



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

R. P. (SR) No. 79 of 2023

in

O. P. No. 77 of 2022

Dated 17.11.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Singareni Collieries Company Limited,
Kothagudem Collieries,
Bhadradi Kothagudem District – 507 101.

.... Review Petitioner / Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
6-1-50, Corporate Office, Mint Compound, Hyderabad,
Telangana State – 500 063.
2. Northern Power Distribution Company of Telangana Limited,
Corporate Office, H. No. 2-5-31 / 2, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal – 506 001. ...Respondents / Respondents.

The review petition came up for hearing on 31.07.2023, 21.08.2023, 21.09.2023 and 15.11.2023. Sri. J. Dutta, DGM (R & C) for the review petitioner is present on 31.07.2023, Sri. P. Shiva Rao, counsel for review petitioner is present on 21.08.2023 and 15.11.2023 and Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, counsel for review petitioner is present on 21.09.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Singareni Collieries Company Limited (SCCL) (review petitioner / original petitioner in the original petition) has filed this review petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of Conduct of Business Regulation, 2015 and read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 seeking review of order dated 23.03.2023 passed in O. P. No. 77 of 2022 filed by it. The contents of the review petition are extracted below:

- a. It is stated that the Singareni Collieries Company Limited (SCCL) is a coal mining company incorporated under the companies Act 1956. The petitioner is owned by the Government of Telangana (GoTS) with 51.096% shareholding.
- b. It is stated that SCCL has entered in the business of power generation by setting up a 2 X 600 MW coal based thermal power plant, namely Singareni Thermal Power Plant (STPP) at Jaipur of Mancherial District. The units of STPP achieved COD during financial year 2016-17 in the dates as mentioned below.
 - (i) COD Unit-I: 25.09.2016
 - (ii) COD Unit-II: 02.12.2016
- c. It is stated that SCCL had entered into a power purchase agreement (PPA) with two distribution companies of Telangana for the power generated from STPP which will be sold to them at a tariff decided by the Commission. The PPA shall remain valid for a period of 25 years from the COD of the last unit (unit-II).
- d. It is stated that the Commission vide its tariff order dated 28.08.2020 trued up the capital cost and annual fixed charges for 2 x 600 MW STPP up to 31.03.2019 and determined the tariff for STPP during MYT period of FY 2019-24. The Commission also directed STPP to file midterm review petition by 30.11.2022. The relevant portion is quoted below. In fact said petition is not review but of revision of tariff in mid course of MYT 2019-2024. The following is the said order.

“5.2.7.....In accordance with Clause 27 of the Regulation No.1 of 2019, SCCL is required to file the Mid-Term Review Petition by 30.11.2022.....”

- e. It is stated that accordingly, STPP filed midterm review petition before this Commission. The Commission issued tariff order on midterm review (MTR) truing up the aggregate revenue requirement for FY 2019-22 and revising the tariff for FY 2022-23 and FY 2023-24. The Commission passed order dated 23.03.2023 in the said review petition.
- f. It is stated that however, there occurred some errors in calculation, errors in considering actual facts and errors in application of regulation in computing the tariff, which are apparent on the face of the record of the MTR order dated 23.03.2023. Therefore, this application is now filed before the Commission seeking review and to modify suitably by correcting the mistakes apparent on the face of record that crept in the MTR order dated 23.03.2023 to meet the end of justice.
- g. It is stated that errors apparent on the face of record are found in the following issues in the MTR order dated 23.03.2023.
- h. The Commission has dealt with the issue of the discharge of liability in para 3.4 of the impugned order dated 23.03.2023.
- j. The Commission stated in the aforesaid para that
“The capital cost approved for BTG at Rs.4815.52 crore and for BOP at Rs.922.01 crore as on 31.03.2019 are without any further leftover or balance undischarged liabilities and has attained finality.”
- In fact, the said part of order is factually incorrect. It is stated that as capital cost in tariff on multiyear tariff order dated 28.08.2020 was approved based on the concept of ‘expenditure incurred’ which is the fund actually deployed and paid in cash. Therefore, though the capital cost in respect of BTG and BoP were Rs. 4849.48 crore and Rs.1007.27 crore respectively, the allowed capital cost on cash basis became Rs. 4815.52 and Rs. 922.01 crore respectively after deduction of undischarged liabilities of Rs. 33.96 crore and Rs. 85.26 crore respectively. These were then considered for tariff determination on the principle of ‘expenditure incurred’.
- k. The audited statement showing year wise capital expenditure and liabilities for STPP during FY 2019-22 which was placed before the Commission with the MTR. This statement is evidence of the fact that

these liabilities, in fact was discharged in 2019-20. The details of year wise liability discharged is given below:

STPP BTG cost liability discharged year wise (Rs.crores)						
S. No.	Actual as on date	Actual capital cost	Liability	Amount disbursed by STPP	Approved by TSERC	Remarks
1	31.03.2017	4772.14	416.39	4355.75	4355.75	-
2	31.03.2018	4772.14	179.3	4592.84	4592.84	-
3	31.03.2019	4849.48	33.96	4815.52	4815.52	-
4	31.03.2020	4849.48	0	4849.48	4849.48	Rs. 33.96 crores liability discharged in FY 2019-20 escaped the attention of TSERC
STPP BOP cost liability discharged year wise (Rs.crores)						
S.no	Actual as on date	Actual capital cost	Liability	Amount disbursed by STPP	Approved by TSERC	Remarks
1	31.03.2017	877.1	4.3	872.8	872.8	-
2	31.03.2018	977.42	31.12	946.3	946.3	-
3	31.03.2019	1007.27	85.26	922.01	922.01	-
4	31.03.2020	1007.27	0	1007.27	1007.27	Rs 85.26 crores liability discharged in FY 2019-20 escaped the attention of TSERC

- I. It is stated from the above table, it can be seen that the allowed capital cost in BTG and BoP vide order dated 28.08.2020 arrived at and leftover liabilities amounting Rs. 33.96 crore and Rs. 85.26 crore respectively, but the said fact was missed by the Commission while passing the order review.

- m. These liabilities totalling Rs. 119.22 crore were discharged during FY 2019-20 which is required to be allowed under revised capitalization as per clause 7.19.1(j).
- n. Since this is an error of fact on the face of record in the Commission's MTR order dated 23.03.2023 the same is required to be reviewed and modified and a total discharge of liability amounting Rs. 119.22 crore is required to be allowed in capital cost of the project.
- o. The computed additional impact of the above after gain / loss sharing mechanism is Rs. 84.88 Crores for FY 2019-20 to FY 2023-24.
- p. It is stated that the Commission has dealt with the issue of the spill over works in para 3.5 of the impugned order dated 23.03.2023.
- q. It is stated that the capitalization for generator rotor which was made in FY 2019-20 under BTG package had missed from the consideration of Commission. Thus, occurred mistake apparent on the face of record and deserves to be reviewed.
- r. It is stated that the generator rotor in case of similar unit and with similar history of failure for 1 x 600 MW KTPP-II station, though primarily not approved in generation tariff order dated 05.06.2017, was finally approved in the capital cost given in table 32 of TSGENCO's tariff order dated 22.03.2022.
- s. It is stated that the Commission has correctly allowed the generator rotor amounting Rs. 35.4 crore to be capitalize for 1 x 600 MW KTPP-II. However, for STPP's case, capitalization of generator rotor amounting Rs. 35.59 crore is not taken into consideration by mistake.
- t. It is stated that the Commission is requested to review the said omission and to allow capitalization of Rs. 35.59 crore for generator rotor procured.
- u. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 25.34 Crores for FY 2019-20 to FY 2023-24.
- v. It is stated that the Commission has dealt with the issue of the operation and maintenance expenses in para 3.11 of the order under review dated 23.03.2023.

- w. It is stated that the Commission had taken two important decisions in respect of O and M expenditure. The first is not to treat the O and M expenses as controllable item (para 3.11.25) and the second one is to apply clause 19 of Regulation 1 of 2019 (para 3.11.22 and para 3.11.34) for determination of O and M expenses.
- x. It is stated that however, while doing necessary calculation of O and M expenses, which otherwise ought to have been strictly as per the above decisions, several errors had crept in. These errors are the error of facts, error of application in formula, error in computation and error in application of regulation.
- y. It is stated that accordingly, the following are stated indicating the various errors before this Commission for appropriate remedy.
- z. It is stated that among the three parts of O and M expenses, employee cost and Administrative and General (A and G) expenses are derived by escalating previous years allowed expenditure. However, the R and M expenditure unlike the other two (employee cost and A and G) requires usage of cumulative wholesale price index (WPI) inflation instead of yearly WPI data as R and M expenditure is not derived by escalating previous years normative expenditure. For the calculation of R and M expenditure, the parameter Kn and GFAn remains same and the cumulative WPI is multiplied to get the R and M expenses for nth year.
- aa. It is stated that this was correctly implemented in the MYT tariff order dated 28.08.2020. Table 61 of the above order along with computation in Table 3.29 of order dated 23.03.23 is reproduced one after another to illustrate the issue:

Table 61: R and M expenses computed for FY 2019-20 to FY 2023-24 (Order dated 28.8.2020)

(Rs. Crore)

Financial Year	Kn	GFAn	WPI Inflation	R & Mn
2019-20	1.04%	7745.32	1.04	83.67
2020-21	1.04%	7745.32	1.09	87.26
2021-22	1.04%	7745.32	1.13	91.00

Financial Year	Kn	GFAAn	WPI Inflation	R & Mn
2022-23	1.04%	7745.32	1.18	94.90
2023-24	1.04%	7745.32	1.23	98.96
Total	-	-	-	455.79

Table 3.29: R and M expenses computed by the Commission for MTR (Order dated 23.03.23)

(Rs. Crore)

Financial Year	Kn	GFAAn	WPI Inflation	R & Mn
2019-20	1.04%	7745.32	1.04	83.67
2020-21	1.04%	7745.32	1.02	81.59
2021-22	1.04%	7745.32	1.01	81.27

- ab. It is stated that it can be seen from the above that in earlier MYT order cumulative WPI of 1.09 was considered for FY 2020-21 which was the total inflation effect of FY 2019-20 and FY 2020-21. In the MTR order under review, the WPI figures for FY 2020-21 was taken only as 1.02 even if the FY 2019-20 figure alone was 1.04. This shows cumulative WPI inflation was used in table 61 in the MYT order which erroneously gets changed to yearly inflation (that is inflation with respect to previous year) in table 3.29 of the midterm review order.
- ac. Therefore, the Commission is requested to allow the review on this computational error.
- ad. It is stated that it was noticed that in all calculations requiring inputs of CPI and WPI inflation had even for the purpose of truing up of first three financial years that is from FY 2019-22 used the inflation data which do not belong to the respective financial years for which truing up was done. In fact, the inflation data for immediately preceding years were used for truing up.
- ae. It is stated that the clause 19 of Regulation No. 01 of 2019 provides for using inflation data for immediately preceding years for computation of O and M expenditure which was required to be applied for determination of multiyear tariff at the beginning of the control period but not for the

purpose of truing up considering the fact that clause 3.12.2 provides specific provision of midterm review which should have been a comparison between actual operational and financial performance and the approved forecast. Thus, there occurred mistake apparent on the face of record and deserves to be rectified.

- af. Therefore, the Commission is requested to review this aspect of computation using preceding years inflation data for truing up which otherwise could have been correct to use for projection purposes in absence of actual data but should not have been applied for truing up.
- ag. It is stated that it has been observed that the O and M expenses were finally allowed as per clause 19.1 of the Regulation No. 1 of 2019 which provides that O and M expenses for each year of the control period shall be approved based on the formula shown below:

$$O \ \& \ Mn = (R \ \& \ Mn + EMPn + A \ \& \ Gn) \times 99\%$$

- ai. It is stated that further, the O and M expenses claimed and approved for MTR was given in table 3.33. The table 3.33 is reproduced below:

Table 3.33: O and M expenses at actuals as claimed and approved for MTR

Rs. in crore

FY	Claimed				Approved			
	Employee cost	R and M expenses	A and G expenses	Total	Employee cost	R and M expenses	A and G expenses	O and M expenses approved
2019-20	77.12	101.90	48.63	227.65	77.12	83.67	32.44	191.30
2020-21	75.30	116.07	58.57	249.95	75.30	81.59	33.61	188.59
2021-22	88.74	126.95	66.07	281.76	88.74	81.27	34.34	202.30

Table 3.28: Employee cost at actuals claimed, computed and approved for MTR

Rs. in crore

Financial Year	Actuals claimed by the petitioner	As computed on normative basis	Approved by the Commission
2019-20	77.12	91.91	77.12

2020-21	75.30	97.92	75.30
2021-22	88.74	101.87	88.74

- aj. It is stated that it can be seen from the above tables that under the employee cost of 'Approved' column in table 3.33 actual claim of the petitioner was considered by resorting to a strange methodology of considering least of recomputed expenses and actual expenses (ref: table 3.28) instead of considering EMPn as to be derived according to prescribed formula even if the same was not provided anywhere in the regulation and as such the methodology was not only alien / foreign to the regulation 1 of 2019 but also contrary to it's principle.
- ak. It is stated that this is a case of applying new formula / principles not contemplated earlier in the original tariff regulation and at the same time not following the definitive process set out in the regulation which was declared in force by this Commission.
- al. It is stated that it is not denied that at times the Commission depending on the circumstances may amend the rule to meet the end of justice. However, it is stated that the following table of approved O and M expenditures for generating stations owned by the state and also central generating stations in the state of Telangana.

Comparison of O&M expenses of TSGENCO thermal power plant, STPP in Midterm review orders and NTPC Ramagundam approved O&M as per CERC 2019-24 norms

Station	Capacity	FY 2019-20		FY 2020-21		FY 2021-22	
		Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs. Crores)	Per MW cost (Lakh / MW)
KTPS-V	2x250	159.42	31.88	162.43	32.49	183.53	36.71
KTPS-VI	500	159.42	31.88	162.43	32.49	183.17	36.63
KTPS-VII	800	136.29	17.04	443.3	55.41	388.93	48.62
RTS-B	62.5	75.57	120.91	81.66	130.66	86.71	138.74
KTPP-I	500	145.11	29.02	142.24	28.45	155.32	31.06
KTPP-II	600	161.5	26.92	162.32	27.05	175.59	29.27

Comparison of O&M expenses of TSGENCO thermal power plant, STPP in Midterm review orders and NTPC Ramagundam approved O&M as per CERC 2019-24 norms

Station	Capacity	FY 2019-20		FY 2020-21		FY 2021-22	
		Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs. Crores)	Per MW cost (Lakh / MW)
STPP	2x600	191.30	15.94	188.59	15.72	202.30	16.86
NTPC Ramagundam	4x500	450.20	22.51	466.00	23.30	482.40	24.12
NTPC Ramagundam	3x200	197.76	32.96	204.72	34.12	211.86	35.31

- am. It is stated that from the above table, it can be seen that the allowance of O and M expenditures for STPP was made contrary to the procedure in vogue as applied to other similar projects, which is unreasonably low and as such STPP is going to unduly suffer financially.
- an. It is stated that considering the above facts, the Commission is requested to review the implementation of the formula provided in clause 19.1 of Regulation No. 1 of 2019.
- ao. It is stated that in fact, the comparison of O and M expenses after computing O and Mn is required to be made with actual O and M expenditure placed before the Commission and thereafter the gains / losses could be ascertained to be shared between the parties.
- ap. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 56.47 Crores for FY 2019-20 to FY 2023-24.
- aq. It is stated that the Commission has dealt with the issue of the Interest and financing charges on loan in para 3.9 of the impugned order dated 23.03.2023.
- ar. It is stated that there is error in computation of interest and financing charges of loan. The Commission had stated that the interest and financing charges on loan was approved in accordance with clause 12 of the regulation no.1 of 2019.

- as. It is stated that accordingly, the Commission has decided to allow the refinancing of loan as per clause 12.6 which provides for detailed regulation for loan refinancing. This clause 12.6 comes under the clause 12 of Regulation No. 1 of 2019.
- at. It is stated that the refinancing clause provides that the costs associated with the refinancing shall be borne by the beneficiaries whereas the net savings shall be shared between the beneficiaries and the generating entity in the ratio of 2:1 subject to prudence check by the Commission.
- au. It is stated that in this case, the Commission after considering the facts allowed refinancing. However, during computation, it inadvertently missed to implement the sharing ratio of 2:1 on the gains of this loan restructuring beyond the financial year of loan restructuring that is 2020-21.
- av. It is stated that the regulation 12.6 is very clear about sharing of net savings in the ratio of 2:1 between the beneficiary and the generating entity and as such any ratio other than the given ratio of 2:1 cannot be implemented to pass the total benefit of loan restructuring to the beneficiary from FY 2021-22 onwards.
- aw. It is stated that once the Commission decided to allow refinancing by applying prudence check, it cannot deviate from the stipulated ratio of benefits sharing between the beneficiaries and generating entity, by applying anything not contemplated under regulation 12.6.
- ax. It is stated that in fact, when a definitive prescription for handling an issue is unambiguously provided in the tariff regulation, no reason is stated by the Commission as to why it is resorted to apply differently.
- ay. It is stated that accordingly, the Commission is requested to review computation of interest and financing charges on loan to meet the end of the justice.
- az. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 95.03 Crores for FY 2019-20 to FY 2023-24.
- ba. It is stated that the Commission has dealt with the issue of taxation to be considered in return on equity in para 3.12.10 of the impugned order dated 23.03.2023. The Commission has only considered MAT rate

instead of regular income tax rate as commission opines that otherwise it would lead to higher return on equity (RoE) and consequential burden on the consumers.

- bb. It is stated that here, in fact the clause 11.3 was not applied with the words and spirit attached to it. The regulation provides for considering 'effective tax rate' in the respective financial years and the Commission choose to apply MAT rate for the benefit of the consumers. However, the benefit that the Commission desired to pass to the consumer at the expense of generating company, that is SCCL. This has resulted permanent cash loss of Rs.185.84 Crore. The Commission is requested to review the application of the regulation 11.3 in midterm review order and to allow the RoE considering effective tax rate.
- bc. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 185.84 Crores for FY 2020-21 to FY 2023-24.
- bd. It is stated that the following table shows the summary of year wise claim in this review petition:

STPP year wise claim in review petition of MTR (Rs. Crores)

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Total
Impact of disallowed discharged liability Rs. 119.22 Cr	10.43	21.06	18.23	17.80	17.36	84.88
Impact of disallowance in additional capitalizations due to generator rotor Rs. 35.59	3.11	6.29	5.44	5.31	5.18	25.34
O and M expenses share	8.61	8.19	12.38	12.81	14.48	56.47
Interest on Loan refinancing share	0.00	0.00	35.73	31.68	27.62	95.03
Tax impact	0.00	46.44	46.44	46.47	46.49	185.84
Total	22.16	81.98	118.22	114.07	111.14	447.55

2. The review petitioner has sought the following prayer in the petition.
- “(a) To admit review petition.
 - (b) To review the order dated 23.03.2023 passed in O. P. No. 77 of 2022 and to modify it suitably by rectifying the errors that crept in the said order by allowing the claims made above.”
3. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 31.07.2023:

“...The representative of the review petitioner stated that Sri. P. Shiva Rao, counsel for review petitioner is out of station, hence he sought adjournment of the review petition to any other date. Accordingly, the matter is adjourned.

Record of proceedings dated 21.08.2023:

“...The counsel for review petitioner has stated that he would like to submit arguments in the matter on any other day. In view of the request of the counsel for review petitioner, the matter is adjourned.

Record of proceedings dated 21.09.2023:

“...The advocate representing the counsel for review petitioner has sought adjournment of the matter, as the counsel for review petitioner is out of station. Considering the request of the advocate representing the counsel for review petitioner, the matter is adjourned.

Record of proceedings dated 15.11.2023:

“...The counsel for review petitioner has stated that the review petition is filed against the order passed on 23.03.2023 in O. P. No. 77 of 2022 filed by the review petitioner itself. The original petition was filed for undertaking revision of the tariff upon undertaking trueing up exercise in the middle of the control period. The heading in the regulation states that ‘mid-term review’ is to be carried out is irrelevant and is a misnomer. The original order passed by the Commission is not an order undertaking the review of any other proceedings but is an original consideration of the aspects of trueing up for the 1st three years of the control period and projection for the remaining two years of the same control period. Therefore, this review petition is maintainable.

The counsel for review petitioner stated that a review against an order reviewing the earlier proceedings would not lie and cannot be entertained by the Commission. In that event, the Commission will be right in its questioning the maintainability of such review petition. However, the present petition is not against any order reviewing any other proceedings and it is filed for reviewing the general order. Even the present original proceedings have its roots in the order dated 28.08.2020 in the matter of capital investment and business plans along with tariff. Therefore, the present review petition is prima facie maintainable before the Commission.

The counsel for review petitioner stated that certain aspects in the original proceedings did not find attention of the Commission and there are incomplete or inadequate findings. The question of considering the ingredients of the review would arise once the petition is taken on file of the Commission.

The counsel for review petitioner stated that the Commission may, in the interest of justice, consider the case of the review petitioner. He stated that the headings and side headings for the Act or Rule or Regulation would not make sense and they cannot be considered for decision making in the matter. The entire provision made thereof should be considered for arriving at any decision on a particular aspect. He would like to place the relevant decisions of the Hon'ble Supreme Court on this aspect by next working day. Having heard the counsel for review petitioner, the matter is reserved for orders.”

4. The review petitioner sought to raise issues, which are primarily within the knowledge of the review petitioner as on the date of hearing original petition by the Commission on 01.02.2023. The contentions raised by the review petitioner do not constitute any material, which would be discovered after the disposal of the original proceedings. Inasmuch as, the various parameters considered by the Commission are based on the submissions of the parties and nothing exterior is considered by the Commission.

5. The Commission does not find any infirmity in the order passed by it nor it calls for interference by way of review. None of the ingredients of reviewing an order as set out in Order 47 of Civil Procedure Code, 1908 have been satisfied in this case. The

review petitioner has not been able to show as to the following aspects for undertaking a review of the order.

- a. Where there is a typographical mistake that has crept in the order;
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of law;
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

6. It is noteworthy to state that the principles of review are not satisfied in respect of the contentions raised by the review petitioner. None of the contention would attract the ingredients of review so as to allow the Commission to revisit the order.

7. The counsel for review petition argued extensively on the maintainability of the review petition by presuming that the Commission had considered the original petition as a review proceeding and as such the present review petition is not maintainable. To support his case, he has relied on the provision in the Regulation No. 1 of 2019 at clauses 3.8.2 and 3.12 and stated that the headings are irrelevant and they need not be taken to literal construction. It is his case that the heading of the clauses is a misnomer. Though the heading says that it is 'midterm review' but it is not a review and is revisional action as provided therein.

8. In order to contend that the headings are a misnomer, he has relied on the judgment reported in 1990 (1) SCC 400 in the matter of M/s. Frick India Limited Vs. Union of India and others. Reference has been made to paragraph 8 of the judgment and the same is extracted below.

“It is well-settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplied the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item 29A.”

No doubt the finding of the Hon'ble Supreme Court cannot be brushed aside. However, it has to be stated here that the Commission had placed the matter on maintainability due to the absence of ingredients inviting a review and not on the presumption as understood by the review petitioner. Inasmuch as, the Commission had initiated the proceedings not as a review but as original proceeding at first instance, which order is now sought to be reviewed. Assumptions and presumptions cannot be the basis for filing review petitions or that maintainability cannot be decided on such basis. Therefore, the argument set out in this regard is rejected.

9. Be that as it may, the review petitioner has raised the following points on which it is seeking review of the order dated 23.03.2023. The issues have been answered in the light of the powers vested for undertaking review by the Commission.

- a. **Discharge of liabilities:** Regarding undischarged liabilities, the Commission has dealt the matter at para 3.4.8 of the MTR order dated 23.03.2023 stating that *the capital cost approved for BTG at Rs. 4815.52 crore and for BOP at Rs. 922.01 crore as on 31.03.2019 are without any further leftover or balance undischarged liabilities and has attained finality.* As such, the review petitioner has not made out any case for review as none of the ingredients are satisfied.

- b. **Spill over works:** Regarding the aspect of spill over works, the Commission has dealt with the matter at paragraphs 3.5.13 and 3.5.14 of the order dated 23.03.2023. In view of the above, the Commission does not find any infirmity so as to revisit the order in the light of the contentions of the review petitioner.
- c. **O and M expenses:** Insofar as O and M expenses, the Commission had extensively dealt with the matter at paragraphs 3.11.22 to 3.11.35 of the order dated 23.03.2023. The Commission has computed the normative employee expenses, normative R and M expenses and normative A and G expenses in terms of the Regulation No. 1 of 2019. The computed normative O and M expenses were compared with the actual expenses as claimed by the review petitioner and thus approved the least of the computed normative expenses and actual expenses as claimed. This contention of the review petitioner does not satisfy the requirement of review as the finding of the Commission is emphatic and clear.
- d. **Interest and Finance charges on loans:** The aspect of the interest and finance charges on loans had been considered by the Commission and it has dealt with the matter at paragraphs 3.9.12 and 3.9.18 of the order dated 23.03.2023. The Commission had considered the reduced interest on loan from FY 2020-21 to FY 2023-24. The said aspect was clarified at paragraph 3.9.16 that, *though there is reduction in interest rate due to loan refinancing and after sharing of gains / loss as per clause 12.6 of Regulation No. 1 of 2019, the net interest on loan for FY 2020-21 has increased as the refinancing charges are to be passed on to beneficiaries as per Regulation No. 1 of 2019. The benefit of reduced rate of interest on loan due to loan refinancing is passed on to beneficiaries from FY 2021-22 to FY 2023-24.* The Commission does not find any error for review.
- e. **MAT rate instead of regular IT rate:** Adverting to the aspect of MAT rate instead of regular IT rate, the Commission had dealt with the matter at paragraph 3.12.10 of the order dated 23.03.2023. The Commission had explained in detail in the above paragraph that *the petitioner availing regular income tax rate instead of concessional MAT rate would lead to*

higher RoE and burden on the consumers. Hence the Commission had considered concessional MAT rate instead of regular income tax rate as claimed by the petitioner. Accordingly, consideration of the issues for review would not arise as there is no infirmity in such consideration.

In the light of the above discussion, the review petition has not been able to demonstrate that there is a case for review of the order dated 23.03.2023.

10. In view of the above, the Commission is not inclined to review the order dated 23.03.2023 in O. P. No. 77 of 2022 and accordingly the present review petition is rejected as non-maintainable.

This order is corrected and signed on this the 17th day of November, 2023.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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