ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021
****

Present: **Shri U. N. Behera, Chairperson**
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member

Case No. 02/2020

M/s. CCPPO
N-1/14, IRC Village, Nayapalli, Bhubaneswar-751015. …… **Petitioner**

-Versus

The Chairman-cum-Managing Director,
GRIDCO Limited, Janpath, Bhubaneswar ….. **Respondent**

In the matter of: **Application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC(Conduct of Business) Regulations, 2004 for review of order dated 23.10.2019 of the Commission passed in Case No. 38 of 2019.**

For Petitioner: Shri L. Pangari, Sr. Advocate & Shri Sohan Mishra, Advocate on behalf of M/s. CCPPO

For Respondent: Shri G. S. Panigrahi, Consultant (law), GRIDCO Ltd.

ORDER

Date of hearing: 08.09.2020 **Date of order:28.10.2020**

The present petition has been filed by the Confederation of Captive Power Plants of Odisha (CCPPO) under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of OERC (Conduct of Business) Regulations, 2004 for review of order dated 23.10.2019 of the Commission passed in Case No. 38/2019.

2. CCPPO submitted that they had filed a petition bearing case No. 38/2019 under Section 142 of the Electricity Act, 2003 alleging non-compliance of the order dated 23.11.2010 passed in Case Nos. 117 and 118 of 2010 and other related orders of the Commission by GRIDCO with respect to non payment of price for the surplus power supplied to the Grid for the period up to 08.04.2019 in the form of inadvertent supply. They stated that as per the then

prevailing Captive Generation power (CGP) Pricing Policy for the period from 14.03.2008 to 08.04.2019, any injection of surplus power when the operating frequency band is within 49.50 HZ to 50.18 HZ would be treated as inadvertent power or infirm power and be paid at the pooled cost of state hydro power for the respective financial years as per the directions of the Commission contained in order dated 23.11.2010 in Case Nos. 117 and 118 of 2010 and subsequent related orders. They had approached the Commission under Section 142 of Electricity Act, 2003 for a direction to GRIDCO, the Respondent, to comply the order of the Commission in Case Nos. 117 and 118 of 2010 which were in force until 08.04.2019 and in which specific directions were issued to the Respondent for payment towards inadvertent power.

3. After hearing the parties, the Commission in its order 23.10.2019 had disposed the Case No. 38 of 2019 filed by the petitioner under Section 142 with the following observation;

"16. Heard the parties at length. Their written notes of submission are taken into record. Regarding supply of surplus power from the CGPs, the Commission is of the view that any supply from an independent generator or a CGP can only be effected through a contract. Due to fluctuation in power requirement of the parent industry, inadvertent power is injected into the Grid. This injection is consequential to an obligation to supply power which is effectuated through a contract. We have already dealt with this matter in Case No. 16/2018 dated 09.04.2019 where the Commission on the same issue has held as under.

"13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.

14. In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. xxx x x x x x x x."

17. In view of the above findings of the Commission, it is directed that the bills of the Petitioner be reconciled by both the parties within one month and the reconciled bills be paid to the Petitioner within 15 days thereafter."

4. Being aggrieved with the aforesaid order dated 23.10.2019 in Case No. 38 of 2019, the petitioner has filed the present application for review of the said order on the following grounds.

a) The Commission in its order dated 23.11.2010 in Case Nos. 117 and 118 of 2010 has clearly clarified the issue of inadvertent power injection by CGPs and its pricing as under.

Para 30(a) – Other that 'Firm' and 'Non-firm' Power, any injection of power from CGPs to the state Grid shall be treated inadvertent injection of power to the Grid and such inadvertent power would be priced equal to pooled cost of hydro power of the State."

Para 30(d) - "As the generation scenario of the State has not been changed thereafter and the present hydro condition in the State hydel Reservoirs are not that much encouraging even in Water Year 2010 - 11, xxxxxxxxxxxxxx and any power injection over the implemented schedule during the Operating Frequency Band of 49.50 HZ to 50.18 HZ shall be treated as inadvertent power should be paid at the pooled cost of the hydro power of the State as indicated in Para-33 and 34"

Para 30(e) - "The Captive/Co-generations Plants who would supply inadvertent power/infirm Power within the Operating frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paisa/KWh for FY 201011 as approved by the Commission and xxxxxxxxxxx."

b) Further, the Commission in its orders 29.08.2011 and 01.10.2012 had reiterated that for all practical purpose the injection of infirm power and inadvertent power would be treated under the same commercial principle, i.e. the rate as approved by the Commission i.e. at the pooled cost of hydro power of the State for the respective years.

c) Further, the Commission had passed the order dated 12.05.2015 in Case No. 30/2013 in the matter of non-compliance of /violation of order dated 01.10.2012 in Case No. 86/2011 regarding Comprehensive Pricing Policy for procurement of surplus power from Captive Generating Plants where the Commission directed GRIDCO to clear/settle all the dues of the CGPs and complete the reconciliation process within 02.07.2015 and submit the compliance report by 05.07.2015. From the above orders of the Commission it is clear that as per the prevailing CGPs pricing policy, for the period between 14.3.2008 till 08.4.2019 any inadvertent injection within the operating frequency band of 49.50 Hz to 50.18 Hz shall be treated as inadvertent power or infirm power and paid at the pooled cost of state hydro for the respective financial year.

d) It is further submitted that GRIDCO and CCPPO had signed Minutes of Meeting (MoM) dt.09.09.2016 there by agreeing to the operating frequency range for the purpose of reconciliation of bills of CGPs and Co-generating plants from 17.02.2014 onwards to be considered from 49.70 Hz to 50.05 Hz keeping all other conditions

intact as per orders of OERC. The said MoM signed between GRIDCO and CCPPO stands valid as of date which needs to be complied with by GRIDCO.

e) The Commission, vide its order dated 09.04.2019 in Case No. 62 of 2017 in *suo-motu* proceeding on consultative paper on pricing of surplus power from CGP's to be purchased by GRIDCO, has withdrawn the 'Must Run' status of CGPs with immediate effect and repealed its earlier orders on CGP pricing with effect from the date of this order, i.e. 09.04.2019 and hence such repeal shall only be prospective and cannot be retrospective.

f) From a reading of the aforesaid order of the Commission, it is clear that the Commission has intended to repeal all earlier orders in CGP pricing with effect from 09.04.2019. In other words all other orders passed by the Commission on CGP pricing remained in force till 09.04.2019 and GRIDCO was bound to comply with the said orders.

g) The Commission in its order 23.10.2019 which was filed under Section 142 of the Electricity Act, 2003 for non-implementation of order of the Commission in Case Nos. 117 & 118 of 2010 modified/ varied the earlier orders of the Commission instead of issuing appropriate direction under Section 142 of Electricity Act, 2003 without being challenged by any Party to the issue. Further, the Commission was trying to implement its earlier Order dated 09.04.2019 in Case No. 62 of 2017 with retrospective effect, which is against the provisions of laws and the misconception of the court can be regarded as sufficient ground for review of the Judgment/Order.

h) The Commission without taking cognizance of the facts mentioned in the petition under Section 142 of the Act, has travelled in a different direction and passed a new order which is completely contrary to the order sought to be implemented under Section 142 of the Act, which is not permissible under law and as such there is error apparent on the face of the record.

Therefore, the Petitioner has prayed that in the facts and circumstances stated above the Commission may be pleased to:

(a) Admit this application and exercise the power under Regulation 70(1) of Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 read with Section 94(1)(f) of the Electricity Act, 2003 and may please review the order dated 23.10.2019.

(b) Pass appropriate order under Section 142 of the Act as prayed for in Case No. 38 of 2019.

5. The respondent, GRIDCO submitted that the petitioner, Confederation of Captive Power Plants Odisha (CCPPO) has filed this Review Petition under Regulation 70(1) of Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 read with Section 94(1) (f) of the Electricity Act, 2003 for review of the order dated 23.10.2019 passed by the Commission in Case No. 38 of 2019. The contentions of the petitioner that an error apparent on the face of the record cannot be defined precisely and it has to be decided judicially on the facts and circumstances of each case and the misconception of the court can be regarded as sufficient ground for review of the Judgement/Order are not acceptable at all as the Petitioner have not mentioned any definite error apparent on the face of the record.

6. Further, the allegation of the petitioner in the petition that the Commission without taking cognizance of the facts mentioned in the petition under Section 142 of the Act, has travelled in a different direction and passed completely a new order which is completely contrary to the order sought to be implemented under Section 142 of the Act is not tenable in the eyes of Law. It is submitted that the Commission in its order on 23.10.2019 has dealt explicitly with the relevant submission of the petitioner at para 1 to 11, and as such there is no error on the face of the record as alleged by the Petitioner.

7. Further, GRIDCO submitted that the Commission in its order dated 09-04-2019 in Case No-16 of 2018 at Para 11 had clarified as follows.

11. Heard the parties at length. Their written submissions, arguments put forth during the hearings were considered. The Commission observed that mere connectivity to the transmission system does not give a right to any generator to inject power at their own convenience and consequently claim compensation. Any supply from an independent generator or a CGP can only be effected through a contract. That means the buyer and the seller both have to agree for purchase and sale of power. For this we are reiterating our own order in this regard. In para 6 of the order dated 30.06.2009 in Case No. 6 to 20 of 2009 on the pricing of surplus CGP power to be procured by GRIDCO we had stated as follows:

"6.

(i) XXXXXXXXXXXXX

(ii) The individual Captive Generating Plants (CGPs) may sign an Agreement with GRIDCO or the DISCOMs, covering the volume and duration of supply of firm power as may be mutually agreed upon. In the event of the Commission specifying the volume and duration of supply, then such specification shall prevail. The terms and conditions for supply of such power will include all such conditions as specified by the Commission and such other terms as may be mutually agreed upon.

(iii) The price at which the surplus power of CGPs would be supplied to GRIDCO or the DISCOMs, as per these agreements, shall be at a rate as has been decided by the Commission or as may be determined by the Commission from time to time and till such time, as is required or necessary in the eyes of the Commission.

(iv) Signing of a fresh agreement is also applicable to IMFA/NALCO and such other CGPs having subsisting agreement/MOU in accordance with the principles as indicated in (ii) above. In other words, these CGPs may also sign fresh agreement with GRIDCO as has been clarified vide para 8(i) of the order dated 27.6.2009 of the Commission in Case No.59/2009.

(v) XXXXXXXX

In Para 18 and 27 (iv) of our order in Case No. 48 & 49/2010 dated31.05.2010 on the same issue we have stated as follows:

"18. Basically the rate fixed for procurement of power for GRIDCO from CGPs is the indicative price of the upper limit and accordingly GRIDCO and CGPs were to sign agreement which among other things was to cover the volume and time of supply. Like any other sources of supply of power, supply from the CGPs was one of the sources and the upper limit of the rate was fixed by the Commission for facilitating commercial arrangement between the CGP and GRIDCO. xxxxxxxxxxxx"

27. (iv) xxxxxxxxxx If the State Govt. or GRIDCO insist upon the owner of CGP to supply more electricity to the State Grid for public interest, and thereby CGP's total sale (including sale under Open Access) increases more than 49% of its total generation, then the issue to be addressed with mutual satisfaction in the PPA, or special agreement before such supply is effected. The existing PPA is to be suitably amended."

Finally in the interim order in Case Nos. 49, 50, 52 & 54/2011 in Para 8 the Commission had mentioned as follows:

"8. Further, GRIDCO is advised to execute short-term PPAs with the CGPs before purchasing their surplus power and incorporate all such issues in the PPAs so as to minimize disputes. The existing PPAs between GRIDCO and some CGPs may also be amended accordingly.

8. That Keeping in view of the orders of Commission dated 27.6.2009 in Case No.59/2009, dated 30.06.2009 in Case Nos. 6 - 20/2009 and dated 31.05.2010 in Case No. 48 & 49/2010, the Board of Directors of GRIDCO, in their 137th meeting on 12th January 2011 decided that there is no necessity of Power Purchase Agreement for Long Term between GRIDCO & CGPs. GRIDCO may purchase power through a short-term Contract/Agreement, and accordingly GRIDCO started issuing Letter of intents (LoIs) from time to time from Feb-2011 to Jun-2015 for CGPs and from Feb-2011 to Mar-2015 for Co-Generation Plants for procurement of surplus power.

9. This decision of GRIDCO towards issue of LoIs was also reaffirmed by the Commission in their order dated 29.12.2015 in Case No 26 of 2015. At Para 13 the Commission has mentioned that,

"xxxxxxx… Therefore, the LoI issued by GRIDCO Ltd. by offering lower rate for CGP power and accepted by the parties is not in the violation of Commission's order".

10. GRIDCO further mentioned that the Commission accepted relevant finding in the judgement of Hon'ble APTEL dated 08.05.2017 against Appeal No. 120 of 2016 & IA No. 272 of 2016

in the matter of M/s. Kamachi Sponge & Power Corporation Ltd., Chennai and Tamil Nadu Generation & Distribution Corporation Ltd, as furnished by GRIDCO in Case No. 16 of 2018, Case No. 27 of 2017 and Case No. 48 of 2017 of OERC.

The judgement of Hon'ble APTEL reveals as follows:

"Para-9(g)- " XXXXXXXXXXXXxxx .... This Tribunal in the judgments in .Appeal Nos. 267 of 2014 and 68 of 2014 also held that energy pumped into the grid without consent/agreement and schedule, need not be compensated."

Para-l0 (b) (iii) "xxxxxxxxxxxxxx .... From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1, it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No. 1 and without the knowledge/ schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorized and does not call for any payment by the Respondent No. 1.

Para-l0(c) i "xxxxxxxxxx .... Here we would like to mention that each entity created under the Electricity Act, 2003 has a clear defined role. In this case, the responsibility of regulation of power inflow into the grid from all suppliers lies with SLDC in accordance with Section 32 of the Electricity Act, 2003, based on the contractual agreements entered by the distribution licensee with power generators suppliers through a well-established system of scheduling. It is the duty of everyone connected with the operation of the power system to comply with the directions of the SLDC in its control area. In the instant case, the Appellant has not sought any approval/ schedule from SLDC before synchronization for pumping any power into the grid. Even the SLDC was not aware of the power pumped during this period by the Appellant into the grid. Hence, the onus of the wrong doing by the Appellant cannot be shifted to the Respondent No.1."

Para-(10) (g)(i)"The safe and economic operation of the grid is of utmost importance. In this regard, many regulations, rules and procedures have been made by the Central/State Regulator(s). Maintenance of the grid discipline is the responsibility of all the stakeholders. The Appellant has pumped power into the grid without knowledge obtaining prior approval of the SLDC and without any valid agreement contract with the Respondent No.1. t If every generator starts injecting power into the grid without prior approval of the grid operators/LDCs and without valid contractual agreements this may jeopardise secure grid operations and may lead to catastrophe. The action of the Appellant is not justified and moreover pleading that there was no such impact in the instant case is misplaced."

Para-10(I) iv "XXXXXXXXXXXXXX .... The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/contractual 5 agreement with the distribution licensee and without the approval/ scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments."

11. Based on the aforesaid finding of APTEL, the Commission had passed final Orders in Case No. 16 of 2018 and had directed as under.

"13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming

compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.

14. In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. xxx x x x x x x x."

12. The petitioner claimed in his application misinterpreting various orders of OERC, that Power injected by CGPs without a day ahead schedule would be treated as the injection of inadvertent power and would be priced at the cost of Hydro Pooled Cost determined by the Commission for the respective financial year for the period up to 08-04-2019. As such the claim of the petitioner is irrelevant.

13. Further GRIDCO submitted that nowhere in the various orders of the Commission, it has been mentioned that GRIDCO has to pay the CGPs with hydro pool cost towards inadvertent injection by the CGPs without any Agreement/contract between GRIDCO and CGPs. The Inadvertent (unauthorized) injection of power by the petitioner for a very short period due to load throw from its industry normally acts as a jerk which is absorbed by State Grid by maintaining stability and reliability of the industry of the petitioner. Without even compensating for such negative impact in the Grid, the petitioner is rather claiming charges for the same. If allowed it will render double benefit to the petitioner for its own fault. Such a situation rather demands levy of Grid Support charges on the Petitioner. Further, unauthorized injection of power by the CGPs can cause damage to running of the Grid, when it runs under a high frequency condition. Such injections are to be regulated through relevant Deviation Settlement Mechanism, so as to penalise the miscreants.

14. GRIDCO submitted that from the above, it is construed that the CGPs/Co-Gen Plants are not eligible to get any payment for the inadvertent injection when there is no subsisting contract between GRIDCO and CGPs and no scheduling by SLDC. GRIDCO has already paid all the dues including the payment for inadvertent injection of all the CGPs and Co-Generation Plants up to June-2015 and March-2015 respectively i.e up to the periods for which GRIDCO had subsisting contract with CGPs/Co-Gen Plants , as per rates fixed though relevant Order(s) of the Commission. Therefore, the case may be dismissed since the matter has no merit.

15. Heard the parties. All the written submissions and rejoinder submitted by the petitioner and Respondents are taken on record. The Petitioner seeks to review our order dated 23.10.2019

in Case No. 38/2019. That case had been filed under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 23.11.2010 of the Commission passed in Case Nos. 117 & 118 of 2010 and other various related orders of the Commission by GRIDCO w.r.t. non-payment against injection of inadvertent power to grid by the CGPs at the State Hydro Pool Cost for the period upto 08.04.2019. GRIDCO stated during the hearing that in compliance to the above order, GRIDCO has reconciled and settled the dues of all the CGPs and Co-generation plants supplying power to GRIDCO up to June 2015 and March 2015 respectively i.e. up to the period for which GRIDCO was having subsisting contract with the above CGPs. GRIDCO pointed out our order in Case Nos. 16/2018, 27/2017 and 48/2017 which state that

i) Any supply from an independent generator or a CGP can only be effected through a contract. That means the buyer and the sellers both have to agree for purchase and sale of power.

ii) Power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation /contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and valid schedule so that safety of the Grid at no situation is affected.

iii) Power systems cannot be a dumping ground for unwarranted power.

iv) Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the Grid.

v) Two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline.

vi) GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract."

16. In view of the above submission the Commission reiterated its own order in Case No. 16/2018 and directed GRIDCO to reconcile bill of the CGP accordingly in fulfilment of the implementation of the order of the Commission in Case Nos. 117 & 118 of 2010. The

Petitioner has not been able to point out any specific error in the impugned order which is to be reviewed now. It is an appeal in disguise to address his grievances against our order.

17. As per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others.

As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:

(a) Error apparent on the face of the record;

(b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;

(c) Any other sufficient reason.

Error contemplated under the rule must be such that is its apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence. From the above provisions of CPC we do not find any ground to review our order and therefore, petition does not merit consideration.

18. Accordingly, the case is disposed of.

Sd/-	Sd/-	Sd/-
(G. Mohapatra)	**(S. K. Parhi)**	**(U. N. Behera)**
Member	**Member**	**Chairperson**