

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 30/RP/2018
In Petition No. 133/TT/2017**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order : 05.04.2019

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 29.6.2018 in Petition No. 133/TT/2017.

And in the matter of:

Power Grid Corporation of India Limited
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001

...Review Petitioner

Vs

1. Karnataka Power Transmission Corporation Ltd. (KPTCL),
Kaveri Bhavan, Bangalore – 560 009.
2. Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO),
Vidyut Soudha,
Hyderabad– 500082.
3. Kerala State Electricity Board (KSEB)
Vaidyuthi Bhavanam
Pattom, Thiruvananthapuram – 695 004.
4. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai, 800, Anna Salai,
Chennai - 600 002.
5. Electricity Department, Government of Goa
Vidyuti Bhawan, Panaji, Goa-403001.
6. Electricity Department,
Government of Pondicherry,
Pondicherry - 605001.



7. Eastern Power Distribution Company of Andhra Pradesh Limited, (APEPDCL)
APEPDCL, P&T Colony, Seethmmadhara,
Vishakhapatnam, Andhra Pradesh.
8. Southern Power Distribution Company of Andhra Pradesh Limited, (APSPDCL)
Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta, Tirupati-517 501,
Chittoor District, Andhra Pradesh.
9. Central Power Distribution Company of Andhra Pradesh limited, (APCPDCL),
Corporate Office, Mint Compound,
Hyderabad – 500 063, Andhra Pradesh.
10. Northern Power Distribution Company of Andhra Pradesh Limited, (APNPDCL),
Opp. NIT Petrol Pump Chaitanyapuri,
Kazipet, Warangal – 506 004, Andhra Pradesh.
11. Bangalore Electricity Supply Company Ltd., (BESCOM),
Corporate Office, K. R. Circle
Bangalore – 560001 Karanataka.
12. Gulbarga Electricity Supply Company Ltd., (GESCOM)
Station Main Road, Gulbarga
Karnataka.
13. Hubli Electricity Supply Company Ltd., (HESCOM)
Navanagar, PB Road
HUBLI, Karnataka.
14. MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle
Mangalore – 575 001 Karnataka.
15. Chamundeswari Electricity Supply Corporation Ltd., (CESC)
927, L J Avenue, Ground Floor, New Kantharaj Urs Road
Saraswatipuram, Mysore – 570 009.
16. Transmission Corporation of Telangana Limited,
Vidhyut Sudha, Khairatabad, Hyderabad- 500082.
17. Andhra Pradesh Solar Power Corporation Private Limited,
6-3-856/A3, Neeraj Public School Lane,
Opp. to Green Park Hotel,
Ameerpet, Hyderabad - 500 016.

.... Respondents

For Review Petitioner : Shri Deep Rao, Advocate, PGCIL
Shri Divyanshu Bhatt, Advocate, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri S. S. Raju, PGCIL



For Respondents : None

ORDER

This review petition is filed by Power Grid Corporation of India Limited (hereinafter referred to as “PGCIL” or Review Petitioner) against the Commission’s order dated 29.6.2018 in Petition No 133/TT/2017.

Background

2. The Review Petitioner has sought review and modification of order dated 29.6.2018 in Petition No. 133/TT/2017 wherein the transmission tariff for ± 100 MVAR STATCOM at NP Kunta Pooling Station (hereinafter referred to as “transmission asset”) was granted for 2014-19 period as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred as “2014 Tariff Regulations). The Review Petitioner’s claim for additional RoE of 0.50% was disallowed in the impugned order observing that no separate timeline is specified for STATCOM in 2014 Tariff Regulations. It was further observed that STATCOM was installed in NP Kunta Sub-station which is an existing sub-station and as such it is not eligible for additional RoE of 0.5%. The Review Petitioner has submitted that the instant asset was put into commercial operation within the timeline specified and as such is entitled for additional ROE of 0.50% under Regulation 24 read with Appendix-I of the 2014 Tariff Regulations.

Submissions of the Review Petitioner

3. The submissions made by the Review Petitioner are as follows:-
- a. The Ministry of Power, Government of India, in a meeting on 26.11.2014 informed that NTPC has commenced its tendering process for setting up of Solar Power Project in the Ultra Mega NP Kunta Solar Power Park (hereinafter



referred to as “NPKSPP”) and decided that the transmission system for evacuation for power from the said solar park would be implemented by the Review Petitioner and asked the Review Petitioner to match the date of commercial operation (COD) of the transmission system with the completion of the solar park. The transmission system was discussed and agreed in the 38th SCM (Standing Committee Meeting) of Southern Region held on 7.3.2015 and subsequently in 27th SRPC held on 12.5.2015.

b. The transmission system associated with the evacuation of power from NPKSPP was proposed to be put into commercial operation in three phases in line with the proposed phased development of the NPKSPP. As per the schedule, a quantum of 250 MW, 750 MW and 500 MW was proposed to be commissioned in Phase-I, II and III respectively of the proposed NPKSPP. Phase I, II and III were scheduled to be put into commercial operation in September 2015, September 2016 and December 2016 respectively.

c. The Investment Approval of the Review Petitioner’s Board dated 11.5.2015, which was conveyed through the Memorandum dated 3.6.2015, included the following elements:-

i) transmission line: LILO of 400 kV Kadapa-Kolar S/C Line at NP Kunta Sub-station

(ii) Sub-station: Establishment of 400/220 kV NP Kunta Sub-station with 3X500 MVA Transformers and 2 nos. 220 kV line bays at NP Kunta Pooling Station and

(iii) Reactive Compensation: 1x125 MVAR, 420 kV bus reactor at NP Kunta Sub-station and \pm 100 MVAR STATCOM at NP Kunta Pooling Station.



d. The scope of the IA was bifurcated into two parts, wherein all elements except, ± 100 MVAR STATCOM at NP Kunta Pooling Station, were to be put into commercial operation within 12 months from the date of IA, while the said STATCOM was to be delivered along with the Phase-II. The timeline for COD of the assets under Phase-I was specified in accordance with the timeline specified for a 400 kV AC sub-station under the 2014 Tariff Regulations.

e. CTU in 38th SRPC presented the following scope of work to be implemented by the Review petitioner under the directions of the MoP:-

Phase-I (250 MW)

- a. Establishment of 3x500 MVA, 400/220 kV Sub-station at NP Kunta Pooling Station
- b. LILO of 400 kV Kadapa (Cuddapah)-Kolar S/C line at NP Kunta Pooling Station
- c. 2 nos. 220 kV line bays at NP Kunta Pooling Station
- d. 1x125 MVAR Bus Reactor at NP Kunta Pooling Station
- e. ± 100 MVAR STATCOM at 400 kV NP Kunta Pooling Station

Phase-II (750 MW)

- a. LILO of Kadapa (Cuddapah)-Hindupur 400 kV D/C (Quad) line at NP Kunta Pooling Station
- b. 6 nos. 220 kV line bays at NP Kunta Pooling Station

Phase-III (500 MW)

- a. Augmentation of transformation capacity at NP Kunta station with 4th, 1x500 MVA, 400/220 kV transformer
- b. 4 nos. 220 kV line bays at NP Kunta Pooling Station

f. During the technical validation in the 38th SRPC, the Director (SP&PA), CEA stated that as the COD of the three Phases of NPKSPP are few months apart from each other, the associated transmission system may be



implemented as one scheme and the proposed STATCOM may be shifted to Phase-II, which was agreed by the Members present. Therefore, the IA for the entire scope of Phase-I was taken together with the schedule of 12 months except for the STATCOM, which was to be delivered on a later date. Despite a different timeline for STATCOM, the overall completion timeline of 30 months specified in the 2014 Tariff Regulations for a 400 kV sub-station was adhered to by the Review Petitioner.

g. The COD of the instant transmission asset was approved by the SR constituents in the 32nd meeting of TCC held on 16.2.2018 and 33rd meeting of SRPC held on 17.2.2018. The SRPC approved the COD of the instant asset as 4.6.2017 under Phase-I.

h. The Commission came to the conclusion that the instant asset is an isolated asset and does not form part of the scope of work approved by the MoP and SCM of SR. The instant asset was part of the IA, which included the 400 kV Sub-station at NP Kunta. The said sub-station and the instant asset were implemented within 30 months as specified in the 2014 Tariff Regulations for grant of additional RoW of 0.5%. Hence, disallowance of the additional RoW for the instant asset was an apparent error.

4. The Review Petition was admitted on 2.1.2019 and notices were issued to the Respondents. None of the Respondents have filed reply.

5. During the hearing on 12.2.2019, learned counsel for the Review Petitioner submitted that the instant asset was part of the IA which includes the 400 kV sub-station at NP Kunta. Both were put into commercial within the timeline of 30 months specified in the 2014 Tariff Regulations and as such the Review Petitioner is entitled



for additional ROE of 0.5%. The splitting of Phase-I into two timelines was done with a view to cater to the grid requirements. He submitted that disallowance of 0.5% of additional ROE is an error apparent on the face of record and it needs to be modified.

Analysis and decision

6. We have considered the submissions of the Review Petitioner. The main contention of the Review Petitioner is that the instant asset was put into commercial operation alongwith NP Kunta Sub-station within the timeline of 30 months specified in the Regulation 24(2)(i) read with Appendix-1 of the 2014 Tariff Regulations and hence eligible for additional ROE of 0.5%. It is observed that the instant transmission system, which is the associated transmission system for evacuation of power from NPKSPP, was to be implemented in three phases. Phase-I, II and III were scheduled to be put into commercial operation on December, 2015, September, 2016 and December, 2016 respectively. The instant transmission asset was covered under the Investment Approval dated 11.5.2015 and it was scheduled to be put into commercial operation in Phase-II of the transmission system in September, 2016. All the other elements covered in the said Investment Approval were scheduled to be put into commercial operation within 12 months of the Investment Approval matching with the Phase-I of the associated NPKSPP. When STATCOM was scheduled to be delivered along with Phase-II, it is not clear why STATCOM was included in the Investment Approval of Phase-I, especially when other elements of Phase-II were not covered in the Investment Approval dated 11.5.2015. However, after having declared the COD of the instant asset on 4.6.2017, the Review Petitioner got the approval in the 32nd TCC Meeting held on 16.2.2018 and 33rd SRPC Meeting held on



17.2.2018 for putting the instant asset into commercial operation in Phase-I of the instant transmission system.

7. It is further observed that the other elements covered in Phase-I of the transmission system, i.e. LILO of 400 kV Kadappa Kolar S/C line at NP Kunta alongwith associated line bays, transformers and reactors were put into commercial operation on 28.4.2016 and the instant transmission asset was put into commercial operation on 4.6.2017. Thus, the instant transmission asset was put into commercial operation 14 months after the COD of the other elements covered in Phase-I of the transmission system. Therefore, it cannot be said that the instant asset was put into commercial operation alongwith the other transmission assets covered in Phase-I. We are unable to agree with the Review Petitioner's contention that the instant asset was put into commercial operation with the other elements covered in Phase-I and that it is not an isolated asset. The instant transmission asset was put into commercial operation as an isolated asset independent of Phase-I and after 14 months of COD of the assets covered in Phase-I of the transmission system.

8. Thus, the Commission came to the conclusion that instant asset was put into commercial operation in an existing sub-station. Moreover, Regulation 24 read with Appendix I of the 2014 Tariff Regulations does not provide for separate timeline for grant of additional RoE of 0.5% for STATCOM. Accordingly, it was held in the impugned order that the instant asset is not eligible for additional RoE of 0.5%. The relevant portion of the order dated 29.6.2018 in Petition No 133/TT/2017 is extracted hereunder:-

"40. We have considered the submissions of the petitioner. The petitioner has claimed additional ROE @ 0.5% under Regulation 24(2)(i) of the 2014 Tariff Regulations. There is no separate time line specified for the STATCOM in the 2014 Tariff Regulations. Since NP Kunta Sub-station has already been commissioned under Phase-I on



28.4.2016 which becomes existing substation for the STATCOM and hence the instant assets are not eligible for additional RoE of 0.5%.”

9. Moreover, as per Order 47 Rule 1 of Code of Civil Procedure, 1908, a review is maintainable on (i) discovery of new and important matter or evidence which was not within knowledge of the Review Petitioner or could not be produced after the exercise of due diligence, (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason. The case of the Review Petitioner does not fall under any of the three categories mentioned above to qualify for review and the Review Petitioner is rearguing the matter on merits which is not allowed in a review petition. The Hon'ble Supreme Court in Parison Devi vs Sumitri Devi (1997 (8) SCC 715) observed that a review cannot be an appeal in disguise. The relevant portion of the observations of the Hon'ble Court in the said judgement is extracted hereunder:-

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

10. Further, the Hon'ble Supreme Court in Kamlesh Verma vs. Mayawati and others, ((2013) 8 SCC 320), while examining the scope of review has observed as under:-

“8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury, 1995 (1) SCC 170, while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma, 1979 (4) SCC 389, this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. 9. 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'.”

Accordingly, a Review Petition cannot be an appeal in disguise as held by the Hon'ble Supreme Court.



11. In view of the above discussion, we are of the view that there is no apparent error in the impugned order.

12. The Review Petition No. 30/RP/2018 is accordingly disposed of.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(P.K. Pujari)
Chairperson

