

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

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

**Review Petition No.18/2003 in  
Petition No.68/2000**

**In the matter of**

Review of order dated 1.11.2002 in Petition No.68/2000 viz. Approval for final recovery of extra Rupee Liability due to Foreign Exchange Rate Variation for the year 1999-2000

**And in the matter of**

Tamil Nadu Electricity Board

**....Petitioner**

Vs

1. Power Grid Corporation of India Ltd., New Delhi
2. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
3. Karnataka Power Transmission Corporation Ltd., Bangalore
4. Kerala State Electricity Board, Trivandrum
5. Electricity Department, Govt. of Pondicherry, Pondicherry **...Respondents**

**The following were present:**

1. Shri S. Sowmyanarayanan, Consultant, TNEB
2. Shri S.S. Sharma, AGM, PGCIL
3. Shri D Kumar, AGM, PGCIL
4. Shri Dilip Rozekar, Chief Manager, PGCIL
5. Shri R. Suri, Chief Manager, PGCIL
6. Shri U.K. Tyagi, Chief Manager, PGCIL
7. Shri C. Kannan, Chief Manager, PGCIL
8. Shri M. H. Sastry, APTRANSCO
9. Shri M.N. Krishnan, APTRANSCO
10. Shri S. Gopal, PGCIL
11. Shri S. Shivamallu, KPTCL
12. Shri K.J. Alva, KPTCL
13. Shri B.S. Chander, KPTCL
14. Shri K. Gopalakrishnan, KSEB

**ORDER**  
**(DATE OF HEARING 26.8.2003)**

Through the present application, the petitioner seeks review of the amount of final recovery of extra rupee liability due to Foreign Exchange Rate Variation (FERV) for the year 1999-2000 approved by the Commission for Southern Region. The following prayers have been made in the present application for review:

- "1. TNEB humbly prays that this Hon'ble Commission may be pleased to disallow FERV arising on account of repayment of loan, treating the same as not a revenue expenditure and consequently pass orders to the effect that the same is not eligible to be reimbursed every year.
2. This Petitioner therefore prays, that this Hon'ble Commission may be pleased to suitably modify the order dated 01.11.2002 made in Petition No.68/2000 by disallowing the amount of Rs.16.26 Crs representing FERV on account of repayment of loan in respect of Southern Region SEBs. The implementation of the impugned order may be stayed till the disposal of this review Petition.
3. It is also prayed that the Hon'ble 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 or else the petitioner will suffer cumulative loss."

2. Petition No.68/2000 was filed by the Respondent No.1 for approval of final recovery of extra rupee liability of Rs.65,13,55,509 due to FERV for the year 1999-2000 from the constituents of Northern, Southern, Western and Eastern Regions as also for additional capitalisation in respect of Rihand Bi-pole HVDC Project in Northern Region for the years 1995-1996 to 1998-1999. The amount included Rs.19,79,04,090 being the share of Southern Region. The petition was disposed of by the Commission vide its order dated 1.11.2002. The Commission had approved a sum of Rs.65,11,20,961 on account of recovery of FERV, against the claim of Rs.65,13,55,509. The amount of Rs.65,11,20,961 approved by the Commission was directed to be allocated to different regions in the ratio of allocation of respective

loans. It has been pointed out that the amount approved, so far as Southern Region is concerned, works out to Rs.19.78 crore. This amount of FERV approved was on account of repayment of loan, interest and fee and other miscellaneous charges.

3. According to the petitioner, the Respondent No.1 is not entitled to claim FERV due to repayment of loan; though the petitioner has no objection to Respondent No.1's claim of FERV arising on account of interest payment and fee and other miscellaneous charges. Accordingly, the petitioner seeks review of the order dated 1.11.2002 in terms of the prayers extracted above. It has been submitted that in accordance with Para 4 (extracted below) of Ministry of Power notification dated 1.12.1998, Respondent No.1 is entitled to FERV based on actual expenditure as and when incurred and since repayment of loan is not an expenditure, Respondent No.1 should not be allowed to claim FERV on the amount of loan repaid during the year. In support of the interpretation placed by the petitioner on Para 4 of the notification dated 1.12.1998, reliance has been placed on Paras 9 & 10 of the Accounting Standard 11 (AS 11) of the Institute of Chartered Accountants of India.

#### "4. FOREIGN EXCHANGE VARIATION

The effect of foreign exchange variations, to be paid to/by POWERGRID or by/to the beneficiaries would be determined by the Central Government at the end of each financial year based on actuals as certified by the Statutory Auditors of POWERGRID. POWERGRID may raise adhoc bills on account of **FERV based on actual expenditure as and when incurred**, subject to the final adjustment at the end of the financial year and as certified by the Statutory Auditors of POWERGRID and approved by the Central Government."

4. There is no dispute that the review can be sought on the ground of discovery of new material or evidence not known to the aggrieved party or the evidence could not be produced by it after exercise of due diligence, some mistake or error apparent on

the face of record or for any other sufficient reasons analogous to the preceding two grounds.

5. In the first instance we propose to examine whether or not there is any error apparent on the face of record while approving recovery of extra rupee liability due to FERV for the year 1999-2000 vide order dated 1.11.2002 in Petition No.68/2000 as the petitioner is not relying upon any new material or evidence. The claim of the Respondent No.1 (PGCIL) in Petition No.68/2000 included FERV on account of three counts, namely, repayment of loan, interest on loan and fees and other miscellaneous charges incurred during the year in foreign currency. The petitioner does not seem to have filed its reply to the petition canvassing the interpretation now placed by it on Para 4 of the notification dated 1.12.1998 as no such reply is held on record in that petition. Therefore, the petitioner cannot be allowed to argue in the present review proceedings that FERV on repayment of loan was outside the scope of Para 4 of the notification dated 1.12.1998. The petitioner is contesting the findings of the Commission on merits. Therefore, we do not find any error, much less an error apparent on the face of record to qualify for review of the order. The review petition must, therefore, be held to be not maintainable and should fail on this limited ground.

6. We, however, proceed to examine the matter raised in the light of the provisions of notification dated 1.12.1998. Through the said notification dated 1.12.1998 Ministry of Power had decided "the tariff leviable by POWERGRID in respect of transmission line in Southern Region". The said notification dated 1.12.1998 has been issued "in pursuance of Ministry of Power notification No.2/3/POWERGRID/Tariff/97 dated 16.12.1997, as amended on 4.3.1998", which decided "the norms and factors of the tariff of the transmission system of Power Grid

Corporation of India Limited". Thus, the notification dated 1.12.1998 is based on principles contained in the earlier notification dated 16.12.1997. Para 5 of the notification dated 16.12.1997 expressly lays down that extra rupee liability towards interest payment and loan repayment actually incurred in a year is admissible, if it directly arises out of Foreign Exchange Rate Variation and is not attributable to POWERGRID or its suppliers or contractors. By reading the notification dated 1.12.1998 and 16.12.1997 together, there remains no doubt that Respondent No.1 is entitled to claim FERV on loan repayment, in addition to interest and other fees and miscellaneous charges paid in foreign currency. Therefore, even on merits, we do not find any substance in the contention raised on behalf of the petitioner. We also find that earlier, Ministry of Power vide its notification dated 14.5.1999 had allowed FERV for the year 1997-1998 towards interest payment as also the loan repayment. The petitioner had accepted the amount of FERV allowed by Ministry of Power notification. Therefore, even going by the past practice the claim of the petitioner is not maintainable. Paras 9 and 10 of AS-11 are not relevant so far as the present review petition is concerned.

7. In view of the findings recorded on merits in the preceding paragraph, we do not consider it necessary to record any finding on the issue whether or not the repayment of loan constitutes "actual expenditure" for the purpose of claiming FERV.

8. In the light of the foregoing discussion, the Review Petition No.18/2003 is not maintainable and is dismissed at the admission stage, without any order as to costs.

**Sd/-**  
**(K.N. SINHA)**  
**MEMBER**

New Delhi dated the 1<sup>st</sup> September, 2003

**Sd/-**  
**(ASHOK BASU)**  
**CHAIRMAN**