

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Ashok Basu, Chairman,**
2. **Shri K.N.Sinha, Member**

**Review Petition No.65/2003
in
Petition No.51/2002**

In the matter of

Review of order dated 18.7.2003 in Petition No.51/2002 in the matter of approval of tariff for 400 kV Jeypore-Gazuwaka Transmission Line along with associated bays 500 MW HVDC back-to-back station at Gazuwaka between Southern Region and Eastern Region for the period 1.4.2001 to 31.3.2004.

And in the matter of

Power Grid Corporation of India Ltd.

..... Petitioner

Vs

1. Karnataka Power Transmission Corporation Ltd, Bangalore
2. Transmission Corporation of Andhra Pradesh, Hyderabad
3. Kerala State Electricity Board, Thiruvananthapuram
4. Tamil Nadu Electricity Board, Chennai
5. Electricity Department, Govt. of Pondicherry, Pondicherry
6. Electricity Department, Govt of Goa, Panaji
7. Bihar State Electricity Board, Patna
8. West Bengal State Electricity Board, Kolkata
9. Grid Corporation of Orissa Ltd
10. Damodar Valley Corporation, Kolkata
11. Power Department, Government of Sikkim, Gangtok
12. Jharkhand State Electricity Board, Ranchi

.....Respondents

The following were present:

1. Shri S.S. Sharma, AGM, PGCIL
2. Shri C. Kannan, Chief Manager, PGCIL
3. Shri U.K. Tyagi, DGM, PGCIL
4. Shri S Mehrotra, PGCIL
5. Shri M. Rastogi, PGCIL
6. Shri Vijayanarasmin, KPTCL
7. Shri S. Sowmyanarayanan

ORDER
(DATE OF HEARING: 18.11.2003)

The petitioner had filed a petition, registered as Petition No.51/2002, for approval of transmission tariff for 400 kV Jeypore-Gazuwaka transmission line and 500 MW HVDC back to back station at Gazuwaka between Southern and Eastern Regions (hereinafter referred to as "the transmission system") for the period from 1.4.2001 to 31.3.2004. The transmission tariff was approved by the Commission vide its order dated 18.7.2003. The present application has been filed for review of the said order dated 18.7.2003, (hereinafter referred to as "the impugned order").

2. Before considering the specific issues raised in this application for review, it is necessary to have a look at the circumstances under which the application has been filed.

3. The transmission system constructed by the petitioner, was declared under commercial operation with effect from 1.8.1999 at an estimated completion cost of Rs.64266.00 lakh. However, in a meeting of Eastern Regional Electricity Board held on 24.8.1999, it was decided that the date of commercial operation of the transmission system should be taken as 1.9.1999. Accordingly, the petitioner filed a petition (No.9/1999) for approval of transmission tariff for the period 1.9.1999 to 31.3.2001. The said petition No.9/1999 was disposed of by the Commission vide its order dated 3.6.2002 by admitting the cost of Rs.62967.53 lakh. In accordance with the investment approval accorded by Ministry of Power, the transmission system was to be completed by 21.2.1999. However, as noted above, the transmission system was ready with effect from 1.8.1999. Thus, there was a delay of nearly five months in completion of the transmission system. The reasons for the delay were not explained

by the petitioner despite an opportunity afforded for the purpose as the petitioner felt that it did not involve any delay. Therefore, the Commission had directed pro-rata reduction in IDC of 1195.00 lakh. The Commission, therefore, did not allow capitalisation of this amount of Rs.1195.00 lakh on account of IDC for the period from 21.2.1999 to 31.7.1999.

4. The petitioner had filed a review petition (No.97/2002) for review of the Commission's order dated 3.6.2002 in petition No.9/1999. The petitioner in the review petition sought to justify the delay in execution of the transmission system and prayed that the amount of Rs.1195.00 lakh should be considered for approval of tariff. This review petition was dismissed by the Commission vide its order dated 6.2.2003 holding that the review petition was devoid of merit. The relevant portion of the order dated 6.2.2003 is extracted below:

"We have considered the rival contentions. Without expressing any opinion on sufficiency or justification for the reasons placed on record in the review petition to explain the delay in execution of project, it is necessary for us to take a view whether or not there is proper justification for not filing the explanation during pendency of the petition. The petitioner, vide order 19.9.2001 in Petition No.9/1999 was asked to explain the reasons for time over run, if any, in execution of the project. In the affidavit filed before the Commission on 8.2.2002, the petitioner took a stand that there was no time over run and the different elements of the project were energised and commissioned by 2.3.1999, though in the same affidavit it was stated that the date of commercial operation of HVDC system was 1.9.1999. In the review petition, the petitioner admits the factum of delay and has furnished the reasons in support thereof as has been noticed above and has taken a stand which is at variance with that taken earlier. The right of review is possible only on limited grounds mentioned in order 47, Rule I of the Code of Civil Procedure (CPC). In our opinion, the grounds for review now furnished by the petitioner are not covered under the statutory prescription. The Commission in its order dated 1.1.2003 in Review Petition No.102/2002 has already taken a view that for the purpose of filing of petition for approval of tariff before the Commission, the different departments of the petitioner company cannot be considered entities separate from the petitioner. Therefore, there is no merit in the submission of the petitioner that the new evidence produced explaining the delay in execution of the project could not be produced by the petitioner after exercise of "due diligence."

5. The petitioner had separately filed a petition (No.51/2002) seeking approval of tariff for the period from 1.4.2001 to 31.3.2004 in respect of the transmission system. The tariff in this petition was approved by the Commission vide the impugned order. In this petition, the capital cost of Rs.62967.53 lakh as considered by the Commission in its earlier order of 3.6.2002 in petition No.9/1999 was taken as the base for determination of tariff. Further, while approving tariff in petition No.51/2002, an expenditure of Rs.103.01 lakh, incurred or anticipated to be incurred by the petitioner during the period from 1.4.2001 to 31.3.2004 was kept out of consideration in accordance with Clause 1.10 to Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001, (hereinafter referred to as the tariff regulations") according to which "tariff revisions during the tariff period on account of capital expenditure within the approved project cost incurred during the tariff period may be entertained by the Commission only if such expenditure exceeds 20% of the approved cost". The tariff regulations further provide that "in all cases where the capital expenditure is less than 20%, tariff revision shall be considered in the next tariff period". The petitioner is aggrieved on account of taking Rs.62967.53 lakh as the base for computation of tariff and non-consideration of expenditure of Rs.103.01 lakh during the tariff period, that is, from 1.4.2001 to 31.3.2004 and hence has filed the present application for review of the impugned order.

6. According to the petitioner, Clause 1.10 of the tariff regulations is applicable in case where tariff has been fixed before commencement of the tariff period in which case the capital expenditure incurred during the tariff period, subsequent to such fixation of tariff may not be considered where such expenditure is less than 20% of the approved cost. It is stated that since tariff for the transmission system covered for the period from 1.4.2001 to 31.3.2004 was being decided for the first time vide the

impugned order, the Commission ought to have considered the capital expenditure of Rs.103.01 lakh. The petitioner has stressed on interpretation of the word "revision" used in Clause 1.10 of the tariff regulations.

7. On the question of reduction of IDC of Rs.1195.00 lakh from the capital cost, the petitioner has submitted that since the application for review of order dated 3.6.2002 was dismissed vide order dated 6.2.2003 without considering the merits of the petitioner's claim in the application of review, but on the limited ground that new evidence produced by the petitioner to explain delay in execution of the project could be produced by it in petition No.9/1999 after exercise of due diligence. It is submitted that the Commission while dismissing the review petition No.97/2002 had not considered the explanation for time over run for the reason that the petitioner had not given proper justification for not filing the explanation during the pendency of the petition No.9/1999. The reasons for delay in execution of the transmission system were properly explained in an affidavit dated 28.4.2003 filed in petition No.51/2002, the cognizance of which has not been taken by the Commission.

8. According to the petitioner, these are the errors apparent on the face of record which can be corrected through the process of review. The petitioner has further submitted that it will suffer an irreparable loss and injury in case these errors are not rectified. Accordingly, the petitioner has filed this application for review with the following prayers:

"(i) Review its Order dated 18.07.2003 in petition No.51/2002 and consider the expenditure incurred by the petitioner during the year 2001-2002 and 2002-2003 amounting to Rs.103.85 lakhs towards completion of the Project for approval of tariff for the block period 2001-04.

(ii) review its Order dated 18.07.03 in petition No.51/2002 and to pass an Order for the Tariff based on the completion cost of Rs.642.67 Crs. including IDC of Rs.129.14 Crs, without making any pro-rata reduction from the IDC component of the project and to pass necessary Orders directing the respondents to pay the tariff on the completed cost of the project.

(iii) It is also prayed that the Commission may be pleased to pass such other relief as deemed fit and proper under the circumstances of the case and in the interest of justice else the petitioner will suffer irreparable loss and injury."

9. The application for review is listed for admission after notice to the respondents.

10. We have heard Shri S.S. Sharma, AGM on behalf of the petitioner and the representatives of the respondent present before us and have carefully gone through the record.

11. The basis for introducing Clause 1.10 of the tariff regulations flows from the Commission's order dated 21.12.2000 in petition No.4/2000 and other related petitions. It was considered appropriate that in order to reduce the uncertainty to the barest minimum level, the tariff should be approved before commencement of the tariff period and the tariff so approved should normally be continued for the entire tariff period. The frequent revisions of tariff during the period led to uncertainty and it became difficult for the state utilities to recover the additional tariff from the consumer, besides putting additional strain on the Commission. Therefore, the provision as contained in Clause 1.10 of the tariff regulations has been made. These provisions envisage that expenditure less than 20% should be absorbed by the utilities seeking approval of tariff. The petitioner has filed appeals against the Commission's order dated 21.12.2000 as also the tariff regulations. However, in these appeals there is no challenge to the provisions contained in Clause 1.10 of the tariff regulations or the relevant portion of the order of 21.12.2000. Accordingly, the provisions contained in

Clause 1.10 of the tariff regulations have to be given effect to. We are not satisfied with the contention of the petitioner that since the tariff was being approved for the first time during July, 2003, the expenditure of Rs.103.01 lakh ought to have been considered. It has always been the endeavour of the Commission to approve tariff before commencement of the tariff period and in advance. However, for administrative reasons including the stay granted by the superior courts on certain provisions of the tariff regulations, which was subsequently vacated, the tariff could not be approved before commencement of the tariff period on 1.4.2001. However, there has to be a uniformity in approach so far as the application of tariff regulations is concerned. In the past cases pertaining to other utilities, the Commission has not allowed capitalisation of additional expenditure incurred during the tariff period which does not so qualify in terms of Clause 1.10. Therefore, to ensure uniformity of approach in all cases, a conscious view has been taken by the Commission in the impugned order to exclude the expenditure of Rs.103.01 lakh. In our opinion, the timing of approval of tariff cannot be the criteria for deciding on the applicability of Clause 1.10 of the tariff regulations since it cannot be said to be based on any intelligible differentia. Accordingly, we are of the view that the alleged error pointed out by the petitioner does not constitute an error apparent on the face of record necessitating review of the impugned order.

12. In regard to other contention raised on behalf of the petitioner, it is noted that after dismissal of the application for review (No.97/2002) the capital cost approved by the Commission in its order dated 3.6.2002 in petition No.9/1999 had become final and cannot be allowed to be reopened at this stage, otherwise the process may continue ad infinitum. This is opposed to the public policy that the issues once settled should not be allowed to be re-opened after lapse of time. We also notice that in the

proceedings before the Commission in petition No.9/1999, the petitioner had taken a categorical stand that there was no delay in execution of the transmission system. However, in its application for review of order dated 3.6.2002, the petitioner sought to explain the delay by placing certain additional facts on record which is contradictory to the stand taken earlier on the same issue. For these reasons we are not inclined to reopen the capital cost already approved by the Commission in its order of 3.6.2002 in petition No.9/1999 and considered for computation of tariff in the impugned order.

13. For the foregoing reasons, the application for review is dismissed at admission stage, with no order as to costs.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 4th December, 2003