



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

No. F.11(1613)/DERC/2018-19/6270

Petition No.15/2019
(Diary No. 5023/2018)

In the matter of : Review Petition seeking Review of the Order dated 28.03.2018 in Petition no. 68 of 2017.

Apex Chamber of Commerce and Industry of NCT of Delhi **....Petitioner**

Vs.

BSES Rajdhani Power Limited **....Respondent**

AND

Petition No. 16/2019
(Diary No. 5024/2018)

In the matter of : Review Petition seeking Review of the Order dated 28.03.2018 in Petition no. 69 of 2017.

Apex Chamber of Commerce and Industry of NCT of Delhi **....Petitioner**

Vs.

BSES Yamuna Power Limited **....Respondent**

AND

Petition No. 17/2019
(Diary No. 5025/2018)

In the matter of : Review Petition seeking Review of the Order dated 28.03.2018 in Petition no. 67 of 2017.

Apex Chamber of Commerce and Industry of NCT of Delhi **....Petitioner**

Vs.

Tata Power Delhi Distribution Limited **....Respondent**

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Mr. Udit Malik, Adv. Petitioner
2. Mr. Hasan Murtaza, Adv. Respondents

ORDER

(Date of Hearing: 29.01.2019)
(Date of Order: 14.02.2019)

1. The instant Review Petition has been filed by Apex Chamber of Commerce & Industry of NCT of Delhi with regard to the amendment/reduction roll back of the increase in the fixed charges from Rs. 125/- to Rs. 250/- per KVA for Industrial category under the Annual Tariff Petition for FY 2018-19.

2. An Interim application regarding grant of exemption of fees was filed by the Review Petitioner which is allowed.
3. The Petitioner has sought review with regard to the following issues:
 - i. **Reduction/Roll back of Fixed Charge enhanced from Rs. 125 to Rs. 250 per KVA.**
 - ii. **Waiver of 8% continuing Surcharge on bills.**
 - iii. **No additional surcharge of 20% on peak load in day timings.**
 - iv. **Removal of Pension Fund of 3.8% payable to DISCOM employees from bills.**
 - v. Security payable on enhanced load (MDI) beyond sanctioned on additional load only to be charged at new rate until the roll back to old rates.
 - vi. **Calculation of fixed charges on MDI reading only by DISCOM TPDDL.**
 - vii. No compulsion of Factory License but even Udyog Adhar Memorandum/D.I. Registration should be treated at par. Condition of renewed licence to be deleted.
4. The Petitioner-Association has further submitted that mainly consumers of the industrial power have been deprived of an opportunity to raise their grievances prior to the determination and promulgation of Tariff Order for 2018-19. It is worthwhile to mention that as per the prevailing practice right from 2004 onwards, the Commission always invited various group of consumers separately such as the residential users, the commercial and industrial users in different lots on different dates, whereas in a complete departure of the established procedural practices, the Tariff order for the financial year 2018-19 was determined and promulgated in a collective hearing of all where the consumers and industrial users were completely overlooked. This is illustrated by way of the representation dated 27.06.2018 submitted by the Petitioner Association.
5. The Petitioner-Association has also stated that issue No. V regarding security payable on enhanced load on the basis of MDI has already been settled as the Commission has issued amendment to the Regulations. Further, the issue No. VII for compulsion of factory license for industrial category, the Commission has issued clarification and therefore, this issue is also not pressed upon. Therefore, only remaining 5 issues require consideration of the Commission.
6. It is observed that the Petitioners are seeking review on two separate decisions of the Commission, first the Tariff Order dated 28.03.2018 and the second is DERC (Supply Code and Performance Standards) Regulations, 2017. Review of two different decisions by single petition is not permissible. Moreover, framing of Regulations is a legislative function and the Commission has no jurisdiction to review such subordinate legislation. Also, it is noticed that there is a delay of 127 days in filing the review for which no Interim application was filed.

7. On the contention of the Petitioner that the consumers of industrial power have been deprived of an opportunity due to departure from the established procedural practice of public consultation, it is made clear that the consumers across the board were asked to submit their written submissions on the executive summary of the Tariff Petitions filed before the Commission and at the same time they were given opportunity to present their views during the course of Public Hearing. By doing away with the system of different time slots for different categories of consumers, it has become easy and convenient for the consumers such that a consumer need not wait for the time slot of a particular category to present his views neither he is deprived of such opportunity in case the time slot allotted to his category of consumer is over. The system has been made convenient to consumers such that whenever they get time on the date of Public Hearing they may present their views on the Tariff Petitions. Therefore, the contention of the Petitioner has no merit that the consumers of industrial sector were not given opportunity to raise their voices/concerns due to departure in established procedural practice to raise their concerns in public hearing the procedure of categorisation.

8. **Re: Enhanced Fixed Charges:**

Petitioner's Submission:

As far as the fixed charges in the tariff charges i.e. 2018-19 Regulation of the DERC are concerned, it is submitted that the aforesaid Charges are highly excessive, irrational and tantamount to unjust enrichment and neither can be levied nor it can be demanded.

The concept of levying fixed charges is to enable the distribution companies realize from its consumers on the capital expenditure incurred on infrastructure facilities which are directly relatable to the consumers.

The total consumption of electricity by the state of NCT Delhi was 26471.99 MU and out of which the Industrial Sector consumed only a total of 3177 MU , which is barely 8%. Whereas, the irrational and excessive increase of fixed charges from Rs. 125/- (in the year 2017-18) to Rs. 250/- (in the financial year 2018-19) for Industries is not fathomable. As unlike domestic or other category users, Industrial demand and consumption has limited variation and do not even require installation of new hardware or technology by the existing consumers and yet the fixed charges demanded by Industries have been nearly doubled.

The Petitioner raises the grievances with regard to the consumers who are already equipped with the infrastructural facilities, and even the renovation cost, if any, would not justify irrational and excessive increase of fixed charges from Rs. 125/- (in the year 2017-18) to Rs. 250/- (in the financial year 2018-19), whereas the fixed charges levied in the past.

Commissions Observation:

Ministry of Power, Gol had constituted two committees for simplification of Tariff categories of consumers and rationalization of tariff structure. During the combined meeting of the committees at Ministry of Power on 8th December, 2016, the present cost and revenue component of the distribution licensees prevalent in the state of Maharashtra was presented to committee. It was observed that total fixed cost in the ARR is 45% to 55% against revenue from Fixed Charges of 10% to 15% whereas variable cost component in ARR is 45% to 55% against revenue from variable charges of 80% to 85%.

DERC was also part of these committees and taking a cue from the above study of Ministry of Power, Gol; DERC had analyzed the present cost and revenue component of the distribution licensees prevalent in the state of Delhi and it was observed that fixed cost in the ARR is 45% to 55% against revenue from Fixed Charges of 8% to 10% only. Whereas variable cost component in ARR is 45% to 55% against revenue from variable charges of 90% to 92%.

Therefore, the hike in Fixed Charges had become imperative as already elaborated and explained in the Approach Paper on rationalisation of Tariff. Accordingly, only in order to rationalize the fixed charges, after a gap of so many years, the Electricity Tariff has been rationalised vide Tariff Order dated 28.03.2018 wherein the fixed charges were increased and correspondingly Energy Charges have been decreased in order to recover actual fixed cost through fixed charges and actual Variable Cost through Energy Charges. Even after increase in the fixed charges total recovery of fixed cost of distribution of electricity is not being made.

The contention of the petitioner that there is a decrease in consumption of electricity in the industrial category and to cater the need of such category installation of new hardware or technology is not requirement because of consumers are already equipped with the infrastructure facilities and even the renovation cost, etc., is based on wrong assumptions about levy of fixed charges. The Commission in its approach paper has stated that fixed cost shall include the fixed charges of generating stations, transmission charges and recovery of capital cost of distribution licensee (return on equity, interest on loan, depreciation) etc. The fixed charge levied also include cost of operation and maintenance of the distribution licensee. The equipment has to be replaced after their useful life and a certain cost is necessary to maintain the existing infrastructure. As already stated that the erstwhile tariff was not able to recover the full fixed cost as stated above and therefore in order to rationalise the tariff, it had become imperative to increase the fixed charges.

9. **Computation of Bill**

Petitioner's Submission:

It is worthwhile to mention that bare perusal of the tariff schedule for financial year 2018-19 at page 6 which contains a note stating, inter-alia:

"Notes:

For all categories other than Domestic, Fixed Charges or to be levied based on billing demand per KW/KVA or part thereof. Where the Maximum Demand ((MD), as defined in DERC (Supply Code and Performance Standards) Regulation 2017, reading exceeds sanctioned load/contract demand, a surcharge of 30% shall be levied on the fixed charges corresponding to excess load in KW/KVA for such billing cycle only. Wherever, sanctioned load/contract demand is in KW/HP, the KVA shall be calculated in basis of actual power factor of the consumer, for the relevant billing cycle and in case on non/availability of actual Power Factor, the Power Factor shall be considered as unity for sanctioned load/contract demand upt 10KW/11KVA...."

There exists an ambiguity in the computation of the billing system being followed by DISCOMs. There is no parity in the calculation of fixed cost, as some of the DISCOMs are computing it on the basis of actual MDI (Maximum Demanded Indicator), whereas on the contrary some Discoms are computing it on the basis of the contracted load, creating a state of confusion amongst the consumers.

Commission's Observation:

The notes given below the tariff schedule for the financial year 18-19 is self explanatory and there is no ambiguity in implementation of such provisions. It simply says that the fixed charges are to be levied based on the billing demand. Billing demand is the highest of contract demand/ sanctioned load or the maximum demand indicated by the meter during the billing cycle. Therefore it is amply clear that in a billing cycle, the fixed charges are to be levied on maximum demand or the contract demand/sanctioned load whichever is higher. In case if the maximum demand is more than the contract demand/sanctioned load, for excess load beyond the contract demand /sanctioned load, a surcharge of 30% shall also be levied on the fixed charges, i.e. for the load in excess to the contract demand/sanctioned load, the fixed charges shall be 1.3 times of the normal rate.

10. **Re: Levy of Surcharge**

Petitioner's Submission:

It is submitted that the DISCOMs having been levying an additional surcharge of 8% on consumers from the FY 2013-14, vide its order dated July 13, 2012, under the pretext of recovering the revenue gap.

The Commission at the time of fixation of tariff has not taken into consideration the implications of the financial burden that is being levied on the Industries. Even though Industries are the backbone of any society, they consume a small fraction of electricity in the city of Delhi, and yet the financial burden being levied on them is far greater. The effect of which would be borne by people of the city, with loss of job opportunities due to migration of Industries and loss of tax collection by the state ex-chequer.

That the DISCOMs have determined that the operating cost for the FY 2018-19 has been fixed at 14%. The present consumer has already been burdened with the additional surcharge of 8%, along with that an additional 3.8% is being levied for the erstwhile employee's pension fund, which add to a close to 12%. If already such a significant part of the financial operating burden has already been passed to the consumer, then the need to increase the fixed charges from Rs. 125/- (in the year 2017-18) to Rs. 250/- (in the financial year 2018-19) is not justified. It is highly excessive, irrational and tantamount to unjust enrichment and neither can be levied nor it can be demanded.

That the Petitioner, Association, mainly consumers of industrial power has been deprived of an opportunity to raise these grievances prior to the determination and promulgation of tariff order for 2018-19. It is worthwhile to mention that as per the prevailing practice right from 2004 onwards, the Hon'ble Commission always invited various group of consumers separately such as the residential users, the commercial and industrial users in different lots on different dates, whereas in a complete departure of the established procedural practices, the tariff order for financial year 2018-19 was determined and promulgated at a collective hearing of all where the consumers and industrial users were completely overlooked.

Commission's Observation:

The contention of the petitioner is due to misunderstanding of the purpose of levy of surcharge of 8%. This surcharge of 8%, which is termed as Regulatory surcharge is to recover the Regulatory Assets of the DISCOMs. The Regulatory assets is the amount which could not be realised through ARR because if allowed to be recovered through ARR in one go, it would have resulted in a Tariff shock to the consumers. However, such amount is due, which has to be paid to the DISCOMs and therefore regulatory surcharge of 8% is levied in order to liquidate the Regulatory Assets. Such recovery has already been explained to the Hon'ble Supreme Court of India on its specific query that how the liquidation of Regulatory Assets is proposed by DERC. Such surcharge has resulted in decrease in Regulatory Assets of the DISCOMs and by the passing years the recovery may accelerate and soon the entire Regulatory Asset may get liquidated, thereafter there may not be any requirement of levy of such Regulatory Surcharge.

11. **Re: Additional Surcharge of 20%**

The Petitioner has made no submissions on this. The Additional Surcharge of 20% on peak load in day timing is in order to flatten the demand peak and is a part of Demand Side Management (DSM) mechanism. Such exercise reduces the overall tariff and unnecessary burden on the infrastructure. It is best suited to the industrial categories, which may shift their operations from peak hours to non peak hours. This time of day tariff (ToD) is applicable to all categories of consumers having load of 10kW and above except domestic category. Even the entity like DMRC and DJB have not been spared from ToD tariff.

12. **Re: Pension Surcharge**

The Petitioner has made no submissions on this issue also. The 3.8% surcharge towards funding of Pension trust is as per the directions of the Government of NCT of Delhi so as to meet the pension requirements of retired employees of erstwhile DVB. The Commission has been providing funding to Pension on the specific requests received from GoNCT Delhi to fund the Pension Trust. The Commission allows such ad-hoc dispensation to avoid any undue hardship to the retired employees (pensioners) of the erstwhile DVB. Under the provisions of Delhi Electricity Reforms Act, 2000 (DERA), Transfer Scheme Rules, 2001 and the Tripartite Agreement it is obligatory on part of GoNCTD (which is one of the signatory of the Pension Trust Agreement) to put in place an appropriate system of governance of the DVB Pension Trust and to ensure than equitable system of funding, the liabilities of the trust is put in place. In LPA No 98/2005, the Hon'ble High Court of Delhi in its judgment dated 30.03.2006 has held that: "There is no escape from concluding that even in all these suits which are pending are filed by the retired employees in the Court claiming for their service benefits, thereby creating liability of DVB on the respective transfer company. The transferor company shall be substituted instead of DVB." In civil Appeal No 4269 of 2006 read with civil appeal No 4270 of 2006, the Hon'ble Supreme Court of India has observed that the view taken by the High Court of Delhi is correct.

13. Further any Order is ought to be reviewed as per the relevant provision of law viz. Order 47 Rule 1 of Civil Procedure Code, 1908., which provides that 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*
- (i) *For any other sufficient reason which is analogous to the above two grounds.*

14. The mistake or an error should be apparent on the face of record, and 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.
15. In the present matter the Petitioner has failed to bring any new fact or any error apparent on the face of record to the notice of the Commission so as to fulfil basic criteria for entertaining such a review and accordingly, the present petition is liable to be dismissed at the admission stage itself.
16. The Petition is dismissed.

Sd/-
(Justice S S Chauhan)
Chairperson