. Chandigarh Administration, Chandigarh
9. Uttaranchal Power Corporation Ltd.

.... **Respondents**

The following were present:

1. Shri Umesh Chandra, ED, PGCIL
2. Shri S.S. Sharma, AGM, PGCIL
3. Shri C. Kannan, PGCIL
4. Shri D.D. Chopra, Advocate, UPPCL
5. Shri T.K. Srivastava, EE, UPPCL
6. Shri T.P.S. Bawa, SE, PSEB
7. Shri G.M. Agarwal, DCE(Comml.), RVPNL
8. Shri J.S. Bhargava, AE (ISP), RVPNL
9. Shri R.K. Arora, XEN/T, HVPN

ORDER
(DATE OF HEARING 11.3.2003)

The petitioner, PGCIL seeks review of the order dated 24.6.2002 in Petition No. 89/2000(hereinafter referred to as “the impugned order”).

2. The petitioner had filed Petition No. 89/2000 for approval of tariff for Panki-Mainpuri LILO and associated bays at Kanpur sub-station in Northern Region. The tariff was approved by the Commission vide the impugned order, presently sought to be reviewed. In the said Petition No. 89/200, the petitioner had claimed tariff based on completion cost of Rs.664.10 lakh for Panki-Mainpuri LILO and associated bays stated to be measuring 10 kms with the following details of the completion cost:-

| <u>Description</u> | <u>Gross Block (Rs. in lakh)</u> |
|------------------------------|----------------------------------|
| Land | Nil |
| Building & other Civil Works | 17.72 |
| Sub-station | 229.96 |
| Transmission Line | 400.06 |
| PLCC | 16.66 |
| | ----- |
| TOTAL | 664.10 |
| | ===== |

3. In the proceedings in Petition No. 89/2000, it was pointed out on behalf of the respondents that the amount of Rs.400.06 lakh on construction of the transmission line was abnormally high. A comparison was drawn by the respondents with the construction cost of Rs.24.75 lakh/km in respect of 220 kV D/C Pali-Chakrapur Transmission Line. The respondents had contended that for the purpose of tariff, the completion cost should be considered by taking cost of Rs.24.75 lakh/km. In view of the contention raised, the petitioner was directed to explain the reasons for variation in construction cost of LILO of Panki-Mainpuri transmission line as compared to Palli-Chakrapur Transmission Line. An affidavit sworn on 1.3.2002 was filed on behalf of the

petitioner on 4.3.2002 giving justification for the higher cost to the extent of Rs.7.9 lakh/km on account of various factors, the relevant portion of which is extracted below:-

“The route length of the transmission line is quite small and being a LILO line, traversing through Kanpur City posed serious ROW problems which has necessitated higher number of towers, most of which are tension towers. The average number of towers in this case is 5 against 3 in normal conditions. Further, in this case, the number of tension towers is much higher compared to normal case (the lines in plain terrain). This has resulted in substantial increase in quantity of Tower steel, Insulator, Hardware fittings and accessories, excavation, concreting and reinforcement steel and hence increase in cost of line. On account of higher number of towers per Km and civil works, the effect on cost on this account alone works out to Rs.7.9 lakhs per Km (additional towers Rs.4.97 lakhs per Km and civil works Rs.2.92 lakhs per Km). **The difference in the balance cost is attributable to higher quantity of steel, civil works, insulators, hardware fittings in angle towers compared to normal suspension towers**” (Emphasis added).

4. The Commission while allowing tariff, concluded that average per Km cost of a normal 220 kV D/C transmission line was around Rs. 27.00 lakh. After catering to the additional cost of Rs 7.9 lakh per Km on account of the special features of the transmission line as explained and justification furnished by the petitioner, the Commission allowed an amount of Rs.349.0 lakhs @ Rs.34.90 lakhs per Km for 10 Km long LILO of Panki-Mainpuri line towards construction cost for the purpose of computation of tariff. However, no credit was given for “the balance cost” explained by the petitioner.

5. In support of its prayer for review of the impugned order, the petitioner has now further explained the reasons for higher cost of construction of Panki-Mainpuri LILO line. According to the petition, the higher cost of construction was on account of increase in number of towers and the higher number of tension towers. The petitioner has furnished

revised calculations in support of cost of construction, which add up to Rs.42.54 lakhs per Km, against the construction cost of Rs.40.0 lakhs per Km claimed in the original petition. It has been stated that the complete details could not be filed at the time of filing of application for fixation of tariff, as these were available at the execution site or different Departments of the petitioner company. It is also stated that the actual length of the transmission line was 10.4 Kms against the length of 10.0 Kms mentioned in the original petition and considered by the Commission.

6. The replies have been filed on behalf of Respondent No.1, Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RRVPN) and Respondent No.4, Haryana Vidyut Prasaran Nigam Ltd. (HVPN). None of the other respondents has filed any reply. Respondent No.1 has not urged any grounds to oppose review of the impugned order. Respondent No.4 has, however, submitted that the petitioner in its affidavit filed on 4.3.2002 had given justification in support of the higher cost of Rs.7.9 lakh per Km and no other facts were placed on record to support the remaining expenditure. Therefore, according to Respondent No.4, the justification now furnished by the petitioner to support its claim for higher cost of construction of the transmission line cannot be considered. It has prayed for dismissal of the review petition.

7. We have considered the rival contentions. In its affidavit filed on 4.3.2002, the petitioner had sought to explain the reasons for higher cost of construction for Panki-Mainpuri LILO. We have already extracted above the justification given by the petitioner. The petitioner had quantified the additional cost of Rs. 7.9 lakh per Km. So far as the balance of additional cost is concerned, it was stated that this was “attributable to higher

quantity of steel, civil works, insulators, hardware fittings in angle towers compared to normal suspension towers". Thus, in the original proceedings, the petitioner had explained the entire cost, though a part of higher cost was actually quantified and the reasons for balance of the expenditure were explained in general terms. The necessary facts have now been explained with the supporting evidence. It is also stated by the petitioner that the details now placed on record could not be filed by it earlier as they were available in different departments. The point that falls for our consideration is whether the under these circumstances, the review of the impugned order could be allowed.

8. Review is a strict legal remedy. It is regulated and controlled by the statute and is limited and confined to such cases as the statute enumerates. Although there has to be a strict compliance with the statute authorising review, the provisions are remedial and are to be liberally construed in order to advance the remedy and in the interest of overall justice. Under Section 12 of the Electricity Regulatory Commissions Act, 1998 read with Section 114 and Order 47 of Civil Procedure, the Commission has the power of review and the power is to be exercised in the light of above broad principles. In fact, keeping these broad propositions in view, Madhya Pradesh High Court in the State of Madhya Pradesh and another Vs Jaswant Puri and others (AIR 1989 MP 115) has already held that

“ A review may be granted because of mistakes of parties or of their attorneys as well as for mistakes of the Court, Clerk of Court or of the Commissioner in particular proceedings. Mistake consisting an error of computation, or a mistake which is the result of accident or misfortune may well afford a ground for review. Review may also be granted on the ground of newly discovered evidence or when there is error apparent on the face of the record.The Supreme Court in Aribam Tuleswar Sharma V. Aroibam Pishak Sharma, AIR 1979 SC 1047 pointed out that the power of review inheres in every court of

plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it”.

9. The Commission in its impugned order considered the additional cost of Rs.7.9 lakh per Km. to be justified. However, it did not record any reasons for not allowing “the balance cost” explained by the petitioner. To our mind, this anomaly can be rectified in exercise of power of review. Further, even if the inability of the petitioner to place all the relevant facts on record in the original proceedings is construed to be a mistake on its part, the application for review is still maintainable keeping in view the law laid down by Madhya Pradesh High Court in State of Madhya Pradesh Vs Jaswant Puri (Supra), according to which the mistake of the parties is a sufficient ground for review. We, therefore, allow this application for review.

10. In view of the above findings and decision, Petition No. 89/2000 shall be set down for hearing on 5.6.2003. Meanwhile, the respondents shall continue to pay to the petitioner the transmission charges already approved by the Commission in the impugned order.

11. This order disposes of the Review Petition No119/2002.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 9th April, 2003