

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 39/RP/2022

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order : 14.03.2023

In the matter of:

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 tariff order dated 10.6.2022, passed in Petition No. 482/TT/2020, as modified vide corrigendum dated 22.7.2022, whereby truing up of transmission tariff for the period 2014-19 & determination of transmission tariff for the period 2019-24 has been undertaken in respect of Existing Transmission and Distribution (T&D) System Network of Damodar Valley Corporation in Eastern Region.

And in the matter of:

Damodar Valley Power Consumers' Association (DVPCA)
Ideal Centre, 4th Floor
9 AJC Bose Road, Kolkata -700017

..... Review Petitioner

Versus

1. Damodar Valley Corporation (DVC) & Ors
DVC Towers, VIP Road
Kolkata-700054
2. West Bengal State Electricity Distribution Company Limited (WBSEDCL)
(Previously West Bengal State Electricity Board)
Vidhyut Bhawan, Block DJ, Sector -11, Salt Lake City
Kolkata-700091
3. Jharkhand Bijlee Vitran Nigam Limited (JBVNL)
Engineers Building Dhuwa
Ranchi-834004

...Respondent(s)



For Petitioner : Shri Rajiv Yadav, Advocate, DVPCA
Shri Awanit Kumar Singh, Advocate, DVPCA

For Respondent : Ms Anushree Bardhan, Advocate, DVC
Ms Srishti, Advocate, DVC
Ms Surbhi Kapoor, Advocate, DVC
Ms Tanya Sareen, Advocate, DVC
Shri Aneesh Bajaj, Advocate, DVC

ORDER

The instant petition has been filed by Damodar Valley Power Consumers' Association (DVPCA) seeking review of the order dated 10.6.2022 in Petition No. 482/TT/2020, as modified vide corrigendum dated 22.7.2022, whereby the tariff of 2014-19 tariff period was trued up and tariff of the 2019-24 tariff period was determined in respect of existing Transmission and Distribution (T&D) System Network of Damodar Valley Corporation in Eastern Region.

2. DVPCA has sought review of the order dated 10.6.2022 on the grounds viz- (a) the value of the freehold hold land has been considered for computing depreciation contrary to Regulation 27(4) of the 2014 Tariff Regulations (b) omitted to consider the depreciation recovered on "Old Assets for Main Division" (c) mismatch in the depreciation allowed and the loan repayment and (d) allowance of Sinking Fund Contribution along with "Depreciation on Assets funded through Bonds" resulted in double allowance of loan repayment. DVPCA has contended that these are errors apparent on the face of record which need to be rectified.

3. The matter was listed for admission on 24.1.2023 and none was present on behalf of the Review Petitioner. The learned counsel appearing on behalf of the DVC



raised objections on admissibility of the review petition. She submitted that DVPCA is only an objector and is not formally impleaded as a party in the matter and as such the review petition filed by DVPCA is not maintainable. Learned counsel further sought time to file Written Submissions on this aspect. After hearing DVC, the Commission directed DVC and DVPCA to file their written submissions on the issue of admissibility.

4. Pursuant to the directions of the Commission vide RoP dated 24.1.2023, DVC has filed its written submissions dated 7.2.2023. The gist of the submissions made by DVC are as follows:

- a. DVPCA was not impleaded as a formal party in the Petition No. 482/TT/2020. DVPCA was allowed to file its objections and the Commission observed that there is no need to implead DVPCA as a party and directed it to file its objections. Accordingly, DVPCA had filed its objections and DVC filed its response to the objections of DVPCA. These objections were considered and dealt with by the Commission in the order dated 10.6.2022 in Petition No. 482/TT/2020.
- b. In terms of Section 94(1)(f) of the Electricity Act, 2003, the review petition can be filed by parties to the petition and not by others who had been permitted to participate for a specific purpose at the discretion of the Commission.
- c. The review petition does not disclose the ground for review, namely, any error of the nature which is apparent on the face of the record or otherwise any sufficient cause for reviewing the order. DVPCA is reagitating the issue of Sinking Fund which it had raised in its objections in Petition No. 482/TT/2020.



- d. DVC placing reliance on Hon'ble Supreme Court judgments in the matter of *Kamlesh Verma Vs. Mayawati*, (2013) 8 SCC 320, *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715, *State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612, *Kerala SEB v. Hitech Electrothermics & Hydropower Ltd.*, (2005) 6 SCC 651 and *Lily Thomas v. Union of India*, (2000) 6 SCC 224 has contended that the present review petition is not maintainable.
- e. The participation of DVPCA was as per Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and therefore, the participation was allowed in a regulated manner to enable the Commission to be informed of their objections. The objections of DVPCA have been considered and decided by the Commission in the order dated 10.6.2022.

5. In response, DVPCA has also filed its written submissions dated 17.2.2023. The gist of the submissions made by DVPCA are as follows:

- a. While allowing DVPCA to participate in the proceedings, the Commission vide RoP dated 13.4.2021 in Petition No. 573/GT/2020 did not impose any restriction or condition with respect to DVPCA's participation and was the nature of DVPCA's participation circumscribed in any other manner.
- b. Section 114 of the CPC, 1908 and Order 47 Rule 1 of the CPC 1908 allows any person aggrieved by an order to seek a review. Thus, it is a trite law that a review petition can be filed even by a third party i.e. a person who did not participate in the proceedings in which the order under review was passed.



- The only qualifying criteria to seek a review of an order is that the review petitioner must be aggrieved by the order/ judgment/ decision in question.
- c. DVPCA had actively participated in the entire batch of petitions pertaining to true-up of the 2014-19 tariff period and determination of tariff of the 2019-24 tariff period by filing detailed objections, written submissions and an oral argument in the hearings. Further, while calling for additional information/ clarification from DVC, the Commission always directed DVC to serve an advance copy on DVPCA alongwith other Respondents. DVPCA was also permitted to submit its response to such information/ clarification submitted by DVC. Therefore, there was no difference in the nature of participation by DVPCA and other Respondents.
 - d. DVC is also a deemed distribution licensee and supplies electricity to HT/ EHT consumers, such as the members of DVPCA, thus it was incumbent upon DVC to implead a representative body like DVPCA as a party-Respondent in such tariff petitions.
 - e. Restricting the nature of participation and locus of DVPCA would be opposed to the principles of natural justice, as well as Sections 61(d) and 86(3) of the Electricity Act, 2003.
 - f. It was imperative for DVPCA to be either impleaded by DVC or permitted full scale participation by the Commission, so that its tariff proposals could be meaningfully tested by the consumers that have to ultimately bear the cost determined by the Commission.



Analysis and Decision

6. We have considered the submissions made by the learned counsels for the Review Petitioner and DVC. DVC has submitted that the DVCPA being objector in the proceedings in Petition No. 482/TT/2020 and not formally impleaded as a party in the matter does not have right to file the Review Petition. Per contra, DVPCA has submitted that any person aggrieved by an order can file a review petition under Section 144 of the Code of Civil Procedure, 1908 (CPC). The said issue can be examined in the light of the provisions of CPC and the Commission's Conduct of Business Regulations, 1999 (1999 CBR). As per CPC and the 1999 CBR "any person" aggrieved with an order can file a review. Section 144 of the CPC provides as follows:

"Subject as aforesaid, any person considering himself aggrieved- (a) by a decree or Order from which an appeal is allowed by this Code, but from which no appeal has been preferred, (b) by a decree or Order from which no appeal is allowed by this Court, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the Order, and the Court may make such Order thereon as it thinks fit."

7. Regulation 103(1) of the Conduct of Business Regulations, 1999 provides as follows"

"103(1) The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit."

8. The Hon'ble Supreme Court in 'Nareshkumar Badrikumar Jagad and Vs. O P Singh And Ors. dated 28 November, 2018', (Review Petition No. 40966 of 2013 in Civil Appeal No. 7448 of 2011) on the issue of "who can file a review petition" held as follows:

"19. Reverting to the question of whether Union of India has locus to file the review petition, we must immediately advert to Section 114 of the Code of Civil Procedure ("CPC") which, inter alia, postulates that "any person considering himself aggrieved" would have locus to file a review petition. Order XLVII of CPC restates the position that



any person considering himself aggrieved can file a review petition. Be that as it may, the Supreme Court exercises review jurisdiction by virtue of Article 137 of the Constitution predicates that the Supreme Court shall have the power to review any judgment pronounced or order made by it. Besides, the Supreme Court has framed Rules to govern review petitions. Notably, neither Order XLVII of CPC nor Order XLVII of the Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Therefore, we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.”

9. In the instant case, DVPCA, an association of consumers of DVC, being aggrieved with the order dated 10.6.2022 in Petition No. 482/TT/2020 has filed the present review petition. In view of the above discussion, we are of the considered view that the instant review petition filed by DVPCA is admissible.

10. Accordingly, we admit the review petition and direct issue of notice to the Respondents. The Respondents are directed to file their reply by 29.3.2023 and the Review Petitioner to file rejoinder, if any, by 11.4.2023.

11. The matter shall be listed for final hearing on 13.4.2023.

sd/-

(P. K. Singh)
Member

sd/-

(Arun Goyal)
Member

sd/-

(I. S. Jha)
Member

