



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1818)/DERC/2020-21/6947

I.A. No. 4 of 2020
IN
Review Petition No. 46/2020

In the matter of: **Application for Amendment of Review Petition dated 19.11.2020 filed by the Applicant seeking review of Commissions Tariff Order dated 28.08.2020 in Petition No. 03/2020**

Tata Power Delhi Distribution Ltd.

....Review Petitioner/Applicant

Coram:

Hon'ble Sh. Justice S S Chauhan, Chairperson

Hon'ble Dr. A. K. Ambast, Member

Appearance:

1. Mr. Sri Venkatesh, Adv., TPDDL

ORDER

(Date of Hearing: 18.02.2021)

(Date of Order: 24.02.2021)

1. The Applicant has filed an Interim Application u/S 94(1)(g) of the Electricity Act, 2003 read with Order VI Rule 17 and Section 151 of the Civil Procedure Code, 1908 (CPC) and Regulation 57 and Regulation 58 of the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001 for amendment of Review Petition No. 46 of 2020 in Tariff Order dated 28.08.2020 in Petition No. 02 of 2020 with the following prayer:
 - a. Allow the amendment of pleadings sought by the Applicant in the present Application.
2. The facts given here to the present application is that a review was filed against the Tariff Order dated 28.08.2020. The Review Petition was filed on the following grounds:

WEAR FACE MASK

WASH HANDS REGULARLY

MAINTAIN SOCIAL DISTANCING

- i. Incentive for Distribution Loss for FY 2018-19. (Table 3.52 to Para 3.57, Table 3.17 of the Impugned Order)
 - ii. Pension Trust surcharge for FY 2017-18. (Table 3.68 of the Impugned Order)
 - iii. Interest on Consumer Security Deposit for FY 2018-19. (Table 3.87 and Table 3.90 of the Impugned Order)
 - iv. 7th Pay Commission Amount for FY 2018-19. (Table 3.153 of the Impugned Order)
 - v. Carrying Cost Rate for FY 2018-19. (Table 3.76 and Table 5.3 of the Impugned Order)
 - vi. Cost of Purchase of RECs for FY 2018-19. (Table 3.41 of the Impugned Order)
 - vii. Shortfall in Compliance of RPO targets for FY 2018-19. (Table 3.40 of the Impugned Order)
 - viii. Special Rebate amount announced by Ministry of Power for FY 2020-21. (Table 4.34 of the Impugned Order)
3. The Review Petition was filed on 19.11.2020. The Review Petition remained pending and finally good sense prevailed with the review petitioner to move an amendment application on 24.12.2020. The application came up for hearing before the Commission for following amendment:

Amendment of Issue

Impact of REC Cost. (Table 3.41 of the Impugned Order)

Additional Issue

Carrying Cost for FY 2013-14 to FY 2017-18 (Table 3.3 of the Impugned Order)

4. The Review Petitioner's counsel was heard in respect of amendment prayed for and after hearing the Review Petitioner's counsel the Commission came to the conclusion that as argued by the Counsel the provision of Order VI Rule 17 does not apply in extenso to the Electricity Act, 2003. The Electricity Act, 2003 provides limited application of CPC to the proceedings under the Act.
5. A feeble argument has been raised by the Petitioner by drawing attention of the Commission towards clause 94 (1)(f) of the Electricity Act, 2003. By

relying upon clause (f) of the Electricity Act, 2003 which provides the power of the Commission for reviewing its decision, directions and orders. Under this clause it has been argued that while reviewing its decisions the entire CPC applies, but it is to be noted that Section 94 of the Electricity Act, 2003 is very clear in regard to application of CPC under the Act. Section 94 of the Electricity Act, 2003 reads as under:

“ (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedures 1908 (5 of 1908) in respect of the following matters, namely:-

- a. Summoning and enforcing the attendance of any person and examining him on oath;*
- b. Discovery and production of any document or other material object producible as evidence'*
- c. Receiving evidence on affidavits;*
- d. Requisitioning of any public record;*
- e. Issuing commission for the examination of witnesses;*
- f. Reviewing its decisions, directions and orders*
- g. Any other matter which may be prescribed.*

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceedings, hearing or matter before the Appropriate Commission as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”

6. If we advert to the provisions of Section 94 of the Electricity Act, 2003 then we find that the provision of Order VI Rule 17 of CPC has not been made applicable to the proceedings under the Act. There are clauses a, b, c, d, e & f u/s 94 of the Electricity Act, 2003 and to that extent CPC has been made applicable.
7. The Counsel for the Petitioner has placed reliance upon the judgement of the APTEL rendered in Appeal No. 97 of 2013, wherein the controversy

involved was in respect of a correction of date in the prayer clause and the finding of the APTEL was it that will not cause any harm or prejudice to the other party and allowed the amendment as prayed for. But here in the instant case in hand the amendment is not formal in nature but in fact certain grounds are sought to be added in the Review Petition which were not included at the time of filing of Review Petition. Now, as an afterthought the present application has been moved for amending or adding certain grounds in the Review Petition.

8. Once the provisions of CPC under Order VI Rule 17 have not been made applicable, the application of the Review Petitioner cannot be allowed as it will cause prejudice to the other side and moreover the Commission would be entering into a field not permitted by Law.
9. The prayer for amendment cannot by pass the legal and statutory provisions contained in the Act. The Petitioner was at liberty to include all the grounds at the time of the filing of the Review Petition which he has failed to do so. In the aforesaid circumstances this application for amendment does not have any force.
10. The application has been titled u/S 94(1)(g) of the Electricity Act, 2003. Under Section 94 (1) (g) of the Electricity Act, 2003 the Commission has to see as to whether any mode or method has been prescribed for amendment of the pleadings or not. The Counsel for the Petitioner in Review Petition could not point out any provision though specifically asked by the Commission which have been prescribed for seeking such amendment.
11. Accordingly, application for amendment is rejected.

Sd/-
(A.K. Ambasht)
Member

Sd/-
(Justice S S Chauhan)
Chairperson