CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Review Petition No. 43/RP/2018
in Petition No. 215/TT/2016

Coram:

Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Date of Order : 05.04.2019

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 9.7.2018 in Petition No. 215/TT/2016.

And in the matter of:

Power Grid Corporation of India Limited,
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001 **…Review Petitioner**

Vs

1. Karnataka Power Transmission Corporation Limited (KPTCL),
   Kaveri Bhawan,
   Bangalore – 560009

2. Transmission Corporation of Andhra Pradesh Limited (APTRANSCO),
   Vidyut Soudha,
   Hyderabad- 500082

3. Kerala State Electricity Board (KSEB),
   Vaidyuthi Bhavanam,
   Pattom, Thiruvanathapurarn - 695 004

4. Tamil Nadu Electricity Board (TNEB)
   NPKRR Maaligai, 800, Anna Salai,
   Chennai - 600 002

5. Electricity Department
   Government of Goa, Vidyuti Bhawan,
   3rd Floor, Panaji, Goa-403001

6. Electricity Department,
   Government of Pondicherry,

Pondicherry - 605001

7. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),
   P&T Colony, Seethmmadhara,
   Vishakhapatnam, Andhra Pradesh

8. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),
   Srinivasasa Kalyana Mandapam Backside,
   Tiruchanoor Road, Kesavayana Gunta,
   Tirupati-517 501, Chitoor District, Andhra Pradesh

9. Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL),
   Corporate Office, Mint Compound,
   Hyderabad - 500 063, Andhra Pradesh

10. Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL),
    Opp. NIT Petrol Pump,
    Chaitanyapuri, Kazipet, Warangal - 506 004, Andhra Pradesh

11. Bangalore Electricity Supply Company Ltd. (BESCOM),
    Corporate Office, K. R. Circle
    Bangalore - 560001, Karnataka

12. Gulbarga Electricity Supply Company Ltd. (GESCOM)
    Station Main Road, Gulburga, Karnataka

13. Hubli Electricity Supply Company Ltd. (HESCOM)
    Navanagar, PB Road,
    Hubli, Karnataka

14. MESCOM Corporate Office,
    Paradigm Plaza, AB Shetty Circle,
    Mangalore – 575001, Karnataka

15. Chamundeswari Electricity Supply Corporation Ltd. (CESC),
    927,L J Avenue, Ground Floor,
    New Kantharaj Urs Road, Saraswatipuram,
    Mysore - 570 009, Karnataka

16. Transmission Corporation of Telangana Limited
    Vidhyut Sudha, Khairatabad,
    Hyderabad-500082 **…Respondents**

For Review Petitioner : Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Divyanshu Bhatt, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri S. K. Venkatesan, PGCIL

For Respondents : None

ORDER

This is a review petition filed by Power Grid Corporation of India Ltd. (hereinafter referred to as "Review Petitioner") against the Commission's order dated 9.7.2018 in Petition No. 215/TT/2016.

Background

2. The instant Review Petition has been filed for review and modification of the order dated 9.7.2018 in Petition No. 215/TT/2016 wherein the tariff for Asset-1:2 Nos. 400 kV Line bays at Narendra (New), 2 Nos. 400 kV line bays at Madhugiri (Tumkur), 2X63 MVAR (fixed) line reactors (with 600 ohm NGRs) at Narendra (New) and 2X63MVAR (fixed) line reactors (with 600 ohm NGRs) at Madhugiri (Tumkur) for Narendra (New)-Madhugiri (Tumkur) 765 kV D/C line (initially charged at 400 kV), Asset-2: 2 Nos. 400 kV line bays at Madhugiri (Tumkur) for Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) line and Asset-3: 2 Nos. 400 kV line bays at Bidadi for Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) line under "Sub-station extension works associated with transmission system required for evacuation of power from Kudgi TPS (3 X 800 MW in Phase-I) of NTPC Limited" in Southern Region was allowed. The Review Petitioner has also filed an Interlocutory Application No. 92/IA/2018 seeking condonation of delay of 40 days in filing the review petition.

3. The instant assets were scheduled to be put into commercial operation within 22 months as per the Investment Approval dated 5.2.2014. Accordingly, the scheduled date of commercial operation (COD) of the assets was 4.12.2015. The COD of Assets-I, II and III was on 24.9.2016, 25.8.2016 and 3.4.2017 respectively.

There was time over-run of 9 months 21 days, 8 months 22 days and 16 months in case of Assets-I, II and III respectively and the said time over-run was not condoned in the impugned order on the ground that the Review Petitioner did not produce any document to show that the instant assets were ready before the scheduled COD. Accordingly, the IDC and IEDC from the date of infusion of funds to the date of scheduled date of commercial operation were only allowed while from the scheduled COD to actual COD, the IDC and IEDC were disallowed. Aggrieved by the restriction in the impugned order, the Review Petitioner has filed the instant Review Petition contending that the instant assets were put into commercial operation matching with the associated transmission lines implemented by Kudgi Transmission Limited (KTL) and therefore restriction of IDC and IEDC is an error apparent on the face of record which requires modification.

<u>Submissions of the Review Petitioner</u>

4. The submissions made by the Review Petitioner in support of the instant Review Petition are as follows:-

a. The Transmission System for evacuation of power from Kudgi TPS of NTPC was discussed and agreed in the 33rd SCM of Southern Region Constituents held on 20.10.2011. Subsequently, in the meeting of Empowered Committee on Transmission held on 15.6.2012, it was agreed that the transmission lines shall be implemented through Tariff Based Competitive Bidding and the corresponding bays shall be implemented by the Review Petitioner matching with the COD of the transmission lines.

b. The Review Petitioner is implementing the (a) extension of Narendra (New) Sub-station (GIS) at Kudgi; (b) Extension of Madhugiri Sub-station (AIS); (c) Extension of Bidadi Sub-station (GIS); and (d) 400 kV Line Reactors at

Narendra and Madhugiri. The associated Narendra (New)-Madhugiri (Tumkur) 765 kV D/C transmission line and the Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) line are implemented by KTL.

c. The Details of the capital cost claimed by the Review Petitioner for Assets-I, II and III are as follows:-

(₹ in lakh)

Assets	Apportioned approved cost as per FR	Apportioned approved cost as per RCE	Expenditure upto COD	Projected expenditure in 2016-17	Projected expenditure in 2017-18	Projected expenditure in 2018-19	Estimated completion cost	Cost over-run as compared to FR cost
Asset-I	6589.18	7161.28	5517.22	571.64	398.80	99.85	6587.51	No
Asset-II	1126.57	895.43	361.64	148.97	130.35	93.10	734.06	No
Asset-III	1863.75	2495.54	2079.95	0.00	273.29	117.12	2470.36	Yes
Total	9579.50	10552.25	7958.81	720.61	802.44	310.07	9791.93	Yes

d. The estimated completion cost of Assets-I, II and III was ₹9791 lakh against the FR estimated completion cost of ₹9579 lakh. Thus, there is cost over-run of only ₹212 lakh. However, the total completion cost of the instant assets is within the apportioned approved cost given in the Revised Cost Estimates (RCE).

e. The time over-run in case of Asset-I was on account of the time taken to match the COD of the same with the COD of the associated transmission line. However, there was no cost over-run in case of Asset-I though there was time over-run as the execution of the asset was matched with associated transmission line of KTL and the planned delay of infusion of funds towards implementation of the asset. The award for the instant asset was placed on 17.12.2014, which was 9 months after the date of Investment Approval and the time over-run is only 9 months. Therefore, there is no cost escalation on account of time over-run.

f. The estimated completion of Asset-II is less than the FR apportioned approved cost by ₹392 lakh due to reduction in actual IDC and IEDC. It was due to the deliberate delay in placing of the award in December, 2014 to ensure that the COD of the asset was matching with the COD of the transmission line. This resulted in the reduction of IDC from projected ₹111 lakh to ₹10 lakh and a savings of ₹287 lakh in the IEDC from the projections made in FR. Therefore, there was no cost over-run in the instant transmission asset despite a time over-run of 8 months. The cost of the sub-station equipment has exceeded the projected cost by ₹4 lakh which is due to price variation from 2013 (price level) to 2015 (actual placement of award).

g. Asset-III is for a Gas Insulated Substation and the award was placed in December, 2014 to match the COD of the associated transmission line. There is cost escalation in case of the instant asset due to price variation from FR estimated cost of ₹1504 lakh to ₹2177 lakh at the time of placing the award. The IDC of the instant asset is higher than the FR estimates by ₹100 lakh due to increase in cost of the asset. However, the IEDC is lower than the FR estimated cost by ₹167 lakh on account of the prudence exercised by the Review Petitioner.

h. The matching of the COD of the instant assets with the COD of the associated transmission lines was discussed and agreed by the constituents of SR at the time of approval of the scheme in 2011. The correspondence with KTL, discussions in the meeting at CERC, CEA, regional forums and CTU were submitted in support of the coordination done to match the COD of the instant assets with the associated transmission lines.

i. The COD of the instant assets was not sought under proviso (ii) of

Regulation 4(3) of the 2014 Tariff Regulations in which case documents in support of "no load charging" are required to be submitted for approval of COD.

j. The Review Petitioner acted prudently and reduced the burden of IDC and IEDC by deferring the placement of award taking into consideration the anticipated COD of the associated transmission lines. However, the actual IDC and IEDC incurred from the date of infusion of funds upto actual COD was restricted to the scheduled COD for no fault of the Review Petitioner.

k. The timeline for execution for the instant asset is 22 months and Assets I and II were put into commercial operation within 22 months from the date of infusion of funds and thus the IDC and IEDC should have been allowed for 22 months.

l. The IDC incurred for Asset III was ₹205 lakh against the projected IDC as per FR of ₹105 lakh. The increase was due to increase in the cost of the sub-station equipment. However, the IDC allowed is ₹50.94 lakh. Restriction of IDC to scheduled COD is an apparent error.

m. As there is no cost over-run in case of the instant transmission assets, complete IEDC for Asset I and II should be capitalized. In case of Asset-III, the IEDC should at least be allowed till actual COD of the transmission line and only be deducted for the actual period of delay by the Review Petitioner i.e. from 25.08.2016 (date of temporary arrangement provided by CTU) till COD of the asset i.e. 3.4.2017.

5. The delay of 40 days in filing the Review Petition was condoned and the Review Petition was admitted and I.A. No. 92/IA/2018 was disposed of on 7.2.2019.

Though notices were issued to the respondents, none of the respondents have filed any reply.

Analysis and Decision

6. The Review Petitioner has raised the issue of non-condonation of the time over-run and restriction of IDC and IEDC in the instant Review Petition. As regards the first issue of non-condonation of time over-run, the Review Petitioner has submitted that the time over-run was not condoned as the Review Petitioner did not furnish the documentary evidence to show that Assets-I and II were ready on the scheduled COD. The Review Petitioner submitted that the COD of the instant transmission assets was not sought under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in which case documents for "no load charging" are required for approval of COD. The instant assets were implemented matching with the COD of the associated transmission lines implemented by KTL which led to the time over-run.

7. We have considered the submissions of the Review Petitioner. Review Petitioner has stated that there is no need to provide documentary evidence to substantiate that Assets-I and II were ready on the scheduled COD as the Review Petitioner did not claim the COD of the assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and that the said assets were ready on the scheduled COD. We do not agree with contention of Review Petitioner that it need not submit any documentary proof for its readiness. The observations made by the Commission in the impugned order dated 9.7.2018 is as follows:-

> "With regard to Assets-I and II, the Petitioner has submitted that the assets are delayed due to matching with the commissioning of the Narendra-Madhugiri 765 kV D/C line and Madhugiri-Bidadi 400 kV D/C line executed by KTL. However, the Petitioner has not submitted the documentary evidence in support of its readiness on SCoD i.e. CEA certificate, etc. The Petitioner vide Provisional Tariff order dated 6.3.2017 was directed

to submit the valid documentary evidence. However, the Petitioner did not submit any documentary evidence. Therefore, the time over-run of 9 months 21 days and 8 months 22 days for Assets-I and II respectively is not condoned. With regard to Asset-III, the Petitioner has submitted that the Asset-III was delayed due to matching with the commissioning of bays with the transmission line and generation project. Since, the bays at Bidadi could not be completed, PGCIL provided a temporary arrangement for facilitating the charging of Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) line of KTL from 25.8.2016. Therefore, the reasons given by the Petitioner for delay of bays at Bidadi are not clear. The Petitioner has not clarified as to with which generator or with which line PGCIL was trying to match the commissioning schedule. It is noted that PGCIL has made interim arrangement due to non-commissioning of its bays at Bidadi. The bays have been commissioned on 3.4.2017 and subsequently the temporary arrangement was restored in April, 2017. Therefore, the time delay is attributable to the Petitioner. Accordingly, the time over-run of 16 months is not condoned. “

8. From the above, we observe that despite specific direction to the petitioner to submit documentary evidence such as CEA Certificate etc. for its readiness it failed to do so. The Review Petitioner claimed that the time over-run in case of Assets I and II was on account of the time taken to match the COD of the assets with COD of the associated transmission lines of KTL. The transmission line associated with the Asset-I of the Review Petitioner is the Narendra (New)-Madhugiri (Tumkur) 765 kV D/C transmission line of KTL and the associated transmission line of Assets II and III is the Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) Line. KTL claimed the approval of COD of the said transmission lines in Petition No.248/MP/2016 where the Review Petitioner was a respondent. The scheduled COD of Narendra (New)-Madhugiri (Tumkur) 765 kV D/C transmission line and Madhugiri (Tumkur)-Bidadi 400 kV D/C (Quad) transmission line (referred to as Element 2 and Element 3 in Petition No.248/MP/2016) was 31.12.2015. However, the actual COD of Elements 2 and 3 were 19.9.2016 and 27.7.2016 and there was time over-run in case of both the Elements. KTL in Petition No. 248/MP/2016 has claimed that its delay occurred due to delay in commissioning of interconnection facilities by the Review Petitioner. Accordingly, the Review Petitioner’s claim that the time over-run in case of the

instant assets is due to time over-run in case of the associated transmission lines is not sustainable.

9. The second contention of the Review Petitioner was that the Review Petitioner prudently deferred the placement of award after the Investment Approval taking into consideration the time and anticipated COD of the associated transmission lines. Further, the time taken from the date of placement of award or date of infusion of equity till the actual COD is within the timeline of 22 months specified in the Investment Approval and the cost of the instant assets is within the FR cost. However, the IDC and IEDC incurred from the date of infusion of funds upto the actual COD is restricted to the scheduled COD for no fault of the Review Petitioner. Therefore, IDC and IEDC claimed for Assets-I and II should be allowed as part of tariff.

10. The Commission in order dated 12.2.2019 in Petition No.26/RP/2018 has already held that IDC and IEDC shall be calculated from the date of infusion of funds as provided under Regulation 11 of the 2014 tariff Regulations and only upto the scheduled COD and that the scheduled COD cannot be extended beyond the timeline specified in the Investment Approval. The relevant portion of the order dated 12.2.2019 in Petition No.26/RP/2018 is extracted hereunder:-

> "10. As per Regulation 11 of the 2014 Tariff Regulations, the IDC shall be 'computed from the date of infusion of funds. Accordingly, in the instant case, IDC was computed from the date of infusion of funds by the Review Petitioner which was 20.10.2014 and not from the date of Investment Approval as contended by the Review Petitioner. The IDC and IEDC were allowed for the period of time over-run condoned, i.e. 8 months and 26 days out of the total period of time over-run 21 months and 30 days. IDC and IEDC for the remaining period of time over-run i.e. for 13 months and 4 days was not condoned. The Review Petitioner has contended that the instant assets were executed within the period of 21 months from the date of infusion of funds, which is the timeline specified in the Investment Approval and hence IDC and IEDC should be allowed for 21 months. In our view, time over-run is considered with reference to the timeline specified in the Investment Approval and not from the date of infusion of funds. Admittedly the Review Petitioner has infused the funds after the expiry of the period of execution

specified in the Investment Approval. By delaying the infusion of funds, the Review Petitioner cannot extend the period of execution of the project specified in the Investment Approval. Since the project has been executed in the extended timeline beyond the period of execution specified in the Investment Approval, the Review Petitioner has been correctly denied the IDC and IEDC for the period of time over-run not condoned. No error apparent has been shown by the Review Petitioner in the treatment of IDC and IEDC in the instant case. We find no reason to review our order on this score and therefore reject review of the order on this ground as well."

11. In view of the above, the second contention of the Review Petitioner regarding IDC and IEDC is also rejected.

12. A review is for correction or improvement of a previous order or judgement and it is not for substitution of the previous order or judgement. As per Order 47 Rule 1 of CPC, a review is maintainable only on (i) discovery of new and important matter or evidence which was not within knowledge or could not be produced by the Review Petitioner after the exercise of due diligence, (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason. In the instant case, the Review Petitioner has raised the issue of non-condonation of the time over-run and restriction of IDC and IEDC in the instant Review Petition. The Commission after having considered the information and the documents placed before it had disallowed the time over-run and restricted the IDC and IEDC and cogent reasons were given for doing so. The Review Petitioner has not produced any new evidence that was not produced at the time of the issue of the impugned order or there was any apparent error in the impugned order. The Hon'ble Supreme Court in Kamlesh Verma vs. Mayawati and others, (2013) 8 SCC 320, while examining the ambit and extent of review has observed as under:-

"8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury, 1995 (1) SCC 170, while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, 1979 (4) SCC 389, this Court once again held that review proceedings are not by way of an 22 appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. 9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can

> hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

13. Further, the Hon'ble Supreme Court in Parison Devi vs Sumitri Devi (1997 (8) SCC 715) observed that a review cannot be an appeal in disguise. The relevant portion of the said judgment is extracted hereunder:-

> "A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

14. The Review Petitioner wants the Commission to reopen order dated 9.7.2018 and reconsider the impugned order on merits which is not allowed at the stage of review. In our opinion, the instant Review Petition is an appeal in disguise.

13. In view of the above discussion, Petition No.43/RP/2018 is disposed of.

sd/-	sd/-
(Dr. M.K. Iyer)	**(P.K. Pujari)**
Member	**Chairperson**