

No.N/61/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.

Dated : 21.11.2019

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

RP No.03/2019

BETWEEN:

M/s South Indian Sugar Mills Association – Karnataka,
Having its Office at 133/6, 1st Floor,
Farah Wins Ford, Infantry Road,
Bengaluru-560 001
(Represented by its Secretary)
(Represented by Navayana Law Offices,
Advocates)

.... **REVIEW PETITIONER**

AND:

Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan, K.G. Road,
Bengaluru-560 009.
(Represented by Sri Shahbaaz Hussain, Advocate)

.... **RESPONDENT**

ORDERS

1. This is a Review Petition filed under Section 94 (1) (f) of The Electricity Act, 2003 read with Regulation 8 of the KERC (General & Conduct of Proceedings) Regulations, 2000. praying for the following reliefs:-

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- (a) To review and recall its order dated 14th December, 2018 "In the matter of collection of Operation and Maintenance charges (O&M) by the Respondent from the Generators" produced herein as Annexure RP-1; and
- (b) To pass such orders in the interest of justice and equity.
2. The petitioner is an umbrella body of Sugar Mills (Co-generation plants) in Karnataka having Membership of about 38 Sugar Mills in the State, whose installed capacity is about 1340 MW.
 3. The petitioner has sought review of the order dated 14.12.2018, regarding collection of O&M charges by the respondent from the generating companies for maintenance of dedicated transmission lines and terminal bays in the respondent's sub-stations.
 4. We have heard the Counsel for both parties and perused the records.
 5. We note that the scope of review of an order is limited to the stipulations in Order 47 Rule 1 CPC. We deem it appropriate to give our findings on the grounds urged by the petitioner in the review petition.

6. The allegations made by the petitioner, the reply of the respondent and the finding of the Commission on the various points raised by the petitioner are as follows:

- i. It is the allegation of the petitioner that the members of its Association are IPPs, besides being HT consumers of ESCOMs or selling power by availing open access by paying OA charges. Hence, being HT consumers, they are not liable to pay O&M charges as per the order dated 26.2.2015. It is the reply of the respondent that under section 10 of the Electricity Act, 2003, the IPPs have to maintain the dedicated transmission line or, pay the O&M charges if the respondent maintains the same and that the respondent collects the O&M charges with the consent of the IPPs. It is the further contention of the respondent that in the order dated 26.2.2015, the Commission had held that HT/EHT consumers are not liable to pay O&M charges but IPPs have to pay the same.

We note that the provisions of the Electricity Act, 2003 specify that the 'dedicated transmission line' has to be established, operated and maintained by a generating company. Admittedly, the members of the petitioner association are generating companies. Section 2 (16) of the Electricity Act, 2003

defines dedicated transmission lines which are confined to a captive plant or a generating company referable to section 9 or 10 of the Act. Section 2 (72) of the Electricity Act, 2003 defines other transmission lines. Service line is defined in Section 2 (61) of the Electricity Act, 2003. A conjoint analysis of above provisions would lead to the conclusion that they operate in distinct and separate fields. In other words, a dedicated transmission line as defined under Section 2 (16) is not a transmission line as provided under Section 2 (72) or a service line under Section 2 (61) of the Electricity Act, 2003. A HT/EHT consumer may put up 'service line' at his cost for availing supply of power from the grid. For maintenance of such line laid by a HT/EHT consumer, it is held in the order dated 26.02.2015 that no O&M charges can be collected by the ESCOMS. These service lines cannot be equated to dedicated transmission lines. When a generating company draws power from the grid for auxiliary consumption or for start up or other purposes through the dedicated transmission line, it cannot be treated as a regular 'consumer' of ESCOM and the line cannot be treated as a 'service line'. The main difference is that the main purpose of a dedicated transmission line is for transmitting power generated from a generating

company to the grid and this line remains the property of the generating company, whereas a service line though constructed by a HT/EHT consumer, is taken over as the property of ESCOM. Thus, a line laid by a generating company is a 'dedicated transmission line', the main purpose of which to evacuate power from generating station and it is not a 'service line' to meet the power requirement as a 'consumer'. At best, it can be said that when energy is drawn from the grid by a generating company through the dedicated transmission line as a consumer, instead of through a separate service line, it amounts to a concession given to the generating company drawing energy from the grid, as a HT/EHT consumer. For these reasons, the generating company has to pay O&M charges to the respondent for maintenance of a dedicated transmission line.

- ii. It is the allegation of the petitioner that the O&M cost incurred by the respondent for maintenance of a sub-station as a whole is passed on in the annual tariff orders and the same cannot be charged from the generator as it amounts to double levy. It is the contention of the respondent that O&M cost incurred for bays constructed for exclusive use of IPPs is included in the head 'other

income' and deducted in the ARR of KPTCL and there is no double levy as alleged.

We find that the reply of the respondent is correct.

- iii. It is the allegation of the petitioner that, a bay is a part of the transmission line and as per the order dated 26.2.2015, no O&M charges can be collected by the respondent in respect of a transmission line, hence no such charges can be collected for maintenance of a bay. It is the reply of the respondent that O&M charges are separately collected for bays and lines, as such charges are distinct, as recognised in the Transmission Tariff Regulations, 2006.

We have held in the order dated 14.12.2018 that even if the dedicated transmission line can be maintained by the generating company, the bay, situated in the sub-station of the respondent, has to be invariably maintained by the respondent. Therefore, for maintenance of the bay the O&M charges can be collected by the respondent.

- iv. It is the contention of the petitioner that calculation of O&M charges based on capital cost is not proper, instead the same should be based on voltage level, as is being done by PGCIL. It is

the reply of the respondent that the levy of O&M charges based on voltage level is practically not possible as the sub-stations are of multiple voltages like 440/220/66 kV, 220/66/11 kV and 110/33/11 kV and apportioning/calculating the O&M cost to each voltage level would not be possible due to overlapping of costs.

We note that this aspect is considered and answered in the order dated 14.12.2018 and no new ground is made out to review the order.

- v. It is the allegation of the petitioner that the retrospective operation of the order dated 14.12.2018 is not proper. It is the reply of the respondent that for services already rendered, the collection of charges is proper and is in line with the provisions of Section 70 of the Contract Act.

We note that the Commission had considered this aspect in the impugned order and given a finding. No new ground is made out necessitating review of the same.

- vi. It is the allegation of the petitioner that the principles of natural justice were not followed as the response of the respondent to the discussion paper issued by the Commission was not made

available to the petitioner. It is the reply of the respondent that comments were called for by the Commission to the discussion paper from all the concerned stakeholders and after considering all the comments/views received, the Order is passed and hence the allegation that the principles of natural justice were not complied with is unfounded.

We note that the order is generic in nature. It is not in the nature of an adjudicatory / adversarial proceedings. Strictly, there are no petitioners & respondents or any dispute between the parties and the procedure of serving copies of the pleadings and filing of responses on pleadings by either parties etc., is not applicable. It is in the nature of a legislative act, where the proposals are published in the Discussion paper issued by the Commission, for the information of the public and after considering the comments/objections received, the proposals are finalised. In this case, the Commission had issued a discussion paper containing various proposals in the subject matter, invited comments from all interested persons, conducted a public hearing and issued the order after considering the comments/objections/views of all the concerned. It is in the nature of

inquisitorial proceedings. The procedure followed in an adjudicatory/adversarial proceedings cannot be followed, as it is not possible to anticipate as to who are the affected /interested persons. Hence, the procedure applicable to adversarial proceedings are not applicable to proceedings of these nature, where public in general are the affected /interested persons. The petitioner and the respondent have given the responses to the Discussion paper and the same have been considered while passing the order dated 14.5.2018. There was no impediment for the petitioner to look into the response filed by the respondent. Hence, we feel that adequate opportunity was given to the generating companies and the respondent to respond to the discussion paper and there is no violation of the principles of natural justice.

- vii. It is the allegation of the petitioner that the respondent has not furnished the actual expenditure incurred for O&M of the line/bay and has contravened the judgment of Hon'ble ATE in Appeal No. 285/2014. It is the reply of the respondent that such contention is fallacious.

We note that the methodology for levying the O&M expenses is answered in Issue No. (c) of the order dated 14.12.2018 and this aspect is considered therein. The judgment in Appeal No.285/2014 of the Hon'ble ATE does not disapprove the methodology adopted by this Commission for levy of O&M expenses. Hence, there is no scope for review.

- viii. It is the allegation of the petitioner that the O&M charges should have been based on cost per circuit km and per bay and not on the capital cost, as per the methodology prescribed in the Transmission Tariff /MYT Regulations. It is the response of the respondent that the Transmission Tariff/MYT Regulations are applicable to assets owned and maintained by the respondent and not the lines/bays owned by generating companies and maintained by the respondent.

We note that the methodology for levying the O&M expenses is answered in Issue No. (c) of the order dated 14.12.2018 and this aspect is considered therein. Hence, there is no scope for review.

7. As mentioned earlier, the scope of review of an order is limited to the stipulations in Order 47 Rule 1 CPC. The Hon'ble Supreme Court has,

in the case of *Kamlesh Verma –Vs- Mayavati (AIR 2013 SC 3301)*, held as follows:

“16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason;*

The words ‘any other sufficient reason’ has been interpreted in Chhajju Ram v. Neki, AIR 1922 SC 112 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev.Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520 : (AIR 1954 SC 526), to mean ‘a reason sufficient on grounds at least analogous to those specified in the rule’. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275 ; (2013) AIR SCW 2905).

(B) When the review will not be maintainable :-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

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- (ii) *Minor mistakes of inconsequential import.*
 - (iii) *Review proceedings cannot be equated with the original hearing of the case.*
 - (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
 - (v) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*
 - (vi) *The mere possibility of two views on the subject cannot be a ground for review.*
 - (vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
 - (viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
 - (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."*

We feel that the Review Petition is not maintainable in the light of the above decision. The Petitioner cannot, in a review proceedings urge to re-appreciate the evidence or pray the Commission to come to a different finding.

8. In the Rejoinder dated 17.09.2019, the petitioner has reiterated the allegations made in the Review Petition. Further, the petitioner has made additional submissions with regard to the 'Standard format of agreement' for collection of O&M charges to be entered into between the generator and the respondent. We note that this aspect is beyond the scope of this Review Petition and if any person is aggrieved by the clauses in the agreement, it would be a separate cause of action and a separate petition has to be filed.

9. For the foregoing reasons, we pass the following:

ORDER

The Review Petition is dismissed.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER