

# CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

**Review Petition No. 5/RP/2020.**

**in**

**Petition No. 361/TT/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I. S. Jha, Member**

**Date of Order: 09.04.2022**

**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 the order dated 8.11.2019 in Petition No. 361/TT/2018.

**And in the matter of:**

Karnataka Power Transmission Corporation Limited, (KPTCL),  
Kaveri Bhavan, Bangalore – 560009

**.....Petitioner**

**Versus**

1. Power Grid Corporation of India Limited.  
SAUDAMINI, Plot No-2,  
Sector-29, Gurgaon-122 001 (Haryana).
2. Tamil Nadu Generation and Distribution Corporation Limited,  
NPKRR Maaligai, 800, Anna Salai Chennai – 600 002
3. Transmission Corporation of Andhra Pradesh Limited,  
Vidyut Soudha, Hyderabad- 500082
4. Kerala State Electricity Board (KSEB),  
Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram - 695 004
5. Electricity Department, Government of Goa,  
Vidyuti Bhawan, 3rd Floor, Panaji, Goa-403001



6. Electricity Department, Government of Pondicherry,  
Pondicherry –605001
7. Eastern Power Distribution Company of Andhra Pradesh Limited,  
Seethmmadhara, Vishakhapatnam,  
Andhra Pradesh
8. Southern Power Distribution Company of Andhra Pradesh Limited,  
Srinivasasa Kalyana Mandapam Backside,  
Tiruchanoor Road, Kesavayana Gunta,  
Tirupati-517 501, Andhra Pradesh
9. Central Power Distribution Company of Andhra Pradesh Limited,  
Corporate Office, Mint Compound,  
Hyderabad - 500 063, Andhra Pradesh
10. Northern Power Distribution Company of Andhra Pradesh Limited,  
Opposite NIT Petrol Pump, Chaitanyapuri,  
Kazipet, Warangal - 506 004, Andhra Pradesh
11. Bangalore Electricity Supply Company Limited,  
Corporate Office, KR Circle,  
Bangalore - 560001, Karnataka
12. Gulbarga Electricity Supply Company Limited,  
Station Main Road, Gulburga, Karnataka
13. Hubli Electricity Supply Company Limited, Navanagar,  
PB Road, Hubli, Karnataka
14. Mangalore Electricity Supply Company Limited,  
Corporate Office, Paradigm Plaza,  
AB Shetty Circle, Mangalore – 575001
15. Chamundeswari Electricity Supply Corporation Limited,  
927, L J Avenue, Ground Floor,  
New Kantharaj Urs Road,  
Saraswatipuram, Mysore - 570009, Karnataka
16. Transmission Corporation of Telangana Limited,  
Vidhyut Sudha, Khairatabad, Hyderabad, 500082



**Parties present:**

- For Review Petitioner** : Shri Shahbaaz Husain, Advocate, KPTCL  
Ms. Stephania Pinto, Advocate, KPTCL  
Shri Fahad Khan, Advocate, KPTCL
- For Respondent(s)** : Shri Tushar Shrivastava, Advocate, PGCIL  
Shri Pallav Mongia, Advocate, PGCIL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Chandrashekhar, PGCIL  
Shri Prashant, PGCIL  
Shri Arjun Malhotra, PGCIL  
Ms. R. Ramalakshmi, TANGEDCO  
Dr. R. Kathiravan, TANGEDCO  
Shri R. Srinivasan, TANGEDCO

**ORDER**

Karnataka Power Transmission Corporation Limited, (hereinafter referred to as the “KPTCL/ Review Petitioner”) has filed the instant review petition seeking review of the order dated 8.11.2019 in Petition No. 361/TT/2018, 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.

**Background**

2. Power Grid Corporation of India Limited (hereinafter referred to as the “PGCIL”) had filed Petition No. 361/TT/2018 seeking approval of transmission tariff in case of the following transmission assets under “System Strengthening XII in Southern Region” for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”):

**Asset-1:** LILO of 400 kV S/C Neelmangla-Hoody Transmission Line at new 400/220 kV GIS Substation at Yelahanka with 1X63 MVAR 420 kV Bus Reactor along with associated bays and equipments and



**Asset-2:** Asset-2A: 2 x 500 MVA, 400/220 kV ICTs alongwith associated bays and 2 number 220 kV bays at 400/220 kV Yelahanka Sub-station; and

**Asset-2B:** 4 number 220 kV bays at 400/220 kV Yelahanka Sub-station.

3. The Commission vide order dated 8.11.2019 in Petition No. 361/TT/2018 observed that PGCIL was not able to put 4 number of 220 kV bays constructed under ISTS at Yelahanka Sub-station into commercial operation as downstream 220kV transmission lines to be constructed by the Review Petitioner were not ready. Accordingly, the COD of the transmission assets covered in the Petition No. 361/17/2018 was approved by the Commission as 1.4.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to the delay in COD of the assets covered under the scope of work of the Review Petitioner. The Commission therefore held that the Review Petitioner should bear the transmission charges from the COD of the assets of PGCIL till the COD of the downstream transmission system of KPTCL. The relevant extracts of the order dated 8.11.2019 in Petition No. 361/TT/2018 are as follows:

*“Sharing of Transmission Charges*

*67. TANGEDCO, vide affidavit dated 13.2.2019, has submitted that KPTCL has not commissioned the downstream lines and bays and the transmission charges for the entire scheme covered in the instant petition should be billed bilaterally till commissioning of the downstream system under the scope of KPTCL.*

*68. In response, the Petitioner vide affidavit dated 23.5.2019 has submitted that the subject scope of works includes 6 Nos. 220 kV downstream bays at Yelahanka Substation under ISTS associated with 220 kV lines to be constructed by M/s KPTCL. Out of the 06 No. 220 kV bays, power flow started in 2 No. 220 kV downstream Line bays (Asset 2A) w.e.f 13.10.2018. Accordingly, trial operation certificate of RLDC and power flow data as recorded by SEM for active power flow in 02 No. 500 MVA, 400/220 kV ICT"s & 02 No. 220 kV downstream bays. The 4 Nos. 220 kV downstream bays (Asset 2B) are yet to be commissioned by M/s KPTCL, which is beyond the control of the petitioner.*

*69. We have considered the submissions of the petitioner and respondent. The COD of the Assets covered in the instant petition has been approved as 1.4.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to non-commissioning of the Assets covered under the scope of KPTCL. Hence, the transmission charges from the COD of the instant assets shall be borne by KPTCL*



*till commissioning of the downstream transmission system. Thereafter, the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time, as provided in Regulation 43 of the 2014 Tariff Regulations.”*

4. Aggrieved with the above order, KPTCL has filed the instant review petition.

The Review Petitioner has made the following prayers:

*“(a) Admit the present review petition;*

*(b) Review the order dated 8.11.2019 of the Hon'ble Commission in Petition No. 361/TT/2018 to the extent of the payment of transmission charges directly by KPTCL to Powergrid in para 68 and 69*

*(c) Hold and direct that the Respondent No.1, Powergrid is entitled to the recovery of the Transmission Charges from the Date of Commissioning of the Transmission System only under the PoC mechanism under the Sharing Regulations of the Hon'ble Commission;*

*(d) Pass an interim order for stay of the recovery of bilateral charges by Powergrid from the Petitioner pending the disposal of the present review petition;*

*(e) Pass an ad interim order in terms of prayer (d) above and confirm the same after notice to the Respondents; and*

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

5. The impugned order dated 8.11.2019 in Petition No. 361/TT/2018 was passed by the coram of Shri P.K. Pujari, Chairperson, Dr. M.K. Iyer, Member and Shri I.S. Jha, Member. Since Dr. M.K. Iyer, Member, has demitted office, the instant review petition is heard by the coram of Shri P.K. Pujari, Chairperson and Shri I.S. Jha, Member.

6. The review petition was initially heard through video conference on 16.7.2020 and was admitted by the Commission vide order dated 1.2.2021 and notice was issued to the Respondents. After competition of pleadings, the matter was heard again through video conference on 29.3.2022 and order in the instant review petition was reserved.



## **Submissions of the Review Petitioner**

7. The Review Petitioner, vide affidavits dated 21.12.2019, 30.7.2020 and 23.9.2021 has inter alia submitted the following grounds for review:

- a. PGCIL had sought for recovery of the transmission charges under the Sharing Regulations and not from KPTCL separately under bilateral billing.
- b. In response to RoP dated 24.5.2019 in Petition No. 361/TT/2018, a letter dated 17.7.2019 was sent by KPTCL, which was not taken into consideration by the Commission while passing the final order in Petition No. 361/TT/2018.
- c. PGCIL made no prayer and claim against KPTCL in the petition. Therefore, it was bona fide belief of KPTCL that no formal objection/ reply was required to be filed in Petition No. 361/TT/2018. Moreover, there is no contract entered into between the KPTCL and PGCIL for payment of any charges. Thus, there is no contractual liability on the part of KPTCL in Petition No. 361/TT/2018.
- d. The non-commissioning of the downstream system cannot be attributed to the Review Petitioner as it was the responsibility of PGCIL. The Review Petitioner was forced to take alternate steps to meet the requirements of the State due to the inordinate delay in COD of the sub-station by PGCIL. The delay is mainly due to Right of Way (RoW) issues and also due to unprecedented urbanization in Bangalore city.
- e. There are errors apparent on the face of the record, as much as the requirement of transmissions system, the time frame for commissioning, the consequences for delay etc. were not placed on record by PGCIL. No relief was sought by PGCIL against the Review Petitioner in the tariff petition and therefore grant of any such relief, not even sought for, is also an error apparent on the face of the record.
- f. There was substantial time over-run in case of the transmission lines of PGCIL and hence the Review Petitioner made alternate arrangements to meet the growing requirements of Bangalore city. PGCIL completed the transmission lines after a substantial time over-run of more than 10 years and therefore, PGCIL is liable for the delay and not the Review Petitioner.



- g. KPTCL, vide affidavit dated 30.7.2020, has submitted that the following facts were not disclosed by PGCIL before the Commission:
- i. The Yelahanka Sub-station was put into commercial operation using the transmission system of KPTCL. The system of PGCIL was delayed and has come up only in 2020.
  - ii. By the time the Yelahanka Sub-station started progress, KPTCL had made alternative arrangements to meet the electricity demand of Bangalore, which was very critical during the relevant period.
- h. KPTCL has laid down underground cables to connect to the 2 terminal bays, which are capable of utilising the entire capacity of the 2 x 500 MVA ICT at the sub-station.
- i. However, PGCIL had submitted that KPTCL defaulted in not bringing up the downstream system. Therefore, in the absence of facts, holding KPTCL to pay for YTC of Asset- 2B on bilateral basis is grossly erroneous.
- j. Besides reiterating the submissions made vide affidavits dated 21.12.2019, 30.7.2020, the Review Petitioner vide affidavit dated 23.9.2021 has submitted that the instant review petition has been filed by highlighting certain material facts that are relevant to the prayer of the main petition, i.e., Petition No. 361/TT/2020, which were not considered in the original proceedings, whereas an appeal is filed only if a party is aggrieved by the manner of consideration of facts by the original authority. Therefore, in the instant petition, the Review Petitioner has sought for consideration of relevant facts which were not considered while passing the order in Petition No. 361/TT/2020 (case referred: The Selection Committee for Admission to the Medical and Dental College, Bangalore Vs M.P. Nagaraj, by Karnataka High Court).
- k. In view of the above, the transmission charges loaded solely upon the Petitioner are not justified and prayed that that same may be shared under the PoC Mechanism.



## **Submissions of the Respondents**

8. PGCIL, Respondent No.1, vide affidavit dated 22.2.2021 submitted as follows:
- a. The Review Petitioner was a party to the Petition No. 361/TT/2018 and had been duly served with a copy of the Petition. The Review Petitioner thus had the opportunity to file the submissions and documents. Therefore, at this stage, it is not appropriate for KPTCL to contend that the PGCIL had not disclosed any fact.
  - b. The delay in COD of PGCIL's assets was condoned by the Commission in the impugned order to which none of the Respondents made any objection.
  - c. The delays faced by PGCIL were informed and discussed in various forums including Pragati Meeting and Southern Regional Power Committee meetings, wherein the Review Petitioner was also a party.
  - d. The Review Petitioner is seeking to raise other issues and aspects which are not relevant to the PGCIL's assets. These were not raised by the KPTCL in Petition No. 361/TT/2018 and new issues cannot be raised in the Review Petition.
  - e. The Review Petitioner did not oppose the COD of the subject assets/ line in any of the Forums.
  - f. The Commission has consistently held in cases where the downstream lines/ asset are not ready, that the transmission charges are payable by the party whose lines/ assets are not ready. The Commission has repeatedly held that the transmission charges would be included in the POC mechanism under 2010 Sharing Regulations after the downstream transmission system is ready.
  - g. There is no requirement of any agreement in this regard.
  - h. In the Standing Committee on Power System Planning of Southern Region, the interconnection with Review Petitioner assets was known. The Review Petitioner cannot deny that its transmission assets were to be ready and connected to PGCIL.
  - i. Petition No. 361/TT/2018 was filed by PGCIL for determination of tariff for its transmission assets and PGCIL was to justify its own delays.
  - j. The Review Petitioner chose not to file any submissions in Petition No. 361/TT/2018 and has not provided any information or details.





9. TANGEDCO, Respondent No. 2, vide affidavit dated 13.12.2021, has made the following submissions:

- a. The Commission has passed orders in a number of petitions to allocate the charges bilaterally till the COD of the downstream/ upstream systems/transmission assets.
- b. Other beneficiaries should not be burdened for the delay on the part of the Review Petitioner as it is a bilateral issue between the Review Petitioner and PGCIL.
- c. A number of similar review petitions have been dismissed by the Commission due to the fact that the review cannot be an appeal in disguise.
- d. The Commission vide RoP dated 24.5.2019 had specifically observed that it would like to hear KPTCL. However, KPTCL chose not to appear before the Commission.
- e. The instant review petition has no grounds for review as mandated under law. Accordingly, the review petition is not maintainable since, the Review Petitioner has no locus standi for challenging the merit of the order dated 8.11.2019 in the Petition No. 361/TT/2018 passed by the Commission. Therefore, the review petition deserves to be dismissed.

### **Analysis and Decision**

10. We have considered the submissions of the Review Petitioner, PGCIL and TANGEDCO. The Review Petitioner has prayed for review of the impugned order on the ground that the Commission had not taken cognizance of their letter dated 17.7.2019 wherein it had submitted its views / comments on bilateral billing to them due to delay in commissioning of the downstream assets.

11. The Commission, vide RoP dated 24.5.2019 in Petition No. 361/TT/2018 directed the Respondent/Review Petitioner as follows:



*“The Commission observed that it would like to hear KPTCL before approving the COD of the instant assets under Regulation 4(3) of the 2014 Tariff Regulations and directed KPTCL and all the respondents to file their reply.”*

12. Thus, the Commission had specifically observed that it would like to hear KPTCL. However, none appeared on behalf of the Review Petitioner on 8.8.2019 when the matter was heard by the Commission and order in the matter was reserved. Further, instead of filing reply on affidavit substantiating its position with supporting documents, the Review Petitioner chose to send a letter dated 17.7.2019 in the matter without any supporting documents. In view of the above facts, Review Petitioner’s submission that it was a bona fide belief of KPTCL that no formal objection/ reply was required to be filed in Petition No. 361/TT/2018 has no merit. Accordingly, the case referred to by the Review Petitioner, namely, “The Selection Committee for Admission to the Medical and Dental College, Bangalore Vs M.P. Nagaraj” of Karnataka High Court is not applicable in the instant matter as the Review Petitioner was given sufficient chance to argue its case before the Commission.

13. The Commission has consistently held that the defaulting party has to bear the transmission charges in case of any mismatch. In the instant case, on the basis of the submissions made by PGCIL, the Commission came to the conclusion that KPTCL is responsible for the mismatch and held that it has to bear the transmission charges.

14. Now by way instant Review Petition, the Review Petitioner contends that the delay in commissioning of Yelahanka Transmission System by PGCIL forced it to take alternate steps to provide electricity to Bengaluru City. The Review Petitioner has submitted that the time over-run is mainly because of RoW issues and due to unprecedented urbanization in the Bengaluru City. The Review Petitioner has further submitted that the Review Petitioner has made alternate arrangements to meet its



requirements and PGCIL has utilised the Review Petitioner's facilities to execute the transmission assets under its scope.

15. In terms of Order 47 Rule 1 of Code of Civil Procedure, 1908, a review is maintainable on the following grounds:

- (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.

16. We have perused the materials on record and we are of the considered view that 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 arguing 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."*

17. 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'."*

18. Thus, a Review Petition cannot be an appeal in disguise as held by the Hon'ble Supreme Court. In light of the above discussions, the instant review petition is beyond the ambit of review and hence dismissed.

19. This order disposes of Petition No. 5/RP/2020.

sd/-

**(I. S. Jha)**  
**Member**

sd/-

**(P. K. Pujari)**  
**Chairperson**

