



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 16 of 2017(M)

In the Matter of

"Review of the Tariff Order dated 31.03.2017 for the year 2017-18 clause 11.2.4 Load Factor Rebate and clause 11.2.11 time day tariff".

M/s Chhattisgarh Mini Steel Plant 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 Agrwawal
for petitioner.
: Shri Abhinav Kardekar, Advocate along with
Shri V.A. Deshmukh, EE for respondent.

ORDER on ADMISSION
(Passed on 30th June 2017)

The petitioner, M/s Chhattisgarh Mini Steel Plant Association (hereinafter Association or petitioner), aggrieved with insufficient load factor rebate and off peak hour discount declared in tariff order dated 31.03.2017 for the years 2017-18, seeks review of tariff order dated 31.03.2017 passed in petition no. 64 of 2016(T) and therefore, filed this petition.

2. The petitioner prays to review clause 11.2.4 of the tariff order relating to load factor rebate and to allow full rebate of 10% on the load factor on achieving 63% load factor and further discount of 10% on achieving 73% load factor. The petitioner further prays for

review of clause 11.2.11 of the same tariff order related to discount on consumption during off-peak load period and requests to allow 25% discount in such consumption.

- 3.** The petitioner states that mini steel plants being power intensive industries play big role in supporting distribution licensee by way of large and efficient electricity consumption. Further, to encourage substantial electricity consumption, load factor rebate scheme was devised and mini steel plants were given adequate load factor rebate in previous tariff orders. But in the recent tariff order, ten slabs have been inserted with incremental load factor rebate of 1% point for every increment in load factor above 65 to 75%. This is very difficult for many units to achieve and these units will, therefore, become unviable and close down. Referring to R-15, data, the petitioner submits that only about 68% of steel industries were illegible for load factor rebate in September 2016 when full load factor rebate of 10% was permissible on achieving 70% load factor. This will come down further with current tariff. Hence, the proposals are required to be reviewed.
- 4.** It is further submitted by the petitioner that for total HV category, off peak drawl is 92% of normal drawl but for HV 4 category, the drawl during off peak period is 100.64% of the normal consumption. As per the petitioner, this becomes possible just because of the reason that there was a provision of discount of 25% for off peak period in earlier tariff. Therefore, petitioner prayed that off peak discount should be continued at 75% of normal tariff.

- 5.** Respondent Chhattisgarh State Power Distribution Company Limited (CSPDCL) was issued a notice for hearing on admissibility of the petition. In response, CSPDCL has raised objection and requested the Commission to dismiss the petition.
- 6.** The CSPDCL submitted 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 grounds claimed by the petitioner are irrational and inconsequential and does not stand the scrutiny of Order 47 Rules 1 of the Code of Civil Procedure.
- 7.** According to CSPDCL, the 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. Similar view has been observed in another judgment in case of Sanja Bai V/s Smt. Bhagwati Bai published in AIR 1955 Ajmer 2(2).
- 8.** The petition is filed within the stipulated time period and there is no dispute regarding limitation of filing of the petition.
- 9.** It is also worth to mention and refer the clause 23 of the CSERC (Conduct of Business) Regulation, 2009 which is reproduced below:-

"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".

10. 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.

11. 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.

- 12.** The respondent objected that the petition could not fulfill the criteria mentioned in Order 47 Rule 1 for review. The argument of the petitioner can not sustain as the contents and terms and conditions in respect of a tariff order are distinct and separate and can not be compared with any previous tariff orders. The petitioner in this regard argued that in previous tariff orders of financial year 2015-16 the Commission fixed load factor rebate at 63% of consumption, which was increased to 70% for financial year 2016-17, but in the present tariff order for year 2017-18 the same load factor rebate increased to 75%. The Mini Steel Plants work at very less margins and in the present competitive scenario, no mini steel plant will survive if it fails to achieve entire benefit of 10% in load factor rebate. This rebate will be allowed only on accomplishment

of 75% load factor, which is very difficult for many units. These units would become therefore, unviable.

- 13.** The respondent argued that all the grounds raised in review petition were already considered in the original petition and there is no new fact raised, which was not raised earlier. Further, the petitioner has not countered this content.
- 14.** 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 grounds.
- 15.** Considering the provisions of the (Conduct of Business) Regulation, 2009 and finding 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 according to which 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, we do not find any ground in this case and dismiss the petition at the stage of admission only. Both parties shall bear their own costs.

Sd/-
(ARUN KUMAR SHARMA)
MEMBER

Sd/-
(NARAYAN SINGH)
CHAIRMAN