



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1654)/DERC/2018-19/6365

Petition No. 05/2019

In the matter of : Review Petition against the Tariff Order dated 28.03.2018.

Dr. Jai Kishan & Ors. .

....Petitioner

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Mr. Atul Goyal
2. Mr. B.S. Sachdev
3. Mr. Brij Mohan Garg
4. Mr. S.P. Gupta
5. Mr. A.L. Mittal

ORDER

(Date of Hearing: 09.01.2019)

(Date of Order: 23.01.2019)

1. The instant Review petition has been filed by Dr. Jai Kishan and Ors. seeking Review of the Tariff Order dated 28.03.2018 on the following grounds:
 - a) DERC Tariff Order of 28th March 2018 pronounced by single member amounts to minority judgment;
 - b) As per Electricity Act, 2003, DERC constituted as three members bench thereby minority order of single member be reviewed by the bench for delivery of justice;
 - c) None of the stakeholder be required to deposit fee, review being a legal requirement reflecting on Lakhs of consumers;
 - d) Issues at stake listed in the petition such as i) Security Deposit ii) Fixed charge iii) Surcharges iv) PPAC as asked for be considered in the review petition; and
 - e) Electricity bill be simplified to the extent that ordinary consumer can understand.
2. The contentions of the Petitioners have been considered and it is observed that the Petitioners have sought review on the following three issues;
 - i. Security Deposit;
 - ii. Steep hike in fixed charges; and
 - iii. Power Purchase Adjustment Cost.
3. The Petitioner through the instant review petition has sought review of two different orders of the Commission, first of Delhi Electricity Regulatory Commission Supply Code and Performance Standards (SOP) Order, 2017 and secondly of the Commission's Tariff Order dated 28.03.2018. Review of two separate set of orders by a single review petition is not permissible.

Re: Single Member Commission means minority decision

4. One of the grounds raised by the Petitioner for review of the orders is that the tariff order was pronounced by Single Member whereas the DERC is a three members Commission.

5. Section 93 of the Electricity Act, 2003 provides that "No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission." Hon'ble APTEL in its judgement dated 02.12.2013 in OP 1 of 2011 has categorically held that:

8. In this context, it is to be pointed out that this Tribunal has already rendered judgments while interpreting Section 93 of the Electricity Act, 2003 that any decision taken by the Commission should not be invalidated by a mere fact that there is some vacancy either of the Chairman or Member.

9. In view of the above decision, we are to direct all the Commissions to conduct the proceedings irrespective of the quorum since the proceedings before the Commission could be conducted even by a single Member.

10. Of course, Section 82 (4) of the Act, 2003 provides that the State Commission shall consist of not more than three Members including Chairperson. However, Section 93 of the Act, 2003 provides that no Act or proceedings of the appropriate Commission shall be questioned or shall be invalidated merely on the ground of any vacancy or defect in the constitution of the appropriate Commission.

11. In our view, since the quorum depends upon the number of Members in the office, even single Member of the Commission including the Chairperson of such a Commission can conduct the proceedings of the appropriate Commission.

12. Therefore, we direct that all the Commissions concerned irrespective of the Regulations with regard to the quorum for a meeting, that Commission, even with a single Member despite that there are vacancies of other Members or Chairperson, can continue to hold the proceedings and pass the orders in accordance with the law.

6. Therefore, the issue that the Tariff order was issued by a Single Member Commission has no strength and such action on part of a Single Member Commission is perfectly legally valid and it cannot be a ground for review of Tariff order.

Re: Amount of Security Deposit

7. Section 47 of the Electricity Act provides that a distribution licensee may require any person, who requires a supply of electricity to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him in respect of the electricity supplied to such persons, electrical plant or electric meter etc. It further provides that the distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security.

8. The argument of the Petitioners regarding review of security deposit that in most of the cases the payments are made in time, lacks the understanding about levy of the Security Deposit. Security Deposit is levied to secure payment of dues in case a default in payment is made. It is a provision for an emergency situation therefore, the argument that 99% payments are made in time is not acceptable being against the basic spirit of levy of security deposit in any of the matter whether electricity or otherwise. Secondly, the amount of security deposit is a credit lying in the account of the consumer with the DISCOMs on which the DISCOMs pay interest equivalent to the bank rate, which is adjusted in the bills of the consumer at the beginning of ensuing financial year. In the statement of objects and reasons issued in respect of DERC (Schedule of charges and procedure) Order, 2017 the following has been clarified:

“The Security Deposit is taken as a security towards charges to be paid by the consumer for consumption of electricity. The existing security deposit rates notified by the Commission in its Delhi Electricity Supply Code and Performance Standards, Regulations, 2007 were prevalent from 16.6.2003. The Commission in its Delhi Electricity Supply Code and Performance Standards, Regulations, 2007 has not revised any security deposit. It may also be informed that in the last revision carried out by the Commission in 2003 for security deposit, the rates were kept constant or revised on lower side as compared to the rates during DVB period.

5.5 The billing cycle has been specified for a consecutive period of 30-35 days for raising the bills and 15 days period has also been given for due date of payment from the date of bill generation. If the payment is not made by the consumer, the Licensee is entitled to disconnect the supply of power after giving a notice of 15 days to the applicant. Therefore in all, consumer will have a minimum consecutive period of around 2 months for getting supply Statement of Objects and Reasons on the Order Page 4 of 16 without disconnection. Therefore, Commission has considered 60 days period for computation of bill amount for determination of security deposit.

9. The computation for Security Deposit is done on the basis of approximate bill amount of the consumer for consumption of energy as per LDHF formula for a consecutive period of 60 days based on the applicable tariff, based on certain assumptions. The Industrial Category of consumers are of three types viz. Single

Shift industry (day or night), Non-continuous process industry (Double Shift- day and night) and Continuous process industry. The LDHF formula has been applied to all the three types of industry and an average of the three, which is approximately Rs.6,000/- but taking the interest of consumer into consideration the same has been fixed at 4,500/- for the Industrial category. It may be noted from the above that the Commission has provided a relief to some categories of consumers in determining the security deposit to be paid by the consumers.

Re: Hike in Fixed Charges

10. Ministry of Power, Gol had constituted two committees for simplification of Tariff categories of consumers and rationalization of tariff structure. During the combined meeting of the committees at Ministry of Power on 8th December, 2016, the present cost and revenue component of the distribution licensees prevalent in the state of Maharashtra was presented to committee. It was observed that total fixed cost in the ARR is 45% to 55% against revenue from Fixed Charges of 10% to 15% whereas variable cost component in ARR is 45% to 55% against revenue from variable charges of 80% to 85%.
11. DERC was also part of these committees and taking a cue from the above study of Ministry of Power, Gol; DERC had analyzed the present cost and revenue component of the distribution licensees prevalent in the state of Delhi and it was observed that fixed cost in the ARR is 45% to 55% against revenue from Fixed Charges of 8% to 10% only. Whereas variable cost component in ARR is 45% to 55% against revenue from variable charges of 90% to 92%.
12. Therefore, the hike in Fixed Charges had become imperative as already elaborated and explained in the Approach Paper on rationalisation of Tariff. Accordingly, only in order to rationalize the fixed charges, after a gap of so many years, the Electricity Tariff has been rationalised vide Tariff Order dated 28.03.2018 wherein the fixed charges were increased and correspondingly Energy Charges have been decreased in order to recover actual fixed cost through fixed charges and actual Variable Cost through Energy Charges. Even after increase in the fixed charges total recovery of fixed cost of distribution of electricity is not being made.
13. Further, the statement of the Petitioners that the Fixed Charge are recovered from the consumers for a sanctioned load of 23000 MW, whereas the long term PPA is for 7,000MW only is not correct and is a misapprehension. In Delhi the DISCOMs have a network of 22876 MW (as per press release of Tariff Order FY 2018-19) which is equivalent to sanctioned load of all the consumers. The DISCOMs have Long Term PPAs of 8,041 MW and equivalent Transmission Capacity. The Aggregate of fixed cost of 8,041 MW Long Term PPA of GENCOs, Transmission Cost and DISCOM's network cost of 22876 MW is prorated per Kw and is recovered from the consumers in the form of Fixed Charges. It is not only fixed cost of long term PPA

rather other fixed costs are also involved and the sum of these costs is prorated on 23000MW i.e. on sanctioned load. It is not that additional fixed charges are recovered by levying it on 23000MW sanctioned load against 7000MW PPA and there is no gap. It should also be understood by the Petitioner that fixed charges are for the cost incurred towards entire infrastructure required for distribution system.

Re: Power Purchase cost Adjustment Charges (PPAC)

14. The Power Purchase Adjustment Cost is levied as per the formula which is given in the Tariff order as per the extant provisions of the act and regulations thereon. With regards to the concern raised by the consumer related to PPAC on the basis of rise in Coal prices in violation Supreme Court Order, it is submitted that the judgment of the Supreme Court dated 12.04.2017 is perhaps regarding in the matter of Energy Watchdog vs. CERC & others which is entirely different case and has no relevance in the levy of the PPAC by DERC. The matter was regarding revision of tariff due to change in law and the Hon'ble Supreme Court has held that change in law in the nation of Indonesia may not be a change in law in terms of PPA under reference and the change in law would be only in respect of Indian context. The Supreme Court has held that this being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that:

"...the supply from Coal India and other Indian sources is cut down, the PPA read with these documents provides in clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law has not occurred. Further, for the operation period of the PPA, compensation for any increase/decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. This being the case, we are of the view that though change in Indonesian law would not qualify as a change in law under the guidelines read with the PPA, change in Indian law certainly would."

15. Secondly in Delhi all Coal based power is received from various stations of NTPC, IPPs, and DVC. The DISCOMs claim PPAC on the basis of Generation Bills of power stations including these plants and Transmission Bills. Tariff and arrears of these coal based plants are approved by CERC and not by DERC. Therefore, the contention of the Petitioners is without any merit.
16. Further any Order is ought to be reviewed as per the relevant provision of law viz. Order 47 Rule 1 of Civil Procedure Code, 1908, which is reproduced as under:

Order 47 Rule 1 CPC.

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, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

17. In accordance with the provisions under Order 47 Rule 1 of Civil Procedure a Court of review may allow a review only on three specific grounds which are as under:-

- (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*
- (i) *For any other sufficient reason which is analogous to the above two grounds.*

18. Under Order 47, Rule 1, CPC, Order/Judgment may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident but has to be detected by process of reasoning cannot be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said provisions.

19. In the present Review Petition no new fact or any error apparent on the face of record is brought to the notice of the Commission. Therefore, the instant Review Petition does not meet the basic criteria for entertaining such a review and accordingly, is liable to be dismissed at the admission stage itself.

15. The Petition is dismissed.

Sd/-
(Justice S S Chauhan)
Chairperson