



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

No. F.11(1359)/DERC/2015-16/5170

**Review Petition No. 18/2016**

**In the matter of :** Review Petition filed for seeking Review, clarification and modification of the Order dated 18.12.2015 passed by the Commission in Petition No. 61 of 2014.

Tata Power Delhi Distribution Ltd.  
Through its Managing Director  
NDPL House,  
Hudson Lines, Kingsway Camp  
Delhi 110 009

**.....Petitioner**

**VERSUS**

Indraprastha Power Generation Co. Ltd.  
Through its Director (T)  
Rajghat Power House,  
Office Complex,  
New Delhi 110 00

**....Respondent**

**Coram:**

**Sh. Krishna Saini, Chairperson &  
Sh. B.P. Singh, Member**

**Appearance:**

1. Mr. Vishal Anand, Adv. TPDDL
2. Mr. Rahul Kinra, Adv. TPDDL
3. Mr. Rakesh Kumar, TPDDL
4. Mr. Mithun Chakraborty, TPDDL
5. Mr. Sumit Sachdev, TPDDL
6. Ms. Nayantara, TPDDL
7. Mr. Yuganshu Pathak, TPDDL

**ORDER**

(Date of Hearing: 31.05.2016)  
(Date of Order : 01.08.2016)

1. The instant petition is Review Petition filed under the provisions of section 94(1)(f) of the Electricity Act, 2003, and Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001 by Tata Power Delhi Distribution Limited (TPDDL), hereinafter referred to as the Review Petitioner, seeking review/ modification/clarification of the Commission's Order dated 18.12.2015 in Petition No. 61/2014, wherein Indraprastha Power Generation Company Limited (IPGCL) and Pragati

Power Corporation Limited (PPCL) had sought appropriate directives of the Commission to TPDDL for opening the Letter of Credit (LC) in their favour.

2. The submissions made by the Review Petitioner are as under:-

(A) The Review of the order dated 18.12.2015 has been sought on the following grounds:

a) There is an error apparent on the face of the record since the Commission has passed the Order in isolation and not considered the following facts:

- i. The Commission has directed the Review Petitioner to honor the terms of the Power Purchase Agreement (PPA) and regarding the recovery of net power purchase cost, said that the Review Petitioner may make submissions in this regard in its Aggregate Revenue Requirement Petition;
- ii. However, the Commission has failed to appreciate that National Thermal Power Corporation (NTPC) and National Hydro Power Corporation (NHPC), who are currently the providers of approximately 50% of the procurement of power to the Review Petitioner utilized for distribution of power to its consumers have considered it fit to provide the 0.1% rebate to the Review Petitioner over and above normative rebate which helps to reduce the power procurement cost of the Review Petitioner and ultimately benefits the consumers of the Review Petitioner. The said mechanism has been laid out in consumer interest. The Commission is obliged in terms of Section 61 of the Electricity Act, 2003 to protect and safeguard the interest of consumers and the Review Petitioner is only espousing the cause of its consumer.
- iii. The Commission has not considered and recorded the submissions made by the Review Petitioner, nor has dealt with it in the Order under Review i.e. Order dated 18.12.2015.

- iv. The Commission has failed to take into account the intractable and adversarial stance taken by the Respondents herein and has failed to even record the request of the Review Petitioner herein to direct for negotiation or meetings in the said issue of financing charges of LC and the increased rebate proposed.
- b) On the discovery of new and important matters, which the Commission has not considered while passing the Order under Review:
  - i. Pendency of disputes between the Review Petitioner and IPGCL and PPCL.
  - ii. Directions issued by this Commission in the recent Tariff Orders dated 29.09.2015 passed by it for IPGCL and PPCL.
  - iii. The fact that by its Order dated 02.11.2015 passed in Petition no. 56 of 2015 filed by the Review Petitioner had held that no power could be scheduled from IPGCL's Rajghat Power Station. The said direction of this Commission has a direct bearing on the issues involved in the present proceedings in Petition no. 61 of 2014.
- (B) That in the event that the Review Petitioner is compelled to renew the aforementioned LC, such an action would clearly be detrimental to the Review Petitioner. Since, in the event the LC is undertaken by IPGCL and PPCL then they may invoke the LC anytime towards the disputed amounts to the detriment of the Review Petitioner.
- (C) That the Commission while passing the Order under Review has not taken into consideration the inconsistency between the PPA(s) entered into by Review Petitioner with the Respondents and DERC (Terms and Conditions of Tariff for Wheeling and Retail Supply) Regulations, 2011 (MYT Distribution Regulations, 2011) in terms of the Regulation 5.24 of the MYT Distribution Regulations, 2011 the DISCOMs are to be allowed net power purchase cost which should include the cost incurred by the Review petitioner towards the Opening and maintenance of LC and in terms of the PPA, the Review Petitioner has to provide LC for State Utilities in terms of Clause 6.2.2 of the PPA(s) dated 14.02.2011 signed by the Review Petitioner with IPGCL and PPCL which interalia provides

that the Review Petitioner shall bear the cost towards the payment of LC.

(D) That in view of the Judgment of the Supreme Court of India in PTC India vs. CERC **(2010) 4 SCC 603** the Regulations have an overriding effect on not only the future contracts but also on the existing contracts. Therefore, in the present matter the Regulations should supersede any PPA thus correcting the inconsistency.

(E) That the Commission, in its recent Tariff Order dated 29.09.2015, has itself directed that the power purchase cost from Rajghat Power Station of IPGCL would not be considered after May, 2015. However, while calculating the LC amount IPGCL has deliberately included the bills pertaining to the Rajghat Station raised by it even after May, 2015.

3. The Commission derives powers for reviewing its own decisions, directions and Orders by virtue of sub-Section 1 (f) of Section 94 of the Electricity Act, 2003 read with Order 47, Rule 1, of the Code of Civil Procedure. The scope of review, at the very outset, is much more strict and restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the four corners and limited by the unqualified language of Order 47, Rule 1.

4. In accordance with the provisions under Order 47 Rule 1 of the Code of Civil Procedure, a Court of review may allow a review only on three specific grounds, which are as under:-

*(i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or*

*(ii) Mistake or error apparent on the face of the record; or*

*(iii) For any other sufficient reason which is analogous to the above two grounds*

5. An error which is not self-evident but has to be detected by process of reasoning cannot be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said

provisions. Discovery of new evidence should be considered with great caution. The applicant has to show :-

- (a) That such evidence was available and is of undoubtful character.*
- (b) That it was so material that its absence might cause miscarriage of justice.*
- (c) That it could not be taken into consideration with reasonable care and diligence as it has not been brought to the notice of the court at the time of decree/order. It is a well settled principle of law that new evidence discovered must be relevant and of such character that it has clear possibility of altering the judgment and just not merely reopening the case for the sake of it.*

6. The Commission has considered the written and oral submissions of the Review Petitioner and has also considered the entire record placed before the Commission along with relevant provisions of the Electricity Act, 2003, Regulations made thereunder and the Code of Civil Procedure.
7. It is noticed that in Petition No. 61 of 2014 on which the present Review has been filed, there was only one dispute regarding the opening of LC by the Review Petitioner in favour of IPGCL and PPCL, as per the terms of the approved PPA. After hearing both the parties the Commission observed that it would not be appropriate to accede to the claim of TPDDL seeking 0.1% additional rebate/incentive for providing LC, over and above the prompt payment rebate so as to go beyond the terms of PPA wherein there is no mention about 0.1% additional rebate for opening of LC. The respondent/Review Petitioner has to honor the terms and conditions of the PPA.
8. It is further observed that the ratio of the Judgment in PTC India Ltd. vs CERC **(2010) 4 SCC 603** to the effect that the regulations can override the existing contracts is not applicable in the instant case as there is no inconsistency between the Regulations and the PPA (Contract). The Regulation provides that the DISCOMs are to be allowed to recover the net cost of power procured from the sources approved by the Commission, whereas, the PPA entered between the parties talks about opening of LC and it does not provide that the generator will pay the cost

of opening of LC. A plain reading of the two provisions makes it clear that there is no inconsistency or conflict between them. Further, the DISCOM may submit its claim for recovery of net cost of power through respective Aggregate Revenue Requirement (ARR).

9. The Regulation 5.24 does not provide for seeking any rebate on opening of LC, it only provides for recovery of cost of power purchase. If a generator pays additional rebate of 0.1% towards opening of LC then it would not become part of the cost of the power purchase whereas, it would be an additional expenditure on the part of the generator, which may be disallowed being beyond the scope of agreed terms of PPA. In simple words the DISCOM has to incur expenditure towards opening of LC, which may be recovered through ARR, whereas, the expenditure for opening of LC could not be legally permissible in case it is borne by the generator. Considering the above fact the Commission in its order dated 18.12.2015 has made it clear that for recovery of net power purchase cost, the petitioner may make submissions in its ARR Petition but it has to honour the terms of PPA which do not mention about any additional rebate for opening of LC.
10. There are inherent contradictions in the arguments of the Review Petitioner as at one place it talks about recovery of net cost of purchase of power as per the provisions of the Regulations and on the other hand it is seeking additional rebate of 0.1%.
11. As regards additional rebate provided by NTPC and NHPC it is made clear that every contract is a separate contract and may not be applicable to other contracts.
12. On the issue of pendency of other related petitions before the Commission like Petition No. 56 of 2015 (Rajghat Power Station) and Petitions No. 91 and 92 of 2015 (non-payment of dues to IPGCL and PPCL) it is observed that the issue of non-opening of LC ante dates these petitions i.e. the issue is much older than the dates on which these petitions were filed. Secondly, while deciding the Petition No. 61 of 2015 these petitions were also brought to the notice of the Commission and no further consideration was required on these matters as these have no legal bearing on the issue in hand. Administrative or financial

hardship/problem, as cited by the Review Petitioner, may not override a just and legal provision.

13. From the above, it is evident that the issues raised in this Review Petition have already been considered by the Commission in the Impugned Order and no fresh evidence has been adduced or error apparent on the face of the record been made out by the Review Petitioner, which can be considered as a case of miscarriage of justice. The Review Petitioner has also failed to cite any other sufficient reason requiring review. The instant petition is devoid of any of the ingredients mentioned in para 4 above, which can qualify its admissibility for review and therefore the Review Petition is dismissed.

**Sd/-**  
(B.P. Singh)  
Member

**Sd/-**  
(Krishna Saini)  
Chairperson