

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**
4. **Shri A.H. Jung, Member**

**Review Petition No.45/2005
In
Petition No. 20/2004**

In the matter of

Review of order dated 30.6.2004 in Petition No.20/2004 - Grant of licence for inter-state trading in Electricity to Power Trading Corporation of India Ltd.

And in the matter of

Shri Gajendra Haldea

.....Review Petitioner

Vs

Power Trading Corporation of India Limited

.....Respondent

The following were present:

1. Shri Gajendra Haldea, Review Petitioner
2. Shri Sitiesh Mukherjee, Advocate of Shri Gajendra Haldea

**ORDER
(DATE OF HEARING: 24.5.2005)**

Background Facts

Petition No.20/2004 was filed by Power Trading Corporation of India Ltd (now PTC India Limited), for grant of licence for inter-state trading in electricity. Shri Gajendra Haldea had filed objections under sub-section (2) of Section 15 of the Electricity Act, 2003 to the application made by PTC India Limited. These objections were considered and disposed of by the Commission in its order dated 4.6.2004. By the said order dated 4.6.2004, the Commission proposed to grant licence to PTC

India Limited and invited further objections or suggestions to the proposal, under sub-section (5) of Section 15, *ibid.* Further objections filed by Shri Haldea under his letter dated 12.6.2004 were considered by the Commission in its order dated 30.6.2004. On consideration of the matter on record, including the objections filed by Shri Haldea, the Commission decided to grant licence for trading to the PTC India Limited. Shri Haldea has sought review of the Commission's order dated 30.6.2004, through the present application for review, listed for admission.

2. According to Shri Haldea, the issues raised by him have not been effectively dealt by the Commission in its order dated 30.6.2004. It needs to be kept in mind that Shri Haldea was heard at length on three occasions on the objections raised in the proceeding in petition No.20/2004 and the Commission had dedicated a large amount of time and effort while considering the issues raised by him. Before we proceed to consider the issues raised by Shri Haldea to seek review of the order dated 30.6.2004, the legal position may be noted.

3. We heard Shri Gajendra Haldea (in person) and also Shri Sitesh Mukerjee, Advocate accompanying him.

Legal Position

4. Under Section 94 (1) of the Electricity Act, the Commission is vested with same powers as are vested in a civil court under the Code of Civil Procedure as regards review of its decisions, directions and orders. Section 114 read with Order 47 of the Code relate to power of a civil court on review of orders. Under Rule 1, Order 47 of the Code, any person considering himself aggrieved by a decree or order may apply for review of the judgment or order, under the following circumstances:

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

5. The grounds for review urged by Shri Haldea are to be examined on the touchstone of the provisions of Rule 1, Order 47 of the Code and noted above.

Possibility of Bias of Power Grid Corporation of India Limited

6. Power Grid Corporation of India Limited (PGCIL) holds 8% equity share in PTC India Limited and also has one Director on latter's Board. Therefore, according to Shri Haldea, PGCIL has pecuniary interest in PTC India Limited, and for that reason, there is every "possibility" of PGCIL being biased in favour of PTC India Limited while deciding on the question of providing open access on its transmission system. It has been submitted that by virtue of PGCIL's status as systems operator, it will have enormous powers and ability to influence "systems operations" in favour of PTC India Limited. It has also been contended that grant of licence to PTC India Limited amounts to trading in electricity by PGCIL, prohibited under third proviso to Section 41 of the Electricity Act, 2003.

7. The issue raised by Shri Haldea was considered by the Commission in its order dated 30.6.2004 in the following terms:

“18. This issue was raised by Shri Haldea in his letter dated 4.2.2004 and certain other communications sent by him. The issue was also argued by him at the hearing on 24.5.2004. The Commission in its order dated 4.6.2004 has elaborately dealt with the issue. The findings recorded by the Commission are that PGCIL is not in a position to influence the trading activities of the applicant because of it having 8% shares in the applicant company. The memorandum of association of the company also reveals that PGCIL does not have any controlling rights over the functioning of the applicant. On consideration of these facts, the Commission in its order dated 4.6.2004 has not found any possibility of bias by PGCIL (as CTU) in favour of the applicant. Therefore, the bar imposed by proviso to Section 38(1) of the Act is not attracted. As the issue has been reargued by Shri Haldea, the matter has been given a fresh consideration we endorse the views already recorded in the order dated 4.6.2004 on the issue. Any case of favouritism by PGCIL (as CTU) in favour of the applicant coming to notice of the Commission will be dealt with in accordance with law as already noted by the Commission in the order dated 4.6.2004.”

8. The Commission in its earlier order dated 4.6.2004 arrived at a finding that PTC India Limited and PGCIL were distinct persons in law and, therefore, the embargo on trading in electricity imposed on the CTU or the transmission licensee under third proviso to Section 41 of the Electricity Act was not attracted. The Commission has further concluded that PGCIL with 8% share in PTC's equity is not in a position to influence trading in latter's favour. On consideration of the material on record, the Commission in its order dated 4.6.2004 has further found that there is no likelihood of PGCIL's bias in favour of PTC India Limited in the matter of open access on the transmission system or PGCIL unduly favouring PTC India Limited in trading. The Commission has already notified regulations on grant of open access. Under these regulations, Regional Load Despatch Centres are assigned the responsibility of implementing these regulations which do not leave any discretion to them. This aspect has been duly considered earlier. It becomes obvious that while considering Shri Haldea's objections, the Commission took into account the fact of PGCIL having pecuniary interest in PTC India Limited (8% share capital) and also its status as the

CTU. The ground taken by Shri Haldea does not fall under any of statutory grounds necessitating review of the order dated 30.6.2004. The performance of the RLDCs as well as the trading licensees are under constant watch by the Commission, and the Commission will not hesitate to take appropriate action in case of any violation of law.

Sale price of electricity by the generating company

9. It has been submitted by Shri Haldea that PTC India Limited is engaged in buying electricity at exorbitantly high price and selling it to other state utilities in violation of the mandatory bidding procedures. According to Shri Haldea, the state utilities are selling their allocated share of power from NTPC generating stations to other states through PTC India Limited in violation of the provisions of the Electricity Act. Shri Haldea has named Grid Corporation of Orissa India Limited, Uttaranchal Power Corporation Limited, West Bengal State Electricity Board, etc, in this regard. Shri Haldea has contended that the state utilities can sell electricity only at regulated price. He has argued that as a result of concerted actions of PTC India Limited and the state utilities, the consumer interest gets jeopardised as the consumer has to pay heavy tariff.

10. Shri Haldea had raised this issue in the objections filed before the Commission. The issue has been considered by the Commission in its order dated 4.6.2004 and disposed of as under:

“17. Shri Haldea further argued that the procurement price of power purchased by the applicant is not determined by any authority since according to the applicant, pricing of trading transactions are all market determined. It was argued that this kind of *carte blanche* to the applicant may lead to exploitation

of the end consumer. We have considered the submission. We do not find any cause for apprehension that because of the trading activities of the applicant,

the ultimate consumer can be put to any disadvantageous position. The sale and purchase price of electricity is regulated. The applicant may sell electricity to a distribution licensee direct or through an intermediary. By virtue of Section 86 (1) (b) of the Act, the State Commission is assigned the function to regulate electricity purchased and procurement process of distribution licensees including the price on which electricity shall be procured from generating companies or licensees or from other sources through agreement for purchase of power for distribution and supply within the State. In this manner the interest of the end consumer is duly secured as it is the State Commission which has the ultimate say in the matter of fixation of tariff of a distribution licensee to the consumer. Therefore, the apprehension expressed by Shri Haldea cannot be considered sufficient to deny licence to the applicant.”

11. It would be seen that the Commission in its order dated 4.6.2004, had considered the issue of regulation of price of electricity traded and has found that the apprehension expressed by Shri Haldea was not sufficient to deny licence to PTC India Limited. Therefore, review of order dated 30.6.2004 on this count is also not warranted, wherein this issue is neither raised nor considered.

Status of Nodal Agency on PTC India Limited

12. It has been contended by Shri Haldea that PTC India Limited, a private company, has been designated as nodal agency for international trading by Ministry of Power. He has sought to argue that the designation of PTC India Limited as the nodal agency has not been proper. Shri Haldea has alleged that the Commission has failed to determine/decide the issue raised by him in his objections before the Commission and has sought to invoke Section 60 of the Electricity Act, which empowers the Commission to issue appropriate directions to a generating company of the licensee if such generating company or licensee enters into any agreement or

abuses its dominant position or enters into a combination which causes or is likely to cause an adverse effect on competition in electricity industry.

13. The Commission in its order dated 4.6.2004 has recorded a finding that PTC India Limited is not a Government company within the meaning of the term used in the Companies Act, 1956. This finding of the Commission remains undisputed. In regard to grant of status of nodal agency for inter-state trading, the Commission in its order dated 30.6.2004 had considered the objection. The objection was brought to the notice of Ministry of Power for its appropriate action since the status of nodal agency was conferred on PTC India Limited by the Central Government in exercise of its executive function. In this context, it will be relevant to take note of the Commission's observations as extracted below:

“15. Shri Haldea in his letter has stated that the applicant has been declared by Ministry of Power as a nodal agency for all international trading. According to him, it is rank favouritism. He has requested the Commission to issue a ruling on conduct of the trading licensees in international trading, in a fair and just manner, without showing undue favour to any chosen entity. The relevant extract from Shri Haldea's letter dated 12.6.2004 is quoted below:

“The Commission has already held that PTC is a non-government company over which MoP exercises no control. Under these circumstances, it is rank favoritism on the part of MoP to designate PTC as the nodal agency for all international trading. It is submitted that all international trading will ultimately lead to inter-state trading that lies in the sole jurisdiction of the Commission. The Commission may, therefore, kindly issue a ruling on how its trading licencees can conduct international trading in a fair and just manner, without any undue favoritism towards a chosen entity.”

16. Without commenting any further on the issue, now that the number of traders in the electricity sector is increasing day by day, we direct that this objection raised by Shri Haldea be also brought to the notice of Ministry of Power for its appropriate action.”

14. The issues regarding the dominant position enjoyed by PTC India Limited and invoking of provisions of Section 60 of the Electricity Act were also considered by the Commission in its order dated 4.6.2004. It was noted by the Commission that it may address the situations of abuse of dominant position by any player as and when they may arise to prevent the abuse or misuse. In this context it is relevant to reproduce the observations made in the order dated 4.6.2004:

“19. It was next argued by Shri Haldea that the applicant is abusing its dominant position, which is likely to cause an adverse effect on competition, thereby attracting provisions of Section 60 of the Act. We have considered the submission. Section 60 of the Act provides that the Commission may issue such direction as it considers appropriate to a licensee or a generating company, if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry. No instances of abuse of its position by the applicant have been brought to our notice, though applicant has been in the business of trading without a licence under the old laws since its incorporation in April 1999. At the stage of considering the applicant’s request for grant of licence, the question raised does not merit much attention. The Commission may address the situations under Section 60 of the Act as and when they arise, in order to prevent misuse of the dominant position by any player in the electricity market.”

15. In the review petition, Shri Haldea has not brought any specific instance of abuse of dominant position by PTC India Limited. Therefore, review of the earlier order on this count also is unwarranted.

Representation of PTC India Limited on Regional Electricity Boards/Regional Power Committees

16. It has been brought out by Shri Haldea that PTC India Limited is represented on Regional Electricity Boards/Regional Power Committees constituted by the Central Government. It has been alleged that by virtue of such representation PTC India Limited has access to sensitive information, by use of which it draws undue benefit.

Resultantly, other traders are denied a level playing field which has a direct impact on free and fair growth of electricity market.

17. The issue of participation of PTC India Limited in Regional Electricity Board/Regional Power Committee meetings was not raised by Shri Haldea in his objections. Shri Haldea has not indicated any reasons as to why the objection could not be raised by him in the original proceedings. As such, this cannot be a ground for review of the order dated 30.6.2004. However, the constitution of Regional Electricity Boards/Regional Power Committees is within the purview of Ministry of Power and the matter has been brought to the Ministry's notice for consideration while reconstituting Regional Electricity Boards/Regional Power Committees.

Conclusion

18. On consideration of the above facts, no case for review of order dated 30.6.2004 has been made out as the grounds on which review has been sought fall outside the limitations imposed by Rule 1, Order 47 of the Code. The application for review is not maintainable and is accordingly disposed of at the admission stage itself.

**Sd/-
(A.H. JUNG)**

MEMBER

**Sd/-
(BHANU BHUSHAN)**

MEMBER

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

MEMBER

**Sd/-
(ASHOK BASU)**

CHAIRMAN

New Delhi dated the 8th June 2005