

RAJASTHAN ELECTRICITY REGULATORY COMMISSION, JAIPUR

Petition No. RERC/1352/18 and I.A. No. 05 of 2018

In the matter of Review petition and Interlocutory Application filed by Rajasthan Rajya Vidyut Prasaran Nigam Ltd. under Section 94 (1) (f) of the Electricity Act, 2003 for review of Commission's order dated 03.05.2018.

Coram:

Shri Shreemat Pandey, Chairman

Shri S.C. Dinkar, Member

Shri Prithvi Raj, Member

Petitioner : Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

Respondent(s) : 1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearing : 28.08.2018

Present : 1. Sh. R. K. Jain, CE (NPP&RA), RVPNL
2. Sh. Manish Saxena, CCOA, RVPNL
4. Ms. Anju Sultania, CAO, RVPNL
5. Ms. Anirudha Upadhyay, Advocate for AVVNL
6. Sh. S. T. Hussain, Ex. En., JVVNL

Date of Order : 24.01.2019

ORDER

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (hereinafter referred to as "Petitioner" or "RVPN") has filed this petition on 22.05.2018 under Section 94 (1)(f) of the Electricity Act, 2003 for review of Commission's Order dated 03.05.2018 for approval of Annual Revenue Requirement & determination of Tariff for FY 2018-19 and True up of ARR for FY 2016-17.

Further, Petitioner has also filed an Interlocutory Application (I.A.) on 25.05.2018 for review of the Commission's Order dated 03.05.2018 issued in the matter of approval of Investment Plan for FY 2018-19.

2. Notices were issued to the Respondents to file the reply, upon which JVVNL has submitted its reply on 06.07.2018. Petitioner has also submitted its rejoinder on JVVNL's reply on 07.08.2018.
3. The matter was heard on 28.08.2018. Sh. Manish Saxena CCOA, appeared for RVPN. Sh. S. T. Hussain appeared for Respondent Discoms.
4. Petitioner in its petition, rejoinder and during hearing made submissions as under:
 - 4.1. The Commission vide its Order dated 03.05.2018 has allowed O&M expenses of Rs 675.56 Crore instead of Rs 950.57 Crore on normative basis as per the provisions of the Regulation 9(2) of RERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 (Tariff Regulations, 2014).
 - 4.2. As per the said Regulation, the O&M expenses are controllable and not covered under the exceptions, the gain or loss has to be retained or borne by licensee. The purpose of specifying the norms for O&M expenses was to encourage the efficiency in the performance of the licensee and the Commission's disallowance is not as per spirit of the Regulation, i.e. to promote efficiency. RVPN should be allowed full O&M charges
 - 4.3. The Commission has approved depreciation charges amounting to Rs 698.83 Crore as against Rs 731.18 Crore claimed in the petition. The Petitioner has computed depreciation amounting to Rs 731.18 Crore based on rates and methodology specified in the RERC Tariff Regulations, 2014 for which the bulk data was already submitted in soft copy. Therefore, full depreciation should have been allowed.

4.4. Commission vide its Order dated 26.05.2017, had directed the Petitioner to refund the surplus amount to the Discoms whereas in the present Order, tariff rate has been reduced for FY 2018-19 by the surplus amount which would adversely affect RVPN's cash flow. Therefore, it is prayed that, if there is any surplus, the same may be treated as dealt in ARR Order for FY 2017-18.

4.5. Commission in its Order dated 03.05.2018, at Para 4.2 (Table 30) and Para 4.3, has not considered any investment in the following heads:

From Table 30 of Para 4.2

(Rs. In Crore)

S. No.	Particulars	Petition	Approved by RERC
1	Replacement of old, damaged and obsolete Assets in transmission system	50.00	Nil
2	Others	12.00	Nil
3	Old Miscellaneous works	10.00	Nil
4	Allocation by CCOA – Admin, Building, Vehicles	15.00	Nil

5. Respondents in their reply and during hearing made submissions as under:

5.1. The issues raised by the Petitioner cannot be covered under review in accordance with the provision of order 47 Rule 1 of the Civil Procedure Code and thus, the Commission should not consider the same.

5.2. The Commission has rightly rejected claims under "Replacement of old, damaged and obsolete Assets" as these expenses are part of regular Repairs and Maintenance expenditure incurred by the transmission licensee and the same should not be allowed as a capital expenditure.

5.3. The Commission has rightly disallowed capital expenditure under "Others" head, as the Petitioner had not provided details of these expenses.

5.4. The Petitioner in its review petition has submitted that "Old miscellaneous

works" includes "work approved with the scheme/project in DPR...but not executed in due course of time". The Discoms are of the view that since the cost of these works have been already approved and included by the Commission in previous investment plans so again approving expenditure for the same work will lead to double accounting of same expenditure thus leading to excessive and unnecessary burden of the Discoms and the consumers.

- 5.5. Expenditure proposed by the Petitioner on administration and residential building, vehicles should not be approved by the Commission as these expenses have been included in Detailed Project Report cost of the original project and thus already approved by the Commission in its previous capital investment plan order.
- 5.6. Regarding O&M Expenses for FY 2016-17, Commission had observed that the actual expenses incurred at Rs. 409.41 Crore which is only 43% of the normative O&M expenses claimed at Rs. 950.57 Crore and thus, despite the Tariff Regulations, 2014 allowing O&M expenses as per norms, the huge difference between the actual and normative figures cannot be ignored. The intension of allowing the normative O&M expenses without any sharing of gains of losses on account of variation from the actuals was to encourage the utilities to improve their efficiency and there is no reason to approve such huge normative expenses when the actual expenses are only 43% of the normative amount.
- 5.7. Further, Commission has exercised Regulation 94 of the Tariff Regulations, 2014 for dealing with such instances wherein the Commission feels that it has sufficient reason to deviate from the provisions of the Regulations and hence the Commission has rightly deviated from the provisions of Tariff Regulations, 2014 by recording in writing, the reasons for deviation with regard to the normative O&M expenses.
- 5.8. Apart from this, Petitioner has been allowed extra amount as the

Commission has considered capitalization to the extent of 10% of the gross Employee and A&G expenses. Also an additional amount has been approved on account of superannuation to cover up for the impact of implementation of the 7th Pay Commission. Hence, the stand taken by the Commission is in favour of the consumer of the State and should be upheld. The same stands also true for the decision of the Commission to allow bad debts as per norms specified in the Tariff Regulations, 2014 and there is no need to deviate from the Tariff Regulations, 2014, in respect of bad debts.

5.9. The Commission, while determining the true-up for FY 2016-17 had specifically enquired the Petitioner about the segregated summary of depreciation separately on fixed assets for less than 12 years, more than 12 years and no depreciation. The Petitioner had stated that the depreciation had been computed as per the Tariff Regulations, 2014 and also provided detailed circle-wise fixed asset register to the Commission, which the Commission found to be of no use for the purpose of trueing up. Accordingly, the Commission has detailed out its opinion regarding the same in para 3.21 and 3.22 of the Order. In view of above, the order dated 03.05.2018 cannot be reviewed.

Commission's Analysis

6. Commission has considered the submissions made by Petitioner, Respondents and judgments placed before the Commission.
7. The petition has been filed u/s 94(1) (f) of the Electricity Act, 2003 for review of the order dated 03.05.2018. The above Section confers powers to this Commission to review its own orders or decisions which are the same powers vested in a civil court under the Civil Procedure Code while trying a suit.
8. In view of the order 47 Rule 1 of CPC, the review is maintainable only on the following grounds:

“(a) Discovery of a new and important matter of evidence which even after exercise of due diligence was not within the knowledge of the Petitioner and which even after exercise of due diligence could not be produced by the Petitioner during the original proceedings which culminated in the final order passed;
(b) Order made on account of some mistake or error apparent on the face of the record; or
(c) any other sufficient reason”

9. The Petitioner, neither in its petition, nor during the hearing of the case, has demonstrated the applicability of its review petition on any of the above mentioned grounds, as mentioned under the provisions of Order 47 Rule 1 of the CPC.
10. However, the Respondents during the hearing have argued against the maintainability of the petition, as any of the matter raised by the Petitioner does not fall within the purview of review jurisdiction of the Commission. Commission has provided sufficient justification, rationale while deciding on all the issues raised and thus the issues raised in the petition cannot be covered under review.
11. It is well settled that review jurisdiction of this Commission under Section 94 is very limited and is only on the grounds specified in Order 47 Rule 1 of Civil Procedure Code.
12. The Hon'ble Supreme Court of India in the case of Review Petition (Civil)No. 891 of 2015 in Civil Appeal 209 of 2015 dt.08.01.2016, Chairman & Managing Director, Central Bank of India & Ors Vs Central Bank of India SC/ST Employees Welfare Association &Ors reported in AIR (2016) SC 326 has held as under :-

“an error has to be established by a long drawn process of reasoning on points where there may be conceivably be two opinions can hardly be said to be an error apparent on the face of the record.”

13. The Hon'ble APTEL vide its order dt. 17.04.2013 in Review Petition no. 12 of 2012 in Appeal no. 17 of 2012 in the matter of Ajmer Vidyut Vitran Nigam

Ltd. Vs Rajasthan State Mines & Minerals Ltd. has also summed up the grounds on which review petition is maintainable as below:

“ The ratio decided by the Hon'ble Supreme Court giving guidelines for exercise of the Power of Review could be culled out which are as follows:

- (a) It is well settled that the 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;*
- (b) The Review jurisdiction cannot be exercised on the ground that the decision was erroneous on merits. That would be the province of the court of Appeal. A power of Review is not to be confused with Appellate power which may enable an Appellate Authority to correct all matter of errors committed by the subordinate court. This power has not been conferred in the review jurisdiction;*
- (c) An error apparent on the face of record must be such an error which might strike one mere looking at the record and would not require any long drawn process of reasoning on points where there may be two opinions;*
- (d) An error which has to be established only by lengthy and complicated arguments during the long drawn process of reasoning cannot said to be an error apparent on face of the record;*
- (e) The party is not entitled to seek a Review of a judgment delivered by the Court merely for the purpose of re-hearing a fresh decision of the case. The principle is that the judgment pronounced by the court is final. Departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*
- (f) If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it would be difficult to hold that there is an error apparent on the face of the record.*
- (g) The parameters are prescribed in order 47 Rule 1 CPC. It permits the party to press for a re-hearing on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The former part of the rule deals with a situation attributable to the applicant and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible;*
- (h) There is a distinction between a mere erroneous decision and a decision which could be characterized by error apparent. The Review is by no means an Appeal in disguise whereby an erroneous decision is re-heard and corrected. Review lies only on a patent error.*
- (i) Whatever, the nature of the proceedings, it is beyond dispute*

that a Review proceedings cannot be equated with the original hearing of the case. The finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility;

- (j) Where the order in question is appealable and the aggrieved party has adequate and efficacious remedy by recourse to Appeal the original courts should exercise the power to review its order with the greatest circumspection;*
- (k) An error contemplated under the Rule must be such which is apparent on the face of the record. It cannot be an error which has to be fished out and searched.*
- (l) Expression "any other sufficient reason" appearing in order 47 Rule 1 has to be interpreted in the light of the other specified grounds."*

14. On the basis of the above judgments of Hon'ble Supreme Court and Hon'ble APTEL, we have gone through the grounds made out by Petitioner in this petition for review.
15. It is observed that the arguments on the above aspect now submitted by the Petitioner are the same as submitted during the earlier proceedings. The Commission has already considered the submissions now being made and passed its order. Same point cannot be argued again in the Review petition. It is well settled law that Review petition cannot provide fresh opportunity to parties to reargue the case in the name of Review petition.
16. In the Commission's considered view the Petitioner has not placed any new fact in the matter and could not indicate any apparent error in the impugned order. Thus, the impugned order is not open to review as there is no mistake or error apparent on the face of record. The Petitioner could not make out any other grounds for review.
17. Accordingly, the review petition and Interlocutory Application are dismissed.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman