

BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**Review Petition 38/2000 in**
Petition No.19/2000Coram

1. Shri S.L. Rao, Chairman
2. Shri D.P. Sinha, Member
3. Shri G.S. Rajamani, Member
4. Shri A.R. Ramanathan, Member

In the matter of :

Review of the order of the Commission passed in Application No.11/2000 in
Petition No.19/2000.

AND

In the matter of :

M/s. Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area,
Katwaria Sarai, Petitioner
New Delhi-110 016.

AND

Karnataka Power Transmission Corporation and OthersRespondents

The following were present :-

1. Shri P.R. Agarwal, Sr. Advocate Petitioner
2. Shri Mahendra Singh, Advocate -do-
3. Shri Suresh Sachdeva, GM, PGCIL -do-
4. Shri V.V. Sharma, DGM (C), PGCIL -do-
5. Shri T.P.S. Rao, DGM (Law), PGCIL -do-
6. Shri Sowmyanarayanan, Consultant, TNEB.....Respondent
7. Shri Sivathanu Pillai, DCE, KSEB -do-
8. Shri K.R. Unnithan, EE, KSEB -do-
9. Shri R. Venkata Seshu, SEE, KPTCL -do-

ORDER

(Date of Hearing 31.7.2000)

The present Review Petition has been filed by the Power Grid Corporation of India Ltd seeking

review of the Commission's order dated 26.4.2000 in IA 11/2000 in Petition No.19/2000.

2. The Petitioner had filed petition No.19/2000 seeking the Commission's approval for transmission tariff for Kaiga Transmission System in Southern Region, alongwith interlocutory application for interim order. The Board of Directors of the Petitioner Company approved construction of Kaiga Transmission System at a capital cost of Rs.5365 lakhs, which was subsequently revised to Rs.5752.73 lakhs. The system was put into commercial operation on 1.12.99. The certificate dated 10.12.99, annexed to the petition as Enclosure-4, indicated that out of total cost a sum of Rs.174 lakhs was expected to be spent on the Project upto 31.3.2001. At the hearing on 26.4.2000, it was stated on behalf of the petitioner that after 10.12.99, a further sum of Rs.74 lakhs had been spent and thus remaining amount of Rs.100 lakhs was yet to be spent. However, no audited figure in support of claim for expenditure of Rs.74 lakhs after 10.12.99, was produced before us at the hearing. The tariff proposal for the transmission system was discussed by the petitioner with the beneficiaries of Southern Region on 28.2.2000, whereat it was pleaded on behalf of the petitioner that 100% tariff proposed be paid on provisional basis. The beneficiaries, however, had agreed to pay 80% of the proposed tariff. The Petitioner offered to accept 90% of the proposed tariff on provisional basis, subject to its final determination by the Commission. A copy of the Minutes of the Meeting dated 28.2.2000 between the Petitioner and beneficiaries of Southern Region has been placed on record by the Petitioner as Enclosure-8 to the Petition. On consideration of above noted facts, we directed payment of 90% of the provisional tariff claimed by the Petitioner subject to adjustment in the light of its final determination by the Commission.
3. While considering the provisional tariff, we had found that the Petitioner had unilaterally and without consultation with the beneficiaries revised the completion cost of the project from Rs.5365 lakhs to Rs.5753 lakhs. Since the capital expenditure incurred on the project is "pass through" and is to be borne by the beneficiaries, we considered it appropriate to direct the petitioner to evolve a mechanism for consultation with beneficiaries in case of upward revision of the cost of project. We therefore ordered accordingly.

4. The present review petition has been filed by the petitioner as it feels aggrieved on account of the above directions. We have heard Shri P.R. Aggarwal, Sr. Advocate, for the Petitioner. The learned Senior Counsel has argued that against the revised cost of Rs.5752 lakhs, an amount of Rs.5578.73 had already been spent by the Petitioner company when the petition for provisional tariff was filed before the Commission. This works out to 97% of the revised capital cost. He pleaded that the Commission should have allowed at least 97% of the proposed tariff claimed by the Petitioner. He argued that transmission system is fully utilised by the respondent beneficiaries since 1.12.99 and therefore they are liable to make payment for the use of the system. According to the learned Senior Counsel, accumulation of arrears will adversely affect the financial position of the petitioner and also the investment on other projects. The learned Counsel also argued that directions of the Commission in regard to consultation with the beneficiaries is unwarranted, impracticable, involve duplication of work and waste of resources and entail delay in finalisation of tariff. He pleaded that at hearing, the parties get full opportunity to present their views and, therefore, prior consultation is undesirable and unnecessary. Therefore, he pleaded for review of the order dated 26.4.2000.

5. Section 12 of the Electricity Regulatory Commission Act, 1998, inter alia, provides that the Commission for the purpose of any enquiry or proceedings has the powers as are vested in Civil Court under Code of Civil Procedure for review of its decision, directions and orders. Therefore, provisions of Order XLVII of Civil Procedure Code shall apply for review of an order by the Commission. According to the relevant provisions, any person aggrieved

- a. by any decree or order from which appeal lies but no appeal has been preferred ;
or
- b. by a decree or order from which no appeal lies ; or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgement on one of the following grounds:-

- i. Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made, or.
- ii. Mistake or error apparent on the face of the record, or
- iii. For any other sufficient reason.

6. It is trite law that the review petition may be entertained on the ground of error apparent on the face of the record or any other similar ground. A decision cannot be reviewed on merits since a review by no means can be an appeal in disguise, whereby a judgement is re-heard. It would be pertinent to refer to the following observations of the Supreme Court in a case reported as Sow Chandra Kante and another Vs Sheikh Habib [(1975) 1 SCC 674] :-

"A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets for entertainment of review and fight again the same battle which has been fought and lost. (The review) stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

7. In light of the above legal position, we propose to examine whether there is any error apparent on the face of record in the order dated 26.4.2000 or any other sufficient ground for review of order dated 26.4.2000. In regard to our directions to the Respondents for payment of 90% of the provisional tariff claimed by the petitioner, we found that the facts now pleaded by the petitioner were already noticed by the Commission in the order. We took notice of the above stated facts that a part of expenditure was yet to be incurred and that the petitioner had agreed to accept 90% of the provisional tariff while having discussions with the beneficiaries of Southern Region on 28.2.2000. We do not find any error or mistake apparent on the face of the record or any other sufficient reason warranting review of our directions to the Respondents in regard to payment of provisional tariff. Petitioner's claim that it is entitled to 97% of the provisional tariff amounts to re-opening the case on merits. It is established law as we have already noted, that the decision of the court cannot be reviewed on merit.

8. We are fully alive of the situation that in large projects, it may not always be possible to forecast the completion cost of the project in advance with precision and exactitude. There may always be occasions warranting upward revision of the cost because of certain unforeseen circumstances which are beyond the control of the petitioner. In the past, many such instances have come to our notice on number of occasions. The increased expenditure has been borne by the beneficiaries through the tariff. On consideration of the recurring importance of the matter, we directed that a mechanism should be evolved for consultation

with beneficiaries wherever there is an upward revision of the cost of the project. We are not persuaded to accept that a case for review of our direction in this regard is made out in the light of the statutory provisions and the law declared by the Supreme Court. The petitioner has sought to agitate the matter afresh, which is not permissible.

9. We are accordingly of the opinion that the present review petition is not maintainable and is liable to be dismissed. We order accordingly.

Sd/-

Sd/-

Sd/-

Sd/-

(A.R. Ramanathan)

(G.S. Rajamani)

(D.P. Sinha)

(S.L. Rao)

Member Member Member Chairman

New Delhi dated the 4th August, 2000.