



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

R. P. No. 1 of 2023
in
O. P. No. 70 of 2018

Dated 31.07.2023

Present

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

Between:

Southern Power Distribution Company of Telangana Limited,
H.No.6-1-50, 5th Floor, Mint Compound,
Hyderabad 500 063.

... Review Petitioner/Respondent in O.P.

AND

M/s Sugna Metal Limited,
1-8-673, IDA, Aizamabad, Hyderabad 500 020. ... Respondents/Petitioner in O.P.

This review petition came up for hearing on 04.04.2023 and 24.04.2023. Sri. Mohammad Bande Ali, Law Attaché for review petitioner appeared on 04.04.2023 and 24.04.2023. Sri. Ravindar, Advocate Clerk representing Sri. N. Vinesh Raj, counsel for respondent appeared on 04.04.2023 and Sri. N. Vinesh Raj, counsel for respondent appeared on 24.04.2023. The review petition having stood over for consideration to this day, the Commission passed the following:

ORDER

1. The Review Petitioner herein is the respondent of O.P.No.70 of 2018 and filed this review petition by invoking Section 94(1)(f) of the Electricity Act, 2003 with a prayer to review the order dated 17.10.2022 in O.P.No.70 of 2018 to the extent of clarification in regard to deduction of open access (OA) recorded demand from total recorded demand without taking the highest level of OA recorded demand in any time block for the purpose of getting the demand consumed from it in any time block; that to arrive

billing maximum demand, the highest level of DISCOM recorded demand (demand consumed from DISCOM) shall have to be considered.

2. The respondent/petitioner in O. P. in the counter affidavit opposed the review petition and sought for dismissal on the premise that the review petitioner has been violating the Regulation No. 2 of 2006 despite the issue of clarification dated 04.05.2013 by this Commission and the review petitioner failed to follow Regulations issued by the Commission and for that the respondent/petitioner in O.P. has approached the Commission and filed the O. P. No.70 of 2018 and with the order dated 17.10.2022 this Commission once again clarified above stated regulation and directed the parties to the extent of filing only simple statement before the CGRF-II, by giving true picture of the said regulation and the review petitioner again wants a clarification contrary to the Regulation No. 2 of 2006 and proceeding dated 04.05.2013 and the review petitioner under the guise of review petition seeking to set aside the order passed on merits and in case the review petitioner aggrieved with the order the remedy available is to file appeal before the Hon'ble Appellate Authority and not the review petition.

3. The Commission has heard the parties to the review petition and also considered the material available to it including the order passed by it dated 17.10.2022 in O. P. No. 70 of 2018. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 04.04.2023:

"... .. The representative of the counsel for respondent has sought some time for arguing the matter. The representative of the review petitioner has also stated that he needs time to make submissions in the matter. Considering the request of the parties, the matter is adjourned."

Record of proceedings dated 24.04.2023:

"... .. The representative of the review petitioner stated that the review petition is filed with regard to consideration of the quantum of open access demand as considered by the Commission and for effecting calculations by GFRF. The Commission considered highest demand instead of the average demand. Therefore, the order required reconsideration to that limited extent.

The counsel for respondent/petitioner stated that the Commission had already clarified this aspect while determining the tariff for FY 2016-17 and there is no ground made out by the review petitioner for reconsideration of the order. Nothing is shown to satisfy the ingredients of the review as is required under law. The counsel for respondent/petitioner relied on the judgment rendered by the Hon'ble Supreme Court in the matter of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury reported in 1994 Supreme (SC) 1140 with

regard to interpretation of Order XLVII Rule 1 of Civil Procedure Code, 1908. It is his case that the Commission cannot entertain the review petition where the submission clearly constitutes a ground for appeal and not for review. In this case, it is his contention that the review petitioner has raised the ground which clearly constitutes a ground for appeal and not amenable to review proceedings. The Commission may consider retaining the order without any modifications and require the CGRF to complete the exercise, expeditiously as directed earlier by the Commission in its order. ”

4. The paragraph 17 of the order dated 17.10.2022 in O.P.No.70 of 2018 on which clarification or review sought by the review petitioner is reproduced below:

“17. The Commission is constrained to observe that though calculations have been provided by the parties on either side, there is no concrete statement as to what is the excess amount of the demand either supplied by the licensee or drawn by the consumer with reference to open access quantum availed. But in any case the licensee has to calculate the demand availed from it by deducting the open access quantum availed by the consumer at the highest level in any time block and the same is to be considered for the rest of the time blocks in the month.”

5. It is submitted by the review petitioner that in order to get the demand consumed from the DISCOM / TSSPDCL by the consumers, absolutely there is no need to take the highest level of OA recorded demand in any time block and it is enough to take OA recorded demand. While submitting this, the review petitioner has drawn attention of the Commission over the Proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013 of the APERC adopted by the TSERC vide Regulation No. 1 of 2004 wherein the following clarification has been given:

Demand consumed from DISCOM = (Total Recorded Demand – OA Recorded Demand)

6. That, the Commission inadvertently in the paragraph No.17 has used the word highest level though there was no necessity to use that word and which word is not there above stated clarification dated 04.05.2013. It appears that due to usage of the word highest level in the paragraph No.17 an ambiguity has crept in the mind of review petitioner which made it to seek a clarification by filing this review petition. If that word is not deleted from the paragraph 17 of the order dated 17.10.2022 then certainly it would amount misinterpretation of the clarification which has been given earlier.

7. The Section 92(1)(f) of the Electricity Act, 2003 empowers the Commission to review its decisions, directions and orders and such review power is similar as vested in a Civil Court under the Civil Procedure Code, 1908. The Section 114 and Order 47

Rule 1 of Civil Procedure Code, 1908 says about review power of a Civil Court. Under Section 114 of CPC a person feeling aggrieved either by decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree may apply for review of the decree or order as the case may be in the Court, which passed the order. Section 114 of CPC does not provide any limitation over the power of the Court for review, but Order 47 Rule 1 of CPC contains such limitations. According to Order 47 Rule 1 of CPC that, a review of judgment or an order could be sought (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant/petitioner; (b) such important matter or evidence could not be produced by the applicant/petitioner at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

8. The respondent/petitioner submitted that the Commission had earlier clarified this aspect and there is no ground made out by the review petitioner for reconsideration of the order and the Commission cannot entertain the review petition where the submission of the review petitioner clearly constitutes ground for appeal and not review. The respondent/petitioner relied on the Judgement rendered by the Hon'ble Supreme Court in the matter of '*Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudary*' reported in 1994 Supreme (SC) 1140.

9. In the above quoted Judgment, the Hon'ble Supreme Court at paragraph 8 by making reference of the case of '*Aribiam Tuleshwar Sharma Vs. Arbiyam Pishak Sharma*' (AIR 1979 SC 1047) observed that it is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, of C.P.C. It is further observed that a review petition can be entertained only on the ground of error apparent on the face of the record and not on any other ground and it has to be kept in view that an error apparent on the face of record must be such error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

10. From the above quoted judgment, it is clear that the review of an order passed earlier can be made and a clarification can be given, when an error apparent on the

face of record strikes upon mere looking at the record and without in depth dwelling of other facts. In the instant review petition the Commission due to inadvertence omitted to take into consideration certain material facts on record and law i.e., the clarification which has been given earlier and which apparent on the face of the order.

11. Considering the submission made by the review petitioner, the Commission replaces the said paragraph in the original order as below:

“17. The Commission is constrained to observe that though calculations have been provided by the parties on either side, there is no concrete statement as to what is the excess amount of the demand either supplied by the licensee or drawn by the consumer with reference to open access quantum availed. But in any case, as per the proceedings No.APERC/Secy/25/2013, dated 04.05.2013 *“Order on Open Access metering and Demand settlement – FSA billing on minimum energy”* the DISCOM has to arrive at 15 minute block wise demands by deducting OA demand from Recorded Demand for all the 2880 time blocks in a month. The result would be 2880 demand readings of 15 minute blocks consumed from the DISCOM. Of all the 2880 fifteen minute block demand readings, the Maximum Demand (MD) reading should be billed as per the tariff order rate.

12. Needless to add upon the said modification, the order is comprehensively corrected and thus the review petition filed by the review petitioner/respondent stands allowed but, in the circumstances without any costs.

This order is corrected and signed on this the 31st day of July, 2023.

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