

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.28/RP/2021
in
Petition No. 347/MP/2020

Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Pravas Kumar Singh, Member

Date of Order: 10th March, 2022

IN THE MATTER OF:

Review of Commission's order dated 23.10.2021 in Petition No.347/MP/2020 regarding recovery of impact of wage revision of employees, impact of GST, Minimum Wages and Security Expenses (CISF) in respect of Tehri Hydro Power Project (1000 MW) during the period from 1.1.2016 to 31.3.2019.

AND

IN THE MATTER OF

THDC India Limited
(A Joint Venture of Govt. of India & Govt. of U.P.)
Pragatipuram, Bypass Road,
Rishikesh-249 201, Uttarakhand

.....Petitioner

Vs

1. Punjab State Power Corporation Limited,
The Mall, Patiala,
Punjab – 147001
2. Haryana Power Utilities (DHBVNL & UHBVNL),
Shakti Bhawan, Sector-6,
Panchkula, Haryana – 134109
3. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14 Ashok Marg,
Lucknow, Uttar Pradesh – 226001
4. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019
5. BSES Yamuna Power Limited,
3rd Floor, Shakti Kiran Building,
Karkardooma, Near Court,
New Delhi-110092



6. Tata Power Delhi Distribution Limited,
33 KV Grid Sub-Station Building, Hudson Lane,
Kingsway Camp, Delhi-110009

7. Chandigarh Administration,
1st Floor, U.T Secretariat,
Sector 9-D, Chandigarh-160009

8. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun-248001 (Uttarakhand)

9. Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan,
Shimla – 171004

10. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur – 302005, Rajasthan

11. Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hatthi Bhatta,
Jaipur road, Ajmer-305001 (Rajasthan)

12. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan

13. Power Development Department,
Government of J&K, Civil Secretariat Building,
Jammu-180001 (J&K)

14. Madhya Pradesh Power Management Company Limited,
3rd Floor, Block No. 11, Shakti Bhawan, Rampur,
Jabalpur-482008, Madhya Pradesh

15. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Jiyoti Nagar,
Jaipur- 302005, Rajasthan

16. Jammu & Kashmir State Power Trading Company Limited,
PDD Complex, Bemina
Srinagar -190010 (J&K)

.....Respondents

Parties Present:

Ms. Anushree Bardhan, Advocate, THDCIL
Shri Rajesh Sharma, THDCIL
Shri Mukesh Kumar Verma, THDCIL
Shri Ajay Vaish, THDCIL
Shri Rakesh Singh, THDCIL
Shri Ravindra Khare, MPPMCL



INTERIM ORDER

The Review Petitioner, THDCIL has filed this review petition against the Commission's order dated 23.10.2021 in Petition No.347/MP/2020 (in short 'the impugned order') pertaining to the recovery of impact of wage revision of employees, impact of GST, Minimum Wages and Security expenses (CISF) in Tehri HPP (1000 MW) (hereinafter referred as 'the generating station') during the period from 1.1.2016 to 31.3.2019, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations').

2. Aggrieved by the impugned order dated 23.10.2021, the Review Petitioner has filed this review petition on the ground that there is error apparent on the face of the record on the following issues:

- (i) Impact due to implementation of Pay Revision of CISF Personnel (Security Expenses);*
- (ii) Impact on account of GST implementation;*

3. The Commission heard the learned counsel for the Review Petitioner on 'admission' through Video Conferencing on 24.2.2022. We have considered the submissions of the learned counsel that even after exercise of due diligence, evidence on the point could not be produced by the Petitioner during proceedings of the Petition No. 347/MP/2020 and before passing of the order dated 23.10.2021. The Review Petition therefore is 'admitted' on issue (i) in paragraph 2 above, namely, "impact due to implementation of Pay Revision of CISF Personnel (Security Expenses)". Accordingly, the Commission directed to issue notice to the Respondents.

4. As regards issue (ii) in paragraph 2 above, namely, "impact on account of GST implementation", the same is disposed of the admission stage as discussed in subsequent paragraphs.



5. The claim of the Review Petitioner in the original petition for additional O&M expenses of Rs.106.84 lakh in 2017-18 and Rs.74.86 lakh in 2018-19 on account of impact due to implementation of GST was rejected vide impugned order dated 23.10.2021.

6. The Review Petitioner has referred to Regulation 29(3)(b) of the 2014 Tariff Regulations regarding computation of O&M expenses and has submitted that the 2014 Tariff Regulations, which was notified in the gazette on 12.3.2014 could not have possibly taken into account the Central Goods and Service Act, 2017 (in short 'CGST') which was notified much later. It has also submitted that the escalation rates considered in the O&M expenses under the 2014 Tariff Regulations are not sufficient to cover the additional impact which the Review Petitioner had to incur for the period 2014-19 on account of GST, which came into effect on 1.7.2017. The Review Petitioner has further submitted that the Central Goods and Service Act, 2017 is a change in law event as the same was not in existence when the 2014 Tariff Regulations were enacted. The Review Petitioner has submitted that the change in law event is an uncontrollable parameter in terms of Regulation 8(3)(ii) of the 2014 Tariff Regulations dealing with truing up of tariff by this Commission for a generating station. Accordingly, the Review petitioner has prayed that the Commission may consider the claim of the Review Petitioner with respect to impact of implementation of GST in the truing up proceedings in Petition No. 98/GT/2020 for the 2014-19 tariff period which is currently pending before this Commission.

7. The submissions have been considered. We observe that the Review Petitioner in the original petition, while seeking the recovery of additional O&M expenses on account of impact of the implementation of GST, had submitted that the expenditure could not have been factored in by the Commission at the time of determination of the O&M



expense norms during 2014-19 tariff period, as GST was implemented only with effect from 1.1.2017. It had also submitted that denial of the same will result in under-recovery for the generating station. Considering the submissions of the Review Petitioner, the Commission vide impugned order dated 23.10.2021 held as under:

“26. The matter has been considered. It is observed that the Commission while specifying the O&M expense norms for the 2014-19 tariff period had considered taxes to form part of the O&M expense calculations and accordingly, had factored the same in the said norms. This is evident from paragraph 49.6 of SOR (Statement of Objects and Reasons) issued with the 2014 Tariff Regulations, which is extracted hereunder:

“49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in...”

27. Further, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations is only after accounting for the variations during the past five years of the 2014-19 tariff period, which in our view, takes care of any variation in taxes also. It is pertinent to mention that in case of reduction of taxes or duties; no reimbursement is ordered. In this background, we find no reason to grant additional O&M expenses towards payment of GST.”

8. It is, therefore, evident that the Commission, after considering the submissions of the Review Petitioner had, by a conscious decision, rejected the prayer of the Review Petitioner for recovery of additional O&M expenses, on account of GST implementation. In our view, the review petition cannot be an appeal in disguise and the Review Petitioner cannot be permitted to raise issues on merits. We, therefore, find no reason to entertain the submissions of the Review Petitioner for review of impugned order dated 23.10.2021, on this count. Accordingly, review on this ground is not maintainable and is disposed of at the admission stage.

9. The Petitioner is directed to serve the copy of the Review Petition along with this order on the Respondents by 14.3.2022. The Respondents shall file their replies on issue (i) in paragraph 2 above on or before 29.3.2022, after serving a copy to the Petitioner, who shall file its rejoinder, if any, by 5.4.2022. The parties shall ensure the completion of pleadings within the due date.



10. Matter shall be listed for hearing in due course for which separate notice will be issue to the parties.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson

