

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 12/RP/2021

in

Petition No. 167/TT/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Date of Order: 08.06.2022

In the matter of:

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 17 and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 11.2.2021 in Petition No. 167/TT/2020.

And in the matter of:

Power Grid Corporation of India Limited,
SAUDAMINI, Plot No-2, Sector-29,
Gurgaon-122 001 (Haryana).

.....Review Petitioner

Versus

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur - 482008, Madhya Pradesh.
2. Madhya Pradesh Power Transmission Company Limited,
Shakti Bhawan, Rampur,
Jabalpur – 482008, Madhya Pradesh.
3. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road,
Indore-452008, Madhya Pradesh.
4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3rd Floor, M.G. Road, Fort,
Mumbai-400001, Maharashtra.



5. Maharashtra State Electricity Transmission Company Limited,
Prakashganga, 6th Floor, Plot No. C-19, E-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai-400041, Maharashtra.
6. Gujarat Urja Vikas Nigam Limited,
Sardar Patel, Vidyut Bhawan, Race Course Road,
Vadodara-390007, Gujarat.
7. Electricity Department,
Government of Goa,
Vidyut Bhawan, Near Mandvi Hotel,
Panaji, Goa-403001.
8. Electricity Department,
Administration of Daman & Diu,
Daman-396210.
9. DNH Power Distribution Corporation Limited,
Vidyut Bhawan, 66 kV Road, Near Secretariat Amla,
Silvassa-396230.
10. Chhattisgarh State Power Transmission Company Limited,
State Load Despatch Building, Dangania,
Raipur-492013, Chhattisgarh.
11. Chhattisgarh State Power Distribution Company Limited
P.O. Sunder Nagar, Dangania,
Raipur-492013, Chhattisgarh

....Respondents

For Review Petitioner : Ms. Swapna Sheshadari, Advocate, PGCIL
Shri Aditya H. Dubey, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri Ved Prakash Rastogi, PGCIL
Shri A. K. Verma, PGCIL

For Respondent : Shri Manoj Dubey, Advocate, MPPMCL
Shri Ravindra Khare, MPPMCL
Shri Anindya Khare, MPPMCL.



ORDER

Power Grid Corporation of India Limited (hereinafter referred to as the “PGCIL/ Review Petitioner) has filed the present Review Petition No. 12/RP/2021 seeking review and modification of the order dated 11.2.2021 in Petition No. 167/TT/2020 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 wherein the tariff of the 2014-19 tariff period was trued up and tariff for the 2019-24 tariff period was approved for **Asset-I**: 400 kV D/C Solapur (STPP)–Solapur (PG) Transmission Line along with bay extension at Solapur (PG) Sub-station; and **Asset-II**: Extension of 400/220 kV Solapur Sub-station–Augmentation of Sub-station by 1 x 315 MVA (3rd) Transformer (by shifting of 500 MVA transformer from Wardha to Solapur) (hereinafter collectively referred to as “the transmission assets/ Combined Asset”) under “Transmission System for Solapur STPP (2x660 MW)” in the Western Region (hereinafter referred to as the “transmission project”).

2. The Review Petitioner has submitted that there is double deduction of excess initial spares of ₹38.63 lakh from the Additional Capital Expenditure (ACE) in 2016-17. The Review Petitioner has contended that an amount of ₹38.63 lakh has already been deducted by the Review Petitioner from the ACE during 2016-17. Therefore, further deduction of ₹38.63 lakh by the Commission from the ACE is an error apparent on the face of record.

3. The Review Petitioner has made the following prayers:

“(a) Admit the present Review Petition;

(b) Review the order dated 11.02.2021 passed by this Hon’ble Commission;

(c) Correct the double deduction of initial spares and add back the amount of ₹38.63 lakhs to the Additional Capital Expenditure of FY 2016-17;



(d) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case."

4. The matter was heard through video conference. The Commission admitted the instant review petition on 20.7.2021 and issued notice to the parties. In response, Madhya Pradesh Power Management Company Limited (MPPMCL) has filed its reply vide affidavit dated 18.8.2021. The Review Petitioner has not filed any rejoinder to it. Subsequently, the matter was heard through video conference on 20.1.2022 and order was reserved after hearing the parties.

Submissions of the Review Petitioner

5. The gist of the submissions made by the Review Petitioner in support of the Review Petition is as follows:

a) There is a double deduction of excess initial spares of ₹38.63 lakh in respect of Asset-I from ACE of 2016-17 as the same was already reduced from the ACE claimed in 2016-17 and the further deduction of ₹38.63 lakh from ACE of 2016-17 is an error apparent on the face of record.

b) The initial spares procured in respect of Asset-I were in excess to the extent of ₹38.63 lakh under the transmission line head and accordingly, while claiming the tariff and ACE in the truing-up petition, ₹38.63 lakh was deducted from the ACE in 2016-17.

c) While filing up the tariff forms, even though the ACE for 2015-16 was ₹899.58 lakh, the "spares transmission lines" head showed ₹0.00 lakh and the "spares sub-stations" head showed ₹60.34 lakh. However, these two heads should have reflected ₹34.12 lakh in "spares transmission lines" and ₹0.00 lakh in "spares sub-



stations” head. Similarly, for 2016-17, the “spares transmission lines” head showed ₹10.61 lakh and the “spares sub-stations” head showed ₹0.41 lakh and since, ₹38.63 lakh excess Initial Spares were already adjusted, these two heads should have been reflected as ₹0.41 lakh in “spares transmission lines” and ₹10.61 lakh in “spares sub-stations” head. Further, the ACE of ₹460.74 lakh shown in Form 7 for 2016-17 is correct and takes into account the deduction of excess Initial Spares of ₹38.63 lakh.

d) As a matter of practice, any excess initial spares procured in a particular time period are adjusted against the ACE claimed for the respective year for calculation of tariff. Even in the present case, the ACE of ₹460.74 lakh was claimed after reducing the amount of ₹38.63 lakh.

e) There was an error in Form 7 submitted by the Review Petitioner. While the total amount of ₹460.74 lakh reflected as ACE in 2016-17 already reduces amount of ₹38.63 lakh, an error had crept in the “spares transmission lines” head which was shown as ₹10.61 lakh and the “spares sub-stations” head which was shown as ₹0.41 lakh. These two heads ought to have been reflected as zero. The corrected Form 7 is filed in the instant review petition.

f) In the present case, the double deduction of initial spares would show the incorrect ACE and result in under-recovery of transmission tariff by the Review Petitioner.

Hearing dated 20.1.2022

6. During hearing held on 20.1.2022, the learned counsel for the Petitioner submitted that the Commission vide order dated 24.12.2021 in Petition No. 135/TT/2020 (filed for



truing-up of the tariff for the 2014-19 tariff period and for the determination of transmission tariff for the period from 1.4.2019 to 31.3.2024 in respect of the other transmission assets forming a part of Combined Asset associated with “Western Region Strengthening Scheme VI” in Western region) had directed PGCIL/ Review Petitioner to file fresh petition for after carrying out de-capitalisation of 500 MVA ICT (shifted from Wardha Sub-station to Solapur Sub-station) in Petition No. 135/TT/2020 and recapitalisation of the same in Petition No. 167/TT/2020 (for which the instant review petition has been filed). In line with this direction of the Commission, the Petitioner will be filing a fresh petition giving the details of ACE for 500 MVA ICT (shifted from Wardha Sub-station to Solapur Sub-station). She prayed that the present review petition can be disposed of by holding that the issue raised in the present petition would be considered along with the fresh petition to be filed in terms of the order dated 24.12.2021 in Petition No. 135/TT/2020.

7. Madhya Pradesh Power Management Company Limited (MPPMCL) in its reply, vide affidavit dated 18.8.2021, has made the following submissions:

- a) The Petitioner, in the garb of present review petition, is seeking to reinstate the excess Initial Spares and if permitted, would lead to allowance of Initial Spares beyond the ceiling rates specified in the 2014 Tariff Regulations.
- b) The Petitioner, on the basis of allowed expenditure, is seeking to work back and re-state the audited and accepted figures of ACE and trying to accommodate the excess Initial Spares procured by it to be serviced by way of tariff. Such an approach is not acceptable and is disputed.
- c) The present error, as stated by the Petitioner, is not an apparent error or an error due to inadvertence. In order to ascertain the error/ inadvertence as



pleaded by the Petitioner, it would be needed to revisit the entire facts and records of Petition No. 167/TT/2020 and fish out the alleged error. Such an approach is not permissible in a review petition. If the Petitioner feels that the impugned order is erroneous in any manner, he has a remedy to appeal against the same. That, 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. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa, (reported as 1954 AIR (SC) 440, the Apex Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Ahmad Ishaque, reported as 1955 AIR (SC) 233, it was held that it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record.

- d) Therefore, the present petition is not maintainable and is bereft of merits and accordingly may be dismissed.

Analysis and Decision

8. We have considered the submissions of the Review Petitioner and MPPMCL. The Review Petitioner has contended that there is a double deduction of excess initial spares of ₹38.63 lakh in respect of Asset-I from ACE of 2016-17 as the same amount has already been deducted by the Review Petitioner from the ACE claimed for 2016-17. Therefore, further deduction of ₹38.63 lakh from ACE is an error apparent on the



face of record. Accordingly, the Review Petitioner has prayed for allowing ₹38.63 lakh as ACE in 2016-17.

9. The Commission, taking into consideration the submissions of the Review Petitioner in Form 7 of 2014-19 tariff period, in the order dated 11.2.2021 in Petition No. 167/TT/2020 held that the Review Petitioner had not deducted the amount of excess initial spares from the initial spares claimed in ACE for the year 2015-16 and 2016-17. Accordingly, the Commission deducted excess Initial Spares amounting to ₹38.63 lakh from ACE. The Review Petitioner in the instant Review Petition has admitted that there was error in Form-7.

10. The Commission in order dated 11.2.2021 in Petition No. 167/TT/2020 deducted excess Initial Spares on the basis of the submissions made by the Review Petitioner. Thus, there is no error in the order dated 11.2.2021 as contended by the Review Petitioner, as it was issued taking into consideration the submissions and the information filed by the Review Petitioner. In fact, the inconsistency in the information submitted by the Review Petitioner was also highlighted in order dated 11.2.2021. In the instant review petition, the Review Petitioner has accepted that there was an error in Form 7 submitted in Petition No. 167/TT/2020. As the information submitted by the Review Petitioner was incorrect as admitted by the Review Petitioner itself, based on which the order dated 11.2.2021 in Petition No. 167/TT/2020 was issued, the Petitioner's contention that there is an error apparent in the order does not sustain. In fact, the Review Petitioner in the present Review Petition has submitted the revised and corrected Form-7, which is not allowable at the stage of Review.

11. The grounds for review under Order 47 Rule 1 of CPC are as follows:



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

12. The Review Petitioner has sought review on the ground that there is an “apparent error” in order dated 11.2.2021. The above discussion shows that there is no “apparent error” in the order dated 11.2.2021 as it was passed on the basis of the information submitted by the Review Petitioner. The error, if any, is on the part of the Review Petitioner. In this regard, we tend to agree with the submissions of MPPMCL that there is no error in the order as contended by the Review Petitioner and the error was made by the Review Petitioner at the time of filing of tariff petition. We are of the view that the Review Petitioner is trying to re-agitate the matter on merits by submitting revised corrected Form-7, which is not allowable at the stage of Review.

13. In view of above discussions, we are of the view that no ground is made out by the Review Petitioner to review the decision in order dated 11.2.2021.

14. This order disposes of Petition No. 12/RP/2021 in terms of the above discussion and findings.

**sd/-
(Arun Goyal)
Member**

**sd/-
(I. S. Jha)
Member**

**sd/-
(P. K. Pujari)
Chairperson**

