

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 23 of 2021

In the matter of:

Petition for review of the Commission's Order dated 11.06.2021 passed in Petition no. 21 of 2020 under Section 94(f) of the Electricity Act, 2003 read with Section 114 and Order 47 of the Civil Procedure Code, 1908.

In the matter of:

Shri. Digamber Singh Bisht ... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.,
Uttarakhand Renewable Energy Development Agency, ... Respondent
Shri Dharendra Singh Rawat ... Performa Opposite Party

CORAM

Shri D.P. Gairola Member (Law)

Shri M.K. Jain Member (Technical)

Date of Order : November 12, 2021

Shri Digamber Singh Bisht (herein after referred to as "the Petitioner") has filed an application for review of the Commission's Order dated 11.06.2021 passed in Petition no. 21 of 2020 on issuing necessary directions for fixing the electricity tariffs as per FY 2015-16 for the allocated Solar Power Plant and 40% additional tariff for the Solar PV plants installed in hilly terrain of Uttarakhand under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act") read with Section 114 and Order XLVII of the Code of Civil Procedure 1908.

1 Background

- 1.1 The Commission, based on the complaint received from the Petitioner, vide Suo-moto Order dated 15.06.2018 had directed UPCL to provide grid-connectivity once the project of the Petitioner is completed and ready for commissioning. Subsequently, the Petitioner had filed a Petition before the Commission for issuance of appropriate directions to UPCL and/or UREDA for fixing the electricity tariff as per the generic tariff specified by the Commission vide its Suo-moto Order dated 23.07.2015 for FY 2015-16 for small Solar PV Plants allocated to him in accordance with the advertisement dated 01.01.2016 published by UREDA in FY 2015-16. The Commission vide its Order dated 11.06.2021 in Petition no. 21 of 2020 ordered that tariff with zero subsidy (owing to the non-receipt of subsidy by the Developer) as approved by the Commission vide its Suo-moto Order dated 03.08.2017 for FY 2017-18 shall be applicable for the energy supplied or to be supplied from the Solar PV plant of the developer as the plant was commissioned during FY 2017-18 and as per submission of the Petitioner it was inferred that the plant in no way was ready to be commissioned by 31.07.2017 even though UPCL delayed the testing of meters and finalising the supervision charges.
- 1.2 The Petitioner filed a Review Petition dated 06.09.2021 on the grounds that there were certain errors apparent on the conclusions drawn on certain issues by the Commission in its Order dated 11.06.2021. The Review Petition as per Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014 was required to be filed by 10.08.2021. The Petitioner submitted that the Hon'ble Supreme Court of India vide Order dated 27.04.2021, in Misc. application no. 665 of 2021, in recognizance for Extension of, has exempted the period commencing from 14.03.2021, for the purpose of computation of period of limitation as provided under the Indian Limitation Act and as such in consonance with the same the present appeal filed lies within the period of limitation.
- 1.3 The Petitioner through the current Review Petition prayed to the Commission to modify the impugned Order dated 11.06.2021 to the extent that the applicability of the tariff as held to be applicable from FY 2017-18 be deleted and in its place the Petitioner be held entitled for the tariff as applicable during FY 2016-17 and also Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL") be penalised heavily on account of harassment of the Petitioner done by it.

2 Petitioner's submission

- 2.1 The Petitioner submitted that the present Review Petition has been filed under Regulation 54 of UERC (Conduct of Business) Regulation, 2014 read with the applicable provisions of the Code of Civil Procedure, 1908 and the Electricity Act, 2003 seeking review of the Commission's Order dated 11.06.2021 in the Petition filed by the Petitioner for issuance of necessary directions for fixing the electricity tariffs as per FY 2015-16 for the allocated Solar Power Plant and 40% additional tariff for the Solar PV plants installed in hilly terrain of Uttarakhand under Section 94(1)(f) of the Electricity Act, 2003.
- 2.2 The Petitioner submitted that the Commission failed to consider that the Petitioner approached UPCL in December, 2016 for construction of HT line and UPCL failed to construct the same and, thereafter, in February, 2017 the Petitioner got it constructed on its own in accordance with the provisions of the PPA and informed UPCL accordingly and, thereafter, UPCL was under obligation to inform the Petitioner to deposit the fees against Supervision charges which they failed and as such the said amount which the Petitioner was ready and willing to pay at any stage itself, could only be deposited after the demand of supervision charges was raised by UPCL in February 2018 which shows the sole negligence of UPCL.
- 2.3 The Petitioner submitted that the Commission erred to consider the fact that there has been delay of 13 months by UPCL to check the meters submitted by the Petitioner. Further, the Petitioner also submitted that the Commission failed to consider that UPCL in its written submission acknowledged that the project of the Petitioner was ready to be commissioned by the month of March, 2017.
- 2.4 The Petitioner submitted that the finding of the Commission to the effect that the plant could have been deemed completed on the date the Petitioner deposited fees against inspection of Electrical Inspector for HT line is also wrong and beyond pleadings. The Petitioner submitted that in the entire pleadings the Petitioner has not agreed to this fact.
- 2.5 The Petitioner submitted that the Commission failed to consider the fact that inspection by the Electrical Inspector was the last nail towards execution of the work and prior to the same, supervision charges were required to be deposited and under the present case the charges against the inspection by Electrical Inspector were deposited prior to the supervision charges

that to at the personal behest of the Petitioner and demand towards supervision charges was raised on 06.02.2018.

- 2.6 The Petitioner submitted that the Commission failed to consider the fact that the entire delay was solely attributable on the part of UPCL and the Commission had wrongly penalized the Petitioner against the delay on the part of the Respondents.
- 2.7 The Petitioner submitted that the Commission failed to consider the fact that there was no iota of evidence on file which could prove that there was any delay on the part of the Petitioner towards completion of the plant at his end.

3 Respondents' Submission

- 3.1 The Commission in order to provide transparency forwarded the copy of the review Petition to the Respondents for comments. In the matter, UREDA and UPCL (hereinafter collectively referred to as "Respondents") vide letters dated 16.09.2021 and 20.09.2021 respectively submitted their reply in the matter.
- 3.2 UREDA vide its letter dated 16.09.2021 submitted that the issues raised by the Petitioner in the current review Petition pertains to UPCL. UREDA also reiterated its submissions which were made during the proceedings of the Petition no. 21 of 2020. The Commission does not find it appropriate to reiterate the comments of UREDA which has already been dealt in the Order dated 11.06.2021 in Petition no. 21 of 2020.
- 3.3 UPCL vide its letter dated 20.09.2021 submitted that the review Petition appears to be in the nature of appeal and, hence, is not legally maintainable and it is a judicially settled proposition of law that review Petition cannot be an appeal in disguise.
- 3.4 UPCL submitted that the Petitioner has not even pointed out the error apparent on record. Further, the Commission has categorically held that the Petitioner could not commission its plant by 31.03.2017 and that the Petitioner himself had not submitted any record relating to its readiness to the Commission of the plant. Therefore, the Commission has given just and well-reasoned order.
- 3.5 UPCL submitted that the Petitioner in its review Petition has wrongly mentioned that UPCL has admitted that the project of the Petitioner was ready to be commissioned by the month of March, 2017 and for justifying the same has reproduced a part of the contents from UPCL's

reply. The submission of the Petitioner is totally absurd, mere reading of first three lines of the concerned para clearly shows as to when the plant got commissioned. March 2017 is a typographical error which neither confers any benefit nor proves any fact.

4 Commission's Analysis and Ruling

- 4.1 The Commission conducted a hearing on the admissibility of the Petition on 21.09.2021. All the parties reiterated their submissions before the Commission. After hearing the parties, the Commission vide Order dated 21.09.2021 reserved the judgement. After examining the relevant material available on records, issues raised by the Petitioner in the review Petition and replies of the Respondents, the analysis of the Commission are dealt in the subsequent section.
- 4.2 Before going into the merits of the Petition filed by the Petitioner on various issues, the Commission first looks into the powers vested in it to review its Orders for taking a view on maintainability of the Petition. In this regard, reference is drawn to Section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court exercises such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). The powers available to the Commission in this connection have been defined in Section 114 and Order 47 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:
- a. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
 - b. Mistake or error apparent on the face of the record; or
 - c. Any other sufficient reasons.
- 4.3 The application for review has to be considered with great caution to necessarily fulfil one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and is of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be even with reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled principle that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given

during earlier proceedings, it might possibly have altered the Judgment.

4.4 It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous Judgment is not a ground for review, but if the Judgment or Order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for a patent error. A review can only lie if one of the grounds listed above is made out.

4.5 Further, as per Regulation 54(1) of UERC (Conduct of Business) Regulations, 2014, a Petition for review can be filed within 60 days of the making of any decision, direction or order by the Commission. The relevant portion of the Regulation is reproduced hereunder:

“The Commission may on its own or on the application of any of the persons or parties concerned, within 60 days of the making of an decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the commission thinks fit.”

4.6 The Commission firstly would like to examine the Petitioner’s request regarding the condonation of delay in filing of the Petition. The Commission had passed the Order in the Petition no. 21 of 2020 on 11.06.2021. Accordingly, based on the aforesaid regulation, Review Petition should have been filed by 10.08.2021. However, the review Petition has been filed on 06.09.2021. Accordingly, there is delay of almost one month in filing the review Petition. With regard to the delay in filing the review Petition, the Commission analysed the submissions made by the Petitioner and observed that the Petitioner has relied on the Limitation Act, 1963 as amended from time to time. However, it is pertinent to mention that the Electricity Act, 2003 is a special statute and overrides the provisions of the Limitation Act. However, the Commission decides to accept the request of the Petitioner and condones the delay as the Petitioner is a small generator and has limited means.

4.7 The Commission observed that the objections raised by the Petitioner in the present review Petition has already been dealt by the Commission in its Suo-moto Order dated 15.06.2018 in Petition no. 28 of 2018 (*Suo-moto*) and Order dated 11.06.2021 in Petition no. 21 of 2020. In the present review Petition, the Petitioner submitted that UPCL has admitted during the proceedings of Petition no. 21 of 2021 that the plant of the Petitioner was ready by the end

of March, 2017. In the matter, it is pertinent to mention that UPCL had provided Hindi translation of its reply dated 19.11.2020 to the Petitioner vide letter dated 14.12.2020 on its request wherein UPLC had inadvertently mentioned March, 2017 whereas in its main reply (English) dated 19.11.2020, UPCL had mentioned that the plant got ready for commissioning only in March, 2018. Accordingly, this cannot be a ground of review.

4.8 Further, it is worth mentioning that the Petitioner in the original Petition no. 21 of 2020 had requested the Commission to issue necessary direction to UPCL for fixing the generic tariff as approved by the Commission for FY 2015-16 whereas in the present review Petition, the Petitioner prays for the fixing the tariff for as per the generic tariff specified by the Commission for FY 2016-17 for small Solar PV Plants allocated to them. It appears that the Petitioner intends to get the beneficial tariff to what it is actually eligible. A financial year is an essential factor for which the Petitioner seeks tariff approval which also forms an essential part of the Cause of Action of the Petition. Altering the Financial Year alters the Cause of Action in the original matter before the Commission which was the basis of forming ratio decidendi in the order against which the review is sought. This claim is itself flawed and is an independent ground for rejection of the review Petition.

4.9 Furthermore, the Petitioner has reiterated its submission which was made by him during the proceedings of the main Petition and no new fact has been brought before the Commission in the present review Petition. The Petitioner has failed to establish that the plant was ready for commissioning and only because of delay on the part of UPCL, the solar power plant could not be put under commercial operation. The Petitioner vide submission dated 19.10.2021 submitted a copy of the invoice amounting to Rs. 2.29 Crore against the installation of Grid Connected Solar Power Plant of 450 kW against 500 kW allocated to it. In the matter, it is important to mention that during the disposal of proceeding for issuance of necessary directions for fixation of tariff determined by the Commission for FY 2015-16, the Petitioner itself vide email dated 03.04.2017 had informed UREDA that the solar panels of capacity of 30 kW have been installed against the approved capacity of 500 kW and had sought time till May, 2017 for commissioning of the project. It is apparent from the submission made by the Petitioner earlier that the Plant was not ready for commissioning by March, 2017 even though UPCL delayed in testing of meters and finalizing the supervision charges. The relevant extract of the suo-moto Order dated 15.06.2018 is as

follows:

“1.6 ...However, no information was provided by the Developer till 31.03.2017 regarding installation of the plant. Thereafter, UREDA vide e-mail dated 03.04.2017 enquired regarding status of installation of the plant. In reply, the Developer vide email dated 05.04.2017 informed that solar panels of capacity of 30 kW have been installed against approved capacity of 500 kW and informed that the plant will be ready by May, 2017”

4.10 Moreover, the Petitioner vide its letter dated 01.10.2021 sought time of 15 days to submit the invoices before the Commission, however, till the date of this Order no invoices have been submitted by the Petitioner.

4.11 Accordingly, the Commission, in view of the above, rejects the Review Petition filed by the Petitioner against the Commission's Order dated 11.06.20121, as not maintainable, and accordingly, Miscellaneous Application No. 23 of 2021 stands disposed off.

4.12 Ordered Accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)