

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 6/2012 in Petition No. 69/2010

**Coram: Shri S. Jayaraman, Member
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

Date of Hearing: 29.3.2012

Date of Order : 9.10.2012

In the matter of:

Review of order of Commission dated 2.12.2010 in Petition No. 69/2010 in the matter of approval of transmission tariff for 400/220 kV, 315 MVA ICT II at Rajgarh S/S along with associated bay equipment under Sipat-I transmission system in Western Region from date of commercial operation to 31.3.2014

And

In the matter of:

Power Grid Corporation of India Ltd., Gurgaon

.....**Petitioner**

Vs

Madhya Pradesh Power Trading Co. Ltd., Jabalpur

....**Respondent**

ORDER

PGCIL has filed the present petition seeking review of the order of the Commission dated 2.12.2010 in Petition No. 69/2010 with the following prayers:

(a) Condone the delay in filing of review petition and admit.

(b) Review the order dated 2.12.2010 in Petition no. 69/2010 and

(c) To restore full IDC, IEDC and tariff as originally claimed in Petition No. 69/2010 and accordingly amend the order dated 2.12.2010 in Petition No. 69/2010.

2. The Review Petitioner has submitted that the Commission has determined the transmission tariff for 400/220 kV, 315 MVA ICT II at Rajgarh sub-station along with associated bay equipment under Sipat-I transmission system in Western Region for the period from 1.4.2009 till 31.3.2014 vide order dated 2.12.2010 in Petition no. 69/2010. The Review Petitioner has submitted that the commercial operation of the asset covered under the petition was delayed by 12 months against the approved schedule of March 2008, as per RCE I dated 5.3.2008. The Review Petitioner has further submitted that it had furnished in para 4.1 of the Petition No. 69/2010 that the reasons for delay in execution of the project with reference to the investment approval was on account of delay in Sipat I generation project of NTPC. As Sipat I project was inordinately delayed, the petitioner commissioned the various elements of Sipat I transmission system for grid strengthening and to improve system parameters including despatch of power from Sipat complex on commissioning of Sipat II units. However, Commission in its order dated 2.12.2010 in Petition No. 69/2010 while approving the tariff for the period 2009-14 has dis-allowed ₹82.06 lakh on account of IDC and IEDC from March 2008 to March 2009 on account of 12 months delay in

commissioning of ICT II at Rajgarh from the scheduled date of commissioning as per RCE I. The petitioner has submitted that the commissioning of the asset got delayed due to reasons beyond the control of the petitioner.

3. The Review Petitioner has also furnished additional justification in support of the delay in commissioning of ICT II at Rajgarh sub-station. The Review Petitioner has submitted that it placed award on M/s CGL for supply of 4 nos. of 400/220 kV, 315 MVA ICTs (two at Rajgarh sub-station and two at Seoni sub-station) under Sipat I Transmission system. However, on account of the delay in commissioning of the Sipat I generating units, the petitioner explored the various alternatives to gainfully utilize the ICTs till the time the same could be utilized in the Rajgarh sub-station. Keeping in view the overall system requirement, the petitioner diverted the ICT meant for Rajgarh sub-station to some other place for gainful utilization. ICT-I at Rajgarh sub-station was commissioned with effect from 1.4.2008 and it was sufficient to meet the entire load requirement of the system and the beneficiary (MPPTCL). After it was indicated by NTPC that the Unit I of Sipat I generation would be commissioned with effect from March 2009, the petitioner replaced the CGL make ICT by BHEL make ICT at Rajgarh sub-station. On account of change of make of ICT from CGL to BHEL, the foundation design had to be modified by the petitioner. After completion of the foundation by November, 2008 and subsequent erection, ICT-II at Rajgarh sub-station was commissioned on 1.4.2009. The petitioner has submitted that no

constraint has been experienced for power evacuation through 220 kV downstream system of MPPTCL due to delay in commissioning of ICT-II at Rajgarh sub-station, as unit-I of Sipat-I generation project could be commissioned only on 22.6.2011. The petitioner has submitted that while preparing the documents for RCE II of the Sipat I transmission system, the petitioner came to know about the fact of revised date of scheduling of Unit I of Sipat Stage-I which has a bearing on the delay in commissioning the ICT-II. Based on the new evidence, the petitioner has approached the Commission for review of the order of the Commission.

4. The Review Petitioner has submitted that review has been sought on the ground of the discovery of new and important matter or evidence, mistake or error apparent on the face of record, and other sufficient reasons. As regards the delay in filing the Review Petition, it has been submitted that due to administrative reasons it could not be filed within the stipulated period of 45 days.

5. We have heard the representative of the Review Petitioner. First of all, we consider whether the Review Petition has been filed within the period of limitation. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations") provides as under:-

"103. (1) The Commission may at any time, on its own motion, or on an application of any of the persons or parties concerned, within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit:

Provided that power of review by the Commission on its own motion under this clause may be exercised only for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations."

Further, Regulation 116 of the Conduct of Business Regulations provides as under:-

"116. Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission."

6. It is evident from the above provision that a Review Petition can be filed by a party within a period of 45 days from the date of issue of the order. This period can be enlarged or curtailed if the party is able to show sufficient reason. The expression "sufficient reason" has not been defined in the Conduct of Business Regulations. Therefore, the expression "sufficient reason" shall receive the same interpretation as the expression "sufficient cause" in Section 5 of the Limitation Act, 1963. Existence of sufficient cause is a condition precedent for the exercise of discretion under Section 5 of the Limitation Act. The cause should be beyond the control of the party invoking the said section. A cause for delay which by due care and attention, the party could have avoided cannot be a sufficient cause. The test therefore, is whether or not a cause is sufficient is to see whether it could have been avoided by a party by the exercise of due care and attention. The Hon'ble Supreme Court in *Dinbandhu Sahu vs. Jadumoni Mangaraj* [AIR 1954 SC, 411] has held as under:

"As was observed in the Full Bench decision in Krishna vs. Chathappan, [(1890) ILR 13 Mad 269] in a passage which has become classic, the words 'sufficient cause' should receive 'a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant".

In the case of The State of West Bengal Vs The Administrator, Howrah Municipality and Ors. [1972 (2) SCR 874], the Supreme Court while considering the scope of the expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act, reiterated that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party.

7. In the light of the above settled principles of law, we now proceed to consider whether the Review Petitioner has made out a case for sufficient reason to meet the requirement of Regulation 116 of Conduct of Business Regulations for condonation of delay in filing the Review Petition. The Commission passed the order on 2.12.2010 in Petition No. 69/2010. The Review Petitioner has not filed Review Petition before this Commission within the stipulated period of limitation of 45 days. The Review Petition has been filed on 12.3.2012, i.e. after a delay of 396 days. The Review Petitioner has submitted that due to administrative reasons, the Review Petitioner could not file the Review Petition within the stipulated period. The Review Petitioner has not explained the administrative reasons for which it was prevented from filing the Review Petition within the

stipulated period. Therefore, the Review Petitioner has not been able to show sufficient cause for condonation of delay.

8. Next we consider whether the grounds raised in the Review Petition meet the requirements of Order 47 Rule 1 of the CPC read with Section 94 of the Act. Under the provisions of Order 47 Rule 1 of CPC, any person feeling aggrieved by any order may apply for review on the following grounds:-

- (a) Discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when order was made, or
- (b) On account of some mistake or error apparent on face of record, or
- (c) For any other sufficient reason.

9. The Review Petitioner has filed the review on all the aforementioned grounds which have been examined in subsequent paras in the light of the above principles.

Discovery of new and important matters or evidence:-

10. In its Review Petition, Review Petitioner has submitted that it placed award for supply of 4 nos. 400/220 kV, 315 MVA ICTs (2 at Rajgarh and 2 at Seoni sub-stations) under Sipat Stage-I Transmission System on M/s. CGL. However, the completion of Sipat-I generation project of NTPC was getting delayed and, in order to avoid non-utilization of the asset, PGCIL looked into various alternatives to gainfully utilize the transformer till the time the same could be utilized for the subject project. Keeping in view the over-all system requirements, it was found possible to utilize the said transformer at other sub-station for its gainful utilization. During the Quarterly Progress Review meeting of NTPC in Ministry of Power held on 14th October, 2008, NTPC indicated the commissioning schedule of Unit-I of Sipat-I as March 2009 and accordingly, the Review Petitioner planned to delay the commissioning of ICT-II matching with the NTPC generation schedule. The diverted ICT was finally replaced by BHEL make ICT at Rajgarh sub-station. In view of change of make of ICT from CGL to BHEL, the foundation design had to be modified by the petitioner. After completion of foundation in November 2008, and subsequent erection, ICT-II at Rajgarh substation was commissioned on 1.4.2009.

11. The representative of the Review Petitioner during hearing on 29.3.2012 submitted that the Commission, in its order dated 2.12.2010 considered the scheduled date of commissioning as March 2008, based on statement made by the Review Petitioner in the RCE I. Subsequent to the impugned order, the Review Petitioner has found a new matter of evidence

while preparing the material for RCE II which showed the date of scheduled commissioning of Sipat I generation as March 2009. Though the petitioner could have commissioned the asset in March 2008, but in that case the asset would have remained idle. In order to avoid that, the petitioner, in the interest of consumers and beneficiaries, diverted ICT to other more critical projects where ICT supply was urgently required as per the system requirements, and subsequently revised foundation design due to supply of BHEL make ICT in place of CGL. Therefore, the fact that NTPC had indicated the date of commissioning of Sipat I generation as March 2009 and the Review Petitioner planned to delay the commissioning to March 2009 matching with the commissioning of the generation schedule is a new evidence which came to the knowledge of the Review Petitioner after the impugned order was passed and had the said evidence been produced at the time of passing the impugned order, the Commission would have taken the date of scheduled commissioning as March 2009 and consequently, would not have disallowed the IDC and IEDC.

12. It is a settled law that when a review is sought on the ground of discovery of new evidence, the evidence must be relevant and of such a character that, if it had been given in the petition, it might have possibly altered the judgment. Before a review is allowed on this ground, it must be established that the applicant had acted with due diligence and that the existence of evidence was not within its knowledge. Mere discovery of new and important matter or evidence is not sufficient ground for review.

The party seeking the review has to show that the additional material was not within its knowledge and even after exercise of due diligence could not be produced before the Court earlier. In the instant case, the petitioner delayed the commissioning of the transmission asset because the Sipat I generation of NTPC was delayed. This has been mentioned in para 4.1 of the Petition No. 69/2010. However, the petitioner has not placed on record the decision taken in the QPR meeting regarding revised commissioning schedule of Sipat I generation as March 2009. In our view, even production of the said evidence would not have weighed in favour of the Review Petitioner as the said evidence revealed nothing new which was not considered by the Commission. Moreover, the said evidence was in the possession of the Review Petitioner and it cannot be said that the evidence was not in the knowledge of the Review Petitioner. Therefore, review is not maintainable on this ground.

Error apparent on the face of record:-

13. The Review Petitioner has submitted that non-consideration of prayer of the petitioner that the delay in commissioning of transmission system was due to delay in commissioning of Sipat I generation of NTPC due to various reasons is an error apparent on face of record, requiring review of the order dated 2.12.2010.

14. In Parsion Devi and Ors Vs. Sumitri Devi and Ors, [(1997) 8 SCC 715], the Supreme Court held as under:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, 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 Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purpose and cannot be allowed to be "an appeal in disguise."

15. In para 9 of our order dated 2.12.2010, it has been clearly recognized that on account of delay in commission of Sipat I due to various reasons, the petitioner had taken proactive approach and commissioned various elements of Sipat I transmission system. After considering all relevant facts, the Commission has dis-allowed the IDC and IEDC for the period from March 2008 to March 2009. There is therefore no error apparent on the face of record as contended by the petitioner. We accordingly reject the contention of the Review Petitioner that the impugned order dated 2.12.2010 suffered from error apparent on the face of record.

Other sufficient reasons:-

16. The expression "any other sufficient reasons" used in Order 47, Rule 1 means a reason sufficiently akin to those specified in the said rule. Other "sufficient reasons" must be construed as ejusdem generis with the two clauses preceding these two words, i.e. discovery of new and important matter or evidence, or error apparent on the face of record. The petitioner has failed to advance any sufficient reason for review of the impugned order.

17. In view of our discussion in the preceding paragraphs, the Review Petition is not maintainable on the ground of limitation as well as for the failure on the part of the Review Petitioner to make out a case for review under Order 47, Rule 1 of the Code.

18. Review Petition No. 6/RP/2012 in Petition No. 69/2010 is dismissed in terms of our findings above.

Sd/-

(M. Deena Dayalan)
Member

Sd/-

(V.S. Verma)
Member

Sd/-

(S. Jayaraman)
Member