



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 17 of 2017(M)

In the Matter of

“Review petition against the Tariff Order dated 31.03.2017 for the year 2017-18 clause 11.2.4 of tariff order for 2017-18, supply voltage HV 4, 33 KV supply”.

M/s Chhattisgarh Steel Re-Roller Associations ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd. ... Respondent

PRESENT : **Narayan Singh, Chairman**
: **Arun Kumar Sharma, Member**

APPEARANCE : Shri Shyam Kabra and Shri Vikash Agrawal
for petitioner.
: Shri Abhinav Kardekar, Advocate along with
Shri V.A. Deshmukh, EE for respondent.

ORDER on ADMISSION
(Passed on 13th June, 2017)

The petitioner, M/s Chhattisgarh Steel Re-Roller Association (hereinafter Association or petitioner) seeks review of tariff order dated 31.03.2017 passed in petition no. 64 of 2016(T) and therefore, filed this petition. The petitioner is aggrieved with clause 11.2.4 of the tariff order dated 31.03.2017 for the years 2017-18 by which tariff for steel industries has been determined.

2. The petitioner is a State level industrial Association having membership of about 180 plants/industrial units. The members of petitioner have great role in manufacturing steel, being the producer of end products like steel bars, rods, angles, channels

etc. in the chain of steel manufacturing industry therefore, any adverse impact on the working/viability/competitiveness of these industries are going to negate the growth of entire steel industries in the State.

- 3.** Last year also in tariff plan 2016-17 for Low Load Factor steel industries, the petitioner had filed petition in the Commission and got relief in double demand charges, in case monthly energy consumption between 6 pm to 6 am is less than 25% of the monthly energy consumption between 6 am to 6 pm.
- 4.** For the year 2017-18 in approved tariff, the tariff rate applicable to low load factor steel industries is totally unviable as most of the re-rolling mills come under 13% to 30% load factor criteria.
- 5.** The petitioner wants to review clause 11.2.4 of the tariff order relating to supply voltage HV 4, 33 KV supply (Load Factor \leq 15%) and pass order allowing load factor \leq 30%.
- 6.** A notice was issued to the respondent Chhattisgarh State Power Distribution Company Limited (CSPDCL) regarding the hearing on admissibility of the petition. With response to the notice the respondent raised objection and requested the Commission to dismiss the petition.
- 7.** The respondent submits that the review of Commission's order is governed by CSERC (Conduct of Business) Regulation, 2009 and amendment thereof. Review application can only be filed under limited grounds. The contentions raised by petitioner under the petition need not to be considered as discovery of new and important evidence nor it can be treated as some mistake or error

apparent on the face of the record. The respondent submits that load factor is ability of consumer to utilize it's contract demand depending upon it's need that varies from customer to customer.

- 8.** The respondent has further submitted that historical background of succeeding in review petition during previous year could not be a valid ground for review. It is not correct to say that existing tariff is totally unviable for steel industries. The State Govt. has continued the tariff subsidy at the rate of Rs. 1.40 per unit to steel industries taking power on 33KV and in the light of this fact the contention of petitioner becomes baseless. In the light of the facts, the present review petition is not maintainable. The petitioner association had not responded the retail tariff issue at the time of hearings on tariff petition for year 2017-18. This shows that the petitioner has nothing concrete to comment upon tariff proposal of CSPDCL and hence, principle of implied consent equally holds proper to this case. Law of estoppels would also apply in this case.
- 9.** Referring APTEL's judgment published in 2012 ELR (APTEL) 1290, it is submitted by the respondent that an erroneous view or erroneous judgment is not a ground for review, but if the judgment or order completely ignores a positive rules of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in review.
- 10.** According to the respondent, the review petitioner prays for extra gains by relying upon the facts already considered by the Commission during the proceedings of tariff petition. Referring judgment of Hon'ble Supreme Court reported in AIR 1980 SC 674

and another judgment published in 1992 (1) AN LT 566, It is submitted that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. In this regard another judgment in case of Sanja Bai V/s Smt. Bhagwati Bai published in AIR 1955 Ajmer 2(2).

- 11.** After hearing both the parties we observe that clause 23 of the CSERC (Conduct of Business) Regulation, 2009 provides :-

"Review of decisions, directions and orders.

(1) The Commission may on its own or on the application of any of the persons or parties concerned, review its decisions, directions or orders and pass such appropriate orders as it thinks fit.

Provided that the Commission may review its decision or order on its own motion only for the purpose of correction of any clerical or arithmetical mistakes or error arising out of any accidental slip or omission.

(2) An application for review shall be filed within a period of 30 days from the date of decision / order or direction or the date of communication of such decision / order or direction which is sought to be reviewed, and it shall be filed in the same manner as a petition.

(3) A review application can be filed only on the grounds mentioned in Order 47, Rule 1 of the Code of Civil Procedure, 1908".

- 12.** The petition is filed within the stipulated time period and there is no dispute regarding limitation of filing of the petition.

- 13.** It appears from the clause 23 of the CSERC (Conduct of Business) Regulations that a review application can be filed only on the grounds mentioned in Order 47, Rule 1 of the Code of Civil Procedure, 1908.

14. The order 47 Rule 1 of the Code of Civil Procedure provides:

Application for review of judgment- (1) Any person considering himself aggrieved-

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) By a decree or order from which no appeal is allowed, or

(c) By a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desire to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellant Court the case on which he applies for the review.

Explanation,- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

15. From the above provisions we can see that scope of review petition is limited only to an error apparent on the face of record or the discovery of new facts which could not be produced by the party

despite due diligence and the fact is important for decision of the case or any other sufficient reason. We do not find any ground in this case.

- 16.** The various Hon'ble High Courts and the Hon'ble Supreme Court in several judgments held that a review is permitted only on the three grounds specified in Order 47 Rule 1 and no other grounds are permissible. A Review cannot be granted only because the Court might take a different view of the same facts or because the judgment has taken an erroneous view on a debatable point of law or even on the ground that the judgment is wrong. But if the Court has exceeded its jurisdiction it's review should be granted.
- 17.** Going through the arguments presented by the parties, we arrive at a conclusion that the review petition filed by the petitioner could not fulfill the criteria mentioned in Order 47 Rule 1 of the Code of Civil Procedure. Hence, we dismiss the petition at the stage of admission. Both parties shall bear their own costs.

Sd/-
(ARUN KUMAR SHARMA)
MEMBER

Sd/-
(NARAYAN SINGH)
CHAIRMAN